

# **THE LEGALIZATION OF PROSTITUTION: MYTH AND REALITY**

**A Comparative Study of Four Countries**

**Hotline for Migrant Workers**



This project is funded by the  
European Union

 HEINRICH  
BÖLL  
FOUNDATION

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

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## Acknowledgements

This policy study was prepared with funding from the Heinrich Böll Foundation and the European Union. We wish to thank the Heinrich Böll Foundation for its extensive assistance in translating documents and initiating contacts with organizations in Germany.

I am grateful to all those who provided advice and support as I prepared this report; all errors of fact and judgment are mine. Thanks to Jan Tresman, Aviva Koby, Ruti Hostovsky, Adi Hadar, Lisa Richlen, Nadav Levinton, Gali Cochavi Ronen, Natalie Smith, Alice Nagele, Adva Cohen, Mina Psheticki, Gal Sever, Werner Haberzettl, Richard Warding, Dr. Norma Tarrow, Katharina Kötke, Ralph Amelan, Uri Sadeh.

Thanks to Hila Shamir for her help on the conceptual level in eradicating outmoded perceptions. Thanks to Dr. Merav Shmueli, Idan Halili, Adi Willinger, Efrat Rotem, and Shevy Korzen for their productive comments. Hotline for Migrant Workers volunteers and students at the Clinic for Combating Trafficking in Women at the Hebrew University have worked tirelessly to promote the rights of victims of trafficking in persons.

*This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of the Hotline for Migrant Workers and can under no circumstances be regarded as reflecting the position of the European Union.*

ISBN 978-965-7422-07-6

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## INTRODUCTION

During the course of almost any discussion on the subject of prostitution and trafficking in women, one or more of those involved argues that the solution is to legalize prostitution. Those who support this approach claim that legalization will enable criminal elements to be identified and removed from the sex industry; will protect women's rights; and will prevent a public nuisance. It is also claimed that the state will benefit from the taxation of the sex industry. Since a number of countries have gained practical experience in the legalization of prostitution, public debate on this question in Israel should be informed by this experience. As our study shows, the "legalization of prostitution" should not be seen as a homogenous concept. Different countries have introduced widely divergent arrangements or systems of legalization reflecting diverse approaches to prostitution. After presenting the principal features of the debate on the approach to be taken to prostitution and its institutionalization, we shall review the situation in Israel. Thereafter, we shall examine the arrangements for legalization as introduced in four countries, focusing on a number of aspects: The factors leading the country to legalize prostitution; the nature of the institutionalizing legislation; and the ways in which the process of legalization influenced all those involved – the victims of human trafficking and women engaged in prostitution, pimps and traders, and the position of state, particularly in economic terms. Lastly, we shall examine the ramifications of our study for Israel. Should the current policy be left intact or should it be changed; and if so – how? Can the legalization of prostitution provide a solution for the situation in Israel?

The present study is unique in terms of the diversity of the sources on which it is based. In addition to theoretical literature, empirical and updated information that was collected from reports issued by governmental authorities and NGOs in the Netherlands, Germany, Australia, and the state of Nevada in the USA. The comparison between these different countries aimed to enable a thorough examination of the systems introduced to legalize prostitution in their local economic, political, and sociocultural contexts. The Netherlands and Germany are two adjacent nations; both are members of the European Union and both have a similar basic profile. This selection was balanced with countries from other continents with sharply different conditions, as reflected in the distinct systems they have adopted for the legalization of prostitution. The information collected for the study reflects a broad range of ideological positions on the subject of prostitution, from those who view it as a form of exploitation and humiliation of women to those who see prostitution as just another job. In each of the countries examined we contacted experts and relevant public bodies – the police, the prosecution service, the Special Rapporteur on trafficking in women, and human rights organizations that assist the victims of trafficking, as well as organizations that help women in the sex industry to claim their rights. We sent identical questionnaires to these sources in order to examine all aspects of the process of institutionalization. In addition to the above-mentioned sources, the study is also based on the responses received from fifteen experts and organizations.

Numerous difficulties were encountered in the course of the study. Firstly, it is difficult to secure precise figures relating to the sex industry due to the inherent character of the phenomenon and the desire

of all those involved to minimize their own involvement. This difficulty was present even in countries in which prostitution has been legalized. For example, while governmental bodies tend to underestimate the scope of human trafficking within their territory, particularly due to the international interest in this subject, a converse argument was raised regarding the NGOs that assist the victims, who tend to emphasize the dimensions of human trafficking in order to raise public awareness and encourage the authorities to take action.<sup>1</sup> The numerical estimates included in the study take into account these reservations. Interpreting the existing data is also a far from straightforward task. An increase in the reported number of victims of trafficking during the years following the legalization of prostitution may be due to such factors as the enhanced professionalism of authorities and NGOs; heightened awareness of the issue; and the allocation of budgets.

A further difficulty encountered in the study was due to the fact that not all those we contacted provided responses. Moreover, some of the replies relating to the same country raised contradictions regarding the situation; sometimes it was difficult to separate facts from opinions. Two important issues were not included in the study since no information could be obtained. Although other studies have claimed that involvement in prostitution often has serious psychological consequences, the psychological condition of employees in the sex industry has not been the subject of serious study in the countries that have legalized prostitution. A further claim sometimes raised in debates on the legalization of prostitution is that legalization has a negative impact on women in

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<sup>1</sup> UNESCO, Statistical Commission and UN Economic Commission for Statisticians Europe, Working Paper No.16 , **Churning out Numbers: Trafficking and Statistics**, 2004. See: <http://www.unece.org/stats/documents/2004/10/gender/wp.16.e.pdf>

general; the legitimization granted to prostitution, it is argued, also legitimizes sexual harassment and the objectification of women. Since the impact of the legalization of prostitution on such aspects cannot be isolated from other influences, the study did not examine these arguments.

The study also encountered difficulties due to the lack of agreement between different countries, legal systems, and even different feminist approaches regarding the definition of basic concepts. The term “victim of trafficking” is an example of this. According to the radical feminist approach, most women involved in prostitution are victims of trafficking since they did not choose prostitution but were coerced into it by various circumstances, and since they do not work independently but rather (in most cases) through a “mediating agent” or a trafficker in women.<sup>2</sup> The other extreme of the spectrum is represented by organizations of sex workers, which argue that prostitution includes an element of choice, however restricted. These organizations argue that the inflation of estimates regarding the number of victims of trafficking is intended to create panic, while in practice many women wish to migrate for the purpose of prostitution but are prevented from doing so by draconian immigration laws.<sup>3</sup> The UN Protocol adopted an approach that

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<sup>2</sup> A. Dworkin, “Prostitution and Male Supremacy,” **Michigan J. of Gender & Law**, (1993), 1; K. Barry, **Female Sexual Slavery**, 1979; Idem, **The Prostitution of Sexuality**, 1995; J. Raymond, “Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand to Prostitution”, in M. Farley ed. **Prostitution, Trafficking And Traumatic Stress**, 2003, p. 315-332.

<sup>3</sup> P. Alexander, “Feminism, Sex Workers, and Human Rights,” in J. Nagle ed., **Whores and Other Feminists**, 1997, pp. 83-97; L. Agustin, “Migrants in the Mistress's House: Other Voices in the “Trafficking” Debate”, **Social Politics: Int. Studies in Gender, State and Society**, 2005, 96-117; **World Charter For Prostitutes' Rights**, 2005, available at: [http://www.walnet.org/csis/groups/icpr\\_charter.html](http://www.walnet.org/csis/groups/icpr_charter.html); D. Gallin, **Note on the International Sex Workers' Movement Global Labor Institute**, 2003: [http://www.global-labour.org/sex\\_workers.htm](http://www.global-labour.org/sex_workers.htm)



is closer to the former of these two positions, establishing that the offense of human trafficking occurs even if the victim of trafficking agrees to be trafficked.<sup>4</sup> This study adopts the definition included in the UN Protocol, the principal document on this subject in international law.

The range of definitions of “human trafficking” reflects profound divergences in attitudes toward the phenomenon of prostitution. The underlying attitude to prostitution is highly significant, since it determines the approach each country chooses to adopt – whether and how to legalize prostitution; which laws to enact and which laws to enforce strictly, and so on. We shall now turn to a review of the principal underlying approaches.

The **religious or conservative approach** views prostitution as a moral problem and a harmful aberration; this approach is common in Israel. During a Knesset debate, the proposal by MK Poraz to permit prostitution in residential apartments met with the following response: “Are you not ashamed... what a disgrace you bring on the Jewish people.”<sup>5</sup> This approach seeks to eliminate prostitution and will naturally oppose its institutionalization. As MK Benizri stated: “They came to Rabbi Yitzhak Arameh and told him, ‘In any case there are prostitutes, maybe we should make a special building and there they can do the same thing in one place.’ The rabbi’s response was simple: ‘We do not

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<sup>4</sup> **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Supplementing the United Nation Convention against Transnational Organized Crime** (2000), article 3B. Israeli law has also adopted this definition, establishing the rule that even if a woman expressed the desire to leave her country in order to work in prostitution, she will still be considered a victim of trafficking. See Sundry Criminal Applications 291/01, **Rivai v State of Israel**, Pador (unpublished) 3(1)01, p. 3.

<sup>5</sup> MK Yosef Ba-Gad of the Moledet party, February 12, 1996, during discussion of the Proposed Penal Code (Amendment No. 54), 5756-1996 (First Reading), 13<sup>th</sup> Knesset, Session No. 413.

introduce reforms for criminals.”<sup>6</sup> The underlying assumption behind this approach is that it is possible to eradicate prostitution through uncompromising law enforcement; accordingly, this approach tends to support the criminalization of all those involved in the phenomenon. Such a policy may create the public impression of a forceful campaign against prostitution; however, it entails a substantial economic price and has not proved effective in eliminating the phenomenon in the long term.<sup>7</sup> Opponents of this approach argue that criminalization merely forces prostitution underground, exacerbating the conditions in which women work and exposing them to heightened exploitation. Underground prostitution also hampers efforts to locate and assist the victims of trafficking and other women in the sex industry suffering from exploitation.<sup>8</sup> The criminalization of women involved in prostitution prevents them from complaining to the authorities if they are the victims of offenses; contributes to their negative stigmatization; and further limits the possibility of helping women to free themselves from prostitution.

The **liberal approach** accepts prostitution as a legitimate part of life and emphasizes the right of women to choose to work in the “oldest profession in the world.” This approach argues that it is impossible to combat prostitution, and criticizes the conservative approach for its hypocrisy and tendency to ignore the problem, which only exacerbates the coercion and exploitation that accompany prostitution. The liberal approach argues that legalization is intended to meet a natural need of men that should indeed be met, as long as this takes place without

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<sup>6</sup> Ibid.

<sup>7</sup> H. Reynolds, *The Economics of Prostitution*, 1986, p. 36.

<sup>8</sup> M. Kandel, “Whores in Court: Judicial Processing of Prostitutes in The Boston Municipal Court in 1990,” *Yale Journal of Law and Feminism*, 4 (1992), pp. 329-352.

coercion. The legalization of prostitution will lessen the harm involved in prostitution and offers a number of advantages: Those working in prostitution will be adults doing so of their own choice, without exploitation of minors and trafficking victims; the social stigma accompanying prostitution will be removed and the women involved will be able to live without shame; the state will receive income from taxes; public health will be better protected; prostitution will be circumscribed and will pose less of a nuisance to the general public; and the conditions in which women work will be improved. In Israel, the liberal call to regulate prostitution is supported by public figures such as former Member of Knesset Avraham Poraz; its supporters also include pimps and others active in the sex industry who are interested in securing legitimacy for their work and in freeing themselves of the fear of official persecution.<sup>9</sup>

The **radical feminist** approach also seeks to restrict the phenomenon of prostitution, though it focuses on the interests of the women involved. This approach views prostitution as a mechanism for social oppression and the exploitation of women. Most women, it is argued, do not enter prostitution of their own free will but due to a reality of poverty and limited opportunities. Numerous studies have shown that many of those involved in prostitution suffered abuse as children. Prostitution is one consequence of the trauma they have experienced, and it adds further physical and psychological damage.<sup>10</sup> This approach views

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<sup>9</sup> One brothel owner commented: "When a guy feels he needs to unload himself, he comes to an 'institute' (brothel). I don't see anything immoral in that... As long as there are a million clients a month... where is the immorality here?" A. Shavit, "The Bordello Is Over," **Ha'aretz**, November 2, 2001, p. 24.

<sup>10</sup> M. Farley and H. Barkan, "Prostitution, Violence Against Women and Posttraumatic Stress Disorder," **Women and Health**; 27 (1998), pp. 37-49; S. Hunter, "Prostitution is

prostitution as an institution that humiliates all women in society, preserves their image as sex objects, and perpetuates inequality between men and women. This approach opposes the criminalization of women involved in prostitution and advocates the criminalization of those who exploit them. It strongly opposes the legalization of prostitution, though for different reasons than those presented by the conservative approach. Radical feminists argue that the legalization of prostitution is analogous to the granting of a license to exploit women. Legalization will benefit men and weaken the status of women still further – particularly women employed in prostitution. It will drag more women and victims into the sex industry, weakening the motivation of the authorities to act to combat the human right violations that accompany prostitution. Legalization will not remove the stigma attached to prostitution, but merely remove it from the public eye, exacerbating the dangers to which women involved in prostitution are exposed. It will lead to the expansion of the sex industry, strengthening the status of pimps and clients at the expense of a struggle against the damages and victims of this phenomenon.<sup>11</sup> Just as no-one advocates institutionalizing other offensive phenomena such as pedophilia in order to “control” them, so there is no reason to legalize prostitution.

The **sex workers** approach supports the removal of legal restrictions relating to prostitution, but it emphasizes the rights of the

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Cruelty and Abuse to Women and Children,” **Michigan Journal of Gender and Law**, 1 (1994), pp. 1-14; **Prostitution, Trafficking and Traumatic Stress**, ed. M. Farley, 2003; M. Silbert and A. Pines, “Early Sexual Exploitation as an Influence in Prostitution,” **Social Work**, 28, 4 (1983), pp. 285-289.

A. Gur: “My pimp didn’t have to teach me anything – my dad already taught me it all at home.” “Incest as a Key Factor in the Decline of Women and Girls into Prostitution, Drugs, and Crime,” **Critical and Clinical Perspectives on Incest**, eds. Z. Seligman and Z. Solomon, pp. 457-482.

<sup>11</sup> Raymond, “Ten Reasons,” p. 325.

women involved as workers, rather than the protection of clients or the profits of pimps. This approach argues that women's choice to work in prostitution should be respected even if it is due to limited opportunities, and prefers to see women who migrate to another country to work in the sex industry as migrants rather than necessarily the victims of trafficking.<sup>12</sup> This approach argues that the women involved should be granted rights precisely because they are subject to violence and must be enabled to protect themselves.<sup>13</sup> Like radical feminists, sex workers are opposed to institutionalization, or at least to some of the restrictions it entails. For example, they may oppose the restriction of their activities to "tolerance zones," arguing that they should be free to decide where they wish to work.<sup>14</sup> The sex workers approach criticizes the radical feminist approach for what it considers a paternalistic attitude of victimization toward those involved in prostitution, ignoring the possibility that women may consciously and freely choose to work in this profession. Even if such women constitute a minority, as radical feminists claim, this minority is still entitled to make its voice heard.

Discourse on prostitution tends to be polarized and intolerant; each approach negates the others without responding in depth to their arguments. The absence of meaningful discussion and the entrenchment of each approach prevents cooperation between radical feminists and sex workers – cooperation that is vital in order to illuminate the many intermediate shades between the poles of trafficking victims and the model of the adult sex worker choosing to work in prostitution. It should

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<sup>12</sup> L. Agustin, "Migrants in the Mistress's House," pp. 96-117.

<sup>13</sup> P. Ostergren, **Sex workers Critique of Swedish Prostitution Policy**, 2004. available at: [http://www.swop-usa.org/news/Swedish\\_critique\\_world\\_news.html](http://www.swop-usa.org/news/Swedish_critique_world_news.html)

<sup>14</sup> **World Charter For Prostitutes' Rights**, 2005: [http://www.walnet.org/csis/groups/icpr\\_charter.html](http://www.walnet.org/csis/groups/icpr_charter.html)

be recalled that the situation in the field has become increasingly complex; no single approach can encompass all the existing nuances and variations. Prostitution itself, and the question of institutionalization, are multifaceted, and proposed changes to the status quo must be examined cautiously. Any change may have different and sometimes contradictory consequences for the different women involved in prostitution.

## **DIFFERENT SYSTEMS FOR PROSTITUTION AND LEGALIZATION**

Any policy on prostitution reflects one of the approaches discussed above and is influenced by local political, economic, and social factors. Policy comprises legislation and enforcement and may be seen as designed to serve those engaged in prostitution, in an effort to protect their rights; the public, out of concern for health and the prevention of nuisance; or the state, by procuring a portion of the profits of the sex industry. Focusing on legislation alone, a broad division can be seen between five different systems. Before presenting these systems, we should note that the way in which laws are enforced gives a better indication of the system than legislation alone. In most states in the USA, for example, all those involved in prostitution, including prostitutes and clients, are criminalized. In practice, however, the number of women prosecuted for prostitution is vastly greater than the number of clients, traffickers, and pimps combined.<sup>15</sup> Partial legalization criminalizes those involved in the sex industry, with the exception of women and clients; the latter will be criminalized only if they use the services of minors or, in

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<sup>15</sup> S. Law, "Commercial Sex: Beyond Decriminalization," *California Law Rev.*, 73 (2000), p. 527-610.

some jurisdictions, trafficking victims. The legalization of the women only, criminalizes all those involved, including clients, but excluding women. This is the approach adopted in Sweden. In a full legalization system, none of those involved are criminalized. The only offenses relating to prostitution are those drawn from general criminal law, such as kidnapping and rape. This approach has been adopted, for example, in New South Wales, Australia.<sup>16</sup>

The legalization of prostitution restricts prostitution in accordance with rules imposed by the state. In reality, the term “legalization” is misleading, since it can refer to a wide range of arrangements. In order to understand how legalization operates in any given country, it must be analyzed within the appropriate social, political, and economic context. Legalization may be applied with varying measures of regulation and supervision, each of which has ramifications in terms of those involved in the sex industry. The minimalist end of the spectrum is represented by the legalization of prostitution without any additional arrangements. General legislation (labor and contract laws, and so forth) apply to the sex industry just as they do to any other occupation, without any additional requirements or supervision. Conversely, at the maximalist end of the spectrum, the state controls and closely supervises the sex industry. This model includes numerous demands, such as registration fees, inspection of the criminal record of brothel managers,

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<sup>16</sup> J. Freeman, “The Feminist Debate Over Prostitution Reform: Prostitute’s Right Radical Groups, Radical Feminist and the (Im)possibility of Consent,” **Berkley Women’s Law J.** (1990), pp. 75-109; M. Jennings, “The Victim as Criminal: A Consideration of California’s Prostitution Law,” **California Law Rev.** (1976), pp. 1235-1284; R. Miller and N. Haltiwanger, “Prostitution and Legalization/Decriminalization Debate,” **Georgetown J. Gender & Law** (2004), pp. 207-42; J. Halley et al., “From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism,” **Harvard J. of Law & Gender** (2006), p. 335-423.

restrictions on the area of operations, and so forth. We shall distinguish three main types of institutionalization: Legalization that focuses on the client; legalization that focuses on women's rights; and legalization that emphasizes the economic interest of the state. Most of the models are not "pure," however; as we shall see, they may serve more than one goal.

**"Military" legalization** focuses on the health of the clients and is often seen during wartime, when the state seeks to prevent injury to the fighting capabilities of its soldiers. In the best scenario, this model requires women to undergo medical examinations. In the worst cases, the "brothels" established are no more than rape camps. Women – usually from the enemy population – are kidnapped, imprisoned, and forced to undergo examinations and, in some cases, sterilization and abortions. During the Second World War, Japan developed this system of brothels in which most of the raped women were Korean.<sup>17</sup> This study will not relate to this form of institutionalization.

**Instrumentalist-capitalist legalization** focuses on the effort by the state to secure profits from the sex industry. This type of legalization will lead to the granting of licenses to brothels, rather than to prostitutes; prostitution will be legal only within these brothels. The state will not tend to interfere in the running of these institutions, assuming that those involved are adults who are parties to a business agreement. The state gains taxes and collects fees for such "services" as the granting of franchises to the brothel, the issuing and annual renewal of employee

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<sup>17</sup> S. Jenkins-Vanderweert, "Seeking Justice for Comfort Women," **North Carolina Journal of International Law & Commercial Regulation**, 27 (2001), pp. 141-183; S. Park, "Broken Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum," **Asian-Pacific Law & Policy Journal**, 3, (2002), pp. 22-55.



cards, and so on. This form of legalization marginalizes women's rights while protecting the profits and property rights of the state and the brothel managers. In our study, Nevada and the state of Victoria in Australia represent this model of institutionalization.

**“Democratic” legalization** decriminalizes brothels and pimps and focuses on the rights of women involved in prostitution. The goal of this model is to ensure that women enjoy rights such as health insurance, dismissal compensation, and pensions. It is based on the assumption that prostitution can be combated and reduced, but not eradicated. This form of legalization does not regard prostitution as equivalent to any other job willingly undertaken; at the same time, it seeks to respect the decisions of the women involved and to protect their rights. The authorization to engage in prostitution is granted to the women themselves; the only requirement is that they must be above a given age and present lawfully in the country. This form of legalization imposes special restrictions that do not apply to other professions, particularly restriction to specific geographical areas and hours of work. This legalization is considered to offer various advantages, including: Removing the social stigma attached to prostitution; securing profits for the state; protecting public health; preventing a public nuisance; removing brothels from residential areas; and ensuring transparency to prevent criminals from becoming involved in the industry. It has also been argued that regular police inspections of brothels prevent coerced prostitution, prostitution of minors, and human trafficking. In our survey, democratic legalization is represented by the Netherlands and Germany and, to a limited extent, by Australia.

## PROSTITUTION AND TRAFFICKING IN WOMEN IN ISRAEL: LAW AND REALITY

Israel inherited from the British Mandate a model based on the partial criminalization of the sex industry. Prostitution and its consumption were not criminalized (with the exception of the clients of minor prostitutes), and criminalization was applied only to pimps and brothel managers. The model that has emerged in reality is completely different. Israel has never developed a declarative policy on the issue but, on a de facto level, the police and the prosecution have implemented a policy of “turning a blind eye” to the phenomenon, preferring to divert resources to more “important” fields of crime. Their policy has been welcomed by criminal elements interested in ensuring industrial peace and quiet. Accordingly, the decisions of the prosecution service have had far-reaching consequences for the fate of thousands of women, although the policy created by these decisions has never been discussed by the public, by the Knesset, or by women’s organizations. This policy may be considered tantamount to the de facto legalization of prostitution. The only serious public debate on the subject of prostitution took place in 1975, when a committee chaired by Judge Hadassah Ben Ito met to examine the issue in depth. The committee’s report was published in 1977.<sup>18</sup> Most of its recommendations were not implemented, with the

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<sup>18</sup> Ministry of Justice, **Report of the Committee for the Examination of the Problems of Prostitution**, 1977 (hereinafter – “the Ben Ito Report.”) The committee assumed that prostitution is a necessary evil that cannot be eliminated from human society. The committee’s recommendations focused on the question as to how young women can be prevented from entering prostitution, and how adult women who choose to work in the profession can do so without harming themselves or the public. For further details on the work of the committee, see: D. Amir and M. Amir, “The Politics of Prostitution and Trafficking of Women in Israel,” J. Outshoorn ed, **The Politics of Prostitution –**

exception of those that were consonant with the de facto policy, particularly the authorization of “tolerance zones.” The unofficial legalization of prostitution was reinforced in guidelines issued by the State Prosecutor’s Office in 1994, establishing that police investigations into offenses relating to prostitution should be instigated only when these involve minors, women who have been forced to enter prostitution, grave exploitation, violence, coercion, additional criminal activities, or nuisance to neighbors.<sup>19</sup>

The de facto policy that has emerged in recent decades has been manifested in various facets that combine to provide a picture of the nature of the unofficial legalization of prostitution. Firstly, from the time of its establishment the State of Israel imposed taxes on the sex industry.<sup>20</sup> It has been estimated that this industry has a total annual turnover of approximately one billion shekels, although the tax authorities provide only partial information on this income.<sup>21</sup> More importantly, in the main

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**Women’s Movement, Democratic States and the Globalization of Sex Commerce,** 2004, pp. 144-164.

<sup>19</sup> Section 2.2 of the guidelines issued by the State Prosecutor’s Office, **Policy for the Investigation and Prosecution of Offenses of Solicitation regarding the Provision of Escort Services and the Management of Massage Parlors**, 1994. The guidelines of the State Prosecutor’s Office from 2006 establish similar provisions; however, under the influence of the interest shown by the USA in the subject of trafficking in women, they are phrased in more cautious terms and reflect a clear value judgment that prostitution is a manifestation of deprivation, and pimping exploits deprivation.

<sup>20</sup> AMH (TA-Jaffa District) 923/62, **Wasserman v Assessing Officer, Piskei Mehozi** 38, 377.

<sup>21</sup> Minutes No. 2 of the Parliamentary Commission on the Subject of Trafficking in Women, January 18, 2005, on the subject “The Economic Struggle against Traffickers in Women: Should Tax Be Collected from Traffickers in Women? Will the Collection of Tax Grant Legal Legitimacy to the Criminal Actions of Traffickers in Women?” See also: Minutes No. 27, May 20, 2002, “The Economic Struggle against Trafficking in Women;” Minutes No. 9, November 26, 2003, “Financial Aspects of the Struggle to Eradicate the Phenomenon of Trafficking in Women – An Examination of Cooperation between the Israel Police and the Authority for the Prohibition of Money Laundering;” Minutes No. 12, February 17, 2004, “The Struggle by Law Enforcement Authorities against Organized Crime in General, and the Phenomenon of Trafficking in Women in Particular.”

cities “tolerance zones” have developed in which overt prostitution is concentrated. The areas involved are on the outskirts of cities, or in neglected areas; prostitution takes place in full view of the authorities, who simply turn the other way. The development of these areas may be attributed to the prohibition established by the legislator against the management of premises for the purpose of engaging in prostitution (as distinct from prostitution itself, which is not an offense). Judge Zussman and others have taken the position that a woman who engages in prostitution in the apartment in which she resides is not guilty of the offense of managing premises for the purpose of engaging in prostitution.<sup>22</sup> However, the Supreme Court judges disagreed, ruling that the legislator also intended to prohibit prostitution in the woman’s own apartment.<sup>23</sup>

Since both prostitution in the woman’s home and solicitation on the street are prohibited, the only remaining alternative is a brothel. By contrast to a woman engaging in prostitution in her home in an apartment block, and potentially causing a nuisance to her neighbors, the presence

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Responding to a request for information on income tax revenues in accordance with the Freedom of Information Law, Mr. Avi Cohen from the Planning and Economics Division in the Taxes Authority stated: “The procedure for the taxation of brothels does not differ from any other branch of the economy. The taxation of income in accordance with the Income Tax Ordinance does not distinguish between income of lawful origin and income whose origin is contrary to the existing law, such as brothels. Brothels are a business or vocation for any purpose, and accordingly the procedures for the taxation of this branch by the Taxes Authority are in accordance with section 2(1) of the Income Tax Ordinance (Revised), 5721-1961. Naturally, the fact of the taxation of this income is not tantamount to the legitimization of their unlawful operations... Brothels are not classified as a separate branch; accordingly, no information is available regarding the number of files or the tax charged... The policy regarding the taxation of internet sites offering escort services is identical to that adopted regarding other commercial internet sites, and in accordance with the Income Tax provisions.” Letter dated February 25, 2007. At the meeting of the Committee on May 16, 2007, partial and limited data were presented on this subject.

<sup>22</sup> CA 361/63, **Belgali v Attorney-General**, 18(3) 61,64.

<sup>23</sup> CA 94/65, **Turgeman v Attorney-General**, 19(3) 57.

of brothels in “tolerance zones” is not perceived as a problem, since the local population is too weak to demand their removal as a nuisance. The police is aware of these brothels, undertakes regular “inspections,” and does not seek to close them. The “inspections” are no more than an opportunity to make the police presence felt and to inspect the women’s papers. The existence of such “tolerance zones” is convenient for all those involved. Pimps are aware that the presence of overt prostitution in residential areas creates public hostility whereas in the “tolerance zones” police inspection is extremely lax.<sup>24</sup> Indeed, this inspection is so lax that for many years the police presence did not prevent the trafficking in women that took place in the brothels.<sup>25</sup> In recent years enforcement operations against trafficking and efforts to rehabilitate the victims have been expanded, although they are still far from adequate.<sup>26</sup> Thus, over the years, an attitude of tolerance has developed toward the sex industry, and particularly toward those who operate the industry – pimps and brothel managers.

Regarding the condition of women under the system of the unofficial legalization of prostitution, a number of aspects may be

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<sup>24</sup> Public opposition to prostitution may be gauged from the struggle by residents of a Tel Aviv neighborhood against a decision to establish a shelter for the victims of trafficking in the area. The neighbors organized an action committee and distributed leaflets stating: “The youth hostel will become a prison for young prostitutes. We will not permit such a scandal.” The committee was evidently less concerned that these same women were currently incarcerated in brothels around the old central bus station in Tel Aviv; ironically, the public considered the establishment of the shelter an intolerable measure.

<sup>25</sup>N. Levenkron and Y. Dahan, **Women as Commodities– Trafficking in Women in Israel**, Hotline for Migrant Workers, 2003.

<sup>26</sup>See the US TIP Report for 2006: <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>; T. Raviv and N. Levenkron, **Visas for the Victims of Human Trafficking in Israel: Vision and Reality**, Hotline for Migrant workers, 2006; H. Ben Israel and N. Levenkron, **The Missing Factor- Clients of Trafficked Women in Israel's Sex Industry**, Hotline for Migrant Workers and Hebrew University, 2005; Y. Livnat, **The Involvement of the State in Human Trafficking**, Kav La’oved, 2004.

examined. In terms of health insurance, Israeli citizens are entitled to receive medical treatment and services under the terms of the National Health Insurance Law. Unlike their peers in countries where prostitution is criminalized, women in Israel need not be afraid to report a sexually transmitted disease since prostitution is lawful. The Ministry of Health runs two STD clinics at which any person, even if they are present unlawfully in Israel, may undergo anonymous testing and receive free treatment for most STDs.<sup>27</sup> The clinic staff also works in the field, examining, advising, and treating people from disadvantaged populations, including women employed in prostitution. As for women's rights as workers, the courts have ruled that women working in prostitution may receive the protection of labor laws.<sup>28</sup> In one case, the National Insurance Institute paid compensation to women employed in prostitution who suffered physical injury.<sup>29</sup> To the best of our knowledge, however, no **Israeli** woman employed in prostitution has ever sued her employers.<sup>30</sup> In 2006, the labor court recognized the right of a victim of trafficking to sue those who subjected her to trafficking.<sup>31</sup> However, this right has only been used in a small number of cases, and only by victims who have received legal advice and counseling regarding their rights. In general,

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<sup>27</sup> For further details, see:

<http://www.health.gov.il/pages/default.asp?maincat=50&catid=267&pageid=1982>

<sup>28</sup> LC (Beersheva) 56 180-3, **Ben-Ammi v Galitzansky**, Piskei Din Avoda 37 755.

<sup>29</sup> The case involved injuries caused when a number of men attacked a brothel in Beersheva on November 2, 2000, including an arson attack. One of the injured women was a citizen of Uzbekistan; she was recognized by the National Insurance Institute as the victim of a work-related accident.

<sup>30</sup> In Galitzansky, the plaintiff argued that she was employed in the brothel as a cleaner, while the defendant who managed the brothel claimed that she worked as a prostitute. The court preferred the plaintiff's version; even if the defendant were right, however, and the plaintiff had indeed been engaged in prostitution, this would not have denied her the protection of labor law.

<sup>31</sup> IA 4634/03, **Moldonova v Salsaravsky et al.** (ruling dated July 11, 2005). An appeal on this subject is pending before the National Labor Court. For an opposing position in another case, see IA 5307/04, **Raro v Cochik** (ruling dated January 8, 2007).

since prostitution is not prohibited in Israel, women involved in prostitution can complain to the police of any offense committed against them, whether or not they are present in Israel lawfully. The main obstacle they face is the stigma that accompanies their profession; in practice, they are reluctant to file complaints, believing that they will not be believed and will be treated with derision.

### **“SHE NEEDS A ROOM, A SHOWER, AND TOWELS” – THE DEBATE ON THE LEGALIZATION OF PROSTITUTION IN ISRAEL**

Whenever the subject of prostitution is raised on the public agenda, legalization is raised as a magic solution that will solve the problems inherent in prostitution in general, and in human trafficking in particular. As we shall see, public discourse on the legalization of prostitution has hitherto been characterized by a tendency to avoid defining the term or considering the different methods of institutionalization. The Ben Ito Commission rejected the idea of institutionalizing prostitution for various reasons. Religious figures considered such a step sacrilege; feminists felt it injured the liberty of women; social workers argued that the official recognition of brothels would make it harder to prevent girls deteriorating into prostitution, since they would find it harder to understand why they should not choose a vocation that had been regulated by the legislator. It was also argued that restricting prostitution to brothels would make it easier for pimps to exploit women, and that registering women and obliging them to work in legalized brothels would be problematic for the women concerned. Women working in prostitution who met with the commission were also

opposed to institutionalization, partly because they believed that clients wishing to maintain their anonymity would be reluctant to attend legalized brothels, thus resulting in the emergence of underground prostitution and defeating the purpose of institutionalization. Some argued that concentrating brothels in a single location would create difficulties for the police and eliminate the practical benefits of institutionalization. Although legalization was rejected, however, it continues to be perceived as a miracle cure. Members of Knesset, police representatives, members of the general public, and even those involved in trafficking in women have also expressed their opinion on the subject, and almost all have argued passionately in favor of institutionalization, without explaining what they mean by the term. Even the courts have sometimes entered the fray, expressing an assumption that men have a need to be able to purchase sex, and even calling for the legalization of prostitution.<sup>32</sup>

Before presenting the public discourse on the subject, we wish to emphasize that in most countries that have introduced institutionalization, this was preceded by actions of women's organizations and organizations of sex workers supporting and promoting such change.<sup>33</sup> In Israel, women's organizations and organizations of those working in prostitution have never engaged in activities supporting institutionalization; the limited activities that have taken place have reflected solely the positions of radical feminism. In the early 1990s, a movement called "We Are Equal" was established to provide assistance for women working in prostitution. The movement published a journal and provided lectures on

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<sup>32</sup> See, for example, the position of (then) President Shamgar in CA 2885/93, **Tomer v State of Israel**, 48(1) 635, 638.

<sup>33</sup> See: **The Politics of Prostitution**, ed. J. Outshoorn, 2004.



the subject of prostitution.<sup>34</sup> This movement was an exception, however, and its activities had a restricted scope. It demanded that the women's voices be heard, but did not present any clear demands, apart from the call for its members to be involved in decisions of concern to them. The movement did not advocate the legalization of prostitution, and opposed the proposal by MK Avraham Poraz to pass a law permitting prostitution within private apartments.<sup>35</sup> The founder of the movement, Linda S., believed that prostitution is the product of deprivation; that it causes damage to the women involved; and that they should be helped to free themselves from this work.<sup>36</sup> The only activist in Israel who represents the approach of prostitution as work is Liad Kantrowitz.<sup>37</sup>

All the discussions that have taken place in Israel regarding the legalization of prostitution were initiated by Members of Knesset, police officials, traffickers in women, or pimps. In the vast majority of cases, these discussions were characterized by a high level of ignorance regarding prostitution in general and trafficking in women in particular. For example, in a survey carried out by Dr. Mina Zemah in 2004, 82 percent of the respondents stated that prostitution is illegal in Israel, despite the fact that, as already explained, it has never been criminalized. Only 14 percent were aware that prostitution is legal in Israel.<sup>38</sup> As a

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<sup>34</sup> Interview with Esther Eilam, March 11, 2007.

<sup>35</sup> Ibid.

<sup>36</sup> Interview with Linda S., March 19, 2007.

<sup>37</sup> G. Wergaft, "Workers of the Sex Industry in Israel – Unite," *Ha'aretz*, June 30, 2002; L. Kantrowitz, "Wayward and Trafficked," epilogue to the Hebrew-language edition of Nicky Roberts, *Whores Making History*, 2006, pp. 408-423.

<sup>38</sup> The survey was commissioned by the Knesset television channel. The findings of the survey were presented at a joint meeting of the Knesset Committee for the Struggle against Trafficking in Women and the Knesset Committee for Advancing the Status of Women held on July 19, 2005. The meeting discussed whether the legalization of prostitution in Israel would increase violence against women; Minutes No. 9 of the Committee.

result, discussion has mistakenly focused on the concept of making prostitution legal. The proposed solutions were the subject of fierce arguments among the Members of Knesset, but almost all were defeated.<sup>39</sup> During the sessions of the Parliamentary Commission of Enquiry into Trafficking in Women, MK Marina Solodkin expressed her support for the legalization of prostitution as a solution to the problem of trafficking in women. She did not clarify precisely what she meant by the term “institutionalization,” but emphasized a number of aspects she considered important: “I want this area to be under police and medical supervision, and for prostitution to be a Jewish-only profession.”<sup>40</sup> Similar views have occasionally been expressed by the police. For example, Deputy Commissioner Menachem Frank, in his position in the vice squad, stated: “My approach is that it is impossible to eradicate the phenomenon, but it must be legalized and brought under inspection.”<sup>41</sup>

Traffickers in women also seek to improve the status quo from their perspective. A representative of traffickers in women who appeared before the Parliamentary Commission of Enquiry into Trafficking in Women, headed by MK Zahava Galon, claimed that his goal was the “regulation of prostitution.” However, he too showed a total lack of knowledge regarding the legal situation: “I head a group of several people, some of them from the sex industry, who have set themselves the goal... I wouldn’t say of legalizing prostitution, because that’s something that rubs people the wrong way... but of regulating prostitution... The

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<sup>39</sup> See, for example, the minutes of the 153<sup>rd</sup> session of the Twelfth Knesset on February 19, 1990; the minutes of the 308<sup>th</sup> session of the Twelfth Knesset on June 12, 1991; and the minutes of the 420<sup>th</sup> session of the Thirteenth Knesset on February 12, 1996.

<sup>40</sup> Joint meeting of the Knesset Subcommittee on Trafficking in Women and the Committee for the Advancement of the Status of Women, July 19, 2005.

<sup>41</sup> A. Shavit, “The Bordello Is Over,” **Ha’aretz**, November 2, 2001, p.24.

goal is that within about five years prostitution should become legal in Israel.”<sup>42</sup> A further group supporting the legalization of prostitution is attorneys who represent traffickers in women. One attorney stated in the Knesset that the trafficker in women he represents recognized “the importance of this important public commodity of prostitution. He wants to improve the standard of prostitution. He brings beautiful girls from Moldova to Israel in order to do his best for the consumers. You may laugh, but we accept the basic assumption that this is an important social commodity, so it is important that the service should be at a high standard. I could lecture for an hour on the issue of the legalization of prostitution.”<sup>43</sup> Another attorney who represents traffickers in women stated: “From our perspective it is preferable that she should have a shower, a room, and towels; she should receive medical services and there should be someone who can inspect her. If the assumption is that she is going to do it anyway, then... At least let her do it in an organized and controlled way... We can call it legalization for lack of alternative.”<sup>44</sup>

In addition to examining principled attitudes to prostitution, the study undertaken by Mina Zemah also related to various models of institutionalization. The model of supervision and licensing received the highest level of support – 65 percent.<sup>45</sup> Legalization that protects the rights of women as workers secured a slightly lower level of support – 60 percent,<sup>46</sup> and 54 percent supported legalization in the form of permitting

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<sup>42</sup> Minutes No. 29 of the Parliamentary Commission of Enquiry into Trafficking in Women, June 18, 2002.

<sup>43</sup> Minutes No. 7 of the Parliamentary Commission of Enquiry into Trafficking in Women, June 5, 2001.

<sup>44</sup> Minutes No. 29 of the Parliamentary Commission of Enquiry into Trafficking in Women, June 18, 2002.

<sup>45</sup> 32 percent were opposed to this model; 3 percent did not reply.

<sup>46</sup> 32 percent were opposed.

women to engage in prostitution in their own homes.<sup>47</sup> These proposals, and many others, have been cast into the public arena over recent decades, fading away without any serious consideration, only to reemerge when the issue is again raised on the public agenda. This study seeks to break the vicious circle of hollow and misleading public discourse by offering an in-depth examination of the legalization of prostitution as it has been applied in four jurisdictions: The state of Nevada in the USA; Germany; the Netherlands; and certain states in Australia. The study examines the factors that were taken into consideration at the time of the decision to legalize prostitution; the nature of the legislation introduced for this purpose; the impact of legalization in terms of women engaged in prostitution and their pimps; whether legalization met the expectations; and whether it led to unexpected outcomes. Each of the following sections presents one of the above-mentioned jurisdictions, followed by a concluding discussion and an examination of the opportunities and risks presented by legalization in Israel.

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<sup>47</sup> 43 percent were opposed; 3 percent did not reply.

# LEARNING FROM EXPERIENCE: FOUR COUNTRIES THAT HAVE LEGALIZED PROSTITUTION

## THE LEGALIZATION OF PROSTITUTION IN NEVADA

The state of Nevada developed during the nineteenth century; during the Gold Rush, its population was disproportionately male.<sup>48</sup> Due to the dearth of women, prostitution was considered a “vital commodity” and a tolerant attitude developed to the presence of brothels. During the latter half of the twentieth century, various provisions were introduced restricting the operation of brothels (such as a minimum distance from schools or churches). The tolerant attitude toward brothels was often thought to be consonant with the fact that gambling and tourism form the economic basis of Nevada, alongside quarrying and agriculture.<sup>49</sup> In fact, however, the casino owners were actually opposed to the presence of brothels, arguing that these would give the state a bad reputation and deter tourists; they even organized a lobby to campaign for the closure of brothels. In 1971, the lobby managed to secure legislation prohibiting the granting of licenses for brothels in counties with a population of more than 250,000.<sup>50</sup> This law was interpreted inversely, since it implicitly permits smaller counties to open brothels. In 1978, the Supreme Court of

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<sup>48</sup> D. Sandowsky, “The Best Little Whorehouse Is Not in Texas: How Nevada’s Prostitution Laws Serve Public Policy and How Those Laws May be Improved,” *Nevada Law Rev. J.*, 6 (2005), pp. 217-247.

<sup>49</sup> N. Bingham, “Nevada Sex Trade: a Gamble for the Workers,” *Yale J. of Law and Feminism*, 10 (1998), pp. 69-99.

<sup>50</sup> This figure was later raised to 400,000. Since there are only two counties in Nevada with a population greater than 400,000, the practical outcome is that almost all the counties are free to decide whether or not to permit brothels, and on what conditions.

Nevada confirmed this interpretation, although it defined brothels as a nuisance.<sup>51</sup> This combination of distaste and tolerance for brothels is also seen among the general public. A telephone poll carried out in 1986 showed that 66 percent of voters in northern Nevada believed that the residents of each county should be free to decide whether or not to permit brothels. In a referendum held in 2002, only one county favored amending the existing legislation on the issue.<sup>52</sup> There are currently 36 legal brothels in Nevada.

### **Background to the Legalization of Prostitution**

Legalization prostitution in Nevada can be seen as the direct descendant of the prostitution that emerged when the first settlers arrived in the area. The perception of prostitution as an integral part of local history contributed to the development of a tolerant approach to the phenomenon.<sup>53</sup> Most of the residents of Nevada recall anecdotes from their childhood relating to brothels. One particularly common anecdote regards a brothel that operated closer to a school than is permitted by law; the local residents decided to move the school rather than the brothel. Another story claims that residents of a county held a fundraising event to rebuild a brothel that was destroyed in a fire. The status of brothels as part of the social and cultural landscape of Nevada is also reflected in folkloristic stories about “madams” and the women they employed. Many stories tell of weddings between prostitutes and local men, including former clients and even policemen.<sup>54</sup> Brothels are regarded rather like an eccentric family member who may cause some embarrassment but whose

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<sup>51</sup> Miller and Haltiwanger, “Prostitution and Legalization,” p. 235.

<sup>52</sup> A. Albert, **BROTHEL- Mustang Ranch and Its Women**, 2001, p. 176.

<sup>53</sup> Reynolds, p. 99.

<sup>54</sup> *Ibid.*, p. 100.

presence must be tolerated. A further factor supporting the legalization of prostitution was concern that organized crime would take control of this industry, as was the case with the gambling business.<sup>55</sup> Legalization was seen as enabling supervision and control, preventing organized crime from gaining a foothold in the industry.

### **Legislative Goals in the Legalization Process**

Nevada is the only state in the USA that has not passed legislation prohibiting prostitution. However, prostitution is limited to authorized brothels, and the prostitutes must be above the age of 21.<sup>56</sup> Solicitation and pimping are also legal, provided they take place in accordance with the conditions established by law. Nevada comprises seventeen counties, each of which determines its own policy regarding prostitution, subject to the state legislation and provided that the county has a population of less than 400,000. Counties are permitted to hold a referendum to decide whether to allow license brothels. The basic assumption behind the legislation and the policy it establishes is that the existence of prostitution in legalized brothels is a privilege, not a right; accordingly, the community is entitled to restrict the phenomenon.<sup>57</sup> Nevada is a classic example of capitalist-instrumentalist institutionalization; accordingly, the license to engage in prostitution is granted to brothels and not to individual prostitutes. Women cannot legally work in prostitution outside the brothels; this reality influences their status and rights. This method is reminiscent of the manner of employment of migrant workers in Israel, whereby the work permit is not

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<sup>55</sup> Bingham, p. 85.

<sup>56</sup> Nevada Revised Statutes Section 201.354.

<sup>57</sup> B. Brents and K. Hausbeck, "State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels," *Sociological Perspectives*, 44 (2001), p. 311.

granted to the workers themselves but to their employers or to personnel companies. The brothels and prostitutes in Nevada operate in accordance with a complex system of provisions derived from federal and state law, local legislation, and the rules established by local sheriffs or by the owner of the brothel. What is the nature of these rules and how do they influence the rights of women employed in prostitution in Nevada?

### **The Impact of Rules of Legalization on Women's Rights**

A woman who wishes to engage in prostitution in Nevada must prove that a licensed brothel wishes to employ her, and must undergo a series of medical tests, including HIV and STDs.<sup>58</sup> The woman herself pays the cost of the tests, and will also be required to undergo regular tests after commencing work.<sup>59</sup> HIV carriers are prevented by criminal law from working as prostitutes; if an HIV test is positive, the result is sent to the brothel and to the local sheriff, and the license to engage in prostitution is revoked immediately. By contrast, clients are not required to undergo testing.<sup>60</sup> During intake into the brothel, the woman is usually required to waive medical confidentiality and provide the sheriff with full details of her past, including her criminal record. Some criminal offenses may prevent a woman being accepted by the brothel. The woman's fingerprints are taken and she is photographed. After all the tests are completed and the sheriff's approval is obtained, the woman receives the

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<sup>58</sup> Albert, p. 56; K. Hausbeck and B. Brents, "Inside Nevada's Brothel Industry," in R. Weitzer ed. **Sex for Sale: Prostitution, Pornography and the Sex Industry**, 2000, p. 227. Since 1986, legislation has determined that medical tests are a condition for receiving medical approval prior to receipt of a license.

<sup>59</sup> A monthly test for syphilis and HIV is required, as well as a weekly test for gonorrhea and Chlamydia.

<sup>60</sup> It may be assumed that this situation has a negative impact in terms of the exposure of women to HIV and other STDs, since clients will feel that it is safe to have unprotected sex with the women on the assumption that they are healthy. This assumption has not yet been confirmed by research, however.



status of an “authorized prostitute.” She is issued a worker’s card bearing the name of the brothel in which she is to work. The card is issued by the owner of the brothel in order to enable control by the brothel and the sheriff, despite the fact that the women are considered self-employed and not salaried workers. The women are not entitled to medical insurance, sick leave, pension, or any other benefit from the brothel.<sup>61</sup>

As noted, rules concerning the behavior of women working in brothels are determined not only by legislation, but also by the local sheriff, who is responsible for maintaining law and order, and by the brothel managers, whose objective is to maximize their profits.<sup>62</sup> The sheriff’s instructions are forwarded in writing, while the rules of behavior in the brothel are explained to the women when they begin work. We shall note here some of the main provisions, although it is important to recall that rules vary considerably from one county to another, and even between brothels in the same county. The common feature of the rules is that they apply to all areas of life, from the number of hours the women may work to the public places in which they may be seen. The women work for three weeks out of every month, and rest for approximately one week. The average number of hours work a day ranges from twelve to fourteen.<sup>63</sup> After paying for their expenses (room, cleaning, contraceptives, laundry, tests, and medicine), the women give fifty percent of their takings to the brothel. The woman is required to inspect the client’s penis in order to ascertain, as far as possible and on the basis of her knowledge, whether he is suffering from an STD. The brothels install emergency buttons that the women can press if they need

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<sup>61</sup> Bingham, pp. 69-99.

<sup>62</sup> H. Reynolds, **The Economics of Prostitution**, 1986, p. 94.

<sup>63</sup> Bingham, p. 94.

assistance.<sup>64</sup> The women attach importance to the sense of safety and protection from violence on the part of clients, pimps, and policemen, and quoted this as one of the main reasons why they prefer to work in a licensed brothel.<sup>65</sup>

Restrictions are imposed on the women's freedom of movement, ranging from a total prohibition on their leaving the brothel to a system that requires them to report in detail on the purpose and destination of their leaving and the time they will return. The closer the brothel is to a city, the stricter the restrictions, presumably due to fear that the women will engage in prostitution outside the brothel.<sup>66</sup> In most cases, women are only permitted to leave the brothel during the daytime, for the purpose of tests or to purchase personal items. In some counties, they are not permitted to enter bars.<sup>67</sup> When outside the brothel, the women are required to act in a manner that does not reveal their profession; they must not solicit clients or be the object of solicitation. They are not permitted to approach public places such as video arcades or dancing rooms. During the monthly week of vacation, they must choose either to spend the week in the brothel or to leave town. In most cases, the women can order items for delivery or can request that errands be run on their behalf. These restrictions are not imposed by law and seem to have been inherited from Nevada's past. The restrictions imposed in the brothels reflect traditional norms regarding the sexual needs and functions of men and women. Male prostitution is usually prohibited, and women who are

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<sup>64</sup> Reynolds, p. 116.

<sup>65</sup> B. Brents and K. Hausbeck, "Violence and Legalized Brothel Prostitution," *Nevada Journal of Interpersonal Violence*, 20 (2005), 270-295.

<sup>66</sup> *Ibid.*, p. 231.

<sup>67</sup> J. Drexler, "Government's Role in Turning Tricks: The World Oldest Profession in the Netherlands and the United States," *Dickinson Journal of Int'l Law*, 15 (1996), 201-236, p. 225.

not prostitutes are prohibited from entering the brothel. If a woman declines to serve a client she must explain herself to the manager, even though she willingly waived her share of the fee.<sup>68</sup>

The women are required to pay a tip, sometimes in the amount of \$18 a day, to the cleaners, barman, and cook who work in the brothel. Health checks are mandatory, but the brothel often interferes in the selection of the physician. One woman employed in a local brothel stated that the tests performed by the “in-house physician” were perfunctory but extremely expensive, and were sometimes accompanied by unpleasant comments.<sup>69</sup> Further instructions prohibit the women from getting drunk or from contacting a man they met in the brothel, in order to prevent independent solicitation or embarrassment to the client.<sup>70</sup> The woman’s family is not permitted to live in the city in which she is employed in prostitution and details of her vehicle must be held by the police.<sup>71</sup> Some of these restrictions have been abolished in recent years, and others are now imposed as house rules rather than police provisions. This series of strict requirements explains why many women do not remain for more than three months in each brothel and frequently move from place to place. A woman who is dismissed must leave town within 24 hours. Grounds for dismissal include concealing earnings from the owner; contravening the rules of the house; or inability to get on with the other women. A dismissed woman who has broken the rules cannot work again in that city and may lose her worker’s card.<sup>72</sup> A woman who wishes to

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<sup>68</sup> L. Anderson, **Working in Nevada**, available at: <http://www.bayswan.org/Laura.html>

<sup>69</sup> Ibid.

<sup>70</sup> Reynolds, p. 119

<sup>71</sup> Brents and Hausbeck, 2001 p. 325

<sup>72</sup> Reynolds, p. 92.

move to another brothel must leave town for a “cooling-off” period of 30 days.

A fierce argument rages between the supporters and opponents of legalized prostitution on the subject of rape. Advocates of legalization argue that prostitution in general, and legalized prostitution in particular, reduces the occurrence of rape in a society. Opponents of legalization argue that prostitution, particularly if legalized, will lead to an increase in the number of cases of rape. The incidence of rape in Nevada is higher than in neighboring states,<sup>73</sup> but it would be wrong to rush to conclusions due to this fact. It is difficult to isolate the impact of prostitution and legalization from other social factors. On the other hand, the conclusions from data regarding the scope of legal and illegal prostitution are unequivocal. Despite the presence of legalized prostitution, the level of illegal prostitution in Nevada is high. While some 500 women are lawfully engaged in prostitution in Nevada, it is estimated that there are 3000 “illegal” prostitutes in Las Vegas alone. Reasons for this include the relatively remote location of the legal brothels. In addition, the strict restrictions imposed on the women mean that despite the sense of security offered by the licensed brothels, many of them prefer to work independently.<sup>74</sup> Trafficking in American women and girls for the purpose of prostitution occurs in Nevada,<sup>75</sup> but women from other countries are also brought to the state, particularly from Asia and Mexico. The number of victims located in Nevada is low; some attribute this to

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<sup>73</sup> Reynolds, p. 103.

<sup>74</sup> Email from Professor Barbara G. Brents of the Department of Sociology at the University of Nevada, Las Vegas, dated March 20, 2007.

<sup>75</sup> **United States v. Quinton Williams**, CR-S-03-0046-KJD(RJJ); **United States v. Cheryl Chadwick et al.** CR-S-03-0100-RLH(LRL); **United States v. Dennis Obey** CR-S-04-0017-LRH(RJJ)

difficulties in identification.<sup>76</sup> Since February 2007, a joint task force of government departments and human rights organizations (ATLAS – the Anti-Trafficking League Against Slavery) has worked in the state, attempting to improve the identification of victims and to eradicate the phenomenon of trafficking, particularly in the south of the state.<sup>77</sup>

### **The Impact of Legalization on Brothel Owners**

As explained above, the existing rules state that an individual may request a license to open or manage a brothel in any county in Nevada with a population below 400,000. The applicant must pay a relatively high fee; the remaining conditions for receiving and holding a license are determined by each county. The contravening of the rules leads to the immediate revocation of the license. A committee appointed by the county may amend the rules, and usually does so, on the recommendation of the sheriff. A license may also be removed from a brothel that endangers public health; for example, one brothel was closed after the water on the premises was found to be unfit for consumption.<sup>78</sup> Various requirements apply regarding the identity of the owner and manager of a brothel. In some areas, the manager of the brothel must be a woman, in order to avoid sexual exploitation. Two counties do not permit

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<sup>76</sup> **Police to Target Human Trafficking in Las Vegas**, Nov 28 2006, available at: <http://www.klas-tv.com/Global/story.asp?S=5734951>; **United States v. Stanley Chan**, et al. CR-S-00-0298-KJD(LRL); "Nevada Man Convicted on Charges Related to the Sex Trafficking of Minors", Department of Justice, 27.6.2006, available at: [http://www.usdoj.gov/opa/pr/2006/June/06\\_crm\\_394.html](http://www.usdoj.gov/opa/pr/2006/June/06_crm_394.html)

<sup>77</sup> For further information, see: <http://www.lvmpd.com/news/pdfs/2007/020207release.pdf>. The task force was based on an earlier force founded in Nevada in 2004 to campaign against human trafficking and comprising enforcement agencies and welfare services. See: U.S Department of Justice, United State Attorney, District of Nevada Law Enforcement & Social Service Agencies form Working Group to Combat Human Trafficking. available at:

<http://www.usdoj.gov/usao/nv/home/pressrelease/september2004/trafficking092804.htm>;

<sup>78</sup> Reynolds, p. 92.

corporations to own brothels, others confine ownership and management to residents of the country. To date, all applications relating to male prostitution, whether for homosexual or heterosexual purposes, have been rejected; in some counties, such prostitution is illegal. Applicants for licenses are asked about previous experience managing brothels and must explain their sources of financing.<sup>79</sup> Information is also collected regarding the applicant's family and criminal record. The license is granted to a specific individual and is not transferable.

As in the case of the women who work in the brothels, the owners of license brothels must also observe various rules, some of which are general while others vary from one county to another.<sup>80</sup> General rules include the requirement to place a sign on the entrance door requiring the use of condoms,<sup>81</sup> as well as a sign advertising the brothel, which must not be larger than 24 square meters and must include the words "brothel" or "house of prostitution." The brothel must not display more than three red lights outside, and each bulb must not be stronger than 200 Watts.<sup>82</sup> Men may not be employed in a brothel, except as maintenance and repair workers. The brothel must confirm that clients are above the minimum age for paid sex (usually 18-21), and are liable toward their clients if the latter contract HIV. Brothel owners generally adopt further procedures enhancing the level of safety in the brothel, since this promotes their primary objective of maximizing their profits.

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<sup>79</sup> Brents and Hausbeck, 2001, 317. The cost of a brothel ranges from \$ 150,000 to \$ 4 million, depending on its proximity to a city.

<sup>80</sup> For example, one county states that linen and towels must be laundered after every use. Another requires the brothel owner to pay for the women's medical treatment. This requirement may not necessarily promote protection of the right to health; payment of health insurance by a person other than the beneficiary usually leads to the selection of a policy on the basis of its low price, resulting in partial and inadequate health services.

<sup>81</sup> Brents and Hausbeck, 2000, p. 226.

<sup>82</sup> Reynolds, p. 92.

An atmosphere of fear or danger could jeopardize this same objective. “House rules” establish a minimum fee, to which additions are made according to the client’s particular requests. Bargaining over the price takes place directly between the woman and the client. Representatives of the management closely monitor the bargaining process by means of a wiretapping device.<sup>83</sup> Wiretapping is one the means used to protect the safety of the women; in other cases another woman listens outside the door, or the door is left ajar.

The number of brothels is fairly static. In 1973, there were 33 legal brothels, while in 1997 the number was 36. It is unclear why the rate of growth is so limited. It is possible that the government did not wish to expand the scale of legal prostitution; it may also be the result of lobbying efforts by brothel owners nervous of competition. An organization by the name of the Nevada Brothel Association exists to represent the brothels and promote their rights. The association was founded in 1984 for lobbying purposes and includes the managers of the permanent brothels in the state.<sup>84</sup> The women who work in prostitution are not represented in the organization, which attempts to maintain good relations with the community, as do the individual members. Brothel owners award scholarships to schools and give jackets to firefighters; they participate in carnivals and local events, donate to the local community center, and so forth. The result is that some brothel owners have become respected members of their communities.

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<sup>83</sup> Brents and Hausbeck, 2005, p. 278

<sup>84</sup> Brents and Hausbeck, 2001, p. 314

## The Economic Dimension of Legalization

Federal income tax is imposed on prostitution in Nevada; the state confines itself mainly to the collection of license fees. The president of the Nevada Brothel Association estimated that the state of Nevada derives some ten million dollars a year from prostitution.<sup>85</sup> It is difficult to obtain precise figures on income in each county. In 1997, total income from the legal sex industry in Nevada included \$88,049 from worker's cards and \$522,322 from license fees and from tax on alcohol and rooms.<sup>86</sup> These figures are not particularly high, while brothel directors apparently view such payments as a way of enhancing the legitimacy of the sex industry. Legitimacy is important for political reasons and in order to expand the circle of clients.<sup>87</sup> In 2003, the state of Nevada faced a severe deficit; the possibility was raised of imposing a direct tax on brothels, but this was rejected.<sup>88</sup> In some counties, income from brothels constitutes a significant portion of local income, while in others it is of marginal importance.<sup>89</sup> A correlation may be seen between the economic situation of a county and the state of its brothels. In prosperous counties the brothels have a large number of clients and high income; equally, a prosperous brothel can itself contribute to the local economy.<sup>90</sup>

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<sup>85</sup> L. Gormley "Prostitution Pumps Millions into Nevada's Economy," **Nevada Outpost**, Dec. 11, 1998, available at:

<http://www.jour.unr.edu/outpost/community/archives/com.gormley.prostitute.html>

<sup>86</sup> Brents and Hausbeck, 2000 p. 225, Table 13.1 Brothels in Nevada (1997).

**Sex for Sale – Prostitution, Pornography and The Sex Industry**, Edited by Ronald Weitzer, 2000

<sup>87</sup> K. Hennessey, "Nevada Brothels Lobby to be Taxed: State Turns Down Unusual Strategy to Secure Future," **The Washington Post**, May 15, 2005.

<sup>88</sup> A. Goldman, "Brothel May Bear Budget Burden," **Las Vegas Review Journal**, Feb. 17, 2003.

<sup>89</sup> Sandowsky, p. 226.

<sup>90</sup> Reynolds, p. 108.



## **The Legalization of Prostitution in Nevada – Interim**

### **Conclusions**

The manner in which prostitution has been legalized in Nevada shows that the process was intended mainly to confirm the legal status of a practice that had formed part of local history while securing income for the state. The capitalist-instrumentalist model of legalization that applies in Nevada was consonant with the accepted norms of the Wild West. This system maintained the rights of brothel owners and state profits. The rights of women as humans and as workers were marginalized and overlooked; where women benefited from institutionalization, this was by way of a by-product of the numerous obligations imposed on them. Legalization did not eradicate the social stigma attached to prostitution; rather, it perpetuated this, effectively condemning the women to social isolation and reducing their rights to a minimum.

## **THE LEGALIZATION OF PROSTITUTION IN GERMANY**

The number of women engaged in prostitution in Germany is estimated to be as many as 400,000,<sup>91</sup> although some organizations argue that is impossible to count “women who do not exist as far as the system is concerned,” despite the fact that their work is not defined as illegal.<sup>92</sup> Although prostitution has never been criminalized in Germany, various restrictions were imposed; the level of enforcement varied from state to state within Germany. These restrictions also affected women who chose to work in prostitution. For example, women were forced to undergo tests for STDs, and the police was entitled to detain them for this purpose.

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<sup>91</sup> Response from Mr. M. Kinert of the Ministry of Family Affairs, Pensioners, Women, and Children, in an email dated December 28, 2006.

<sup>92</sup> Veronica Monk, Amnesty Germany, email dated March 12, 2007.

Since prostitutes were not considered workers, they could not receive the benefits enjoyed by other workers. They were required to pay taxes, but due to the “immorality” of their profession they were not permitted to offset work-related expenses, such as makeup and clothing. They could not sue clients who failed to pay them since the contract between the parties was considered immoral and therefore void.<sup>93</sup> They could purchase private health insurance, but due to their profession the insurance companies demanded high premiums. In 2002, a law came into effect recognizing prostitution as a form of work, and seeking to ensure that various aspects of prostitution as it existed at the time enjoyed full legal recognition. Officials and NGOs agree that the primary purpose of the new law was to improve the conditions for people willingly working in prostitution.<sup>94</sup> This law effectively introduced the legalization of prostitution in Germany in accordance with the “democratic” model.

### **Legislative Goals in the Legalization Process**

Although the new law recognized the presence of other agents in the sex industry, particularly brothel owners, its central focus was concern for the women involved. The law granted these women access to the national insurance system, to unemployment benefit, pensions, and health insurance, and sought to eradicate criminal aspects of the profession and to enable those women who wish to do so to leave the world of prostitution. The law allowed women to choose whether to have the status of salaried employees or self-employed workers. An earlier law

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<sup>93</sup> M. Von Galen, “Prostitution and the Law in Germany,” **Cardozo Women's Law J.** (1996), 349-376.

<sup>94</sup> E. Mitrovic, **Working in the Sex Industry: Social Change in Dealing with Prostitution Since the New Legislation Entry into Force in 1/1/2002**, Report on the finding of a field research, 2004, p. 2.

passed in 2001 abolished the coercive imposition of health checks on women working in prostitution.<sup>95</sup> Clinics exist in Germany that provide counseling and anonymous testing for STDs and HIV. The tests and initial treatment are provided free of charge for all, regardless of legal status. Due to Germany's federal system of government, differences exist in the legislative provisions relating to prostitution in the different states; these differences are sometimes significant. Legislation defines specific areas of cities within which prostitution is permitted, and in what format (brothels or private apartments); sometimes specific hours are also established. In Berlin, for example, prostitution is permitted in most parts of the city, whereas in Hamburg it is restricted to a few streets, and to nighttime only. Stuttgart has prohibited prostitution, with the exception of a single brothel; the police launch raids on street prostitution and clients are also fined.<sup>96</sup>

### **The Impact of Legalization on Women's Rights**

The impact of the new pattern of legalization of prostitution introduced in 2002 on the state of women employed in prostitution in Germany varies significantly according to their legal status. Three groups may be distinguished: Women from European Union countries, including German citizens; women from the ten new European Union member states; and women from outside the European Union.

**Women from European Union countries, including Germany,** are entitled to engage in prostitution as self-employed workers or as salaried employees. They need not register with the police, though they

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<sup>95</sup> Transnational Aids/STD Prevention among Migrant Prostitutes in Europe Project (TAMPEP) 2004, p. 79; Mitrovic, p. 8.

<sup>96</sup> The letters sent to the homes of clients are known as "Sweden lights;" since 1999, Swedish law has prohibited any consumption of sex for payment.

must declare their work to the tax authorities.<sup>97</sup> As we shall see, the legalization arrangement has not significantly altered the situation of these women. The new law has led to a decline in street prostitution in Germany, and prostitution now takes place mainly in private apartments (36 percent), clubs and bars (22 percent), brothels (10 percent), and massage parlors (8 percent).<sup>98</sup> Prostitution in private apartments includes a single woman working in her apartment, as well as up to two or three women renting an apartment together. Most brothels include between four and ten women. Many women are employed in brothels, ostensibly as self-employed workers, renting a room for a daily fee or for a percentage of their takings. Women working in bars and clubs receive a percentage of takings from the sale of drinks to men, and often become alcoholics themselves; sex takes place in nearby hotels or apartments. In some cases, a building comprises a row of rooms down a long corridor; a woman works in each room, and the clients choose from the women whose door is open.<sup>99</sup> The price is set by the owner of the club, who shares the profits with the woman. The average monthly income of women working in prostitution is usually below 1500 euros, since most of the money they earn is used to pay expenses or is transferred to the pimp.<sup>100</sup>

Since the abolition of the law requiring women to undergo medical tests, women are tested less often; those who suffer most from this change are migrants and trafficking victims.<sup>101</sup> The health authorities

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<sup>97</sup> TAMPEP, 2004, p. 78.

<sup>98</sup> *Ibid.*, 2004, p. 80.

<sup>99</sup> TAMPEP, 2006, p. 15.

<sup>100</sup> Mitrovic, p. 4.

<sup>101</sup> *Ibid.*, p. 9. Previously, when these women engaged in prostitution in visible settings and were subject to control, all women underwent testing.

claim that the new situation has also not favored German women working in prostitution, most of whom prefer not to register as prostitutes, due to the stigma involved, and purchase private medical insurance. Many women are unable to afford expensive policies, and thus use the services of public clinics, or confine themselves to securing treatment when a problem arises or when they are forced to do so by a brothel manager or pimp. The vital need for testing and treatment has increased in recent years due to a steep rise in the level of demand for unprotected sex. For example, oral sex often takes place without a condom and the level of awareness of the risk is low.<sup>102</sup> The demand by the health system to reinstate legislation requiring women engaged in prostitution to undergo testing has met with opposition. Although the new law recognizes prostitution as work, employment bureaus have not accepted applications to work in prostitution. Although current German legislation does not prohibit employment services from requiring women to work in prostitution, they do not offer such work for normative reasons; unlike other forms of work, grants are not provided for unemployed people who wish to work in prostitution.<sup>103</sup> Women working in prostitution have also been reluctant to claim their pension rights, although some of them have responded to rehabilitation and assistance programs that have helped them gain an education and profession and leave the sex industry.<sup>104</sup>

Since the new law came into effect, most German women employed in prostitution have not reported any improvement in their

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<sup>102</sup> TAMPEP 2006, 22-3. It has been suggested that this situation is due to the increasing number of migrant women, leading to a reduction in prices in general, and increased supply of unsafe sex in particular.

<sup>103</sup> Mitrovic, 6.

<sup>104</sup> The Pension Institute in Hamburg reported that not a single prostitute had applied to realize her rights in accordance with the new law; quoted in Mitrovic, 11.

situation. The law was unclear and failed to address the main problems faced by women: The lack of social recognition of their rights; poor working conditions; psychological and physical pressure, and so on. The law did not remove the stigma attached to prostitution; moreover, many women are unaware of the law or do not understand its significance. Rather than campaign openly for their rights, most of them prefer to remain anonymous.<sup>105</sup> They do not consider prostitution to be a respectable profession, and share the generally accepted view that their occupation is less than respectable. This explains why many of them continue to live double lives, refraining from telling those around them of their occupation. Neither do they wish to pay income tax or national insurance; they work in prostitution on a part-time basis alongside normative employment. Efforts to organize women in the sex industry in a trade union have been hampered by their skeptical attitude. Women in the sex industry are also facing a growing wave of violence, both physical and emotional; this phenomenon does not only affect migrant women. Women still encounter difficulties when they seek to sue a client, due to the demand to produce witnesses to the agreement between the parties who can confirm that the agreement was implemented, with the exception of the payment.<sup>106</sup> Women also fear that filing a suit will expose them to demands to pay taxes. The new law has not only been a failure from the women's perspective; several German states refrain from enforcing its provisions.<sup>107</sup> Not everyone considers the law a failure, however; some

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<sup>105</sup> Ibid, p. 10.

<sup>106</sup> **Study on National Legislation on Prostitution and the Trafficking in Women and Children**, TRANSCRIME 2005, p. 111, available at: [http://www.europarl.europa.eu/comparl/femm/womensday/2006/transcrime\\_final\\_study\\_en.pdf](http://www.europarl.europa.eu/comparl/femm/womensday/2006/transcrime_final_study_en.pdf)

<sup>107</sup> R. Furlong, "German Prostitutes in Rights Plea," **BBC**, June 24, 2005: <http://news.bbc.co.uk/2/hi/europe/4111738.stm>

NGOs claim that the law and its enforcement must be enhanced in order to secure the desired change.<sup>108</sup>

The group that seems to have been least harmed by the new arrangement for the legalization of prostitution, and even to have benefited in some respects, are **women from countries that have joined the European Union in recent years**. In 2004, ten countries joined the EU: Poland, Hungary, the Czech Republic, Slovakia, Lithuania, Latvia, Estonia, Malta, and Cyprus. In 2007, Bulgaria and Romania also joined. Women from these countries wishing to work in prostitution in Germany do not require a work visa. However, until 2009 they are only able to work on a self-employed basis, and in order to do so they must hold a work permit. In order to obtain a permit to work in prostitution on a self-employed basis, the women must report to the immigration authorities with an identifying document, a document from a brothel owner or an accountant testifying that the woman has a monthly income of at least 600 euros, a health insurance certificate (from Germany or their country of origin), a bank account, and an income tax file number. The immigration authority can impose additional requirements after examining the documents. The woman receives a residency visa for three months; this may be extended for up to five years.

**Women who do not come from a EU country** do not have any status or rights in Germany, unless they are covered by a specific work agreement relating to a given profession and signed with a specific country.<sup>109</sup> Since there are no agreements relating to prostitution, the new

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<sup>108</sup> Response to the questionnaire from Amnesty Germany, March 12, 2007; response to the questionnaire from Hydra, December 26, 2006.

<sup>109</sup> An example of such an agreement is one signed with South Korea regarding nurses.

law cannot improve the situation of these women, and in some respects it has even led to a further deterioration. Women migrants are vulnerably mainly because they cannot secure legal status; in addition, they lack adequate information on their rights and on services and organizations. Accordingly, the women are forced to rely on the very people who severely violate their rights, thus becoming easy targets for trafficking. As in other European countries, many of the women who work in prostitution are not German. The number of migrant women in the field has increased in recent years: approximately 13 percent are from Africa, 16 percent from Latin America, 21 percent from Asia, and 50 percent from Eastern Europe.<sup>110</sup> In addition to the economic situation in their countries of origin, and the discrimination they face, women also migrate due to the demand for foreign women among clients. Their lack of legal status exacerbates their dependence on the pimps and brothels; this situation facilitates their exploitation and encourages trafficking.<sup>111</sup> They are also reluctant to complain to the police, and are moved frequently from one place to another according to demand and the local enforcement situation. This further worsens their vulnerability and makes it harder for them to access information and medical treatment.

Germany is a key destination for women and girls from Eastern Europe, and also serves as a transit station for those heading to other countries.<sup>112</sup> German law prohibits human trafficking for the purpose of sexual exploitation and exploitation in work when these entail force

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<sup>110</sup> During the 1990s, women from twelve countries worked in prostitution in Germany. In recent years, women from approximately 40 countries have been identified. TAMPEP 2004, pp. 17, 83; TAMPEP 2006, p. 16.

<sup>111</sup> Sex for payment costs an average of 75 euros, of which the women themselves usually keep no more than one-third. Mitrovic, p. 3.

<sup>112</sup> Trafficking in Person Report, 2006:  
<http://www.state.gov/g/tip/rls/tiprpt/2006/65988.htm>



and/or deception. In 2005, 317 preliminary proceedings took place in Germany in cases relating to human trafficking.<sup>113</sup> In the same year, the police identified 642 victims of trafficking, 18 percent of whom were German citizens – an increase of 5 percent over the previous year. Most of the women involved are foreigners, however, and the vast majority (86 percent) come from Eastern Europe, particularly Russia and Romania.<sup>114</sup> Since the introduction of the new legalization arrangement for prostitution, a decline has been seen in the number of trafficking victims identified in Germany. Although a slight increase was seen in the total number of victims in 2002 and 2003, the police attributed this to the fact that internal victims of trafficking began to be included in the figures in this period, alongside foreign victims, as required in accordance with the UN Protocol.

The fall in the number of trafficking victims located in Germany is due to numerous factors and cannot be attributed solely to the new law. The relatively small number of victims located is due to the restricted definition of the offense of trafficking. While deception and force are recognized as a component in trafficking, German law does not include the presence of debt as a factor.<sup>115</sup> Moreover, trafficking victims are

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<sup>113</sup> **Report of the Federal Police on Human Trafficking**, 2005, June 2006. The report was translated into English with the generous assistance of the Heinrich Böll Institute.

<sup>114</sup> The number of victims of trafficking from Ukraine fell from 183 in 2004 to 20 in 2005. This decrease illustrates the fact the policy on prostitution in the destination country is not the only, or even the main, factor in trafficking operations. Other factors, including developments in the country of origin, may influence the number and source of the victims.

<sup>115</sup> Thai women working in the German sex industry are exploited and work in harsh conditions. In addition to the burden of providing for their families in Thailand, most of the women have acquired serious debts. However, since these women were not the victims of force or deception, and knew that they would be working in prostitution, they are not considered victims of trafficking. See: P. Ruenkaew, 'The Transnational Prostitution of Thai Women to Germany: A Variety of Transnational Labour Migration',

afraid to complain and are not encouraged to do so by the authorities. Apart from a one-month period during which they can decide whether to not to testify, they do not enjoy any rights. If they decide to testify, they will be unable to work or study during the course of the trial. In 2004, victims of trafficking from the ten new EU member nations became eligible to work in prostitution on a self-employed basis, and additional cases emerged in this category.<sup>116</sup> Due to their registration, it is difficult to the police to identify such women as the victims of trafficking. Most of the located victims worked as prostitutes in bars, brothels, and private apartments; a minority, mainly in the largest cities, worked on the streets.<sup>117</sup> The concentration of prostitution in closed settings makes it harder to identify trafficking victims. Some organizations believe that trafficking is caused mainly by the lack of information about the target country among women who wish to migrate in order to work in prostitution; these women also lack personal and professional contacts. These organizations argue that trafficking in women may be cut if the state amends the legislation relating to these women and ensures that they are already aware of the situation pertaining in Germany when they are still in their country of origin.<sup>118</sup>

### **The Impact of Legalization on Pimps and Brothel Managers**

German law does not define any preliminary requirements that must be met in order to open a brothel; no license is required. The law prohibits prostitution under coercion, as well as the employment of illegal

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in G. and A. Scambler eds. **Rethinking Prostitution**, 1997, pp. 69-85; TAMPEP 2006 43-46.

<sup>116</sup> Report of the German Federal Police, 2005.

<sup>117</sup> Ibid.

<sup>118</sup> The website [femmigration.net](http://femmigration.net) attempts to fill this need, providing information for women who wish to work in prostitution in other countries.

aliens and minors; police raids on brothels are intended to identify such offenses. The new law attempted to create employer-employee relations in the sex industry, providing exemption from criminalization for pimps and brothel managers. However, some prosecution services in Germany still consider these contracts to be a form of procurement and hence indict those involved.<sup>119</sup> To date, the German authorities have refused to provide brothel owners with lists of women seeking work, and prostitution is not included in the list of potential occupations offered by employment bureaus. In one case, a brothel owner was not permitted to place an advertisement in a job bureau. He argued that newspaper advertisements were ineffective, and that the refusal by the state to publish his advertisement constituted “moralistic discrimination,” since state law recognizes prostitution as analogous to any other type of employment.<sup>120</sup> This situation is a question of policy, however, and not of law, and no written provision prevents future changes. Another argument raised against the law institutionalizing prostitution is that brothel managers have used the law to justify cutting payments to women on the pretext that they must now pay tax to the state.<sup>121</sup>

### **The Economic Dimension of Prostitution**

Even prior to the enactment of the new law prostitution was considered a profession liable to taxation. As mentioned above, the new law legalized prostitution in Germany according to the “democratic institutionalization” model, which focuses on concern for the women involved. The rights provided in accordance with the law mean that this

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<sup>119</sup> TAMPEP, 2004, p. 77.

<sup>120</sup> D. Hughes, **The Demand for Victims of Sex Trafficking**, 2005, available at: [http://www.uri.edu/artsci/wms/hughes/demand\\_for\\_victims.pdf](http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf), p. 58.

<sup>121</sup> *Ibid*, p. 57.

model is relatively expensive, although the women themselves participate in financing its provisions through tax payments. Profit from prostitution in Germany is believed to be extremely high; estimates range from the relatively modest figure of some six million euros a year to an astonishing 14.5 billion euros.<sup>122</sup> The method and level of tax on prostitution varies from region to region.<sup>123</sup> In Stuttgart, women pay a fixed tax of 20 euros a day; it has been proposed that this figure be raised to 30 euros. Since the introduction of the new law in 2002, the tax authorities have launched campaigns to collect tax from the women. The law did not specify the date from which tax was due to be paid, and the authorities have sometimes demanded retroactive payment for as much as ten years. The result was that many women were reluctant to register officially as engaged in prostitution, thus limiting their ability to complain against pimps or violent clients. Women with modest income find it difficult to cover high payments for health and national insurance, again creating doubts regarding the method of institutionalization.

### **Prostitution, Trafficking in Women, and the World Cup**

The 2006 football World Cup was held in Germany. It was suggested in certain circles that the presence of large numbers of fans would lead to an increase in prostitution and trafficking in women. This scenario did not materialize for various reasons.<sup>124</sup> A key factor was that informational campaigns were undertaken before the competition to raise public awareness. Before and during the World Cup, the police reinforced their presence in brothels and sex clubs. Police officers were briefed in

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<sup>122</sup> Mitrovic, p. 3.

<sup>123</sup> Ibid, p. 7.

<sup>124</sup> J. Hennig et al, **Trafficking in Human Beings and the 2006 World Cup in Germany**, IOM, 2006.

identifying the victims of trafficking, and disguised themselves as clients in order to collect intelligence. Advertisements were also placed in newspapers, on the internet, and in hotels. Other countries cooperated in the information campaign: the British police distributed informational leaflets; the Swedish team promised that its players would not visit brothels; the coach of the French team condemned trafficking in women; and the Vatican deplored the rise in demand for prostitution during the World Cup.<sup>125</sup> NGOs also joined in; for example, the organization Context urged visitors to respect women and to make sure to have safe sex only. Condoms were distributed around the venues of the matches, together with postcards detailing ten “golden rules” for clients. Due to the enhanced enforcement and public panic on the subject, the German sex industry actually did worse during this period than in normal times; no significant change was seen in the number of women working in prostitution. It should be noted, however, that there were those who argued that the strict supervision merely resulted in an increase in underground prostitution, exacerbating risks and violence and thus harming women’s interests.<sup>126</sup>

### **The Legalization of Prostitution in Germany – Interim Conclusions**

The new law adopted in 2002 was supported by 85 percent of women working in prostitution; by over 90 percent of brothel owners; by law enforcement agencies; and by the majority of government and non-governmental organizations.<sup>127</sup> Opposition was limited to two NGOs and

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<sup>125</sup> Ibid, p. 16.

<sup>126</sup> TAMPEP, 2006.

<sup>127</sup> Amnesty questionnaire, March 12, 2007.

to the Christian-Democratic party, which opposes the acceptance of prostitution as a form of work and advocates the revocation of the law.

<sup>128</sup>Organizations advancing the rights of women in prostitution as workers argue that the law has secured its objective, leading the public to recognize prostitution as work. However, changing the attitude toward prostitution is a gradual process; and NGO that support sex worker's right argue that there is a need to resolve ambiguities in the law regarding tax; to remove the restrictions on prostitution in the street; and to ensure that migrants working unlawfully in the sex industry enjoy the same rights as other women. Despite their support for the law, help organizations claim that it has not benefited most of the women involved, the majority of whom are illegal aliens. Meanwhile, most German women are reluctant to take advantage of the rights offered by the law, preferring to continue to live a double life. These women purchase private health insurance or register as workers in other fields in order to secure unemployment and other benefits. The impact of the new law on women from the new EU member states has been more significant; they can now migrate to Germany in order to work in prostitution without fear of deportation. The authorities now appear to be attempting to backtrack from the new arrangement for institutionalization. A report submitted in 2007 prioritized the field of helping women to leave prostitution; organizations advancing this goal will be prioritized in funding decisions. The possibility has also been considered of criminalizing the clients of victims of trafficking and to require brothels to obtain a license in order to strengthen police supervision. There are no proposals to change the

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<sup>128</sup> Furlong, **BBC** June 2005: <http://news.bbc.co.uk/2/hi/europe/4111738.stm>; EMMA and SOLWODI, According to email from TERRE DES FEMMES, February 22, 2007. The opposing organizations were a feminist journal and a Catholic aid organization.

policy regarding taxation or the attitude toward migrant women working in prostitution.

## **THE LEGALIZATION OF PROSTITUTION IN THE NETHERLANDS**

Prostitution in the Netherlands was legalized at the turn of the twentieth century. However, brothels and procurement were outlawed, in the hope that in their absence prostitution would disappear. Over the years the police implemented a policy based on “tolerance zones,” refraining from enforcing the prohibition against procurement and brothels.<sup>129</sup> This approach explains the emergence of the red light areas in Amsterdam and other cities, which reduced the nuisance to the general public. During the 1970s, prostitution expanded in the Netherlands, entering residential areas. Street prostitution and the drug trade were also more evident than in the past. The police was forced to undertake arrests and women faced fines or prison sentences. Due to their fear of arrest the women became less careful about choosing their clients, and therefore more likely to be subjected to assault. This situation was criticized by many in the police force, particularly in the Vice Squad.<sup>130</sup> During the 1980s, feminist launched a campaign against the prohibition on brothels. They demanded that prostitution be recognized as a form of work; that those working in the profession receive the rights enjoyed by workers and improved conditions; that stricter penalties be imposed on those

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<sup>129</sup> J. Outshoorn, “Voluntary and Forced Prostitution: The ‘Realistic Approach’ of the Netherlands,” in J. Outshoorn, ed, **The Politics of Prostitution - Women's Movement, Democratic States and the Globalisation of Sex Commerce**, 2004, p. 185.

<sup>130</sup> M. van Doorninck, “A Business Like Any Other? Managing the Sex Industry in the Netherlands,” in S. Thorbek and B. Pattanaik eds., **Transnational Prostitution - Changing Patterns in a Global Context**, 2002, p. 193-200.

trafficking in women; and that temporary visas be granted to the victims of trafficking. In the 1990s, as the phenomenon of trafficking in women increased, a public debate developed in the Netherlands regarding the policy that should be adopted relating to prostitution. The proposals raised were contradictory, ranging from the legalization of prostitution to criminalization. Despite the differences of opinion, however, many agreed that sex for payment between consenting adults does not injure human dignity.

### **Legislative Goals in the Legalization Process**

In October 2000 a legal amendment was adopted in the Netherlands removing the prohibition against the operation of brothels. This effectively marked the introduction of legalized prostitution in the Netherlands in accordance with the “democratic” model, focusing on the rights of women. In addition to a total prohibition against coerced prostitution, the local authorities retained the legislative power to regulate the sex industry. Most authorities adopted a policy that determines the number and location of brothels and mandates licensing.<sup>131</sup> Some local authorities require that women working in their own homes also secure a license. Local authorities can publish by-laws relating to hygiene, working conditions, and other aspects, but do not have the power to prohibit prostitution. In order to prevent excessive differences in terms of the conditions for licenses, the government has determined several provisions and established a body to coordinate between the local authorities.<sup>132</sup> Prostitution is restricted to women aged 18 and above who are citizens or who hold a legal residence permit, and is limited to

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<sup>131</sup> **Trafficking in Human Beings**, Third report of the Dutch National Rapporteur, p. 87.

<sup>132</sup> The Association of Netherlands Municipalities. See *ibid*, p. 14.



brothels, certain clubs, and “windows.” Prostitution on the street or in residential apartments has only been permitted in a small number of areas. Prostitution has been distanced from schools and churches, and is sometimes restricted to specific hours. The local authorities are not permitted to grant a license for the management of a brothel to people who have a criminal record, and must revoke the license of a brothel where illegal aliens or minors are found to be working. Women employed in prostitution must carry an identifying document and present it to official representatives; refusal to do so may be taken as implying that they do not have official status.

Legalization included the application of labor law to women working in prostitution. Women may choose whether to be self-employed or to receive a salary. A woman who wishes to work in prostitution must contact the local employment bureau; present a contract with a brothel owner; declare her expected income and expenses; and present a document confirming her status as a citizen or a legal alien.<sup>133</sup> If the woman chooses to work in prostitution on a self-employed basis, she must register with the tax authorities. If she is a salaried employee, she need only register with the national insurance; her employer will be responsible for contacts with the other authorities. Salaried employees are entitled to unemployment benefit, pension, national insurance, and health insurance. If their rights are violated they can file suit against their employers. However, prostitution was recognized not as an ordinary form of work, but as one that requires special skills, including emotional skills. The significance of this is that a person cannot be obliged to work in prostitution or be denied unemployment benefit. Employment bureaus do

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<sup>133</sup> TAMPEP 2004, p. 139.

not offer jobs in prostitution;<sup>134</sup> indeed, government bodies offer programs to help women who wish to leave prostitution.<sup>135</sup> After a special debate, the Dutch government decided not to permit women migrants interested in working in prostitution to enter the Netherlands. Women who are present in the country legally can work in prostitution, but they will not receive a visa for this purpose.<sup>136</sup> This decision was criticized on the grounds that it would make women wishing to migrate in order to work in prostitution more vulnerable to trafficking.<sup>137</sup>

The legalization of prostitution was by no means a revolution in terms of the attitude to prostitution in the Netherlands; at most, it narrowed the previously significant gap between the legal provisions and the de facto situation. Legalization reflected social tolerance and political pragmatism.<sup>138</sup> Prostitution has existed openly in the Netherlands for centuries, and tolerance reflected official and declared policy rather than merely the turning of a blind eye to the phenomenon.<sup>139</sup> It is estimated that in the 1990s approximately 25,000 women in the Netherlands were engaged in prostitution, at least half of whom were foreigners.<sup>140</sup> The objective of legalization was to address the reality of prostitution as a widespread phenomenon while protecting the rights of the women

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<sup>134</sup> Outshoorn, p. 198.

<sup>135</sup> General Assembly WOM/1601/Rev.1 Committee on Elimination of Discrimination against Women Chamber B, 767<sup>th</sup> & 768<sup>th</sup> meeting Women's Anti Discrimination Committee Examines Netherlands' **Policies on Prostitution, Domestic Violence, Human Trafficking**, 24 January 2007.

<sup>136</sup> TAMPEP 2004, p. 137; Outshoorn, p. 198.

<sup>137</sup> J. Bindman and J. Doezema, **Redefining Prostitution as Sex Work on the International Agenda** <http://www.walnet.org/csis/papers/redefining.html#3d>, 1997

<sup>138</sup> Van Doorninck, p. 193.

<sup>139</sup> J. Kilvington et al. "Prostitution Policy in Europe: a Time of Change," **Feminist Rev.** 67 (2001), p. 81.

<sup>140</sup> The organization Scarlet Cord stated in an email dated December 18, 2007 that in just one week during 2006 its representatives met 230 women in brothels, only 38 of whom were Dutch citizens.

involved, and to combat negative aspects such as coercion, prostitution by minors, and trafficking in women.<sup>141</sup> The government believed that a system of municipal licensing would regulate the sex industry; protect women working in prostitution; guard women and minors against coerced prostitution and sexual exploitation; reduce the number of foreign women engaged in prostitution unlawfully in the Netherlands; enable enhanced supervision of the sex industry in order to prevent the spread of crime; protect public health; and prevent nuisances to the public.<sup>142</sup> With these goals in mind, the Dutch legislature began to pass laws distinguishing between coerced prostitution and trafficking and women, which were to be combated fiercely, and prostitution by choice, which was recognized as a form of work entitling those who work in it to full and equal status and rights. Legalization in the Netherlands is a classic example of the “democratic” model, and it is therefore reasonable to ask why so few women working in prostitution bother to realize their rights.

### **The Impact of Legalization on the Rights of Women Working in Prostitution**

As in Germany, the impact of the legalization of prostitution on women who are citizens of Netherlands and the European Union has been very different from the impact on foreign women. In general, legalization has improved the situation of the former group but led to a further deterioration in the situation of foreign women. Citizens of the European Union are entitled to work in any form of employment in the Netherlands, including prostitution, without any special permit. In most cases, the law has granted the same rights to women from the new EU member states,

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<sup>141</sup> Netherlands Office of Foreign Affairs, **Dutch Policy on Prostitution**, 2005.

<sup>142</sup> Van Doorninck, p. 196.

although this has sometimes been introduced on a gradual basis.<sup>143</sup> The enactment of the new law in 2000 changed the status quo and significantly changed the map of prostitution in the Netherlands. Due to policy differences between the various local authorities, some of which adopted more lenient policies than others, many women were forced to leave the areas in which they had been working and to change the arrangements that had hitherto applied to their work. For example, some authorities required the women to work under the auspices of a body organizing their involvement in prostitution.<sup>144</sup> As mentioned above, most of the women working in prostitution at the time the law came into effect were foreigners present in the Netherlands unlawfully. These women were forced to leave the brothels since one of the conditions for obtaining a permit was to refrain from employing illegal aliens. The police also began to take action against people who rented rooms to illegal aliens working in prostitution. The conditions faced by these women deteriorated – not only were they classed as illegal aliens, but their work in prostitution was also unlawful. As a result, many of them were forced to go underground, losing their independence. In some areas these women began to work in prostitution on the street in tolerance zones originally created for drug addicts. Even here, though, they were often apprehended by the police and deported.

Legalization improved the level of supervision of the legal sex industry, but this industry shrank in size and new problems emerged. It is estimated that the number of women working in brothels and in

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<sup>143</sup> TAMPEP 2004, p. 138.

<sup>144</sup> Ibid., 2004, p. 134.

authorized “windows” fell by about half following institutionalization.<sup>145</sup> There is no evidence to suggest that the sex industry as a whole shrank in size, and accordingly it can reasonably be assumed that illegal prostitution increased significantly. Since legalization there has been a sharp fall in the number of brothels, mirrored by a rise in the number of saunas and massage parlors; this may suggest the growth of the illegal sector.<sup>146</sup> On the one hand, this situation encourages conditions that generally lead to an increase in severe exploitation; on the other, it hampers police operations. For example, it has been claimed that the level of demand for harmful sex has increased. Although women employed legally in prostitution are better able to refuse clients and to protect themselves, some of them have signed worrying agreements requiring them to work a sixteen-hour day and denying them the right to refuse a client. Moreover, allegations are still heard of a disrespectful attitude by the police toward complaints made by women working legally in prostitution.<sup>147</sup> If these women face such problems, it is hardly unreasonable to assume that the situation of women in the illegal sector is even worse. Neither did legalization address the constant danger that women will be drawn into the illegal sector; no channels of supervision were created for this sector. As a result, some social workers claim that there has been an increase in the number of minors working in illegal prostitution, and that is now harder to locate them. Others, however, argue that it was just as difficult to locate minors working in prostitution before legalization and nothing has changed in this respect.<sup>148</sup>

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<sup>145</sup> Email from the Consulate of the Netherlands, October 2, 2005.

<sup>146</sup> M. Stribosch, Radio Netherlands, October 31, 2006.

<sup>147</sup> STV (Foundation against Women Trafficking), email dated November 2, 2005.

<sup>148</sup> **Trafficking in Human beings**, Fourth report of the Dutch National Rapporteur, p. 49.

After legalization organizations were established to represent women working in prostitution. In 2002, the Dutch Union of Sex Workers was established, securing the support of the largest labor federation in the Netherlands as well as a government grant. On the whole, however, the union has had limited success. Employers have refused to negotiate with the women, and the union has only one hundred paying members, and represents only registered (i.e. legal) sex workers, who account for just ten percent of the total number of women in the industry.<sup>149</sup> This fact reflects the failure to overcome the desire of women to maintain their anonymity. One of the reasons for this is that if the women report their occupation, insurance companies will define them as “high risk” and they will be required to pay a higher premium for health insurance.<sup>150</sup> Women from diverse backgrounds are currently employed in the Dutch sex industry: Self-employed Dutch women; Dutch women recruited by “boyfriends” who won their trust and then pimped and trafficked in them;<sup>151</sup> victims of trafficking from Africa, Asia, and Europe; and women migrants who came to the Netherlands for the purpose of working in prostitution after their home countries joined the European Union. Some women are present in the Netherlands but are illegally employed in prostitution; some women in the industry are asylum seekers whose applications have been rejected.<sup>152</sup> The women are employed in legal and illegal brothels; in “escort” services, most of which operate underground; and on the streets.

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<sup>149</sup> G. Gregor, **Sex Worker Union Organizing: an International Study**, 2006, pp. 132-140.

<sup>150</sup> Telephone conversation with the organization BLIN, May 30, 2007.

<sup>151</sup> **Trafficking in Human beings**, Fourth report of the Dutch National Rapporteur, p. 50.

<sup>152</sup> *Ibid*, p 55; “Human Trafficking in Holland,” **The Amsterdam Times**, December 1, 2006 p. 7.

The complex situation in the Netherlands illustrates the enormous difficulty in defining the contours of the offense of human trafficking and in distinguishing the blurred and shifting boundaries between migration, prostitution, and trafficking. As noted, legalization in the Netherlands led to the growth of illegal prostitution and created conditions in which human trafficking flourished – mainly, though not only, in foreign women. An increase has been seen in the number of victims of trafficking located, from 257 in 2003 to 405 in 2004 and 424 in 2005. Although the Dutch police stated to the US TIP Report in 2005 that there had been a fall in the total scope of trafficking in women, 17.5 percent of the victims of trafficking located in that year were from the legal prostitution sector, including Dutch women and girls.<sup>153</sup> Trafficking in women is not a new phenomenon in the Netherlands. In the 1970s women from Thailand and the Philippines came to work in the Dutch sex industry; they were followed by women from Latin America and the Caribbean in the 1980s, and women from Africa and Central and Eastern Europe in the 1990s. Many of these women were the victims of trafficking. The Netherlands has been a destination for trafficking in women for prostitution and for other purposes, and has also served as a transit station for women heading elsewhere. Opinions are divided on this matter, however. The US TIP Report believes that many of the 25,000 women currently employed in prostitution in the Netherlands are the victims of trafficking.<sup>154</sup> The Dutch government has appointed a Special Rapporteur on human trafficking;

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<sup>153</sup>M. Hageman, Office of the Public Prosecutor; telephone interview, November 12, 2006.

<sup>154</sup>See the US Trade Report on the Netherlands:  
<http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>

she claims that many cases involve migration for the purpose of work in the sex industry rather than trafficking.<sup>155</sup>

Dutch law prohibits trafficking in humans for the purposes of prostitution, trade in organs, and work. Those violating the law are liable to up to six years' imprisonment, and more in exacerbating circumstances. According to the Human Trafficking Report issued by the US State Department, 220 suspects were interrogated in the Netherlands in 2006; 253 were prosecuted and 136 were convicted. Prison sentences imposed ranged from three months to four years.<sup>156</sup> These lenient sentences create an atmosphere that encourages the activities of traffickers in women. Accordingly, even if an increase had been seen in the number of victims of trafficking (as noted, the police claim that the trend is in the opposite direction), this might be attributed to the light penalties rather than to the legalization of prostitution. The government reported that it has intensified efforts to locate trafficking victims in the field of legalized prostitution and undertakes careful checks relating to applicants for licenses to work in the field, in part in order to combat trafficking. However, reports suggest that victims of trafficking can be found working in the red light district in Amsterdam, and the police admit that it is difficult to supervise non-legalized prostitution. In September 2005, the Dutch Ministry of Justice signed an agreement with the country's union of journalists to prevent advertisements for unauthorized brothels. Traffickers are increasingly using advertisements for their purposes; prohibiting such publicity is perceived as a preventative measure. A public information campaign was also launched in 2006 to

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<sup>155</sup> **Trafficking in Human Beings**, Fourth report of the Dutch National Rapporteur, p. 140.

<sup>156</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>



combat trafficking in women for the purpose of employment in prostitution; the campaign was directed both at clients and at the general public.

### **The Impact of Legalization on Pimps and Traffickers**

As already mentioned, the new law allowed local authorities to develop their own policy regarding prostitution. Approximately twelve percent of the local authorities in the Netherlands initially decided not to permit brothels in their area. However, the Dutch minister of justice ruled that a total prohibition on brothels violated freedom of vocation; accordingly, local authorities were not permitted to apply a sweeping ban.<sup>157</sup> On the other hand, the government imposed strict requirements on applicants for a license to run a brothel; the owners are effectively responsible for everything that happens in the institution. Inspection is undertaken by a variety of public bodies, including the fire department, inspection and building units, hygiene, income tax and, of course, the police. The police undertake surprise inspections as well as scheduled visits. A range of sanctions is available to the authorities when the rules are broken: warnings; restrictions on the opening hours of the brothel; temporary or permanent closure; prosecution; and revocation of the license.<sup>158</sup> The police claim that it is easier to close a brothel than to prosecute its manager.<sup>159</sup> The level of enforcement also varies from one local authority to another. In The Hague, five applications were rejected and two licenses were revoked due to substantive concern regarding

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<sup>157</sup> Coalition Against Trafficking in Women, **NGO Shadow Report on the Netherlands**, Convention on the Elimination of All Forms of Discrimination Against Women, 57th CEDAW Session, 2007, p. 5.

<sup>158</sup> **Trafficking in Human beings**, Third report of the Dutch National Rapporteur., p. 15.

<sup>159</sup> Van Doorninck, p. 196.

involvement in illegal activities, including trafficking.<sup>160</sup> The police have recently instituted monthly checks on brothels in Amsterdam; these revealed that 37 brothels were violating the law, and the local authorities have begun proceedings to revoke their licenses.

In contrast to the tightening of supervision in the legal sector, illegal prostitution operates without any monitoring or supervision. This situation clearly encourages illegal activities and removes any incentive for pimps to move over to the legal sector. In practice, the attraction is in the opposite direction, encouraging those in the legal sector to engage in illegal operations in order to secure an advantage given the constant competition between the two sectors.<sup>161</sup> Those involved in the business combine operations in both sectors in order to legitimize unlawful activities, relying on forged documents and fictitious marriages. Brothels have tended to migrate to areas where supervision is lax in order to avoid police inspections.<sup>162</sup> Moreover, there has been an increase in recent years in the number of “escort services” that send women to private homes or hotels on demand. The main advantage of this arrangement for those who trade in the women is that they do not always require a license; it is also harder to inspect such operations.<sup>163</sup> In an effort to ascertain whether the women involved are migrants or minors, police officers pretend to be clients and book women through the telephone numbers that appear in newspaper advertisements. The police also attempt to uncover illegal brothels functioning in the guise of cafes or hairdressing saloons.

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<sup>160</sup>Report of the US State Department, The Netherlands, 2005.

<sup>161</sup> **Trafficking in Human Beings**, Third report, 2004 p. 94.

<sup>162</sup> Ibid, p. 90.

<sup>163</sup> “Human Trafficking in Holland,” **The Amsterdam Times** , p. 7.

As noted above, trafficking for prostitution was a problem in the Netherlands long before it was legalized, and it has continued to be a problem following institutionalization. Of 666 people detained during the period 1998-2002 on suspicion of involvement in human trafficking, 64 were owners of brothels in the legal sector.<sup>164</sup> Within the group of brothel owners detained on suspicion of trafficking in women, three sub-groups may be observed: Owners who were unaware that they were employing the victims of trafficking (39 percent); owners who were aware of this, but were not themselves involved in trafficking (59 percent); and owners who played an active role in trafficking (2 percent). The latter group generally secured the highest level of profit from the women.<sup>165</sup> The managers of legal brothels report that traffickers continue to offer them victims for sale.<sup>166</sup> There is a flourishing industry in forgeries that enable trafficking victims and migrants to work in the legal sector; in response, the police have been forced to gain expertise and work creatively in order to identify skilful forgeries.<sup>167</sup> Traffickers sometimes send women to legal brothels, warning them not to tell their clients or the brothel managers about their true status. One of the main problems relating to traffickers and brothel owners is that the authorities have not developed a general data base of brothel owners; someone who is convicted in one district can move elsewhere and receive a license.

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<sup>164</sup> Ibid, p. 107.

<sup>165</sup> Ibid, p. 108. In Israeli law, the employment of a victim of trafficking is in itself defined as part of the chain of trafficking – CAC (TA) 1064/02, **State of Israel v Badian et al.** (supplementary verdict regarding Defendant 3), *Tak-Meh* 2002 (3) 4839; CA 1609/03, **Borrisov et al. v State of Israel**, Tak-El 2003(2), 1919.

<sup>166</sup> Trafficking in Human Beings, Third report, 2004, p. 90.

<sup>167</sup> Ibid., pp. 91, 94. The police also use the services of interpreters to ascertain whether the woman understands the language of the country appearing in her documents.

Regarding the **economic dimension of institutionalization**, it is doubtful whether the legalization of prostitution has dramatically changed the state's income. The existence of the red light district in Amsterdam as a tourist attraction has constituted a major source of income for the Netherlands for many years. This income has now been supplemented by license fees and taxes on brothels, in addition to the taxes imposed on self-employed women working in prostitution.

### **The Legalization of Prostitution in the Netherlands – Interim Conclusions**

The legalization of prostitution in the Netherlands is too recent to permit a full evaluation of its ramifications. Nevertheless, it is already apparent that it has by no means secured the desired outcomes. There has been an improvement in the conditions of employment of women working legally in prostitution; if they work as salaried employees, they receive health insurance, unemployment payments, and other benefits. However, it is estimated that only some ten percent of all women working in the sex industry are employed on a legal basis.<sup>168</sup> Most of the women in the industry are illegal aliens who do not enjoy the benefits of institutionalization; some are victims of trafficking. Trafficking in women continues even in the legal sector, and doubt has been expressed in the Netherlands as to whether the legalization of prostitution has contributed to the campaign against trafficking.<sup>169</sup> The vast majority of illegal aliens working in prostitution in the Netherlands have been forced to go underground, where organized crime has a stronger influence.

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<sup>168</sup> Email from the Consulate of the Netherlands in Israel, October 2, 2005.

<sup>169</sup> Marleen Hageman from the public prosecution service emphasized that this is her personal position, and does not necessarily reflect the position of the service.

Legalization has not ended the stigmatization of prostitution, and may even have perpetuated existing prejudices by confining prostitution to specific areas and defining minimum distances between prostitution and “respectable” institutions such as schools and churches.<sup>170</sup> From another angle, the fact that at least half of the payments received by women are collected by the brothel owners suggests that their status continues to be weak relative to that of their employers. Various proposals have been raised in order to rectify the situation. Organizations promoting the perception of prostitution as a regular form of work argue that granting visas to migrant women to work in prostitution will prevent trafficking. These organizations also support the imposition of liability on clients who collaborate with those who exploit women, including fines for clients who fail to report women who are being held against their will or in other unacceptable conditions. As elsewhere, legalization in the Netherlands has again proved the need for appropriate enforcement in order to confirm the absence of coercive prostitution and trafficking in the legal brothels. The level of enforcement in the Netherlands is good, but it seems that this is still inadequate.

## **THE LEGALIZATION OF PROSTITUTION IN AUSTRALIA**

Over the past 25 years a process of legalization of prostitution has been seen in some of the states and territories that comprise the Commonwealth of Australia: Victoria in 1984; Queensland in 1990; the Australian Capital Territory in 1992; and New South Wales in 1995.<sup>171</sup> As in many other parts of the former British Empire, Australia inherited its

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<sup>170</sup> Bindman and Doezema.

<sup>171</sup> B. Sullivan, “The Women’s Movement and Prostitution Politics in Australia,” in J. Outsborn ed., **The Politics of Prostitution**, 2004, p. 21.

laws from the Mother Country; accordingly, ancillary activities relating to prostitution such as the management of a brothel, soliciting, and making a living from prostitution were criminalized, although prostitution itself was not. In the late 1970s new approaches began to emerge, ultimately paving the way for legislative amendments and a process of institutionalization. The status quo regarding prostitution was criticized from different, and sometimes contradictory, angles. To one side, some women's movements argued that prostitution is a form of work, and demanded that the status of women be changed from prostitutes to sex workers. To the other, there were those who argued that any type of restrictive legislation relating to prostitution constitutes a violation of personal liberty. Legalization was preceded by debates in each state as well as on the national level. The Labour Party, which won the 1992 elections, promoted an approach that considers prostitution to be a private matter between responsible adults; it accepted that argument that the prevailing prostitution laws constituted a further form of abuse of an already-oppressed population. Some considered prostitution a victimless crime, while others saw it as an integral part of human society.<sup>172</sup>

In 1985, as part of the attempt to reexamine policy in the field, the Neave Report was published. This comprehensive document examined the economic, social, legal, and health-related aspects of prostitution.<sup>173</sup> The authors of the report heard testimony from police officers, officials, women working in prostitution, and brothel owners. The report recommended the adoption of policy based on the elimination of most of the offenses relating to prostitution; the regulation of zones for

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<sup>172</sup> Ibid., p. 24.

<sup>173</sup> Ibid., p. 31.

brothels and street prostitution; and a refusal to grant licenses to run a brothel to persons convicted of serious offenses. The objective of this policy was to protect women from exploitation and to protect the public from nuisance. The report claimed that criminal enforcement cannot negate the negative aspects of prostitution. The report also recommended that laws be enacted increasing the amount of control enjoyed by women working in prostitution and enabling them to oppose coercion by pimps and clients. The report emphasized that the roots of prostitution lie in gender inequality; the idea that it is “inevitable” should be abandoned. Women should be enabled to leave prostitution, particularly by adopting a policy of economic equality between men and women. With the exception of the proposal to allocate zones for street prostitution, the government accepted the recommendations in the report. However, debate on the issue continued on the local level, and each state and territory adopted a distinct approach.

### **Legislative Goals in the Legalization Process**

Despite the differences between the policies adopted by the various states, a number of common guiding principles may be identified, although these were prioritized differently in each jurisdiction. The common principles are the demand that women working in prostitution should not be subject to unsafe and discriminatory living conditions; the desire to protect the public from the various nuisances that accompany prostitution, such as drugs, organized crime, and prostitution in residential areas; and concern for public health, particularly in view of the HIV epidemic. In some cases the emphasis was on ensuring that the legalization controlled the sex industry rather than on supporting women working in prostitution. An additional argument was later raised that

legalization was intended to remove prostitution from the areas of responsibility of the police due to rampant corruption.<sup>174</sup> In Victoria, the first Australian state to legalize prostitution, the process was intended to ensure control and supervision of prostitution; to protect children from sexual exploitation; to protect the community; to prevent the involvement of criminal; to ensure that brothels would not be established in residential areas; and to improve protection against STDs. The lowest priorities were to promote the health of women working in prostitution and to protect them from violence and exploitation. This objective was reflected in the legal requirement in Victoria that prohibited the humiliating treatment of women.

Just as the objectives of prostitution varied from one part of Australia to another, so the methods used to introduce legalization also varied, from the stringent approach adopted in Victoria to the more lenient arrangements in the Australian Capital Territory. Most states have required brothels and their managers to register and/or obtain a license, though in the most lenient arrangement the process and cost of registration are largely symbolic. In Victoria and Queensland, the institutionalizing legislation included the establishment of a special authority with responsibility for prostitution. This authority grants licenses to brothels and ensures that they operate in accordance with the laws and complies with the conditions of their licenses, for example on health and safety aspects, or in terms of the zones in which they are

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<sup>174</sup> S. Smith, "The Regulation of Prostitution: A Review of Recent Developments," 1999, Paper 21/99, available at: <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/87ABAC8FFF20946FCA256ECF0009F848>



permitted to operate.<sup>175</sup> The attitude toward street prostitution and solicitation varies; in some cases, these forms of prostitution are completely prohibited. In Victoria, clients involved in street prostitution are also criminalized. In Queensland, solicitation is illegal unless it takes place in an authorized brothel and away from public view.<sup>176</sup> The legalization laws permit women aged eighteen and above to engage in prostitution. Women are not required to register in all states. Women working in prostitution have the right to refuse to have sex with a client. The woman and her employers are both liable to penalties if she continues to work while she is sick. By contrast clients are not required to undergo testing. In some states the use of condoms is compulsory, including in the case of oral sex.<sup>177</sup> The models of legalization introduced in Australia are diverse. Victoria has followed a similar model to that of Nevada, while New South Wales is a clear example of the “democratic” model.

### **The Impact of Legalization on the Rights of Women Working in Prostitution**

It is estimated that approximately 20,000 women are currently employed in prostitution in Australia: 2 percent on the street, 40 percent on a self-employed basis, and the remainder in brothels.<sup>178</sup> Some of these women are of Asian origin and secured Australian citizenship by way of

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<sup>175</sup> Prostitution Control Act (Victoria) 1994, Article 28; The Prostitution Act (Queensland) 1999, Article 100.

<sup>176</sup> Prostitution Control Act (Queensland) 1999, Article. 73-74.

<sup>177</sup> M. L. Sullivan, “Can Prostitution be safe? Applying Occupational Health and Safety Codes to Australia’s Legalized Brothel Prostitution,” in C. Stark and R. Whisnant eds., **Not for Sale – Feminists Resisting Prostitution and Pornography**, 2004, pp. 252-268.

<sup>178</sup> Reply to the questionnaire from the Scarlet Alliance Organization, May 30, 2006.

marriage.<sup>179</sup> Australia is a destination for trafficking in women for the purpose of employment in prostitution, and internal trafficking also occurs. Most of the women come from South East Asia and enter Australia after marrying Australian men; in some cases the marriage is genuine and in other fictitious.<sup>180</sup> Many of these women know that they will be employed in prostitution after arriving in the country. When pimps wish to get rid of a woman, they report her to the immigration authorities who arrest and deport her.<sup>181</sup> The number of victims of trafficking in Australia is estimated at one thousand;<sup>182</sup> several victims have been found working in legal brothels in Victoria.<sup>183</sup> To date, the number of people in Australia prosecuted for trafficking in women is small.<sup>184</sup> The maximum penalty for trafficking offenses is 25 years imprisonment.

The different legalization arrangements introduced in each jurisdiction are reflected in the different impact the process has had on women working in prostitution. The policy adopted in Victoria is considered the strictest and has had a negative impact on the rights of

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<sup>179</sup> L. Meaker, "A Social Response to Transnational Prostitution in Queensland," in S. Thorbek and B. Pattanaik eds., **Transnational Prostitution-Changing Patterns in a Global Context**, 2002, p. 63.

<sup>180</sup> Meaker, p. 63.

<sup>181</sup> Reply to the questionnaire from Project Respect, May 30, 2006.

<sup>182</sup> Project Respect.

<sup>183</sup> K. Maltzhan, **Combating Trafficking in Women: Where to Now?** Available at: [http://www.brisinst.org.au/resources/maltzhan\\_kathleen\\_traffic.html](http://www.brisinst.org.au/resources/maltzhan_kathleen_traffic.html)

<sup>184</sup> For example, see **The Queen V. Wei Tang** Case No CR-04-01316, 9 June 2006. All the Thai women involved in this case had worked in prostitution in the past and were aware that they would do so in Australia. They were required to see 900 men over a period of four to six months, or to pay \$ 45,000. The women were required to work in prostitution from 6 o'clock in the evening until two o'clock in the morning. Their passports and flight tickets were withheld.

women in the field.<sup>185</sup> It is not easy to obtain a license for a brothel, and most women continue to work in the illegal sector, engaging in prostitution in their homes or on the street.<sup>186</sup> Alongside institutionalization, however, Victoria also introduced stricter legislation against women engaging in illegal prostitution. As a result, these women are more vulnerable than in the past to harassment, arrest, imprisonment, and to acts of corruption on the part of police officers and pimps. The surfeit of demand over supply for legal jobs in prostitution has increased the control enjoyed by brothel owners over women and worsened the women's working conditions. Women employed in brothels must pay a high percentage of their income to the brothel, sometimes in advance. They are often fined for petty matters such as arriving late or failing to shave their legs.<sup>187</sup> They are subject to violence, and also to STDs since many of their clients prefer unsafe sex. If they fail to meet their clients' demands they run the risk of losing their already precarious position in the brothel. The brothel owners tend to place a large number of women in each shift, increasing competition and reducing the women's earnings.

The stringent arrangements for the legalization of prostitution introduced in Victoria led to deterioration in the conditions of women working in the legal sector, and to the flourishing of illegal prostitution. In the Australian Capital Territory, however, where the arrangements for

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<sup>185</sup> However, opinions vary regarding the root cause of the problem. Project Respect believes that the problem is the legitimacy granted to brothels, and the conditions imposed on the women by brothel owners under this system. Conversely, women in the Urban Realists organization argue that the problem is the small number of brothels which leads to a surfeit of demand over supply for work places in the field. In this situation, brothel managers can force women to accept exploitative conditions.

<sup>186</sup> B. Sullivan, "Prostitution Law Reform in Australia, A Preliminary Evaluation," *Social Alternatives*, 18/3 (1999), p. 9.

<sup>187</sup> S. Davis, "Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?" 1994, available at: <http://www.walnet.org/csis/papers/sdavis.html>

legalization are considered lenient, the situation is completely different. Women working in prostitution can register easily and the illegal sector is relatively small. Women in the sex industry and the authorities engage in cooperation, and a body representing women working in prostitution meets regularly with a government official in order to offer advice on ways to improve the sex industry. When problems emerge these are usually resolved through cooperation between the women and official bodies, including the police. Women employed in prostitution are protected against discrimination on the grounds of their employment. Their employers are required by law to ensure that the women enjoy conditions that protect their safety, such as alert buttons in their rooms. The law permits the women to refuse a particular client or a particular sex act. New South Wales has also introduced lenient arrangements for institutionalization, and women in the field argue that this has improved their situation. The conditions in the brothels are good, in part in order to dissuade them from leaving. Despite this, many women continue to work illegally on the street or on a private basis without a permit. Reasons for this include the desire to avoid tax payments and an effort to overcome the negative stigma that still accompanies prostitution.

The situation in terms of health and work is also complex. The women in some brothels are inspected by a physician hired by the owner; in other areas, the state finances sex-related health services. Inspectors visit the authorized brothels in order to run sex health education programs and prevent the women being treated improperly. However, many men do not insist on safe sex. Indeed, some clients specifically demand to have sex without using a condom, and women have sometimes been beaten after refusing to engage in unsafe sex. Despite institutionalization, at least

one-fifth of all sex acts are still unsafe.<sup>188</sup> Women employed in prostitution in Australia are entitled to sue their employers, but rarely do so in practice due to their fear that a law suit will attract unwanted attention. Women also fear that judges and juries will be influenced by stereotypes relating to their profession.<sup>189</sup> Over the past decade, labor organizations in Australia have begun to represent women employed in prostitution and to negotiate on their behalf over such issues as delays in paying salaries, fines, coercive sex with brothel owners, and dismissal.<sup>190</sup> However, the number of women who are union members is still small, partly due to their desire to protect their anonymity and avoid taxation. Cooperation on the part of the employers has also been partial. The union has struggled to secure recognition of the women as workers, and has managed to ensure that some of them enjoy sick pay, annual paid vacation, pregnancy leave, dismissal compensation, and pension rights. Among other achievements, the union managed to ensure that women in several brothels are paid an hourly rate, regardless of the number of clients they see.<sup>191</sup>

### **The Impact of Legalization on Pimps and Brothel Owners**

As we have seen, the differing arrangements for legalization have had a varying affect on all those involved. One common feature, however, is an emphasis on ensuring that the authorities have access to brothels for the purpose of inspection. In Victoria every brothel requires a license, also small businesses (employing one or two women) pay a reduced fee for the license. Conditions for receiving a license include the

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<sup>188</sup> M. Sullivan, p. 263.

<sup>189</sup> *Ibid.*, p. 265. The exception is **Phillipa V Carmel** (1996) WI 2523 PERTH.

<sup>190</sup> G. Gall, **Sex Worker Union Organizing**, 2006, pp. 124-32.

<sup>191</sup> Gregor, pp. 124-32.

provision of personal details relating to the owner and manager, who must be above the age of eighteen and must provide fingerprints. An applicant for a license must publish his application in the press. Brothel owners and managers are subject to special business legislation, such as the requirement to ensure that women in the brothel undergo regular tests and do not have STDs.<sup>192</sup> They are also subject to general provisions, such as the obligation to provide a protected working environment for their employees. In Queensland, a special statutory authority has been established to examine applications for licenses to run brothels. The authority decides whether the applicant will receive a license and monitors the activities of the brothels. All those working in a brothel and all clients must be above the age of eighteen, and every brothel must have staff member trained in providing first aid. The authorities issued a special book of instructions for brothel managers detailing the women's rights and recommending that women who are new to prostitution or who do not speak English should receive special treatment. The instructions include guidance on how to cope with violent clients and what to do if a client is suspected of having an STD. The guide details the method of disposal of clinical waste such as condoms, and requires brothels to launder towels and sheets after each client.<sup>193</sup>

In New South Wales, legislation applying to all places of work, including brothels, requires employers to consult with their employees on all policy issues that affect their health and well-being and to develop safe working methods. Here, too, a guidebook was published detailing,

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<sup>192</sup> Prostitution Control Act, 1994, Article 19.

<sup>193</sup> **Handbook for Approved Managers of Licensed Brothels**, 2005, available at: <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/handbook/documents/managersHandbook2005.pdf>

for example, the length of shifts and meal breaks, and mandating the installation of special light bulbs to detect whether clients are carrying certain STDs. The employer must provide the women with condoms conforming to the Australian standard and must show consideration for pregnant women, for example by giving them shorter shifts and moving them to smoke-free areas.<sup>194</sup> It is difficult, if not impossible, to estimate what impact legalization has had on the scale of the sex industry, both legal and illegal, since the available data is partial and contradictory. For example, while the number of authorized brothels in Queensland almost doubled between 2004 and 2006, a decline of sixteen percent was reported in the number of people registered as engaged in prostitution over the same period.<sup>195</sup> Part of the growth in Queensland is due to a deliberate effort on the part of the authorities to increase the number of legal brothels and reduce the illegal sector. The decline in the number of people registered as engaged in prostitution reflects the opposite trend, however, as women move from legal prostitution to the illegal sector. It may be concluded that at least to date, the legalization processes in Australia have not made the sex industry more transparent in a manner that can permit substantiated research rather than speculation.

### **The Economic Aspect of the Legalization of Prostitution**

Following the legalization of prostitution, the tax authorities and others began to receive money from the sex industry. In 2006, for example, the profits of the authority responsible for the supervision of

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<sup>194</sup> **Health and Safety Guidelines for Brothels**, 2001, NSW available at: [http://www.workcover.nsw.gov.au/NR/rdonlyres/BFFA4789-E98E-478E-B110-C86A1EA6402E/0/guide\\_wc\\_brothels\\_1201e.pdf](http://www.workcover.nsw.gov.au/NR/rdonlyres/BFFA4789-E98E-478E-B110-C86A1EA6402E/0/guide_wc_brothels_1201e.pdf)

<sup>195</sup> **In Touch** Newsletter, Issue no.8, October 2004. available at: <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/newsletters/documents/08.pdf>

brothels in Queensland totaled \$ 380,733.<sup>196</sup> However, the money received by the authorities is almost certainly no more than the tip of the iceberg, since many brothels and women do not report all their income.<sup>197</sup> According to unsubstantiated figures, a local newspaper stated that 60,000 men spend a total of \$ 7 million a week on prostitution in Victoria, and that the legalized sex industry secures profit of \$ 360 million a year – yet between 1995 and 1998, the State of Victoria secured just \$ 991,000 from licenses.<sup>198</sup> It was also reported that one brothel was issued on the stock exchange in order to raise \$ 12 million for investment in a second brothel, strip clubs, and companies producing pornographic movies; the managers of the brothel are considering international expansion. The directors of the company claimed that profit margins in the sex industry are as large as 60 percent.<sup>199</sup> As noted, however, the authorities secure only a small fraction of these sums.

## **The Legalization of Prostitution in Australia – Interim**

### **Conclusions**

The diverse nature of the arrangements introduced in Australia for the legalization of prostitution makes it difficult to draw general conclusions. At least in theory, legalization seems to have created a potential basket of rights for women working in the sex industry, including their rights as workers. Once again, however, the gap between theory and practice is considerable. For example, improved access to the

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<sup>196</sup> Prostitution Licensing Authority, Annual Report 2005-2006, Queensland Government

<sup>197</sup> Reply to the questionnaire from Project Respect, May 30, 2006.

<sup>198</sup> M. Sullivan and S. Jeffreys, "Legalising Prostitution Is Not the Answer: The Example of Victoria, Australia", p. 4, available at: [http://action.web.ca/home/catw/readingroom.shtml?x=6573&AA\\_EX\\_Session=4833c0ddfadd3bbac2f70a6911e79e7d](http://action.web.ca/home/catw/readingroom.shtml?x=6573&AA_EX_Session=4833c0ddfadd3bbac2f70a6911e79e7d)

<sup>199</sup> R. Gluyas, "Brothel Arouses Market Interest", *The Australian*, 2.5.2003; J. Madslie "Australian Brothel Set to Float", *BBC*: <http://news.bbc.co.uk/1/hi/business/2143912.stm>



courts has only been utilized in a small number of cases; stereotypes have deterred women from turning to the courts and enjoying an impartial response. Those who support the eradication of prostitution argue that legalization has not solved the typical problems that accompany this phenomenon. Accordingly, they suggest that consideration should be given to adopting the Swedish approach, which criminalizes clients. They claim that legalization has increased the level of demand for prostitution, exacerbating the phenomenon of trafficking in women. The supporters of legalization completely reject these claims. They define the foreign women who work in prostitution as migrant workers and refuse to see them as trafficking victims. They urge a reduction in the restrictions imposed on prostitution and argue that women should be permitted to work in the industry without permits or restrictive frameworks. However, they too are unable to explain the general impression that despite the diverse models of legalization introduced in Australia, the process has not met any of its declared goals.

## **THE LEGALIZATION OF PROSTITUTION: IS IT THE SOLUTION?**

Our review of the situation in Nevada, Germany, the Netherlands, and Australia has highlighted the different forms of legalization that have developed in each jurisdiction. Legalization has not achieved all its goals, or its principal goals, in any of these jurisdictions. If we take into account that the areas that introduced legalization were ones that had a high level of acceptance of prostitution even prior to institutionalization, its achievements seem extremely modest. It is unclear whether legalization has made any contribution to fostering social tolerance of prostitution. In each jurisdiction, legalization has left a substantial sector of illegal prostitution, probably on a larger scale than that of the legal sector. There are many reasons for this reality. Legalization has not altered the stigma attached to prostitution; together with a reluctance to pay taxes, this stigma is one of the main factors deterring women from registering as workers in prostitution. A further factor deterring women from engaging in legalized prostitution are the minimum requirements, particularly in terms of health and non-use of drugs. It is true that in most cases women working in a legalized brothel enjoy better protection from violence. However, they are sometimes subject to pressure to engage in sex without using condoms, or to receive a client they do not wish to have sex with. Equally, clients do not confine themselves to authorized brothels, and continue to contact women working illegally in prostitution. Their reasons for doing so include lower prices; greater supply; and the fact that many men are not interested in safe sex or do not wish to be subject to supervision or restrictions in

terms of what they do to the women they meet (including injury to them). Such behavior is more difficult in legalized brothels, if only due to the presence of alarm buttons.

Pimps have also been reluctant to accept legalization on the basis of considerations of cost-benefit. While legalization removes the criminal label attached to their activities, and reduces the risk of arrest and prosecution, this is offset by the economic price of institutionalization. The profit margin in a legalized brothel is smaller; moreover, taxes must be paid and women employed on a salaried basis must be granted social rights. Illegal prostitution also entails costs due to the need to conceal the operations, pay bail charges, and so on, but the profit margin means that these can rapidly be recouped. The owners of small brothels sometimes prefer to continue to run the brothel illegally rather than make the expensive changes that are required in order to secure a license. The jurisdictions that have legalized prostitution have not managed to prevent criminal elements entering the sex industry, despite precautionary measures such as examining the criminal record of applicants for licenses. In many cases, forged documents have been used to overcome the hurdles created by institutionalization, and in all the jurisdictions we examined trafficking victims have been found working in authorized, legal brothels.<sup>200</sup> A key factor in the effectiveness of legalization and in nurturing the legal prostitution sector is the quality of enforcement. In cases when enforcement was lax prior to institutionalization, has the process led to more dynamic and effective action? The cases examined above suggest that in most cases legalization did not lead to any dramatic

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<sup>200</sup> Kathleen Maltzhan, **Combating Trafficking in Women**, 2004, available at: [http://www.brisinst.org.au/resources/maltzhan\\_kathleen\\_traffic.html](http://www.brisinst.org.au/resources/maltzhan_kathleen_traffic.html)

change in the quality of enforcement. Neither did legalization remove the nuisance to the general public created by prostitution. Street prostitution continued to exist, if only because many women were excluded from the legal sector – drug addicts, those with diseases, minors, trafficking victims, and illegal aliens. Even when the police was more active against street prostitution it was unable to eradicate the phenomenon, and the women involved suffered most from police operations.

Legalization has not changed prevailing negative prejudices regarding prostitution. In all the jurisdictions that have introduced institutionalization, prostitution has been prohibited in the vicinity of schools and churches. The stigmas relating to this phenomenon have deep historical roots and it is unrealistic to expect that a few years of legalization can change this. In terms of access by women to the courts, too, no significant improvement has been seen. In Germany not a single woman has sued an employer or client, and in Australia and the Netherlands the number of cases is very small. Again, this is due to prevailing stigmas regarding prostitution, not only on the part of the authorities but also among women working in the field. Even when prostitution has secured legal recognition as work, no improvement has been seen in terms of the use of the courts, suggesting that legalization has not even managed to encourage the women themselves to view their work as more legitimate. Access by women to the courts is not only important in terms of the ability to sue employers or clients. It has broader ramifications, such as claims for damages and, above all, providing women with the practical possibility to file suit. In terms of health, too, there is no evidence of any tangible improvement following institutionalization. In theory, women are certainly more able to secure

protection than in the illegal sector. However, many cases of unsafe sex or sex in which the woman is an unwilling partner continue to occur; at best, the number of such cases may have been reduced.

## **CAN LEGALIZATION OF PROSTITUTION BE A SOLUTION IN ISRAEL? IF SO – FOR WHOM?**

The experience of other countries in the legalization of prostitution is extremely important. Nevertheless, when considering the possibility of introducing legalization in Israel the first step should be to examine the unique social, economic, and political circumstances in this country; to define the character of the sex industry that has developed over recent decades; to examine who is promoting the idea of legalization and why; and to define its goals. The following sections examine the various goals of legalization and consider whether it will indeed be able to promote these goals.

**Promoting the rights of women as workers:** If the goal of legalization is to improve the working conditions of women in prostitution and improve their rights, it is doubtful whether any such benefit will materialize. In the current situation, in which prostitution is not considered a criminal offense, women working in the field are entitled to various rights but they rarely take advantage of this. Indeed, it is very doubtful whether most women in the sex industry are aware that they have the right to sue their employer in the labor courts or through damages proceedings. The vast majority of suits against traffickers and pimps in Israel have been possible thanks to the support of the legal aid provided for trafficking victims by the state. Such assistance is not available to Israeli women working in prostitution who are not victims of

trafficking. Why have so few women working in prostitution turned to the labor courts or filed suit for damages against those who have injured them, and could the legalization of prostitution enhance their access to the courts? We have seen quite clearly that the legalization of prostitution has not improved the access to the courts enjoyed by women in any of the jurisdictions examined. The main key to improving their situation lies not in the legalization of prostitution, but in ensuring that all women employed in prostitution, rather than just the victims of trafficking, enjoy legal assistance, even if their income level means that they are not entitled to legal aid in accordance with the usual criteria established by law.

An additional factor limiting the prospects that the legalization of prostitution in Israel will lead to any improvement in the position of the women involved is the high proportion of victims of trafficking, new Jewish immigrants, and drug addicts working in the local sex industry. Accordingly, even if prostitution is legalized, the large number of women present in Israel illegally would not benefit from the change. The only people who would benefit would be the pimps, whose businesses would become legitimate. Moreover, Israel has never seen the emergence of a trade union representing women working in prostitution or of organizations advocating their rights as workers. This is further evidence of the weak population groups involved in the Israeli sex industry; most of the women involved do not meet the model of women who choose to work in prostitution as a way of life, are willing to announce their profession publicly, and to engage in a social and political struggle to secure their rights. It is difficult to avoid comparisons between the situation of women working in prostitution in Israel and that of migrant

workers in the country. Migrant workers began to arrive in Israel in the 1990s. The State of Israel allowed them to come, but refused to accept responsibility for them. Employers were given full authority regarding migrant workers, with the exception of the arrest and expulsion of illegal workers. The “chaining policy,” as it became known, severely violated the rights of migrants as humans and as workers. Their passports were confiscated; they were required to work long hours; and, in most cases, they received less than the minimum wage. Some migrant workers were abused by their employers, and some women (particularly those caring for the old and infirm) were subjected to sexual abuse.

Many migrant workers remained with their employers, even when these were abusive, due to their fear of losing their legal status and risking expulsion. However, many workers did break free of their employers. In most cases, they secured higher salaries and improved working conditions. Migrant workers are entitled to the full protection of Israeli labor law, including the minimum wage. In practice, however, few of them enjoy these benefits. The reason is that the employers to whom they are “chained” exploit their unfamiliarity with Israel and their weak position. Similarly, women working in prostitution are also vulnerable, in part due to ingrained prejudice and the harsh economic and emotional circumstances of their lives; they, too, are often exploited. Accordingly, it is reasonable to assume that women will be unable to utilize the rights granted to them if prostitution is legalized. A similar situation already exists – women in prostitution are entitled to workers’ rights, but in practice do not enjoy them. What is important is not just the letter of the law, but the prospects that the law will be implemented. Official declarations about the rights of weakened populations do very little to

protect their rights in practical terms. The declaration of rights is not a miracle cure and does not mean that rights have been granted in practice. The difference between the two is significant. Legalization may be likened to a declaration of rights, but it does not guarantee that rights will actually be granted in practice. Realizing rights does not necessarily accrue from institutionalization, and it would be possible to realize these rights under Israeli law without institutionalization.

**The economic aspect:** Every jurisdiction that has legalized prostitution has imposed taxation on the legal sex industry. It must be doubted whether legalization encouraged pimps to manage all their businesses legally and to pay their full tax liability. Moreover, although the payment of taxes is a legal obligation in Israel, there are many who avoid paying tax in full. Legalization will not create any new obligation to pay tax, but will merely grant certain rights to pimps. Will these rights constitute an incentive to pay tax? It must be recalled that profit in the legal sector is lower, and in addition to tax payments brothel owners will also be required to pay national insurance, health insurance, pensions, and so on. We have seen that in Germany legalization discouraged women from pursuing their other rights. In addition, it is difficult to ignore the moral dimension of this subject, and to ask whether income tax (and the public in Israel) is entitled to benefit from a tax that is raised on the back of a weakened population (in more than one sense of the phrase) and in such harsh conditions.

**Eliminating the social stigma:** In the survey by Mina Zemah in 2004, the respondents were asked how they would react if a job applicant who was qualified for the position mentioned during the interview that she had worked in the past as a prostitute. Thirty four percent were sure



that they would accept the woman; 26 percent thought they would probably accept her; 12 percent thought they would probably reject the woman; and 22 percent were sure that they would do so.<sup>201</sup> Israeli society condemns prostitution, despite the fact that it has not been criminalized by law. Stigmas and stereotypes have accompanied prostitution since ancient times, and it is doubtful whether its declaration as an official “profession” will change such deeply ingrained feelings. The experience of the countries examined above suggests that the legalization of prostitution has not solved this problem and has not helped women to claim their rights within society.

**Public health:** In theory, legalization grants women working in prostitution the power to demand that their clients engage in safe sex. As we have seen, however, they are not always able to exercise this power in practice. The argument in favor of legalization based on the desire to help women to protect their health is only partially accurate. Public concern focuses not on the health of the women but on that of the clients, since it is the latter who pass on STDs to their partners. Surveys have shown that contrary to the accepted myth that the clients of the sex industry are lonely young men, most of those consuming sex for payment are married men, or single men who have sex with a large number of women, that majority of whom are not women working in prostitution.<sup>202</sup> The public is not concerned about the danger facing a prostitute who has AIDS, but

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<sup>201</sup> Meeting of the Knesset Committee for the Struggle against Trafficking in Women and the Knesset Committee for Advancing the Status of Women held on July 19, 2005, Minutes No. 9.

<sup>202</sup> B. Anderson and J. O'Connell, “Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study,” *Migration Research Series*, 15 (2003); D. Hughes, **Best Practices to Address the Demand Side of Sex Trafficking**: [www.uri.edu/artsci/wms/hughes/demand\\_sex\\_trafficking.pdf](http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf); See H. Ward et al. “Who Pays for Sex? An Analysis of the Increasing Prevalence of Female Commercial Sex Contacts among Men in Britain,” *Sex Transmitted Infections*, 81 (2005), pp. 467-71.

about the danger she poses to the public. Panic occasionally ensues when the public learns that women who have AIDS are working in prostitution.<sup>203</sup> None of this is novel or surprising. It is only to be expected that women who have sexual relations with a large number of men, and are not always able to protect themselves, will contract STDs. The question is whether they alone should be held to blame for this situation while their clients are released of responsibility?

It is also important to recall the enormous difference between women working in prostitution out of choice and those coerced into the profession. Women coerced into prostitution cannot control their conditions of employment and are not always free to decide whether to have safe sex or whether to seek out testing or treatment. They come to the world of prostitution from disadvantaged social backgrounds, suffering from poverty and lack of education; their level of knowledge about STDs and methods of protection is minimal. Women who are not coerced into prostitution are more aware of the dangers involved in the sex industry. They have a higher level of awareness of STDs and are more likely to undergo testing of their own initiative and to protect themselves through the use of condoms. A high rate of STDs among women working in prostitution reflects less on the women themselves and more on the sickness of the society in which they live. The demand to legalize prostitution so that it will be possible to inspect the women

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<sup>203</sup> Minutes No. 308 of the Twelfth Knesset, June 12, 1991; E. Kortz, "Loads of Prostitutes Have AIDS and Do Not Know It," **Iton Tel Aviv**, October 27, 2006; [http://www.tam.co.il/27\\_10\\_2006/chdashot3.htm](http://www.tam.co.il/27_10_2006/chdashot3.htm); H. Alroi De-Bar, "Ten Prostitutes Have AIDS," **NRG**, October 25, 2006, <http://www.nrg.co.il/online/43/ART1/496/240.html>; E. Ben-David, "Dangerous Sex – Consider Yourselves Warned," **NRG**, January 24, 2006, <http://hot.nrg.co.il/online/1/ART1/038/282.html>; E. Glickman, "Soldiers Found Out Too Late: The Escort Is an HIV Carrier," **YNET**, November 27, 2002, <http://www.ynet.co.il/articles/1,7340,L-2276855,00.html>.

working in the field perpetuates an approach that releases the client of responsibility for having safe sex and imposes this obligation solely on the women. A client is always free to demand unprotected sex, and women are not always free to refuse.<sup>204</sup> Requiring women to undergo testing may even threaten their well-being, since clients who know that they are tested may be encouraged to demand unprotected sex. Pimps may exploit testing to market “their girls.” After the Israeli Ministry of Health ran tests in the past, one Israeli brothel published an advertisement proclaiming: “Our girls have been tested and found free of AIDS. Authorizations from the Ministry of Health are available.”<sup>205</sup>

**Transparency preventing criminals entering prostitution:**

Experience shows that a legal prostitution sector does not eliminate the parallel presence of illegal prostitution, and may not even reduce the latter phenomenon. The illegal sector relies on such mechanisms as forged documents and concealed brothels – methods that are already employed. In February 2006, the Israeli public was horrified by footage screened on the television investigative program “**Uvda**”, showing women hiding in special spaces built into the walls of a brothel. Another method already used in Israel are “cover agents” who manage the contacts with the authorities in place of the brothel owner.<sup>206</sup> Since involvement in prostitution is a field that is rife with possibilities for exploitation, and since the women employed in the field are weak and can

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<sup>204</sup> It should also be noted that women contract HIV more easily than men and are at greater risk than their clients when engaging in unprotected sex.

<sup>205</sup> N. Levenkron and Y. Dahan, **Women as Commodities**, p 72.

<sup>206</sup> At a Knesset session, a representative of income tax explained: “When we launch investigations into massage parlors we never get to the top guy... There are always monkeys [sic] in the massage parlors who are willing to take the rap... He says, ‘We only opened this year, I only began to work this year.’ The girls back up his story.” See: Minutes of a Meeting of the Subcommittee of the Constitution, Law and Justice Committee for the Struggle against Trafficking in Women, January 18, 2005.

easily be exploited, there are grounds to fear that even people with no previous criminal record may engage in exploitation. This is exactly what happened with migrant workers, who were grossly exploited by lawful and reputable personnel companies that ostensibly meet all the legal requirements, except the requirement to respect their employees' rights.<sup>207</sup>

To sum up, it may be argued that prostitution in the State of Israel has already been legalized, albeit in a surreptitious and gradual manner. This legalization is guided by the state and serves the interests of all those involved, with the exception of the women involved in prostitution, whose rights come last on the list of priorities. "Tolerance zones" regarding prostitution operate freely. Police policy, as reflected in the guidelines of the State Prosecutor's Office, is to inspect the sex industry but to refrain from interfering unless other provisions of the penal code are being violated. The National Insurance Institute, which in the past paid supplementary income to women working in the sex industry, recently demanded tens of thousands of shekels in repayments, based on assumed profit of NIS 350 a day.<sup>208</sup> At the very least the covert legalization of prostitution should be balanced by steps guaranteeing the rights of women working in the field. For example, women should get help getting out of prostitution and should be permitted to work in prostitution in their own homes. This will improve their ability to defend themselves from assault and violence and reduce their dependence on

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<sup>207</sup> An example is the **Binyamin** case in which the defendants, employees of Y. Zarfati Ltd., were convicted of assault in aggravated circumstances, including attacking employees with a wooden plank with nails on, threats, etc. (C 2116/03, **State of Israel v Binyamin** (ruling dated September 22, 2005)); LA 1218/02, **Xue Bin v A. Dory – Engineering Works Company Ltd.** (ruling dated March 20, 2003).

<sup>208</sup> "Hamishmar Haezrachi", 17.5.2007, available at: <http://www.keshet-tv.com/CivilGuard/Default.aspx>

pimps and brothels, which currently operate in full view of the law, which prefers to turn its gaze elsewhere. Introducing measures to recognize and guarantee the rights of women is not tantamount to furthering the legalization of prostitution. Rather, such measures seek to correct the imbalance inherent in the one-sided form of legalization that currently applies, the main outcome of which is the legalization of pimps and brothels.

## CONCLUSION

An examination of the practical ramifications of the legalization of prostitution in a number of jurisdictions shows that the main objectives of this process – the elimination of trafficking in women, improving their health, and ensuring they enjoy rights – have totally failed or, at best, have been only a very partial success. Legalization has been shown to provide only limited protection for women, and generally only for those women who choose to work in prostitution of their own free will. In Israel, the main supporters of legalization are traffickers in women and those who speak on their behalf, as well as police officials and Members of Knesset. No such demand has come from the women themselves. Accordingly, it may be assumed that such a process of legalization will concentrate on securing profit for the state and improving its supervisory powers, rather than on protecting the rights of women working in prostitution. In light of the experience elsewhere, there can be no certainty that the legalization of prostitution will indeed benefit the public exchequer. However, it will certainly prove financially rewarding for the pimps. If prostitution is legalized, the State of Israel will be even less involved in the field than at present. Responsibility for the fate of the women whose rights it has never respected will be transferred to “franchisees” – those pimps who meet the conditions of its “tenders.” At present, procuring is a criminal offense; although this offense is not enforced, it at least gives the women a chance to complain, even though they rarely use this opportunity. The legalization of pimps and brothels will transform a criminal complaint into a purely civil proceeding between the women and their “legitimate” employer. It is doubtful whether women will enter into such proceedings.

In recent years, Israel has concentrated on actions relating to the offense of trafficking in women, while continuing to ignore the phenomenon of domestic prostitution, which often faces quite similar problems. Although the struggle against trafficking is important, it has done nothing to help the situation of Israeli women drawn into the sex industry in increasing numbers. Fundamental change is needed in this respect. Israel must develop comprehensive policy relating both to Israeli women and to women who are the victims of trafficking. In developing such policy it must be recalled that while official policy cannot completely transform the sex industry, it can influence changes in the ways it operates. The adopted policy must include support programs for women working in prostitution who wish to leave the sex industry; the establishment of shelters for women; raising the women's awareness of their rights to receive health services; informing them of their right to complain to the police when they are the victims of offenses and to sue their pimps and traffickers. The problem of prostitution will not disappear in the near future – not because it is the “oldest profession,” as is sometimes claimed, but because too many people make a living from prostitution and are unable and unwilling to permit it to disappear. Despite this, women working in prostitution can be helped without legitimizing traffickers, pimps, and the sex industry as a whole. Wherever there is prostitution there is exploitation, to a lesser or greater extent, even when it occurs under the auspices of the state and even when “market forces” are allowed to act freely. Accordingly, any legal solution to the problem of prostitution will be limited, and must be accompanied by educational efforts to prevent the consumption of sex for payment, alongside an emphasis on education to equality. Great care must be

exercised when developing policy on prostitution, since the lives of so many women hang in the balance. The experience of other countries in this field must be constantly examined. As the Israeli authorities develop policy on institutionalization, they should recall that the sex industry will always be more powerful than the women it traps.



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