

Report 2004

# Purchasing Sexual Services in Sweden and the Netherlands

Legal Regulation and Experiences

An abbreviated English version

A Report by a Working Group on the legal regulation of the purchase of sexual services



JUSTIS- OG POLITIDEPARTEMENTET

*Ministry of Justice and the police*

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in  
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**Issued on 8 October 2004**



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## Preface

On 8 October 2004 the report on *The Purchase of Sexual Services in Sweden and the Netherlands. Regulation and Experiences. A Report from the Working Group on the Legal Regulation of the Purchase of Sexual Services* was handed over to Odd Einar Dørum, the Norwegian Minister of Justice and Police Affairs. The report is being published in the Ministry of Justice and Police Affairs report series for the year 2004 (G-0367).

The Norwegian version of the report runs to 140 pages with 11 chapters. This English version of the report is a substantially abbreviated version of the official report. Three chapters have been selected for English-speaking readers: the original Chapter 3 on conditions in Sweden (here Chapter 2); the original Chapter 4 on conditions in the Netherlands (here Chapter 3) and the original summary Chapter 8 (here Chapter 4). This version starts with a brief introduction to the group's terms of reference and its composition (here Chapter 1).

The English version has been edited by Ulf Stridbeck.

### Editor's Note on footnotes and references:

It should be noted that references in the footnotes to literature in the Norwegian and Swedish languages have not been translated into English as this literature does not exist in English form. The footnotes not relating to literature in Norwegian or Swedish, have, however, been translated into English.



# 1 Introduction

## 1.1 Terms of reference and the Group's composition

In 2003 the Norwegian Ministry of Justice and Police Affairs launched *Plan of Action to Combat Trafficking in Women and Children*.<sup>1</sup> One of the measures in the plan was the appointment of a working group whose task would be to collect experiences which argued for and against the criminalisation of the purchase of sexual services.

Under Law No. 76 of 11 August 2000 concerning changes in the Penal Code's provisions on sexual offences it became a criminal offence to purchase sexual services from anyone under the age of 18. In NOU<sup>2</sup> 1997:23 there was a discussion as to whether a general ban should be imposed on the purchase of sexual services. Both the Ministry and the Norwegian Parliament found that the considerations which argued against a general criminalisation were weightier than those which argued in favour of it. The Ministry of Justice stated in Proposition to the Odelsting No.28 (1999-2000)<sup>3</sup> that it would reconsider the question after a period of two years.

On account of the above, the working group was established with the following terms of reference:

1. The working group shall collect information which argues both for and against making the purchase of sexual

<sup>1</sup> The Government's Plan of Action to Combat Trafficking in Women and Children 2003–2005, Ministry of Justice and Police Affairs: The Action plan was presented to the public on 12 February 2003).

See

<http://odin.dep.no/filarkiv/175924/Trafficking-eng.pdf>

<sup>2</sup> The Official Norwegian Report.

<sup>3</sup> Ot. prp.nr. 28 (1999-2000), s. 84

services a criminal offence, with the purpose of providing better knowledge on which to base a decision on whether or not the purchase of sexual services should be made a criminal offence.

The group shall gather experiences with such a penal provision from Sweden, where a law prohibiting the purchase of sexual services came into force on 1 January 1999. Furthermore the group shall collect information on experiences from the Netherlands where the legalisation of brothels took place in 2000.

2. The working group shall gather information on:

- the experience of the police and the prosecuting authorities, health and social authorities, and organisations representing those who sell sexual services. In particular the working group shall investigate whether the extent of prostitution has changed after the changes in the law, and how conditions now are for the prostitution which still exists,
- the impact in relation to preventing trafficking in women and children,
- other factors they consider significant for the question as to whether the purchase of sexual services should be made a criminal offence.

The working group shall point out the advantages and disadvantages of the way prostitution is regulated in Sweden and the Netherlands, taking up the issue of enforcement, to what extent prostitutes avail themselves of health services, violence against prostitutes and the extent of prostitution.

3. The working group shall also evaluate the present ban in Norway on the purchase of sexual services from persons under the age of 18, by analysing the use of Penal Code art. 203.

4. The working group shall be made up of three persons. The group should



include persons with competence in criminological, police and health/social affairs. Both sexes should be represented in the group.

5. The group was to deliver its report to the Ministry of Justice by 1 July 2004.

The working group was chaired by Professor Ulf Stridbeck, Professor of Law in the legal faculty in the University of Oslo. The other members were Police Inspector Olaf Kristiansen, the Police Directorate and Professor Berit Schei, Professor of Medicine in the Norwegian University of Science and Technology (NTNU). The secretary of the working group was jurist Julia Köhler-Olsen.

## **1.2 Overview**

The report which follows describes the experience of Swedish and Dutch legal regulation relating to the purchase of sexual services. The experience of the national police forces in the enforcement of the legislation is also described, as well as the health and social institutions' assessments of the situation after the changes in the law. The experiences of the prostitutes are also presented. In addition, the report points out the advantages and disadvantages of the way in which prostitution is legally regulated in Sweden and the Netherlands.

## 2 Sweden

### 2.1.1 Street prostitution

There is documented evidence of street prostitution in Stockholm, Gothenburg and Malmö. Previously there has also been street prostitution in Norrköping, but it disappeared just after the Law on the Purchase of Sex was introduced. When the Law on the Purchase of Sex came into force there were about 2,500 prostitutes in Sweden. Of these about 650 (26%) worked on the streets.<sup>4</sup> The investigation by the Swedish National Board of Health and Welfare in 1998 showed a change in the numbers of known prostitutes from 1998 to 1999 i.e. before and after the law came into force. In 1998 in Stockholm some 280 women were known to work on the streets whilst the number in 1999 was 170. In Gothenburg some 286 women were reported to be working on the streets in 1998 whilst the figure in 1999 was 90. In Malmö some 160 women were known to be working on the streets in 1998, whilst in 1999 the figure was 80 women. Subsequent to these observations the numbers of known prostitutes has remained constant. The number of street prostitutes was halved the year after the law came into force.

A general problem with statistics from Sweden is that they are highly uncertain. The Swedish National Board of Health and Welfare emphasises the problem in a SoS Report –99<sup>5</sup>:

As a conclusion, the following can be observed in relation to the practical problem concerning the reliability of the data:

The more "up-market" prostitution, the more unreliable the data. It is possible to obtain relatively reliable figures relating to street prostitution and for instance in

the massage parlours. But collecting data on hotel and restaurant prostitution and call girl activity for instance is very hard. The same obviously applies to those persons, prostitutes and clients, or procurer, who are found within these forms of prostitution.

The elements of uncertainty are so great that it is not possible to form an exact picture of the phenomenon.

The methods employed by the different parties vary as far as documentation is concerned. Street prostitution is the simplest subject for study, but also very difficult to document. In the SoS Report-03 it is pointed out that in Stockholm the observations vary between the social services and the police.

The Swedish National Board of Health and Welfare:

Total 180- 200 prostitutes /year.  
On the streets 25-30/per 24 hours.

The police:

Total 50-60 prostitutes/year.  
On the streets 5-7/per 24 hours.

The fact that the figures from the social services prostitution group and those from the police are so divergent may be because the two groups appeared on the streets at different times during the 24 hours, on different days and in different situations.<sup>6</sup>

The police's own documentation says:

It has to be remembered that the method of measuring is very rough and does not give an accurate figure, though it indicates the way things are going.<sup>7</sup>

This last statement is important. The figures are an indication – nothing more.

<sup>4</sup> Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmö-rapporten*, s. 11.

<sup>5</sup> Socialstyrelsen, *Kännedom om prostitution 1998 – 1999, SoS-rapporten -99*, s. 17.

<sup>6</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 22.

<sup>7</sup> Gripenlöf A., *Rapport över sexköpslagens effekt på gatuprostitutionen, inomhusprostitutionen i Stockholms län 1999-2003*.

### 2.1.1.1 Stockholm

In Stockholm street prostitution is concentrated in Malmskillnadsgatan – a secluded street in central Stockholm. Statistics from the social administration and the police are based on observations there.

The prostitution group's statistics 1999-2003 show the following:<sup>8</sup>

Year	-99	-00	-01	-02	-03
Total prostitutes	101	112	112	77	104
Total foreign prostitutes	13	5	5	1	7
Total number of reported clients	31	23	18	0	3

**Table 1 – Street prostitution, Malmskillnadsgatan, Stockholm**

The figures from Malmskillnadsgatan show that the total number of women on the street has been stable in the period 1999-2003. The reason for the reported number of clients in 2002 being zero, is that during that period, the prostitution group had been redirected to a trafficking project. Thus the group made no observations/reports in the period. When the number of observers is small (2 persons) and there are few observations, the statistics are highly uncertain.

The number of prostitutes on Malmskillnadsgatan has been reduced since prostitution was made a criminal offence, and the number of clients has also reduced. The police and social workers see fewer cars and men in the streets. This may be due to the Law on the Purchase of Sex but there are also other explanations.

The total number of reports to the police concerning the purchase of sex in Stockholm county in the years 1999-2003 is 371. The number of clients is 357, and all are men. The reported sex purchases have occurred on 121 occasions in the

<sup>8</sup> Gripenlöf A., *Rapport över sexköpslagens effekt på gatuprostitutionen, inomhusprostitutionen i Stockholms län 1999-2003.*

streets and on 233 occasions indoors.<sup>9</sup> The cases indoors have been discovered as a result of investigations in connection with investigations of cases involving pimping activities and trafficking. The doubling in total number of reported purchases of sexual services from 2002 to 2003 is due to a list of "clients" found by the police on computer records in connection with the investigation of brothels in Stockholm. The police have never uncovered brothels or Trafficking in Human beings as a result of under-cover observations and investigations into the purchase of sex on the streets.

According to Klaragårdens<sup>10</sup> statistics, 85 % of women involved in street prostitution have problems with alcohol and/or drugs, and this is the reason they turn to prostitution. 15% become prostitutes not to obtain narcotics, but mental problems are probably the reason. The Outreach Unit<sup>11</sup> assume that 50% of the women have problems with alcohol and/or drugs, and 50% are mentally ill.

### 2.1.1.2 Gothenburg

The total number of known prostitutes in Gothenburg has fallen from 300 a year before the change in the law to 100 a year today. About 15 women are on the streets in any 24 hours. There is some degree of recruitment.

### 2.1.1.3 Malmö

The Social Services prostitutions group states that they know of about 135 women involved in street prostitution. There are about 30-35 women on the streets in any 24 hours. There is some degree of recruitment. Street prostitution covers a large diffuse area which makes the figures from Malmö uncertain.

<sup>9</sup> Gripenlöf A., *Rapport över sexköpslagens effekt på gatuprostitutionen, inomhusprostitutionen i Stockholms län 1999-2003.*

<sup>10</sup> Klaragården is the City Mission's Drop-in Centre for homeless prostitutes in Stockholm.

<sup>11</sup> The Outreach Unit is Stockholm's Social Administration's street action group.

#### 2.1.1.4 Changes in the numbers of street prostitutes in Sweden 1998-2003

In Gothenburg and Stockholm about the same number of street prostitutes is known today as there was in 1999, apart from the Stockholm Police who have much lower figures. In Malmö the numbers have gone up from 80 to 135. The overall picture from the large towns show that the number of prostitutes in evidence is lower (- 41 %) now than before the law was enacted. And the number of purchasers in the streets is lower after the law came into force.

The SoS Report-03 observes that it is impossible to explain the reduction on the streets.<sup>12</sup> It is impossible to say whether a reduction on the streets is due to legislation or to other factors. Mobile telephones and the Internet are probably of great significance for women selling sex elsewhere than on the streets.

There seems to have been a movement away from public places to a more shady setting.<sup>13</sup>

#### Changes in total street prostitutes

Town	1998	1999	2003	1998-2003
Stockholm	280	170	190	-32 %
Gothenburg	286	160	100	-65 %
Malmö	160	80	135	-15 %
<b>Total:</b>	<b>726</b>	<b>410</b>	<b>425</b>	<b>-41 %</b>

Table 2 – Changes in total street prostitutes<sup>14</sup>

#### 2.1.2 The indoor market

“The more ”up-market” the prostitution is, the less reliable the data.”<sup>15</sup> It is difficult to obtain a picture of the indoor market. From the figures for 2001 we know that, of the 2,500 prostitutes in Sweden, 1,850 were not on the streets. 74 % of the women worked indoors, which must either have been at home, in a brothel, in a

studio, as an escort or in some other non-visible market. It is possible that indoors prostitution is more extensive now, but no one knows for certain. Those who claim that there has been an increase in indoors prostitution, explain it by the fact that the women have been scared off the streets since their clients could be charged with a criminal offence. Some of it can be due to a ”technical revolution” that is to say that use of the mobile telephone and the Internet make contact between the seller and the buyer less dependent on being seen on the open market. Some persons think that mobile telephones and the Internet have opened the market up for new groups of sellers and new groups of buyers. It is claimed that new recruits have been made among Swedish girls (under 20 years of age) in the escort market.<sup>16</sup> The new technology represents a ”low threshold offer”.<sup>17</sup> It offers anonymity, effectiveness and greater freedom of choice as far as the type of service and place is concerned.<sup>18</sup> With the new technology one is no longer dependent on being in the Metropolitan Jungle. The Internet opens up opportunities for the sale of sex all around the country, so that women can arrange small tours to clients in sparsely populated rural areas. “Much suggests that the sex contact pages are the real forum for prostitution.”<sup>19</sup> The ”technical generation” probably operates indoors. The Social Administration’s Prostitution Group says they do not undertake any form of visiting activity as far as indoor prostitution is concerned. There is no method for it.<sup>20</sup> The SoS Report-03 states that it is impossible to say anything meaningful about for other than the street.<sup>21</sup> And anyway it is impossible to say whether

<sup>12</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 25.

<sup>13</sup> RFSU, *Prostitution på Internet*, s. 9.

<sup>14</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 24.

<sup>15</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 17.

<sup>16</sup> Interview with N.N., 28 January 2004.

<sup>17</sup> RFSU, *Prostitution på Internet*, s. 31.

<sup>18</sup> Månsson S.-A., Söderlind, P., *Sexindustrin på nätet*, s. 140 flg.

<sup>19</sup> RFSU, *Prostitution på Internet*, s. 19.

<sup>20</sup> Cederlöf, P., *Socialförvaltningens prostitutioner*, s. 33.

<sup>21</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 25.

any changes to the indoor market are a result of legislation or other factors.

One of the reasons that we do not know so much about the indoor market is that the police do not do undercover work on the purchase of sex indoors since it is a very resource-intensive job, with uncertain results.<sup>22</sup> What is the purchase of sex and what is a normal form of establishing contact? Since the purchase of sex has, after all, the same penalty level as pilfering, it becomes a professional police matter to decide on the prioritisation of scarce resources.

### 2.1.3 Age

In Stockholm it is estimated that street prostitutes are about 30 years of age, but there are also many much older women on Malmkillnadsgatan. Klaragården estimates the age to be mainly 35-45 years of age.

In Gothenburg women under the age of 25 are rarely to be seen, apart from a few heroin addicts between 22 and 25. There is also a small group in their forties.

In Malmö the police believe that the women are younger in comparison with Stockholm and Gothenburg. The average age has fallen in recent years and is now between 20 and 25 years. Many are heroin addicts.

Young girls under the age of 18 are seldom to be seen. There is some information on girls under the age of 18 who accompany travel groups on the ferries to Finland. In Gothenburg in the course of 2003 five prostitutes under the age of 18 have been encountered. The youngest was 14.

According to the reasoning behind the "technical generation" amongst indoor prostitutes, there is probably a whole

group of girls under the age of majority "On the Net".

### 2.1.4 Violence

As regards violence in general towards prostitutes the SoS Report-03 shows that the violence which women involved in prostitution are exposed to is not only violence from clients, but also violence from partners and from other men the women have been in contact with. There are a large number of studies, claims the report, which shows that violence is an everyday occurrence for women involved in prostitution. Women tell of violence in the form of major attacks, rape, threats with knives and with being locked up.

Where the extent of the violence against prostitutes is concerned, this has not been recorded systematically, neither before nor after the coming into force of the law. According to the SoS Report-03 there is uncertainty as to the frequency of the violence. There is a lack of documentary evidence from the hospitals on injuries caused by violence to prostitutes. The police in Stockholm cannot confirm an increase or a decrease in cases of violence. It is also stated in the SoS Report-03<sup>23</sup> that:

There are now fewer clients and it is therefore reckoned that a larger part of them are "dangerous". For instance, they now want "rougher things" and have more peculiar demands (for instance more rough sex) or are prepared to pay more for unprotected sex.

The main conclusion in the SoS Report-03 on violence is as follows:<sup>24</sup>

We cannot say for certain whether violence in relation to prostitution has increased or not. While some informants speak of a more risky situation, there are

<sup>22</sup> Socialstyrelsen, *Kännedom om prostitution* 2003, SoS-rapport -03, s. 25.

<sup>23</sup> Socialstyrelsen, *Kännedom om prostitution* 2003, SoS-rapport -03, s. 8.

<sup>24</sup> Socialstyrelsen, *Kännedom om prostitution* 2003, SoS-rapport -03, s. 9.

few who really think that the actual violence has increased.

In addition, according to our informants, the risk of violence has increased for those who no longer work on the streets or who work in a studio with others. When coming on a home visit the prostitute does not know what she is coming to and will be indoors with an unknown person. This can give rise to disputes about the price and the type of services.

The Malmö-report also shows that violence has increased after the change in the law:<sup>25</sup>

Those prostitutes who are still working in street prostitution experience a tougher existence. This is partly caused by the increased flow of heroin, but also by the decreasing number of clients. This tougher competition means that the prostitutes lower their prices, are prepared to take more clients and are prepared to give the service without protection. The health authorities express a fear of a dramatic development in a negative direction for the health of the prostitutes and the spread of venereal diseases.

This is further confirmed in an article in the Swedish "Polistidningen" (*The Police Journal*).<sup>26</sup> In Malmö most of the "normal" clients have been scared off by the law. And because the client base has changed and prices have fallen, "then the girls today have to take clients they don't feel safe with". Clients have become more brutal.

Those who run the bus that gives out syringes to addicts in Malmö are of the opinion that more abuse takes place than previously, as the women cannot afford to

say "No" to clients they have their doubts about.<sup>27</sup>

Östergren's investigations show that the prostitutes she has interviewed feel themselves more exposed. There is no documentary evidence that they are more exposed to violence, but they are more afraid of being exposed to violence. This is particularly the case for "the weakest group – addicts, the mentally ill and people from other countries" --- the forced prostitutes:<sup>28</sup>

...the clients had become more scared and more stressed than they were before. This made it very difficult for the sex workers to assess whether the client was "OK" or not during the negotiations with the client. It was more difficult to judge if the client was nervous because of stress or if he was dangerous.

During our visit to Klaragården we were told that the after Law on the Purchase of Sex it had become more difficult to be a prostitute. Now it meant "a lightning decision with no quality assurance of the client". The prostitutes who have a good understanding of human nature and can "read" a client do not have time for it. Clients have become more violent. As an example Klaragården mentions the example of men with a war trauma background of whom there is a number in Stockholm.

Helene Cevers, a midwife who has worked with abused women since 1993, says that she meets more abused women after the Law on the Purchase of Sex was enacted. "Violence has increased, and especially sexual violence. Today the girls are exposed to much more perversity and sadism."<sup>29</sup> Cevers thinks that normal men purchase sex via the Internet. The few

<sup>25</sup> Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmö-rapporten*, s. 27.

<sup>26</sup> Polisförbundet, *Polistidningen*, nr. 2/2003. Interview with police officer Lars-Gunnar Backemyr.

<sup>27</sup> Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03*, s. 32.

<sup>28</sup> Östergren P., *Synden ideologiserad*, s. 38.

<sup>29</sup> Göteborgsposten, *Interview with midwife Helena Cevers, Kvinnokliniken*, 29 December 2001.

men who still drive round the prostitution areas have a sick perverse sexuality.

There is no documentary evidence from the hospitals or the police that there is more or less violence directed towards prostitutes, but there is much evidence that there is a tougher market with more violence.

## 2.2 Law (1998:408) on the Prohibition of Purchase of Sexual Services

### 2.2.1 Introduction

On 1st January 1999 Sweden, as the first and so far only country in the world, introduced an unilateral regulation of the purchase of sex. In some other countries there is a ban on both the sale and purchase of sexual services, but no country has penalised the purchaser alone.

### 2.2.2 The legislative history

#### 2.2.2.1 *The Prostitution Committee of 1977*

The question of measures against prostitution, in particular the criminalisation of buyers, sellers or both of them was taken up in the Prostitution Committee of 1977. The committee<sup>30</sup> did not propose that either sale or purchase of sexual services in general should be made criminal offences. The arguments at that time were the risks that activity would go underground, increased risks for both parties and difficulties with evidence and questions of definition. The possibilities for enforcing any ban were viewed as limited since any measures would operate against the market on the streets, but the more hidden (luxury) prostitution would get off free.

This type of criminalisation is a class-based law. Furthermore

Prohibitions that cannot be supervised and where violation does not normally entail any consequences are a danger to the law-governed society. They undermine people's sense of justice and reduce respect for other rules and laws. Furthermore, a feeling of antipathy to new prohibitions has become noticeable amongst more people in recent years. This applies in particular to private life. Another risk with the prohibition is that if such a prohibition is introduced the problem may be perceived to be solved, thus freeing society from further involvement in it.

<sup>31</sup>

A general criminalisation of the parties was ruled out, but a limited criminalisation was proposed. Purchase of sexual services from a prostitute that the purchaser knows to be under the influence of, or dependent on narcotic substances is punishable as for sexual abuse. The proposal was not accepted into law.

#### 2.2.2.2 *The Prostitution Committee of 1993*

The Prostitution Committee of 1993's proposals<sup>32</sup> were:

- Development of a national centre for combating prostitution.
- The criminalisation of prostitution where both buyer and seller are punishable
- An extension of the "pimping"-legislation, making it a punishable offence for those who promote or gain profit from another person taking part in pornographic films or photography or posing in sexual situations.

The Committee's arguments for the criminalisation of *both the purchaser and the seller* were:

- Criminalisation performs a function of *setting norms*.
  - It will affect relations between women and men in

<sup>30</sup> SOU 1981:71, *Prostitution i Sverige – Bakgrund og åtgärder*.

<sup>31</sup> SOU 1981:71, s. 146.

<sup>32</sup> SOU 1995:15.

the direction of greater gender equality.

- It will make it clear that purchasing sex is not socially acceptable
- It will make it clear that the state authority find prostitution so appalling and injurious to those involved that they should be stigmatised as criminals.
- Within the police and the social services administrations, those persons with experience in working with prostitutes have come round to the view that making prostitution a criminal offence is the only way to combat the purchase of sexual services.
- For many of those who purchase sexual services, the risk of discovery and investigation by the police and legal proceedings, would serve as a strong deterrent
- Some of these women who sell sexual services would give up the activity if it becomes illegal
- The market would change in a negative direction so that even more women will give up selling sexual services.
- Criminalisation would constitute an effective measure in hindering women from starting off in prostitution.
- Women would be in a stronger position and would better be able to resist the pressure to take up prostitution if it were a punishable offence.

The Committee declares that "No prostitution can be said to be of a voluntary nature."<sup>33</sup> It is important that this viewpoint be taken into consideration when trying to understand the further debate on criminalisation in Sweden.

According to the Committee, the criminalisation of both parties should be part of a

wider package of measures. A precondition for criminalisation is that resources are made available for social measures.

In the event that resources are not available to increase social measures or to reinforce the police, criminalising the purchase of sex should not be implemented now, but instead efforts should be directed at social instruments.<sup>34</sup>

The Committee's main proposal for criminalising both buyer and seller was rejected by virtually all of those consulted through hearings.  $\frac{3}{8}$  of those consulted wanted a criminalisation of the buyer alone, whilst  $\frac{5}{8}$  also rejected this. Those consulted who rejected the criminalisation of the buyer were: the Swedish National Board of Health and Welfare, National Police Board, the Swedish Court Administration, the Chancellor of Justice and the Director of Public Prosecutions, as well as, in principle, all those other parties consulted who had close links to the legal system.

#### 2.2.2.3 *Proposition 1997/98:55 on the Protection of Women (Kvinnofrid)*

In 1998 a legal package called "The Protection of Women" was adopted. It consists of criminalisation of and making more severe previously punishable offences such as "abuse of women, rape, sexual harassment, and purchase of, and attempts to purchase sexual services."

Despite opposition from legal and other parties to the hearing who were consulted, it is proposed that only the purchaser of the sexual services is criminalised.

Criminalisation of the purchaser alone is motivated from the following considerations:

There is no doubt that prostitution is seriously detrimental, both to the individual and to society. Extensive

<sup>33</sup> SOU 1995:15, s. 52.

<sup>34</sup> SOU 1995:15, s. 18.



criminal activity of various types, such as drug dealing, pimping, abuse, etc., is normally associated with prostitution. Generally, the prostitutes also experience a very difficult situation. It is therefore an important issue for society to combat prostitution. Even though there are arguments against criminalising the purchase of sexual services, the government considers that the arguments for are so weighty that it is reasonable to introduce a prohibition against the purchase of casual sexual relationships. In this way society takes a direct stand in this question. Through a prohibition, prostitution and its injurious effects may be more effectively combated than what has been so far achieved.<sup>35</sup>

It should be noted that in 1998 Trafficking in Human Beings was not yet an argument for criminalising the purchasers of sexual services.

Of the three main requirements set out by the Prostitution Committee – criminalisation of the purchaser, criminalisation of the seller and extensive social measures – only one was actually met by the Bill on the Protection of Women.

### 2.2.3 More on the Law on the Purchase of Sex

#### 2.2.3.1 Law (1998:408) on prohibition of the purchase of sexual services

The person who, for payment, obtains a casual sexual relationship is penalised – unless the action entails punishment in accordance with the Penal Code – for the purchase of sexual services with fines or imprisonment for a maximum of six months.

For attempting to do so, the person is sentenced in accordance with chapter 23 of the Penal Code.

The Law is constructed on the basis of five conditions:

1. "for compensation"
2. "obtaining sex"
3. "casual"

4. "sexual relationship"
5. "the action shall not attract a penalty under other criminal legislation"

In addition subjective responsibility is required for all of the objective conditions.

#### 1. For compensation

Evidence must be produced that money, narcotic substances, luxurious dinners, gifts or other forms of compensation have been agreed upon in advance. Even if compensation is not given, it will be sufficient to produce evidence that there was an agreement concerning it.

#### 2. Obtains sex

Those who "obtain sex .... shall be sentenced for ...." The verb "obtains" is in the present tense. This must mean that the point of attempting to fix an agreement has been passed when the agreement has been made. There is no further explanation in the travaux préparatoires or legal practice of what is constituted by obtaining sex. If another person, for example a friend, contacts and pays on behalf of the casual contact the offender has, then the conditions for the punishment will not exist. However in this case a proposal to change the law exists and this will also cover the case where a third party finances the purchase.<sup>36</sup>

#### 3. Casual

Evidence must be produced of a casual sexual contact. One problem with the evidence can therefore arise where one "established" client has regular sexual contact with a prostitute. One of our informants had had the same client for 17 years. The border between casual and established contact is thus not always clear.

#### 4. Sexual Relations

Sexual relations are defined first and foremost as sexual intercourse, but other sexual activities are sufficient for criminal

<sup>35</sup> Prop. 1997/98:55, s. 104.

<sup>36</sup> SOU 2001:14.

liability. Stripping or posing in the nude where no sexual activity takes place will not be sufficient for criminal liability.

#### **5. The action shall not attract a penalty under the Penal Code**

The action shall not attract a penalty under the Penal Code. This means that the Law on the Purchase of Sex is subordinate to the Swedish Penal Code where the purchase of sexual relations with persons under the age of 18 years is regulated in Chapter 6, § 10 (on the seduction of young people.) The prescribed penalty scale is, in any event, the same as that in the Law on the Purchase of Sex.<sup>37</sup>

##### *2.2.3.2 Attempting to obtain sex*

According to the second paragraph of the law, attempting to obtain sex is a punishable offence. The point of attempting has been passed when an offer of payment has been given by the buyer to the seller. That the act of attempting is punishable is uncommon when the prescribed penalty scale is as low as this. The Penal Code has no similar provisions. Cf. the Norwegian General Civil Penal Code § 49 stating that an attempt to commit a misdemeanour is not punishable.

##### *2.2.3.3 Accessory*

Accessory on the part of the seller is not punishable. In the proposition<sup>38</sup> it is evident that the purchase of sexual services as a rule assumes some form of accessory by the person offering the casual sexual service, but it is only the person, who obtains the sexual service for payment, who is to be punished. The seller cannot therefore take responsibility for accessory. Neither is it punishable to arrange, i.e. fix and/or pay for sexual services for another person. This is likely to be changed in the autumn of 2004 when new legislation on sex will be adopted.

##### *2.2.3.4 Punishment*

The punishment for buying sexual services is a fine or six months imprisonment. The punishment scale is at the same level as that for pilfering. The low punishment scale of the Law on the Purchase of Sex means that the police have procedural limitations. For instance, there is no legal authority to apprehend the person charged for the criminal act itself. However, he may be brought in under the Police Act, as when e.g. the person refuses to impart personal information. Neither has the police the possibility of using extraordinary methods such as communication control and entrapment.

#### **2.2.4 Sentencing**

The law has a punishment scale of fines or imprisonment of up to six months. It was already pointed out early on that the punishment under normal conditions ought to be fines.<sup>39</sup> It was the size of the fines and the level in the event of repeated misdemeanours that was initially unclear.

To ensure that the scale of fines has the same punishment effect, irrespective of the convicted person's financial status, the fines in Sweden are standardised at day fines. The size of the day fine is calculated on the basis of the person's financial position by way of a fixed formula, but the total number of fines for comparable conditions is stable. In the initial cases the number of day fines varied from case to case and from court to court. It is claimed that there were systematic differences in levels between the courts in Malmö and Stockholm. The level was lower in Malmö.

In accordance with the clarification by the Swedish Supreme Court, today's "normal

<sup>37</sup> Prop. 1997/98:55, avsnitt 21.3.

<sup>38</sup> Prop. 1997/98:55, avsnitt 21.3.

<sup>39</sup> Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmö-rapporten*, s. 13.

fine” is equivalent to 50-75 day fines.<sup>40</sup> For ”serial purchases” the level is equivalent to 150 day fines. Our informant from the prosecuting authority<sup>41</sup> had demanded a sentence of imprisonment on several occasions without these demands being met. The first sentence of imprisonment came in June 2004. The indictment contained several other more serious counts however, which were decisive for the imprisonment.

### 2.2.5 Problems with evidence

To penalise someone under the Law on the Purchase of Sex the prosecuting authority must show that the requirements of the law have been met. If the accused pleads not guilty strong evidence, without reasonable doubt, must be brought forward to demonstrate his guilt. Generally speaking the requirement for evidence is strict and the conditions for evidence are not reduced for this type of case. Difficulties with evidence are the main reason for dropping criminal charges. In part it is difficult to produce evidence that an agreement for payment for sexual relations has been made. In part it is difficult to produce evidence of the sexual services. Even if the police have intervened when the sexual relations took place it is difficult to win in court when both parties deny that payment has been made for the sex act.<sup>42</sup>

Under the Swedish Criminal Procedure Law (Chapter 36 § 6 Rättegångsbalken) the prostitute can refuse to give evidence which can reveal that she has undertaken a "disreputable" act. Lack of evidence from a prostitute will give rise to problems with evidence and will lead to the prosecution authorities having to give evidence of criminal guilt in another way.

<sup>40</sup> The normal penalty for pilfering to a value of SEK 600 is something above 50 day fines.

<sup>41</sup> Hans Ihrman, Stockholm's international prosecution department.

<sup>42</sup> BRÅ, *Förbud mot köp av sexuella tjänster*, BRÅ-rapporten, s. 42.

Where the purchaser does not admit to the relationship and the prostitute refuses to give evidence or to confirm the relationship in court, it will be difficult for the prosecuting authorities to produce evidence of criminal guilt.

Experience has shown that it is easier to produce evidence of criminal guilt when the police wait with their intervention until the sexual relations have been completed.<sup>43</sup> This, however, is in conflict with the police's main duty which is to prevent criminal actions.

There have been relatively few charges which have lead to conviction. In 1999 there were 91 charges made. Of these 37 were dropped in 1999, whilst 42 continued to be under investigation. For the 37 cases which were dropped the reasons were as follows:

Reasons for dropping the case	Charges	%
The act not a criminal offence	13	35 %
Difficulties with evidence	19	51 %
The suspected person couldn't be found.	4	11 %
Other	1	3 %
Dropped in 1999	37	100 %

Table 3: Statistics on Cases Dropped in 1999<sup>44</sup>

According to the BRÅ Report<sup>45</sup> ”Problems with evidence” were the reasons most used by the prosecuting authorities for dropping a case. 51 % of all cases dropped were caused by difficulties with evidence, and in the BRÅ Report this is commented upon in the following way:

The majority of those organisations consulted who took part in the original proposal from the 1993 Prostitution Committee on criminalising both the

<sup>43</sup> BRÅ, *Förbud mot köp av sexuella tjänster*, BRÅ-rapporten, s. 43.

<sup>44</sup> BRÅ, *Förbud mot köp av sexuella tjänster*, BRÅ-rapporten, s. 38.

<sup>45</sup> BRÅ, *Förbud mot köp av sexuella tjänster*, BRÅ-rapporten, s. 38.

buyer and seller in a prostitution transaction, expressed the view that criminalisation would entail problems in defining the criminal act as well as problems in proving that it had taken place. That a large part of the preliminary examinations have been terminated for the reason that criminal offences cannot be confirmed indicates at least that there have been difficulties in establishing evidence.

That a large proportion of the charges made in 1999 were dropped due to difficulties with evidence, can be due, in the opinion of the working group, to the fact that the wording of the law is not clear enough, that training in the requirements for evidence has not been adequate or that there is a general problem in producing evidence of guilt and that one is largely dependent on confessions of guilt.

### **2.3 Experiences of those selling sexual services**

In the terms of reference it is stated that the working group is to gather experience from organisations representing those who sell sexual services. In Sweden we have not been able to find any active organisations for these groups. There is one organisation ROSEA (the National Organisation for Sexual workers) with a web page: [www.rosea.se](http://www.rosea.se), but it turns out not to be particularly active. ROSEA has been active for about 1 year and has around 20 members. Two of our informants are members of ROSEA, one of them a member of the board. Their opinions are nevertheless their own. In addition we have based our report on published interviews where Petra Östergrens Master's thesis<sup>46</sup> has the most comprehensive material. We obtained some indirect experiences from the personnel at Klaragården.

#### **2.3.1 The consequences of the Law**

One of our informants has this to say:

The Swedish street prostitutes experience a tougher time. They are more frequently exposed to dangerous clients, while the serious clients are afraid of being arrested. Prohibition will never be able to stop the purchase and sale of sex. It could only make conditions worse for the prostitutes. They have less time to assess the client as the deal takes place very hurriedly due to fear on the part of the client. They (the prostitutes) are exposed to violence and sexually transmitted diseases. If the client demands unprotected sex, many of the prostitutes cannot afford to say no. Harassment by the police has increased and the clients no longer provide tip-offs about pimps, for fear of being arrested themselves. The social workers working on the streets have problems reaching them. They (the prostitutes) use pimps for protection.

Another one of our informants sums up the impacts of the legislation: there is great pressure on prices, demands for unprotected sex have increased and there is more violence. There are many peculiar clients out there on the street. On the whole she feels that life on the streets has deteriorated.

At Klaragården the personnel refer to their guests who say that since the Law on the Purchase of Sex came into force, it has become more difficult to make a living as a homeless prostitute. Whenever the prostitutes are looking for a client in a car, they need to make hurried decisions. There is no time to make a quality assessment of the client. Car arrives, girl gets in, and there she sits, negotiating a price, service and place. In general prostitutes are keen observers of people, whose long experience has taught them to read clients. Now there is no time for that, they have to accept whoever chances to stop their car. Hurried assessments of clients have made their work more hazardous. For those forced on to the

<sup>46</sup> Östergren, P., *Synden ideologiserad*.

street, life has become much harder. Experience following the introduction of the act, as conveyed by Klaragården, is that the Law on the Purchase of Sex has made working as a prostitute harder and more dangerous.

In the preparatory work preceding the Law, the possibility for the prostitutes of using the law against “bad” purchasers is emphasised. None of our informants have been able to refer to any legal complaint against the purchasers.

In addition to the law’s intention of convicting clients, the law has also had unintentional impacts. It has created a new form of crime: Girls who behave like prostitutes rob the client, who in turn does not dare report the robbery for fear of being indicted for purchase of sexual services. It also happens that prostitutes threaten to report the client for sex purchase after the service has been provided. In this way they press the client for even more money. The client does not dare report it, partly for fear of being prosecuted himself, partly out of a need for secrecy in relation to his family.

## **2.4 Experience from the police and enforcement in Sweden**

### **2.4.1 The police’s work with prostitution before the Law on the Purchase of Sex**

In Sweden, as in most other countries it was in the major cities that the prostitution was most noticeable. Stockholm, Gothenburg, Malmö, and in part, Norrköping had visible street prostitution. The prostitution was mainly linked to certain streets and areas where the prostitutes hung about and were picked up by clients who mostly came to these areas by car.

The police had knowledge about these areas and went into action mainly whenever there were problems relating to

law and order or crime associated with trafficking such as drug dealing, procuring activities or violence.

From the mid-1990s there was an influx of foreign prostitutes to Sweden, in particular from the Baltic countries. In Stockholm this developed into a problem of law and order as tension rose between Swedish and foreign prostitutes. Before the enforcement of the law the police had therefore employed resources to get an overview of the situation, and they availed themselves of the possibilities in the Aliens Law to deport prostitutes without legal residence permits.

The police are not familiar with the indoor market to the same extent. It is more difficult to gain information about the indoor market. The prostitution group in Stockholm work very deliberately to obtain information and use resources for under-cover detection of crime/ information to gain an impression of the situation and to strike at pimps operating in indoor prostitution. The prostitution group has consisted of two service officers since its establishment.

At the meeting of the working group in Stockholm, representatives from the police reported that preparations to implement the law had only been made to a limited extent. No key goals or strategy had been prepared, and enforcement was not given priority by central police authorities. Nor were there any strategic directions in the form of instructions or enforcement directives for the police districts.<sup>47</sup> The intense media attention and the earmarked funds of SEK 7 million a year gave priority to combating prostitution in the districts affected. Some police districts set their own target figures for the number of charges to be made under the Law on the Purchase of Sex.

<sup>47</sup> BRÅ, *Förbud mot köp av sexuella tjänster*, BRÅrapporten, s. 19.

A strategy for implementation and enforcement would have been sensible given the debate before and after the law came into force, the bill's proposal to grant SEK 10 million a year to enforce the law<sup>48</sup> and given that Sweden is the first country where the purchase of sex is a criminal offence.

In their comments to SOU 1995:15 The National Police Board (RPS) as well as most major police districts opposed the proposal for criminalisation,<sup>49</sup> and so did most of those consulted who had strong legal affiliations.<sup>50</sup> The fact that the law was approved in Riksdagen (the Swedish parliament) after a majority of the judicial bodies consulted had opposed criminalisation, may have resulted in reduced motivation and it being given low priority by the police authorities. Even though police officers were uncertain with regards to enforcement, no guidelines were given by central authorities for the interpretation of the law, evaluation of evidence or working methods before the appearance of the Malmö report in 2001.<sup>51</sup>

## 2.4.2 Enforcement of the law on the Purchase of Sex

### 2.4.2.1 Resources

In their bill the government proposed to grant SEK 10 million for the enforcement of the law on the Purchase of Sex.<sup>52</sup> SEK 7 million was allocated to the police in connection with the budget deliberations 1998/99, and the police authorities decided themselves how the money was to be applied and distributed.

<sup>48</sup> Prop. 1997/1998:55, s. 128.

<sup>49</sup> Socialdepartementet, *Könshandeln, Sammanställning av remissyttranden över Prostitutionsutredningens betänkande (SOU 1995:15)*.

<sup>50</sup> Lernestedt, C., Hamdorf, K., *Sexköpskriminalisering – till skydd av vad? Del I*, s. 856.

<sup>51</sup> BRÅ, *Förbud mot köp av sexuella tjänster, BRÅrapporten* og Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmörapporten*.

<sup>52</sup> Prop 1998/99:55, s. 106.

As mentioned, open prostitution was mainly concentrated in limited geographical areas in the major cities. The National Police Board distributed the SEK 7 million to the police districts that reported the most widespread street prostitution. In addition the police in Malmö received funds to implement a project to develop methods for the enforcement of the Law on the Purchase of Sex. The Malmö Report was submitted to RPS in 2001.<sup>53</sup>

In Stockholm, Gothenburg, Malmö and Norrköping units/projects were established with special responsibility for enforcement of the Law on Purchase of Sex. The police districts used the allocated resources to buy office equipment and under-cover detection equipment, such as binoculars, camera/video-camera, patrol cars, mobile phones etc. PCs for office work and for searching for evidence of prostitution on the Internet were also acquired. In addition to equipment, the funds were spent on development of methodology and enforcement of the law in the way of traffic controls, harassment actions in the milieu, under-cover detection and investigation.

The police authorities had SEK 7 million earmarked per annum up to 2003 in order to enforce the Law on the Purchase of Sex. In 2003 the government earmarked SEK 30 million for combating Trafficking in Human beings for the period 2004 - 2006. Resources for the enforcement of the Law on the Purchase of Sex were included in this amount. The funds are to be used and distributed to the police districts by RPS.

The earmarked funds allocated to the police for enforcement, have, in the opinion of the working group, helped to focus and prioritise the enforcement, which would otherwise probably not have

<sup>53</sup> Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmörapporten*.

happened. The funds have helped some police districts establish projects/groups and to inject fairly large resources for enforcement, which apparently has not happened at the expense of other police duties.

#### 2.4.2.2 *Enforcement/method – street prostitution*

The immediate aim of the enforcement of the Law on the Purchase of Sex was to get rid of street prostitution and prevent recruitment of new candidates.<sup>54</sup> In the longer term the wish was to get to grips with the indoor market and pimping.

The police made use of various methods to enforce the Law on the Purchase of Sex. Measures to prevent the purchase of sexual services by way of actions on public order and traffic were those most often used. Under-cover detection, investigation and legal action were also measures used and resulted in most numerous charges in compliance with the Law on the Purchase of Sex.

The measures were most often initiated by the local police who were in charge of the areas where street prostitution took place. In some of the larger cities, where there were no separate units to supervise the prostitution scene, the police established units or started projects that were wholly or partly engaged in the street prostitution situation. At times the police planned and carried out major actions in cooperation with several units.

At the working group's meeting in Stockholm it came to be known that, statistically, the police could not prove that there had been a reduction in other crime associated with prostitution.<sup>55</sup> Further information revealed that the reduction in street prostitution had not resulted in more resources being directed

at indoor prostitution. Units that implemented measures against street prostitution in the early years were mainly from the local police, and the majority of these were related to public order and traffic matters that could be implemented due to earmarked funds. The two officers working in the prostitution group in Stockholm now direct their efforts mainly at the indoor market by investigating pimping. That group has not received more resources following the reduction in street prostitution.

It was further pointed out that the priority areas set out in the bill were not implemented in day-to-day work. As long as the police received earmarked funds the work was given priority. When the money is no longer earmarked, but is combined with resources for combating Trafficking in Human beings, this will lead to a change in a negative direction, both in relation to priority and in attitude to the enforcement of the Law on the Purchase of Sex.

This view is also supported by the Malmö report, which describes the transition to measures against indoor prostitution in the following manner:

At present the police and the prosecutors have given priority to the legislation, as this is new and the police have been granted special funds to combat this crime. It is very doubtful whether the police, given the many other punishable offences with a higher priority, (e.g. family violence, race-related crimes etc.), can continue to devote resources to combat the purchase of sex at the same level as they have so far.<sup>56</sup>

The working group feel that the basis for the police's enforcement of the Law on the Purchase of Sex has changed from dealing with the problems relating to public order caused by street prostitution

<sup>54</sup> BRÅ, *Förbud mot köp av sexuella tjänster, BRÅrapporten*, s. 21 og s. 25.

<sup>55</sup> Gripenlöf A., *Rapport över sexköpslagens effekt på gatuprostitutionen, inomhusprostitutionen i Stockholms län 1999-2003*.

<sup>56</sup> Polismyndigheten i Skåne, *Rapport – Lag (1998:408) om förbud mot köp av sexuella tjänster, Malmö-rapporten*, s. 26.

to enforcing problems related to pimping and Trafficking in Human beings. In recent years a large number of reported cases, following the adoption of the Law on the Purchase of Sex have arisen as a result of investigation into pimping and Trafficking in Human beings, where client registers, amongst other material, served as evidence.

On the whole, the Swedish experience shows that exposing, investigating and bringing to court sex purchase offences that occur indoors are demanding on resources and difficult to prove. Lack of police resources means that the enforcement of the Law on the Purchase of Sex is given priority on the basis of the law's scale of penalties (fines or up to 6 months jail). The working group has no knowledge of any investigation directed only at the purchase of sex indoors in Sweden. However, if the police, during investigation into pimping or Trafficking in Human beings, identify buyers and come across evidence of the purchase of sex, these will normally be reported. The enforcement of the Law on the Purchase of Sex in the indoor market is therefore considered to have had a very limited effect on prostitution as  $\frac{2}{3}$  of the prostitution takes place indoors.



## 3 The Netherlands

### 3.1 Introduction

To be able to understand the attitude to the sale and purchase of sexual services in the Netherlands, it is important to remember a few facts:

- The Netherlands has around twice as many inhabitants as Sweden.
- The scale of prostitution is about ten times that of Sweden.
- The objectives of regulation are viewed differently in the two countries (not removing prostitution entirely, but controlling it with certain rules).
- There is a different reference base (in the Netherlands there is familiarity with women who work in brothels and of those who work regularly in the “tolerance zones”, in Sweden one is only familiar with women working in street prostitution).
- Different definitions of prostitution (in the Netherlands prostitution is work, in Sweden prostitution is men’s violence against women).
- The Netherlands often has a pragmatic approach to solving their social problems.

### 3.2 The Dutch reality

#### 3.2.1 Extent and locations

Prostitution is a legal activity in the Netherlands that takes place in sex clubs, behind “displays windows”, in hotels, in bars, as escort services and on the streets. However it is not known how many are engaged in the business. The police are not at liberty to register the prostitutes as this would be to breach individual privacy. However it is permissible to keep investigative records in connection with

cases of Trafficking in Human beings, as approved by the Data Protection Board.<sup>57</sup>

According to a study from 2000 it was estimated to be 25 000 prostitutes in the Netherlands, 12 500 working at any time, at a total of 6 000 locations.<sup>58</sup> Many were migrants. In around 30 % of the Dutch municipalities prostitution is practised, especially in major towns and on the borders with Germany and Belgium. In 12 towns there is window prostitution where around 2000 women work. Street prostitution is found in 10 towns with around 320 women.

There are many immigrants in the prostitution business. In the 1970s most of these came from Thailand and the Philippines. In the 1980s they came from Latin America and South East Asia. After the fall of the Berlin Wall many arrived from central and eastern Europe. In 1999 not more than 1/3 were Dutch. The other 2/3 represented 44 different nationalities. Most of these came from the Dominican Republic, Colombia, the Czech Republic, Romania and Poland. The working group has not been able to obtain figures of illegal prostitutes.

At the time of the study it was estimated that 5 % of the prostitutes were male and 5 % were transsexual, and most of these were migrants. It was also estimated that 10 % of the prostitutes were drug addicts, the majority Dutch nationals or former Dutch nationals.<sup>59</sup>

As a result of frequent inspections by the police and the tax authorities in the legal

<sup>57</sup> Booklet published by the Dutch Ministry of foreign Affairs on *Dutch Policy on Prostitution. Questions and Answers. 2004*. See [www.minbuza.nl](http://www.minbuza.nl). The facts in this chapter are based on Dutch Policy on Prostitution, Question & Answers.

<sup>58</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Question & Answers*, s. 7.

<sup>59</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Questions & Answers*, s. 7.

brothels, it is assumed that the number of prostitutes has decreased in recent years.

According to the 2000 study the prostitutes are distributed in the following areas of activity:<sup>60</sup>

Arena	%-share
Window soliciting	20 %
Streetwalkers	5 %
Brothels and sex clubs	45 %
Escort services	15 %
Service at home	5 %
Other locations*	10 %
Total	100 %

\* Hotels, bars, massage etc.

**Table 4: Distribution of prostitutes in the Netherlands**

These figures have changed since the introduction of the new legislation. A new study will be undertaken in 2005.

In advance of the legislation there were many foreign prostitutes without work or residence permits working in the brothels. One condition for obtaining a licence to run a brothel is that the prostitutes are legally resident in the country. The foreign prostitutes without work and residence permits were not allowed to keep their work at the brothels and many ended up in the tolerance zones. The consequence of this was that animosity and trouble developed between the prostitutes originally in the tolerance zones, and the new foreign prostitutes. The police went into action against all prostitutes who were illegally in the country, and after many were sent home because of the lack of work and residence permits, conditions in the tolerance zones reverted to normal. According to the police the number of foreign prostitutes without a valid work and residence permit has probably reduced.

### 3.2.2 Violence

The working group was told that there was generally a greater risk of violence on

the streets. The establishment of tolerance zones has resulted in a reduction of violence. It is also safer in the service areas (a parking area in the proximity of the tolerance zone) because the police patrol the area. And the other women report to the police or others when a “colleague” disappears for too long.

The crime statistics do not record cases of violence systematically in relation to prostitution. But there are records from the tolerance zones that show there is only occasional violence. There is little information on violence in the brothels. What is known is that the women sometimes experience a lack of respect. Before the change in the law it was accepted that a certain amount of violence was considered to be part of the job. The legalisation has made the women more conscious that violence is not acceptable.

The police reported that there was a large increase in the number complaints by the prostitutes, which the police interpret as increased confidence in them now, and that the threshold for reporting unwanted incidents to the police has been lowered. The police think it is positively wrong that some people interpret the increase in complaints shows that the situation has become worse.

## 3.3 On the regulation of the Law on the Purchase of Sex and Prostitution in the Netherlands

### 3.3.1 Introduction

The prohibition against brothel activity in the criminal code was repealed on October 1st 2000. The objectives of the change were, among other things, to provide better instruments and possibilities for controlling and regulating the running of brothels, to better combat forced prostitution (Trafficking in Human beings) and to ensure that underage persons were better protected from sexual abuse. Prostitution has never been illegal

<sup>60</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Questions & Answers*, s. 7.

in the Netherlands. The legalisations means that sex clubs and brothels are able to operate as legal enterprises as long as they meet certain conditions. Decriminalisation of the brothels did not entail any special regulation of prostitution at the national level. This is a municipal affair.

Forced prostitution, which according to Dutch law is defined as Trafficking in Human beings, has been illegal since 1911, and still is.

### 3.3.2 Short historical resumé

In 1911 the Netherlands got its first legislation on prostitution in brothels. As part of a wider range of legislation to stop immoral behaviour, a general prohibition against brothels was introduced (Dutch Penal Code art.250 *bis*). At the same time a penal provision for criminalisation of trafficking in women was brought in. (Dutch Penal Code art. 250 *ter*). Prostitution in it self, though, was not criminalised.

During the second half of the 20<sup>th</sup> century there was a development in policy that distinguished between voluntary and involuntary prostitution in the Netherlands, and the government focused in principle on regulating the voluntary and on combating the involuntary prostitution. At the same time there existed a prohibition against brothel activity. This meant that, in practice, voluntary prostitution was tolerated in the Netherlands.<sup>61</sup>

In time the development progressed from a passive tolerance to an active tolerance. *Passive tolerance* meant permitting the establishment of prostitution business, as long as they did not cause any inadmissible nuisance or other articles of the law were not infringed. The ban on brothels has not been enforced for the past

<sup>61</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, kapittel 2.2.

50 years.<sup>62</sup> On the other hand *active tolerance* meant the government taking controlling action so as to guide developments in a particular direction by various measures. An example of this is the system of tolerance orders or licences for brothels and other sex establishments in many municipalities at the end of the 20<sup>th</sup> century.

After 16 years of effort by various players and political parties to repeal the prohibition against brothel enterprises, legalisation was adopted on 1<sup>st</sup> October 2000.<sup>63</sup>

### 3.3.3 Today's view on prostitution in the Netherlands

Prostitution is a fact; it has always existed and will never go away. It doesn't matter how you feel about it. Therefore we believe it is important not to forbid prostitution, but to organize it better, otherwise the problems will only become greater.<sup>64</sup>

The basic view today within Dutch politics is that prostitution is a part of reality and will never disappear from society, thus forcing the government to take a realistic stance on the problem. Furthermore the view is that there are two forms of prostitution, voluntary prostitution, where the prostitutes have chosen to sell sexual services as a form of work based of their own free will, and forced prostitution, where people have been forced into prostitution. Dutch politics are strongly against forced prostitution and prostitution involving minors. This is “the unacceptable forms of prostitution “. Voluntary prostitution is

<sup>62</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Questions & Answers*, s. 3

<sup>63</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, chapter 2.2.

<sup>64</sup> Prostitution Information Centre (PIC), [www.pic-amsterdam.com](http://www.pic-amsterdam.com)

regulated to make conditions more transparent.<sup>65</sup>

Parts of the Dutch feminist movement and prostitutes' interest organisations have further demanded and still demand that prostitution should be "normalised". The normalisation is to take place by defining prostitution as work, and to adapt Dutch legislation to this understanding of prostitution.<sup>66</sup>

The purpose in the Netherlands is to draw a sharp dividing line between voluntary prostitution on the one hand and involuntary prostitution on the other. An effective and coordinated enforcement of the criminal provisions and the administrative legislation is considered necessary in the fight against involuntary prostitution, prostitution of underage persons and Trafficking in Human beings.<sup>67</sup>

The idea behind the new legislation is that criminalisation of brothels and enforcement of the prohibition was ineffective, not only in preventing prostitution, but also in dealing with the crime associated with the activity.

The Dutch government is of the opinion that legislation against brothels will not make prostitution disappear as it is part of life and will always be so. What society and its political leaders can do, however, is to adopt tough measures against the exploitation and abuse of prostitutes. Allowing individuals to become employed as prostitutes if they so wish, makes it easier to use administrative and legislative

measures to prevent these being exploited.<sup>68</sup>

### 3.3.4 Repeal of the general prohibition against brothels

The purpose of de-criminalisation - to remove the penal provision against brothels art. 250*bis* of the Penal Code – is to regulate and control prostitution activity, and thus legalise the existing tolerance situation. The prohibition against pimping (Dutch Penal Code art. 432) was repealed at the same time,<sup>69</sup> but the conditions that lead to a prostitute becoming exploited or performing prostitution involuntarily are included in the new Penal Code art. 250a.<sup>70</sup>

With this approach the Dutch government wished to remove the prohibition against voluntary prostitution activities between adults, and at the same time provide clear-cut rules for a more effective approach in order to penalise all forms of forced prostitution. The change in the law constituted an adaptation to a practice that existed for many years in the Netherlands. Involuntary prostitution and prostitution of underage persons were not accepted even during the tolerance situation. With the change in the law, stricter conditions were put on those promoting and profiting from prostitution.

In connection with the decriminalisation of the brothel activity and intensifying the fight against Trafficking in Human beings, six main objectives were formulated for the change in the law to lift the general ban on brothels:

1. control and regulation of the running of prostitution;

<sup>65</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 2–3.

<sup>66</sup> Jan Visser.

<sup>67</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 2.

<sup>68</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 3.

<sup>69</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 14–15.

<sup>70</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 15.

2. improvement of the combat of exploitation of involuntary prostitution;
3. protection of minors from sexual abuse;
4. protection of the position of prostitutes;
5. separation of prostitution and peripheral criminal phenomena;
6. reduction in the scale of prostitution by illegal migrants.<sup>71</sup>

The heart of the policy is the legalisation of the prostitution sector on one hand, and a tightening up of the criminalisation of unwanted phenomena in this sector on the other. The implementation takes place through a combination of penal and administrative statutory provisions.

Trafficking in Human beings, including criminal exploitation of prostitution is covered by the Penal Code, especially through the Penal Code art.250a, while legalisation of the prostitution sector through administrative statutory provisions shall lead to better control and regulation of the activity. The administrative statutory approach takes place at municipal level.<sup>72</sup>

### 3.3.5 The Dutch Penal Code art. 250a

The criminal provision against forced prostitution and Trafficking in Human beings is the Dutch Penal Code art. 250a. As voluntary prostitution is not prohibited, the Dutch Penal Code is limited to Trafficking in Human beings with the purpose of exploitation. The maximum penalty is set at 6 years, with an option of heavier penalties in eligible cases.

The purpose of art. 250a is to criminalise involuntary prostitution and gains from

this type of crime. To promote prostitution where violence, abuse of authority or deception have been employed is illegal. Force, abuse or deception are however not concrete requirements when it comes to trafficking in underage persons. Inducing underage persons into prostitution, without exerting any pressure of any kind, is considered to be Trafficking in Human beings. In addition there is no requirement that any border be crossed during the criminal action. The purpose of placing someone, irrespective of their age, in prostitution in any country other than the Netherlands, also comes in under the Penal Code relating to Trafficking in Human beings cf. art. 250a, 1. Section No.2.<sup>73</sup>

The Penal Code art. 250a is not directed at the prostitutes' clients. The purchasing of sexual services is not a criminal offence.

In relation to sex with underage persons other statutory provisions apply. As the prohibition against brothel activity has been repealed, sex with underage persons aged from 12 to 18 who offer sexual services, is a criminal offence cf. Dutch Penal Code art. 245. If the underage person who serves as a prostitute is between 12 and 16 years old, application for a prosecution from the offended party is no longer required, but the case can be prosecuted *ex officio*. Sex with an underage person below 12 years old is always a criminal offence, irrespective of whether this includes prostitution, cf. Dutch Penal Code art. 244. Before October 2000 sexual intercourse with an underage person older than 16 and offered themselves voluntarily for sex, was not a criminal offence.<sup>74</sup>

In accordance with the wording of the penal provision, it is not essential for the

<sup>71</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 2 – 3.

<sup>72</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 16.

<sup>73</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 16.

<sup>74</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 18.

victim of trafficking to become a prostitute in order to be embraced by the provision. The description of the criminal act also includes cases where a person wishing to work voluntarily in the prostitution business of his or her free will is hindered or prevented from quitting. Forced exploitation exists when the physical integrity and freedom of choice of the prostituted person is compromised.<sup>75</sup> Furthermore, intentional gains and profiteering from Trafficking in Human beings are a criminal offence, cf. art. 250a, 1. Section No. 4 – 6. The person who stands to gain financially is not necessarily the person who has caused the exploitation of the situation (“the trafficker”).<sup>76</sup>

At present a new bill has been presented before the Dutch parliament that extends the criminal provision on Trafficking in Human beings to include other forms of exploitation.<sup>77</sup> The new bill is to implement the UN’s Convention against transnational organised crime, as well as the supplementary protocol to prevent, suppress and punish trafficking in persons, especially women and children.<sup>78</sup>

In June 2004 the Dutch Ministry of Justice published an action plan with the intention of following up the legalisation in the Netherlands.<sup>79</sup> The document contains several very concrete

<sup>75</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 16.

<sup>76</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 17.

<sup>77</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 5.

<sup>78</sup> The UN Convention against Transnational Organized Crime, 2000, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

<sup>79</sup> Ministerie van Justitie, *Plan van aanpak ordening & bescherming prostitutiesector*, juni 2004.

supplementary measures in order to achieve the goals set out in connection with the decriminalisation.

### 3.3.6 The role of the municipalities

With the decriminalisation of brothel activities the Dutch government has placed the responsibility for the administration of the set of rules relating to the legal prostitution activity with the municipalities.

#### 3.3.6.1 *The municipalities’ jurisdiction in regulating the market*

The approach to the legal prostitution activity in the Netherlands is now marked by extensive regulation that includes control, guidance and a cleaning up of the legal market, as well as improvements to the working conditions of those working in prostitution. One part of the regulation includes law and order matters such as fire provisions, hygiene provisions etc., while the other part is directed at the prostitutes themselves, through voluntary medical check-ups.

Decentralisation is chosen, as it is the municipalities and local authorities that are actually confronted with the prostitution. As such the local authorities are also to be the authorities that deals with the prostitution activity. Legal authority for the municipalities’ regulation of prostitution is set out in the Dutch Law on Municipalities. (Gemeentewet) art. 151a.<sup>80</sup>

In accordance with the Law on Municipalities art. 151a local authorities have the jurisdiction to adopt municipal rules on how enterprises that offer the opportunity to have sexual relations with a third party for compensation, are to be run. The Dutch Local Government Association has created a model based on that of Local Government Act art. 151a that may be copied by the local

<sup>80</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 19.

authorities. The model is based on a licensing system with conditions. In spite of every local authority being free to choose how they wish to regulate the brothel activities, 94 % of local authorities have chosen to use the association's proposal with or without changes.<sup>81</sup>

The Netherlands assumed that the responsibility of the local authorities to regulate prostitution activity would not result in local prohibitions against brothels because of the fundamental right to choose freely one's own profession, safeguarded both in the Dutch Constitution and in international human rights conventions. Nevertheless 43 minor local authorities (12 % of local authorities in the Netherlands) have chosen a "no brothel policy" and banned brothels within the local authority boundaries.<sup>82</sup>

### 3.3.6.2 *The obligation for licence, control and enforcement, sanctions*

The intention of the regulatory power given to the municipalities is that municipalities will lay down rules in their bylaws for the establishment, installation and management of sex establishments within their borders. The licence poses certain requirements on the owner and the manager of the brothel, on the building (installation requirements) and the operation of the place. Requirements are linked to, for instance, opening/closing hours, monitoring, labour law and health care aspects. The licensing system has made it possible to establish conditions for obtaining a licence.<sup>83</sup>

In view of the great diversity of the fields for which conditions may be laid down in

the license many different bodies are involved in enforcing prostitution policy. The (administrative) licensing obligation lays the responsibility for compliance with the conditions laid down in the license on the operator or the manager of the sex establishment. The control and enforcement of this lies in hands of the municipality. Special enforcement bodies (for example the Labour Inspectorate), the police and Public Prosecution Service are responsible for the control and enforcement of the provisions of the Penal Code and other national legislations. With a view to the great number of those involved in control and enforcement the Minister of Justice has proposed the adoption of a so-called enforcement arrangement. This must include measures that each partner will take where it is found that the regulations laid down in their respective fields of control have been infringed. In this way active enforcement in both the administrative and criminal field is guaranteed.<sup>84</sup>

The key partners in the enforcement of the licensing system are the police, the Municipal & Health Service and the municipal building and housing inspectorate. Within these key partners a very wide range of departments may be entrusted with the actual control and enforcement, such as the aliens and youth and vice departments in the police, and in the municipality the fire service and, in addition to the building and housing inspectorate department, the administrative (law) affairs department. Other partners are the Labour Inspectorate, the Tax Authorities and the Public Prosecution Service. Furthermore, the administration agencies for social security and the Immigration and Naturalisation are involved in the enforcement.<sup>85</sup> Tax control is probably the controlling unit

<sup>81</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 20.

<sup>82</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 20.

<sup>83</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 20.

<sup>84</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 21.

<sup>85</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 21.

that is least appreciated amongst the sex workers. Some are reluctant to work openly for that reason.

The results of contravention of the licensing requirements consist of various sanctions and measures depending on which rule has been broken. In criminal cases the office of the public prosecutor acts and decides whether a prosecution shall be initiated. In addition to criminal enforcement there are administrative statutory provisions that may be employed. Measures may be a single warning, temporary closure of the enterprise, change of permitted opening hours, withdrawal of the licence, or closure of the brothel indefinitely. Under the guidelines of the public prosecutor, prosecution should always be initiated when illegal or underage prostitutes are found. In addition, the local authorities are recommended to withdraw the licence and close down the prostitution business for an indefinite period in such cases. If the local regulations related to the enterprise contain conditions that no illegal immigrants or under age prostitutes are allowed to work in the brothels, then local policy supports the national criminal provisions. Such provisions are found in most local authority legislation in the Netherlands.<sup>86</sup>

Licences may be withdrawn or refused if:<sup>87</sup>

- the owner of a brothel is unable to produce a police clearance certificate issued by the local authorities
- the intended location conflicts with the zoning plans
- the brothel employs a minor or an illegal resident or any person under coercion
- it is in the interest of public order

<sup>86</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 21.

<sup>87</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Question & Answers*, s 5.

- it makes the area less desirable to live and work in.

Permission to run a brothel may not be refused on moral or ethical grounds.

The Netherlands has chosen to wait with the introduction of a national law on prostitution activity. During the legislative process a national law was not viewed as necessary in order to reach the defined goals. Without such a law local authorities could adopt a legal framework for the regulation of prostitution activity. Rules for the administration of brothels did not need to be based on national legislation. Given this background it has been decided to await the evaluation of the experience gained from the present model to assess whether central legislation is desirable and if it is, what it should contain.<sup>88</sup>

### 3.3.6.3 *Lack of harmony*

One problem pointed out by most critics is that the implementation of the Dutch model in the municipalities is not satisfactory.<sup>89</sup> Wagenaar points out that a lack of experience in the new area and lack of support for decriminalisation in some cases have impeded an effective implementation. Problems have been experienced in relation to varying practice amongst the local authority inspectors within the same local authority. The department responsible for buildings may for instance have a different opinion from the fire department or the health authorities where a specific shortcoming is concerned. In some municipalities the brothel owners encounter so many strict and unreasonable regulations that it is difficult to operate legally. In other municipalities conditions may be much easier. In the municipalities where prostitution was tolerated and openness existed in relation to communication

<sup>88</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 21–22.

<sup>89</sup> Rob Coster, Henk Wagenaar, Jan Visser.



between the parties, the implementation has been a success.<sup>90</sup>

### 3.3.7 Street prostitution and “the Zone”

The repeal of the prohibition against the brothel business was directed at the indoor market. But prostitution also takes place on the street. Some municipalities in the Netherlands have decided to regulate street prostitution.

In several towns street prostitution outside limited areas is prohibited, in compliance with municipal bylaws. The reason for the regulation of the outdoor market was an increasing number of complaints from residents about the lack of peace and order, syringes and general pollution in the areas where street prostitution took place in the 1970s. In order to secure public order, the police opted to arrest the prostitutes for short periods, before letting them out on the streets again. This situation was eventually considered unsatisfactory for all the parties involved.<sup>91</sup>

At the beginning of the 1980s several Dutch towns altered their policies towards street prostitution.<sup>92</sup> Many towns have now introduced tolerance zones with varying success. The street prostitution in Utrecht was the first that had a “package solution”: an official zone, a drop-in centre and a working area. These three elements are now considered necessary for a functioning zone.

”The zone” is a street or an area designated by the municipality for permitted street prostitution. The area is not to cause disruption to the residential

areas and shall, in addition, allow a certain amount of security for the prostitutes to be provided. Furthermore the municipality decides on the “opening hours” for the area, i.e. at which times of the night it is allowed to sell and buy sexual services in this area or street. In the towns following the model, street prostitution is allowed every night all year round. Within every zone there is a drop-in centre that provides the prostitutes with a place to retire when they want a break, take a cup of coffee, eat something, talk with other prostitutes and the employees, buy or receive condoms. The prostitutes may contact a doctor and get consultations on infectious diseases and other health problems. Appointments and consultations as well as examinations for infectious diseases are voluntary, as it is felt that forced examinations will frighten away the prostitutes. Within, or close to the tolerance zone an area is established that is fenced off or clearly marked, where parking for clients is allowed so that the prostitutes can work with them. In this way it is felt that all activities are concentrated where they are least disruptive.<sup>93</sup>

The tolerance zone in Den Haag was described as a zone functioning in accordance with the intentions by representatives from SHOP.<sup>94</sup> The tolerance zone is open between 11 pm and 2 am, while the drop-in centre, known in the Netherlands as “living room” is open from 10 pm to 5 am every night. ”The living room” offers all the services such a drop-in centre should have.

<sup>90</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 19-20.

<sup>91</sup> van Doorninck, M., *Prostitution policies in the Netherlands*, Dutch Institute for Prostitution Issues, s. 7.

<sup>92</sup> van Doorninck, M., *Prostitution policies in the Netherlands*, Dutch Institute for Prostitution Issues, s. 7.

<sup>93</sup> van Doorninck, M., *Prostitution policies in the Netherlands*, s. 7.

<sup>94</sup> Conversation with Kersten van Dalen and Petra Houwing from the organisation SHOP. SHOP is an abbreviation for Stichting (foundation), Hulpverlening (helping organisation), Opvang (reception), Prostituees (prostitutes) – Social Work organisation for street and indoor sex workers in the Hague.

Some of the zones in the Netherlands have thus functioned very well during the past 20 years that the model has been in place, while others do not work, or, as is the case in Amsterdam, have even been closed. Frank ten Horn and Marieke van Doorninck think that success is mainly due to the ability of the tolerance zone to adapt to social changes in that influence street prostitution. A body of rules that is flexible in relation to changes and thus easily adaptable to the realities of the street market will, to a large extent, decide whether the basic idea can be maintained and can function.<sup>95</sup>

Amsterdam's tolerance zone has, since its introduction, not functioned in accordance with the intention. Amsterdam Municipality opted to locate the tolerance zone far outside the city centre. This has resulted in very few of the prostitutes actually making use of the tolerance zone. It is mainly the drug addicts who prostitute themselves on the street. For these, the zone was too far from the centre. The drug addicted prostitutes wanted to, and had to be there where drug trading went on, that is in the centre of Amsterdam. That is the main reason that Amsterdam's tolerance zone was closed in the end.<sup>96</sup>

Street prostitution outside the tolerance zone and its "opening hours" is forbidden. In places where there is no particular regulation of prostitution it is a criminal offence if it disturbs peace and order, or if underage persons are involved or if force is used. Otherwise prostitution is allowed. The sale and purchase of sexual services on the street outside the zone is a criminal offence under with the law and punishable by fines. Whether both parties can be penalized depends on the police bylaws.

<sup>95</sup> Conversation with Marieke van Doorninck, Mr Graaf Foundation, Dutch Institute for Prostitution Issues and Frank ten Horn, STI/AIDS-Foundation, Amsterdam.

<sup>96</sup> Conversation with Kersten van Dalen and Petra Houwing from the organisation SHOP.

The Dutch Union of Municipal Employees has prepared standard police bylaws that are often employed, mostly however by the smaller municipalities that have no legal expertise. Legal authority for the municipal police by-laws is the Dutch Penal Code art. 91 and the Local Government Law articles 150 and 151. Under the Local Government Law art. 154 the penalty for contravening the police bylaws is fines of up to 2,250 € or imprisonment for up to a maximum of three months.<sup>97</sup>

### **3.4 Experience of those selling sexual services**

#### **3.4.1 Introduction**

In the Netherlands we met with nobody who was a sex worker now. In the terms of reference it is stated that we are to collect experience from organisations representing those selling sexual services. We visited De Rode Draad<sup>98</sup>, which is an organisation representing the interests of prostitutes. In addition we visited Prostitutie Informatiecentrum (PIC), which is situated in the Amsterdam Red Light District and is managed by a former sex worker.

#### **3.4.2 De Rode Draad**

The foundation De Rode Draad was founded by sex workers and former prostitutes in 1985. The foundation is small with around 50 members today. Jan Visser is the foundation's manager.

De Rode Draad operates nationally and works for women's legal rights. The background for the organisation was the desire to be listened to in the debate on regulation and control of the sex industry through legalisation and a wish to treat prostitution as work. This is the situation in the Netherlands today and the reason why the term sex workers is employed

<sup>97</sup> Information from tax lawyer Karen Mulder, Amsterdam.

<sup>98</sup> [www.rodedraad.nl](http://www.rodedraad.nl)

rather than prostitutes. To use the term sex workers for all those selling sexual services is important for the entire Dutch normalisation project.

With this foundation the sex workers wished to attain an official legal status. Parts of the Dutch women's movement were for the establishment of the foundation, and the Ministry of Social Affairs supported it financially. Today, financial support comes from the Ministry of Justice. The women's movement wanted the prostitutes to obtain legal rights through the working environment legislation.

For Rode Draad it is important to give the sex workers legal status. It is believed that if the women attain legal status this will make the government put forward effective policies and sound regulation. Experience from the political struggle for sex workers' rights shows that the process is slow. Several drafts and examples from affected ministries have to materialise in order to develop new policies, which will be the basis for all regulations in the sex industry. It has taken a long time to make all the institutions affected to develop new instruments and to coordinate these in order to implement them. Much is still unfinished and De Rode Draad is still actively engaged with bills and proposals for better implementation.

Not all prostitutes are happy with the registration requirements in legal brothels. They are not happy to be registered as sex sales persons as there is a negative attitude towards sex workers in society.

De Rode Draad feel it is important for women to see the advantage of paying tax. But like everywhere else there are also those amongst the prostitutes who do not wish to become taxpayers. So there are those who do not wish to become legal as they would rather keep all the money for themselves without tax deduction.

Working conditions in all brothels are still not good enough. In some cases clean bed linen and fire provisions alone are not enough. In most cases working conditions are still poor and the employees still have no right of employee participation.<sup>99</sup> The brothel owners do not want the women to become employed and join a union. They want the women to be self-employed. But at the same time the owners want to set out rules for the women. Sometimes the work situation is so tense that the women need help in the form of inspection of the brothel to find out whether the working conditions are fair and correct.

De Rode Draad's experience is that the situation for the women who have obtained a work permit and have joined a union is better after the legalisation. But for non-European women it has become worse. The situation for immigrant women has become much more difficult. Formerly these women's work was tolerated in the same way as other sex workers'. With the legalisation of one group of women, the work of another group of women now becomes illegal.

De Rode Draad confirms the Dutch viewpoint that criminalising clients is an alien concept.

Jan Visser's wish for the future of the sex industry is that it should not become criminalised, but on the other hand, neither should it receive support. The independent sex worker is his ideal model.

### 3.4.3 Prostitutie Informatiecentrum

Prostitutie Informatiecentrum (PIC) is an information centre in the Amsterdam Red Light District. The centre is managed by a former sex worker, Mariska. Her view of the legalisation is as follows<sup>100</sup>

I am not blind for such big problems as forced prostitution and venereal diseases;

<sup>99</sup> van Doorninck, M., *Prostitution policies in the Netherlands*.

<sup>100</sup> [www.pic-amsterdam.com](http://www.pic-amsterdam.com)

but you can't solve these problems by banning it. On the contrary you solve them by better regulations concerning working conditions, safety and hygiene. Problems like forced prostitution don't have anything to do with the profession as such, but with the mentality of society today. I think the biggest problem is changing that mentality in relation to how we get on with each other as human beings.

PIC's attitude to sex work is as follows<sup>101</sup>

Prostitution is a fact; it has always existed and will never go away. It doesn't matter how you feel about it. Therefore we believe it is important not to forbid prostitution, but to organize it better, otherwise the problems will only become greater.

In many country's prostitution is illegal and men and women are being persecuted. They are forced, by law, to work under very dangerous and unhygienic circumstances. Prostitutes are treated like animals, criminals or trash. But why? Because they are getting paid for sexual acts, under normal circumstances exchanged with mutual respect. Prostitution is a personal choice and nobody should intervene in this choice.

Sex isn't dirty and certainly not bad for your health. Most people have sex, and nowadays it looks like everything is possible and permissible, except getting paid for it. If somebody chooses this profession for him or herself, and works in a responsible and healthy way, there absolutely doesn't have to be any problem with prostitution at all. Because there are problems, it is the task of the government to regulate prostitution in a proper way, so that we can learn to live and let live and respect each other's choices.

## **3.5 Experience from the police and enforcement in the Netherlands**

### **3.5.1 Introduction**

The police in the Netherlands are organised into 25 police districts, each with its Chief Police Officer. Within a police district, there is a Chief Police Officer, a public prosecutor and a council chairman who, together, make up the strategic command for combating crime, and the cooperation between these authorities is organised by way of, among other things, regular meetings.

In order to coordinate and to harmonise the work of the police in combating crime in general, an advisory board – “board of chief commissioners” – has been established which consists of the Director of Police and the Chief Police Officers in the 25 police districts. The advisory board formulates joint strategies for the police and otherwise works to develop new methods, to standardise routines, joint training and to establish equal treatment of public order and criminal cases.

Because of the international focus on Trafficking in Human beings, the upcoming legalisation and the development which had taken place in the Netherlands with a large influx of foreign prostitutes, the board found it necessary to formulate strategies for the police's continued work on trafficking and the enforcement of the new laws which legalising the brothel business would bring about. In 1999, one year before legalisation, the board took the initiative to establish a project that would prepare the police's implementation of the new legislation.

The board decided that the project would be headed by the Chief Police Officer, the council chairman and the public prosecutor of Den Haag. The project has appointed a police officer as project

<sup>101</sup> [www.pic-amsterdam.com](http://www.pic-amsterdam.com)

coordinator for prostitution and Trafficking in Human beings.<sup>102</sup>

We were given to understand by our informants that the police took seriously the work of implementing the legalisation, and there was no moral or attitudinal opposition to the internal changes within the police.

### 3.5.2 The Board of Procurators-General Instruction

In 1999 the Board of the Procurators-General published an Instruction on Trafficking in Human beings and other forms of exploitation. The Instruction formulated four objectives:

- protection of victims,
- exposure of criminal acts and motives of the traffickers/operators of sex establishments,
- rounding up the (criminal) organisations behind them and creaming off the financial benefit, and
- to undertake special and general preventive work.<sup>103</sup>

Furthermore, the instruction points to the importance of cooperation and uniformity in the work against Trafficking in Human beings. The instruction also refers to the local policy with regard to prostitution and its statutory administrative enforcement. As far as investigations into the prostitution environment were concerned, there is a clear wish that an interdisciplinary investigation team be established, and that focus is put on the importance of financial investigations at an early stage. In addition it was stated that Trafficking in Human beings must in any case lead to investigation and “if possible to prosecution”, particularly

where underage victims are involved in the case.<sup>104</sup>

### 3.5.3 The work of the police in advance of the legalisation

The approach of the police to prostitution is a pragmatic one and not a moral one. The basic thought behind it is that prostitution has always been with us and that it is not desirable to forbid it by law. On the other hand there is a need to regulate prostitution activities so that the police can maintain peace and order and prevent the exploitation of the prostitutes. The police view involuntary prostitution as organised crime, in contrast to voluntary prostitution. The police’s experience has been that there are many negative aspects with prostitution and with the environment related to it. There were often elements from other forms of crime such as pimping, drug dealers and economic crime that operated in association with the prostitution business.

The legalisation of the brothel business was an adaptation of the legislation to reality where the prohibition on the brothel business was not being enforced. In addition legalisation was viewed as a means for combating Trafficking in Human beings.

By requiring a licence to run a brothel, the police will, in the first place, be involved in giving opinions to the municipality on where the brothels can be established, what opening hours should apply and on other police-related matters. In the second place, after the licence has been granted, the police will check the business principally with regard to

- Whether there are prostitutes under the age of 18.
- Whether the opening hours are being observed.

<sup>102</sup> Rob Coster, National Coordinator on prostitution and Trafficking in Human beings.

<sup>103</sup> Ministerie van Justitie, *Some background information on Trafficking in Human beings in the Netherlands*, s. 6.

<sup>104</sup> NRM, *Trafficking in Human Beings – First report of the Dutch National Rapporteur*, s. 82.

- Whether the prostitutes are in possession of valid residence and work permits.
- Whether there are indications that the prostitutes are required to undertake services against their will

Other matters concerning the brothel such as fire safety, hygiene and tax are matters for other municipal departments to check.

### 3.5.4 The strategy of the police

The point of departure for the police's work with prostitution is not to reduce prostitution, but to prevent and to combat Trafficking in Human beings and the sexual exploitation of young people under the age of 18 as well as to maintain law and order.

To be able to enforce the provisions on trafficking, and to attend to the duties which legalisation had brought about, the Board wanted an effective and proactive approach. The challenge touched upon several matters such as human rights, organised crime, sexual crimes and illegal immigration. The wish was to:

- Establish an effective and coordinated effort against Trafficking in Human beings.
- Raise the proficiency of the police as regards the control of prostitution and trafficking.
- Develop new methods for combating Trafficking in Human beings.

### 3.5.5 The police's organisation of work with prostitution and Trafficking in Human beings

The national development work through the prostitution and trafficking project has had an effect on the police's work at the local level in the districts, together with the districts and together with the prosecuting authority.

#### 3.5.5.1 Organisation and problem-solving in the Police Districts

The police districts are organised and manned differently in accordance with each district's own premises. The national project has worked out guidelines, advice and recommendations to the police districts, which have ensured that there has been a large degree of similarity in the organisation and problem-solving in the police districts.

In the main it is officers within the sexual crimes department who carry out the checks of the brothels. The checks are carried out regularly and are not announced beforehand. Even although good cooperation exists between the different authorities responsible for the checks, it is not usual for the authorities to undertake their checks at the same time. The reason for this is that a "gentle" transition is wanted from what previously was an unregulated market, to a regulated activity. The police provide advice and guidance to both the owners and the employees (the prostitutes) during their checks. The police pointed out that it is important to have a clear understanding of the police's role in connection with their checking duties, and to ensure that a good atmosphere is created between those checking and those being checked, so that the police get the best possible information on, among other things, victims of Trafficking in Human beings.

Strict demands are made of the officers who undertake the checks. Among other things, they shall have undertaken a special course, and may not work with this sort of checking for more than 6 years. A manual has been prepared for the work together with ethical guidelines.

If, during the checking of a brothel, it is suspected that a victim of Trafficking in Human beings is working in the brothel, the officer will write a report and an assessment shall be made as to whether further investigations shall be initiated. When there is due cause to suspect

Trafficking in Human beings, it is the duty of the police to initiate investigations, because a failure to do so can expose the victim to serious danger.

Should the police's checking officer discover other matters, which are the responsibility of other authorities to check, then a report shall be made to the authority in question.

Each police district has a coordinator for combating Trafficking in Human beings. Experiences have led to cases of trafficking in the district being dealt with by officers belonging to the unit for organised crime. Intelligence and investigation work are, however carried out in close collaboration between those working in the aliens' department and the sexual crimes department, and are often organised in an interdisciplinary team.

Officers who investigate Trafficking in Human beings shall undergo a special course in the investigation of such cases. Further requirements as to experience and proficiency are made as this type of case is complicated.

If there is a tolerance zone within the police district, uniformed police will keep the zone under surveillance and the zone is available for the prostitutes and to those who provide social assistance. The police also carry out checks of the age and residence/work permits of the prostitutes within the zone.

If street prostitution takes place outside the tolerance zone and if it causes annoyance to the public, then the police will intervene in order to maintain law and order.

Other forms of prostitution, for example, escort services, hidden brothels etc are a problem that the police do not have enough control over. Monica Smit in the Bureau Nationaal Rapporteur Mensenhandel is sorry that escort prostitution does not fall within the licensing system.

The development of technology is such that it is not necessary to work on the streets or to work in a brothel to get clients. This "grey zone" market has developed in recent years and the police are working to develop new methods to be able to gain an overall picture of the extent, and to do something about it. By control we mean to be able to gain an overall view and contacts in order to combat Trafficking in Human beings and illegal work, not to remove this type of prostitution. On the other hand the police recognise that there will always be an illegal market over which the police have no information about.

Due to controls over communications in ongoing criminal cases such as Trafficking in Human beings, the police have gained an overall picture of some of the illegal market. In spite of this it is desirable to develop new methods and to focus more on the illegal part of prostitution in order to be able to put an end to it.

### **3.5.6 Training the police**

An important part of the development within the police has been standardising and development of necessary proficiency. Combating Trafficking in Human beings is complicated and demanding, both for the individual police officer and for the police organisation because it needs great resources and cooperation with other authorities. In addition evidence is often difficult to collect and those involved are seldom willing to give evidence to the police. Different milieus with different cultures and languages and often international ramifications do not make things any easier.

The project has therefore developed standardised courses which are held in the Police Colleges. For those officers checking brothels a four-day course has been developed. Considerable emphasis is placed on understanding one's role,

because collaboration with other authorities is crucial. In addition emphasis is placed on ethics and on a pragmatic approach. 450 officers have so far completed the course.

A three weeks examination course has been developed for officers investigating Trafficking in Human beings. The course is obligatory for those working with trafficking and a course diploma may be demanded when officers appear in court as witnesses.

### **3.5.7 The police's collaboration**

Collaboration between the police and the municipal authorities is well developed and a pattern for the collaboration, consisting of meetings and reports, has been established. In practice collaboration means that authorities report to one another when things are discovered that come under the portfolio of other authorities. This applies to all authorities unless duty of confidentiality imposes any limits. It is particularly in the relationship between the health authorities and the police where such a duty of confidentiality can be a problem where there is a danger of revealing information that has emerged within a client/staff member relationship

The collaboration is not only between authorities, but also with brothel owners who receive advice and guidance, and with organisations for the prostitutes that can raise problems with the police. The police also cooperate with NGOs, which assist victims of Trafficking in Human beings.

The police's collaboration with the public prosecutors in the regions is particularly developed with regard to cases involving Trafficking in Human beings. There are specific public prosecutors who specialise in cases of Trafficking in Human beings. Knowledge and experience make such collaboration easier and it is important for the judicial treatment of the criminal case.

In addition to the municipal authorities, the police report to the Government's national rapporteur who collects, analyses and reports further to the government, matters pertaining to Trafficking in Human beings.

### **3.5.8 The experience of the police**

The police received neither extra financial nor other resources in connection with the legalisation process. The police districts had to reorganise priorities and to take resources from areas with lesser priorities. The national project has, to a large extent, contributed to developing and coordinating police methods, procedures and training of the Dutch police.

Experience that the police has gained shows that, with legalisation, greater openness has been created along with a dialogue between the parties within the prostitution business. For the police whose job is to investigate Trafficking in Human beings, this has meant that the sex industry has become more transparent. Legalisation has made it easier for the police to obtain information and to establish contacts within the prostitution business. Knowledge of the business and of those who are involved in the industry is essential for the police's treatment of cases involving Trafficking in Human beings. The police have managed to establish confidence with prostitutes, clients, brothel owners, other authorities and society at large. It is more difficult to obtain information from the illegal part of the prostitution business. Despite this the police receive about 50% of their complaints from prostitutes in the illegal part of the prostitution business.

The police's checking of legal and illegal brothels has caused 95% of 350 complaints in 2003 to come from prostitutes when the brothels were being checked. Legal brothels account for about 50% of all the complaints the police have received from the women. These complaints have been noted by the police and if the conditions are as claimed, they



are investigated as Trafficking in Human beings. The number of complaints from prostitutes has increased considerably in recent years because of the police's checking activity. Coster attributes this development to the fact that the police have concentrated in particular on the victims of trafficking. With the aid of this concentration the police have obtained a better understanding of the individual victims and know more about their traumatisation.

The latest figures from the Dutch National Rapporteur on Trafficking are from the year 2002 and show that there were 55 successfully completed police investigations in 2002.<sup>105</sup> In 2002 some 198 suspects were passed to the public prosecutors for processing.<sup>106</sup> In 2002 judgement was passed in 95 cases, of these 83 (87%) cases resulted in a conviction and 12 cases (13%) resulted in acquittal. In 2003 there were 60 major investigations on Trafficking in Human beings. The investigations take between 7 and 12 months and all of the persons charged have been convicted.<sup>107</sup>

## 3.6 Welfare measures

### 3.6.1 Health and social conditions

The system of health checks is divided into two parts. One part deals with checking the hygienic conditions in the brothels. The other part consists of the health checks of the prostitutes. There is no system for ensuring that the clients are not infectious.

The local authorities are responsible for the prostitutes having access to health services,<sup>108</sup> but it is the prostitutes themselves and their employers who have the main responsibility for ensuring that health and environmental conditions are good. The duty of the local authorities is to ensure that the employer meets his obligations. The employers' responsibility is to convey attitudes on safe sex, to provide the employees with information on the business and to encourage them to undergo regular health checks. Safe sex and health information are basic elements in protecting the women and their clients from STD.<sup>109</sup> SOA AIDS<sup>110</sup> recommend the women in the prostitution business to undergo medical checks four times a year, but only twice a year for women in outdoor prostitution, since it is unrealistic to expect any more.

The health inspections take place in the form of a municipal nurse coming to the brothel to undertake a check of the hygienic conditions. To undertake the technical inspection the health centre may come without advance notice. As far as the health inspections of the women are concerned the nurses give advance notice so as to be able to reach as many women as possible. This system is independent of the licensing system. The difference after the introduction of the licensing system is that the brothels cannot refuse to receive the nurses, something that did occur in about two out of every ten brothels previously. When a woman has been diagnosed with a sexually transmitted disease, it is recommended that she takes sick leave. If there is an employment contract, then she can claim sickness benefit, but if she is registered as self-employed then medical insurance is required in this case.

<sup>105</sup> NRM, *Trafficking in Human Beings, Supplementary Figures – Second report of the Dutch National Rapporteur*, s. 23. Additional figures for 2002 from Monica Smit.

<sup>106</sup> NRM, *Trafficking in Human Beings, Supplementary Figures – Second report of the Dutch National Rapporteur*, s. 25. Additional figures for 2002 from Monica Smit.

<sup>107</sup> Conversation with Rob Coster, National Coordinator on prostitution and Trafficking in Human beings.

<sup>108</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution. Question & Answers*, s 6.

<sup>109</sup> STD – Sexually Transmitted Disease

<sup>110</sup> [www.soaids.nl](http://www.soaids.nl)

General practitioners and specialists have received special checklists for the STD checks of prostitutes. There are four large clinics for STD in Den Haag, Amsterdam, Rotterdam and Utrecht. Outside these facilities, the women must be examined and referred by a doctor. The municipal nurse whose job it is to visit brothels can refer the women to a hospital for further investigation. Despite the fact that the health checks are voluntary, most of the women undergo these checks. Health clinics in the towns offer free and anonymous checks.

On occasion clients state that they have undergone a health check in order to ask for unprotected sex.

At SHOP in Den Haag the women can be examined by a doctor who attends twice a week. Testing for HIV and STD is voluntary. The women are also informed that they can visit an ordinary STD clinic which is in Den Haag. The women are offered help for drug addiction. Syringes are given to substance-abusers. Condoms are on sale. On average there are between 30 and 35 women who visit the centre daily. On a yearly basis about 750 different women use the centre. The women who came were both substance addicts and non-addicts.

The SOA AIDS organisation<sup>111</sup> works on a national level to develop guidelines for work in the prevention of STD and AIDS. The organisation has been given the task by the municipalities of preparing guidelines for this work in the municipalities. The target group for the guidelines were local authorities, doctors and health workers, and the individual women in the prostitution business. Before the introduction of the licensing system there were also arrangements for health inspections in the brothels.

One observation the health staff had made was that it was profitable to work as a

doctor visiting the brothels. But they were not always so good. Quality assurance of the doctors is on the agenda for SOA AIDS now.

### 3.6.2 Conditions of employment

Nearly half the 25,000 sex workers in the Netherlands work in brothels. Some are self-employed, but most of them are employed. For these, as for other workers, it is the occupational health law and other legislation that regulates working conditions. The Labour Inspectorate has published a booklet containing information on legislation governing safety, health and welfare. The booklet is intended for prostitutes and their employers, and for safety, health and welfare services.<sup>112</sup>

Prostitutes working for an employer who are obliged to stop working for reasons beyond their control are eligible for unemployment benefit. Like any other unemployed person (as in Norway), they must be available for work and take any jobs that are generally considered acceptable. Obviously no one can be obliged to take a job in the sex industry, nor do employment offices offer such jobs.<sup>113</sup> All sex work is voluntary. Any involuntary work is regarded as Trafficking in Human beings. The same exception from “being available for duty” applies to jobs in the military forces. One is not obliged to take a job as a soldier instead of unemployment benefit.

Prostitutes who choose to stop working, whether for an employer or as a self-employed professional, are not eligible for unemployment benefit, because they have become unemployed voluntary. Instead, they are entitled to social assistance. They may register as jobseekers.

<sup>111</sup> [www.soaids.nl](http://www.soaids.nl)

<sup>112</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Question & Answers*, s. 8.

<sup>113</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Question & Answers*, s. 8.

Prostitutes who are not self-employed but work for an employer are eligible for invalidity benefit. They are entitled to benefit only if they are no longer able to do their own or any other generally acceptable work. – These rules apply to employers in all sectors.

Women and men over the age of 18 who are from the Netherlands or from an EU or an EEA country have a general right to work in the Netherlands. They can work independently or as employed sex-workers. The European Union courts have established<sup>114</sup> that voluntary prostitution can be a business activity that can give a residence permit in a European Union country.

Women who come from areas outside the European Union, but with which the Netherlands has a convention, can work as self-employed individuals in the Netherlands. However they must satisfy some requirements; private capital, a business plan and commercial skills and possess a residence permit that gives them the right to work. However they may not work for an employer.

Nationals of countries outside the European Union and the European Economic Area who do not have a valid residence permit are not allowed to work in the Netherlands.<sup>115</sup> By the same token, they are not allowed to engage in prostitution. This group includes visitors who are in the Netherlands on a tourist visa or who do not require a visa for a stay not exceeding three months.

Nationals of countries that have signed an association agreement with the European Union, such as Bulgaria and Romania, may establish themselves as self-employed workers, providing they satisfy the conditions for doing so (private

capital, business plan, commercial skills) and possess a residence permit that allows them to work for themselves. They may not work for an employer.

Nationals of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal., Spain, Sweden and the United Kingdom may work as prostitutes in the Netherlands, either for themselves or for an employer. Transnational arrangements will apply to nationals of the countries that joined the European Union in May 2004. Under these arrangements, nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia will not be permitted to work for an employer in the Netherlands until at least 1 May 2006.

Strict measures are taken against prostitutes operating in the Netherlands without a valid residence permit and to unmask anyone working under false pretences. Any person who is in the Netherlands illegally is asked to leave or may be deported under the provisions of the Aliens Act.

### 3.7 The Dutch evaluation of the legalisation

The Dutch researcher Dr. Hendrik Wagenaar has evaluated the Dutch regulation of prostitution.

The municipalities are the group which have received the least backing on a national basis. The municipal administrations received no additional funds and undertook no reorganisations. They have received new duties for, what is for them, an unknown area. The checking functions are normal but the social sector is unknown. The award of licences and the cooperation between the municipalities and the brothel owners has worked well in some areas, whilst in some other places, there been much poorer cooperation.

<sup>114</sup> European Court reports 2001, page I-08615. Jany-Case.

<sup>115</sup> The Ministry of Foreign Affairs, *Dutch Policy on Prostitution, Question & Answers*, s. 10.

In those municipalities where prostitution is not entirely unknown and where there exists an open attitude to communication, the implementation has been successful. There are particularly two factors that Wagenaar thinks has contributed to this success:<sup>116</sup>

- Involvement and cooperation of the main actors both inside and outside the administrative apparatus.
- The “vision”. Formulation of a number of core values. The values in Den Haag, for example, are responsibility, integrity and public safety.

*Responsibility* means not only that all the parties are aware of what their areas of responsibility are, but also that everyone knows what is the area of responsibility of everyone else. If one of those links does not work as it should, then it will affect the whole network.

*Integrity* is defined as solidarity and consistency. Solidarity stands for “take each other’s part” while “consistency” means the “resolve to follow up words with actions”.<sup>117</sup>

The value of *public safety* implies that the implementation and the owners of the brothels and the display windows agree on the opening and closing hours for the business, something that has reduced noise and disorder considerably.

The municipalities that have been most successful with the implementation of the licensing system experience quite a lot of loyalty from those involved. The police, the inhabitants of the municipalities and the prostitution business are all loyal to the process because they have been included in a dialogue and their input has

been heard. Wagenaar attributes this success to three factors as follows:<sup>118</sup>

- Limited bottom-up participation.
- Deliberative problem solving and practical orientation. City officials refrained from moralizing about prostitution per se.
- Values instead of formal rules. The municipalities had no previous experience but found their way to the values on the basis of the challenges they knew they would encounter. It was possible to convince everyone of the significance of these values and these values were accepted voluntarily by everyone.

In those municipalities where there has been some degree of success with the implementation the following positive effects can be summarised as follows:<sup>119</sup>

- Changes in the attitudes of the prostitution industry to society in general. For example people now value peace and public order outside the brothels and the display windows.
- The municipality employees know better and accept and recognise prostitution activities.
- Greater confidence exists between the different parties involved, the municipal administrations, the inhabitants, the brothel owners and the police.
- Regular, fixed meetings have been established between the parties within the network
- Open cooperation has given rise to a working system of licensing and supervision
- In Den Haag the police report that street crime has gone down by one sixth compared with the

<sup>116</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 20.

<sup>117</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 22.

<sup>118</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 25-26.

<sup>119</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 30-34.

figures before the legalisation of the brothel business.

Despite the fact that some municipalities have had success, these have also experienced unintended and negative results:<sup>120</sup>

- The focusing and the concentration by the parties on the legal market have led to an increase in the number of illegal women in the street walking zone.
- The illegal women in “the zone” are either victims of traffickers or they are driven into the hands of unscrupulous middlemen because of their tenuous position in Dutch society.
- The pimps have disappeared from the clubs and windows to the street walking zones, and possibly, escort services and bars.

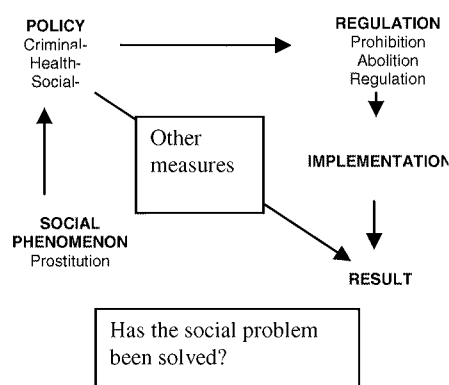
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<sup>120</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 34-35.

## 4 Summary

### 4.1 The Regulating model

Experiences from the Netherlands and Sweden can be combined and explained with help from the following model, which we have termed the “regulating model”. Our point of departure is that the way one defines a social phenomenon has consequences for the policy one chooses to apply in dealing with that social phenomenon. The political choice can be regulation under the law and other measures such as, for example, campaigns on attitudes or a combination of these. Implementation of a law can be more or less successful, depending on different factors. In the final analysis the question is whether the result one has achieved is the one aimed for, or whether other unfavourable, unintended effects have arisen.



### 4.2 Prostitution

In *Sweden* the official attitude is that the purchase of sex constitutes violence by men against women. In the Government’s Fact Sheet on prostitution and trafficking in women it is stated:<sup>121</sup>

The Swedish government and parliament have, through the implementation of the

Legislation pertaining to the Protection of Women, defined prostitution as men’s violence against women.

The official Swedish view is that there is no such thing as voluntary prostitution. The Study on Prostitution writes:<sup>122</sup>

No prostitution can be said to be voluntary.

The Swedish model puts the emphasis on the significance of the structures. Prostitution is viewed as an enforced activity, whereby the woman who sells sex is the victim of structural mechanisms.

In Sweden prostitution is viewed as a serious social problem that causes serious harm to both the individual and to society. The Swedish authorities focus on the harm caused to society by prostitution. Since it is not women’s free will that is emphasised, consideration to the general public is more important. An essential argument is that gender equality in society cannot be achieved as long as men buy, sell and exploit women.<sup>123</sup>

In *the Netherlands* the official attitude is that voluntary prostitution is the sale of sexual services. Sale and purchase of sexual services has “always taken place” and is a part of reality. There will always be someone who will sell sex and there will always be someone who will buy it. Within this reality there is both a voluntary aspect and an enforced one. In addition a distinction is made between adults and children. Both the adult who voluntarily sells sex and the client who buys it are accepted. On the other hand those who sell sex against their will shall be assisted by society. Underage individuals who are not sufficiently adult to make such a choice must also be protected. Enforced prostitution is viewed as organised crime.

<sup>121</sup> Näringsdepartementet, *Prostitution och handel med kvinnor*. Se också Regeringskansliet, *Regeringens handlingsplan för Jämställdhetspolitiken 2003 – en sammanfattning – Jämt och ständigt*, s. 7.

<sup>122</sup> SOU 1995:15, s. 52.

<sup>123</sup> Regeringskansliet, *Faktablad om Prostitution och handel med kvinnor*, januar 2004.

In the Netherlands it is considered that persons acting under their own free will are also to be found within prostitution. Within certain parameters people choose between different alternatives. Prostitution can constitute such a choice.

The same activity is defined at one level of society in quite different ways. In simple terms it is possible to describe the difference between Sweden and the Netherlands as follows:

- Sweden: *All* prostitution constitutes violence and is harmful to society
- The Netherlands: *Voluntary* prostitution constitutes work, *involuntary* prostitution is to be regarded as organised crime

### 4.3 Policy

The social phenomenon that one dislikes and that one wants to do something about can be defined politically in different ways. For example is the purchase of narcotic substances a health problem or a criminal problem?

In *Sweden* prostitution is regarded as a problem of gender equality.<sup>124</sup>

Equality cannot be achieved as long as men buy, sell and exploit women and children through prostitution.

A society that permits the sale of women cannot be accepted. Prostitution is a form of female oppression that must be combated.<sup>125</sup>

Through prohibition, prostitution and its damaging effects can be combated in a more effective way than has so far been achieved by the work against prostitution.

<sup>124</sup> Näringsdepartementet, *Prostitution och handel med kvinnor*.

<sup>125</sup> Prop. 1997/98:55, s. 104.

Gunilla Ekberg in the Gender Equality Unit in the Näringsdepartement (Swedish Ministry of Industry, Employment and Communication) considers that the Law on the Purchase of Sex is a mechanism for "getting rid of prostitution in Sweden".<sup>126</sup> The policy is based on a "zero vision" where the object is that prostitution shall disappear".<sup>127</sup>

In *the Netherlands* the voluntary sale of sexual services is viewed as a job of work. This attitude is to do with gender equality – equal rights to good working conditions, safety and security. In some instances, however, prostitution is an annoyance to others and then it becomes a problem of law and order. In those cases where the sale of sex is not voluntary, it becomes a criminal problem since it is a matter of coercion. In addition there are some cases where underage persons sell sex and should be protected. The fact that voluntary sale of sex by adults is defined as a job of work has consequences for how the police approach the phenomenon.

In the Netherlands prostitution is viewed as a trade distinct from criminal activities, which are often linked to prostitution. Voluntary prostitution comes under the administration's rules that control the operations of prostitution activities, and working environment rules that regulate the working conditions of the prostitutes. Involuntary prostitution comes under criminal rules. The Penal Code is used in the case of openly criminal activities that are to be found in the prostitutes' environment, particularly to protect vulnerable groups such as minors and illegal immigrants.<sup>128</sup>

<sup>126</sup> Malmkvist, J., *Perspektiv på den svenska sexköpslagen*, s. 34. Interview with G. Ekberg.

<sup>127</sup> Malmkvist, J., *Perspektiv på den svenska sexköpslagen*, s. 34. Interview with G. Ekberg.

<sup>128</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 13.

The policies in Sweden and the Netherlands can be described by the following terms:

- Sweden: A gender equality policy with emphasis on the relationships between women and men. A “zero” vision.
- The Netherlands: A gender equality policy with emphasis on equal conditions for all work. A normalisation project.

#### 4.4 Adjustments to the Law or other Measures

The political solution to a social problem can take different forms in different countries. In choosing between legal regulation and other measures, the legislator, according to the Committee on Sanctions ought to consider the following matters:

- Is criminalisation necessary?
- Can control be achieved by other means?
- Are the interests, which are to be protected so important that it merits the use of punishment?
- Is the action serious enough?
- Will enforcement be effective?

After consideration of these matters, the Storting (Norwegian Parliament) can make changes to the law and use the criminal justice system or choose other measures or combinations of these. Examples of other measures are:

- Campaigns to influence attitudes
- Financial subsidies
- Taxes
- Permits and licences

The different choices Sweden and the Netherlands have made can be described in the following ways:

- Sweden: Penalties and campaigns on attitudes
- The Netherlands: *Voluntary* prostitution: permissions, licences.  
*Forced* prostitution: punishment

#### 4.5 Legal Regulation

In the theoretical literature, three main models for regulating prostitution and the purchase of sex have been mentioned. These are:

- Prohibition
- Abolition
- Regulation

With the support of these models we can now see a difference between Sweden and the Netherlands. Neither of the countries wants to criminalise the prostitutes. Originally Sweden wanted to criminalise both the seller and the purchaser.<sup>129</sup> The prohibitionist proposal was changed under the Swedish legislative process to an abolitionist standpoint.

In *Sweden* there is a wish to abolish prostitution – the “zero” vision. The way to do this is to disturb the market by criminalising the client. The idea is that the law and its enforcement have an overall preventive effect that will make the clients and the basis for the market disappears.

In the *Netherlands* prostitution is permitted in approved brothels, in some tolerance zones, behind display windows and in other places that causes no disturbance to law and order.

The Dutch approach is pragmatic. Prostitution is part of society and this has to be accepted. The use of regulation allows prostitution within certain limits.

<sup>129</sup> Official Swedish Report - SOU 1995:15



These limits include, for instance, local authority approval of brothels. In addition to approval, the brothels are also inspected in terms of health, safety, fire and accounts.

- Sweden: Abolitionism
- The Netherlands: Regulation

## 4.6 The implementation

### 4.6.1 Introduction

Implementation is often the most difficult issue when new legislation is being introduced to society. "Any Government has to accept that they cannot rule the implementation".<sup>130</sup> It is known from a sociology of law perspective that to be successful with a law that runs contrary to the interests of the parties, some aspects are particularly important:

- Clear legal wording
- Supporting factors such as financial resources and a functioning organisation
- Communication with the parties
- Loyalty by the parties to the law
- Effective enforcement

### 4.6.2 The implementation in Sweden

#### 4.6.2.1 *The text of the Law*

The Swedish text of the law was criticised in the round of consultation on the law. The text of the law has also been criticised by the police and the prosecuting authorities. Legal theoreticians have also pointed out weaknesses. Several of the legal drafting problems will be corrected if the bill in SOU 2001:14 goes through. Some of the confusion will probably be cleared up under case law.

#### 4.6.2.2 *Supporting factors*

Some SEK 7 million a year was contributed in Sweden in the first instance for a period of three years for the police's

enforcement of the Law on the Purchase of Sex. The money was used for technical undercover work and specific measures. For the period 2004 to 2006 the Government has allocated SEK 30 million to work on trafficking in people including a follow-up of the Law on the Purchase of Sex. This means that there are now less funds earmarked to support directly the Law on the Purchase of Sex and it is assumed that these funds will be more difficult to access than previous funds.

Some SEK 5 million was allocated for work on violence against women in connection with the package of measures for the protection of women in 1998. It has not been ascertained what share of this has gone to social and health support to the prostitutes.

From an organisational point of view it was only the police who made any changes when the law was first adopted. Prostitution groups/projects were established within the police. This was for a few towns like Stockholm, Gothenburg, Malmö and Norrköping. The Stockholm group, which is still active, consists of two men. The other groups are not as active as before, and now have other duties in addition.

Within the prosecuting authorities, an International Prosecuting Unit with special responsibility for Trafficking in Human beings has been established. In those cases where the purchase of sex is discovered in connection with Trafficking in Human beings the International Prosecuting Unit will also take to court the sex purchase cases.

#### 4.6.2.3 *Communication with the parties*

Campaigns to influence the attitudes of the general public were initiated at an early stage. The Gender Equality Unit of Ministry of Industry, Employment and Communication has made an impressive effort. Posters on the purchase of sex and prostitution have been produced and attracted great attention. The follow-up of

<sup>130</sup> Wagenaar, H., in the meeting with the working group

the film *Lilja 4ever* with the anthology *What has my life to do with Lilja?* in cooperation with the Swedish Film Institute and Save the Children is a good attempt to inform people and to influence their attitudes. The anthology and the film showing, with subsequent debates at high schools and for Army recruits have been a major area of concentration. In addition the Gender Equality Unit of the Ministry of Industry, Employment and Communication has travelled round, given lectures and debated the Swedish model both in Sweden and internationally.

The Law on the Purchase of Sex is a “normative” law, and one of its purposes is to influence people’s attitudes. Here there has been a successful effort. The support of the general public for the law has been great. According to an investigation undertaken in 2001 81% of the population are positive towards the law and 15% want the law to be abolished.<sup>131</sup> The activity that the Gender Equality Unit has been responsible for, has enjoyed great support amongst the general public.

#### 4.6.2.4 Loyalty amongst the parties

The parties are sellers, clients and those involved in control. There is little to indicate that the street prostitutes think that the law is good. The prices on the street have gone down and the fear of violence has increased.

Some of the “nice” clients have probably learned something about the law and stopped buying sexual services on the streets and, left behind, are the special clients. We know little about the clients who use the indoor market. Probably those clients who use mobile telephones, the Internet and the indoor market are affected to a lesser degree by the law.

<sup>131</sup> Regeringskansliet, *Faktablad om Prostitution och handel med kvinnor*, januari 2004.

The focus by the police on clients has diminished in recent years. Originally the police established special prostitution groups/projects that were responsible for enforcement. This led to the ordinary policemen feeling less of a responsibility. At the same time as the earmarked funds disappeared, the police changed their focus from the purchase of sex to Trafficking in Human beings. A professional police comment was that priority couldn’t be given to concentrating large undercover resources on an activity, which, in terms of penalties, is on the level with petty theft, unless this is given priority with specially allocated resources.<sup>132</sup>

It is also claimed that the loyalty of the legal system to the person reported is greater than loyalty to the law. One example is that the summons for questioning on suspicion of purchasing sex was sent to the workplace rather than the home as is usual in other cases.<sup>133</sup>

It has been observed that the judicial system shows special consideration to buyers of sexual services. An example of this is that summons to an examination of a suspected sex purchaser was sent to the person’s work place, and not to his home, which is normal practice. Such a procedure shows a certain understanding within the judicial system for men who are suspected of buying sex. It is unusually considerate and designed to protect the suspect from the social consequences that might follow from his actions.

Another example is that some judges are not interested in mixing together pimping activity with the purchase of sex.<sup>134</sup>

In some cases prosecutors have chosen to bring a charge for sexual offences at the same time as they bring charges for

<sup>132</sup> See NOU 2002:4, section 4.2.3.4.

<sup>133</sup> RKP, *Handel med kvinnor–Lägesrapport 5*, s. 26.

<sup>134</sup> RKP, *Människohandel för sexuella ändamål – Lägesrapport 6*.

pimping and grave pimping. It has happened that judges have opposed this arrangement as they do not think that purchasers of sex should have to be ridiculed in connection with a main hearing in a pimping case.<sup>135</sup>

The parties within the social and health sectors demonstrate a large degree of loyalty towards the Swedish policy, which is used to deal with the social phenomenon of prostitution.

#### 4.6.2.5 Enforcement

Enforcement has been focussed on street prostitution. As far as the working group has been able to find, no charges have been brought for independent cases of purchasing sex on the indoor market. The charges have come about in connection with pimping cases /Trafficking in Human beings

Among other things, enforcement has been difficult because of unclear wording of legal, texts and because the preparatory work is not clear enough. Strict requirements from the courts have made the hearing of evidence difficult. If both parties deny everything, then a great deal will be needed to show that a deal has been made and that sexual services have been given.

The National Criminal Police have stated that a lack of understanding of the seriousness of the criminalisation of the purchase of sex, can be one reason for the poor follow-up of the law.<sup>136</sup>

### 4.6.3 The Implementation of the Law in the Netherlands

#### 4.6.3.1 The text of the Law

The Dutch text of the law has the opposite function from that of the Swedish one. Where the Swedish law criminalises behaviour, the Dutch law decriminalises something that was forbidden – ”lifted the

ban on brothels”. Naturally enough the analysis of the sociology of the law will be different.

#### 4.6.3.2 Supporting factors

In the Netherlands extra money was not allocated in connection with the legalisation. This may appear strange as new duties were being imposed upon the municipal authorities.

The year before the change in the law took place the police took action and established a national prostitution and human trafficking project. The reason was the upcoming legalisation of the brothels. The project worked out a strategy and guidelines for the enforcement of the police’s duties as regards prostitution and Trafficking in Human beings. The project developed, amongst other things, ”Guidelines Prostitution Control” and ”Prostitution and Trafficking in Human Beings Handbook”.

The municipal administrations received no additional funds and undertook no re-organisations. The issue of licences and the cooperation between the municipality and the brothel owners worked well in some places, whilst in some places cooperation has been poorer.

#### 4.6.3.3 Communication with the parties

Decriminalisation does not normally require so much communication as criminalisation. The special interest organisations the Mr Graaf Foundation and De Rode Draad received funds from, amongst others, the Ministry of Health and Social Affairs. These organisations have informed sex workers on the consequences of a “normalisation project”, for example information relating to payment of tax and rules on occupational health.

The sex workers who work in brothels are informed by the health workers and others who check conditions regularly. The women who are in tolerance zones obtain information and help from health and

<sup>135</sup> RKP, *Människohandel för sexuella ändamål – Lägesrapport 6*, s. 35.

<sup>136</sup> See the quotations above.

social workers who work in the drop-in centre in the zone. The police in the zone too are important informants.

The three interest groups who organise the brothel owners also pass on information to them.

The challenge to the municipalities in implementing the licensing system was that the sex industry was fragmented and plagued by rivalries. The police and the municipal apparatus encountered a strong and sceptical opponent who, after years outside the legal system, was unwilling to give up its lucrative activities. The means of communication between the municipal administration and the sex industry was in some places very variable, and not always effective or constructive.<sup>137</sup>

The municipalities that have been successful (amongst them, Den Haag) have, to a large extent, managed to use actively the contacts they had with the brothel-owners before legalisation. Furthermore they have included participants in the sex industry, especially brothel-owners, but they have also listened to experience from the police and the city legal officer and other important parties such as the municipality's politicians, the administration, service providers and citizens. The municipalities were particularly aware that the sex industry would not accept a hierarchical implementation of the licensing system, which is a top-down system of implementation.<sup>138</sup>

#### 4.6.3.4 Loyalty amongst the parties

The impression we gained was that in general there was loyalty amongst the parties towards legalisation, but there are several examples of disloyalty and dissatisfaction.

<sup>137</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 16-17.

<sup>138</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 18-19.

Some municipalities are not happy with having brothels and set unrealistically strict requirements for issuing licences, or they are, in some way or other, disloyal towards the model. There is also unequal practice between individual municipal officials who check the brothels, something that may have other reasons than disloyalty.

Sex workers can be disloyal with regards to health checks, which are voluntary. Four checks are recommended a year for those working in the brothel and two checks a year for those working outside. The majority of the sex workers, however, undergo health checks. Sex workers can also display disloyalty by not registering and/ or not paying tax and preferring to work unregistered on the streets or in illegal brothels.

Some clients are loyal to the legislation in that they report to the authorities if they have suspicions of Trafficking in Human beings or underage persons.

#### 4.6.3.5 Enforcement

As legalisation opens up for freedom of trade, it is not enforcement of the criminal law which is the central issue, but the statutory and administrative controls under the municipal authorities. As mentioned elsewhere practice can vary from municipality to municipality and from department to department. It is the implementation of this control which has been criticised most. A lack of coordination, administrative confusion and poor organisation in the least successful municipalities has been mentioned as weaknesses with the Dutch model.

The municipalities and the sex industry have, during the implementation phase of the licensing system, met each other in court. The reason for this was that they found themselves in an area which until now had not been legally regulated. For example questions as to what constitutes a

brothel have now been answered in the courts. However these legal conflicts have not been regarded as negative. For practical reasons the questions which the parties cannot agree on by means of dialogue, must be decided in the courts. According to Wagenaar, these decisions have propelled the implementation process forward in a positive manner.<sup>139</sup>

## 4.7 Results

### 4.7.1 Results in Sweden

Have the political choices made to deal with the social problem of prostitution been successful? Has the Swedish Law on the Purchase of Sex reduced the total number of purchases of sex and have there been changes as far as violence and health amongst prostitutes are concerned?

Unfortunately there is no simple answer. Knowledge exists on visible prostitution on the streets, which is more or less stable. It has gone up in Malmö and down in Gothenburg and Stockholm. There was a reduction in 1998/1999. There were most probably several factors which affected the reduction. The immediate reduction when the law came into force was most probably due to the Law on the Purchase of Sex itself and the focus on it by the media. In addition “the technical revolution” probably played a central role in the period after the law came into force. The possibilities for advertising and dealing in prostitution using the Internet and mobile telephones have made it easier to provide clients to the indoor market in Sweden as has happened in other countries. The number of women who have switched from street prostitution to the indoor market is not known.

Irrespective of the reason for the reduction in street prostitution it has not been possible for the working group to find an answer to the question as to what

happened to the women who disappeared from the street. No studies and no follow-up have been undertaken of the prostitutes on what the effects of the law have been for them. However it is quite clear that some of the women died of substance abuse, some received treatment and some bought themselves a mobile telephone.

It has been claimed that criminalisation would give rise to some undesirable results,<sup>140</sup> so-called unintentional effects:

- Prostitution would go underground
- The risk for attack, extortion and other types of crime would increase
- Criminalisation only strikes the most vulnerable women
- The enforcement of the prohibition will be difficult

#### *Prostitution will go underground*

- Prostitution on the streets has reduced. Whether the reduction is due to the effects of the law, to treatment by methadone, illness, death or new technology is not known with any certainty. Most probably it could be a combination of these factors. Street prostitution has largely been stable after the year 2000. It is not known whether those who disappeared from the streets in 1998 have retreated indoors. It has been claimed that the prostitutes’ dependence on pimps has increased because street prostitutes cannot work as openly as before. The police informed us that it is more difficult to investigate cases of pimping and Trafficking in Human beings because prostitution does not take place so openly on the streets any more.

<sup>139</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 32.

<sup>140</sup> Månsson, S.-A., *Den köpta sexualiteten*, s. 246 f.

*The risk of attack, extortion and other types of crime would increase*

- Our informants have given us a general impression of an increased fear of attack. There is no evidence of extortion and other type of crime before or after legislation.

*Criminalisation strikes at the most vulnerable women*

- The women's experience is that they feel that the criminalisation process has affected them negatively. Street prostitutes now meet more frequently the special men with the special desires. It has become more difficult to carry out "quality assurance" on these clients. The prices have fallen so that they need more clients to get enough money for the daily need for drugs. For the street prostitutes prices have fallen and fear has increased.
- With the help we have received from Sweden we have not been able to find out what has happened in the indoors market. We do not know much as to whether health or social conditions have changed. We do not know whether violence occurs. We do not know how many they are.

*Enforcement of the prohibition is difficult*

- One clear impression from the police and the prosecuting authorities is that the enforcement of the prohibition has been difficult. In the first place the wording of the law itself is unclear. In the second place undercover work requires time and is difficult. To provide documentary evidence of agreements and sexual relations is complicated and requires technical equipment and intensive monitoring. In the third place the extra funds from the first year have disappeared. In the fourth

place the courts impose strict demands so that few prosecutions actually end up in a conviction. In the fifth place a punishable offence which gives only six months in prison is not given high priority.

The intended effects of the Swedish law were, among other things to bring an end to the purchase of women by men, whether it was voluntary or not. What we do know is that the year after the law came into force open prostitution went down. An unintended effect is that the clients are less visible than previously and that they are less willing to cooperate in bringing to light coercion, Trafficking in Human beings, or underage persons involved in prostitution. Another unintended effect of the fact that women are less visible is they are more difficult to reach by the support system. An unintended effect of the police's "threatening" presence on the streets is that the prostitutes' dependence on pimps has probably increased. Someone is needed in the background to arrange transport and new flats so that the women's activity is more difficult to discover and so that it will not attract the attention of the police.

**4.7.2 Results in the Netherlands**

Has the decriminalisation of the brothels and the opening of tolerance zones resulted in control through transparency? Has illegal immigration been cleared up?

After the legislation was in place the implementation of the legislation has not proceeded without some friction. Illegal brothels exist, women exist who sell sex under duress and a market still exists which the police still do not have full knowledge of. Marieke van Doorninck writes of this:

The legalisation of an industry that had been illegal for so long is not just a matter of changing the Penal Code, it is a process. The emancipation of sex workers, who have been excluded from

civil and labour rights for centuries, has just started. Lifting the ban on brothels was just the first step of the long and probably difficult road that lies ahead of us.<sup>141</sup>

The intended effect of the decriminalisation in the Netherlands was, among other things, and with the aid of transparency, to gain control over organised crime in the form of traffickers and pimps. Researcher Hendrik Wagenaar puts it this way, "the license system opened the doors". Experiences from the police suggest that prostitution has become more transparent and it is easier to impose control with the legal brothels. On the other hand a so-called "grey market" still exists where, to a lesser degree, the police have information and control. It is assumed that the victims of human trafficking are within the "grey market".

An intended positive effect of the legalisation is that the number of brothels has been halved after legalisation. But at the same time it is not known what has happened to the brothels which did not get licences, whether they are operating illegally, or whether they are out of the market. If one wants to reduce prostitution which is not a stated goal in the Netherlands, then it was not achieved by way of legislation.

Despite the fact that some municipalities have had success, these have also experienced that unintended or negative results have arisen:

- The focus and concentration of the parties on the legal market gave rise, for a period, to an increase in the number of illegal women in "the zone".
- The illegal women in "the zone" are either victims of Trafficking in Human beings or are in the grip of

unscrupulous middlemen, as they possess no rights within society

- The pimps have disappeared from the brothels and the display windows in the Netherlands but they are to be found in "the zone" in the escort business and in bars.<sup>142</sup>

One explanation for the unintended effects which have come about is, according to Wagenaar, that in those municipalities which have been only partially successful, the prostitutes have not been involved in the process. The group that will first experience the changes after the legalisation and the new measures, has never had a voice in the implementation process. This is due in the first place to the fact that prostitutes did not want to take part in the debate for fear of losing their anonymity, and in the second place, because the women live a very mobile existence and move around a lot because the clients always want a "fresh face". An additional factor is that the parties involved consciously or unconsciously choose to "weed out" some information which will make the implementation more difficult. This information can later emerge in the form of unintended results.<sup>143</sup>

## 4.8 Has the social problem been solved?

### 4.8.1 Sweden

The answer to the question as to whether the purchase of sexual services shall be criminalised or not depends first and foremost on how one defines politically the social phenomenon of prostitution/the purchase of sex. In Sweden the lawmakers view prostitution as violence against women. The question then is whether the

<sup>141</sup> van Doorninck, M., *A labour approach towards sex work*.

<sup>142</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 34-35.

<sup>143</sup> Wagenaar, H., *Democracy and Prostitution: Deliberating the legalization of brothels in the Netherlands*, s. 36-37.

Law on the Purchase of Sex has contributed to reducing/removing violence against women i.e. prostitution. One must take account of the fact that no legislation has a “light switch effect”, that is an automatically intended effect and that all legislation in addition has some more or less unintended effects. Then the theme for political consideration is what unintended effects can be accepted?

The legislators can be assumed to have had different purposes with the legislation. These can be a desire for effective legislation, legislation with a cleansing effect or a symbolic legislation.

- *Effective legislation* is the legislation which results in its intended social effects being achieved
- *Cleansing legislation* is the legislation which partly results in the intended effects being achieved whereby the social problem is removed from sight. The Norwegian Professor in Sociology of Law Thomas Mathiesen writes: ”Some of the so-called “deviants” or “trouble-makers” which our society creates are placed outside society, out of circulation”.<sup>144</sup>
- *Symbolic legislation* is the legislation in which the symbolic effect of the law is more important than achieving real changes in society, with the aid of criminal proceedings in the courts.

The question as to whether Sweden has solved the social problem of prostitution can be answered from what the legislators have wanted out of the Law on the Purchase of Sex. Was the wish an effective criminal law, a cleansing law which keeps “deviants out of circulation” or was the symbolic effect of creating an attitude within a normative law, sufficient? On the basis of this reasoning

we can summarise matters in the following way:

- *Effective legislation?* The Swedish legislation has not achieved all its intended effects. The enforcement has had its weaknesses and the unknown quantities amongst prostitutes and clients for sex are still huge. In addition the law has had some unintended effects.
- *Cleansing legislation?* The Law on the Purchase of Sex and its enforcement have probably contributed to the fact that the prostitutes and their clients are not as visible on the street scene as they used to be. The number of prostitutes on the streets has been reduced by about 41%. But there are still prostitutes’ districts in the three large cities in Sweden. And prostitution occurs indoors which is not visible or of disturbance to the general public. In addition the law has had some unintended effects.
- *Symbolic legislation?* The Law on the Purchase of Sex together with campaigns to influence attitudes have been successful. The Government has marketed the law as a normative law which will change people’s attitudes. 81% of the population are positive towards the law. The effect on attitudes of the Gender Equality Units marketing that the purchase of sex is a criminal offence has been substantial. On the other hand the law has had some unintended effects.

## 4.8.2 The Netherlands

### 4.8.2.1 *The social phenomenon and the social problem*

In the Netherlands the social phenomenon of prostitution is not viewed as a social problem as long as it does not involve underage persons or coercion. In the Netherlands prostitution is regarded as

<sup>144</sup> Mathiesen, T. *Retten i samfunnet*, s 71.



voluntary, and involuntary prostitution is regarded as organised crime

#### 4.8.2.2 *Voluntary prostitution*

It has been a complicated process to get the previously illegal, but tolerated brothels to become licensed activities. Labour, safety, tax and health legislation have to be adapted to the special working conditions. The implementation of the new Netherlands policy has not been a success everywhere.

In those municipalities where there has been experience and where good relations have existed between the municipality and the brothel owners, implementation has been successful. The relationship between the prostitute and the brothel owner has varied. Some brothel owners are good employers and some are not. Our impression is that what the municipalities have offered in the way of health, safety, fire provisions etc. have worked well in relation to the prostitutes. Cooperation within the municipality itself has not always been effective.

Because of the focus by the police and the health and social departments on the legal side of prostitution, there have not yet been the resources to control effectively and to enforce the criminal legislation on “twilight” zone prostitution (escorts) or illegal prostitution (illegal brothels, prostitution outside the tolerance zones). There is a shift in focus under way whereby the police are now working on new methods and shall concentrate their

resources on Trafficking in Human beings and that side of the sex industry.

#### 4.8.2.3 *Involuntary prostitution (Trafficking in Human beings)*

In the Netherlands involuntary prostitution is organised crime. Involuntary prostitution is forbidden under art. 250a of the Penal Code. After legalisation, action was taken against street prostitution with the result that many women without work or residence permits, who had previously been in the brothels, were sent out of the Netherlands. One condition for operating a legal brothel is that one must not employ women who do not have work or residence permits or who are working under coercion. Legal brothels thus serve as a brake on illegal prostitution. It is hoped that self-regulating market mechanisms will dry up the work possibilities for involuntary prostitution.

Where sex with underage persons is concerned articles 244 and 245 apply. To the extent that these girls are in the tolerance zone, they will often be discovered by the police or the social support services, and are often pointed out by the adult women who do not like such competition. The young girls do not obtain employment in legal brothels. The only market for them is the “invisible” market, for example the Internet market or in illegal brothels.

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