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## **Report on prostitution laws in the European Union**

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## 1) Foreword: overview at the EU level

This *Report on prostitution laws in the European Union* presents very synthetically the laws that govern prostitution in 27 EU member states (Croatia not included), following a description of the phenomenon in its different realities based on sociological sources. Where the actual policies are known to markedly differ from the written law, this fact has been signalled. The description of the laws is to my best knowledge, I apologize for any mistake, that I will correct upon request. Nevertheless, as the laws about prostitution do not change at a high pace, the report should be considered sufficiently reliable for the majority of the 27 EU member states (before 1<sup>st</sup> July 2013, when Croatia joined the Union).

The gap between laws (that are in general quite repressive) and actual policies is big. This can have pragmatic reasons: prostitution is so widespread in the EU member states that *de facto* tolerance and formal or informal arrangements as to where it can take place are the answer often chosen by authorities at the local level. The diffusion of the commercial exchange of sexual services for money can be grasped from surveys that ask men whether they have ever bought sex. The percentage who answers positively to this question is usually around 10%. In Sweden it is 8% (Kuosmanen 2009, 368) decreasing from 12.7% (Månsson 1998) before criminalisation (and its increase of the taboo surrounding prostitution); 25% in the UK and in the USA (1995 rate), notwithstanding the fact that in both countries (with the exception of some counties in the state of Nevada) prostitution is forbidden (Brooks-Gordon 2006, p. 48 ff.); 32% in Spain<sup>1</sup>. I consider this to be the lower “floor,” while more realistic estimates should be higher, since the positive answer to this question (even when formulated as neutrally as possible and referenced to one's whole lifetime) means participation in a highly stigmatized (if not illegal) activity, which is difficult to admit to even in a survey guaranteeing anonymity.

Another characteristic of contemporary prostitution common to the EU states that must be highlighted is that, according to estimates, the majority of “sellers” in the EU-15 and a substantial portion, about 10%, of “sellers” in the new EU member states are women foreign to the country where they practice the trade.<sup>2</sup> Since the enlargement of the EU-15 towards the East, a good part of these foreign women have gained EU citizenship. Nevertheless their activity is generally considered illegal as they are non-nationals, notwithstanding the high or low degree of permissiveness of national laws on prostitution and the possible application of two judgments of the Court of Luxembourg.

It is known that there are no common provisions on sex trade at the EU level, but two important verdicts of the Court of Justice of the EU should be highlighted.<sup>3</sup> In the judgment of the Court of 20 November 2001 (Aldona Malgorzata Jany and Others vs Staatssecretaris van Justitie), prostitution was declared to be an “economic activity as a self-employed person,” and as a consequence it was recognized to be included in the Association Agreements with the countries of origin of the plaintiffs, Poland and the Czech Republic. An older verdict is also relevant, establishing that, with regard to EU citizens engaging in prostitution in another member state, their position is equivalent to that of citizens of the state examined.<sup>4</sup> A sentence on the free movement of workers was passed on 18 May 1982 by the Court of Justice of the European Community in Luxemburg, ruling that

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<sup>1</sup> According to journalistic sources, as a result of a survey of the Ministry of Health. Gutiérrez, Óscar: “Un cliente (de prostitución) muy normal”, in *El País*, 18.10.2010

[http://sociedad.elpais.com/sociedad/2010/10/18/actualidad/1287352812\\_850215.html](http://sociedad.elpais.com/sociedad/2010/10/18/actualidad/1287352812_850215.html)

<sup>2</sup> “Research conducted by the TAMPEP network shows that, in 2008, there was an average of 65% of migrant sex workers within the EU-15 countries, Norway, and Switzerland. In contrast, migrant sex workers still make up only a small percentage – on average 10% – of those working in sex work in the ten Central and South/Eastern European and Baltic countries that joined the EU in 2004 and 2007.” (TAMPEP 2009, 30). [http://tampep.eu/documents/Sexworkmigrationhealth\\_final.pdf](http://tampep.eu/documents/Sexworkmigrationhealth_final.pdf)

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999J0268:EN:HTML>

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61981J0115:EN:NOT>

citizens of another EU country cannot be expelled (sentence no. 681J0115, see also Joined cases 115 and 116/81 [1982] E.C.R. 1665). The case in point concerned two French women, Adoui and Cornuaille, suspected of prostitution in Belgium. Suspicions had been raised by the fact that they worked in a particular nightspot which led to their expulsion. Their appeal was upheld: Belgium could not deny them the residence permit because article 48 on the freedom of movement of workers of the Treaty of Rome, back then in force, mandated that no stricter limitation to mobility be imposed on citizens of another nation of the Community than those in force for citizens of that particular country (Bridgeman and Millers 1998).

This report is based on the consulted bibliography following it in a separate file. I apologize for not inserting all the references at the proper places in the text. The literature is the cumulative result of my work on the subject, which began 15 years ago. My work has up to now mainly focused on the Western part of the EU, and so is the description of typical occurrences in prostitution (chapter 6. *Prostitution markets*).

“Eastern Europe” or “Eastern EU” are the former Socialist states, now EU member states; “Western Europe” or “Western EU” all the other EU member states, regardless of their geographical location.

## 2) Terminology

To study prostitution means attempting an untangling of the knots tying sex with money. The direct exchange between sex and money is what is called – and has historically been called – prostitution. The term “prostitution” places an emphasis on the activity of the offerers of sexual services, that historically were women: it refers to the practice of a woman waiting for clients in front of her residence, and comes from the Latin *prostituere*, “to put in front, to expose”. In Old Greek the term was *πορνεία* (*pornéia*), derived from the word for (low class) “prostitute”. In the Slavic languages and also in Hungarian, Estonian, Maltese, terms derived from the Latin “*prostitutio*” are generally employed. In German and Scandinavian languages and legal codes, the term used in the law meant simply “immorality”, as in the Danish *utugt*, the Swedish *otukt*, the Dutch *ontucht*, and the German *Unzucht* (these words are disappearing from contemporary legislation – exceptions are Denmark, Bulgaria and a county in Austria, but see further).

The offerer of sexual services drew all the attention, as she was morally condemned, and generally subject to various restrictions of her mobility and rights, while her clients were generally seen as legitimately exercising their sexuality. Notwithstanding the moral condemnation, in many historical periods and locations women who practiced this trade would enjoy comparatively more freedom than married women, starting from reaching economic independence (Tabet 2005, Ringdal 2004). The penal codes have unanimously condemned the activities of the pimp, that was the instigator, “protector,” and partner of the prostitute, especially in the organization of prostitution most common in the 19<sup>th</sup> and most of the 20<sup>th</sup> century: in the German penal code *Zuhälterei* is prohibited, and in the French one *proxénétisme* (a term used also in the Spanish penal code), terms that can be translated with “pimping” and likewise derive from the term indicating the male protector and profiteur.

But in many Western States came a time, in the 1970s, when the trade was practiced by a growing number of educated people (both men and women) free from pimping relationships and choosing prostitution for the comparatively high possibility of gains. This change in the prostitution scene had structural reasons: the increasing level of education and the increased economic opportunities for women in the boom years (“les Trentes glorieuses”) drained the low skilled and low educated basin from which most prostitutes came. As such, with a reduction in the offer, the prices for street prostitution became higher than in earlier periods. The term *sex work* began to be used by prostitutes themselves: Carol Leigh aka “Scarlot Harlot” invented it in the 1970s (Leigh 2004). It is generally used with a broader meaning than prostitution, because the sexual content of the work may also not involve direct contact, as is the case for operators of phone sex lines or websites, strippers, workers in pornography.

Other linguistic innovations have appeared in more recent times: “prostituted woman” is now employed by abolitionists to express their belief that no act of prostitution can be consented to by the woman, since she is in an inferior social and economic position in relation to her clients (Jeffreys 1998, Barry 1995). Abolitionist associations also identify “trafficking” and “prostitution” as phenomena they aim to abolish by legal prohibition, targeting the clients (or “john”, a term taken from prostitutes' slang, to indicate that it could just about be any man) identified as agents of violence.

## 3) Sociological definition of prostitution

Prostitution has been defined by social scientists in a way that places the emphasis from time to time on the requirement (1) a direct exchange of sexual services for money, (2) that takes place with a multiplicity of clients (3) that the latter are not selected (4), that this occurs in a situation of emotional indifference, and (5) that this source of earning is the main source of income of the person that carries out this exchange (Davis 1997). Obviously, these criteria are questionable

because they deal with a range and not the absence or presence in absolute terms of the specified quality. If there are assets other than money, in the absence of an agreed fixed fee, if it deals with a relationship between only two people, then the current definition of prostitution is ill-suited to the observed phenomenon, that instead could be referred to as a relation of maintenance, a marriage of interest,<sup>5</sup> or with the many names that cultures different from our own give to social institutions that are not subject to the characteristic stigma of the activity of prostitution in the West (Tabet 1986). If the exercise is performed for a limited period (or if the intention is this), then the same person that performs prostitution will refuse the social label/identity of prostitute/sex worker; if there is no emotional involvement with the customer, the possibility of developing relationships of empathy can certainly not be ruled out; and, with regard to the lack of discrimination among all those persons that are willing to pay the requested price, in reality the screening of the danger from potential customers is constant and ever present.

There are several motivations harboured by customers than pure sexual satisfaction: among these, the exercising of power, social contact and sexual initiation,<sup>6</sup> the certainty of being able to have a sexual relationship that is not expensive in terms of time and free from other obligations aside from the payment, the ability to take on a passive sexual role (Ahlemeyer 1996; Cutrufelli 1997; Leonini 1999, Brooks-Gordon 2006).

Recent research conducted in Great Britain (Kinnell 2008) has analysed the episodes of violence perpetrated against prostitutes, finding that the offenders were not customers: they were in fact men that had had no intention of paying for the service and/or had approached the prostitutes to exercise violence, believing in general that they were particularly easy targets.

### 3a) Legal definition of prostitution and legal terminology

Jurisprudence is involved in the interpretation of the codes and laws, but in this report I can present only the definitions found in the law texts at my disposal – that is nearly all the text for the biggest ten countries in the Western part of Europe, the old EU-15.

Prostitution is the direct exchange of sexual services for money or other utilities: this definition is apparent from jurisprudence and legislation. Sometimes laws require the practice to be habitual, in order to be defined as prostitution, but often not.

Only Britain and Austria seem to have a definition of prostitution in law. For England and Wales it is in Section 51 (“Sections 48 to 50: interpretation”) of the Sexual Offences Act 2003:

(2) In those sections [48 to 50] “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.<sup>7</sup>

The local laws regulating prostitution in Austria at the county level define prostitution as the “commercial acquiescence to sexual acts on one's body or the commercial engagement in sexual activities<sup>8</sup>” in consonance with the penal code. Other Austrian laws specify that they apply to

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<sup>5</sup> Marrying for interest represents, also subjectively, a kind of prostitution: see Dessieux (1996) for a newspaper account of this phenomenon in France. In the late 18<sup>th</sup> century Mary Woolstonecraft defined the very institution of marriage as “legal prostitution”, denouncing the lack of suitable alternatives for women who had to support themselves.

<sup>6</sup> In Italy substantially decreased from 25% of males born between 1913 and 1932 to 1.4% of those born between 1966 and 1977 having their first intercourse with a sex worker (Buzzi 1998).

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2003/42/section/51>

<sup>8</sup> For example: **Gesetz, mit dem die Prostitution in Wien geregelt wird (Wiener Prostitutionsgesetz – WPG 2011)**

occasional commercial relations, too, and also give a definition of the client: “persons that take advantage of the soliciting for prostitution of another person, or have the intention of taking advantage”, as in the law in Burgenland.<sup>9</sup>

The terminology used in the laws generally uses the words etymologically related to “prostitution”, also in countries, as Austria, Germany and the Netherlands, that consider prostitution as sex work and have adopted laws that try to improve the situation of persons in prostitution (at least for nationals). *Gewerbsmäßige Unzucht* (professional immorality) is instead used in Vorarlberg (Austria). The Bulgarian penal code prohibits “debauchery,” and the interpretation of this section is legally contentious. In Denmark the penal code uses “sexual immorality” (*kønslig usædelighed*) for prostitution.

In Sweden the prohibition instead regards *sexköp* (purchase of sex) and its attempt:

Whoever, otherwise than as previously provided in this Chapter [*paragraphs against rape, sex with children etc*], procures himself/herself an occasional sexual service in exchange for payment shall be sentenced for purchase of sexual services to a fine or imprisonment for up to one year.

What is stated in the first part is valid even if the payment was promised or given by somebody else (Penal Code, cap. 6, § 11).

The article was initially approved in 1998 in a law called *Kvinnofrid* (a medieval expression meaning “peace of the woman”, in the sense of protection) addressing violence against women, and was later inserted in the penal code without written reference to the motivation of the prohibition. It is interesting that in 2008 a survey found that 71% of the sample interviewed in Sweden were in favour of maintaining the law, but the same percentage wanted to criminalise the seller of sexual services, too (Kuosmanen 2008).

For the countries – the majority in Western Europe – where there are no positive regulations but the legal space is delimited with penal code articles, the forbidden acts are generally referred to with words peculiar to the “underworld” of prostitution as it was organized in the 19<sup>th</sup> century, with the prostitute having a pimp as a life partner, a man who had probably encouraged her prostitution and lived off her earnings with a flamboyant lifestyle, showing off among other pimps. Therefore procuring and exploitation of prostitution are generally conflated in a unique word (Danish *rufferi*, Swedish *koppleri*, French *proxénétisme*, Spanish *proxenetismo*, Portuguese *lenocínio*) or have an unique penalty, as in the Italian provisions against *sfruttamento e favoreggiamento della prostituzione*, “exploitation and aiding/abetting prostitution).

Prostitution is forbidden in all penal codes and laws if it involves minors (sometimes the age of consent to prostitution is higher: 19-21 instead of 18, the general coming of age), as they are not considered mature enough to give their consent to this exchange, though age of consent to sexual relationship is generally lower than 18.

Civil law generally considers prostitution agreements invalid as contracts, being contrary to public morality. This happened in the old (19<sup>th</sup> century) regulations, too. The prostitution contract has been recognized as valid in civil law the regulationist country, and in Germany it was the first change made to the old regulations in 2001.

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§ 2. (1) Prostitution im Sinne dieses Gesetzes ist die gewerbsmäßige Duldung sexueller Handlungen am eigenen Körper oder die gewerbsmäßige Vornahme sexueller Handlungen.

<sup>9</sup> (3) Gewerbsmäßigkeit im Sinne des Abs. 1 liegt vor, wenn die Prostitution in der Absicht erfolgt, sich durch ihre wiederkehrende Begehung eine fortlaufende, wenn auch nicht regelmäßige Einnahme zu verschaffen.

(9) Als Freierinnen und Freier gelten *Personen, welche die Dienstleistung einer die Prostitution anbahnenden Person in Anspruch nehmen oder zu nehmen beabsichtigen*. [translated and quoted part in italics]

#### 4) Gender imbalances in the phenomenon

Still today, it is almost always men that seek out sex for payment while it is usually predominantly women that show a willingness to enter into a sexual relationship (which is usually not desired as such) in exchange for money, along with many transsexuals and male prostitutes that mainly sell homosexual services. To explain prostitution it is important to understand both sides of the issue: the demand, i.e. sexuality, including the male and female sexual roles, and the offer, i.e. the economic imbalances between the male and female genders and between the different regions of the world.

Historically, the social role of those exchanging their sexual favours for money has always been object of reproach and contempt (with some exceptions: the *hetairai* of Ancient Greece, renaissance courtesans) for reasons revolving around social judgement on female sexual activity. The social contempt for prostitutes is, in fact, the shadow side of the exaltation of female chastity, and reflects a gender non-neutral and paradoxical social norm: contact with the body of men dishonours a woman, while a man acquires prestige and value from contact with women's bodies. The social role of the prostitute is for "fallen women", whose socially miserable destiny (but individually not necessarily worse than others) acts as a warning to all women. Mandeville, in his pamphlets in defence of public brothels, one of the first texts that put forward a regulatory policy, wrote: "Young Girls are taught to hate a Whore, before they know what the Word means; and when they grow up, they find their worldly Interest entirely depending upon the Reputation of their Chastity."

(Mandeville 1724, 57). Still today the word "whore" is in many languages the greatest insults that can be addressed to a woman. The existence of a category of women that devote themselves to the exchange of sex and money is thus an underlying threat to all other women, over whom still hangs the possibility of being judged and labelled as "whores" for having enjoyed their sexuality in ways that don't comply with the social rules. In fact, the definitions of "whore", "slut" and "harlot" do not necessarily refer to women who have sex for money. Between a woman that is sexually active only in her marriage and one that has sex for money there is, in fact, a sort of grey area that in the past (with regard to western countries, but still today in many areas of the planet) was equated with prostitution, and now is more clearly separated and has acquired social respectability, perhaps in parallel with a further fall down the social ladder for those that engage in prostitution. This change occurred from the period of cultural and political upheaval of the sixties: social rules regarding feminine premarital chastity have progressively loosened.

This recent historical break in the countries of the West touches not only sexuality but also economic relations: there has in fact been a growth in the social power of women. With respect to the past in which the social domination of the male sex was tyrannical, the social panorama has changed greatly. The achievement of equality in laws between the sexes is the legal aspect of this transformation, the end of the imperative of the segregation of women in private spaces is its social aspect, the diminishing of the control of female sexuality is the sexual aspect, and the gradual entry of women into male professions that are better remunerated is the economic aspect.

Relatively few women now offer themselves as prostitutes: the social stigma for women that practise it, together with the unpleasantness generally perceived in having continuous sexual relations with unknown men are today, as in the past, two key factors. This shortage, combined with the high demand for sexual relations for payment, which has to do with the construction of the male identity that still today includes sexuality experienced as a manifestation of power in a manner somewhat detached from feelings, makes prostitution a source of considerable earnings in relation to all other low skill professions. This fact has, on the one hand, always been in a variety of ways exploitable by other men that force women into prostitution to reap its proceeds, and on the other hand has meant that many women choose - and have chosen in the past - to engage in prostitution as an alternative that they consider better than a life of poorly paid toil, as a wife or a worker. Today the "debt" ascribed by traffickers to migrants destined to prostitution is in fact much higher than that

required for those migrants who practise other professions, taking advantage of the formers greater earning ability.

On this side of the sixties watershed, and from the point of view of supply prostitution is no longer a trade practised by many women of the richer part of the European Union, thanks to the increase in the standard of living and the increased opportunities for access to paid employment. Economic transformations have drained the areas of social exclusion from where prostitutes mainly came from, and transformations in the field of sexual relations meant a decrease in the violent stigmatisation of young women who became prostitutes having "lost their virtue" and the prospect of marriage. Since the seventies in fact more and more prostitutes have emphasized that they weren't pushed into this option by misery and lack of alternatives, but simply they didn't feel the exchange they engaged in was humiliating, while it allowed them to access in a short time large sums of money. They did not believe that being a prostitute meant losing their dignity.

Prohibitions of a sexual relationship outside of marriage have become more blurred, suggesting that a drastic drop in men looking for prostitutes should have occurred. The fact that male demand has gradually lost respectability and that it is less normal for a boy to have his first sexual intercourse with a prostitute would suggest that with the years prostitution should have decreased. And in fact it was often forecasted that prostitution would disappear completely following the liberalization of sexual habits. If in the system of relations between the genders in the past prostitution was seen as the necessary complement to the monogamy of marriage and the imposition of virginity of the bride, the logical prediction on its future, when sexuality would have been experienced even more freely by women, could only be its gradual disappearance. How to explain then the reversal of the trend since the end of the eighties, on the same streets that for more than a decade were becoming depopulated? On the economic side, it is not difficult to recognize that decisive factors were the poverty of the majority of non-western countries and the increase in international mobility of people, migrating or fleeing from economic and social crises, such as the collapse of the system of "real socialism" in the (formerly) Soviet bloc.

The fact that in the market of prostitution customers are largely men and sellers are predominantly women undoubtedly reflects, first and foremost, the imbalances of wealth and power in society, perpetuated by the male alliance in managing economic and political power on women. But prostitution is not the foundation that underpins the dominant male role: it is part of it and a confirmation, as many other social phenomena are also a confirmation of it. And in fact, the accepting of money for a sexual service does not necessarily put those offering it in a condition of absolute submission, as demonstrated by the case of the gigolos (male heterosexual prostitutes) who seem to be paid much than a female escort and perform their profession with a sense of superiority over their customers (that many other prostitutes share).

At this point it may be interesting to ask why women on the contrary are so rarely buyers of sex. There are two ideal types in relation to sex: one is linked to the male gender stereotype that sees sex as pleasure disconnected from emotion, in such a way that it can be thought of as a form of consumption; the other is on the contrary typical of the female identity and entails the coincidence between sexuality and the expression of love, that does not allow to be traded for another currency. The mode of expression of sexual desire that we label as "masculine" is in other words marked with the performance of the sexual act for the pleasure itself, without worrying about other aspects of the relationship. In the manner that we call "feminine", sexuality is seen as a means and an expression of the fact that two people are linked in a loving and more complex relationship. Sex as an end or as a means, as it could drastically be stated. And money, as the sociologist Georg Simmel noted, is used to dispense with any other social obligations, once the commercial transaction has been completed. Also the use of the money in itself is relevant to the public sphere under the control of men: men are traditionally more liable to use money to achieve their desires, while women are more inclined to the economy of reciprocity based on gratuitousness or even self-sacrifice.<sup>10</sup> It is then

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<sup>10</sup> Moreover, English research on the management of money in couples [Pahl 1989] has shown the spread of poverty

clear that heterosexual women have little reason to offer men money because when they want to go in search of sex without complications, a positive result is practically guaranteed by the mere widespread male demand for this type of relationship. In relation to men who are accustomed to considering a relationship transient as such, a woman does not need to use money to remove social obligations.

The persistence of social norms that blame women that engage in non-monogamous sexual activity, while praising men that have many partners cannot be overlooked in assessing an alleged "naturalness" of these ideal types. We must not fall into the error of matching labels of "male" and "female" with the true nature of men and women. It is true that female diffidence for prostitution relations may also have objective reasons: given the very limited physical training of women compared to the development of the force encouraged in men, there is a lesser degree of control of a woman over the sexual act precisely because the difference in force generally is to the disadvantage of women. Moreover, the social definition of heterosexual sex, in a context of male dominance, is likely to reflect male sexual preferences rather than female – if such a generalization is possible.

#### 4a) Gender imbalances in legislation

It is unusual that the laws in the EU would treat women and men differently. The application of the concept of “common prostitute” in the UK ceased to be gender-specific with the Sexual Offences Act 2003. Here the amendments:

##### SCHEDULE 1<sup>11</sup>

##### Extension of gender-specific prostitution offences

##### *Sexual Offences Act 1956 (c. 69)*

1 In section 36 of the Sexual Offences Act 1956 (permitting premises to be used for prostitution), at the end insert “ (whether any prostitute involved is male or female) ”.

##### *Street Offences Act 1959 (c. 57)*

2 In section 1(1) of the Street Offences Act 1959 (loitering or soliciting for purposes of prostitution), after “prostitute” insert “ (whether male or female) ”.

The provisions in the Greek law attributing only to women the faculty of registering to practice prostitution have also recently been amended (lawyer Moraitis, telephone conversation).

#### 5) Four views of prostitution

The judgment that social and political forces give to the phenomenon of prostitution (from its interpretations to their consequences in terms of legislative measures) can be ideal-typically distinguished into two negative views of prostitution and two positive ones: as social damage or as individual damage and as a resource or as work (Danna 2004). The first view, that has a very ancient tradition, recognises in the phenomenon of prostitution a *social plague*, that concerns for example the practice of sexuality out of marriage and the danger of venereal contagion, the use of sex as merchandise, the corruption of minors who are witness to it, disturbance of the public peace, the degradation of the areas in which it is being carried out and also the perpetuation of the concept of female sex as something that can be bought and sold, thus it uses more traditional arguments as

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among married women even if married with rich men: the husband uses most of the money for himself and enjoys more free time to use it, while his wife doesn't feel entitled to have free time or to use money for herself. Jan Pahl writes: “husbands typically earned more than wives and had more *fringe benefits* from their employment. They usually saw themselves as breadwinners for the family, even when they retained substantial sums for their own use; wives' earnings were seen as more marginal to the budget, even though most women spent all their wages on the family. Husbands were less likely to have to justify the money they spent and they tended to spend more on their own leisure” (Pahl 1989, 169).

<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2003/42>

well as more recent reflections.

The second view belongs to those who argue that prostitution implies *individual damage*: through its activity those who practise it suffer from moral degradation, a loss of dignity, or a very serious psychological damage, caused by the continuous maintaining of distances from one’s physical sensations, which can lead to a sort of schizophrenia and encourages recourse to dangerous substances (from alcohol to tranquilisers, from heroin to cocaine) to ease the pain.

The third view sees prostitution as a *resource*, which legitimately one would have to be able to make use of as a personal choice, and that therefore should be kept beyond legal regulation, only allowing self-managed forms of organisation (and not taxing the proceeds in order to avoid the state contributing to the exploiter role – this was the position of prostitutes' movements in the 80s, before immigration).

The fourth view sees prostitution as a *job*, and therefore characterises as a problem all the obstacles to its full acknowledgment as an activity to be openly practiced with safeguards for those that work in it as well as those that benefit from the service being offered, introducing standards of safety on a par with other professions.

|                        | <b>Individual perspective</b> | <b>Social perspective</b> |
|------------------------|-------------------------------|---------------------------|
| <b>Negative vision</b> | Individual damage             | Social scourge            |
| <b>Positive vision</b> | Resource                      | Work                      |

These four ideal-typical views show an affinity with particular public policies: from the “classical” 19<sup>th</sup> century ones (prohibitionism, regulationism and abolitionism – see further), to those adopted for the first time in recent years, such as client criminalisation and neoregulationism, while arguments from the positive view have been used for episodes of decriminalisation. Nevertheless, the passage from a moral/ideological perspective to actual legislation cannot be automatic, but must take into consideration practical observations on the effectiveness of the legislative measures and its coherence with human rights principles, e.g. the right to privacy.

Policies of harm reduction can be coherent with all these moral views of prostitution, and it is practiced in most, if not all, countries. The harm reduction approach is aimed at minimizing the negative consequences of a certain (potentially) damaging behaviour. It was developed by the social workers in the drug addiction world, as a part of their activities. “Harm reduction” implies a suspension of the moral judgement on the (potential) damaging choice made by drug users providing safe spaces to inject the substance, disposable syringes to prevent the spread of HIV or

other diseases, and condoms for the same purpose – as well as to disseminate information on health and prevention in general. Sometimes it entails the distribution not only of methadone or other substances alternative to heroin, but of (controlled) heroin itself.

Originally the attention to the world of prostitution has started assisting addicted women working in prostitution. In the social work aimed at prostitutes it basically means providing information on sexually transmitted diseases and other health issues as health care, providing social spaces (even in the vans of the “street units”), distributing condoms.

### 5a) Typology of legal situations: the prostitution contract in civil law

With Enlightenment, the exchange of sexual services and money between consenting adults started to be considered as pertaining to the private sphere, beyond the regulation of the law, being a matter of private morals and a “crime without victims”, as Cesare Beccaria wrote. This legal limbo has not addressed the circumstances in which this exchange takes place: the private character of the arrangements is not always guaranteed, as the meeting of demand and offer needs some degree of publicity or advertisement. Many practical problems are connected with where prostitution should take place: indoor, outdoor in designated areas? How should it be organized? The principle of privacy even in matter of exchanges between sexual services and money does not give practical answers to prostitution's location.

To elaborate a typology of policy models about prostitution, it is crucial to determine the legal status of the exchange of sexual services for money (sometimes the possibility of receiving also “other material benefits” is contemplated in the laws). There can be three possibilities:

- 1) the exchange is prohibited;
- 2) the exchange is neither prohibited nor protected by law: it is not recognized, that is: the contract is invalid being *contra bona mores*; so the money can be freely given but it has the status of a donation, not of an obligation; sexual services must be performed freely, otherwise the crime of rape is committed (it is the same when the contract of prostitution is legal);
- 3) the exchange can take the form of a legal contract (of course this possibility is always referred to verbal agreements, that nevertheless civil law considers equivalent to valid contracts).

| Prohibited                              | Invalid  | Valid   |
|---|--|---|
| Lithuania<br>Malta<br>Romania<br>Sweden | Belgium<br>Bulgaria<br>Czech Republic<br>Cyprus<br>Denmark<br>Estonia<br>France<br>Ireland<br>Italy<br>Luxembourg<br>Poland<br>Portugal<br>Slovakia<br>Slovenia<br>Spain<br>United Kingdom | Austria<br>Finland<br>Germany<br>Greece<br>Hungary<br>Latvia (?)<br>The Netherlands |

Table 5a: Consideration of prostitution contracts.

In the first situation we find the states with a prohibitionist approach, the second singles out abolitionist states, while the states with a legally protected space for prostitution are regulationist. As we will see, inside these broad categories, laws, practice, and also views of prostitution vary very much. It is useful therefore to examine closely the different approaches with an historical explanation of their establishment.

Scholars who study prostitution nowadays still utilize these categories with variants (Joardar 1984, Gazan 1992, Cazals 1995, Brussa 1998, Treanscrime 2005, Havelkova 2012 taking into account the changed general climate towards sexuality at the end of the XX century – there is an ongoing debate on the possibility of considering prostitution as just another kind of work (Teodori 1986, Hubner and Roper 1988, Pheterson 1989, Jenness 1993, HWG 1994, Deutsche Hurenbewegung 1996, Kempadoo and Doezema 1998, Mathieu 1999, 2000, Weitzer 2012), unimaginable a century ago when the categories were first defined (Walkowitz 1980, Macrelli 1981, Gibson 1995). Back then it was ruled that prostitution and offence to public decency were one and the same thing, nowadays this is no longer such a foregone conclusion: “it must be ruled out that in modern times in the common way of thinking the activity of prostitution could be considered contrary to public morals and public decency” reads a passage of the Bottalico sentence as passed by the Bari magistrate’s court on 28 November 1986 in Italy.

### 5b) “Classical” models of prostitution policy

Public attention towards prostitution has historically focused on the offer. The political measures to counter prostitution or regulate it up until recent times have addressed only the women that constituted its offer, morally guilty because deviating from the feminine role, whose main requirement was chastity outside marriage. The attention turned to customers in the recent new policies starting from the end of the ‘90s represents a historical innovation.

In classical, 19<sup>th</sup> century, models there could be – or not – a moral condemnation of the activity of the prostitute and a legal possibility of exercising prostitution.

In the following table the visualisation of these two dimensions distinguishing classical models of prostitution policy, with a logical void where the absence of moral condemnation of the prostitute would nevertheless not give her a legal possibility to carry out her trade.

|  | Moral condemnation of the prostitute |                 |              |
|--|--------------------------------------|-----------------|--------------|
|  |                                      | Yes             | No           |
| Legal possibility to exercise prostitution | yes                                  | Regulamentarism | Abolitionism |
|  | no                                   | Prohibitionism  | (void)       |

Regulation of prostitution was historically the most diffuse model. The *code Napoleon* introduced a strict control of the exchange, that was legal only in state brothels where prostitutes were confined, deprived of civil rights, and subject to compulsory medical examination, to avoid the spreading of the diseases they contracted from the clients. The regulation spread from France to the rest of Europe and was contrasted by the abolitionist movement, led by Josephine Butler, protestant and feminist.<sup>12</sup> The near-slavery situation of these women, plus the risk run by every woman to be forcibly medically examined on police suspicion that she was soliciting, elicited widespread

<sup>12</sup> The impact of her political activism was huge: “Defending prostitutes against unrepentant exploitation ( by men ) and persecution (by the State) was a real threat for the Victorian patriarchy. Indeed, the simple discussion of sexual acts in public was for a woman equal to heresy” (Smart e Brophy 1985, 14).

outrage, and a movement was organized to combat these discriminatory laws<sup>13</sup>. The movement called itself Abolitionist, in parallel with the abolitionism against slavery. It obtained its first victories in England with the closing and prohibition of brothels in 1885. The prostitute should not be punished, and could, privately, consent to the exchange of sexual services for money, while the exploitation of prostitution (variously defined) remained on the law books.

Abolitionism has been introduced in two waves: at the turn of the 19<sup>th</sup> century in other countries of Northern (mainly Protestant) Europe and after WW2 in Southern-Western (Catholic) countries. In the European Union there is currently a majority of abolitionist states, that are nevertheless quite different in the way the law is written and applied. In the Eastern block the Stalinist prohibition of prostitution was introduced. After 1989, with the change of the economic system there has been a divergence of policy models in the former Eastern block.

|              |       |
|--------------|-------|
| UK + Ireland | 1885  |
| Denmark      | 1901  |
| Finland      | 1907  |
| Netherlands  | 1911  |
| Sweden       | 1918  |
| Germany      | 1927  |
| France       | 1946  |
| Belgium      | 1948  |
| Spain        | 1956  |
| Italy        | 1958  |
| Portugal     | 1963  |
| Greece       | Never |
| Austria      | Never |

Table 5b. Diffusion of abolitionism in the Western EU countries: timing of the closure of brothels

notes: *Finland*: prohibition then abolitionism.

*Germany*: Nazism reopened the state-controlled brothels previously closed by the Weimar Republic (Gleß 1999).

*Portugal*: prohibition until 1983.

*Russia*: brothels were closed by the Communist Revolution, and the *USSR* signed the 1949 abolitionist convention. By 1945 abolitionism was brought to the Eastern European states still not adopting it. For example in *Estonia* brothels were closed in 1940 with the Soviet occupation. Prostitution was then considered among the forbidden “parasitic lifestyles” while brothel keeping was expressly prohibited. In *Eastern Germany*, though, sex work was prohibited only in 1968 as being a breach of the public order, while before 1968 regulations still applied. In *Czechoslovakia* the Civil Code of 1961 punished procurement. In *Yugoslavia* prostitution was criminalized in 1974.

Abolitionism, born as a movement to defend prostitutes as women and give them back their civil rights, as a policy has been based on the freedom to exchange sexual services with money; however,

<sup>13</sup> As Rebecca Pates writes: “Early regulation largely concerned the spread of (moral and biological) infections in the general population, of which sex workers were regarded an important cause. In order to prevent moral contamination, prostitution was (and continues to be) prohibited in the vicinity of schools, churches, kindergartens and so on. In order to prevent biological infections, sex workers had to submit to monthly health checks, and had to be able to demonstrate to investigating police that they were inoffensive through showing a particular pass.”

it refuses to give legal guarantees to this contract. In abolitionist countries this agreement/contract is void because it is contrary to morality.

There are at least two forms of abolitionism as a policy according to the status given to the will of the woman who prostitutes herself. The first conventions (1904 and 1910)<sup>14</sup> aimed in fact at opposing the coercion into prostitution and the fraudulent traffic in people. Later conventions (1933 and 1949)<sup>15</sup> introduced clauses obliging states to take measures against prostitution and the slave trade in women even in cases where the alleged victims had given their consent. From the very preamble of the Convention of 1949 it is clear that the will of the woman who prostitutes herself is not given any consideration. Prostitution is, in fact, seen as a danger for the welfare of the family and of the community, while in earlier times it was seen as a support for them.<sup>16</sup> This convention has been superseded in 2000 by the Palermo Convention against Transnational Organized Crime, with its “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”<sup>17</sup>

Abolitionism as a policy legally abolished prostitution insofar as it could, creating laws that aimed both at repressing any economic exploitation of the prostitution of others, and encouraging women who engaged in it to leave their profession. In practice, all sorts of activities have been considered economic exploitation of prostitution: the renting of rooms or flats where prostitution is performed, even when market prices are applied; providing help in organising encounters; accompanying the prostitute to the work place; selling or offering goods to prostitutes; even partners and adult children of prostitutes who live with them and cannot justify their living standards with their own income have been criminalized<sup>18</sup>. Abolitionist states (see p. 17 for a table) impose a series of restrictions that render legal only the acts of prostitution that are performed in one's own apartment, without legal possibility to advertise the activity as such. Renting unbeknownst to prostitutes is admitted in some laws.

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<sup>14</sup> In 1902 in Paris some states underwrote an international agreement for the protection of women and girls coerced or threatened into prostitution, ratified in 1904 by 16 states under the name of International Agreement for the eradication of the slave trade in white women and girls. In 1910 was signed the International Convention for the suppression of white slavery.

<sup>15</sup> The Geneva Convention of 1933 adopted by the League of Nations and the Convention for the suppression of the traffic in women and the exploitation of prostitution, drawn up in New York at the United Nations Organizations and voted by the General Assembly on 2 December 1949.

<sup>16</sup> Schopenhauer in *On women* wrote: “Then what are these women who have come too quickly to this most terrible end but human sacrifices on the altar of monogamy?” <http://www.theabsolute.net/misogyny/onwomen.html>

<sup>17</sup> “The new Protocol has superseded the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (UN GA Res 17 (IV), 2 December 1949). The 1949 Convention has been widely criticized because it restricts the concept of trafficking to prostitution and does not address other forms of labour exploitation. It neither includes a definition of trafficking nor does it distinguish between voluntary and forced prostitution, being an anti-prostitution treaty rather than an anti-trafficking treaty. The Convention has been ratified only by 73 states.”

Angelika Kartusch: *Reference guide for anti-trafficking legislative review*. Ludwig Boltzmann Institute of Human Rights, Vienna, September 2001, © OSCE/ODIHR 2001, note 29, p. 14. <http://www.osce.org/odihr/13986>

<sup>18</sup> See below. For an example of the variety of country approaches in abolitionism: the latter situation occurs in France according to the literal interpretation of the Penal Code and in Sweden by jurisprudential interpretation, but not in Italy nor in Spain.

### 5c) New models of prostitution policy

In recent years, political thought and public debate have been leading states' policies and public debates either in the direction of a transformation of policies (mainly abolitionist in Western Europe and prohibitionist in Eastern Europe) into open repression (including the “neoprohibitionist” criminalisation of the client, sparing the prostitute), or towards the acceptance in the public sphere of the exchange of sex for money, through the approval of regulations that, unlike those of the 19<sup>th</sup> century, try not to be punitive towards prostitutes but to protect them by giving their profession the status of a real job (“neoregulationist models”). The concept of prostitution as a consensual act between two adults is instead rejected in client criminalisation, that can be called *neoprohibitionism*, as its rationale is much different from classical prohibitionism. Although the prohibition to purchase sexual services implies the impossibility of selling them, and therefore is actually a prohibition against the market of sex in general, the declared objective of this policy model has remained the abolitionist goal of cancelling prostitution so as to diminish violence against women. Sweden, the first country to<sup>9</sup> introduce this new model, expressed a refusal of the reduction of women to sexual objects for male use and consumption, in a country that is very proud of being among the best in the world for the indicators of gender equality. The client is seen as ultimately responsible for prostitution and trafficking in human beings, as in this quote from a Swedish governmental source: «Prostitution and trafficking in human beings require a demand among men for women and children, mainly girls. If men did not regard it as their self-evident right to buy and sexually exploit women and children, prostitution and trafficking in human beings for sexual purposes would not exist» (Ministry of Industry 2005, 1-2). The john also commits, according to radical feminists, a very concrete act of sexual violence (from which the expression “sexual exploitation”, that made its way into international law texts as the Palermo convention) indistinguishable from a rape. *Nota bene* that for separatist radical feminism all relations between men and women are expression of the oppression of women<sup>8</sup> – a position that contemporary abolitionists adopt only in part, applying it only to prostitution.

These two opposite models have been introduced since the end of the 90s. First Sweden in 1999 started penally prosecuting clients (Norway and Iceland followed in 2009), then in the course of the next two years the Netherlands and Germany chose a neoregolamentarist approach, the Netherlands maintaining voluntary health checks, as this proved to be effective. Another interesting characteristic of the Netherlands is the possibility for invalids and disabled people to claim recourse to sex workers as health care.

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<sup>8</sup> This position is found in the writings of American feminist Andrea Dworkin and Kathleen Barry and of British Sheila Jeffreys, all supporters of the criminalisation of clients.

## 5d) Summary table of states and policy models

In sum, in contemporary history there have been three main legislative models dealing with the sex trade phenomenon: *prohibitionism* that deems prostitution immoral sanctioned both the seller and the buyer; *reglamentarism* which considered it a necessary evil that had to be limited and controlled by keeping a tab on prostitutes to stop them from working if they suffered from venereal diseases; *abolitionism* that fought for the abolition of vexatious regulations towards prostitutes, because it saw them as a manifestation of male oppression toward women, and liberalized the act of prostitution itself while seeking to prosecute pimping, the traffic in women and, in the versions of abolitionism concretely implemented, also the organization of indoors prostitution and its aiding and abetting. To these classical models, two new models have been added: *neoprohibitionism* with its client criminalisation, and *neoregulationism*, not punitive towards prostitutes. Abolitionism has been modified legally permitting prostitution indoors.

| <b>Prohibitionism</b>  | <b>Abolitionism</b>   | <b>Regulationism with health checks and licenses</b>   |
|--|---|--|
| Lithuania ( <i>administrative illicit</i> )<br>Malta ( <i>soliciting is a crime</i> )<br>Romania ( <i>being a professional prostitute is a crime</i> ) | Bulgaria<br>Czech Republic<br>Cyprus<br>Denmark<br>Estonia<br>Finland<br>France<br>Ireland<br>Italy<br>Luxembourg<br>Poland<br>Portugal<br>Slovakia<br>Slovenia<br>United Kingdom | Greece<br>Hungary ( <i>outdoors only in restricted areas</i> )<br>Latvia ( <i>only indoors</i> ) |
| <b>Neoprohibitionism</b>   | <b>Abolitionism with legal indoor prostitution</b>  | <b>Neoregulationism</b>  |
| Sweden ( <i>attempting to buying sexual services is a crime</i> )  | Belgium ( <i>local regulations</i> )<br>Spain   | Austria ( <i>with compulsory health checks</i> )<br>Germany<br>The Netherlands                   |

Table 5d: Provisional categorization of policy models

In abolitionist countries the legislation varies as what is legal in the activities surrounding the private act of sex-money exchange, but also the laws in the other models of regulation and prohibition differ.

As prostitution must take place in a particular setting and has various forms of organizing, the legislation often intervenes in which forms of prostitution and organization are legal and which are not. The practice can vary: some abolitionist countries tolerate prostitution indoor and/or in certain areas at the local level, as Belgium and Spain: in Spain third parties are not criminalized, and in Belgium, where some cities have a regulationist approach, it is illegal for them to get abnormal profits.

## 6) Prostitution markets

The different markets in which exchanges between sexual services and money can be analysed ideal-typically according to the various forms related to the places and ways in which the exchange between sex and money usually occurs, the reasons behind supply and demand, the cataloguing of the interests at stake between the different parties that, directly or indirectly, participate in the exchange. I will describe a series of ideal-typical characteristics of the various modes of conduct of prostitution: a theoretical exercise, yet based inductively on the data that emerges from existing literature, both from sociological research and from extensively narrated life stories.

The economic exchange between prostitute and customer takes place in the same way as any other commercial relationship, in which the prices are established by the circumstances of supply and demand in the market, with the selling party that generally tries to provide their services at the lowest level, always establishing the limits for their own involvement (a refusal to kiss, to be touched unless an extra sum is paid, the need to use condoms as a physical barrier), while the buyer tries to obtain a better service for the same money.

The first distinction between forms of sex trade is based on the place where the meeting between the customer and prostitute takes place: indoors or outdoors.

### 6a) Legal provisions regarding prostitution in general

While prohibitionism applies acts of prostitution everywhere, also other penal law provisions can be applied both to indoor and outdoor activities: those against aiding/abetting (including recruiting) and exploitation.<sup>19</sup> They are called “actions of third parties,” and their range – taking as example the Swedish penal code where *koppleri* refers to «anyone who favours or unjustly profits from the fact that another person engages in occasional sexual relations in return for payment» (Penal Code, cap. 6, § 12) – goes from managing a brothel to exercising psychological influence in the decision of another person to prostitute herself, to publishing advertisement, and so on. A partner who lives off the earnings of a prostitute inevitably commits procuring, since the obligation in Swedish (and many other countries') law of cohabiting couples to support each other does not apply in the case of prostitutes. Any child over 18 who lives with a prostitute and benefits from her earnings can be charged. The same applies to flat owners who are aware that prostitution happens on their premises.

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<sup>19</sup> It is useful to remind that prosecution can be sporadic. In the second part of the Report (to be compiled) the actual use of the legislation will be presented.

GEOGRAPHICALLY SUBDIVIDED TABLES

|  | Sweden | Great Britain   | Ireland | Italy | France | Denmark | Austria | Germany | Netherlands | Spain |
|--|--------|-----------------|---------|-------|--------|---------|---------|---------|-------------|-------|
| Exploiters, pimps  | X      | X               | X       | X     | X      | X       | X       | X       | X           | X     |
| Panderers, aiders and abettors for gain                    | X      | X               | X       | X     | X      | X       |         |         |             |       |
| Partially or totally living off the prostitution of others | X      | X               | X       | X     |        | X       |         |         |             |       |
| Panderers, aiders and abettors without gain                | X      |                 |         | X     | X      |         |         |         |             |       |
| Recruiters even without gain                               |        | X <sup>20</sup> | X       | X     | X      | X       |         |         |             |       |
| Clients (in general)                                       | X      |                 | X       |       |        |         |         |         |             |       |
| Prostitutes (in general)                                   |        |                 |         |       |        |         |         |         |             |       |
| Prostitutes soliciting without a licence                   |        |                 |         |       |        |         | A       |         |             |       |

*Table 6a.1: Penalisation of actors in prostitution in general, both indoors and outdoors. Western Europe (states that I have studied thoroughly, the order goes roughly from the most to the least repressive)*

**(some categories do not apply to all states: see tables by policy models on page 34-35)**

X=criminal offence

A= administrative illicit

<sup>20</sup> Gain should be enjoyed by a third party.

|  | Belgium | Greece | Portugal | Finland | Cyprus | Luxembourg | Malta |
|--|---------|--------|----------|---------|--------|------------|-------|
| Exploiters, pimps  | X       | X      |          | X       | X      | X          |       |
| Panderers, aiders and abettors for gain                    |         | X      | X        |         | X      | X          |       |
| Partially or totally living off the prostitution of others |         | X      |          |         |        |            |       |
| Panderers, aiders and abettors without gain                |         |        |          |         |        |            |       |
| Recruiters even without gain                               |         |        | X        |         | X      | X          |       |
| Clients (in general)                                       |         |        |          |         |        |            |       |
| Prostitutes (in general)                                   |         |        |          |         |        |            | X     |
| Prostitutes soliciting without a licence                   |         | X      |          |         |        |            |       |

Table 6a.2: Penalisation of actors in prostitution both indoors and outdoors. (W-EU other countries)

|  | Romania | Poland | Czech R. | Hungary | Bulgaria | Slovakia | Lithuania | Slovenia | Latvia | Estonia |
|--|---------|--------|----------|---------|----------|----------|-----------|----------|--------|---------|
| Exploiters, pimps  |         |        | X        | X       |          | X        | X         | X        | X      | X       |
| Panderers, aiders and abettors for gain                    | X       | X      | X        | X       |          |          | X         |          | X      | X       |
| Partially or totally living off the prostitution of others | X       | X      |          | X       |          | X        |           |          |        |         |
| Panderers, aiders and abettors without gain                | X       |        | X        |         |          |          |           |          |        |         |
| Recruiters even without gain                               |         | X      | X        |         | X        |          |           |          |        |         |
| Clients (in general)                                       |         |        |          |         |          |          | A         |          |        |         |
| Prostitutes (in general)                                   | X       |        |          |         |          |          | A         |          |        |         |
| Prostitutes soliciting without a licence                   |         |        |          | X       |          |          |           |          | A      |         |

Table 6a.3: Penalisation of actors in prostitution both indoors and outdoors. Eastern European states.

PÉNALISATION DE LA PROSTITUTION ET  
DU RACOLAGE

TABLEAU COMPARATIF

|  | Allemagne   | Belgique  | Danemark                             | Espagne                                 | Italie   | Pays-Bas                                | Angleterre   | Suède                        |
|--|---|---|--------------------------------------|---|--|---|--|------------------------------|
| <b>Sanctionne-t-on pénalement :</b>  |   |   |                                      |   |  |   |  |                              |
| <b>- l'exploitation d'un établissement de prostitution ?</b><br>(cas général)                | oui, jusqu'à 3 ans de prison ou une amende <sup>1</sup> | oui, mais elle est tolérée en pratique                              | oui, jusqu'à 4 ans de prison         | non                                     | oui, 2 à 6 ans de prison                             | non                                     | oui, jusqu'à 3 mois et/ou amende   | oui, jusqu'à 4 ans de prison |
| <b>- la prostitution individuelle, libre, d'un majeur ?</b>                                  | non   | non   | non                                  | non                                     | non  | non                                     | non  | non                          |
| <b>- le racolage ?</b><br><br>celui-ci fait-il l'objet d'une réglementation administrative ? | non<br><br>oui, règlements des <i>Länder</i>            | oui, 8 jours à 3 mois de prison<br><br>oui, règlements des communes | oui, au plus 1 an de prison<br><br>2 | non<br><br>oui, règlements des communes | oui, amende<br><br>oui, règlements des communes<br>3 | non<br><br>oui, règlements des communes | oui, amende et si première infraction, participation à des réunions pour sortir de la prostitution | non<br><br>2                 |
| <b>- Le proxénétisme ?</b><br>(cas général)  | oui, 6 mois à 5 ans de prison                           | oui, 1 à 5 ans de prison  | oui, jusqu'à 4 ans de prison         | oui, 2 à 4 ans de prison et amende      | oui, 2 à 6 ans de prison et amende                   | jusqu'à 8 ans de prison ou amende       | oui, jusqu'à 7 ans de prison   | oui, jusqu'à 4 ans de prison |
| <b>- le client d'un(e) prostitué(e)?</b>   | non   | non   | non                                  | non                                     | non  | non                                     | oui, si contrainte exercée par un tiers  | oui                          |

<sup>1</sup> Sous les réserves mentionnées dans la note.

<sup>2</sup> La recherche n'a pas permis de déterminer la situation dans ces deux États en la matière.

<sup>3</sup> Leur légalité est discutée

Source: Sénat de la République Française, *Note sur la pénalisation de la prostitution et du racolage. Allemagne – Belgique – Danemark – Espagne – Italie – Pays-Bas – Royaume-Uni (Angleterre et Pays de Galles) – Suède*, March 2013, p. 11

## 6.1) Outdoor prostitution

In the category of *outdoor prostitution* there is only one form, namely street prostitution, characterised by the waiting for the customer by the prostitute in an outdoor place. Sexual services take place in a (semi-)public location in the customer's vehicle (in the majority of cases in almost all countries) or in a private space such as a hotel or an apartment.

The price of service is minimal since there are no infrastructure costs to pay (except in the case of the use of a hotel room, a cost that is directly borne by the customer). This is an economic advantage for both the customer and the prostitute that doesn't need to incur in any fixed cost nor has to plan her activity as is the case of indoor prostitution. The interaction is also reduced to a minimum, even only a few minutes for the act, a quarter of an hour in total for the transaction: this fact is generally considered an advantage by the prostitute but a disadvantage for the customers.

The street as a place of work may represent the optimal situation for the prostitute from the point of view of the independence and management of her own earnings, at least in the best case scenario: maximisation of their share of earnings for each sexual act depends practically on the circumstances of entering into the world of prostitution (voluntary or forced), on the prostitute's personal relations with their partner (if there is a relationship of psychological dependence and abuse with a pimp), on the presence of criminal organisations that control the territory and deduct from the woman a fixed daily amount from her earnings. According to existing sources, those sums extorted however remain lower than both the costs of renting an indoor space intended for prostitution and the percentage deductions that are made by the operators of brothels. In hotels generally prostitutes have to pay the rent of a room every time it is used, and not for the entire day.

Many sources have emphasised that in several places in Europe, already for some time now, it is no longer necessary to use the services of a "protector" in order to engage in street prostitution.

With regard to the characteristics of independence of outdoor prostitution, these derive from the fact of being able to choose the hours of work, even if the practical observation shows that the presence of professional prostitutes is very assiduous, which is part of the ethics of the trade. If there will be dynamics of solidarity or competition between prostitutes that work the same area depend on market conditions (insufficient or excessive supply). In general professionals create "cartels", standardising the price of services and imposing the use of condoms, and strive to limit the supply of prostitution also resorting to violence against newcomers.

A component (considered marginal by "professional") that finds the street as the most congenial place to exercise the trade, is heroin or crack addicts, not accepted elsewhere<sup>21</sup> also

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<sup>21</sup> This difficulty to be accepted in the organised world of indoor prostitution concerns older women, too.

due to their lack of self discipline. But it is the urgency of making money to obtain a dose to avoid the abstinence crisis them particularly oriented to work on the street, to accept lower sums of money, to establish less limits on their services, or to waive the use of condoms. They generally work the streets near places of drug dealing, and vice versa pushers share the same interest to be present in places where addicts collect money.

The choice to engage in prostitution to raise the large sums needed for the purchase of drugs on the black market is a typical female choice as opposed to that of men that steal or become drug dealers. It is more suited to the female role and is also preferred because it is not detrimental to others. Another important reason is that the act of prostitution is generally not legally sanctioned and generally does not involve the risk of being sent to prison (see also table on page 21).

In street prostitution the most obvious disadvantage for women is that they find themselves alone, generally in an isolated place during bodily with the customer. The exposure to male violence against women, in particular against a woman that is looked down upon as a whore, against which violence appears socially legitimised, is therefore very high: there are frequent episodes in which the man refuses to pay or takes back the money after the sexual service, where the woman is forced to perform services not negotiated, where the earnings that the prostitute carries with her are stolen. Often there are also reported cases in which members of the police force take advantage of their position to blackmail these women and carry out these same abuses.

The strategies to defend themselves from violence and robberies involve other people: their colleagues memorise car number plates, other people periodically collect the money earned and men judged dangerous are rejected.

From the point of view of the customer, street prostitution, in addition to representing a lower cost, may have a special attraction for the very reason that it binds sex to risk (especially in the case of sex that takes place in a car), for the anonymity better guaranteed than frequenting brothels or night clubs, due to the opportunity to choose by slowly cruising around in a car, a behaviour in itself rewarding that often results in no sexual relations.

The attraction of the street at night, between danger and prohibition, is another reason that distinguishes the experience that the customer has of outdoor prostitution rather than engaging with prostitutes indoors. However in areas where in the Netherlands street prostitution is confined (*tippelzonen*), this assumes less wild characteristics: motorists enter a fenced-off area, drive along a set path where the prostitutes are waiting and finally park into specially designed lots, visually isolated from each other.

The fact that the supply is clearly visible to all passers-by and does not require them to go to a particular place (except in the case where policies of confinement of prostitution in marginal areas are adopted), can have the effect of increasing demand, as was probably the case with the arrival in many places of women judged to be particularly attractive (white) coming from the countries experiencing economic crisis in Eastern Europe. The phenomenon of the "saviour" customer that falls in love with the prostitute and tries to take her off the street has become very evident in recent years.

In general, open air prostitution tends to concentrate spontaneously around stations, places of intense traffic, in the vicinity of ports (this also relates to indoor prostitution), while contrarily the authorities tend to restrict it to industrial or office areas, so that there are no residents that can be disadvantaged by the presence of this trade. The latter are important social actors in political dynamics that involve outdoor prostitution: given the stigma of the act of exchanging sex for money, the presence of prostitutes in residential neighbourhoods, if this has not been the case for a long time, causes a high level of rejection. The moral judgement on the sex trade is not the only reason for conflict: residents are also mobilising due to the public nuisance caused by negotiations and interactions between prostitutes and between

prostitutes and clients, due to the danger of the presence of exploiters, due to the discarding of used condoms in the streets of the neighbourhood, due to the traffic of potential customers and the trouble that the latter can cause for women residents of the neighbourhood.

Another typical argument is the difficult management of the information on prostitution towards children noticing the phenomenon.

A strictly economic matter, instead, is the decrease of the value of homes for their owners when a neighbourhood is downgraded by the presence of prostitution for the reasons listed above. Tenants are on the contrary not economically disadvantaged by street prostitution.

The forms of action that have been undertaken range from the simple request for the intervention of the police to take personal action, with patrols of vigilantes or popular torchlight processions, in order to physically move prostitutes from a particular area.

Upon examination prostitution in windows and the form with soliciting from windows or from the doorway of the home or at a hotel could be considered as midway between the two forms of the indoor and outdoor sex trade. When customers are in the street, the reaction of the neighbourhood in the areas where the windows are located is often identical to that of places where true outdoor prostitution takes place; the public location creates conflict for the same reasons that relate to street prostitution. Attempts to establish areas delegated to street prostitution also normally clash with opposition from residents.

The police, even in the absence of special provisions that legitimise their intervention against street prostitution, have often used to combat the phenomenon more generic rules to protect public order or laws relating to road traffic, used both against prostitutes and against customers, mostly at the instigation of formal protests organised by residents of the streets where prostitution takes place.

### 6.1a) Legal provisions regarding outdoor prostitution

|  | Sweden | Great Britain             | Ireland         | Italy | France | Denmark | Austria | Germany | Netherlands | Spain                  |
|--|--------|---------------------------|-----------------|-------|--------|---------|---------|---------|-------------|------------------------|
| Prostitutes passively soliciting               |        | A<br>(common prostitutes) | X <sup>22</sup> |       |        | X       |         |         |             |                        |
| Prostitutes actively soliciting                |        | A<br>(common prostitutes) | X               |       | X      | X       | X       |         |             | Forbidden in Catalonia |
| Clients (kerb crawlers)                        |        | X                         |                 |       |        |         |         |         |             |                        |
| Prostitutes soliciting outside permitted areas |        |                           |                 |       |        |         | X       | X       | X           |                        |
| Clients outside permitted areas                |        |                           |                 |       |        |         |         | X       |             |                        |

Table 6.1a.1: Penalisation of actors in outdoor prostitution.

(some categories do not apply to all states: see tables by policy models on page 36-37)

X=criminal offence; A= administrative illicit

<sup>22</sup> Loitering for the purpose of prostitution is forbidden

|  | Belgium | Greece | Portugal | Finland         | Cyprus | Luxembo<br>urg | Malta |
|--|---------|--------|----------|-----------------|--------|----------------|-------|
| Prostitutes passively soliciting               |         |        |          |                 |        |                |       |
| Prostitutes actively soliciting                | X       | X      |          | A<br>(Helsinki) |        |                |       |
| Clients (kerb crawlers)                        |         |        |          |                 |        |                |       |
| Prostitutes soliciting outside permitted areas |         |        |          |                 |        | A              |       |
| Clients outside permitted areas                |         |        |          |                 |        |                |       |

*Table 6.1a.2: Penalisation of actors in outdoor prostitution.*

|  | Romani<br>a | Poland | Czech<br>R. | Hungar<br>y | Bulgari<br>a | Slovaki<br>a | Lithuani<br>a | Sloveni<br>a | Latvia | Estonia |
|--|-------------|--------|-------------|-------------|--------------|--------------|---------------|--------------|--------|---------|
| Prostitutes passively soliciting               |             |        |             |             |              |              |               |              |        |         |
| Prostitutes actively soliciting                |             |        |             |             |              |              | A             |              | X      |         |
| Clients (kerb crawlers)                        |             |        |             |             |              |              |               |              |        |         |
| Prostitutes soliciting outside permitted areas |             |        |             | A           |              |              |               |              |        |         |
| Clients outside permitted areas                |             |        |             |             |              |              |               |              |        |         |

*Table 6.1a.3: Penalisation of actors in outdoor prostitution.*

## 6.2) Indoor prostitution

While street prostitution has few problems reaching its market, this represents the main concern for indoor prostitution, a category that includes all cases where the prostitute waits for her customer: an authorised brothel, an apartment, an Eros centre where she has leased a room, a massage parlour, a sauna, a nightclub, a bar, the lobby of a hotel, a restaurant, a shop window, a camper van, the window over the road from where the prostitute looks out. All these locations do not involve the appropriation of a public space, as opposed to outdoor prostitution (for intermediate situations see above).

Prostitutes that work as "escorts" (companions) can be placed in this category, too. Contact

with the client takes place through the intermediation of an agency for which she works, accompanying the client to dinner or other social events: any extra services are contracted directly with him.

Recourse to advertising is necessary. Small ads or real advertising spaces in printed publications, leaflets left in phone boxes or in other public places, and road signs. This fixed can even reach considerable figures and are incurred by the prostitutes or by the organisers of indoor prostitution. There are legal regulations that limit or prohibit prostitution publicity, even if they are disregarded or circumvented by resorting to screening activities: the massage parlour, the sauna, the strip club. This has the effect of raising the fee demanded for such insertions under these categories, an effect strengthened by the fact that, considering the high profits of prostitution (that will be soon discussed), the organisers of indoor prostitution are willing to pay higher rates.

However, sometimes free advertising by word of mouth between customers may be sufficient, or an agreement with taxi drivers that indicate to their customers the address of indoor prostitution locations. The passing of information will in any case be rewarded by the client, the prostitute, or the person organising the prostitution.

Indoor prostitution presents other additional costs with respect to outdoor prostitution: obviously the owners of the properties demand some form of reward for the use of their premises a reward that can be pushed to very high levels by the “risk premium” where penal codes forbid this kind of prostitution, or from monopolistic dynamics created by zoning (that is: only permitting indoor prostitution on certain roads) in other countries where space is excessively limited to contain the entire prostitution scene.

Depending on whether the costs of the use of premises are supported directly by the prostitute or by other persons, the organisers of prostitution, an important distinction between two forms in which the demanded service is provided is made, that could be defined “entrepreneurial” or “analogous to dependent employment”.

If fixed costs for the rent of the infrastructure are sustained by prostitutes, this implies the possibility that they don't profit from their own activity or they risk falling into debt if earnings are insufficient to cover fixed costs (that can also include other costs besides the rent, even if lower, such as the wage to the look-out, the supply of condoms, the cleaning of the premises). The payment of rent expenses is also due during the days in which the prostitute does not work, due to illness or other reasons. This situation of high instability is typical of the prostitution that is carried out in display windows, brothels, Eros centres.

On the contrary, in cases in which the encounter with a customer occurs in a strip club or at other public premises, at a massage parlour, at a sauna, the situation of the women that work there is more akin to that of an employee, it being understood that the profit always depends on the number of customers and on the services demanded and it is reduced by quite a high percentage for the managers of the afore-mentioned premises.

Those who work in an apartment will, in the best of circumstances, have to incur market costs related to the renting of the flat, if not they will also have to pay that surplus of rent that is demanded by many owners in order to benefit from the gains of the prostitution of their tenant.

Protests by residents may arise when the use of the premises for prostitution in their own apartment block or in the neighbourhood is discovered, and in many countries in which the sex trade is forbidden indoors, this can result in the risk of criminal charges. In the countries where the indoor form is illegal, the corruption of public officers responsible for the repression or management of the prostitution is a possible strategy that that can be carried out by the organisers in order to reduce this risk.

The risk of violence is lower if compared to outdoor prostitution since generally there are also other people at the premises: other prostitutes, organisers, bar tenders, people responsible

for look-out. Of course, excluded are those cases in which the prostitute works alone in an apartment: having a dog or coming to an agreement with her neighbours are strategies adopted in order to reduce the risk and to make the situation somewhat more controllable if compared to street prostitution. A great advantage, as opposed to street prostitution, is the fact of knowing the premises and the related furnishings, should the need arise to defend oneself physically.

Beyond the issue of safety, the development of indoor prostitution also means being able to wait for customers in a more comfortable environment as opposed to outdoors.

In order to explain the methods by which prostitution takes place at the various indoor premises, we will group them according to the additional services that are offered: other services relating to the body (saunas and massage parlours), socialising and entertainment (escorts, clubs and strip clubs), no service (brothel, Eros centre, apartment, display window, camper van) or benefitting from services offered by others (lobby of a hotel, restaurant, bar). But before moving on to describe these various situations we shall address another criterion of classification that gives rise to different effects on the manner in which the work is carried out: the situation of independence of the prostitute or her dependency on an organisational structure that she chooses to join.

In a brothel, an Eros centre, a massage parlour, a sauna, a strip club, a display window, and in some cases also in an apartment and in a camper van, if the prostitute works as dependent for an organisation, it is practically impossible for her to refuse a customer or his particular requests. Due to competition among the various women present at the premises and the fact of being potentially “on the waiting list” to work at precise premises, actually refusing a particular customer or not wanting to provide specific sexual services is subject to the approval of the organisation that has the power to decide if the prostitute will be able to continue to work in the premises managed by them or if she will be replaced. It’s much more probable that the management will side with the customer, source of revenue, rather than with the prostitute, while it is true that this depends on the market situation, which can be to the benefit of prostitutes if there are fewer women willing to carry out this task, and many potential organisers. Conversely, if competition among prostitutes is high and there are few organisers, the power lies with the organisers.

Also the practice of using condoms must become part of the official regulations established by the organisers of the premises, otherwise it becomes extremely difficult for the prostitute to impose her will to use them with customers, since these latter generally refuse to do so.

In all cases of prostitution in indoor dependent form, the prostitute must be subject to a form of discipline in terms of timetables, of ways to presenting herself to the customer, of relationships with the management.

Now we shall try to describe the procedures of indoor prostitution in the presence or absence of auxiliary services. We will start from the case of their absence: in apartments, in camper vans, in display windows and at Eros centres the encounter occurs in forms that are less hasty than street prostitution and generally (for this as for all other forms of indoor prostitution) a determined time span is negotiated, besides the type of services, generally half an hour. It should be remembered that generally the aspect of social interaction with the customer is frowned upon by the prostitute yet welcomed by the customer, where the prostitute in such case also sells the illusion of welcoming the act, evidently not only sexually but also with the client being considered as a complete person. Therefore, in this type of prostitution there is more room for the satisfaction of emotional needs of the customer but this doesn’t necessarily mean greater gain for the prostitute: it is true that the rates are higher but there are fixed costs to be supported.

The modern form of brothel is different from that of the XIX century and the first part of the XX century from the point of view of the prostitute because it is no longer her place of

residence and also from the perspective of the customer because the brothel has assumed a specialised function relative to sexuality and the premises no longer provide a space for male sociality. Night clubs and strip clubs have taken their place in allowing the expression of male camaraderie linked to relegation of the women to their sexual role.

There is then the prostitution that is added to other services relating to the body, and this occurs in the saunas and at massage parlours, obviously only at those premises that have such licences, in order to mask their true aim which is that of offering sexual services.

At those saunas and massage parlours where the sex trade is carried out, the customer pays an entrance ticket, the amount of which is withheld by the organisers, and the customer must arrange with the prostitute for sexual services, according to a tariff plan that is in any case established by the organisation in order to avoid disparity between different women.

With prostitution that offers the service of sociality (escorts, clubs and strip clubs) as, at least partially, is the case where prostitution is carried out at the premises that also offer entertainment services, there the prerequisite be able to speak the language of the customer, something that is quite important given that in many countries prostitution is engaged in mainly by immigrants. These forms of prostitution are the most expensive for customers and the most profitable for women (unless they are forced to work at night clubs under the most stringent of conditions where at the end they are left with only a fraction of the turnover, which can often happen to foreign women).

Within the realm of prostitution with male customers the escort service is the one that more closely resembles a free sexual as opposed to a prostitute type of relationship.<sup>23</sup> The escort agency receives a fee for the intermediation that takes place according to the telephone requests of the customer or according to a direct choice from a catalogue at the premises of the agency. Then the customer and the escort spend the night out together before the sexual act and the prostitute is paid for the entire time spent together with the customer, while sexual services are paid for apart. The relationship remains non-chosen, in other words it is chosen for the material benefits that it brings and not for the particular attraction of a customer (most prostitutes exclude a-priori any sort of attraction felt for those whom they know as customers), and moreover it is necessary to provide a form of attention oriented to the psychological wellbeing of the customer. This is considered an extra service, particular stressful and at times even more demanding than the sexual act, since it is more difficult to implement strategies to distance oneself mentally from what is taking place than when one is distancing oneself from the purely physical interaction of the sexual act.

Prostitution in night-clubs is carried out by girls that put on erotic shows while clubs are essentially luxury bars where there are women available to accompany customers, with whom they can later arrange a sexual service, to be performed in suitable places within the club or outside of it.

The earnings of organisers are represented, apart from a percentage of the prostitute's earnings, by the entrance ticket paid by the customer, and by the resale of alcoholic drinks, in particular bottles of champagne at exorbitant prices. In turn, the prostitute that manages to persuade the customer to order champagne receives a share of the profit. The fact that in these situations prostitutes are required to consume alcohol and the fact that there are economic incentives to drink in large quantities is undoubtedly a great disadvantage to this form of prostitution, in terms of health problems that can derive from it, as well as due to the danger of getting drunk and, therefore, not being able to defend one's own boundaries in the interaction with the customer.

With regard to the places that are used as a meeting place, exploiting the services offered by others (the lobby of a hotel, restaurant, bar), these are chosen above all because they offer the opportunity to meet lonely men far from their city. The tips to hotel porters and to supervisors

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<sup>23</sup> Apart from the offering of a "girlfriend experience", common in the USA.

are a fixed cost of this form of soliciting.

Prostitution that uses the bar or the hotel as the meeting place is usually the most traditional form of prostitution, performed by somewhat older women that accompany regular customers that are also senior. Often the gentrification of parts of towns remove these places and their traditional tolerance towards the sex trade, formerly an integral part of the social panorama.

### 6.2a) Legal provisions regarding indoor prostitution

|   | Sweden | Great Britain      | Ireland | Italy | France | Denmark | Austria | Germany | Netherlands | Spain |
|---|--------|--------------------|---------|-------|--------|---------|---------|---------|-------------|-------|
| Brothel keepers                         | X      | X                  | X       | X     | X      | X       |         |         |             |       |
| Room renters for prostitution of others | X      | X                  | X       | X     | X      | X       |         |         |             |       |
| Advertisers                             | X      | X (in phone boxes) | X       | X     | X      |         |         |         |             |       |

Table 6.2a.1: Penalisation of actors in indoor prostitution.

(some categories do not apply to all states: see tables by policy models on page 38)

X=criminal offence

A= administrative illicit

|   | Belgium | Greece | Portugal | Finland | Cyprus | Luxembourg | Malta |
|---|---------|--------|----------|---------|--------|------------|-------|
| Brothel keepers                         |         |        |          |         | X      | X          | X     |
| Room renters for prostitution of others |         |        | X        |         | X      | X          |       |
| Advertisers                             | X       |        |          |         |        |            |       |

Table 6.2a.2: Penalisation of actors in indoor prostitution.

|   | Romania | Poland | Czech R. | Hungary | Bulgaria | Slovakia | Lithuania  | Slovenia | Latvia | Estonia |
|---|---------|--------|----------|---------|----------|----------|------------|----------|--------|---------|
| Brothel keepers                         |         |        |          | X       | X        |          | X implicit |          | X      | X       |
| Room renters for prostitution of others |         |        |          | X       |          | X        |            |          |        | X       |
| Advertisers                             |         |        |          |         |          |          |            |          | X      |         |

Table 6.2a.3: Penalisation of actors in indoor prostitution.

## 7) Forced prostitution and trafficking in human beings

Not even the greatest or smallest degree of freedom and autonomy of prostitutes actually depends on the localisation in outdoor or indoor places: in both cases there can be mobs that control the premises or the area with violence or the classic pimp that entices and then exploits women. The degree of freedom depends not only on who the organisers are and by what methods they operate but also on the characteristics of the subjects that engage in prostitution. If the latter are young, it is easier to take them in or exploit them. They may be in a weak position because they are living in a country without papers, probably with a debt to be settled having been brought into the country illegally, or perhaps they are being bought and sold between the different figures that supervise trafficking of illegal immigrants.

The current pauperisation in Eastern Europe, with the transition to a capitalistic system, and in Third World countries/the Global South guarantees that the supply for prostitution, that in many places is no longer assured by native women as in the past, will not decrease. In fact it is not only assured by the action of criminals that cheat women by promising them non-existent jobs and then force them to engage in prostitution once they enter, generally legally, a foreign country (when they are not the same families that sell their young daughters to sex traffickers): emigrating to offer themselves as prostitutes on the market of Western countries is also a female strategy motivated by individual and familiar economic needs.

Intermediate situations between legality and illegality are the entry with a visa as an artist or dancer, as well as a tourist visa that doesn't permit employment. From existing sources it can be inferred that these channels are managed by organised groups upon the precise request of night club managers that "order" women according to their needs and sign a contract for their legal entry.

Another intermediate situation that is very widespread in the world of prostitution is when the migrant has accepted to use the services of traffickers or has actively sought them out but has been cheated on the amount of the sum to be paid as a fee once she has entered the country, on the conditions of activity in prostitution or on the profit that the organisation will draw from her prostitution. The sums upon which she has agreed, that seemed considerable given the difference in currency value, are indeed a tiny fraction of what customers pay. It is fairly easy to use these techniques to extort high sums from migrants since once they are in a foreign country without documents that allow them to stay legally (and often without a passport that is held by the traffickers), they are unable to resort to any authority.

These situations occur not only in the world of prostitution and not only towards women but perhaps in this world it occurs more often and the debt to be paid is more burdensome precisely due to the high profits that prostitution guarantees as opposed to other professions. Moreover, implicit in the practice of prostitution is the fact of appropriation of what could be called surplus value generated (or better taken) from the work of the prostitute that cannot take place in a concealed manner like other professions in which immigrants are exploited with the payment of low salaries. Instead it must take place directly, taking from the prostitute's hands (some/most of) the money that the customer gives her directly. This structural condition makes the economic exploitation explicit and the direct resorting to forms of violence more probable.

The problems with trafficking in human beings for forced prostitution are well known and acted upon (see also Directive 2004/81/EC, and Directive 2011/36/EU,<sup>24</sup> that should replace

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<sup>24</sup> In Art. 2, comma 2 it defines "position of vulnerability, which was left undefined in the Palermo protocol: "Position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved."

In comma 3 it leaves undefined "sexual exploitation": "Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour (etc)."

Framework Decision 2002/629/JHA for member states adopting it), but a less debated issue is prostitution in former East-Western European border zones, as in the Czech Republic close to the border with Germany, where an economic wasteland became a huge brothel where the buyers feel everything to everything taking advantage of the economic disparity between the two countries. There were reports on extreme exploitation by pimps and widespread requests for underage prostitution, in the inactivity of authorities (Schauer 2006).

### **7a) Legal notion of consent**

The distinction between free and forced prostitution is contested in the political debate by those that maintain that no woman, if she is not driven by poverty or by pathological psychological motivations, can rationally choose to become a prostitute. Therefore, this path is always undertaken as a result of a constraint: either directly physical, with the use of violence or threats, or psychological, with tricks used by pimps to exploit women, or economical.

This mechanism seems to be more plausible when referring to women/citizens of other countries rather than those who guarantee a minimum basic income or in which insurance policies against unemployment protect a large part of the population.

Depriving a-priori non citizens of the right to choose prostitution has been denounced as discriminatory by those who emphasise that economical constraint is the force that underpins most choices, not only that of engaging in prostitution.

The issue of the consent given to carry out prostitution is controversial: some assert the impossibility of giving one's consent to prostitution since it is an act contrary to human dignity or a form of violence against women, just as it is impossible to give one's consent to entering into a condition of slavery. Contrary arguments do not tie the concept of dignity to the use one makes of her/his sexual capacities. Even if all prostitution were indeed violence, models of intervention in cases of violence against women generally rely on the offer of help, leaving to women themselves to judge whether and when they need help without outside imposition. Feminist women's shelters have found that all other interventions, not based on the will of the woman to leave her violent partner, are deemed to failure. And most certainly political proposals to outlaw marriage or heterosexual relationships in order to fight violence against women would be deemed absurd from the majority of people taking part in them – same for prostitution, as sex workers' rights groups (and clients' organisations when they exist, as in the Netherlands) express the same position.

It is possible to use the category of free, non-forced prostitution when an adult gives consent to paid sexual relationships, adopting the legal definition of consent: without violence, threats or deceit operated directly by other subjects, the consent is valid. A more refined definition of consent, protecting the person basically still from violence, threats and deceit, can be found in art. 2 of the Directive 2011/36/EU. The economical constraint or social or psychological factors that can lead to the choice (or better: decision, given the complexity of the concept of “choice”) to engage in prostitution, do not affect this juridical notion of consent. Even the definition of prostitution as an act contrary to human dignity to which consent cannot be given is a definition not universally accepted, for example it is not accepted by the organisations of sex workers.

Using (as it is perfectly normal elsewhere) a legal notion of consent does not imply disregarding economical constraint nor morally accepting situations of inequality. These are structural problems that must be addressed. It does mean to respect an adult subject who makes choices starting from given social conditions, that can be unfavourable, but in respect to which the alternatives to prostitution are not provided, or are rejected because they are considered to be even more unpleasant than prostitution.

## 9) TABLES ACCORDING TO POLICY MODEL

### *Penalisation of actors in prostitution in general, both indoors and outdoors*

#### 9.1. ABOLITIONIST COUNTRIES (by population size), *indoors and outdoors*

X=criminal offence

A= administrative illicit

|  | Great Britain | France | Italy | Spain | Poland | Belgium | Portugal | Czech Rep. |
|--|---------------|--------|-------|-------|--------|---------|----------|------------|
| Exploiters, pimps  | X             | X      | X     | X     |        | X       |          | X          |
| Panderers, aiders and abettors for gain                    | X             | X      | X     |       | X      |         | X        | X          |
| Partially or totally living off the prostitution of others | X             |        | X     |       | X      |         |          |            |
| Panderers, aiders and abettors without gain                |               | X      | X     |       |        |         |          |            |
| Recruiters even without gain                               | X             | X      | X     |       | X      |         | X        | X          |

|  | Bulgaria | Denmark | Finland | Slovakia | Ireland | Slovenia | Estonia | Cyprus | Luxembourg |
|--|----------|---------|---------|----------|---------|----------|---------|--------|------------|
| Exploiters, pimps  |          | X       | X       | X        | X       | X        | X       | X      | X          |
| Panderers, aiders and abettors for gain                    |          | X       |         |          | X       |          | X       | X      | X          |
| Partially or totally living off the prostitution of others |          | X       |         | X        | X       |          |         |        |            |
| Panderers, aiders and abettors without gain                |          |         |         |          |         |          |         |        |            |
| Recruiters even without gain                               | X        | X       |         |          | X       |          |         | X      | X          |

*Penalisation of actors in prostitution in general, both indoors and outdoors*

9.2. ALL OTHER COUNTRIES AND POLICY MODELS, *indoors and outdoors*

|  | PROHIBITIONISM |           |       | NEOPROHIBITIONISM | REGULATION |         |        | NEOREGULATIONISM |             |         |
|--|----------------|-----------|-------|-------------------|------------|---------|--------|------------------|-------------|---------|
|  | Romania        | Lithuania | Malta | Sweden            | Greece     | Hungary | Latvia | Germany          | Netherlands | Austria |
| Exploiters, pimps                                    |                | X         |       | X                 | X          | X       | X      | X                | X           | X       |
| Panderers, aiders and abettors for gain              | X              |           |       | X                 | X          | X       | X      |                  |             |         |
| Partially or totally living off the prost. of others | X              |           |       | X                 | X          | X       |        |                  |             |         |
| Panderers, aiders and abettors without gain          | X              |           |       | X                 |            |         |        |                  |             |         |
| Recruiters even without gain                         |                |           |       |                   |            |         |        |                  |             |         |
| Clients (in general)                                 |                |           |       | X                 |            |         |        |                  |             |         |
| Prostitutes (in general)                             | X              | X         | X     |                   |            |         |        |                  |             |         |
| Prostitutes soliciting without a licence             |                |           |       |                   | X          | A       | A      | A                |             |         |

*Penalisation of actors in outdoor prostitution*

9.3. ABOLITIONIST COUNTRIES (by population size), *outdoors*

X=criminal offence

A= administrative illicit

|  | Great Britain             | France | Italy | Spain | Poland | Belgium | Portugal | Czech Rep. |
|--|---------------------------|--------|-------|-------|--------|---------|----------|------------|
| Prostitutes passively soliciting               | A<br>(common prostitutes) |        |       |       |        |         |          |            |
| Prostitutes actively soliciting                | A<br>(common prostitutes) |        |       |       |        | X       |          |            |
| Clients (kerb crawlers)                        | X                         |        |       |       |        |         |          |            |
| Prostitutes soliciting outside permitted areas |                           |        |       |       |        |         |          |            |
| Clients outside permitted areas                |                           |        |       |       |        |         |          |            |

|  | Bulgaria | Denmark | Finland         | Slovakia | Ireland         | Slovenia | Estonia | Cyprus | Luxembourg |
|--|----------|---------|-----------------|----------|-----------------|----------|---------|--------|------------|
| Prostitutes passively soliciting               |          | X       |                 |          | X <sup>25</sup> |          |         |        |            |
| Prostitutes actively soliciting                |          | X       | A<br>(Helsinki) |          | X               |          |         |        |            |
| Clients (kerb crawlers)                        |          |         |                 |          |                 |          |         |        |            |
| Prostitutes soliciting outside permitted areas |          |         |                 |          |                 |          |         |        |            |
| Clients outside permitted areas                |          |         |                 |          |                 |          |         |        |            |

<sup>25</sup> Loitering for the purpose of prostitution is forbidden

*Penalisation of actors in outdoor prostitution*

OUTDOOR PROSTITUTION IS ALWAYS FORBIDDEN IN PROHIBITIONISM

9.4. NEO/REGULATIONIST COUNTRIES, *outdoors*

|  | REGULATION |         |        | NEOREGULATIONISM |             |         |
|--|------------|---------|--------|------------------|-------------|---------|
|  | Greece     | Hungary | Latvia | Germany          | Netherlands | Austria |
| Prostitutes passively soliciting               |            |         |        |                  |             |         |
| Prostitutes actively soliciting                | X          |         |        |                  |             | X       |
| Clients (kerb crawlers)                        |            |         |        |                  |             |         |
| Prostitutes soliciting outside permitted areas |            | A       |        | X                | X           | X       |
| Clients outside permitted areas                |            |         |        | X                |             |         |

*Penalisation of actors in indoor prostitution*

9.5. ABOLITIONIST COUNTRIES (by population size), *indoors*

X=criminal offence A= administrative illicit

|   | Great Britain      | France | Italy | Spain | Poland | Belgium | Portugal | Czech Rep. |
|---|--------------------|--------|-------|-------|--------|---------|----------|------------|
| Brothel keepers                         | X                  | X      | X     |       |        |         |          |            |
| Room renters for prostitution of others | X                  | X      | X     |       |        |         | X        |            |
| Advertisers                             | X (in phone boxes) | X      | X     |       |        |         |          |            |

|   | Bulgaria | Denmark | Finland | Slovakia | Ireland | Slovenia | Estonia | Cyprus | Luxembourg |
|---|----------|---------|---------|----------|---------|----------|---------|--------|------------|
| Brothel keepers                         | X        | X       |         |          | X       |          | X       | X      | X          |
| Room renters for prostitution of others |          | X       |         | X        | X       |          | X       | X      | X          |
| Advertisers                             |          |         |         |          | X       |          |         |        |            |

INDOOR PROSTITUTION IS ALWAYS FORBIDDEN IN PROHIBITIONISM

9.6. NEO/REGULATIONIST COUNTRIES, *indoors*

nb: It is understood that brothels, when admitted, need a licence

|   | REGULATION |         |        | NEOREGULATIONISM |             |         |
|---|------------|---------|--------|------------------|-------------|---------|
|   | Greece     | Hungary | Latvia | Germany          | Netherlands | Austria |
| Brothel keepers                         |            | X       | X      |                  |             |         |
| Room renters for prostitution of others |            |         |        |                  |             |         |
| Advertisers                             |            |         | X      |                  |             |         |