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Prostitution, trafficking and modern slavery in Europe

Report¹

Committee on Equality and Non-Discrimination

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Summary

Trafficking in human beings is a hideous human rights violation and one of the most lucrative activities for criminal organisations worldwide. It occurs for various purposes, including forced labour, criminality and organ removal. In Europe, trafficking for sexual exploitation is by far the most widespread form: an estimated 84% of victims are trafficked for this purpose.

Efforts to tackle trafficking in human beings have intensified in the last decade but remain insufficient. As transnational trafficking represents the greatest part of this phenomenon, harmonisation of legal standards and effective international co-operation in criminal matters are crucial to succeed in the fight against human trafficking. The lack of reliable and comparable data on prostitution and trafficking in Europe is a major barrier to making and implementing effective policies against trafficking for purposes of sexual exploitation. Creating a Europe-wide data collection system on prostitution and trafficking is therefore crucial. As a pan-European organisation, the Council of Europe has an important role to play in promoting such a data collection system.

Some Council of Europe member States have drawn up prostitution regulations and policies aimed at countering trafficking by curbing the demand for victims. This is true of Sweden, together with Iceland and Norway. The “Swedish approach”, based on criminalising the purchase of sexual services, is currently under consideration by legislators in several European countries as a possible tool for tackling trafficking. While each system presents advantages and disadvantages, policies prohibiting the purchase of sexual services are those that are more likely to have a positive impact on reducing trafficking in human beings. Irrespective of the legal approach adopted, prostitution regulations should include harm-reduction measures aimed at countering the negative effects of prostitution on the people involved and supporting those who wish to leave the sex industry.

1. Reference to committee: [Doc. 12920](#), Reference 3869 of 25 June 2012.



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A. Draft resolution ²

1. Trafficking in human beings is one of the most hideous violations of human rights, affecting between 70 000 and 140 000 people every year in Europe. Girls and women are disproportionately affected and so are transgender persons, but men and boys are also concerned. A considerable proportion of victims are citizens of the European Union, in particular Bulgarian and Romanian women who are trafficked for the purposes of sexual exploitation.
2. The Parliamentary Assembly is deeply concerned that, despite several national and international mechanisms and legal instruments put in place to counter it, trafficking in human beings in Europe is not only widespread but is even on the rise, while relevant convictions are falling. It is necessary to step up efforts to curb this scourge, allocating the necessary resources and efforts towards prevention, investigation and prosecution, while ensuring that freeing victims from this modern form of slavery and restoring their rights and dignity remain at the centre of actions undertaken.
3. Although they are distinct phenomena, trafficking in human beings and prostitution are closely linked. It is estimated that 84% of victims in Europe are trafficked to be forced into prostitution; similarly, victims of trafficking represent a large share of sex workers. The lack of precise and comparable data on prostitution and trafficking makes it difficult to assess with accuracy the impact that different regulations on prostitution may have on trafficking. However, considering the significant overlap between the two phenomena, the Assembly believes that legislation and policies on prostitution are indispensable anti-trafficking tools.
4. Research and data collection on prostitution and trafficking should be carried out in all Council of Europe member States. It should aim to collect nation-wide information and be conducted on the basis of Europe-wide harmonised standards to guarantee comparability.
5. Prostitution legislation and policies vary across Europe, ranging from legalisation to criminalisation of all or some prostitution-related activities. In 1999, Sweden was the first country to criminalise the purchase of sexual services, with proven positive results in terms of reducing the demand for trafficking. Since then, other countries have followed the same path or have taken steps in this direction. At the same time, other member States have chosen to legalise both the sale and the purchase of sexual services, in the false hope that the existence of a legal sex-work sector would reduce the attractiveness of this business for criminal organisations or may improve the working conditions of sex workers.
6. Forced prostitution and sexual exploitation should be considered as violations of human dignity and, as women are disproportionately represented among victims, as an obstacle to gender equality.
7. Prostitution is a complex issue presenting various facets that should be taken into account. It affects the health of sex workers with consequences ranging from increased exposure to sexually transmitted diseases to higher risks of drug and alcohol addiction, physical and mental traumas, depression and other mental diseases. Prostitution is often linked to criminal activities such as petty crime and drug dealing. In addition, criminal organisations controlling trafficking in human beings are often involved in drug trafficking.
8. The Assembly acknowledges that different legal approaches and cultural sensitivities make it difficult to propose a single model of prostitution regulations that would fit all member States. It believes, however, that human rights should be the main yardstick in designing and implementing policies on prostitution and trafficking.
9. Irrespective of the model chosen, legislators and law-enforcement officials should be aware of their responsibility to ensure that sex workers, where prostitution is legalised or tolerated, may carry out their activity in dignified conditions, free from coercion and exploitation, and that the protection needs of those who are victims of trafficking can be adequately identified and addressed.
10. In designing and enforcing prostitution legislation and policies, public authorities should strengthen co-operation with civil society, particularly non-governmental organisations (NGOs), assisting victims of forced prostitution and trafficking, as these are not represented by sex workers' organisations.
11. Furthermore, in all cases, the authorities should refrain from considering prostitution regulations as a substitute for comprehensive action aimed specifically against human trafficking, based on a sound legal and policy framework and implemented effectively. International co-operation at bilateral and multilateral level has a major role to play in action on trafficking, given its transnational nature and the economic interests involved.

2. Draft resolution adopted unanimously by the committee on 5 March 2014.

12. In the light of these considerations, the Assembly calls on Council of Europe member and observer States, and Parliamentary Assembly observer States and partners for democracy, to:

12.1. as regards policies on prostitution:

12.1.1. consider criminalising the purchase of sexual services, based on the Swedish model, as the most effective tool for preventing and combating trafficking in human beings;

12.1.2. ban the advertising of sexual services, including forms of disguised advertising;

12.1.3. criminalise pimping, if they have not already done so;

12.1.4. establish counselling centres providing prostitutes with legal and health assistance, irrespective of their legal or migrant status;

12.1.5. set up “exit programmes” for those who wish to give up prostitution, aimed at rehabilitation and based on a holistic approach including mental health and health-care services, housing support, education and training and employment services;

12.1.6. if they have legalised prostitution:

12.1.6.1. consider fixing the minimum legal age for prostitution at 21;

12.1.6.2. ensure that all the relevant laws and regulations – including those concerning health and safety, social security and tax – are reviewed and effectively implemented, at all levels of administration;

12.1.6.3. ensure that prostitution regulations apply to all forms of sex work, including Internet prostitution;

12.1.6.4. apply strict administrative and technical requirements for the practice of sex work, aimed at ensuring monitoring of the administration and regular contacts with sex work establishments (“barrier system”);

12.1.6.5. require that information on the rights of sex workers as well as contact details of anti-trafficking services be clearly displayed in prostitution establishments;

12.1.6.6. exchange best practices with a view to reducing the harm caused by prostitution;

12.1.7. strengthen co-operation with civil society, including sex workers’ associations and non-governmental organisations assisting victims of trafficking and forced prostitution, and consult them in the context of the drawing up or revision of policies on prostitution;

12.1.8. establish specialised police forces for the enforcement of prostitution and human trafficking regulations;

12.2. as regards policies on human trafficking:

12.2.1. sign, ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No. 197) (if they have not yet done so) and fully co-operate with its monitoring mechanism;

12.2.2. introduce action plans on human trafficking and closely involve parliaments in their preparation, implementation and monitoring of their implementation;

12.2.3. allocate adequate resources to all agencies and services active in the prevention, investigation and prosecution of human trafficking;

12.2.4. reinforce co-operation with Europol and increase substantially the financial and human resources allocated to it;

12.2.5. establish shelters for victims of human trafficking;

12.2.6. work bilaterally with countries of origin, including developing countries, to prevent trafficking and ensure that those victims who are returned are given the means to reintegrate into society;

12.2.7. strengthen co-operation between the anti-trafficking and law enforcement on one side and with non-governmental organisations on the other, in the context of anti-trafficking and victim assistance activities;

- 12.3. as regards research and data collection:
 - 12.3.1. promote quantitative and qualitative research on prostitution: prevalence, types/markets of prostitution, breakdown of people involved by gender, age, national origin;
 - 12.3.2. promote quantitative and qualitative research on human trafficking: prevalence, countries of origin, purpose of the trafficking, prevalence of victims among prostitutes;
 - 12.3.3. mandate independent bodies to carry out regular assessments of the impact of their prostitution regulations on trafficking in human beings;
- 12.4. as regards awareness raising, information and training:
 - 12.4.1. raise awareness through the media and school education, particularly among children and youth, on respectful, gender-equal, violence-free sexuality;
 - 12.4.2. raise awareness on the link between prostitution and human trafficking by means of information campaigns targeting the general public, civil society and education institutions;
 - 12.4.3. step up training programmes on prostitution and trafficking for law-enforcement officials, the judiciary, social workers and public health professionals.

B. Explanatory memorandum by Mr Mendes Bota, rapporteur

1. Introduction

1. In August 2013 in Valencia, Spain, the police rescued a Romanian woman and her eight-year-old child who were being held captive by traffickers in human beings. The woman had been forced into prostitution and her child held to prevent her from escaping. The child was confined to a small room with no ventilation and poor conditions of hygiene. After being rescued, the woman had to be kept under observation at the hospital for 24 hours as a result of the sexual and physical violence that she had suffered. The police arrested three members of the criminal organisation.³ At the same time, a similar police operation took place in Madrid to liberate the children of two Nigerian women who were forced to work as prostitutes in France. The minors were held as a guarantee of their mothers' obedience.⁴

2. Headlines on trafficking in human beings appear in the press every day. They are a reminder that, while slavery was formally abolished in Europe a long time ago, it has resurfaced in the form of trafficking in human beings. Whenever we see a prostitute on the streets of our cities, we should remember that the chances are quite high that she is a victim of trafficking; that she is being beaten up, raped and forced to sell sex in inhuman conditions.

3. Although data is scarce and not always comparable, all the estimations concur in indicating that prostitution and trafficking are closely linked: in Europe, the overwhelming majority of victims of trafficking are trafficked for purposes of sexual exploitation and a large share of sex workers are victims of trafficking. Given this link, it is legitimate to ask what policy on prostitution can contribute to curbing trafficking in human beings.

4. The motion from which this report originates gave a clear answer to the question: it said that the criminalisation of the purchase of sex is the policy which can have the greatest impact on reducing the demand for trafficking for sexual exploitation and therefore on reducing human trafficking.⁵

5. When I was appointed rapporteur, I made it clear that I would tackle my assignment without preconceptions. I intended to conduct research, consult several experts, evaluate different policies, and only at the end of this process would I agree or disagree with the solution put forward in the motion.

6. For the preparation of this report, in 2013, the Committee on Equality and Non-Discrimination organised an exchange of views with Mr Nicolas Le Coz, President of the Group of Experts on Action against Trafficking in Human Beings (GRETA),⁶ and the Parliamentary Network Women Free from Violence organised a hearing on Trafficking and Prostitution, during which two young women who had been victims of trafficking for the purposes of prostitution gave their testimony, together with the representative of a sex workers' organisation.⁷ In January 2014, the committee organised a hearing on relevant developments in France, with the participation of Ms Irène Aboudaram, of Doctors of the World International Network, and Mr Grégoire Théry, Secretary General of Mouvement du Nid. During the same part-session of the Parliamentary Assembly, the Parliamentary Network Women Free from Violence and the Network of Contact Parliamentarians to stop sexual violence against children organised a hearing on the sexual exploitation of girls, with the participation of Ms Livia Anonisanu, Director of the Center for Partnership and Equality (Romania), and Ms Roshan Heiler, Director of the SOLWODI counselling centre (Germany).

7. I also conducted fact-finding visits to Sweden (21-22 May 2013), Germany (13-14 June 2013), Switzerland (25-26 September 2013) and the Netherlands (14-15 November 2013). I wish to thank all the interlocutors I met for their co-operative attitude and readiness to openly share their views on such sensitive issues. Besides national stakeholders, I had the opportunity to meet representatives of several international organisations and structures, namely the Office of the United Nations High Commissioner for Human Rights, the International Organization for Migration and Europol, which provided me with valuable information.

8. At the time of writing, several Council of Europe member States are reviewing their policies and legislation on prostitution, or their implementation. These domestic debates unveil the complexity of the issue: prostitution in itself is a delicate and divisive subject, being considered by some as a job, by others as an attack on women's dignity. The implementation of the laws on both prostitution and trafficking is not always

3. www.abc.es/local-comunidad-valenciana/20130807/abci-liberado-nino-anos-madre-201308071026.html.

4. http://sociedad.elpais.com/sociedad/2013/11/28/actualidad/1385630413_133360.html.

5. Doc. 12920.

6. Strasbourg, 24 January 2013.

7. Strasbourg, 24 April 2013.

effective or consistent. Resources available to counter trafficking are dismally inadequate. On top of this, there is the issue of the co-existence of voluntary and forced prostitution, and the rights and working conditions of sex workers in countries where prostitution is legal or tolerated.

9. With the present report, I intend to contribute to the ongoing debates at national level by providing a comparative perspective: I shall examine the policies on prostitution adopted in different Council of Europe member States and assess their impact on curbing trafficking in human beings. I shall refrain from any moral consideration on prostitution.

2. Trafficking in human beings, modern slavery in Europe

10. Trafficking in human beings is often referred to as a modern form of slavery. This is not a rhetoric expression. It is an accurate description of the situation, as explained by Iva, who shared her dramatic experience with the members of the Parliamentary Assembly Network Women Free from Violence:

“My story is wrong trust in bad people”

“I am Iva from Bulgaria and I am a victim of trafficking. I was in a two-year relationship with my boyfriend back in Bulgaria when he told me I could find a good job in the Netherlands. My family was poor. I did not have a job. I was 16. I agreed. I trusted him.

When I arrived in the Netherlands, a woman was supposed to wait for me, but there were two men. They brought me to an unknown place, raped me, took my passport away. The pimp had my working papers made. They forced me into prostitution, saying that if I refused they would kill my family. So I started to work. I wanted to leave but I couldn't. They had photographs of me with the clients and they said that they would show them to my parents. So I continued for five years.”

11. There are thousands of girls like Iva in Europe. Besides the forms of violence and humiliation that she shared, a variety of other humiliations are used by traffickers and pimps to keep control over their victims. The cases of women forced to feature in pornographic films are common. Often, the films are then used to threaten the victims. If they try to escape from slavery, the films may be shared with their community of origin, ruining their reputation and the respectability of their entire family.

12. Trafficking in human beings is a hideous violation of human rights. It occurs for various purposes, including forced labour, criminality, begging and organ removal. The largest share of the victims are trafficked for sexual exploitation and forced prostitution: they are mostly girls and women who are forcibly or deceptively recruited into the sex industry, like Iva. Victims are caught up in a system from which it is very difficult to escape: they are reluctant to seek help from the authorities, for fear of deportation or retaliation against them or their families.

13. As was the case for slavery in the past, trafficking in human beings implies the exploitation of the victims and has a huge economic magnitude. The overall proceeds of trafficking, all purposes combined, are estimated at US\$32 billion per year (ILO estimations, 2005). As previously mentioned, trafficking for purposes of sexual exploitation represents the largest share: estimations from the United Nations Office on Drug and Crime (UNODC) indicate that 28 out of those US\$32 billion are produced by sex trafficking. While two thirds of the reported victims of trafficking are female, the share of women and girls is even higher in cases of trafficking for sexual exploitation. The ILO 2012 Global Estimate mentions 20.9 million victims of forced labour, of which 22% (4.5 million) are victims of sexual exploitation and 68% (14.2 million) of labour exploitation.⁸

14. Looking more closely at Europe, the proceeds of sex and labour trafficking are estimated at US \$2.5 billion per year and the number of trafficked people ranges from 70 000 to 140 000 yearly. People trafficked for purposes of sexual exploitation account for 84% of the victims.⁹

15. Efforts to tackle trafficking in human beings have intensified in the last decade but remain by and large insufficient. The Council of Europe Convention on Action against Trafficking in Human Beings (ETS No. 197) is the main European legal instrument for international co-operation against trafficking. It is based on a human rights approach and puts the victim at its centre. It applies to any form of trafficking, irrespective of the age and gender of the victims, whether trafficking is connected to organised crime or not, whether it occurs in the

8. www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm.

9. UNODC Factsheet on Human Trafficking, 2010, www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf.

same country or cross-country. GRETA, its independent monitoring body, has nearly completed the first monitoring cycle of the convention, and has adopted country-based reports and recommendations aimed at helping the State Parties to strengthen their action in this area.

16. Given that transnational trafficking accounts for the greatest part of this phenomenon, harmonisation of legal standards and effective international co-operation in criminal matters are crucial for the success of anti-trafficking efforts. This is why I join Mr Nicolas Le Coz, President of GRETA, in asking that the few European countries which have not acceded to the convention do so rapidly, as leaving blank spaces on the map helps perpetrators escape justice and leaves victims inadequately protected. To date, the convention has not been ratified by Estonia and Turkey. The Greek Parliament has recently voted the ratification and is expected to formally deposit the instrument soon. Four Council of Europe member States (the Czech Republic, Liechtenstein, Monaco and the Russian Federation) have not even signed it.

17. In parallel to the Council of Europe, also the European Union has developed a framework on trafficking in human beings, based on Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and the communication by the European Commission on “The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016”. Both instruments follow a human rights approach and focus on the protection, assistance and support of victims. Their weak point, however, is implementation.

18. In April 2013, Commissioner Cecilia Malmström presented the European Commission’s report on human trafficking, based on data for the period 2008-2010 for the 28 European Union member States as well as Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey.¹⁰ The report shows an alarming trend: cases of trafficking have increased by 18% while convictions of traffickers have fallen by 13% over the same period. Intra-EU trafficking represents the majority of the identified and presumed cases: 61% of victims of trafficking are EU citizens. Several of my interlocutors in Germany, Switzerland and the Netherlands indicated that the EU enlargement of 2007 had marked a milestone, as the largest share of victims of trafficking come from Bulgaria and Romania. It is estimated that Romanian and Bulgarian girls and women represent 85% of victims of trafficking in Germany.¹¹ During the meeting of the Committee on Equality and Non-Discrimination in Madrid on 16 and 17 September 2013, the Minister of the Interior, Mr Jorge Fernández Díaz, confirmed that Romanian citizens – mostly girls and women – represent the highest proportion of victims of trafficking in Spain.

19. It is to be hoped that these worrying findings have sounded an alarm bell for the authorities. By November 2013, the number of EU member States having notified full transposition of the anti-trafficking directive in their national legislation reached 20. The European Commission then formally requested Cyprus, Italy, Luxembourg and Spain to ensure full compliance with their obligations under the directive.¹²

20. In May 2013, the European Commission also launched the EU Civil Society Platform against trafficking in human beings, composed of civil society organisations working on victim protection in the European Union member States. The Platform is meant to act as a permanent forum enabling civil society organisations to exchange practices and strengthen co-operation at European Union level. I consider this to be a positive step, as civil society has an essential role to play in dealing with victims of trafficking and bringing situations of concern to the attention of the authorities. Synergy in this field can only improve the effectiveness of anti-trafficking efforts.

21. On 4 February 2014, the European Parliament’s Committee on Women’s Rights and Gender Equality published a report on sexual exploitation and prostitution and its impact on gender equality which attaches great importance to the link between prostitution and trafficking for sexual exploitation. The report takes a clear stance in favour of the Nordic model of prostitution regulations, presenting it as the most effective tool both to counter trafficking in human beings for sexual exploitation and to improve gender equality.

22. Resources, however, are indispensable to achieving tangible results. During the fact-finding visit to the Netherlands, I had the opportunity to meet a police officer seconded to EUROPOL who is in charge of the serious organised crime business area of the organisation, Mr Sergio D’Orsi. EUROPOL collects and processes information on policing activities in its member States. Processed information is then shared with national police forces to support and facilitate their activities. Although EUROPOL supports the activities of the

10. http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FPublications%2FTrafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileName=Trafficking+in+Human+beings+-+DGHome-Eurostat_EN.pdf&fileType=pdf.

11. <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Germany>.

12. http://ec.europa.eu/anti-trafficking/entity.action?breadCrumbReset=true&path=EU+Policy/Cyprus_Spain_Italy_Luxembourg_to_enact_EU_rules.

national police forces in a competent and effective way, it would certainly benefit from additional financial and human resources. The team of officers working on cases of trafficking amounts to six people. In view of the large and increasing number of cases of trafficking in Europe, enlarging the staff covering this field seems to me to be a priority. I hope that this will be done in the context of the forthcoming strengthening of EUROPOL's role, as foreseen in a new draft regulation.¹³

3. Policies on prostitution¹⁴

23. The main question that this report aims to answer is whether a given legal approach to prostitution may effectively contribute to reducing trafficking in human beings. I therefore deem it necessary to briefly present the different options currently applied in Council of Europe member States. Two opposite approaches can be identified: legalisation and criminalisation. A range of different systems exists as a gradation between them.

3.1. Legalisation

24. This system is based on the regulation of prostitution by the State. Prostitution is legal under certain conditions and is considered a working activity like any other. As a result, sex workers are provided with protection under health and safety and labour law regulations. Countries adopting this approach include (with specificities) Austria, Germany, Greece, the Netherlands, Switzerland and Turkey.

25. There is a form of legalisation which is sometimes referred to as decriminalisation. In this case, no prostitution-specific rules are provided for, only the general legislation (on working conditions, health and safety and so on) being applicable. There are no examples of decriminalisation in Europe (New South Wales in Australia and New Zealand follow this approach).

3.2. Criminalisation

26. Criminalisation makes prostitution, or certain related activities, illegal and punishable by law. Different categories of system exist, which can be divided into two groups:

- prohibitionist systems, banning prostitution by criminalising all aspects of it, including the sale of sex, and all the people involved. A number of European countries have chosen this approach, including Albania, Croatia, Romania, the Russian Federation, Serbia and Ukraine;
- abolitionist systems, where the sale of sex is not punishable, but some or all related activities are. Under this model,
 - soliciting, procuring, advertising and other prostitution-related activities are criminal offences. Countries which have adopted this approach include (again with different specificities) Belgium, France (although a radical reform is under discussion), Italy, Spain, Poland, Portugal and the United Kingdom;
 - in Sweden, Norway and Iceland, in addition to all or some of the above-mentioned actions, also the purchase of sex is criminalised.

27. It is worth underlining that in prohibitionist systems, prostitutes can be prosecuted for selling sex. In abolitionist systems, selling sex is not a crime, with the consequence that prostitutes are not criminally liable. Important differences exist between Council of Europe member States in the rigour with which the relevant legislation is implemented.

28. Personally, I do not think that criminalising the sale of sex is a valid approach: it risks sanctioning those who are forced into prostitution by others or their personal circumstances, and dissuades victims of trafficking and exploitation from reporting it to the authorities. In my opinion, this policy choice is not in line with the victim-centred approach of the Council of Europe Anti-Trafficking Convention.

13. http://ec.europa.eu/commission_2010-2014/malmstrom/news/archives/2013/03/20130327_en.htm.

14. See Appendix.

4. The impact of legalisation on trafficking: case studies

4.1. Germany

4.1.1. Policy on prostitution

29. The main piece of legislation regulating prostitution in Germany is the Prostitution Act, which came into force on 1 January 2002.¹⁵ This law laid down the principle that prostitution should no longer be considered an immoral activity. As a result, sex work becomes a remunerated activity like any other, subject to taxation by the State, health and safety regulations and protection of employees' rights.

30. The main goals of the Prostitution Act were, on the one hand, improving the legal and social status of prostitutes and their working conditions; and, on the other, "cutting the ground from under the criminal activities that accompany prostitution".¹⁶

31. The law of 2002 left it to the different federal States (*Länder*) to regulate some aspects related to sex work by means of their respective legislation (namely trade law). In addition, local authorities retained some competences, such as the right to establish "exclusion zones" in which sex work cannot be practised.

32. Despite the adoption of the Prostitution Act, the situation on the ground is complicated: much of the relevant legislation, including the Trade law, has not been amended accordingly; the competent agencies do not have uniform guidelines on whether brothels can be registered as a business under the Trade Law and in which category, which results in differing practices across *Länder*.¹⁷ Protection of public safety and order is also a matter devolved to the *Länder*, with State-specific police laws which are reflected in different practices on the regulation of prostitution.

33. At the hearing in Strasbourg on 29 January 2014, Ms Roshan Heiler, a representative of the NGO Solwodi, explained that an aspect of the current German legislation which is frequently criticised is that it hinders police intervention. Before the legalisation came into effect, sex workers could be detained and taken to the police station, which offered an opportunity for victims of trafficking and forced prostitution to report their situation. Under the new regulations this cannot happen, in particular in the case of sex workers from Bulgaria and Romania who, as European Union citizens, have the right to live and work in Germany. Despite these limitations, as Ms Heiler underlined, the police is entitled to have access to prostitution establishments and carry out control activities without a warrant or authorisation. The frequency and effectiveness of such control largely depends on the resources put at the police forces' disposal, which in turn reflect the political priority attached to anti-trafficking by the authorities.

In numbers:

400 000: Estimated number of prostitutes working in Germany

1 million: Estimated number of clients per day

44: Number of sex workers covered by social insurance

636: number of trafficking cases prosecuted in 2011 (–30% from 2001)

4.1.2. Impact on trafficking

34. During my fact-finding visit to Germany, all my interlocutors, in particular fellow parliamentarians, with very few exceptions, agreed that the legal framework on prostitution should be amended as it clearly failed to achieve its main objectives. Later, the German Government that was formed after my visit has announced its intention to review the 2001 legislation.¹⁸

35. There are different views on whether the Prostitution Act has had an impact on curbing criminality: official sources claim that human trafficking is decreasing, with the Federal Criminal Police (BKA) saying that 636 trafficking cases prosecuted in 2011 represent a third less than 10 years earlier. The press, however, denounces that in reality trafficking in human beings for the purposes of sexual exploitation has increased: it is

15. Kavemann and Rabe, The Act Regulating the Legal Situation of Prostitutes – implementation, impact, current developments. Findings of a study on the impact of the German Prostitution Act: www.cahrv.uni-osnabrueck.de/reddot/BroschuereProstGenglich.pdf.

16. Ibid.

17. Ibid.

18. www.independent.co.uk/news/world/europe/europes-biggest-brothel-it-will-cost-45m-and-will-boast-90-prostitutes-8986921.html.

claimed that lower figures only reflect fewer investigations.¹⁹ *Der Spiegel* reports that law-enforcement officers working in red-light districts have almost no access to brothels: as prostitution is legal, inspections by the police require a specific reason. As they do not have such a reason, a number of trafficking cases go undetected even if, in brothels, people who have chosen to be employed as prostitutes work side by side with others who are forced, many of whom are also victims of trafficking.

36. The German Government's Report of 2007 on the impact of the Prostitution Act, while recognising that some of the expected results of the law have not been achieved, refutes that the Prostitution Act has made it more difficult to prosecute trafficking in human beings and other prostitution-related crimes.²⁰

4.1.3. Lessons learnt: legalisation neither by itself the solution to trafficking, nor a guarantee for the improvement of sex workers' working conditions

37. Germany has been labelled "Europe's biggest brothel" because of the size of its sex work business. As denounced by a series of articles in the leading news magazine *Der Spiegel* recently, since the Prostitution Act, Germany has also become a destination for sex tourism from many European countries and not only from bordering ones. The internal market is also huge. Reportedly, "the best guess is that Germany has about 400 000 prostitutes catering to 1 million men a day".²¹

38. Contrary to one of the main intended goals of the law, sex workers' working conditions have deteriorated in many respects, threatening their dignity. While the law intended to give sex workers full rights to health insurance, pensions and other benefits, it seems that only 44 of them are registered for social insurance. Private health insurance companies would refuse to accept prostitutes as customers at reasonable rates because of the risks linked to their work.²²

39. Sex workers become simple commodities, subject to the basic market law of supply and demand; brothel owners and managers try to make as much profit as possible out of them. Ironically, the current legal framework makes this easier. As prostitution contracts are legally valid, in many cases brothel owners are simply required to pay the prostitutes daily wages, regardless of how many customers they serve.²³ This has led to brothels launching "flat rate": for a set amount of money, customers can have unlimited sex with as many sex workers as they wish. As reported by *Der Spiegel*, some clients who paid between 70 and 100 euros in one of these brothels in Stuttgart complained that after a while "the women were not fit for use". The current government has announced that brothels would be prohibited from offering flat rates in the context of the revision of the 2001 legislation, which is announced to start in April 2014.²⁴

40. Andrea Weppert, a social worker based in Nürnberg who has dealt with prostitutes for over 20 years, told *Der Spiegel* that the total number of prostitutes has tripled over that period. More than half of the female sex workers have no permanent residence and travel from place to place so that they appear new to each city and can earn more money.

41. According to a former sex worker, writing under the pseudonym Doris Winter, a large number of prostitutes live in the rooms where they work. They do not go home after work or, it can be argued, they do not have a home.

42. In Germany, like elsewhere, I heard different opinions on whether prostitution may or may not be voluntary. Only some sex workers and a few people working for their organisations claimed that prostitution can be the result of a free choice. After listening to these people and to those who work in organisations helping victims of trafficking and sex workers who try to leave prostitution, I am inclined to think that voluntary, free and independent prostitution – free from exploitation – is little more than a myth, as it applies to a small minority of sex workers.

19. "Unprotected: How Legalizing Prostitution Has Failed": www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html.

20. www.mvcr.cz/soubor/05-regulating-legal-situation-of-prostitutes.aspx.

21. *The Economist*, "A giant Teutonic brothel", 13 November 2013.

22. Ibid.

23. www.examiner.com/article/german-s-legalized-prostitution-brought-more-exploitation-than-emancipation-to-women.

24. www.spiegel.de/international/germany/johns-face-prosecution-in-forced-prostitution-cases-in-german-law-reform-a-936844.html.

43. The representatives of the NGOs that I met in Berlin (Neustart, International Justice Mission, SOLWODI) shared my opinion. Ms Beatrice Mariotti of SOLWODI expressed the view that 80% of prostitution is in a grey area: most sex workers are not strictly speaking “forced”, but they are put under strong pressure and have no alternatives. This pressure may come from a partner or even their family, who send them abroad to work and send money back.

44. The NGO Neustart runs a café in the red-light district open to female and male sex workers. The idea is to provide a group which suffers first and foremost from isolation with the comfort of a place to meet and a hot drink. For some sex workers who are victims of trafficking or were forced into prostitution, meeting at the café may represent an opportunity to open up and seek help.

45. The meetings I had in Germany with the authorities and civil society confirmed my impression that both the situation of sex workers and the incidence of human trafficking in the country have worsened over the last decade.

46. I would not interpret this as a direct consequence of the 2001 Prostitution Act, even though it is evident that this law has failed to achieve its objectives. I take the situation in Germany as an indication that legislating on prostitution will not automatically have an impact on reducing human trafficking. Even when prostitution is legalised, it is essential that the authorities allocate adequate resources for the investigation and prosecution of trafficking cases.

47. In addition, affirming the principle that “prostitution is an activity like any other” does not automatically guarantee better working conditions for sex workers. It is necessary to review related legislation and regulations and ensure their effective implementation, also through regular checks and inspections.

Cora's story²⁵

Sometimes girls are sent by their own families, like Cora from Moldova. The 20-year-old digs her hands into the pockets of her hoodie, and she is wearing plush slippers with big eyes sewn to them. Cora lives in a hostel run by a Romanian assistance center for victims of human traffickers. When girls in Moldova are 15 or 16, says Cora's psychologist, their brothers and fathers often say to them: “Whore, go out and make some money.” Cora's brothers took their attractive and well-behaved sister to a disco in the nearest city. Her only duty there was to serve drinks, but she met a man there with contacts in Romania. “He said that I could make a lot more money in the discos there.” Cora went with him, first to Romania and then to Germany. After being raped for an entire day in Nuremberg, she says, she knew what she had to do. She worked in a brothel on Frauentormauer, one of Germany's oldest red-light districts. She received the men in her room, allegedly for up to 18 hours a day. She says that police officers also came to the brothel – as customers. “They didn't notice anything. Or else they didn't care.” The brothel was very busy on Christmas Eve 2012. Cora says that her pimp demanded that she work a 24-hour shift, and that he stabbed her in the face with a knife when she refused. The wound was bleeding so profusely that she was allowed to go to the hospital. A customer whose mobile phone number she knew helped her flee to Romania, where Cora filed charges against her tormentor. She says the pimp called her recently and threatened to track her down.

4.2. Switzerland

4.2.1. Prostitution

48. In Switzerland, prostitution is legal and in principle is considered an ordinary form of economic activity. As such, it is subject to taxation and social security contributions. This matter falls under cantonal jurisdiction. Regulations relating to the exercise of prostitution are cantonal and municipal. At national level, the 1942 Swiss Criminal Code sets forth fines for whoever violates cantonal and municipal regulations. In addition, its Article 195 (incitement to prostitution) prohibits inciting someone to become a prostitute against their will or preventing them from quitting, thus limiting their freedom of action.

49. Regulations on prostitution vary across cantons. Generally speaking, their main aims are to improve the working conditions of sex workers and to reduce the negative effects of the sex trade in the area where this is practised. The local police responsible for trade and industry controls also inspect sex trade activities.

50. In September 2013, shortly before my fact-finding visit, the Swiss Parliament raised the minimum legal age for sex work from 16 to 18 years and set forth sanctions for the purchase of sexual services from underage people. Prostitutes between the ages of 16 and 18 will not face penalties, but people paying for sex

25. This is an extract from an article which appeared in Spiegel online in 2013: www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533-3.html.

with minors may be sentenced to up to three years of imprisonment. In addition, anyone inciting prostitution by minors, including pimps, with the aim of making a profit, and people running brothels or escort services, will face a sentence of up to 10 years.

51. At the moment a debate is taking place on the need to revise the current law on prostitution. Most NGOs working on this matter are in favour of the current regulations, which make it easier for them to reach victims of trafficking and carry out protection and registration activities, in co-operation with the law-enforcement services and the judiciary. Others take a different stand: Ms Irene Hirzel, of the Christliche Ostmission, for instance, explained to me that there is increasing awareness of the need to set stricter limits on prostitution. Furthermore, criminalising the purchase of sexual services is seen by some as the most effective way of tackling trafficking in human beings.

52. A public consultation was launched in 2012 on the possibility of abolishing the status of “cabaret dancer” (*artiste de cabaret*) which may be granted to people from outside the EU/EFTA area to allow them to work in nightclubs in Switzerland for a limited time. Cabaret dancers are at high risk of trafficking and forced prostitution, in violation of their contract.²⁶ In recent years, a large number of Swiss cantons stopped granting this status in order to prevent abuses. Switzerland’s public opinion and civil society are split on this subject. I believe that the national authorities should simply abolish this status since it allows abuse by organised crime organisations.

53. During my visit, I also had a chance to meet Ms Marianne Streiff-Feller, a Swiss parliamentarian who tabled a proposal (*“Postulat”*) to assess the feasibility of a reform of the Swiss legislation on prostitution based on the criminalisation of clients. A report on this *postulat* is currently under preparation. It will present the position of the Federal Council on the issue of such prohibition in Switzerland.

4.2.2. Trafficking

54. The three internationally recognised forms of human trafficking (for sexual exploitation, for labour exploitation and for organ removal) are punishable under Article 182 of the Criminal Code). According to the Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants (SCOTT or KSMM), national statistics are not available because controls fall under cantonal jurisdiction. Furthermore, the existence of different cantonal regulations makes it impossible to collect comparable data.²⁷ In spite of this, in 2013, the Commission for Human Trafficking and Smuggling, which is part of the Federal Office of Police (FEDPOL), received 396 reports (national and international co-ordination files) of human trafficking and smuggling. The victims mostly originate from eastern Europe (Romania, Hungary and Bulgaria), but also from Asia (mainly Thailand and China), South America (Brazil), and Africa (Nigeria).²⁸

55. In 2012, SCOTT approved a National Action Plan to Fight Human Trafficking for the period 2012-2014. The plan defines the global strategy against human trafficking in Switzerland and is based on the provisions of the Council of Europe Convention on Action against Trafficking. It also clarifies the tasks and responsibilities of cantonal and federal agencies in combating human trafficking, as well as contributing to the implementation of international obligations and recommendations made by the competent supervisory bodies. The action plan is based on the principle that countering human trafficking does not only imply prosecuting perpetrators, it is in fact “a multidisciplinary challenge that places assistance to victims at the centre of all action”.

56. The national anti-trafficking authorities and police forces co-operate closely with civil society. In particular FIZ, a Zurich-based NGO, runs important activities of awareness-raising and victim protection in close co-operation with the police.

4.2.3. Lessons learnt: importance of reliable and comparable data as well co-operation between authorities and civil society

57. During my fact-finding visit to Switzerland I realised that it is possible for a country that has legalised prostitution to maintain a fairly good control over the health and working conditions of sex workers. However, this visit confirmed a problem that I had already encountered in Germany: the lack of reliable and comparable data on prostitution and trafficking. Better data collection is essential to enable the authorities to make informed policy choices.

26. www.fiz-info.ch/en/Topics/Cabaret-dancers.

27. www.ksmm.admin.ch/ksmm/en/home/themen/siehe_auch_/prostitution.html.

28. www.fedpol.admin.ch/content/fedpol/fr/home/dokumentation/berichte/jb_fedpol.html.

58. The second element I would like to underline is the importance of co-operation between civil society and the authorities, at all levels. NGOs play a key role in helping and assisting victims of trafficking and exploitation and are often in a position to help with investigations. Any process of reform of policies on prostitution and trafficking should include these groups.

4.3. The Netherlands

4.3.1. The link between prostitution and trafficking

59. The ban on owning or managing a brothel, in force in the Netherlands since 1911, was lifted by the Dutch Parliament in October 2000. The aim of the new law was to take prostitution out of the underground world where it was more likely to be connected to crime. In the previous decade, a policy of “regulated tolerance” had been followed: law-enforcement services and other actors of the criminal justice system consciously decided not to intervene in a sphere that was formally considered illegal.

60. Most of my interlocutors during the visit to the Netherlands expressed the view that the Dutch law on prostitution of 2000 had substantially failed to achieve its goals. While some improvement in the situation of sex workers is to be found for instance in the field of health care, no decisive progress has been made in countering trafficking in human beings for sexual exploitation. On the contrary, the link between prostitution and trafficking, even in registered establishments, has become increasingly strong. Sociological studies confirm that the situation of prostitutes has worsened in the last decade and that organised crime has kept control over a large part of the sex industry, including its legal sector.²⁹

61. A 2008 report of the KLPD, the national police, states that between 50% and 90% of those in licensed prostitution work involuntarily. The report describes the case of two criminals convicted for trafficking and exploiting more than 100 women in the Netherlands and neighbouring countries. One of the alarming aspects of the case was that all the sex workers involved in the Netherlands worked in licensed and tax-paying brothels.

62. Although the representatives of the anti-trafficking and law-enforcement authorities that I met distinguish between prostitution and trafficking in human beings from a conceptual point of view, they all agreed that the two phenomena are closely intertwined in reality.

4.3.2. The ongoing debate on prostitution

63. Legalisation seems to be losing support in the Netherlands. A draft bill which would introduce a series of restrictions on prostitution is currently being debated by the Dutch Parliament. Among others, it will raise the minimum legal age for sex workers from 18 to 21 years. This particular provision is a positive step and should be replicated in other legal systems. Even in countries where prostitution is considered as an ordinary occupation, a heavy social stigma is attached to it. A slightly higher age-limit may allow the individual to make the choice more responsibly. To register as sex workers, people will also need to speak Dutch, English, German or Spanish. This is a safety requirement, as someone who does not know any of these languages can hardly ask for help.

64. This measure is part of the “barrier system”. As explained by the staff of the Amsterdam City Hall, this system consists of setting legal and administrative requirements – related to technical, health and safety or other aspects – aimed at making trafficking in human beings more difficult. Checking the respect of such requirements offers law enforcement and other authorities the opportunity to identify and come into contact with potential victims of trafficking.

65. The governments of the main cities are also playing a role in partially amending the policies on prostitution. In 2006, the then mayor of Amsterdam, Lodewijk Asscher, refused to renew the licences of 37 prostitution businesses in the red-light district. *Tippelzones*, the areas designated by the public authorities for prostitution, have been closed down in Rotterdam and The Hague, and so have one third of window brothels in Amsterdam. As far back as 2003, Amsterdam Mayor Job Cohen stated that legalisation appeared ineffective in preventing trafficking. Creating a safe zone for sex workers, he said, had proved impossible, and a large share of the prostitution industry was controlled by organised crime.³⁰ The City of Amsterdam has recently passed regulations that reflect the content of the draft legislation which is in preparation at national level. The minimum age of 21 for sex workers, for instance, is already required.

29. Daalder A.L. (2007), *Prostitution in The Netherlands since the lifting of the brothel ban*, WODC, Boom Juridische Uitgevers, The Hague.

66. Representatives of sex workers support the current legalisation approach. Among them is Ms Ilonka Stakelborough, representative of the Stichting Geisha foundation, who participated in the hearing on prostitution and trafficking held in Strasbourg on 24 April 2013 within the Parliamentary Network Women Free from Violence. Ms Stakelborough argued that a large number of sex workers are in the prostitution business voluntarily and they are more than ready to co-operate with the authorities against forced prostitution, also in their own interest.

67. Several Dutch parliamentarians, however, including Mr Gert-Jan Segers of the Christian Union Party, are in favour of the “Swedish approach” based on criminalising the purchase of sexual services. During my visit, Mr Segers explained to me that the attitude towards prostitution in the Netherlands is not the same as in Scandinavia, as many consider it as an expression of sexual freedom and few people view it as the result of gender inequalities. He therefore calls for a gradual reform of Dutch legislation on prostitution.

4.3.3. Lesson learnt: country specificities must be taken into account in devising policies on prostitution; although women represent the largest share, men are also victims of trafficking for the purposes of sexual exploitation

68. Most of the NGOs that I met in the Netherlands are in favour of a reform of regulations on prostitution with a view to countering the side effects of legalisation. Pragmatically, they suggested that criminalisation of clients may be difficult to accept by the general public but intermediate measures would be possible. These should include the criminalisation of prostitution-related activities, such as pimping. This would represent a substantial step in making trafficking for sexual exploitation more difficult.

69. During this visit, I had a very strong feeling that it would be hardly possible to propose a single policy on prostitution that fits all Council of Europe member States. There are so many cultural specificities to be taken into account, not only in terms of mentality but also in terms of history, development of society, capacity to enforce laws and regulations and capacity to counter criminality, that it is fully legitimate for this debate to be a domestic one.

70. In the Netherlands, my attention was drawn to the issue of male prostitution. A remarkable share of the sex workers who receive the assistance of the Prostitution and Health Centre in Amsterdam (about 25%) are male. Male prostitution is not a world apart: several experts confirmed that a significant share of male sex workers are victims of trafficking.

5. Criminalisation

5.1. Sweden

5.1.1. Policy on prostitution

71. In 1999, Sweden introduced the Sex Purchase Act, prohibiting and sanctioning the purchase of sexual services but not their sale. Similar legislation was later introduced in Norway (2008) and Iceland (2009).

72. The Swedish law aimed to curb demand as a way of combating prostitution. As Swedish expert Gunilla Ekberg wrote, one of the main aspects of Swedish policies on prostitution is the focus on the root cause, namely “the recognition that without men’s demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able to flourish and expand”.³¹

73. The proposal to criminalise the purchase of sexual services was based on the view that prostitution is a form of violence against women and a barrier to gender equality. The underlying idea was that a distinction between voluntary and forced prostitution is not relevant. The supporters of this policy underline that prostitution is linked to violence in several ways. Most women involved in prostitution have been victims of sexual violence in their youth. At the same time, a number of oppressive elements, including gender inequality, sex and race discrimination, as well as physical and psychological violence perpetrated by male relatives and partners, are shown to increase the likelihood of women and girls being forced into prostitution. In addition, selling sex is proven to be harmful for women, physically and psychologically, especially in the long term. Most women who have escaped prostitution describe years of abuse by clients and pimps. They are beaten, verbally abused, threatened, raped and harassed morally and sexually.

30. www.nytimes.com/2008/02/24/world/europe/24amsterdam.html?_r=2&pagewanted=all&.

31. Ekberg G, The Swedish Law That Prohibits the Purchase of Sexual Services, in Violence Against Women, October 2004, <http://action.web.ca/home/catw/attach/Ekberg.pdf>.

74. From a different angle, supporters of the prohibition also argue that the fact that men could “buy women’s bodies” was in itself a threat to women’s dignity. When the Sex Purchase Act was actually adopted, as a part of a larger violence against women bill, its aim was clearly to eliminate, rather than regulate, prostitution.

75. The Sex Purchase Act provided for sanctions consisting of a fine or imprisonment of up to six months. In 2011, the maximum imprisonment term was brought to one year. To date, nobody has been sentenced to prison under this law.³² While fines were the most common sanction, in a limited number of cases suspended prison sentences were imposed. It is arguable that the main aim of this legislation is not to punish the clients harshly, but rather to convey a strong message to the public, saying that prostitution is unacceptable. Detective Inspector Simon Häggström, of the Prostitution Unit of the Stockholm Police, a guest speaker at the hearing of the Parliamentary Network Women Free from Violence, underlined that, while the law had triggered a heated debate when it was passed and raised sharp criticism by some, it now enjoyed wide support among the Swedish public, particularly the youth. Moreover, as a law-enforcement officer he could confirm that street prostitution had drastically decreased in Swedish cities.

76. When I met other members of the Prostitution Unit during my fact-finding visit to Sweden, they were adamant that the current legislation had achieved its goal of discouraging buyers of sexual services. Since a strong social stigma is attached to prostitution in the country, the very risk of undergoing criminal proceedings was a powerful deterrent for most potential customers. Those who are caught *in flagrante delicto*, the police explained to me, systematically declare themselves guilty and accept being fined, rather than having to go to court. Even the letter of notification sent by the police to the home or work address to communicate that a procedure is pending represents a deterrent, almost a sanction in itself.

77. Most of my Swedish interlocutors, whether fellow parliamentarians, civil servants or members of civil society, expressed their full support for the current legislation and were convinced that it had a positive impact. The law seems to have effectively conveyed the message that prostitution is unacceptable, which was the primary aim of the legislators. According to periodical surveys, young people are particularly in favour of the current regulation.

78. The “force of attraction” of the Sex Purchase Act is also testified by a shift in the opinion of some political forces: there is now general support for this law across the main political parties.

5.1.2. Impact on trafficking

79. In 2010, the Swedish Government published a report based on the analysis of the trends on prostitution over the ten years since the law was adopted. This report indicates that, in the decade 1998-2008, the number of women involved in street prostitution in Sweden has been cut by half. The proportion of men stating that they had paid for sex was 8% in 2008, down from 13.6% in 1996 (the number of men currently paying for sex should be further reduced to 4%, as half of the men interviewed said that they had not done so since 1999). The overall number of women in prostitution in the country dropped from 2 500 in 1998 to 1 500 in 2003, according to Kajsa Wahlberg, Sweden’s national rapporteur on human trafficking.

80. The report also indicates a considerable impact on trafficking in human beings, especially by comparison with neighbouring countries. The number of foreign women and girls trafficked into Sweden for purposes of sexual exploitation was estimated to be between 200 and 400 by 2005 in Sweden, while it was approximately 15 000 to 17 000 in Finland (whose population is much smaller than Sweden’s).

81. According to Ms Ekberg, Sweden’s National Criminal Investigation Department has received indications from Interpol and other international bodies that the country is no longer an attractive target for traffickers. Intercepted telephone conversations between pimps and traffickers show that the local prostitution market has become riskier and less profitable. Testimonies from the victims also confirm that traffickers found other European destinations more attractive.

5.1.3. Assessing the overall impact

82. The positive assessment of the current legislation is not unanimous; some representatives of civil society and academia highlight what they consider as weaknesses and unexpected effects of the new system. They argue that while street prostitution has decreased, the sale of sex continues in other forms, for instance through the Internet. When Sweden’s Sex Purchase Act was passed, Internet was booming and rapidly changing numerous aspects of many people’s everyday life. This makes it more difficult to assess the impact

32. *The Local*, 3 July 2010, www.thelocal.se/27580/20100703/.

of this piece of legislation on the overall size of the sex trade. Critics of the 1999 Act therefore say that the prostitution industry has partially gone underground and that sex work has thus become more dangerous. In addition, making human trafficking more difficult in one country may have just relocated the threat into other countries, particularly in the Nordic neighbourhood.

83. In the light of these remarks, the Swedish Government has recently asked the County Administration Board of Stockholm to collect information about the extent and the different forms of prostitution in the country. The results of this research are scheduled to be made public in March 2015.

5.1.4. Sweden's prostitution regulations: more than just good practice

84. It would be difficult to encapsulate in a single sentence the "lesson learnt" from the Swedish experience. Sweden's regulations and policies on prostitution were the starting point and the main reference in the preparation of this report. In 1999, Sweden's visionary law-makers proved that it was possible to adopt a radically new approach to prostitution, shifting the focus from the sex workers to the clients. What might then have appeared as ideological or moralistic regulations are now recognised as important tools for countering trafficking in human beings for sexual exploitation. Legislators from other European countries should look at this experience with particular attention when reforming their respective legal frameworks on prostitution.

5.2. Countries prohibiting all aspects of prostitution, including the sale of sex

85. Besides the countries that I have visited in preparation of this report, I would like to add information on those where the sale of sexual services is prohibited. A number of countries of central and eastern Europe belong to this category. I will present three examples: the Russian Federation, a major country of origin and destination of trafficking in human beings, Romania and Serbia, two countries of the Balkan region which are Parties to the Council of Europe Anti-Trafficking Convention.

86. In the Russian Federation, criminal and administrative regulations prohibit prostitution and related activities. The Criminal Code of 1996 criminalises the activity of organising prostitution by means of violence or threats, as well as pimping.³³ The Code of Administrative Offences of 2001 sanctions prostitution (selling sexual services) by a symbolic fine of up to 2 000 roubles (65 euros).³⁴

87. Despite this ban, prostitution in Russia is widespread. In January 2013, the Vice-Minister of Internal Affairs, Igor Zubov, revealed the results of research which indicates that in Russia there are over one million prostitutes³⁵. According to Silver Rose, a sex workers organisation, this figure may be as high as 3 million.³⁶ Although some research has been carried out locally (for instance in St Petersburg and Orenburg), as is the case in most other countries, reliable figures on prostitution are not available at national level.³⁷

88. In recent years, a debate was initiated on the possibility of legalising prostitution in Russia³⁸. In 2012, the Morality Police Fund, a lobbying group, organised a conference and proposed a draft federal law on "State regulation and control of sexual services", suggesting that prostitutes should pay taxes and their activity be regulated under labour law. Similar initiatives were announced by individual politicians. Legalisation of prostitution appears to be unlikely, due to the opposition by the influential Orthodox Church. Surprisingly, even sex workers organisations like Silver Rose stood against legalisation, but from a different perspective. They claimed that this would increase the overall number of sex workers and that before collecting taxes, the State should provide prostitutes with medical assistance, security and respect³⁹.

89. Trafficking in human beings is also rife. While the Russian Federation is indicated as a major destination of trafficking of human beings from a variety of regions, including South-East Asia, a study published in 2013 by the European University Institute and the Robert Schuman Centre for Advanced Studies states that 30 000 to 60 000 Russian women and children become victims of sex trafficking every year.⁴⁰

33. www.russian-criminal-code.com/PartII/SectionIX/Chapter25.html.

34. www.consultant.ru/popular/koap/.

35. http://echo.msk.ru/news/998072-echo.html?utm_source=twitterfeed&utm_medium=twitter.

36. www.gazeta.ru/social/2013/12/17/5807973.shtml.

37. www.academia.edu/4097526/_-_-.

38. http://english.pravda.ru/society/sex/07-12-2012/123054-prostitution_taxes-0/.

39. www.gazeta.ru/social/2013/12/17/5807973.shtml.

40. www.carim-east.eu/media/exno/Explanatory%20Notes_2013-54.pdf.

90. Unfortunately, the Russian Federation is not Party to the Council of Europe Anti-Trafficking Convention. I hope that this situation will change in the future, as the system established by the convention may be strengthened and made more effective by including Russia among its members. Recently, at an event organised in co-operation with GRETA, I was informed that the country's authorities are in the process of designing new policies against human trafficking. I welcome this development.

91. In Romania, Interior Minister Vasile Blaga proposed in 2007 to legalise prostitution, but no actual change followed.⁴¹ In spite of the criminalisation, prostitution is widespread in the country. An academic study presenting the situation of four European countries including Romania indicates that prostitutes are often found in hotels, but also in private apartments. Among the channels giving access to sexual services there are hotel staff, taxi drivers and the Internet.⁴²

92. As concerns trafficking, Romania is essentially a country of origin, as the National Agency against Trafficking in Persons indicates in its 2011 report.⁴³ In 2012, GRETA published its first report on Romania, which as already mentioned is Party to the Council of Europe Anti-Trafficking Convention. The group of experts presents a mixed assessment of anti-trafficking policies in the countries in which comprehensive regulation exists, but implementation is not always satisfactory. At the same time, GRETA welcomed the efforts of the Romanian authorities in the area of investigation and prosecution of trafficking cases and the introduction of specific legal provisions guaranteeing the non-punishment of involuntary victims of trafficking for their involvement in unlawful activities. I consider this a very positive provision, considering that criminalising victims of forced prostitution would amount to a severe form of re-victimisation at the hands of the authorities.

93. Serbia, also a Party to the Council of Europe Anti-Trafficking Convention, bans prostitution, which is punishable with a prison term of 5 to 10 years. These harsh sanctions do not seem to have a significant impact, considering that over the last decade prostitution has "boomed, overwhelming the police".⁴⁴ In January 2014, GRETA published its first report on Serbia.⁴⁵ Rather than the general assessment presented by the group of experts on the efforts made by the Serbian authorities in fighting trafficking, I wish to highlight two specific aspects. The first is that the Criminal Code establishes as a criminal offence knowingly using the services of a victim of human trafficking. I agree with GRETA's positive assessment of this provision. On the other hand, the principle of non-punishment of victims of trafficking for illegal activities that they may be forced to commit has not been implemented. I consider that this gap should be filled by the Serbian authorities, for the same reasons that I have presented in support of the relevant Romanian provisions.

94. The example of countries criminalising the sale of sexual services does not appear positive. Firstly, there is lack of consistency in the implementation of this approach: while on paper the aim is to counter prostitution in any form, no control is carried out in the field. Secondly, sex workers are the most vulnerable link in the prostitution chain, even more so when they are victims of trafficking or forced prostitution. Targeting them with criminal sanctions can only increase their vulnerability and in cases of non-voluntary prostitution – presumably the overwhelming majority – it would amount to severe injustice.

6. Legalisation v. criminalisation: academic research

95. Academic research based on economic theory has been recently carried out on the impact of legalisation of prostitution on human trafficking, with interesting results. Researchers from the London School of Economics and Political Science, the University of Heidelberg and the German Institute for Economic Research of Berlin have compared a large amount of data and studies available on prostitution in a number of countries.⁴⁶

96. According to this study, legalisation of prostitution may be expected to have two opposite effects on human trafficking: on one hand, it may lead to an expansion of the prostitution market and therefore increase human trafficking ("scale effect"). On the other hand, it could reduce the demand for trafficked persons by

41. <http://uk.reuters.com/article/2007/02/28/uk-romania-prostitution-idUKL2864579420070228>.

42. "Prostitution and Human Trafficking: Focus on Clients", Springer, 2008.

43. <http://anitp.mai.gov.ro/ro/docs/studii/Evaluarea%20semestriala%202011.pdf>.

44. <http://iwpr.net/report-news/serbia-booming-sex-trade-overwhelms-police>.

45. www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_19_FGR_SRB_public_en.pdf.

46. Cho, Dreher and Neumayer, "Does legalized prostitution increase human trafficking?": www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development-_prostitution_-anonymous-REVISED.pdf.

increasing the offer of legal sex workers (“substitution effect”). Empirical comparison of data on 150 countries has led the researchers to conclude that the scale effect prevails. In other words, legalising prostitution seems to lead to an increase in human trafficking.

97. The article in question compares the situation in Germany and Sweden. It argues that, in Germany, the number of people working as prostitutes was estimated at 150 000 people in 2006, about 62 times more than in Sweden (whose population is about 10 times smaller than that of Germany). It quotes ILO’s figures indicating that in 2004 there were 32 800 victims of trafficking in Germany, which means about 60 times more than in Sweden.

98. The authors point out that for Germany there is sufficient data to compare the situation before and after the current prostitution law was passed. Such comparison gives meaningful results: estimations on the 1996-2003 period reveal that the number of victims of trafficking declined between 1996 and 2001 and then increased in 2002 and 2003, that is after prostitution was legalised in German law.

99. Another study based on an economic approach was published in 2010 and revised in 2013 by two researchers of the University of Gothenburg, Niklas Jakobsson and Andreas Kotsadam.⁴⁷ This study reaches the conclusion that criminalisation of prostitution reduces human trafficking: “Trafficking of persons for commercial sexual exploitation is least prevalent in countries where prostitution is illegal, most prevalent in countries where prostitution is legalised, and in between in those countries where prostitution is legal but procuring illegal”.

100. Ms Corinne Dettmeijer, Dutch National Rapporteur on Trafficking in Human Beings, whom I had the pleasure to meet in The Hague, published an article in which she criticises the previous two studies that I referred to above. Ms Dettmeijer believes that the lack of reliable figures on human trafficking makes it impossible to reach sound conclusions as regards which legal approach is preferable. “The problem” she writes “is not that there are no estimates but that the estimates that have been made are inaccurate or unreliable”.⁴⁸

101. In spite of the difficulty the researchers faced in finding usable data, I consider the two studies on prostitution and trafficking that I have mentioned above as interesting and useful contributions to the debate. The indications they give seem to me sensible and relevant. I nevertheless share Ms Dettmeijer and many others’ concerns about the lack of reliable data. They confirm once again that further research and data collection in this field is a top priority and should be strongly encouraged both at national and international level in the years to come.

7. Ongoing developments in other Council of Europe member States

7.1. Scandinavia

102. Since the Sex Purchase Act was passed, both Sweden’s public authorities and civil society have actively promoted the Swedish approach to prostitution as a model to be replicated in other countries. Conferences have been organised to present it and information material has been published in several languages.

103. After a long public debate, Norway followed the Swedish example in 2008, joined by Iceland in 2009. This has put pressure on other countries to do the same, in particular Denmark, both because of the cultural proximity and the risk that curbing prostitution and human trafficking in neighbouring countries may lead to an increase on its territory. Some studies carried out in Sweden already suggest that the number of prostitutes may have increased in Copenhagen while rapidly decreasing at home.⁴⁹

104. In several countries, including those following a more liberal approach to prostitution, the idea of introducing stricter regulations and criminalising the purchase of sexual services finds growing support. While legislators and policy makers are increasingly committed to countering trafficking in human beings globally, they are also becoming aware that legalisation has proved ineffective, unable to either protect the victims involved or to break the ties between prostitution and organised crime.

47. The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation, https://gupea.ub.gu.se/bitstream/2077/22825/4/gupea_2077_22825_4.pdf.

48. “Does legalised prostitution generate more human trafficking?": www.dutchrapporteur.nl/current/news/archief/new-article-does-legalised-prostitution-generate-more-human-trafficking.aspx?cp=64&cs=16855.

49. <http://action.web.ca/home/catw/attach/Ekberg.pdf>.

7.2. United Kingdom

105. In England, Wales and Northern Ireland, the Policing and Crime Act of 2009 introduced a new criminal offence sanctioning those who pay for sexual services of a prostitute “who has been subjected to force”. A peculiarity of this criminal offence is strict liability: it means that, to be criminally responsible, it is not necessary for the client to be aware that the prostitute was in a situation of forced prostitution. As this rather strict legislation is currently in force, the criminalisation of all clients would be a relatively easy step to take. In 2011, one year after the law entered into force, the press reported that the number of convictions was very limited. Some police officers found the provision difficult to enforce and called for a simplification of the text.⁵⁰ The debate on this type of criminalisation has gained momentum in the last few months. The All-Party Parliamentary Group on prostitution and the global sex trade has launched a public consultation on prostitution: its chair, Gavin Shuker, called on the government to consider the criminalisation of buying sex as a way to reduce the demand.⁵¹

106. On 12 September 2012, Rhoda Grant, Member of the Scottish Parliament, tabled a draft proposal for a bill to make it an offence to purchase sex. Ms Grant, who considers prostitution as a form of violence against women, referred to a large wealth of literature to support her views that the majority of those who are involved in prostitution are unwilling participants.

107. Ms Grant’s draft proposal was followed by a public consultation which closed in December 2012. The consultation received over 1 000 responses, 80% of which were favourable. Based on these positive results, a final proposal was lodged in May 2013 and is undergoing the ordinary procedure before the Scottish Parliament. If approved, the new legislation could enter into force in 2014.

7.3. Ireland

108. In June 2013, the Irish Parliament’s Committee on Justice, Defence and Equality issued a report recommending a reform of the legislation on prostitution, with provisions penalising the purchase of sexual services or any request, agreement or attempt to do so. The report explicitly refers to the Swedish experience and specifies that the law should consider that no offence is committed by the person whose sexual services are sold.⁵²

7.4. Malta

109. In Malta, an amendment to the Criminal Code was passed on 3 December 2013 which modified a number of provisions related to human trafficking. Among other things, it introduced an article 248F.2 on “Aiding and abetting” sanctioning “[a]ny person who engages in or makes use of the services or labour ... in the knowledge that the person providing the service has been trafficked”. The criminal sanction provided is imprisonment for a term of eighteen months to five years. Although the element of necessary knowledge that the person is a victim of trafficking makes these provisions much less strict than those based on the Swedish model (and even of the legislation of England, Wales and Northern Ireland), I consider them a step in the right direction. As making use of labour or other services from a victim certainly contributes to increasing human trafficking, it is right to consider such behaviour as a criminal offence in itself.

7.5. France

110. In March 2013, France abolished the crime of soliciting by prostitutes (*racolage passif*). Article 225-10-1, punishing the crime with a prison sentence of two months and a €3 750 fine, was removed from the penal code.

111. On 4 December 2013, the French Parliament’s lower chamber approved a draft bill setting new regulations on prostitution. This text aims to sanction those who pay to obtain a sex service: the sanction is a financial one (€1 500 fine, to be doubled in case of recidivism); imprisonment was originally included in the text, but then dropped. The text mentions amongst its objectives fighting human trafficking. There therefore seems to be a switch in the orientation of French legislators.

50. www.bbc.co.uk/news/uk-14333370.

51. “Government under pressure to review prostitution laws in England and Wales”, *The Guardian*, 26 December 2012, www.guardian.co.uk/society/2012/dec/26/government-pressure-review-prostitution-laws.

52. www.oireachtas.ie/parliament/mediazone/pressreleases/name-17366-en.html.

112. At a hearing in Strasbourg on 28 January 2014, Gérard Théry of Mouvement du Nid expressed full support for the draft bill under discussion in the French Parliament, recalling that it is based on the criminalisation of the purchase of sexual services but is not limited to this. The bill also contains provisions aimed at protecting prostitutes, who are in a vulnerable and precarious situation, and it offers exit strategies to those who want to quit sex work. On the other hand, Ms Irène Aboudaram of Doctors of the World highlighted the risk that the bill may push prostitution underground, making its victims more difficult to reach, among others by health professionals as concerns prevention and care of sexually transmitted diseases.

113. The fact that this draft legislation does not merely sanction the clients is very important. As I said, prostitution is a complex matter and cannot be regulated with a simplistic approach. The importance of this draft bill lies also in the fact that for the first time the “Swedish model” crosses the borders of Nordic countries, showing that it is possible to reach a political majority on this approach in countries with different legal and social traditions.

8. Sex workers’ organisations: issues of representativity and inclusion

Ilonka’s story

“My name is Ilonka Stakelborough. I am the founder of Stichting Geisha, a trade union for sex workers in the Netherlands. I worked as a sex worker for 25 years, 4 hours a day and 3 days a week. I chose this job because it gave me a chance to have quality time with my children and give them the opportunity to study whatever and wherever they wanted.”

114. For the preparation of this report, I considered it necessary to take into account the views of sex workers on the different regulations and policies on prostitution. I met with representatives of sex workers during my visit in Sweden and in Germany. I also established contacts with relevant organisations in Switzerland and the Netherlands.

115. The best-known Dutch organisation of sex workers, Stichting Geisha, was represented at the hearing on prostitution and trafficking organised by the Parliamentary Network Women Free from Violence in Strasbourg. On this occasion, the representative of Stichting Geisha, Ms Ilonka Stakelborough, expressed her organisation’s opposition to the criminalisation of the purchase of sexual services, saying that most sex workers practised their activity voluntarily.

116. This view was shared in Berlin by Ms Theodora Becker and Ms Friederike Strack from the organisation *Hydra*, which opposed a reform of the current German legislation. They claimed that victims of forced prostitution and trafficking represented a minority of sex workers.

117. In Stockholm, I had the opportunity to meet with Ms Pye Jakobsen, co-ordinator of the Rose Alliance, an advocacy organisation of sex workers from the major Swedish cities. A former sex worker herself, by coincidence she had gone into prostitution in my country, Portugal, and even worked for some time in the region of my constituency. She told me that entering prostitution had been for her a voluntary choice and that only a small minority of sex workers, perhaps 5%, were forced into it. She criticised the current legislation in Sweden as ineffective and found that the government’s evaluation on the impact of the law was biased. A well-spoken and polite person, she expressed her stance very clearly. I believed her when she told me that most of the people she knows in the sex industry work voluntarily and out of free choice. However, I remain convinced that voluntary prostitution is only a myth. A fascinating story aimed at explaining an ancient reality, but not one that may be used as a basis for designing policies on prostitution and human trafficking.

118. While I have listened carefully to the representatives that I met, I believe that most sex workers’ organisations no longer represent the world of prostitution in Europe. Their membership and leadership is largely composed of sex workers conducting their activity in relatively safe and stable conditions and they are mostly citizens of the country where they work. Today, the vast majority of sex workers both in the streets and in brothels are of foreign origin. De Roode Draad (*The Red Thread*), once the main sex worker organisation in the Netherlands, was often criticised as being too focused on creating a positive image of sex work and too distant from the real problems of sex workers, particularly foreign ones.⁵³ In 2010, Karina Schaapman, a former sex worker and subsequently a member of the Amsterdam City Council, declared that 75% of prostitutes in Amsterdam were foreign born.⁵⁴

53. www.mediastudies.nl/nap2/index2.php?option=com_content&do_pdf=1&id=542.

54. www.nytimes.com/2008/02/24/world/europe/24amsterdam.html?_r=2&pagewanted=all&.

119. It seems to me that this estimate may apply roughly to the rest of Europe. The challenges that prostitutes of foreign origin face are different and more severe. Many of them are victims of trafficking. They are generally more vulnerable, as they suffer from isolation and a lack of personal connections. Some of them face the risk of deportation by the migration authorities, which is often used as leverage by their pimps to keep control over them.

120. Legislation on prostitution should be designed and enforced taking into account the impact on the situation of sex workers, their health and safety and their freedom of choice. Representatives of sex workers should have their say on relevant regulations, and should be consulted in the course of their elaboration. The stances of organisations assisting victims of trafficking for sexual exploitation and forced prostitution should also be taken into account, as these victims are not represented by sex workers' organisations. The ultimate choice on the legal approach to be adopted should not respond only to the interests and needs of a small minority. Human rights should be the first priority in making policy choices on prostitution and trafficking.

9. Conclusions

121. There is universal consensus on the need to counter trafficking in human beings, which is one of the most hideous and underestimated violations of human rights worldwide and a threat to human dignity. Forced prostitution and sexual exploitation are also severe violations of human dignity. They are an expression of gender inequality, as is confirmed by the disproportionate number of women among the victims, and an obstacle to the achievement of real equality between women and men. However, given the size of the problem, the economic interests at stake and the cross-border nature of a large part of trafficking, effective ways of eradicating this scourge are yet to be put in place.

122. Prostitution is a complex issue presenting various facets. It affects the health of sex workers with consequences ranging from increased exposure to sexually transmitted diseases to higher risks of drug and alcohol addiction, physical and mental traumas, depression and other mental diseases. It is often linked to criminal activities, such as petty crime and drug dealing. In addition, criminal organisations controlling trafficking in human beings are often involved in drug trafficking.

123. In the preparation of my report, I have come to the conclusion that prostitution policies are the most effective tool in the prevention and countering of trafficking for the purpose of sexual exploitation, which, as already mentioned, represents the largest share of trafficking in human beings in Europe. However, these policies should not be treated as a substitute for a specific and comprehensive action against human trafficking, based on a sound legal and policy framework and implemented with adequate financial and human resources.

124. In this report, I have examined the law and policy on prostitution in countries that have followed very different paths: some have chosen legalisation; others have chosen prohibition. All of them have made their choice for a cause that they considered good and just: for some it was to eliminate the stigma against sex workers, in a context of sexual liberation; for others it was the willingness to achieve gender equality. However, the reality has often proved quite different from expectations.

125. It is not easy to compare the effectiveness of different prostitution policies on trafficking. The greatest obstacle is the lack of reliable and comparable data or even estimates, which does not make it possible to understand clearly whether trafficking is increasing or decreasing. This is certainly due to the fact that, whatever the legal framework on prostitution, trafficking in human beings is always illegal. But also, in all the countries I visited, the resources and means to investigate cases of trafficking in human beings are not at all adequate for the size of the phenomenon. The cases that are highlighted in statistics, and those that are brought before the courts are only the tip of the iceberg.

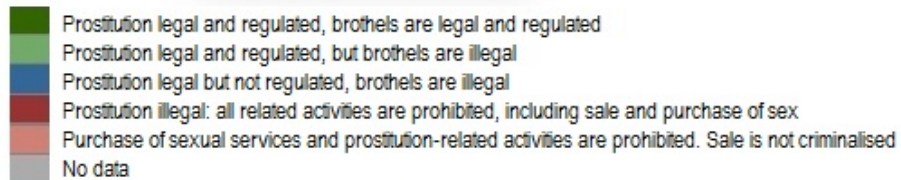
126. Creating a Europe-wide data collection system on prostitution and trafficking is therefore crucial. Accurate information on these phenomena is a prerequisite both to design policies and to assess their impact. Research should be carried out by all relevant actors, including national statistics agencies, independent scientific bodies and the academia; and be conducted on the basis of Europe-wide harmonised standards to guarantee comparability. As a pan-European organisation, the Council of Europe has an important role to play in promoting such a data collection system. The Committee of Ministers should take the lead on this initiative.

127. Despite the fact that each system presents advantages and disadvantages, I think that policies prohibiting the purchase of sex are those that are more likely to have a positive impact on reducing trafficking in human beings. While acknowledging that each country should hold a thorough discussion on its policy on prostitution and that the final decision must be taken in a sovereign manner, I personally consider the Swedish model as the most successful in the context of tackling human trafficking.

128. Should countries opt for legalisation, they should be aware that this reinforces their responsibility both to address trafficking in human beings and to ensure that sex workers carry out their work in dignified conditions, respectful of health and safety and other regulations, and free from coercion and exploitation.

129. Whatever legal regime countries may choose to regulate prostitution, they should ensure its thorough implementation. Prostitution legislation and policies should under no circumstances be empty talk. The experiences of several European countries show that opting for one legal approach over another does not automatically guarantee progress either in terms of countering trafficking and protecting the victims, or in improving the situation of sex workers. Concrete progress can only be achieved by enforcing the relevant legal framework effectively. This requires consistent political will and adequate human and financial resources.

130. While a number of European countries are in the process of amending their prostitution regulations or will do so in the near future, few are making adequate efforts to counter trafficking in human beings. The time is ripe for a better informed approach by legislators and policy makers. The close relation existing between prostitution and trafficking in human beings, particularly in Europe, should never be ignored. Designing, implementing or reforming legislation and policies on prostitution represents an excellent opportunity for State authorities to step up efforts and achieve better results in countering trafficking in human beings.



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