

# **Paper Pimps**

**Advertisements for Prostitution Services in  
Israel**

**Hotline for Migrant Workers**



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**The Hotline for Migrant Workers (HMW)** is a non-partisan, non-profit organization dedicated to protecting the rights of migrant workers and refugees and eliminating trafficking in persons in Israel. We aim to build a more just, equitable and democratic society where the human rights of all those residing within its borders are paramount civic and political values. Our main activities include providing information, offering consultation and legal representation, increasing public knowledge and promoting public policy aimed at eliminating modern day slavery in Israel.

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## INTRODUCTION

"Waiting just for you... Just choose me and I will be yours"<sup>1</sup>

And then I began to work in a discreet apartment in Rishon Letzion. There was no sign there but they ran ads in the newspaper and clients went there. In the discreet apartment I was given a small room and they told me the services I had to give... I could not resist; they paid money for me and I had to do everything they demanded. There was no such thing as saying 'I can't, I don't want to.'<sup>2</sup>

Trafficking in human beings is the only offense that has been openly advertised in Israel's leading newspapers for years without protest: neither by the managers or owners of the newspapers, nor by the law enforcement agencies, nor by the reading public -which ignored the advertisements or even used the services of the women advertised therein. Those advertisements served as an important means for the traffickers and pimps to present their human wares to the Israeli public. When the sex industry began to change its image -from thriving brothels on every corner to "discrete apartments" out of public view -the advertisements became the main way to market it in the last few years.

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<sup>1</sup> From a monthly publication that advertises prostitution services.

<sup>2</sup> Ilana Hammerman, *In Foreign Parts -Trafficking in Women in Israel* (Hebrew) (2004) pp. 87, 90.

The sex industry, wherever it is, needs advertising. There are brothels that confine themselves to word-of-mouth advertising; others use the written and electronic press. For many years the authorities ignored sex industry advertisements (just as they ignored trafficking in women, whose victims were the ones who were advertised, to a large extent, in those advertisements). In 1998, Article 205c of the Penal Code, 5737-1977, was passed, prohibiting the advertisement of the prostitution services of an adult, unless it was done according to standards set by the legislator. Such advertising was permitted according to the Penal Code, but subject to restricting conditions which consisted mostly of moral considerations. Nonetheless, the traffickers continued to invest a lot of money in advertising, in the print media as well as in other channels; and the newspapers continued to accept that money without wondering about its origins or about the women who were advertised and the degree to which they agreed to the advertisement.

In this policy paper we will review the means that have served the sex industry in the written and electronic press over the last decade, why it is problematic and the various interests that are violated by the said advertising. We will also explore, through field research, the nature of the services offered in the advertisements and who the women advertised therein are. After reviewing the legal situation in Israel and in other countries, we will suggest different ways to deal effectively with the advertisements so that they become an



inseparable part of the struggle against forced prostitution and trafficking in women.

## FREEDOM OF EXPRESSION

### a. The right to freedom of expression

The right to freedom of expression is a basic right in Israeli law, that enjoys constitutional status and legal protection. The Israeli Supreme Court asserted the importance of the right to freedom of expression in many rulings, and established that it constitutes a basic right, derived from the values of the State of Israel as a Jewish and democratic state.<sup>3</sup> As we can learn from the extensive literature on the subject, the justification for the freedom of expression is comprised of a number of elements: it combines the search for truth, the desire to give expression to a person's self-fulfillment and the need to maintain the democratic system, based on tolerance and social stability.<sup>4</sup>

The right to freedom of expression covers different areas of expression, the degree of protection of which changes according to the connection between the expression and the rationale on which

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<sup>3</sup> H CJ 6126/94 **Senesh v. Broadcasting Authority**, PD 70 (3) 817 (hereinafter: the Senesh ruling); CA 2/84, **Neiman v. Chairman of Central Elections Committee for Eleventh Knesset**, PD 39(2) 225, 294 (hereinafter: the Neiman ruling); H CJ 73/53 "**Kol Ha'am**" **Co. Ltd v. Minister of Interior**, PD 878, 871 (hereinafter: the Kol Ha'am ruling); CA 723/74, **Ha'aretz, Ltd. v. Israel Electric Corporation**, PD 31(2) 281, 295; H CJ 153/83 **Levy v. Southern District Police Commander**, PD 38(2) 393, 398; CA 225/68 **State of Israel v. Ben Moshe**, 22(2) 427, 435.

<sup>4</sup> See, among others, H CJ 399/85 **Kahane v. The Board of the Broadcasting Authority**, 41 (3) 255; the **Kol Ha'am** ruling, *ibid.*; the **Neiman** ruling, *ibid.*, 296.

the right is based. So, for instance, freedom of expression in the political context enjoys the highest level of protection, because of its vitality for the existence of the democratic system, while the constitutional protection for commercial expression is less than that given to political and other expressions.<sup>5</sup>

**b. Is the advertisement of sex services part of the right to freedom of expression?**

Sex advertisements do not relate to freedom of expression in its political, religious or moral context, but to commercial freedom of expression -the freedom of a seller to offer his wares. As stated above, the protection given to commercial freedom of expression in general is less than that given to freedom of expression in other contexts. When it comes to the publication of sex services, the protection of the commercial expression must be examined even more carefully, considering the problematic aspects of the sex industry, upon which we will expand below. Although prostitution in itself is not forbidden by law, nonetheless it is not a business like any other which should be encouraged and nurtured. To the contrary: the Israeli legislator chose to criminalize pimping in its various facets, trafficking in human beings for the engagement in prostitution and even maintaining a place for the purpose of prostitution; just as it saw fit to restrict the ways such business is

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<sup>5</sup> HCJ 5118/95 **Meir Simon Advertising, Marketing and Public Relations Ltd v. Second Television and Radio Authority** PD 49(5) 751, 755.

advertised. In a number of rulings given over the last years the courts established that there is a close connection between pimping and human trafficking,<sup>6</sup> and that every link in the trafficking chain - traffickers, cashiers and drivers - allows the existence of the offense in its entirety. Moreover, the Supreme Court recently ruled that the category "use of prostitution services" may not be stated as a financial damage that justifies financial compensation, and overturned a compensation ruling whose purpose was to finance the prostitution industry. This came, inter alia, in the context of the dire reality in Israel in relation to the "prostitution industry."<sup>7</sup> In the state attorney's directives regarding the accompanying offenses to practicing prostitution it even says explicitly that "the contents of this directive do not minimize the desire to reduce as much as possible the phenomenon of prostitution in general, which in itself constitutes an offense against human dignity."<sup>8</sup>

Publishing sex advertisements is not only an economic lever for the prostitution industry, which is by and large based on exploiting the

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<sup>6</sup> VCR 1991/04 **Ilichenko v. State of Israel** (ruling from March 9, 2004); VCR 7544/03 **Rachimov v. State of Israel** (ruling from September 21, 2003); VCR 5196/04 **State of Israel v. Gavriellov** (ruling from June 6, 2004); and see also SCF (District – Jerusalem) 708/04 **State of Israel v. Berdichevsky et al** (Verdict from September 29, 2005), which says "we are dealing with an extensive network, every link of which, whether small or large, is necessary for the activity and existence of the entire network."

<sup>7</sup> CA 11152/04 **Anonymous v. Migdal Insurance Co. Ltd.** (ruling from October 27, 2004).

<sup>8</sup> Directive 2.2 of the state attorneys directives as to the enforcement policy regarding the accompanying offenses to practicing prostitution.

distress of women, but also promotes the serious and grave phenomenon of trafficking in women. The main role of the sex advertisements under discussion in this document is increasing the demand. There is extensive literature on the role of advertisements and their effect on creating demand for various products and increasing it.<sup>9</sup> In this case, the advertisements present the potential clients with the possibility of choosing a beautiful woman, according to their personal tastes, and buying her for an hour as an inseparable part of life. The women who work in prostitution are presented as enjoying their work, happy with their lot and always interested in sex of all kinds and with any person. The seductive advertising makes it very easy for the potential client to ignore question marks about the identity of the woman who is about to provide him with sex services, her wish or choice to provide him with the service he bought and the reasons that led her to do it. In the broader context, the sex advertisements are part of commercializing the relations between the sexes, including an

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<sup>9</sup> Loef, Joost, Antonides, Gerrit & van Raaij, W. Fred, "The Effectiveness of Advertising Matching Purchase Motivation", *ERIM Report Series*, Reference No. ERS-2001-65-MKT, November 2001, available at <http://ssrn.com/abstract=370921> (last accessed May 26<sup>th</sup>, 2007); Dube, Jean-Pierre H., Hitsch, Guenter Johann & Manchanda, Puneet, "An Empirical Model of Advertising Dynamics", December 2004, available at <http://ssrn.com/abstract=478050> (last accessed May 26<sup>th</sup>, 2007); Franses, Philip Hans and Vriens, Marco, "Advertising Effects on Awareness, Consideration & Brand Choice Using Tracking Data", *ERIM Report Series*, Reference No. ERS-2004-028-MKT, May 3, 2004, available at <http://ssrn.com/abstract=594965> (last accessed May 26<sup>th</sup>, 2007); Johnson, Justin P. & Myatt, David P., "On the Simple Economics of Advertising, Marketing, and Product Design", June 2005, available at <http://ssrn.com/abstract=503182> (last accessed May 26<sup>th</sup>, 2007).

alienated attitude towards sex and towards the body and treating women as an object. Recognizing the social significances of the phenomena of prostitution and trafficking in women, as well as the sex advertisements that promote them, requires an extremely cautious examination of the degree of constitutional protection given to expressions of this kind.

### **c. The values violated by the advertisement of sex services and the balance between them and commercial freedom of expression**

Freedom of expression, as a constitutional freedom, extends to every opinion, every view and every belief in a free society, whatever its contents.<sup>10</sup> However, it has been established in judicial rulings that a person's right to freedom of expression ends where there is a near certainty that real harm will be done to public peace.<sup>11</sup> The main problem that comes up in practice is where to draw the line between the individual's right and the public's needs. Moreover, we must examine the question of whether we are restricting the freedom of expression of an individual woman, who willfully engages in prostitution and is interested in advertising herself, or -what is more likely -whether we are talking about traffickers and pimps who are advertising their human wares in this way. In any case, even if we

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<sup>10</sup> The **Senesh** ruling, footnote 3 supra.

<sup>11</sup> Ibid.

are talking about the freedom of expression of women from the first group, who engage in prostitution out of choice, their commercial freedom still needs to be balanced against opposing values.

Among those values are the public's feelings. The Supreme Court has ruled in many cases that in order to restrict freedom of expression, the offense to the public's feelings has to be "severe, grave and serious."<sup>12</sup> Heretofore the legislator has taken a moralistic approach in legislation, and through the law expressed concern for the welfare of the public, which could be hurt by pictures that are not "moral." Thus, as shall be detailed below, the law allows the publishing of sex advertisements while restricting the advertising in such a way that only those who are interested in it can see it at their request. However, in the Playboy ruling it was stressed that the examination of the extent of offense to the public's feelings does not focus on the intensity of the personal suffering of those who are hurt, but is derived from society's normative views.<sup>13</sup> That ruling may affect the balance point between the freedom of vocation granted to those who engage in prostitution, and the offense to the public's feelings caused by the problematic messages that emerge, as stated, from those advertisements.

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<sup>12</sup> HCJ 806/88 **Universal City Studios v. Council of Reviewing Movies and Plays**, PD 43(2) 22; HCJ 5432/03 **Shin – For the Equal Representation of Women v. The Council for Cables and Satellite Broadcasting**, PD 58(3) 65 (hereinafter: the Playboy ruling).

<sup>13</sup> The Playboy ruling, *ibid.*

Another value offended by the publication of the sex advertisements is human dignity, at the basis of which is protection from humiliation.<sup>14</sup> An examination of the advertisements discussed here reveals a very grave picture regarding the dignity of the women presented therein in particular, and of any woman anywhere in general. In many cases the advertisements include pictures of women in humiliating positions, accompanied by humiliating and degrading texts that objectify women.

Finally, against the freedom of commercial expression stands the very phenomenon of trafficking in women, for which these advertisements constitute an important business-commercial lever. Trafficking in women presently constitutes a thriving international business; and hundreds of thousands of women in the world are bought and sold every year in that framework.<sup>15</sup> Under these circumstances there is no escaping the conclusion that the commercial freedom of expression granted to those who engage in

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<sup>14</sup> HCJ 4541/94 **Miller v Minister of Defense**, PD 49(4) 94.

<sup>15</sup> S. W. Tiefenbrun "Trafficking of Women Sex Workers and an Economic Solution" **24 T. Jefferson L. Rev.** 161 (2002) p. 161; Stephanie Richard "State Legislation and Human Trafficking: Helpful or Harmful?" **38 U. Mich. J.L. Reform** 447 (2005), pp. 449-450; Robin M. Rumpf "U. N. Report: The new slavery: the United Nations' interregional crime & justice research institute's global program against trafficking in human beings" **19 N. Y. L. Sch. J. Hum. Rts.** 879 (2003) pp. 880-881.



prostitution must be significantly restricted, in favor of the important social values that are being blatantly trampled upon by it.

## **SEX ADVERTISEMENTS AND TRAFFICKING IN WOMEN IN ISRAEL 1990-2007**

The treatment of women as objects, and particularly as sexual objects, is not a new phenomenon, and exists in most societies and cultures.<sup>16</sup> In recent years the grave and worrisome phenomenon of trafficking in women for prostitution has been growing steadily. Women of all ages are being bought and sold from one person to another, are employed in slave-like conditions in brothels, and all or most of their income goes to the traffickers. In this chapter we shall review the subject of trafficking in women in Israel, the advertisements to publicize that industry, and the relationship that develops between traffickers and various advertisers in order to create broader publicity for the sexual services provided by the women, often forcefully.

### **a. Trafficking in women in Israel**

Trafficking in women for prostitution began in Israel in the early 1990s, after the collapse of the Soviet Union.<sup>17</sup> During that period, due to the economic and social crisis that befell the states of the former Soviet Union, working opportunities in those countries shrunk and citizens sought their fortune in other countries. Most of

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<sup>16</sup> M. R. Adelman, "International Sex Trafficking: Dismantling the Demand", 13 *S. Cal. Rev. L. & Women's Stud.* 387 (2004), p. 387

<sup>17</sup> For a more extensive review of the subject of trafficking in women, see "Women as Commodities: Trafficking in Women in Israel 2003," Hotline for Migrant Workers, Isha L'Isha - Haifa Feminist Center, Adva Center, 2003.

the women brought to Israel these days as part of trafficking, are brought from Ukraine, Russia, Moldova and Uzbekistan. Most of them are in their 20s. Most know they are going to work in prostitution but do not know under what conditions; whereas some give an indication from the start that they know the purpose of their migration. Some are even second or third-time victims of trafficking, who were sucked into the cycle of trafficking and never received any rehabilitation or financial aid that would allow them to get out of it. They are smuggled into Israel through the Egyptian border and sold to any bidder, for sums that currently reach a few thousand USD. The women are required to pay the expenses of their transport to Israel and their living expenses. The women are employed in prostitution for any large number of hours a day (an average of 13 hours), every day of the month, earn a few dozens of NIS per customer, and are sometimes forced to accept customers against their will and without contraception. They are exposed to violence and threats from clients, pimps and traffickers.

Trafficking in human beings became an offense in the State of Israel only in July 2000, but even then only in the case of trafficking for the purpose of engaging in prostitution.<sup>18</sup> The law enforcement agencies did not take action against the traffickers in women in the

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<sup>18</sup> In October 2006 a law forbidding trafficking in human beings (law amendments) 5767-2006 was published, forbidding trafficking for additional purposes, including trading in organs, slavery, forced labor, committing a sex offense against the trafficked person and others.

1990s (even though they could have done so due to the offenses that accompanied the trafficking, such as rape and violence), nor did they hurry to do so even after the law was passed. Trafficking in human beings was perceived at the time as occurring within the confines of the “free market,” where the women from the Former Soviet Union (FSU) gave their free consent to engage in prostitution, and operate within a supply and demand market. During those years the Israel Police made extensive use of the traffickers as sources of information, and was in no rush to operate against them. Only recently was a whole and cohesive law passed in Israel about treatment of the problem of trafficking in human beings for various purposes,<sup>19</sup> and time will tell whether and how it is enforced, and whether it becomes an effective tool to fight the phenomenon.

Parallel to the unbearable ease of trafficking in human beings in Israel, that industry was very easily advertised by the traders and pimps. Drug or weapons dealers would never imagine advertising their wares openly; but traffickers in women in Israel, until recent years, had no doubt they could advertise their human wares on the pages of the daily press without suffering any negative consequences – a position that proved itself correct for many years.

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<sup>19</sup> Ibid.

In the last two years there has been a certain change in the patterns of pimping and trafficking in human beings: we are witnessing more and more cases of women being held in “discreet apartments”<sup>20</sup> or sent to individual meetings at hotels or in clients’ homes, and they cannot be located in permanent and open places. Under these circumstances advertisement becomes even more important, because it becomes the main means to inform customers of the existence of prostitution businesses.

### **b. Sex advertisements and the prostitution industry in Israel**

Trafficking in women in its current form developed in Israel, as mentioned above, in the early 1990s. Many sex advertisements were published in the newspapers during those years, but the law enforcement agencies were slow to respond. Just how effective the advertising was can be learned from rulings given in the last years in the trials of pimps and traffickers. For example, in the case of Lidia Matias the court wrote this:

The Accused confirmed she advertises her parlor in the escort and erotic services section, because the title "massage" appears there.

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<sup>20</sup> “Discreet apartments” are brothels located within residential buildings, in order to hide them from the enforcement agencies. When the police campaign against trafficking in women accelerated, many brothels moved from open and visible places to “discreet apartments.”

When asked why she advertises in that section the Accused said it brings her a lot of phone calls and a lot of work..<sup>21</sup>

In the matter of Maria Kaljuzhiny, the testimony of the policeman who investigated the matter is described:

While taking the statement, he seized the telephone she used to contact clients, whose number is 067-292872. She admitted that phone number was advertised by her in the "Kol Hadarom" newspaper. Following her statement he looked for the advertisement in the newspaper and photocopied it (E/4). After seizing the telephone, he turned it on for 10 minutes and it did not stop ringing. He answered one of the calls. The calls were about the advertisement in the newspaper.<sup>22</sup>

In the Turjeman ruling, under the headline "Massage parlors -police policy -morals and nuisance -the principle of legality and the rule of law," Justice Heshin wrote the following:<sup>23</sup>

"Massage parlors" such as the Appellant's have sprung up in this country and multiplied very, very much. And how do we know there are so many? The newspapers speak for themselves, and anyone who picks up a newspaper can see with their own eyes. A "Yedioth Achronoth" newspaper from March 31, 1991 was submitted in evidence to the court. We found in it (on page 41) a headline saying

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<sup>21</sup> CF (Magistrate-Haifa) 10543/99 **State of Israel v. Matias** (ruling from June 14, 2001).

<sup>22</sup> CF (Magistrate-Ashdod) 2291/02 **State of Israel v. Kaljuzhiny** (verdict from January 22, 2004).

<sup>23</sup> CA 3520/91 **Turjeman v. State of Israel**, PD 47(1) 441, pp. 448-449.

"massage parlors," underneath of which were dozens of advertisement for massage parlors -some of them illustrated with pictures -and the more description and titillation the better. Next to the massage parlors we found also "escort services," and in them, among other things, descriptions of those who are on offer to escort the clients. So it is with the "Yedioth Achronoth" of March 31, 1991, and anyone who picks up a newspaper these days knows in this matter nothing has changed; these are the advertisements, and everybody knows what these advertisements are for and why they are there; enough said.

Even in cases explicitly regarding the subject of trafficking in women, both the prosecution and the courts were plainly indifferent to these advertisements, despite the legal prohibition against publishing them and despite their decisive role in the brokering process between the clients and the traffickers and the pimps. They are mentioned in the same breath as the rest of the trafficking offenses, but nobody is prosecuted for them alone.<sup>24</sup> For example, in

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<sup>24</sup> See, for example, SCF (District-Beersheva) 959/04 **State of Israel v. Normatov** (ruling from September 18, 2006), where it was mentioned that the defendants advertised the woman they trafficked in the newspaper, but they were not charged or convicted of doing so; in another case a request was submitted for an injunction to close a brothel, where it was mentioned explicitly that the owners advertised the place in the press VR (Magistrate-Tel Aviv) 1089/07 **State of Israel v. Shmueli** (sentence from February 22, 2007) VR (District-Haifa) 1746/03 **State of Israel v. Gershman** (decision from March 4, 2003); VR (District-Jerusalem) 4593/03 **State of Israel v. Aldenko** (decision from July 16, 2003); VR (District-Tel Aviv) 90346/03 **State of Israel v. Vidershein** (Decision from July 14, 2003); VCR 3905/05 **State of Israel v. Kramer** (decision from May 16, 2005); PCA 9219/03 **Biton v. State of Israel** (decision from November 6, 2003); CF (District-Haifa) 290/01 **State of Israel v. Fischer** (verdict from September 18, 2005); CF (District-Haifa) 3099/04 **State of Israel v. Bettelman** (sentence from October 24, 2004); SCF (District-Jerusalem) 749/04 **State of**

the case of Felix Aldenko, in which the women were advertised in the “Mekomon Yerushalayim,” the Supreme Court wrote this in its ruling:

The Respondents, according to the indictment, "bought" women who were brought to Israel illegally, housed them in rented apartments **and published advertisements in which they offered prostitution services.** The Respondents received orders for prostitution services from different clients and drove the women to the customers. It was also argued that during the initial period of the women's employment they did not receive salaries, and that after that period they only received a small percentage of the revenues. It was also argued that in order to prevent the women from fleeing the apartments where there were housed, the Respondents kept them under constant supervision and threatened them not to leave; sometimes they even locked women in the apartments. In the cases when the women violated the Respondents' instructions, the latter imposed various sanctions upon them.<sup>25</sup> (emphasis added)

Despite these clear facts, no indictment was submitted against the advertiser, and the Defendants were not convicted of the advertising itself. In the verdict in the matter of Sasha Melokandov, who was charged with trafficking in women, it was stated that the women were advertised in sex advertisements in a Bat-Yam local

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**Israel v. Tiomkin** (verdict from June 2, 2005); SCF (District-Tel Aviv) 1075/03 **State of Israel v. Melokandov** (verdict from July 22, 2004); and more.

<sup>25</sup> CA 10545/04 **State of Israel v. Maldenko** (verdict from February 6, 2006).

In this matter a clerk who works in the newspaper where the advertisements were published served as a witness for the prosecution, so that it is hard to doubt the fact that the identity of the advertisers was known to the authorities at the time the indictment was served.



newspaper, but that was not one of the charges against Melokandov, and as far as we know no indictment was served against the local newspaper either;<sup>26</sup> in the matter of Yossi Gershon an indictment was served for pimping and accompanying offenses, and it was stated that the Accused advertised in a local Hadera newspaper. In this case, too, the forbidden advertisement was not one of the charges against him and as far as we know no action was taken against the local newspaper.<sup>27</sup>

In only three cases could we find charges pressed for publishing sex advertisements, along with other charges: in the Giladi case the Accused were charged with trafficking in at least three women, one of them a minor. Because of evidential problems, a plea bargain was reached, replacing the trafficking offense with offenses accompanying prostitution, including advertising and providing information about the prostitution of a minor. In an order of detention process in the case of one of the women charged in this case, the relationship between her and the minor was described: "The Appellant took the minor's passport and warned her not to leave the door of the building. When the minor escaped the apartment where she was kept, the Appellant called her and threatened that she would find her and kill her... She confessed she

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<sup>26</sup> **Melokandov** ruling, footnote 24 supra.

<sup>27</sup> CF (Magistrate-Hadera) 1241/02 **State of Israel v. Gershon** (verdict from December 14, 2003).

ran the office to provide sex services, and confirmed also that the office had publicity."<sup>28</sup> This affair should suffice to refute the myth that all the women advertised in these advertisements do so of their own accord, and that the victims of trafficking are not advertised in this way. The proceedings in the case of Leonid Brown and Yevgeny Radosalsky reflect a similar case, in which victims of trafficking were advertised in a local newspaper called "Sheva:"

Respondent number two not only rented the apartment but also published an advertisement in the "Sheva" newspaper, carrying the telephone number of the "office"... Respondent number two confirmed that he published the advertisement. He claimed he did so at the request of the women who were in the apartment.<sup>29</sup>

The fact that the apartment was advertised openly and publicly, in the newspaper, did not prevent the Defendant from raping the women he advertised and employing them in forced prostitution, as emerges from their testimony: "Once he forced me to have sex with him... They would bring me a lot of customers and I hurt all over and I would ask to rest and they wouldn't let me and they would tell me you have to work, you have to work."

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<sup>28</sup> VCR 6173/02 **Giladi v. State of Israel** (decision from July 22, 2003); SCF (District-Tel Aviv) 1095/02 **State of Israel v. Giladi** (verdict from September 30, 2002).

<sup>29</sup> VR (District- Beersheva) 21964/06 **State of Israel v. Brown** (decision from November 27, 2006); VCR 1429/07 **State of Israel v. Radosalsky** (decision from February 28, 2007). The hearings in this case are not over.

Here, too, an indictment was served only against the traffickers for the offense of advertising, but not against the “Sheva” newspaper.

Another victim of trafficking, in another case, describes the influence of the advertising process upon her as follows:

One of the most humiliating moments during that period was when I had to have my picture taken for the website the owner decided to open. Until then he advertised us in the newspapers but he decided that he would get richer customers through the Internet. He charged twice as much from those who came through the site as he did from people who came through the newspaper. They were almost all tourists. I had to have my picture taken for the website even though I didn't want to. They took us to some studio in Tel Aviv. I can't say exactly where it was. A few men were waiting for us there. They told us to take off our clothes and they wanted us to have our pictures taken in all kinds of positions, nude. I was ashamed and I didn't want to but I had no choice. I was alarmed that now my pictures would be on the Internet and anyone could see me. Once they let me see my picture. It was terrible. I couldn't believe it was me.

We must pay attention to a number of levels of abuse in the context of trafficking in women: first of all, many of the advertisements include nude pictures of the victims of trafficking, the very publication of their pictures increases the severe harm to them, tramples their dignity, unsettles them and humiliates them.

Secondly, the publication of the sex advertisements is an economic lever for the business of trafficking in women. It allows it to flourish, it encourages it and it strengthens it economically. Albeit, because of the secret nature of the prostitution and trafficking industries, there are no empirical studies that examine the effect of advertising on the demand for prostitution and on trafficking in women; but we may learn from the general studies cited above on the role of advertising in creating demand, from the court rulings and from logic, that advertisements for brothels whose owners traffic in women and exploit them, directly contribute to spurring demand for the victims of trafficking in women. Thirdly, the publishing of sex advertisements directly addresses potential clients, recruits women into the sex industry and educates the entire public to tolerate and accept the sex industry and be indifferent towards the phenomenon of trafficking in women and their exploitation by that "industry".

### **c. The legal prohibition against publishing sex advertisements**

In 1998 the publication of sex advertisements was outlawed in Israel, subject to conditions stipulated by the law. The following is established in Article 205c of the Penal Code:

Prohibition of advertising the prostitution services of an adult [5758 version]

205c (a) for advertising the provision of prostitution services, when

the service provider is not a minor, the penalty is six years in prison.

(b) the provisions of subsection (a) do not apply to an advertisement for providing prostitution services in the following cases:

- (1) its subject is the provision of prostitution services only;
- (2) it is published separately from other advertisements;
- (3) it is given to people only upon their request;
- (4) its goal is clearly marked as advertising prostitution services.

(c) the Minister of Justice, with the approval of the Knesset's Law, Justice and Constitution committee, may establish provisions for the execution of this section.

This section actually regulates the matter of advertising prostitution services, while imposing certain restrictions on the advertising: the advertising must be separate from other advertisements; it must be visibly marked as advertising prostitution services; and it must be given to a person only upon their request. According to the explanation to the draft law, the purpose of the amendment was to prevent unchecked exposure to advertisements for sex services, by separating them from other advertisements and providing them only by explicit request.<sup>30</sup> Therefore, the rationale upon which the section is based was primarily moralistic: the desire to keep these advertisements from being read by minors, and the wish to balance

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<sup>30</sup> Draft law 2639 (5757) 464, 477.

between the freedom of occupation and other values.<sup>31</sup> Because of the punishment attached to this offense -6 months in prison -filing an indictment including it is in the power of the Israel Police prosecution department, and the jurisdiction over this offense is in the power of the magistrate court.

By the very fact that the legislator restricted himself to purely moralistic considerations, the law is inadequate. The law did not examine the condition of the women advertised in the advertisements, the extent of their wish to be advertised or their agreement to do so. All that is needed, for the purpose of the law, is a person willing to pay for advertising (and that person may be a pimp or trafficker, of course), a newspaper willing to run the advertisement, and an advertisement meeting the meager standards set by the law. In practice things were even simpler, because the law was only enforced in a very small number of cases, as shall be detailed below. This unfortunate fact allows extensive advertising, which increased over the years, and which was prevented by no one even when the advertising did not meet the standards set by law.

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<sup>31</sup> As to the purpose of the law, see comments by attorney Rachel Gershoni, head of the penal department in the Ministry of Justice, at a discussion in the parliamentary commission of inquiry on trafficking in women on January 16, 2002. The full protocol appears on the Knesset site (in Hebrew): <http://www.knesset.gov.il/protocols/data/rtf/sachar/2002-01-16.rtf>

In Article 205c (c) of the law the Minister of Justice was authorized to establish various provisions and restrictions as to the publication of sex advertisements, but to date the Article is not being used and no relevant standards have been set. Even after Article 205c was passed the newspapers continued to publish advertisements without changing the way it was done. Their legal advisors claimed that the language of the law was unclear and a process of negotiation between them and the Ministry of Justice over its interpretation ensued. The newspapers claimed that advertisements for "hospitality" did not constitute advertisement of prostitution services, and therefore they could continue to be published in the newspaper as usual. The Ministry of Justice objected to that position and claimed it was a legal fig leaf intended to legitimize the publication of prostitution services. In 1999 the advocacy held a discussion on the subject and concluded that the advertisements that continued to appear in the newspapers during that period did not meet the requirements of the law, at least as far as the requirement to receive the advertisement upon request and in a separate section. Therefore the Israel Police national headquarters' investigation department was instructed to investigate the matter.<sup>32</sup> During that period a few complaints were indeed investigated.

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<sup>32</sup> Comments by attorney Maia Hadad of the State Attorney's office in a hearing by the parliamentary commission of inquiry on trafficking in women from January 16, 2002, *ibid*.

The newspaper's representatives argued in their favor that they sent a response letter to the Attorney General, but since the attorney's response was delayed, they continued to publish the advertisements they received. Attorney Meir Blair, the legal advisor of the "Maariv" newspaper, explained the matter as follows:

Since the market continued to operate, and "Maariv" cannot afford to stay outside of the market, "Maariv" appointed a person to be in charge of examining the advertisements in such a way that in our opinion they would not violate the spirit of the law.<sup>33</sup>

At the same meeting, "Maariv's" general manager Roni Kleinfeld claimed that the newspaper's revenues dropped by NIS 700,000-1,000,000 a month because of the newspaper's decision to run those advertisements in "as small and esoteric a format as possible," and with the use of the word "massage" only.

It should be noted that during those years trafficking in women flourished on a large scale, without anyone in the Israeli public knowing, or wanting to know, what was happening in Israel's backyard. It is not clear whether the newspaper owners during that period were unaware of the scope of exploitation in which they were accomplices, or whether they knew yet turned a blind eye. As MK

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<sup>33</sup> Ibid.



Galon put it, "obviously the economic consideration trumps the moral consideration."<sup>34</sup>

#### **d. The Schocken ruling<sup>35</sup>**

As stated above, once Article 205c of the Penal Code was passed the newspapers, as well as the enforcement agencies, were in no hurry to act on it. Sex advertisements continued to appear in the press on a large scale. This ultimately led to police inquiries against the large newspapers and two indictments against the Schocken, Maariv and Yedioth Achronoth networks and senior figures in those corporations, for running sex advertisements in those newspapers from October 2000 to June 2001, in violation of Article 205c (a) of the Penal Code.

During that period, when the newspaper owners felt the ground heating up under their feet, they began to watch their step. The heads of the major newspapers were invited to the meeting of the parliamentary commission of inquiry on trafficking in women on January 16, 2002; but only the director general of Maariv and the newspaper's legal advisor came to the meeting. In a letter to the parliamentary commission of inquiry on January 20, 2004, Moshe

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<sup>34</sup> Protocol of the hearing of the parliamentary commission of inquiry on trafficking in women from January 12, 2005.

<sup>35</sup> CF (Magistrate-Tel Aviv) 3635/02 **State of Israel v. Schocken Network** (sentence from March 17, 2005).

Vardi, editor of "Yedioth Achronoth," wrote, among other things, the following:

The term prostitution service has not been defined by law. The ruling has defined prostitution as the use of a woman's body for sexual satisfaction in exchange for pay... There is no newspaper in a democratic country that can claim the right to prevent the publication of the advertisement or to reject it... The newspaper does not have detective services to check what stands behind every advertisement.

And:

This requirement appears to violate human dignity. It is inconceivable for anyone who engages in massage or every escort or every hostess or every woman who engages in erotic conversations to be defined as a prostitute! And for any person seeking those services for himself to be required to ask the seller for the prostitution services supplement. We know of no country in the world except for fundamentalist countries who use such a method. In all the newspapers in the enlightened world, including the most respectable press, escort and hospitality services are published in the main body of the newspaper and not in a supplement for prostitution services. One may assume that even the Israeli legislator did not mean to completely forbid the publication of such advertisements, and therefore used the term "prostitution services" rather than "sex services," the distinction between the two being clear and obvious. Our newspaper cooperates as far as the law allows and covers the issue of fighting trafficking in women prominently.

The Schocken ruling was, in all respects, an "earthquake" in the area of sex advertisements, and changed the reality that existed until that point in that area. The investigation that led to the indictment was not complex: the indictment was filed after policemen called the phone numbers in the advertisements on a number of occasions, recorded the phone calls and the recordings and transcripts were submitted to the court.

The Prosecution claimed that Article 205c serves a legitimate goal that complies with the values of the State of Israel and is meant to protect people who are not interested or should not be exposed to such advertisements, such as minors. The Prosecution also argued that if any harm was done to the newspapers then it is minimal harm that meets the requirements of the restriction clause of the Basic Laws: it is proportional, its goal is worthy and it does not exceed the necessary.

The main defense argument in this file was that the very prohibition against publishing sex advertisements violates the freedom of occupation and the freedom of expression of the advertisers. Other arguments raised by the Defendants were, among other things, that they sent a letter to the Attorney General when the law took effect in 1998, asking him to clarify the law, but were not answered; that their property was being violated because the restriction on

publishing the advertisements harmed their revenues; that prostitution itself is not forbidden by law and therefore those who advertise it must not be criminalized; that the condition according to which advertisements implying the provision of prostitution or sexist services would not be accepted was advertised in the newspapers prominently, and that the advertisements did not say explicitly they were for sex services, but for "massage," "escorting" and so on; that they added the words "for adults only" in the appropriate section; and that a person was appointed to check the advertisements and censor words that imply sexual organs as well as the country of origin of the "service providers."<sup>36</sup>

The court convicted the Defendants and established in the ruling that even though prostitution itself has never been forbidden, it must not be viewed as an occupation like any other, and therefore many restrictions were placed on it. It was also established that the Ministry of Justice explained to the Defendants what the appropriate interpretation of the term "prostitution services" is and that the Defendants chose to ignore that interpretation. It was established that the newspapers were aware of the progression of the legislation process and fought to block the implementation of the law, and therefore their reliance on the opinions of the newspapers' legal advisors, if they did indeed rely on them, was not reasonable and in

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<sup>36</sup> Some of the arguments were raised by all of the defendants, others only by some.

good faith. However, it was established that "prostitution services" according to the Article require physical contact, and therefore advertisements that offer erotic phone calls are not forbidden by the Article. As to the alleged violation of freedom of expression and freedom of occupation, the court stated that the Article creates a reasonable balance between the different purposes. As to a document one of the newspapers had the advertisers sign - confirming the advertisements were not offering prostitution services -the court said that it only proves that the newspaper's management suspected the true nature of the advertisements. Likewise the advertisers' signing a commitment not to advertise prostitution services attests, according to the court, to the fact that the Defendants knew what was at issue or at least harbored a real suspicion as to the true nature of the advertisements. As to the "secret language" and the codes used in those advertisements - "escort," "hospitality" and "massage" -the court ruled as follows:

The use of code names instead of the explicit word "prostitution" has continued for years and has even been reflected in court rulings as well as articles and books that were written. Prostitution has taken different forms. It became "massage parlor," "escort" and "hospitality" services, and we can assume additional codes will be found. The location of the advertisements in newspapers, next to erotic phone calls, while noting they are "for adults only," and the additional comments that advertisements offering prostitution services will not be accepted, all indicate an awareness of the true essence of the advertisements; and the argument that the advertisements do not explicitly mention the provision of prostitution services for money, cannot help. The most that can be

assumed in favor of the Defendants -and that too, barely -is that these advertisements, some of which are repeatedly run every day, raised a real suspicion that they were advertisements for prostitution services. That suspicion required the advertisers to check whether their suspicion had a basis.<sup>37</sup>

The sentence in the Schocken case was minor, to say the least. The newspaper functionaries were not convicted, but were sentenced to 150 hours of community service. The newspapers were fined NIS 125,000. That sentence is negligible compared to the tremendous profits the newspapers derived over many years from the sex industry, and so they ultimately gained from their iniquity. Moreover, even the symbolic fine paid by the newspaper is money derived from the victims of trafficking, which was transferred from the traffickers to the newspapers and from the newspapers to the state. In fact, in this way the wages of the victims of trafficking became part of the revenues of the State of Israel.<sup>38</sup> For reasons that are insufficiently clear, the sentence has never been published

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<sup>37</sup> **Schocken** ruling, footnote 35 supra

<sup>38</sup> This is not the only case in which the State of Israel has gained from the wages transferred to the traffickers. This phenomenon recurs with the fines transferred to it in the criminal process, with income tax that collects its share, with the impounded property according to the law of fighting against criminal organizations, and so on. For further information see: "Deported and Dispossessed," The Hotline for Migrant Workers, 2007, at [http://www.hotline.org.il/english/pdf/Report\\_economic\\_nforcement\\_eng.pdf](http://www.hotline.org.il/english/pdf/Report_economic_nforcement_eng.pdf).

despite its great importance and the fact that it is a precedent in relation to this Article of the law.<sup>39</sup>

Even though the ruling was precedential and important, absent from both sides' arguments in the court's ruling were the main characters in it: the women who were advertised in the advertisements. The victims of trafficking in women, who were advertised in the advertisements, are present-absent in the Schocken ruling, mentioned in feeble language, and the ruling contains no discussion of the way the advertising affects them.<sup>40</sup>

The ruling focused only on the effect of the advertisements on public morals, and not on their effect on the lives of thousands of women who were imprisoned, raped and enslaved during those years in the State of Israel.

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<sup>39</sup> Ms. Rivka Aharoni, a spokeswoman of the Courts Administration, wrote in a letter from August 24, 2006 that publication in the legal repositories is not the responsibility of the Court Administration, and that publication on the court spokesperson's website is at the discretion of the Administration, but that at the time they did not see fit to publish the procedure.

<sup>40</sup> Trafficking is mentioned in the Schocken ruling three times: in the list of accompanying offenses to prostitution it says that "the only woman detained for investigation following the phone call left the country and cannot be summoned to testify" (section 49) and there appears to be reason to believe she was not an Israeli citizen but a victim of trafficking; it was noted that a special person was appointed to examine the advertisements, whose job was to check what was being advertised and in relation to the **country of origin** of the "service providers"; and trafficking in human beings is mentioned as one of the accompanying problems of prostitution that establishes its special status as different from other occupations.

## **THE PUBLICATION OF SEX ADVERTISEMENTS AFTER THE SCHOCKEN RULING**

In the period after the Schocken ruling the Israeli sex industry found itself in a difficult situation: on the one hand, advertising in the newspapers was severely restricted, according to the restrictions set out by the ruling;<sup>41</sup> on the other hand, the need for such advertising grew, with the decrease in the number of open brothels and the substantial increase in the number of "discreet apartments."<sup>42</sup> Yet, the traffickers and pimps did not give up of course, but found various creative alternatives to the need to advertise. Among other things, business cards were distributed on the windshields of parked cars, advertising on the Internet expanded and advertising in the

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<sup>41</sup> The extent of the ruling's deterrence can be learned from the substantial reduction in the number of advertisements. In a random check we did we found 63 advertisements on January 12, 1992; on January 5, 1997 there were 63 advertisements and another 70 advertising erotic phone calls; on July 9, 2001 we found 51 advertisements; on January 1, 2004 -45 advertisements. On August 21, 2006 -a year and a half after the Schocken ruling was published -there were only two advertisements.

<sup>42</sup> From the early 1990s until recently victims of trafficking in Israel were held in publicly visible brothels, marked by colorful curtains and blinking lights. For instance, in Tel Aviv, a number of streets in the central bus station were filled with brothels, most of the woman held therein being victims of trafficking. When national attention was directed at the issue, especially after a US State Department report rated Israel, in 2001, in the group of nations not meeting minimal standards for fighting trafficking in women, the fight against the phenomenon was stepped up, including legislation authorizing the Israel Police to close brothels. Obviously, that fight did not eradicate the phenomenon, but it drove the brothels underground, and instead of openly visible brothels in South Tel Aviv there started to be "discreet apartments" located in residential buildings in different places.



local newspapers and in the Russian press continued as if the Schocken ruling were never given.

**a. "Business cards" on cars**

Placing business cards and flyers on windshields of cars began in Eilat during the 1990s, along with extensive advertising in the city's local press. A victim of trafficking who was held for several months in a brothel in Eilat said the following about one of the people who traded her:

While I was with a client, he walked around between the cars and put flyers of the parlor under windshield wipers. Do you know how it feels to know that all you are worth is something stuck on peoples' windshields?

The speaker took her own life on July 4, 2003, at the age of 21.<sup>43</sup>

After the Schocken ruling, and the closure of many brothels, the phenomenon expanded to central Israel, especially Tel Aviv. All the cards say they provide "massage services" only, but in a check of eight cards it was found that sex services were offered in **all**. However, the Israel Police does not think there is cause for concern

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<sup>43</sup> Testimony given to a Hotline for Migrant Workers volunteer on June 18, 2002.

in this matter, claiming the following:<sup>44</sup> "Distributing business cards advertising 'massage services' in particular and advertising massage services in general does not constitute a criminal offense and therefore the Israel Police is not dealing with this phenomenon."

### **b. Marketing over the Internet**

Along with advertising in the printed press, advertising on the Internet also began to flourish. The broadband revolution did not skip over the traffickers and women, who perceived the tremendous commercial potential of the Web. The Internet was discovered to be a relatively cheap vehicle of advertising compared to the newspaper. The traffickers did not have to run open brothels, susceptible to arrest and to the expulsion of the trafficking victims held therein, and could restrict themselves to virtual brothels. Only after an order is placed from a certain address is a woman sent there. This helps both the trafficker, who would like to prevent the woman and his criminal activity from being exposed, and the clients, who wish to maintain their anonymity.

The Internet became fertile ground for sites offering sex for pay, and sometimes the untrained eye can even discern they are about victims of trafficking. For instance, the Internet site "Palace of Pleasures" was operated by a trafficker whose nickname was "Tarzan" and who

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<sup>44</sup> From a letter by Lt. Commander Meir Cohen, head of investigations at the national headquarters, August 4, 2005.

was extradited to Israel.<sup>45</sup> Even **after his arrest** the following appeared on the site:

To make things clear, all the girls come from Eastern Europe and therefore their mother tongues are Russian or Romanian... don't forget that when they are new in Israel they usually don't speak a word aside from Russian, just like you wouldn't know how to speak Chinese in China.<sup>46</sup>

Another trafficker in women who used a website is Tal Zohar.<sup>47</sup> Zohar was in the music and high-tech businesses and wanted to open a radio station abroad. After being drawn into the business of trafficking in women he began advertising brothels over the Internet, and later began trafficking in women himself. Zohar was arrested in May 2003 and various materials were found in his possession, including thousands of pictures of minors upon which sexual acts were being committed, which he downloaded from the Internet. Among the other offenses he was charged with, along with rape, sodomy, blackmail and imprisonment were also the offenses of

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<sup>45</sup> Comments by Chief Superintendent Ra'anah Caspi, investigations unit, Israel police national headquarters, in protocol of hearing of parliamentary commission of inquiry from January 12, 2005, footnote 34 supra.

<sup>46</sup> <http://www.0506669988.com/main/info.asp> (last seen on October 6, 2005) (Hebrew). Recently an indictment was served against a person called Rotem Holtzman, who is charged with pimping by managing this site.

<sup>47</sup> SCF (District-Tel Aviv) 1084/03 **State of Israel v. Zohar** (verdict from November 4, 2004).

publishing and presenting obscenities.<sup>48</sup> During pleading for punishment Zohar's friends claimed Zohar "was drawn as part of his specialization in computers and Internet to abuse the knowledge he acquired to advertise women on the site he created, viewing it as a sort of advertisement in the newspaper and nothing more."<sup>49</sup> The court saw fit to be considerate of the fact that Zohar was "an intelligent young man with very obvious talents in the field of high-tech" as well as of the crisis in the high-tech industry, and sentenced him to five years in prison, as well as a conditional prison term. An appeal to the Supreme Court the prosecution was rejected and the court stressed in its reasoning for the rejection that his cognitive level and personal capabilities, as well as Zohar's normative lifestyle, should have served him as a stop sign, preventing him from turning to the world of crime, enslavement and exploitation. The court also viewed with exceeding gravity the use the Respondent made of his professional knowledge and expertise in computers for the development and sophistication of his offenses.

In response to our request to receive information about police activity towards advertising victims of trafficking in the Internet, the Israel Police responded as follows: "As far as we know, websites

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<sup>48</sup> Section 214 of the Penal Code 5737-1977 prohibits the publication and presentation of obscenities, and sets punishments of three to five years in prison for violators. The punishing is especially severe when the publisher makes use of the body of a minor.

<sup>49</sup> **Zohar** ruling, footnote 49 supra.

were dealt with in a number of cases. The Israel Police does not have a breakdown of files according to the Internet.”<sup>50</sup>

### **c. Advertising in local newspapers**

The various local newspapers continue to publish sex advertisements of the kind ruled forbidden in the Schocken ruling, that is, the kind that offer hospitality, escort, massage services and more. However, as opposed to advertisement in previous years, which offered sex services by women from many different countries, today the advertisements offer mainly “Israelis” or “sabras,” and many advertisements stress “no sex;” even though in a conversation to the telephone number written in them very different facts emerge. Out of 38 advertisements that were checked, in 28 phone calls it was stated that the advertisement is actually offering sex services; in the case of eight advertisements it was not possible to receive clear information; and in only two conversations it was stated that the service offered is massage without sex services.

Even so, the Israel Police is in no hurry to act. And this is the police response: **“If it is proven** that those massage services are actually prostitution, a complaint can be submitted at any police station against the place and against the advertiser” (emphasis added). The

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<sup>50</sup> Response of Chief Superintendent Ra’anana Caspi from August 18, 2005 to a letter sent by the Hotline for Migrant Workers according to the Freedom Of Information Act.

Israel Police spoke but did not explain: who is supposed to prove that in a place advertised in the newspaper prostitution services rather than massage services are being offered, and what is its role if the onus of proof is on the citizens or on bodies outside of the Israel Police?<sup>51</sup>

#### **d. Advertising on the radio**

In at least one case the radio was used for the direct advertising of sex services: in the verdict in the Elbaz case it was stated that the Defendant used radio and advertised prostitution services through radio 99 FM.<sup>52</sup> The personal information of the woman was given over the radio, with "the advertisement talking about a woman for a serious and discreet relationship;"<sup>53</sup> in fact, the phone number that was given was offering prostitution services.

Another use of radio to advertise prostitution services was done more indirectly. As part of the program "Didi locally" on February 14, 2007, announcer Didi Harari did a "live contest" between two places that offer sex services. The idea, supposedly, was to check for his listening audience how to negotiate with such places, or as the announcer said: "So we did a little prank and we called places where maybe you can find love, and listen how you check how

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<sup>51</sup> Ibid.

<sup>52</sup> CF (Magistrate-Tel Aviv) 3022/03 **State of Israel v. Elbaz** (sentence from June 26, 2006).

<sup>53</sup> Ibid.

much love there is and what we get for love day." During the negotiation the announcer noted that "right now we are in a tie, would anybody lower the price a little?" In response he was asked, "what is this, an auction?" Although the word "prostitution" was not mentioned during the dialogue, it is hard to doubt what it was about. So it was promised that the "massage" would be done by "an Israeli girl, shapely, sexy, exotic and tall." The announcer asked for information such as "how many girls do you have?" and "do you have four hands?" and inquired about the level of the place's discretion (in one place he was promised that "the place is completely discreet" and that "there is a back entrance").

In the existing form of the law, which is currently based on the moralistic principle -the desire not to expose such contents to people who are not interested in them -it is inconceivable for someone who spread such advertisements not only in writing but over radio to be exempt from punishment. Such hidden publicity has a very broad distribution that reaches the entire population in every place -on the bus, in a restaurant, at home. It is particularly the hidden advertisement, done through plays on words, camouflage and under the cover of popular radio shows that should be treated most seriously, because the advertisement is directed at a "captive audience" that is unwillingly exposed to it and cannot control the contents being advertised. However, the Israel Police decided that the circumstances of the case do not justify criminal investigation,

and was satisfied with a note to the director of the network that the comments were inappropriate.<sup>54</sup>

### **e. Leaflets that meet most of the requirements of the law as it is currently written**

In many places in Israel, especially Tel Aviv and Eilat, leaflets are distributed that meet most of the requirements of the law: they include advertisements for prostitution services, they are published separately from other advertisements (in Tel Aviv mainly at kiosks and in Eilat mainly in hotels), they are given to anyone who asks for them and there is no doubt their purpose is to advertise prostitution services. Even though the leaflets supposedly meet the requirements of the law, it does not prevent them from advertising victims of trafficking. **The law does not require the advertising to be only at the request or wish of the woman advertised in the advertisement, but is restricted to posing conditions whose purpose is to defend morals.** So for instance, out of 28 places checked by phone call following advertisements that ran in the leaflet "Banana," only four women declared they worked alone in the apartment. In all the other places there was prostitution of more than one woman -which means, according to the law, that a brothel is being run there. In each place it said minors were not employed there, but in 17 of the places it said that there were women from the

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<sup>54</sup> Letter by Deputy Commander Yitzhak Almog, head of investigative assistance department at Israel Police from March 22, 2007.



Commonwealth of Nations and other countries there. All the places, without exception, provided the address where the client -and therefore, the police, too -could go.

#### **f. "Job offers" in Israel and abroad**

In various newspapers there are even advertisements that indicate Israel is becoming a country of origin. Various advertisements offer jobs to women abroad, at high salaries. So far the Israel Police has not found enough evidence to press charges on this matter, even though a number of cases have been investigated.<sup>55</sup> Besides, various advertisements are published offering work in prostitution for women in Israel.<sup>56</sup> For instance, in the matter of Kizner et al, an indictment was served against three people for trying to persuade different women to leave Israel to work in prostitution in Canada. The Defendants in this affair advertised in about 10 Russian newspapers in the following words: "Work in escorting in Canada, travel paid."<sup>57</sup>

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<sup>55</sup> Letter from Chief Superintendent Ra'anan Caspi, footnote 50 supra.

<sup>56</sup> See session of subcommittee for fight against trafficking in women from March 13, 2007 (Hebrew) (the protocol has not been published yet).

<sup>57</sup> VR (District-Tel Aviv) 92046/06 **State of Israel v. Kizner** (decision from July 17, 2006).

## **g. The response of the authorities**

### **Criminal proceedings**

The state prosecutor's directive from 2006 on enforcement in regard to the accompanying offenses to engaging in prostitution also refers to the question of sex advertisements.<sup>58</sup> According to the directive, police must initiate action against the phenomenon of distributing flyers on parked cars and in mailboxes, which violates Article 205c; inquire whether the offense of trafficking is being committed; and check whether there is suspicion of public disturbance. In practice, unfortunately, neither the directive nor the Schocken ruling are familiar to the Israel Police. In a letter sent by the Israel Police in response to our inquiry on the matter it said: "As for the distribution of flyers in mailboxes or on the windshields of parked cars, the Israel Police will check the matter if a complaint is filed. We note that we checked a number of such advertisements on our own initiative and discovered they did not advertise prostitution services but massage services. If complaints are filed about advertising forbidden prostitution services they will be investigated by the investigation units."<sup>59</sup>

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<sup>58</sup> State prosecutor directive 2.2, footnote 8 supra

<sup>59</sup> Letter from Deputy Commander Yitzhak Almog from August 30, 2006.

In a series of complaints filed by the Hotline for Migrant Workers against various publications, the response of the Israel Police can be summarized in one word: embarrassing. The policemen's responses showed an ignorance of the law, an unfamiliarity with the guiding ruling set in the Schocken ruling, indifference and contempt. On December 29, 2006 a volunteer filed a complaint at the Modi'in station about a card placed on his windshield in Eilat. The policeman who receive the volunteer at the station told him "you can file a complaint but it won't help." Another was amused and asked why "he brought only one business card from Eilat." When a volunteer tried to file a complaint on December 31, 2006 at the Yarkon district police station on November 30, 2006, she was told to "just throw out those cards... Throw them on the floor, so [Tel Aviv Mayor] Khuldai can see what is going on here." Another policewoman who heard the volunteer saw fit to make a joke about it and asked "what happened, did you get a bad massage?" In a complaint filed to the Yarkon district on December 23, 2006 the complainant was asked point-blank by the policeman at the police station: "Don't you have anything else to do? Did you decide to fixate on this? Isn't it a shame? Nobody is going to do anything with it anyway."

As mentioned, in October 2006 the law against trafficking in human beings (law amendments) 5757-2006 went into effect. The law established, among other things, that anyone who mediates

trafficking in human beings, whether for compensation or not, is considered as if they trafficked in human beings themselves.<sup>60</sup> In the Aldenko ruling the Supreme Court wrote the following:

There is no doubt that advertising prostitution, thereby informing potential clients of the existence of women who practice it, is required in order for a person to be led to engage in prostitution. The advertising is a necessary, although not sufficient condition, to create a place that guarantees clients for prostitution.<sup>61</sup>

And in the Borshtein ruling, where the offense of mediating the trafficking of human beings was discussed, the following was stated:

The law states that anyone who "serves as a middleman in the sale or the purchase" of a human being to employ them in prostitution is committing an offense, and the question that arises is what and who such a "middleman" is? What is it that makes a person a "middleman"?...

The judge quotes dictionary definitions of "middleman" and concludes:

A "middleman" is a mediator, who, for our purpose, makes the connection between a potential buyer and a potential seller. The

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<sup>60</sup> Article 377 a (a) (c) of the law.

<sup>61</sup> **Aldenko** ruling, footnote 24 supra.

dictionary definition is therefore commensurate with the law. Trafficking in human beings constitutes an offence and the middleman is also committing an offence: he is the mediator who helped the two connect with each other.<sup>62</sup>

However, the enforcement agencies do not haste to use the mediation offense in regard to advertisers. Moreover, they do not even use the aforementioned Article 205c, which limits advertising, and the police reaction to complaints on this subject amounts to ignorance and indifference, as we have illustrated. To date, a very small number of investigation files has opened on this matter, and they are rarely cited in rulings.<sup>63</sup> In 2000 the police located seven suspects in the offense of advertising, in 2001 – 3, in 2002 – 1, in 2003 – 2, in 2004 – 2, in 2005 – 1 and as of October 2006 one suspect was located. In the first nine months of 2006 seven investigation files were opened for the advertisement of prostitution services, compared to three in the equivalent period in the previous year.<sup>64</sup>

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<sup>62</sup> CA 7757/04 **Borshtein v. State of Israel** PD 59 (5) 218.

<sup>63</sup> See for example: VCR 1429/07 **State of Israel v. Radosalsky** (decision from February 28, 2007), where an appeal of an order of detention was heard in an offence of trafficking and additional accompanying offenses, including advertising prostitution services; VCR 6173/02 **Giladi v. State of Israel** (decision from July 22, 2002), ), where an appeal of an order of detention was heard in an offence of trafficking and additional accompanying offenses, including advertising prostitution services, including publishing and providing information on the prostitution of a minor.

<sup>64</sup> The Israel Police response to an inquiry according to the Freedom of Information Act from November 26, 2006.

Even if the advertisements are still running under code name such as “escorting” and “hospitality,” there is no doubt that the Israel Police knows what stands behind them, even if it is not interested in investigating.<sup>65</sup> The material required to submit an indictment in the Shocken affair was collected quite easily: a policewomen photocopied advertisements from newspapers at Beit Ariellah [Library] and policemen called those numbers and had simple conversations at the end of which it could be determined that they provided sex services for pay. Such phone calls have been undertaken by the immigration administration for the detection and arrest of citizens residing without visas, but most of the women who were arrested were not investigated after their arrest about being trafficked.

### **Civil Proceedings**

It should be noted that the advertisers’ duty of caution towards the women they advertise has already been used in civil law. In the Sahar ruling the responsibility of the advertising body for the contents of the advertisements was recognized on the civil level.<sup>66</sup> The Plaintiff wished to acknowledge the responsibility of the

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<sup>65</sup> For instance, at a hearing of the commission of inquiry on trafficking in women from January 21, 2004, Chief Superintendent Ra’anan Caspi said: “But don’t be naïve. When they write hospitality, if we call each of these phone numbers it will be prostitution. That is, it is not massage and not hospitality and not anything.” <http://www.knesset.gov.il/protocols/data/rtf/sachar/2004-01-21.rtf> (Hebrew)

<sup>66</sup> CF (District-Jerusalem) 571/94 **Sahar v. Maariv** (ruling from February 5, 1996).

Maariv newspaper and the Dahaf Institute, responsible for transferring the advertisements to the newspaper, for publishing a false ad that presented her as engaging in prostitution. Throughout the verdict the judge reiterated the duty upon both the newspaper and the advertising agency to verify that the Plaintiff really did ask to run the advertisement and that she would not be harmed by the advertisement:

Dahaf is an economic and commercial body that profits from receiving advertisements from the public and transferring them to advertisers. This activity gives it power and might that require it to take every possible cautionary measure available to check and inspect the advertisements sent for publication. This is especially true of sensitive advertisements with the potential to harm their subjects. People who work in this area must take extra caution and make clear rules of screening and checking. Along with the financial benefit for the body that deals with advertising is also a duty to make sure the advertisement is checked and that all cautionary measures have been taken to make sure it is true and real and, most important of all, correctly reflects the will of the person who is the subject of the advertisement.<sup>67</sup>

And the judge added:

On the one hand, we are discussing advertisements of a special nature that carry a special, dangerous and harmful kind of information about the advertiser. On the other hand we are talking about a newspaper that publishes dozens and maybe hundreds of

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<sup>67</sup> Ibid.

advertisements and we must be careful not to impose on it a heavy and ineffective burden it will not be able to sustain. In balancing the conflicting interests and considering the kind of advertising and the destructive harm that might be caused as a result of it, more protection should be given to defending the interests of the people who could be hurt by this kind of advertisement... It should be established as a sort of appropriate norm that Maariv is obligated to make an independent and separate check of information that is advertised in the newspaper and as a matter of proper legal policy the argument that the newspaper is merely a channel for passing on information and that its role is merely technical should not be accepted. The newspaper is bound to establish a system of checking and screening regulations.<sup>68</sup>

#### **h. Interim summary**

Article 205c in its current form provides only a partial solution to the problem of the sex advertisements which advertise, among others, victims of trafficking in women and forced prostitution. The two main problems in this area have not been solved yet: the limited application of the law, which strives to defend public morals rather than the women themselves; and the meager enforcement, characterized by the authorities' indifference and inattention at best, and ignorance of the law at worst.

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<sup>68</sup> Ibid.



## COMPARATIVE LAW

Different countries in the world treat prostitution in different ways, from a sweeping prohibition against engaging in prostitution, through various restrictions on it and all the way to its institutionalization. When examining the existing arrangements regarding the publication of sex advertisements, first the arrangement in that country in relation to the phenomenon of prostitution in general must be examined, because it is the basis of most references to advertising on the subject. We found that the goals of the various restrictions are diverse, from preventing a public disturbance and protecting public health to defending the women who engage in prostitution. The restrictions themselves are also reflected in different ways -by licensing and institutionalizing the prostitution industry, by imposing various restrictions on the places where sex services are provided as well as restrictions and prohibitions that apply to pimps and others who take part in the sex industry.<sup>69</sup>

Let us describe briefly how the issue is dealt with in two different places: Queensland, Australia and the United States.

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<sup>69</sup> Sylvia A. Law “Commercial Sex: Beyond Decriminalization”, 73 **S. Cal. L. Rev.** 523 (March 2000)

### **a. Queensland, Australia**

Since the 1970s most of the states of Australia, including Queensland, have dropped the criminal prohibitions against providing prostitution services and adopted a variety of measures that regulate the sex industry. In Queensland the Prostitution Act was passed in 1999, institutionalizing prostitution yet forbidding the publication of advertisements that describe the sex services being offered, advertisements which could make a person seek employment in that industry and advertisements that state directly or indirectly that the business provides sex services. Restrictions also apply to publication options: such advertisements cannot be made on radio, television, film or videotape. Advertisements published in newspapers or on the Internet require an approved wording, according to the specifications of the state's prostitution licensing authority.<sup>70</sup> Restrictions on the publication allow naming only the advertising body and the ways to contact it. Thus, the supervision only allows the publication of practical information, without provocative details such as pictures or descriptions of the sex services on offer, except for pencil sketches or pictures that do not offend public feelings. In addition, the prostitution licensing authority in the state makes a distinction between a single sex worker and a brothel, and applies different rules to them.

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<sup>70</sup> The information comes from the Queensland Government site (last viewed in April 2007): <http://pla.qld.gov.au/brothelAdvertising.shtml>

In this way the humiliation and violation of women's dignity that stems from advertisements that include explicit and humiliating pictures, as occurs in Israel without hindrance, are avoided. This also reduces the influence of such publications in presenting women as objects rather than seeing them as people.

### **b. The United States**

In the United States prostitution is illegal, and therefore the publication of prostitution services is implicitly forbidden. However, there is a lesson for our matter in the American law. The law says that any person photographed in a pornographic advertisement, picture or film is a minor, unless the producers of the picture prove otherwise.<sup>71</sup> According to American law the onus of proof is on the producer of the pornographic materials and he must keep, for at least seven years, evidence that those photographed in the picture or film are not minors.<sup>72</sup>

Similarly, and considering the figures about the high rate of trafficked women out of the total number who engage in prostitution in Israel, it can be established that the basic assumption is that in many cases the women photographed in advertisements for sex services are victims of trafficking, and therefore the burden of proof

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<sup>71</sup> 18 U.S.C. §2257

<sup>72</sup> Ibid.

that the woman engages in prostitution willingly and independently  
can be placed upon the advertisers.

## **RECOMMENDATIONS TO CHANGE THE EXISTING REGULATIONS OF ISRAELI LAW IN RELATION TO PUBLISHING SEX ADVERTISEMENTS**

The existing legislation provides only a partial and insufficient solution to the problem of the sex advertisements published in the electronic and printed media and enforcement is sparse and inadequate. The authorities must place before the advertisers an adequate threshold of caution that would prevent them from publishing advertisements against the will and agreement of the women advertised therein, and especially prevent the publication of advertisements by traffickers and pimps. Following are a number of recommendations worth exploring carefully:

### **a. Legislation**

Article 205c was passed only in order to deal with problems in the area of morals – to prevent “obscene material” from reaching minors and people who do not want it. In its current form the Article is defective in its disregard for the women advertised in those advertisements and their rights, and its purpose is only to protect the “decent public” that deserves to be protected from them. Therefore, there is no choice but to re-think and change the necessary regulations so that the law address the changing reality and the new

problems that arose with the rising crime in the area of trafficking in human beings.

The legislation from 1998 allows the publication of sex advertisements as long as they are published separately from the newspaper. Therefore the advertisement of victims of trafficking in human beings is actually permitted, as long as it is done quietly, away from public view. We think that conclusion does not stand to reason. Once it was determined that each and every link in the chain of trafficking must be fought, then the advertising link must also be fought, including the advertisements for this illegal activity. Therefore criminal responsibility should also be placed upon the advertisers – printers, publishers and even distributors of flyers – who take part in the chain of trafficking in human beings. For that purpose the advertisement of trafficked women can be defined as an independent criminal offense, or alternatively, the new law can be interpreted in such a way that includes the advertisers in the chain of trafficking, just as has been recently established in regard to drivers and cashiers. The criminal awareness of the advertisers can be proven by a presumption (which is refutable) that all of the photographed women are trafficked women or women who were photographed against their free will. This presumption is based on life experience and on the high rate of trafficked and forcefully prostituted women among the women engaging in prostitution in Israel. We can also learn for this matter from the American

presumption presented above, that anyone photographed in pornographic pictures or films is a minor unless proven otherwise by the manufacturers of the pornographic materials.<sup>73</sup> Likewise, any property known to have served to prepare such advertisements should be impounded in order to increase deterrence.

## **b. Enforcement**

One of the problematic aspects of publishing sex advertisements is the way the prohibition is enforced. So far, Article 205c has scarcely been used, only a handful of times. It is very important to establish clear and effective rules, considering the many possibilities of violation and the economic considerations that encourage the publication of such advertisements.

The police must enforce the law that prohibits the publication of sex advertisements in its current form, and guarantee that the principles established by court rulings are maintained. Members of the police must pay attention to the new patterns used by the traffickers and not rest on the laurels of the Shocken ruling. Two years after the sentence, the Israel Police has not yet given serious enough attention to the ruling or has not given it any attention at all. In the years 2003-2005 not one indictment was served on that offense.

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<sup>73</sup> Ibid.

When the Israel Police investigates trafficking files it must investigate both the traffickers and their victims regarding the means that served them to advertise the services they were giving. Even if it does not lead to adding a charge to the indictment, the investigation will provide important information about existing channels of advertisement and ways to block them.

Likewise, police and attorneys should be trained about the law on publishing the advertisements, about the advocacy guidelines from 2006, about the provisions of the new law and about the rules established by the Shocken ruling.

### **c. Punishment**

The Shocken ruling set minimal punishments: a fine on the newspapers, transferred to the state coffers, and community service for the officers. Since a legislation change is a process that can last for many years, the current law should be used while giving weight to the offense of trafficking in women which is a state scourge, taking into consideration as an aggravating fact the very existence of trafficking and the assistance to trafficking of the advertisers by their very advertisement, and fully enforce the six years in prison set by the law. If people accused of brokering are convicted according to the new law, and it is proven that they helped advertise victims of trafficking, they should be punished severely. Likewise, if money or property is impounded from advertisers, it should be transferred



to a fund to fight trafficking in human beings and rehabilitate its victims, which will be established on the basis of the new law against trafficking in human beings.

#### **d. Publishing warnings in the media**

The publication of warning notices in the newspapers in general and in the brochures advertising sex services in particular should be mandatory, warning that these advertisements sometimes serve to advertise women against their will. The warning advertisements should stress the characteristics of the women who are victims of trafficking, so that clients who consume sex services for pay are aware of them and not use their services. In such advertisements it is necessary to clarify how a victim of trafficking can be identified and what steps should be taken once such a woman is identified. Likewise, in newspapers that advertise job offers for women overseas, warning notices should be published to warn women against trafficking for various purposes, and calling upon them to check each advertisement with the necessary caution.

## CONCLUSION

The media is only a vehicle that reflects and confirms existing situations. The publication of the advertisements in the media for so many years, without any investigation about what is behind them, largely reflects the Israeli public's indifference towards trafficking in women. On the backdrop of the trafficking in women and forced prostitution that have existed in Israel for quite some time we believe these prostitution advertisements must primarily be considered in terms of their part in hurting those who are forced to provide sex services, with offense of the public's sentiments being secondary to this matter.

Trafficking is a dynamic offense that changes forms. The traffickers respond quickly to problems that come up "during business" and give them quick and effective solutions, while the legal authorities take a long time to respond to the new system created by the traffickers. This was the case when the authorities began to close Ben Gurion airport to victims of traffickers – the trafficking route was moved to Egypt; when women began to be arrested in open brothels – the traffickers began to move to "discreet apartments;" and when newspaper executives were put on trial for the advertisements they ran – alternative means of advertisement were found, as presented in this report, especially through business cards placed on the windshields of parked cars, flyers offering sex

services, the Internet, radio and local newspapers. The authorities should act effectively and with determination against new patterns being developed by the traffickers and women, including in the area of sex advertisements. In the Turjeman ruling Justice Heshin said the following:

And if anyone says that these advertisements are not necessarily for “parlors,” and perhaps they are for “masseuruses” who are advertising themselves, we answer thus: first of all, **if we don’t investigate we won’t know**. If we are dealing with a serious offense, it is the police’s duty to investigate and know, and this is a duty it is not fulfilling.”<sup>74</sup> (emphasis added)

The ruling was given 15 years ago, but it is still true and apt today.

“If we don’t investigate, we won’t know.”

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<sup>74</sup> **Turjeman** ruling, footnote 23 supra.

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