

# Prostitution Policies in the Netherlands

## Introduction

This paper starts with describing the current policies on prostitution in the Netherlands, its aims and the underlying principles. It shortly touches the factors that led to the lifting of the ban on brothels in 2000. It then summarises the outcomes of the most recent evaluation of the effects of the change of law and lists the main points of critique. It concludes with a review of the strengths and weaknesses of the current approach and the way the law is implemented in the opinion of the author.

## Current policies on prostitution: lifting of the ban on brothels

In October 2000 the general ban on brothels and pimping in the Criminal Code were lifted. This allowed regulating the sex industry under administrative and labour law and the treatment of sex work as labour. Since 2000 the Dutch Penal Code no longer treats organising the prostitution of an adult female or male person as a crime, provided it is done with the consent of the prostitute. This means that it is legal to operate a brothel or to organize the prostitution of others, when it takes place on a consensual basis and involves adult persons (i.e. persons above 18). [In fact the amendment only removed (part of) the old article on prostitution from the Penal Code, there was no new national prostitution law. It is therefore better to speak of 'decriminalisation' than of 'legalisation'.]

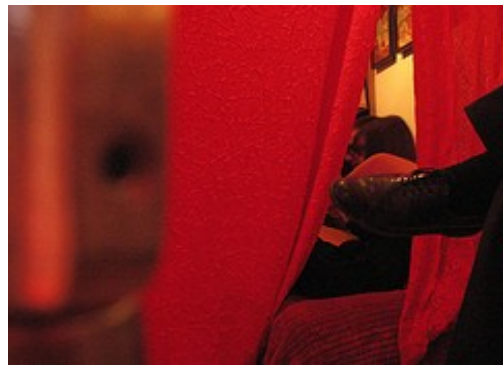


Photo: mirosim

At the same time the prohibition on the use of coercion, (threat of) violence, deceit or abuse of authority in relation to prostitution was sharpened, along with the introduction of more severe penalties.

The criminal law (now Art. 273f CC) prohibits:

- Any involvement, recruitment or exploitation of minors (< 18 year) in the sex industry, independent of conditions of coercion, deceit or abuse of authority;
- Any use of coercion, (threat of) violence, deceit or abuse of authority in relation to adult persons, both with regard to conditions of recruitment and conditions of work; and/or profiting from the prostitution of another person under the aforementioned conditions;
- Recruitment for prostitution across borders, independent of the use of coercion, (threat of) violence, deceit or abuse of authority.

In addition, clients of 16 or 17 year old prostitutes became punishable (Art. 248b CC: illicit sexual acts with a minor prostitute; Art. 248a prohibits the enticement of minors). Clients of prostitutes younger than 16 year were already punishable before the change of law in 2000 (Art. 247 CC: prohibition on illicit sexual acts with a child). Sexual intercourse with a minor between the age of 12 and 16 is separately criminalized and can be prosecuted independent of a complaint of the child or her or his legal representative (Art. 245 CC: sexual intercourse with a person between the age of 12 and 16).

In October 2002 during a partial review of the decency legislation, a number of relevant sections of the law were amended, particularly with a view to a more effective protection of minors.

## **Previous situation**

Before 2000 the Criminal Code contained a general ban on brothels and pimping, meaning that all third party involvement in prostitution was criminalised, independent of conditions of coercion or consent.

Prostitutes themselves, soliciting or the selling of sex has never been criminalised in the Netherlands. There has never been something like the notion of a 'common prostitute' in Dutch law.

## **Underlying principles**

The core of the present laws and policies on prostitution is the decriminalisation of those forms of prostitution in which adult persons are engaged on a voluntary and consensual basis, whereas any form of coercion, (threat of) violence, deceit or abuse of authority in relation to the prostitution of another person, as well as sexual abuse of minors is strictly prohibited and penalised. The underlying principle is a labour approach, i.e. the treatment of sex work as labour, including the application of labour law to the sex industry and the attached labour rights for sex workers.

This is achieved by a combination of administrative, labour, criminal and civil law:

- Regulation of sex businesses by administrative law (licensing system) and labour law;
- Prevention and combat of trafficking in human beings and other forms of violence or abuse, prostitution by minors, or by foreign nationals without the required working permit, through a combination of labour law, criminal law, administrative and economic law;
- Improvement of the position and working conditions of prostitutes, a.o. by according sex workers labour rights and by including requirements in the licensing system regarding working conditions, safety and health and the prohibition on the use of coercion, deceit or abuse.

## **Main impetus for change**

When in the eighties the sex industry grew larger, local administrators began to realise that their towns accommodated a substantial economic sector on which they had very little influence. The structure of prostitution had become so complex that its regulation badly needed more precise instruments, but existing laws had very little to offer in this respect. This dilemma for local policymakers marked the start of the public debate on the decriminalisation prostitution.

This development coincided with the second feminist wave, which put violence against women on the agenda and started to question long cherished stereotypes about decent women and those who were not. As a result of the sexual revolution in the sixties and seventies the moral attitude towards prostitution had changed, as well as the attitude towards the State as the keeper of its citizens' morals. Prostitution was still not considered proper behaviour, but it was no longer seen as sexual abuse per se (or deviant behaviour). Prostitutes started to oppose the division of women into categories of good and bad, innocent and guilty and refused to be seen as victims per definition. Sex worker activists and feminists argued that the idea of self-determination should also apply to prostitution and that the right of women to have control over their own body should also give them the right to sell sex. A prostitutes' union was founded that campaigned for the recognition of

prostitution as work and for protection through labour law. At the same time, feminists and activists-prostitutes drew attention to the exploitation of migrant prostitutes who were working under slave-like conditions and called for harsher penalties for trafficking in human beings.

This debate was the cradle for the Dutch approach towards prostitution: a sharp division between voluntary prostitution and involuntary prostitution, between consent and coercion. If a man or woman considers prostitution an option to earn a living, he or she should be able to work under proper conditions and should have the same rights and the same protection against violence and abuse as any worker has. If a woman or man is forced into prostitution or faces violence, abuse or deceit in the course of her or his work, the law should protect her or him.

In order to give prostitutes the same rights as other workers the ban on brothels had to be lifted. In order to protect victims of trafficking the penalties had to increase and social measures had to be taken. And for, in particular, the big cities the ban on brothels had to be removed in order to enable them to regulate a growing industry without running the risk of being accused of involvement in criminal activities. So, three interests coincided.

## **Aims of the abolition of the ban on brothels**

According to the Parliamentary papers, the abolition of the ban on brothels served six major aims:

1. to control and regulate the organisation of consensual prostitution by adults, among others by the introduction of a licensing system for sex businesses.
2. to improve the combat of the commercial operation (exploitation) of involuntary prostitution
3. the protection of minors against sexual abuse
4. the protection of the position of prostitutes
5. to combat the criminal activities related to prostitution
6. to reduce prostitution by foreign nationals without the required residence and working permit

The achievement of these aims is seen as a process. The evaluations of the lifting of the ban on brothels monitor the progress in achieving the aims.

## **Outcomes of the 2006 evaluation**

The outcomes of the change of law have been evaluated in 2002 and 2006. The recent evaluation focused on 3 aspects: municipal policies, illegal and prohibited forms of prostitution (including involuntary prostitution and prostitution by minors) and the social position of prostitutes. The main results are summarised below. A list of the reports on which this summary is based can be found at the end of this document.

### **1. Control and regulation**

#### *Licensing system*

All municipalities have practically completed the licensing process and are carrying out inspections to a greater or lesser extent. The local authorities have the *location-bound* prostitution businesses (brothels, windows, clubs etc.) reasonably under control. Location-bound prostitution businesses without a licence are by far in the minority.



Photo:  
[elsevier.nl/artimg/200711/yabyum.jpg](http://elsevier.nl/artimg/200711/yabyum.jpg)

Generally, the exploitation of a sex business without license if a license is required only occurs to a limited extent. The checking of adherence to local rules and regulations has increased, as well as awareness about possible abuses. According to the local authorities the rules are known and reasonably clear and voluntary compliance by the branch is good to reasonable.

The situation is more complicated in respect of *non-location-bound* sex businesses, such as escort services. A purely local approach is not sufficient in respect of non-location-bound forms of commercial operation of prostitution. It is easy for this type of sex businesses to evade local policy by relocating to a different municipality or region where either a licence is not required or the approach is less strict. In addition to this, there are sectors that are difficult to control such as couples' clubs, sauna clubs, gay saunas and massage parlours.

A bit more than half (55%) of the municipalities that responded have established an 'enforcement arrangement' between the local authority, police and the Department of Public Prosecution.

The police (still) play the most important role in monitoring the licensed sector and in carrying out inspections that could also be conducted by, for example, the Health and Safety Inspectorate. This goes at the cost of police capacity to play a major monitoring and investigative role with regard to prohibited forms of operation outside the licensed sector.

#### *Content of local prostitution policies*

A large majority of the municipalities have established a specific prostitution policy (84 %). Sixteen percent has not, of which 80 % state as reason the non-existence of prostitution in their municipality. Issues which are subject matter of local prostitution policies include:

- licensing system (92%)
- planning regulations (84%)
- prevention (40%)
- repression (35%)
- integrated approach (33%)
- assistance services (23%)

Most municipalities pay specific attention to health (72 %) and working conditions (70 %) of prostitutes. Other issues are the reduction of the number of prostitutes without a valid residence and working permit (55%), combat of criminality in the sex sector (51%), combat of prostitution by minors (50%), combat of trafficking (49%) and the use of drugs (25%). Only 6 % of the municipalities reported that attention has been paid to exit programmes for prostitutes. These are in particular the big cities: 3 of the 4 biggest cities have exit programmes.

In 70% of the municipalities, the Municipal Health Service (GGD) plays an important role. They give education on hygiene, health, safe sex and working conditions to prostitutes, carry out inspections and try to establish a relationship of trust with the prostitutes.

#### *Street prostitution*

Street prostitution outside designated zones is illegal if prohibited by local by-laws. Illegal street prostitution occurs in cities with a designated street zone, as well as in cities without such a zone. However, the extent of illegal street prostitution is limited. There is no increase in street prostitution since the lifting of the ban on brothels. Also the closure of the street zone in Amsterdam seems to have had little effect on the total number of prostitutes working the streets. Since 1998 the number of prostitutes that walk the streets is around 15 and 35 per week in Amsterdam (D.J. Korff a.o., Tippelen na de zone:

straatprostitutie en verborgen prostitutie in Amsterdam (*Walking the streets after the zone: street prostitution and hidden prostitution in Amsterdam*, Rozenberg Publishers 2005, De Loor, Veldverkenning crack prostitutie (*Field exploration crack prostitution*), Stichting Adviesbureau Drugs, Amsterdam 1998).

#### *Relocation of businesses; illegal sex sector*

The strict enforcement in the regions studied in depth does not seem to have led to a shift to non-licensed prostitution within the area. Relocations of prostitution businesses between regions or municipalities occur less frequently than at the time of the first evaluation in 2001. Relocations of location bound prostitution businesses were hardly found. However, there is some relocation to less easy to control businesses, such as escort, 'couples' clubs and sauna clubs and hotels. Escort businesses, in particular, still have the option of relocating to municipalities where no licence is required for escort services. There are also indications that part of the demand has shifted to other forms/countries, such as sauna clubs in Germany. There is no increase of street prostitution. Establishing of contacts between clients and prostitutes by internet or cell phone has increased.

In general, there is a clear impression that the licensed part of the sex sector is bigger than the non-licensed part. No extensive 'illegal circuit' was found during fieldwork. Also operators and prostitutes cannot give concrete indications or information about the existence of an illegal circuit.

#### *Demand*

Both the demand for and supply of prostitution services appear to have decreased in the past years. Various sex businesses are closed, windows are empty and prostitutes complain about the lack of earnings. It is not clear as to what extent this is the result of the lifting of the ban on brothels. Many other factors can also play a role in the drop in demand, such as the economic downswing, the growth of the Internet, the eroticisation of nightlife (as a result of which voluntary unpaid sexual activities have increased), and the deterrent effect on clients of camera monitoring in prostitution areas.

Generally, the change of law has led to an increase in regulations and control which has led to the closure of some businesses and a decrease of prostitutes from outside the EEA.

## **2. Involuntary prostitution**

Some indications of involuntary prostitution were found during the field work of the evaluation study into illegal prostitution, albeit to a minor degree. The data of the police and the Foundation Against Trafficking in Women (now Comensha) show a slight increase of the number of reports of (victims of) trafficking in human beings. This is mainly attributed to the increased attention for trafficking in human beings, among others due to the campaign 'Appearances are deceptive' of the tip line 'Report crime anonymously'. Almost half of the reports with the Foundation against trafficking in women comes from police.

Of the prostitutes interviewed in the licensed sector, 8 % stated that they began working in the sex business due to some form of coercion.

Complicating factors in combating the commercial operation of involuntary prostitution is that policies, licensing and enforcement are mainly aimed at the operators of sex businesses. Operators can use coercion, but coercion is predominantly exercised by pimps who operate in the background and of whose existence operators are not necessarily aware. Pimps are still a common phenomenon. Prostitutes with pimps mainly work behind

windows, in the escort business and at home. These are the easiest sectors for the pimps to (charge others to) keep an eye on the prostitutes. The problem of pimps may also be related to the ethnic background of the women. In Amsterdam, for example, the problem of pimps seems to occur mostly with women from Eastern Europe, Africa and Asia. The fact that the number of prostitutes with pimps has not decreased is cause for concern from the perspective of combating (the commercial operation of) involuntary prostitution. An increasing number of operators do not want to deal with/refuse any suspect 'offers' of prostitutes by intermediaries or pimps.

There does seem to be increased awareness among operators and prostitutes about preventing involuntary prostitution and exploitation (including trafficking in human beings). Not only police, but also social workers, clients, operators of sex businesses, and employees of the tax department are increasingly alert on indications of exploitation and abuse. The number of people who report possible cases of coerced prostitution at the tip line 'Report Crime Anonymously' has increased. Attention for combating trafficking has also increased within the police and the General Prosecutor's Office, among others by the establishment of the National expertise centre on trafficking in human beings of the police. And the campaign 'Appearances Are Deceptive'.

### **3. Protection of minors**

There appears to be scarcely any underage prostitutes working in the licensed sector and there are no signs of a large presence of underage prostitutes in the non-licensed part of the prostitution sector either. During inspections in licensed prostitution businesses underage prostitutes are only found very occasionally. However, it is difficult to shed light on the occurrence of underage prostitution, as the age of young prostitutes is often difficult to estimate. Five per cent of the interviewed prostitutes in the licensed sector began working in the sex business when they were younger than 18 years. At present young starters mainly work in the escort business. More than half of the prostitutes who work in the escort business were younger than 20 years when they started and more than 10% was even younger than 18 years. The available data do not enable any informed judgment on any development in the scale of the number of underage prostitutes through the years.

There are some alarming indications of (male and female) unaccompanied minor asylum seekers who disappear from asylum centres into prostitution. It is unknown where in the Netherlands and in which sector of prostitution they end up. It would need separate research to gain more insight in this phenomenon. A research in 2004 in Rotterdam concluded that this kind of abuses does not seem to occur on a large scale (C. Bronsveld, Tussen mythe en misdaad. Jonge vluchtelingen in de prostitutie? (*Between myth and crime. Young refugees in prostitution?* Edmund-Husserl-Stichting 2004).

### **4. Associated Crime**

Related crime was only revealed indirectly in the evaluation. In this respect an effective review during the licensing process is important. An important instrument is the Public Administration Probity Screening Act ("BIBOB"). Under this act administrative bodies may refuse to issue a licence (or withdraw it) if there is a grave risk that it will also be used to commit criminal offences or obtain financial benefit from criminal activities. This includes offences like 'white washing' 'or 'laundering' of black money. The majority of the municipalities have not yet used the act, but it is being increasingly used in the sexual services sector. In 2006 the authorities in Amsterdam began to use the integrity tests, provided under BIBOB, to evaluate licence applications for the prostitution sector. At the

time of the evaluation, this resulted in the Amsterdam authorities deciding to withdraw, pursuant to the BIBOB, a large number of licences of a very limited number of operators for window brothels.

Based on the data available it is not possible to define the extent of associated crime, nor whether it has decreased or increased.

## 5. Improvement of the position of prostitutes

For the survey 354 prostitutes and 49 operators were interviewed. The interviews reveal a varied pattern. Although prostitution cannot be referred to as a 'normal' economic activity, as the core of the activity differs too much from those in other industries, it cannot be concluded that the quality of work (covering aspects as the nature of the work, health and safety, terms of employment and employment relationships) is structurally poor owing to a skewed balance of power.

### *Start*

Over 60 % of the prostitutes started before the age of 25; 5% was younger than 18. Most did not start so much because of financial problems or a desire to earn something on the side, but because they saw it as a way of earning more than they could in other industries. 8% were forced into prostitution through trafficking, boy friends or so called 'lover boys'. Just under half of the prostitutes (44%) had stopped at some time or other and restarted, the main reason being earnings.



Photo: P. Timmermans "Belle" Amsterdam PIC

### *Employment relationships*

The employment relationships in the licensed businesses have scarcely changed in the past years; there has been no significant improvement. There is still confusion in the sector about the form of the employment relationship, in particular in relation to taxes and social insurance contributions. In principle an employment relationship is possible. Although this implies that employers have the authority to give instructions, this authority is not unlimited. Prostitutes always have the right to refuse certain customers and/or certain sexual acts ex Art. 11 Constitution (see for an analysis of case law on this issue: R. Zuidema, M.C.M. Aerts, K. Boonstra, *Arbeidsrecht voor prostitues?* (*Labour Law for prostitutes?*, Hugo Sinzheimer Institute 2006).

The vast majority of the prostitutes (95%) see themselves as self-employed rather than as employees, but at the same time the involvement of operators in the activities of prostitutes is such that in many cases there are in fact employer-employee relationships. There is a new trend for the financial relationship between the operator and the prostitute to be disentangled, with the customer paying for the two elements (room rent and services) separately. In addition to agreements on working hours, charges and mode of payment there are often various agreements and rules on e.g. safe sex, use of drugs, style of dress and cleaning, which are found in the house rules.

While regular employment has advantages (clear rights and duties for the operator and the prostitutes, entitlement to welfare provisions), many prostitutes see the disadvantages (loss of anonymity, independence and earnings) as being greater. Only a mere 10% would prefer to work in regular employment, the preference is for being self-employed, working in their own business (33%) or in a business that provides services to them (20%).

The legal position of prostitutes is still poor: under current practice, despite the actual existence of employer-employee relationships, the risks of being unable to work are fully

passed on to the prostitutes. Improvements cannot be expected to take place automatically in the sector.

In comparison with 2001, prostitutes are less satisfied with their earnings, they are less likely to declare their earnings to the tax authorities, and they tend to be paid more directly by the customer. Their independence with regard to setting working hours, breaks and days off, especially in the escort and clubs, has gone down, but in other respects (refusing customers, deciding what to do with customers, choice of dress, price setting) it has remained the same. Of the 60% of the prostitutes who were aware of the change in law, almost half were not in favour of it, less than 40% considered it a good thing. As main disadvantages they mentioned the obligation to pay tax (which in fact was also obligatory before the change of law), the red tape and the risk of losing their anonymity. Other disadvantages mentioned did not so much relate to the change of law, but to the disadvantages of being self employed (no sick pay, no mortgage because of fluctuating income, no accrual of pension). As advantages they mentioned independence (setting prices, organizing working hours and choosing what services to provide), an improvement in the image of the profession and the enforcement of rules on health and safety.

The majority of the operators (84%) regarded the change in law as positive. They consider it as a good thing for the authorities to intervene in the industry, but do not agree on how. The lack of enforcement in the illegal sector is a thorn in the flesh for many people.

#### *Employment conditions*

In the area of employment conditions few real abuses were found, but there are large differences in the conditions under which prostitutes perform their work.

#### *Emotional wellbeing of prostitutes*

Emotional well being of prostitutes is not generally lower than that of other women. The degree of emotional wellbeing of prostitutes on all measured aspects is lower than at the first evaluation in 2001 (9.24 in 2006 against 7.4 in 2001 on the Distress Scale of the Four Dimensional Complaints List), but still more favourable than the average score of the general female population (10.4). (For information: a score of 11-20 indicates a moderate deviation). Prostitutes still do not feel they are treated properly by the authorities, mentioning government agencies in particular, with the tax authorities at the top of the list. Generally, prostitutes live unhealthier lives than the average Dutch woman, mainly as a result of smoking and drinking.

#### *Earnings*

Just under half of the prostitutes were satisfied with their earnings; a quarter was dissatisfied, mainly because they had earned more before (in better economic times). Based on the answers, the average weekly turnover is estimated at just under 1100 euros, with a broad spread on either side. The net income is estimated to be 50-65% of turnover. The majority of the prostitutes does not pay tax, either they do not consider it necessary because of the small number of hours they work or they consider it does not go with the nature of the industry.

#### *Problem areas*

Prostitutes say they need clear information on their status under employment law (especially new entrants) and better representation of their interests. The persistent prejudice about their profession, and the treatment this gives rise to, is still a problem. Operators would above all like more clarity and lack of ambivalence regarding municipal licenses, enforcement and the status of prostitutes under employment law.

#### *Migrant prostitutes*



The number of prostitutes from Russia, Romania, Bulgaria and Latin American countries (who, as a rule, do not have the required residence and working permit) has decreased since the previous evaluation, in particular after targeted actions in 2001 and 2002. There was found to be an increase in prostitutes from East European countries that fall under the EEA in all sectors in the regions investigated in depth. They seem to partly replace women from countries outside the EEA or from the Association countries.

The number of women who apply for a job at clubs without having the required documents has decreased, as well as the supply of foreign prostitutes to clubs by intermediaries. Operators of sex businesses increasingly refuse to work with women who are 'offered' by 'intermediaries'. Many operators call the (aliens) police if they have doubts about the validity of passports or other identity documents.

The number of (license) violations found during inspections has decreased, in particular regarding the number of foreign prostitutes working without the required documents. In general, the number of illegal foreign nationals working as prostitutes in the (licensed) branch seem to have decreased, whereas no extensive underground circuit was found. Stricter inspections and enforcement have contributed to this development.

Both operators and prostitutes indicate that the implications of the change in the law have been the greatest for women who do not have a valid residence permit for the purpose of employment. Operators as well as prostitutes, social and health workers and clients indicate that many prostitutes without a valid residence and working permit have moved to other countries, such as Italy and Spain, or have gone 'underground'.

## **Main critiques of the current approach**

The Red Thread, the organisation of prostitutes, notes improvements, but stresses that much more needs to be done to actually improve the position of prostitutes, to innovate the sector and make it more transparent, and to combat abusive working conditions and other abuses. They are, however, not in favour of going back to the situation before 2000: although abuses still occur, the situation was worse before the lifting of the ban on brothels. They consider legalization as a basic condition to improved conditions in the sex industry and make several recommendations for improvement of the current prostitution policies. Among others they advocate for more national support for the municipalities in developing and enforcing their prostitution policy, a strict enforcement of the Public Administration Probity Screening Act ("BIBOB"), the development of a national Framework Law on prostitution, a national programme to enhance the expertise of local policy makers, the establishment of a special hotline where prostitutes can report abusive and sub standard working conditions, a more generous policy in granting licenses to prostitutes who work independently or in small women run businesses and to operators who respect the current rules on labour conditions, transparency etc., a more active role of the Labour Inspection, better information for sex workers and a more active policy of municipalities in supporting prostitutes who want to change work. They firmly reject criminalization of clients, as this would unnecessarily put prostitutes at risk.

This critique is widely supported. In general, much attention has been paid to the regulation and control of prostitution businesses through the introduction of licensing systems, as well as to the combat of trafficking and other forms of involuntary prostitution. However, far less attention has been paid to the improvement of the position of prostitutes, such as measures to inform them about their rights and support them in claiming those rights, and create opportunities for them to start their own businesses as collectives or independent entrepreneurs. Also, the introduction of the licensing system has not sufficiently taken into account the interests of the prostitutes, for example in

protecting their anonymity and privacy. For many prostitutes this is a reason to prefer working in the un-licensed sector (e.g. the escort or home based prostitution).

Moreover, the feeling in the prostitution sector is that licensed businesses are inspected more often than non-licensed businesses. This situation undermines the willingness of operators of licensed businesses to adhere to the rules and complicates combating human trafficking.

The policy is predominantly directed at the sex businesses, whereas it becomes increasingly clear that much of the coercion is exerted by pimps who operate at the background. These are much more difficult to target (see above).

Another point of critique are the effects of the lifting of the ban on brothels on the position of undocumented migrant prostitutes. Non-EU migrants are by law excluded from legally working in the sex sector. Prostitution is the only kind of work for which a legal prohibition on the issue of working permits exists. Thus migrant prostitutes are per definition forced to work in the illegal and unprotected sector. NGOs question how the categorical exclusion of migrant prostitutes from the legal sex sector and its related (labour law) protection relates to the obligations under article 11 of CEDAW (equal treatment in employment), given the fact predominantly women work in the sex sector (*Taking Women's Rights Seriously? Shadow report by Dutch NGOs: an examination of the Fourth Report by the Government of the Netherlands on the implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women, 2000-2004*, on behalf of NJCM (Dutch Section of the International Commission of Jurists) and Network VN-Vrouwenverdrag (CEDAW Network), Utrecht: HOM 2006).

Others question the liberal prostitution policy of the Netherlands as such and feel that much more energy should be invested in discouraging men to make use of the services of prostitutes. They oppose the notion of voluntary prostitution and consider all prostitution as damaging for women/ sexual violence. This does not necessarily mean that they want to go back to the situation before 2000, rather they advocate to invest much more energy in policies to reduce demand and in exit programmes for women.

## Strengths and weaknesses of the current approach

### *Strengths*

The major difference between the traditional regulation of prostitution and the Dutch situation is that the former is focussed on the regulation and control of prostitutes, whereas the latter is focussed on the regulation and control of the businesses (brothels), while according labour rights to sex workers. In the Netherlands individual sex workers do not have to register and are not submitted to mandatory health checks. Sex workers are entitled to the same rights and protections as other workers enjoy and the State takes responsibility for their working conditions (if still not enough). On the other hand, sex workers also have the same responsibilities that other workers have, like paying taxes.



Illustration 1: Photo: Philippe Leroyer 2008

In the first eight years after the change of law the national government and the local governments have much concentrated on the implementation of the licensing system, that is, the tools to control and regulate the sex industry. This has worked rather well. On the whole the regulation of the industry has been successful. Most brothel owners have,

although sometimes reluctantly, adjusted themselves and their businesses to the new regulations and most local governments have set up a fairly good working control system. Those entrepreneurs who were not willing or able to comply with the rules have either sold their businesses or their licence have been taken. Especially in those cities where, preceding the lifting of the ban on brothels, civil servants have invested in setting up good working relations with the local sex industry entrepreneurs, this process has developed relatively easy, compared to those towns where the sex industry kept being approached with distrust. The new local regulations on prostitutions businesses have improved the physical working conditions of sex workers. Working places are now in conformity with the standards that are requested in other industries.

The decriminalisation of the sex industry goes hand in hand with an active policy to combat trafficking and other forms of coerced prostitution. Victims of trafficking are entitled to a reflection period of 3 months and a temporary residence permit for the duration of the criminal proceedings if they are willing to cooperate with the authorities. After completion of the criminal case they can apply for a permanent residence permit on humanitarian grounds. During the reflection period and the temporary residence permit they are entitled to social benefits, a safe shelter/housing, health insurance and legal aid, and have access to work and education. There is a National Rapporteur on trafficking in human beings, a national Expertise Centre on trafficking in human beings of the police (EMM) has been established, all 26 police departments have specially trained police officers to deal with trafficking cases, and the position of victims of trafficking is improved, as well as monitored and periodically assessed (see: *The Position of Victims of Trafficking in Human Beings, First Trend Report 2006*, Rene van Vianen, Geerte Maaskant, Marjan Wijers, Sandra ter Woerds, Verwey-Jonker Instituut/ Bureau van Montfoort, 2007).

The Criminal Code covers all forms of (threat of) violence, coercion, deceit and abuse of authority in relation to prostitution, be it in relation to the conditions of recruitment or the conditions of work, thus covering forced and/or deceptive recruitment as well as slavery-like or forced labour conditions in the sex industry. Criminal law does not make a difference between 'innocent' and 'guilty' women: it is not relevant for the criminal law whether or not the victim concerned worked in prostitution before, knew s/he would work in prostitution or wants to continue to work in prostitution on an independent and voluntary basis. In all cases s/he is entitled to protection against violence and abuse.

### *Weaknesses*

So far the new possibilities that decriminalisation has offered are mainly used to develop new instruments for control and regulation of the sex industry, rather than to take positive measures aimed at sex workers to improve their position, to develop and introduce labour standards in the sex industry, to regulate labour relations, to support the (labour) emancipation of prostitutes, to create possibilities for women to work independently at home or in small women-owned brothels in apartments, and to lift existing discriminatory practices of both public and private institutions (such as the refusal by insurance companies and banks to accept sex workers as clients).

On the aspect of labour rights much work still has to be done. Most other industries have a history of more than a century of labour law development and labour emancipation, large and influential labour unions defend the rights of their members and a large part of both employers and employees are organised. The sex industry has until 2000 been excluded from these developments and the (labour) emancipation of prostitutes has only just started. In many cases working conditions are still poor and the power relations between employers and employees are far from equal. As long as the position of prostitutes vis-a-vis brothel owners as well as society is not strong enough to stand up for their rights, it ought to be the government's responsibility to create the opportunities and conditions for prostitutes to work on their emancipation.

One of the important tasks for the government and governmental institutions is to inform sex workers about their rights and obligations in the new situation. For the majority of sex workers the benefits of working legally, including paying taxes but also being protected by labour laws, are still not clear or appealing. Some progress has been made, for example the tax department, together with sex workers organisations, is working on creating more clarity about labour relationships and on developing information materials for sex workers, not only about paying taxes but also on working relationships and labour protection. However, on the whole, too little effort has been made to inform sex workers.

Moreover, too little effort has been made to involve sex workers in the development of (local) policies and to redress the (historically) unequal working relations in the sector. In the implementation of the licensing system, insufficient attention has been paid to the interests of the women concerned, for example in protecting their privacy and maintaining their anonymity in relation to brothel keepers. Another problem is the lack of clarity about working relations, notably under what conditions one can speak of independent, self employed workers vis-à-vis an employment relation. In the latter case it is still not clear what duties and rights are attached to the employment relation in light of the specific characteristics of the work and in particular the right to physical and sexual integrity. As a result of this, a substantial number of women prefer to work in the unregulated sector as they feel that the regulated sector does not meet their needs and interests.

Despite the fact that it has been estimated that at the time of the lifting of the ban more than half of the prostitutes working in the Netherlands came from non-EU countries, the government decided to maintain the prohibition in the Migrant Workers Act on the issuing of working permits for work in the sex industry. This effectively makes legal labour migration for the sex industry impossible and excludes migrant prostitutes from legally working in the sex industry. Due to the impossibility of obtaining a legal working permit, migrant prostitutes are per definition relegated to the illegal and unprotected sector. The exclusion of migrant prostitutes from obtaining a legal working permit makes them more vulnerable to exploitation and other forms of violence than if they could legally perform their work.

In short: Up till now the focus of the national and local governments has been predominantly on the implementation of a system of controlling and regulating the sex industry. Now that this is accomplished, the government should also take its responsibility in supporting the empowerment and labour emancipation of prostitutes. This means concrete and practical measures to overcome existing barriers that prevent prostitutes from standing up for their rights, to protect their privacy in relation to brothel owners, to clarify labour relations in the sex sector, to increase possibilities for sex workers to work independently or in small women-owned brothels, to effectively develop programs for prostitutes who want to exit prostitution and to combat discrimination against prostitutes.

On the other hand, it should be kept in mind that it is not realistic to expect that a situation of discrimination, inequality and exclusion that existed for more than 100 years can be redressed in a mere 8 years.

**Marjan Wijers, May 2008**

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