


Human Trafficking and Sexual Exploitation around the World

Law, Ideology, and the
Experiences of Sex Workers
and Clients



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Marijke Malsch and
Janine Janssen (eds)

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*Edited by
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Janine Janssen*

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Marijke Malsch and Janine Janssen

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1. Introduction

Marijke Malsch and Janine Janssen

Sex work is often called the oldest profession in the world. It manifests itself in a plethora of forms and is practiced by different types of individuals (although female sex workers almost certainly are the largest group), while various other individuals may profit from it. Legislators have tried to make laws and regulations to combat forced sex work and to regulate voluntary prostitution, but an adequate solution to fight exploitation without inducing undesirable effects must still be found in many countries. Every option that is being tried seems to have negative side-effects. On the one hand, combating forced work may lead to stigmatization of sex workers and neglect of their rights, while, on the other hand, the liberation of sex work may result in fewer obstacles to the exploitation of victims by traffickers (Malsch & Tsang, 2020; Wijers, 2022).

This book attempts to present a thorough and nuanced examination of human trafficking and the sex industry through a series of interconnected chapters. Each chapter addresses different aspects of human trafficking and/or the sex industry. The book combines theoretical frameworks, empirical data, and practical case studies to offer new insights and concepts. The authors provide for a variety of ideological perspectives and positions, which is very much needed today within the field of sex work and anti-trafficking.

The primary focus of the book is on the exploited sex worker, while attention is also paid to the independent prostitute.¹ It should be noted here that we use the terms “sex worker/sex work” and “prostitute/prostitution” interchangeably in acknowledgment of both the sensitivity of the issue and the legal terminology.

¹ We mention the extremes here of total dependency and total independency. Naturally, there are various degrees of dependency in between these two that may change over time.

Issues addressed

Under the influence of the emergence of the Internet, forms of both voluntary and forced sex work have been changing over the past decades. While, in the Western world, the work was previously done predominantly on the streets or in publicly or semipublicly accessible locations, a move is now taking place to the homes of the sex workers themselves or to other private locations; sex workers and procurers may place advertisements on the Internet to arrange meetings, and worker and client then meet at the appointed location. This move to the private sphere renders monitoring of the risks of forced work by law enforcement more difficult, and situations of exploitation could more easily remain undetected. This book pays ample attention to these developments.

In the current century, the legislatures of some countries, such as the Netherlands and Belgium, have decided to decriminalize brothels and clubs, as well as procurement. Various chapters in the book address these changing legislative models and approaches of the past decades. The optimistic idea was, at least in the beginning of the century, that women would then work for themselves, throw out the procurers, and profit from general labor rights, while being protected against exploitation by the authorities. However, reality turned out differently: human trafficking continued to occur, and on a substantial scale (Daalder, 2015). These developments in the liberalized legal systems gradually led to greater attention paid to the role that the client could play as a detector of forced sex work. The idea emerged that clients who make use of the services of exploited sex workers could be criminalized. Such ideas have been translated into new legislative initiatives, and these developments have been stimulated by international conventions, protocols, and guidelines. Several chapters to this book deal with these developments. The general image of the independent sex worker did not vanish, however. Indeed, independent sex workers exist. In the more liberalized countries, they come forward and claim their rights.²

Other countries, such as Sweden and Norway, implemented a strategy opposite to that of the countries mentioned earlier: they primarily focused on the client. They made the client criminally responsible when visiting *any* sex worker, including those that do not work forcedly, while decriminalizing the prostitute's actions.³ A heated discussion took place on the merits of this

² In more repressive countries, such as openly claiming of rights by sex workers seems impossible. See Tsang, 2019; Malsch & Tsang, 2020.

³ Ekberg & Wahlberg, this book.

repressive legislative model, and today this debate continues to flare up every now and then (see, among others, Weitzer, 2011; Weitzer, 2015; Wijers, 2022).

The present book, while being aware of these debates, tries to avoid taking an extreme position. In the first place, it intends to provide factual, empirical information on prostitution and human trafficking practices; on effects of legislation; on the experiences of sex workers and clients; on enforcement of new and older laws; and on how trafficking is being combated in several countries. It thereby does not intend to provide a complete overview of what is going on in the sex industry, but focuses on the particular issues mentioned above.

Today, the sex industry is affected by relatively new developments such as climate change and increasing volumes of people looking for better lives in other parts of the world (Bales, 2012; Sheu et al., 2021). Such developments are addressed in various chapters, too. An outline of the various chapters to the book is provided below.

Outline of the volume

In Chapter 2, “The Impact of International and Transnational Legal Instruments on Anti-trafficking Legislation in Europe,” Mridula Shobinath discusses the history of the regulation of prostitution that has led to the adoption of anti-trafficking laws as we know it today. She analyzes the Palermo Protocol to understand the impact the Protocol has made on other legislative documents, such as the Council of Europe Convention on Action against Trafficking in Human Beings, and 11 national anti-trafficking laws, thereby shaping the nature and approach of anti-trafficking efforts in Europe.

In Chapter 3, “The Shop Floor Effects of Prostitution Policies in Preventing Human Trafficking,” Nicolle Zeegers begins by pinpointing the role of ideology in claims regarding the effectiveness of policy. In addition, she points to the part that regulatory intermediaries may play in combating human trafficking. She asks how we can measure the effectiveness of prostitution policy without taking recourse to statistics concerning human trafficking that are based on sketchy data. The author proposes an alternative way of doing this, acknowledging the insights generated by the theoretical concept of the semi-autonomous social field (SASF).

In Chapter 4, “Trafficked and on the Run: Rights to Residence for Asylum-Seeking Victims of Trafficking in Anti-trafficking Law and Asylum Law,” Gerrie Lodder explores the options, gaps, and obstacles following from

international trafficking law and asylum law to secure residence for migrant victims of trafficking in the European Union.

In Chapter 5, “Sphere of Influence: The Governance of Sex Workers’ Rights in Contemporary Europe,” Irena Ferčíková Konečná explores the history and understanding of the concept of discouraging demand in relation to international state obligations. She discusses feminist understandings of the concept of demand and presents strategies used by sex worker rights defenders to address exploitation in the sex industry. The author also examines strategies that aim to eliminate, silence, or exclude sex worker rights defenders from the contemporary European political scene and their responses to these initiatives.

In Chapter 6, “Overcoming Insult and Injury: China’s Transgender Sex Workers and Intimate Partner Violence,” Eileen Yuk-ha Tsang and Jeffrey S. Wilkinson deal with research into transgender sex workers (TSWs) in China, and address how they are being abused and extorted. These sex workers may fall victim to physical violence by the police, and they are seriously stigmatized. When they are in a romantic relationship, their male partners regularly are unable to find or hold jobs and thus are dependent on the sex worker. Fellow sex workers may present a sisterhood that provides support and help in a life full of danger and deception.

In Chapter 7, “You Feel That You Could Have Done So Much More’: The Practices and Potentials of Sex Worker–Founded/–Led Groups in Tackling Sex Sector Exploitation,” Emily Kenway explores the anti-trafficking role of sex workers themselves, finding that sex worker–founded/–led groups are implementing a range of programs and tactics to reduce exploitation in their sector, and that their positionality as people with lived experience is crucial to the efficacy of these interventions, including but not limited to their ability to cultivate peer-based trust with current victims of exploitation.

In Chapter 8, “Profiles of Victims of Trafficking for Sexual Exploitation in Bosnia and Herzegovina,” Darko Datzer and Eldan Mujanović discuss prostitution practices and human trafficking in Bosnia and Herzegovina. The developments described in the chapter have been marked by the transition to a free market economy over the past decades. Victims of human trafficking often appear to be vulnerable. They may have problematic family relations, and 60% of them are poor. The authors go into the role that organized criminal groups play in human trafficking practices.

In Chapter 9, “The Programmatic Approach and the Barrier Model: Are We All on Board?,” Warner ten Kate presents a model that consists of various barriers or impediments to human trafficking, such as permits to stay that may be refused in case of forced sex work, municipalities providing

housing to sex workers detecting exploitation, etc. The author also analyzes the various forms of cooperation that exist between law enforcement and other organizations. With the help of a number of famous, real-life cases, application of this model in practice is highlighted in the chapter.

In Chapter 10, “Twenty-five Years of Enforcing the Ban against the Purchase of Sexual Services in Sweden,” Gunilla S. Ekberg and Kajsa Wahlberg discuss the “Swedish approach” in which any individual who purchases a sexual service is criminalized while those who are exploited in prostitution, mostly women, are seen as victims who have substantial rights. Prostitution is, in this approach, understood as male violence and as a violation of the self-determination of women. The authors present empirical research which establishes that demand has decreased during the 25 years since the approach was introduced. The chapter also illustrates that the general public strongly support the criminalization of the purchase of sexual services as a result of the introduction of the Swedish approach.

In Chapter 11, “Tactics Used by Exploiters to Draw Their Victims into Sex Work,” Marijke Malsch and Inga van Uchelen deal with the various tactics that traffickers employ to lure their victims into the sex industry and to keep them there. The most regularly used tactic is abuse of the victim’s vulnerable position, for example, when she is young and living in an institution, or when she has no home, no work, is addicted to drugs, or has no legal residence.

In Chapter 12, “The Role of Clients in Identifying Forced Sex Work,” Marijke Malsch, Miriam Wijkman, Anne Koolenbrander, Marthe Schotsman, and Rik Schoon present a study of clients regarding their preparedness to notify the authorities of exploited sex work. It appears that clients are very well able to identify possible signs of exploitation. Most signs are of direct exploitation, and they are clearly visible. In such situations, however, clients’ willingness to contact the police is minimal or reduced.

In Chapter 13, “A Critical Look at the Criminalization of the ‘Use of Services’ of Trafficked Persons,” Suzanne Hoff and Merel Brouwer discuss the move towards further criminalization of the “use of services” of trafficked persons in Europe, based on desk research and interviews with experts. This research reveals the scarce application of this criminalization across the EU and concludes that there is no evidence of any positive impact on the combat against human trafficking. This contrasts sharply with the criminalization’s unintended harmful effects on victims and vulnerable (sex) workers.

In the concluding chapter of this book, “Human Trafficking in the Sex Industry: Practices and Law,” Marijke Malsch and Janine Janssen tie together all the lines that have been drawn in the book and present a number of

recommendations for future research, based on the findings of the authors and the relevant literature. Moreover, they advise supplementing the current predominant focus on legislative initiatives with a greater dedication to the prevention of falling victim to exploitation.

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I.

Law and Regulation

2. The Impact of International and Transnational Legal Instruments on Anti-trafficking Legislation in Europe

Mridula Shobinath

Abstract: Since the introduction of the Palermo Protocol in 2000, there have been continued efforts by States Parties to the Convention to tackle the crime of trafficking in persons (TIP) through national and transnational legislation. By focusing on 11 European countries that have a diverse but shared history of prostitution control and subsequently anti-TIP policies, and through a document analysis of anti-TIP laws in each of these state's criminal codes or anti-TIP bills, I attempt to unveil the extent to which the Protocol has left a mark on the field of anti-TIP.

Keywords: human trafficking, Palermo Protocol, anti-TIP legislation, exploitation

Introduction

Among the number of severe social problems that currently affect the world, human trafficking or trafficking in persons (TIP) is considered to be one of the most heinous. It is not a new form of criminal act by any means, and has continued to be a cause for concern since the early 1900s (Limoncelli, 2010; Siller, 2017). However, the definition of the crime itself has been debated and discussed over the years by governments, international organizations, nongovernmental organizations (NGOs), researchers, and practitioners, and a true consensus is yet to be reached (Allain, 2015). Despite the lack of a universally approved definition, several legal measures have been drafted and adopted over the past century (Jansson, 2015).

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In the late 1800s, in response to the pervasiveness of communicable diseases in army populations of the United Kingdom, attempts to control women in prostitution were made (Reanda, 1991; Malcolm, 1999; Baker, 2012). However, not much could be done across Europe, since the legal approach to prostitution was a national affair, despite the recommendation of the International Medical Congress to end the regulation of brothels and prostitution in 1873 (Bullough & Bullough, 1987; Bullough & Bullough, 1996; Sigsworth & Wyke, 2013). This changed in the next few years due to Alfred S. Dyer's *The European Slave Trade in English Girls* (1880), which found that young girls under the age of 21 from the United Kingdom had been working in prostitution in Brussels with false documents (Chaumont, 2011). By 1899, an international moral panic had ensued due to other incidents as well, and the first International Congress on the White Slave Trade was organized (Allain, 2017). A few years later, the 1902 International Conference on the White Slave Traffic took place in France. It is to be noted that the word "slave" in "white slave traffic" does not refer to slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" as defined in Article 1(1) of the 1926 Slavery Convention. Instead, "slave traffic" was simply considered to be the best choice of words that correspond to the issue of women moving within or across borders "to satisfy the passions of another," and, as the National Vigilance Association stated in 1899, "The White Slave Trade is the traffic in girls for immoral purpose" (Jäger, 2002; Allain, 2017).

Therefore, endorsement for anti-TIP legislation "started off with campaigns against the forced movement of women across borders for coerced 'prostitution'" (Kotiswaran, 2019). The following first four legal instruments (a)—(d) were initially adopted by the League of Nations and consequently amended and approved by the United Nations (UN) while (e) came into effect after the establishment of the UN:

- (a) International Agreement for the Suppression of the White Slave Traffic, 18 May 1904
- (b) International Convention for the Suppression of the White Slave Traffic, 4 May 1910
- (c) International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921
- (d) International Convention for the Suppression of the Traffic in Women of Full Age, 11 October 1933
- (e) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949

As stated in the preamble of (e), trafficking in persons is considered to be an accompanying evil of prostitution and it points to the fact that a direct link between prostitution and TIP was established early on in the history of anti-TIP legislation. This link continued to be relevant in discussions regarding anti-TIP policies in the early 2000s, as can be seen from the debates between human rights advocates and religious and feminist organizations during the process of negotiations for the drafting of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Doezema, 2005; Dempsey et. al., 2012; Goździak & Vogel, 2020).

However, once international and national focus on creating and enacting legislation was directed towards the new post–World War II political realities, there was a lull in the discussions on anti-TIP until the 1980s leading to the 1990s. The post–Cold War period triggered fears of trafficking once again due to the opening of borders as well as with other aspects of globalization that caused movement of people and goods across the world (Kligman & Limoncelli, 2005). This time around, instead of worries of “innocent” (white) women and girls being trafficked, the 1990s placed emphasis on “trafficking in migrants” or on illegal migration so that “the entry of possible victims” could be prevented (Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, 1996; Sharma, 2005). During this time, the definition of TIP was not standardized and it allowed for countries to define trafficking as they deemed fit for their context. For example, Bangladesh combined the antecedent concern of trafficking for the purpose of prostitution with the new problem of (illegal) migration for the purpose of finding work to issue a ban against low and semi-skilled women in fear that they would be easily deceived into “immoral activities” (Anwary, 2007). Therefore, almost a century of prior discourse regarding TIP that focused on prostitution and illegal migration for labor contributed to the designing of the Palermo Protocol or as it is formally known, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000).

The goal of this chapter is to analyze the impact of the Palermo Protocol on transnational and national legislation in Europe; to do so, the qualitative methodology of document analysis has been employed. The first section looks at the role of the Protocol in drafting the Council of Europe Convention on Action against Trafficking in Human Beings, and next section systematically reviews the definition of TIP in the Palermo Protocol and compares it to the definition of TIP in the anti-TIP legislation of 11 countries in Europe.

The point of this comparison is to understand the extent to which countries have adopted the “standardized” definition of human trafficking that was first introduced in the Palermo Protocol. The next section dives into the role of the Protocol in the drafting of the Dutch anti-trafficking legislation. Finally, this chapter concludes with a discussion on the concept of semantic uncertainty in the comparison of legislation against human trafficking.

The Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings

The Palermo Protocol was adopted by the UN General Assembly Resolution 55/25 on 15 November 2000 and became one of the first ever global legal instruments to provide a compendious definition on trafficking in persons that is not limited to sexual exploitation of women and children, or forced labor. According to Article 3 of the Palermo Protocol¹

For the purpose of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- (b) Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (c) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (d) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (e) “Child” shall mean any person under eighteen years of age.

1 Retrieved from https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf in 2021.

Although the United Nations Convention against Transnational Organized Crime has 147 countries signatory and 190 countries party to it, as of February 2023 the Palermo Protocol which falls under the Convention only has 117 countries signatory and 181 countries party to it. The reasons due to which some countries are not yet signatory to the Convention are diverse; the explicitly stated reservation is that many countries are not willing to be bound by Article 15, paragraph 2, which states the following:

Any dispute between two or more State Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of those State Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those State Parties are unable to agree on the organization of the arbitration, any one of those State Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

Nevertheless, the impact of the Palermo Protocol on the field of anti-trafficking in persons in the span of 20 years cannot be understated (Ricard-Guay, 2015; Bryant & Landman, 2020; Goździak & Vogel, 2020). The instruction that each State Party should adopt legal measures that criminalize the offenses defined in Article 3 of the Palermo Protocol (Article 5), that victims of trafficking in persons should be protected (Articles 6, 7, 8), that comprehensive policies and programs be established to prevent trafficking in persons (Article 9), as well as law enforcement and other relevant authorities be trained appropriately to cooperate transnationally for the protection of victims and prevention of trafficking in persons (Article 10) has ensured that over 90% of countries across the world today have introduced a section in their criminal codes or a separate act or directive that addresses and criminalizes trafficking in persons (transnationally) (Siller, 2017).

One of the best examples of the influence that the Palermo Protocol has had on international law and domestic legislature is the role it played in the drafting of the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings (Nestorova, 2015; Piotrowicz, 2017). The preamble to the CoE Anti-TIP Convention lists the various considerations, such as achieving greater unity between its members, preserving human rights and dignity, and protecting victims among others while also recalling prior relevant European and international agreements and conventions as the foundation for the 2005 Anti-TIP Convention (*ibid.*). One of these important

instruments is the Palermo Protocol, as is stated in the preamble to the CoE Convention:

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them.

This is reflected in Article 4 of the Convention, where the definitions are identical to the definitions set forth in Article 3 of the Palermo Protocol, with the exception of an addition of paragraph (e), which states the following: “Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article.” Plus, Article 39 of the Convention on the relationship with the Palermo Protocol clarifies the following:

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

The CoE Convention stays true to their aim in establishing an improved version of the Protocol as is noticeable in the additions and changes made to various articles. For example, Article 1 of the CoE Convention highlights their commitment to gender equality as opposed to the Palermo Protocol’s emphasis on women and children. They also introduce the goal to design a comprehensive framework for protection of victims and witnesses while ensuring effective investigation and prosecution, with respect to human rights of the victims. Another notable addition in the Convention is in Article 3’s nondiscrimination principle, which states the following:

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Throughout the various articles in the Convention, it is clear that the members of the CoE wanted to distance themselves from the particular focus on women and children and instead ensure gender equality for victims of TIP. This is emphasized in Article 17, which says: “Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.”

Finally, the most noticeable differences between the Convention and the Palermo Protocol can be observed from Chapters III to VI, which include Articles 10 to 35. These articles provide extended measures to protect and promote victims’ rights, expand on multiple acts criminalized under this Convention, broaden the instructions to criminal justice actors in Member States for better investigation and prosecution, and further develop the important aspects of international cooperation and cooperation with civil society.

However, Article 36 in Chapter VII introduces a monitoring mechanism, a “Group of experts on action against trafficking in human beings” (GRETA), a completely new addition to an anti-TIP instrument in 2005. The goal of this mechanism is to evaluate the implementation of the Convention so that necessary measures suggested by the group in accordance to the changes in the anti-TIP field can be adopted, if required. Having a monitoring mechanism ensures that the Convention does not become outdated but has the flexibility for subsequent amendments, if necessary.

Last but not the least, Articles 39 and 40 in Chapter VIII is included to safeguard the rights and obligations that the provisions of the Palermo Protocol and other international instruments provide to the Member States of the Council of Europe. As stated repeatedly, the Convention only seeks to enhance and strengthen the protective measures set in place by the Palermo Protocol.

Comparative analysis of definition of TIP: European legislation

The aim of this section is to analyze Article 3 of the Palermo Protocol and compare it against the definitions of human trafficking in domestic anti-TIP legislation of countries in Europe. Through comparative document analysis, one can note that the similarities and differences between the Protocol and domestic anti-TIP legislation are dependent on the social and cultural contexts of each country. Decisions on what words to include or leave out

are informed by the outlook that different countries have on topics such as morality, religion, and feminist values.

The following 11 countries were chosen for this comparative analysis due to their role in the International Congress on the White Slave Trade in 1899. As mentioned in the introduction, the fact that efforts against human trafficking have always involved societies' fears and moral views on prostitution has been established since the beginning of the history of anti-TIP laws (Kempadoo, 2015; Ditmore, 2005; Broad & Turnbull, 2019). There were a total of 12 countries that sent a delegation and participated in the congress, however, for the purpose of comparison in this chapter, it was decided that the United States will be left out as all the other 11 countries have a similar trajectory of cultural, historical, political, and social evolution in Europe that makes them ideal for comparison.

Since national anti-TIP laws are intertwined with domestic approach to prostitution, their current legislative models on prostitution have been highlighted below. Since prostitution policies are politically (and morally) charged in nature, there exists difference of opinions between researchers on the typology of prostitution policy models; not everyone agrees on what constitutes a particular model (Wagenaar & Altink, 2012; Östergren, 2017). While a thorough discussion on the classification of the models falls outside of the purview of this chapter, the term "neo-abolitionism" here refers to policy that criminalizes clients of sex workers as an attempt to reducing demand for sexual services (Scoular & FitzGerald, 2021), and "abolitionism" refers to the approach where governments promote rehabilitation of sex workers seen as victims and modify certain aspects of a liberal model of prostitution to criminalize certain forms of sex purchasing and third-party actions (Carline & Scoular, 2017).

- Decriminalization: Belgium
- Legalization: Austria, Germany, Netherlands, Switzerland
- Neo-abolitionism: France, Norway, Sweden
- Abolitionism: Denmark, United Kingdom
- Criminalization: Russia

For the purpose of the comparison, the definition of trafficking in persons as mentioned in the Protocol has been divided into three parts dealing with actions, means, and purpose.

- "Actions" refers to recruitment, transportation, transfer, harboring or receipt of persons;

- “Means” refers to the threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- “Purpose” refers to exploitation that includes, at a minimum, the exploitation of prostitution of other others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

Before moving on, a disclaimer is due at this stage since much of the legislation has been translated from their respective native languages into English for the purpose of this comparison. Although having cross-checked the translations using the help of native speakers, pre-existing translated versions of the laws, and online translation software, it is still possible that there are translation mistakes that were overlooked. Since, comparison of the definitions is the aim of this section, it is important to have access to the right texts. Having said that, the following are the findings of the brief comparative analyses.

1. Actions of trafficking in persons

The first characteristic element of the definition for human trafficking in the Palermo Protocol is that of actions. Any person (or persons) who employs or facilitates a set of actions which may include the process of recruitment, transportation, transfer, harboring, or receipt against another individual (or individuals) might be found guilty of the offense of human trafficking. The status of adoption of these actions into the domestic legislation of 11 countries have been examined separately for each country. It is interesting to note that the five words denoting the actions as mentioned in the Palermo Protocol are repeated only 80% of the time in the criminal codes and anti-trafficking bills of the 11 countries relevant to this analysis. In a few countries, although the actions have been termed differently, they have still been included in the process of the criminalization of human trafficking.

Recruitment

The term “recruitment” was included in the definition of human trafficking in all 11 countries. This implies that in cases where an individual (or individuals) has been recruited by another person, that conduct would be criminalized as an offense of human trafficking. However, two countries

used terms that are similar to “recruitment” in order to include the act in their definition of trafficking. This includes “procuring” in the Criminal Code of Norway. It also includes Switzerland where the term “solicit” is used in its definition of human trafficking in its criminal code.

Transportation

The act of transportation is included in the definition of trafficking in persons in 9 out of 11 countries. Austria and Switzerland do not mention it at all, thereby becoming the two countries on the list that do not include transportation in their anti-trafficking laws.

Transfer

The act of transfer is part of the national anti-trafficking legislation in 8 out of 11 countries. Austria, Norway, and Switzerland do not refer to the act of transfer at all.

Harbor

The act of “harboring” a person (or persons) is incorporated in the definition of human trafficking in national anti-human trafficking legislation in 8 out of 11 countries as well. Austria, Norway, and Switzerland do not address this act in their anti-trafficking legislation.

Receive or receipt

The act of “receipt” of an individual (or individuals) has been incorporated in the definition of human trafficking under national anti-trafficking legislation in 8 out of 11 countries. Therefore, any person (or persons) who receive another individual with the intent or for the purpose of exploitation shall be committing a crime of human trafficking. Austria, Norway, and Switzerland do not refer to the act of receiving in their anti-trafficking laws.

2. Means of trafficking in persons

The second characteristic feature of the definition for human trafficking in the Palermo Protocol is that of means. The means that have been identified in the Protocol are that of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another person. Only when one of these means is employed by a trafficker can the conduct be considered as trafficking in persons. The

one exception to this rule in every single country on the list of comparison here is a situation that involves trafficking in minors. In such a scenario, irrespective of whether these means have been used, it is a criminal offense.

Threat or use of force or other forms of coercion

Ten out of 11 countries have all included at least one of the terms such as “threat” “use of force” or “forms of coercion” in their definition of human trafficking within the domestic anti-human trafficking legislation. Only in the Criminal Code of Switzerland is there an absence of criminalization of this means of human trafficking.

Abduction

Another means of trafficking as defined by the Protocol includes abduction, which has also been regarded as kidnapping by several of State Parties that are on the list of analysis here. It was found that 4 out of 11 countries have in fact adopted the means termed “abduction” or “kidnapping” of individual(s) into the definition for human trafficking in their national anti-trafficking legislation. However, 7 other countries such as Austria, Denmark, France, Norway, Russia, Switzerland, and the UK do not consider the means of abduction as a necessary feature of human trafficking.

Fraud

Three out of 11 countries acknowledge and have specified fraud as a means of trafficking in persons in line with the definition as provided by the Palermo Protocol. Countries such as Austria, Denmark, Germany, Norway, Russia, Sweden, Switzerland, and the UK, however, do not include fraud as a means when considering human trafficking cases.

Deception

Compared to the number of countries that used the term “fraud,” we can see that 8 out of 11 countries chose to include deception as a means of human trafficking in the definitions in their domestic anti-trafficking legislation. Countries such as Denmark, Russia, and Switzerland do not refer to the term “deception.” Interestingly, after examining these countries, it is found that Denmark, Russia, and Switzerland refer neither to the means of “fraud” nor to “deception” in their national anti-trafficking legislation.

Abuse of power

Only 4 out of 11 countries consider a conduct to be trafficking when a person(s) abuses their power or position of power over another individual(s). However,

Austria, Denmark, Germany, Norway, Sweden, Switzerland, and the UK have not introduced this means in their human trafficking definitions at all.

Abuse of position of vulnerability

This means of trafficking was the only term to have been explained in the interpretive notes of the Palermo Protocol, and 6 out of 11 countries have included the operation of this means in a conduct for the case to be considered trafficking in persons. Austria, Denmark, Norway, Switzerland and the UK do not refer to vulnerability of potential victims of trafficking while defining human trafficking in their national anti-trafficking legislation.

Giving or receiving payments/benefits for consent of a person who controls another person

4 out of 11 countries in this comparison have included the means in their definition of human trafficking, which when employed can result in an offence of human trafficking according to their national anti-trafficking legislation. Other countries such as Austria, Denmark, Netherlands, Russia, Sweden, Switzerland, and the UK do not explicitly refer to this means in the definitions in their national laws.

Apart from these seven means that are part of the Palermo Protocol's definition of human trafficking, several State Parties have introduced additional means of trafficking in the definition of human trafficking in their national anti-trafficking legislation. For example, Russia has chosen to add the terms "selling or buying" in their national definition of human trafficking. Confiscation of documents (including identity documents) have also been included as a means of trafficking in Russia. The use of technology as a means for human trafficking has also been included in the definition in France.

3. Purpose of trafficking in persons

The third and final requirement mentioned in the Palermo Protocol for a conduct to be considered human trafficking is the purpose of the act and the means. According to the Protocol, this purpose is exploitation of individuals which, at a minimum, include prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs. Given the fact that these forms of exploitation have been stated as being the minimum, there is space for national legislation to separately develop and add other kinds of exploitation under the criminal offense of trafficking in persons. As

you will see below, various understanding of the same definition results in criminalization of different aspects of “exploitation.”

Prostitution of others or other forms of sexual exploitation

In this legal comparison, it is found that all 11 countries explicitly state the term “prostitution” or “sexual exploitation” or “commercial sex act” in their national legislation as part of the definition for the crime of trafficking in persons. Among these countries Germany, Netherlands, Norway, and Russia use the term “prostitution” in the definition of human trafficking along with “sexual exploitation.”

Forced labor or services

Another type of exploitation presented as part of the definition for the trafficking in persons in the Protocol is that of forced labor or services. In this analysis, 9 out of 11 countries have used the term “forced labor” or “other forced services” in their national anti-trafficking legislation to refer to a kind of exploitation that is considered to be the purpose of trafficking in persons. Austria and Russia are the exceptions and do not refer to forced labor as an important type of exploitation.

Slavery or practices similar to slavery

The third type of exploitation included in the definition of human trafficking in the Palermo Protocol is that of slavery or practices similar to slavery. Six out of 11 countries from this list for comparison also include this form of exploitation in their definition of human trafficking within the context of national anti-trafficking legislation. Countries such as Austria, Belgium, Norway, Sweden, and Switzerland do not refer to this type of exploitation in their national anti-trafficking legislation.

Servitude

Five out of 11 countries include the term “servitude,” the fourth type of exploitation as mentioned in the definition of human trafficking by the Palermo Protocol, in their national anti-trafficking legislation. Countries such as Austria, Belgium, Denmark, Norway, Sweden, and Switzerland do not refer to servitude as a type of exploitation within the context of the anti-trafficking legislation in their countries.

Removal of organs

The final type of exploitation as listed in the Palermo Protocol, which has been adopted by 10 out of 11 countries into their domestic anti-trafficking

legislation, is that of removal of organs. Austria is the only country that does not mention the words “removal or organs” in relation to human trafficking.

Influence of the Palermo Protocol on national legislation: The Dutch case

In 2003, an explanatory statement relating to a proposed bill for the implementation of international regulations against human trafficking, human smuggling, exploitation of children, and child pornography in the Dutch Criminal Code was discussed in the House of Representatives (Tweede Kamer) in the Netherlands. This provision, part of which was first introduced as Article 273a of the Dutch Criminal Code and then later renumbered as Article 273f in 2006, finally entered into force on 1 January 2005.

According to the then minister of justice, J.P.H. Donner, the need for a single comprehensive bill that adopts multiple relevant international instruments came from the fact that crimes such as human trafficking and human smuggling have a common ground, and the international regulations reflect that. In the statement, Donner also mentions that it is the responsibility of the Dutch government to adopt a bill that will adequately address the same concerns as the global community; the same concerns that one can see mirrored in the intended creation of the eight instruments identified as relevant to the drafting of Article 273f and others in the Dutch Criminal Code. The eight instruments that were referred to are as follows:

- Optional Protocol to the Convention on the Rights of the Sale of Children, Child Prostitution and Child Pornography (2000)
- The United Nations Convention against Transnational Organized Crime (2000)
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)
- EU Council Framework Decision on Combating Trafficking in Human Beings (2002)
- EU Council Directive Defining the Facilitation of Unauthorized Entry, Transit and Residence (2002)

- EU Council Framework Decision on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence (2002)
- EU Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography (2003)

In the explanatory statement, Donner points out that although the Netherlands was party to the International Convention for the Suppression of the Traffic in Women (1933), the state was not party to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). This is primarily because the 1949 Convention criminalizes exploitation of adults who voluntarily engage in prostitution under the crime of human trafficking, while the 1933 Convention criminalizes the act of recruiting, taking away, or kidnapping another person with the intention of having that person engage in prostitution in another country. This aspect from the 1933 Convention was adopted into Article 250a of the Dutch Criminal Code, and it remained unchanged even when Article 273f came into force. The justification provided for continuing to criminalize the recruitment of a person for prostitution from outside of the Netherlands was that Article 273f borrowed heavily from the Palermo Protocol wherein the 1933 Convention and the 1949 Convention were not pointedly discussed. Since the Palermo Protocol did not explicitly argue in favor or against any changes regarding the criminalization of certain aspects of prostitution, the Dutch government maintained their liberty to leave the concerned provisions unchanged.

However, instances where certain acts, definitions or requirements were notably mentioned in the Palermo Protocol, the draft for Article 273f adopted it extensively. For example, it was in the Palermo Protocol that a comprehensive definition for human trafficking was provided for the first time in the anti-TIP field where the acts, means, and purpose of the crime had been distinguished. This definition expanded the scope of human trafficking beyond just for the purpose of sexual exploitation. It was also one of the first instruments to address protection for victims, as well as to focus on criminal justice systems as a tool to combat trafficking. The EU Council Framework Decision on Combating Trafficking in Human Beings (2002), which was also one of the instruments implemented in Article 273f, and which discussed the aim of harmonizing penalties within the EU, was inspired and had adopted elements of relevance from the Palermo Protocol as well.

Therefore, Article 250a of the Dutch Criminal Code, which was limited to sexual exploitation for prostitution and other forms of sexual services, was amended to create Article 273f, which implemented several international and transnational legal instruments in the domestic legislation.

Winding up

The most important aspect identified in the comparison is the semantic uncertainty (Altena, 2016) within the text of the anti-TIP legislation; i.e., vagueness in the text. Article 3 of the Palermo Protocol, although having provided the international community with a foundation for the definition of human trafficking, chooses to not limit nor expand terms such as “other forms of coercion,” “abuse of power,” and “exploitation.” This purposeful vagueness has provided State Parties with an opportunity to interpret the instrument specific to their context and to establish their domestic legislation against TIP in various manner that includes adding or removing terms. The above comparison of domestic anti-TIP legislation in comparison to the Palermo Protocol shows that many countries have taken the liberty provided under the vagueness of the text of the Protocol to use different terms or to not adopt the terms in its entirety altogether.

An example that can be used to discuss the semantic uncertainty in the text is the fact that the Protocol does not explain, even in its interpretative notes, what any of the terms used to denote the means of trafficking imply, except for “position of vulnerability” which they clarify to mean any situation in which the individual involved has no access to a real or acceptable alternative, and hence has to submit to the abuse involved. Another instance from the comparison shows that only three out of 11 countries used the term “fraud” in their legislation, and the hypothesis here is that it is due to the fact that the term “deception,” which is also a form of means of trafficking, can be used synonymously to refer to fraud. Hence, many countries probably did not feel the need to reiterate the same concern. Furthermore, since the Protocol does not limit the addition of other context specific phenomenon in the process of human trafficking, countries such as Russia chose to add the terms “selling or buying” and “confiscation of documents” in their national legislation.

Finally, exploitation has been identified as being one of the core elements of human trafficking. In the interpretative notes for the Palermo Protocol, it is stated that exploitation of the prostitution of others is being talked about only in the context of trafficking in persons. By choosing not to

define what “exploitation of the prostitution of others” or “other forms of sexual exploitation” mean, the Palermo Protocol appeases State Parties since all countries have their own national views and legislative models on prostitution. By providing a disclaimer, the Protocol leaves it up to the State Parties to decide on whether or not, or how, to include prostitution of others as a type of exploitation in the definition for human trafficking based on the existing legislative models of sex industry in these countries.

Although the Protocol and, subsequently, the regional and national anti-TIP legislation mostly refer to exploitation of another in prostitution, other forms of sexual exploitation, forced or compulsory labor or services, slavery and practices comparable to slavery or servitude, these are still only situations categorized as exploitation, but a clearly defined, substantial criterion has not been provided for the same. The concept of semantic uncertainty mentioned earlier deals with this type of vagueness where the vagueness is criterial. That is, “it is unknown which necessary and sufficient conditions must be met in order for a phenomenon to fall under the scope of a predicate” (Altena, 2016). Korvinus et al. explain this issue using scenarios:

Due to the nature of the work, forced work in the sex industry quickly becomes exploitation, since the physical integrity is by definition at stake. The same applies to the forced removal of organs. For exploitation in other sectors than the sex industry, a similar criterion (the situation in which an articulate worker normally operates) may be useful as a starting or reference point, but a more stringent standard is nevertheless more appropriate. In these cases it is usually not the nature of the work that is decisive in relation to the key question whether fundamental human rights are being violated when the (labor) conditions deviate from the normal situation. The seriousness of the deviating circumstances, the route leading towards them and the effect on the person concerned are then above all the factors determining whether or not exploitation is involved. (2006, p. 288)

Another point to be noted is that the interpretation of the term “exploitation” is context specific. It is precisely the semantic uncertainty in the Protocol (which was adopted into Article 273f) that allows for courts to make decisions that takes their own social setting into consideration. However, one of the pitfalls of such a freedom is the fact that crimes such as human trafficking are, more often than not, international or transnational in nature. What is considered as an appropriate interpretation will not necessarily be accepted in another country. The concern with such a situation is that it

might impede cross-country cooperation, which is one of the most crucial parts of anti-trafficking efforts.

Taking Europe in particular, the comparison of different national anti-TIP legislation shows that not all countries use or agree with the use of all terms from the Palermo Protocol. Keeping that in mind, an argument could be made in favor of harmonizing criminal laws across Europe as having an agreement on what constitutes as an unacceptable crime, and having a similar approach to responding to crimes such as human trafficking can result in efficient cooperation. However, the goal of harmonization should never be harmonization itself. It should contribute to the safety, security, and freedom of people.

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3. The Shop Floor Effects of Prostitution Policies in Preventing Human Trafficking

*Nicolle Zeegers*¹

Abstract: International law obliges states to fight trafficking in human beings via different means, not only via criminal law but also via preventive measures more generally. In addition, they should engage in cooperation with civil society in implementing these measures. In this contribution, I address the question of how to evaluate whether and to what extent national prostitution policies are effective in preventing human trafficking. After addressing the pitfalls of using numbers of human trafficking as an indicator of effectiveness, I propose an alternative model of evaluation, grounded on the theory of the social working (TSW) of rules and insights into regulatory intermediation. This model will be applied to the Dutch policy concerning the prevention of human trafficking in prostitution.

Keywords: standards of comparison, programmatic approach (Netherlands), private regulatory intermediaries, direct and indirect effects of legal rules, prevention

Introduction

The question of what prostitution policy would be most effective in preventing human trafficking (HT) is a puzzling one. Claims about the effects of criminalizing or legalizing prostitution in this respect have been

¹ I would like to thank Georgy Sturge for correcting the English text.

at the heart of European and worldwide debates concerning prostitution policy. Chuang (2010), Goodey (2008), and Weitzer (2011) have indicated the serious flaws that are contained in the numerical comparisons—mostly in terms of the number of women trafficked for sexual purposes—which authors use to substantiate such claims. Notwithstanding the underlying sketchy data, claims about effectiveness have highly influenced national policy choices in the prostitution field, which comes down to these policies being highly driven by ideology instead of facts and evidence.² Scholars need to do a better job, which must start by addressing the key question of how to identify the impact of policies in a scientifically sound way.

The purpose of this chapter is to inquire whether and how comparative—evaluative—research into the impact of the different policies could be worthwhile. It will propose effectiveness to be assessed in terms of the direct effects of the rules and procedures concerning the prevention of trafficking in prostitution. Direct effects are the effects on the behavior of the actors involved in the implementation of these rules and procedures. In the second section, I will elaborate on why comparisons in terms of numbers on the incidence of human trafficking are not an adequate indicator for what rules and procedures work best. Subsequently, in the third section, I will present an alternative way of evaluating the prevention effect of prostitution policies. Here I will build on Griffiths' (2003) theory on the social working (TSW) of legal rules and procedures to elaborate on what direct effects are and how to distinguish these from indirect effects. In the fourth section, I will introduce the Dutch policy concerning the prevention of HT in prostitution as a case. I will explain why it presents a good case study to apply the alternative way of evaluating effectiveness. I will show how it is prototypical for international policy concerning human trafficking. In addition, I will describe the licensing of sex businesses and the programmatic approach as two inherent parts of Dutch prostitution policy. In the fifth section, I will apply the alternative way of measuring effectiveness to the Dutch policy case.

2 Weitzer (2015, p. 86) points at how comparisons between countries, although based on bad data and comparing apples and oranges, have been cited as evidence in support of anti-prostitution legislation and the February 2014 resolution in the EP advocating the criminalization of the purchase of sexual services.

The inadequacy of human trafficking numbers as indicator of effectiveness

It is highly important to compare the effectiveness of different prostitution regimes and regulations in preventing human trafficking because governments can learn from the best practices about what seems to work or not. However, comparisons in terms of numbers of cases or victims of human trafficking are oftentimes scientifically unsound (Weitzer, 2011; Weitzer, 2015). The UNODC 2006 report, although presenting numbers itself, warns against multinational comparison because of the absences of standardized definitions across countries. In addition, the number of cases recorded by the police is not a sound indicator of the true volume of such cases because of the “dark number” and the fact they are highly dependent on the capacity and capability of the police as well as the efforts that have been put into the detection of human trafficking. Neither do administrative statistics on identified victims allow for reliable comparisons. They appear to be unstable and to fluctuate from year to year, most probably reflecting what Durgana and Van Dijk call “the ebb and flow” in efforts to detect cases that result from bureaucratic and political considerations (Durgana & Van Dijk, 2021, pp. 2–3). The policy community in collaboration with scientists is working on solving problems with standardization of definitions and data but this will definitely need more time.

Even with a possible point in the future, where comparable statistics about human trafficking might be available, we have to be prudent about jumping to conclusions too fast. This is because different causal theories might apply in different country cases. First, there are exogenous variables driving human trafficking such as economic developments and conflict in the origin countries. Second, in addition to variety in the quantity and quality of the efforts invested by the police in enforcement there might be other causes of differences in reports and detection. Especially noteworthy here are the many private intermediaries that might be involved in policy implementation. A large variety of NGOs are involved in awareness raising, for example, unions of sex workers about sex workers’ rights.³ The latter might also be involved in the detection of human trafficking as are profit-oriented entrepreneurs in red-light districts.

Abbott et al. (2017a, 2017b, 2017c) pointed to the role of these private actors in regulation more generally and conceptualized them as “regulatory

3 In the Netherlands, the Prostitution Information Center (PIC) is a nonprofit organization that promotes respect for sex workers and educates people on sex workers’ rights.

intermediaries” in an effort to start theorizing their role and their relation to the regulator and the target of rules by introducing the regulator-intermediary-target (RIT) model as analytical framework. A “regulatory intermediary” is:

any actor that acts directly or indirectly in conjunction with a regulator to affect the behavior of a target. The intermediary is a go-between, whose presence necessarily makes some aspects of regulation indirect; as the intermediary stands between the regulator and its target. (Abbott et al., 2017c, p. 19)

Regulatory intermediaries subsequently received much attention in the regulatory governance scholarship and this provided insights into the mechanisms entailed (Abbott et al., 2017a; Abbott et al., 2017b; Abbott et al., 2017c; Brés et al., 2019; Goyal, 2020; Euchner & Zeegers, 2022). A special issue of the academic journal *Regulation & Governance* on the governance of prostitution illustrated how involving third-party actors as intermediaries has become a widespread phenomenon and is popular across different prostitution policy regimes, regions, and third-party actors (Euchner, 2019; Van Wijk & Mascini, 2019; Erikson & Larsson, 2019; Euchner & Zeegers, 2022). Different forms of regulatory intermediation are prominent in Europe (e.g., Germany, Sweden, the Netherlands, and the UK) as well as in Asia (e.g., India) and involve a variety of private actors, such as sex workers, clients, brothel managers, NGOs, and taxi drivers. The way in which specific forms of regulatory intermediation impact the effectiveness of rules and procedures has to be taken into account.

Third, the policy choices of the national legislators in prostitution policies will, most of the time, to a greater or lesser degree, connect to moral values. Whereas Sweden wants to express its allegiance to gender equality and the idea that prostitution by definition is oppressive, other countries want to hold onto the idea of free choice. The latter countries acknowledge how the circumstances in which people engage in this work can be pressing or even coercive and, in any case, limit their range of options, however, their policy is directed at improving those circumstances and not on abolishing the practice itself. The causal theories legislators base their policies on tend to be interwoven with such values.

The conclusion we can draw from this is that there are too many intervening variables for accurately establishing what the relation is between involving a specific private actor and the extent of human trafficking. It would therefore not be advisable to evaluate the intermediation policies

addressed above based on statistics concerning human trafficking. Therefore, this chapter will propose a different way of assessing the effectiveness of policies for preventing trafficking in prostitution.

An alternative evaluation model

The alternative way of assessing and comparing prostitution policies on their effects on human trafficking is to focus on the direct effects of the rules and (implementation) procedures involved. Direct effects are the effects on the behavior of the actors operating in the social field concerned. Most of the existing evaluations focus on the indirect effects—as in the numbers referred to above—as the indicators of effectiveness. These indirect effects are the effects that the regulator expects to result from the direct effects. The distinction between direct and indirect effects and the focus on the former is based on Griffiths' theory of the social working of rules (Griffiths, 2003; Weyers, 2018, p. 86). This author regards the direct effects as crucial for the working of rules and regulations as such because these concern (human) behavior; whereas this is often different for the indirect effects—the relation of the expected changes in behavior to policy ends such as public health and the prevention of crime. Assessing policies in terms of the indirect effects, in this case a numerical reduction in the scale of human trafficking, would come down to assuming that the intended behavior changes of the actors indeed took place without checking whether this really happened. A second requirement inferred from the TSW is that the direct effects in terms of behavior changes should be considered in relation to what the other actors in the field do. Griffiths (2003, p. 23) builds his theory on the social workings of rules and regulations on Moore's concept of the semi-autonomous social field (SASF). Moore considered the New York clothing industry, for example, as a SASF and using this case study she illustrated how such social fields have their own customs, rules, and means of generating compliance or noncompliance (Moore, 1973). Griffiths (2003) refers to such social fields as "shop floors," by which he aims to place the shop floor of social life center stage in order to understand the behavioral effects of (legislative) rules in terms of social organization. If a legislator wants to regulate behavior in a particular social field this means intervening in existing rules and social relations. Therefore, a legislator who expects public agencies and private actors to (help) enforce rules should acknowledge how these actors are part of an existing network of social relations in the field where, in addition to the external legislative rules, many and often contradictory internal rules apply.

The practice of regulatory intermediation of private actors, as addressed in the previous section, brings a further challenge to assessing the effectiveness of the rules and procedures. Although the private actors involved in regulation are assumed to share the same goals as the government, their own private interests might drive them into behavior that does not serve the public interest in all respects.⁴ A pressing issue therefore is how governments can control the private actors involved as intermediaries in order to have them act in the public interest (Abbott et al., 2019). In contrast with the public agencies involved, here no command-and-control order applies to the relation with the government. From the case studies in their compilation, Abbott et al. (2017a, pp. 283–284) concluded that regulators should acknowledge that private intermediaries' goals and interests might differ from the public interest and that intermediaries may therefore act in ways that mainly serve their own agenda. They call this regulatory phenomenon "capture by the intermediary" (Abbott et al., 2017c, p. 30).⁵ Van der Heijden (2017) shows how the US Green Building Council succeeded in incorporating their Green Label Standard into the requirements for certification and by doing this favored some carpet company above others. Kruck (2017) addressed the regulatory use of credit rating agencies (CRAs) by international organizations regulating financial markets.⁶ With his analysis of the role that CRAs played in the 2008 worldwide financial crisis he exemplifies how intermediation led to a bolstering of a powerful position in the financial markets; a position that is almost irreversible: because governors and other actors in the financial-economic field became too dependent on CRAs, the latter gained too much power (Abbott et al., 2019). This contributed to the 2008 worldwide financial crisis and CRAs came to be an example of a dysfunctional regulatory intermediary.

In his analysis of the power relations underlying the disruptive role of CRAs, Kruck emphasizes how power is multidimensional. CRAs already had very specialized knowledge and expertise, which are important private sources of power. In addition, the legislator delegated legal authority to

4 Let alone that the very concept of "public interest" is contested.

5 Abbott et al. (2017c, p. 32) describe the classical regulatory capture as occurring "when the target of regulation (T) induces the regulator (R) to promote the target's goals rather than the regulatory purpose (e.g., serving the public interest) for which the regulation was created." They themselves introduce a broader definition of regulatory capture: "the domination of one regulatory actor by another, restricting the autonomy of the captured actor in performing its regulatory functions."

6 CRAs are private firms that estimate and rate the creditworthiness of borrowers operating and financial instruments traded on these markets.

the CRAs that added up to their material-structural power.⁷ As a result of public law requirements, financial market actors came to depend on their assessments in order to do business. Demand for services became high for the relatively low number of CRAs which resulted in a very strong market position (Kruck, 2017, p. 147). In short, CRAs acquired a considerable degree of “structural power” because of the interaction between the legal authority it acquired from the legislator and the market logic operating in the field.

This case makes clear how involving private intermediaries in rule enforcement affects the power relations in the social field. This insight specifies how the network of actors in the social field might be relevant for whether such intermediaries will be effectively helping the regulator in implementing the rules. The relevant aspect of this network of actors is the power relations between the actors involved and the shifts in these relations that can result from the government’s policy. Governors try to anticipate and prevent the result that occurred in the case of the CRAs by maintaining control over intermediaries through contractual incentives and sanctions (Abbott et al., 2019, p. 2). Introducing a licensing system is an example of how a government applies this to prostitution policy.

In summary, the addressed theories draw attention to three aspects of assessing the effects of policies meant to prevent human trafficking in prostitution. First, we should focus on whether the expected behavior change of actors takes place. Second, we should take the network of actors into account on the shop floor of social life which is in this case, for example, the Amsterdam red-light district. The agencies and actors implementing the rules and procedures have to operate in this field and to take notice of the existing rules and relations. The sexual services market, for example, implies specific relations between sex business owners, sex workers, and clients. Third, power relations within this network of actors deserve special attention. Although, different theories exist and are contested about how gender and power play a role in the sex business exactly (Barry, 1979; Outshoorn, 2005; Kempadoo, 2012; Rogoz et al., 2017), it is more or less generally acknowledged that power asymmetry characterizes these relations, putting sex workers in the more vulnerable positions. The government by involving some actors rather than others in the network as regulatory intermediaries will affect this power asymmetry.

7 Legislators legally categorized CRAs into the experts in rating and making such ratings mandatory for borrowers.

The Dutch policy of detection and prevention of HT as a prototypical case

In order to explain and elaborate on the above proposal for evaluating prostitution, I will apply it to the Dutch case of policy to prevent HT in prostitution. In the case-study method of comparative socio-legal research, it is common to analyze a single case in depth and within its social context as an example of a larger population of cases. I have chosen the Dutch case because I consider it prototypical for cases in which private actors are involved in helping to prevent human trafficking in prostitution. I will explain this by elaborating on how international law acknowledges and conceptualizes the connection between prostitution and human trafficking and what it obliges states to do about it.

The Palermo Protocol defines human trafficking and, to some extent, clarifies the relation between human trafficking and prostitution.⁸ It acknowledges that prostitution is not by definition forced upon the persons that engage in it: engagement can also be voluntary, provided these are adult persons. However, the definition of human trafficking in the Palermo Protocol is very broad and it leaves the precise definition of many terms for the states to decide (Wijers, 2015). For example, the punishable acts and means should be committed and applied for the goal of exploitation, where exploitation can be economic or sexual. However, it is not clear-cut what sexual exploitation and economic exploitation are exactly, nor when such conduct amounts to human trafficking. In Rottier (2018, p. 174), prostitution policy experts in New Zealand, for example, point at how in that country only the more extreme forms of exploitation are classified as human trafficking whereas in the Netherlands they might regard any exploitation as such.

The ECtHR decision in *Rantsev v. Cyprus and Russia* (7 January 2010, no. 25965/04) is relevant in defining the scope of states' obligations concerning human trafficking. In its explanation of Article 4 ECHR, it did not only include human trafficking in the article's scope,⁹ but also broadened the responsibility of the state to include the prevention of trafficking and the protection of its victims. The court mentioned "the need for a *comprehensive*

8 The Palermo Protocol is the short designation for the UN General Assembly Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children addressing trafficking in persons and formulated as a supplement to the Convention against Transnational Organized Crime.

9 As Milano (2017) explains, in *Rantsev v. Cyprus and Russia* the court established that human trafficking falls within the realm of Article 4 of the ECHR as slavery not only includes slavery de jure but also slavery de facto. See also Van Ekelenburg, 2022.

approach to combat trafficking which includes measures to protect victims and to prevent trafficking as such, in addition to measures to punish traffickers” (para. 285). Several ECtHR cases concerning human trafficking in connection to prostitution have succeeded the *Rantsev* case. Although the court reiterated the three forms of state obligations in *L.E. v. Greece*, the court mainly focused on the criminal law aspects of the case. In *S.M. v. Croatia* the rights of the victim were not addressed at all (Milano, 2017; Hughes, 2021). However, *Rantsev v. Cyprus* (2010) does seem to have put a clear stamp on the monitoring policy. The European Crime Prevention Network acknowledges that fulfilling the obligations above in an effective way would entail collaboration between “all governmental enforcement organizations, including fiscal, social and other agencies, and local and regional governments, as well as private partners (besides classical penal law enforcement agencies such as the police)” (European Crime Prevention Network, 2016, p. 9). In addition, the GRETA reports (for example, 2016, 2018a, and 2018b) include “engaging in international cooperation” and “cooperation with Civil Society” in the monitoring of state actions in preventing human trafficking.

We can infer from the sources above that states are not only responsible for ensuring that human trafficking is addressed in their criminal law books and that investigation and prosecution procedures are in place; they are also obliged to protect victims and to take preventive measures against human trafficking. In addition, the crime prevention networks stress how important it is for the different enforcement agencies to collaborate and to include private actors in their prevention efforts. Below, I will address the Dutch policy of licensing sexual services businesses as well as the programmatic approach (PA) in the Dutch prosecution policy to show how well it seems to fit with these departing points.

The prevention of HT in the sexual services businesses

Making a clear distinction between forced and voluntary prostitution has been the linchpin of Dutch prostitution policy since the turn of the 21st century. At that time, this distinction was formalized by lifting the ban on brothels¹⁰ and codifying forced prostitution in the *human trafficking* provision.¹¹ This policy had been inspired by a form of regulation that has

¹⁰ The bill containing the lifting of the ban had been submitted simultaneously with amendments of the human trafficking provision; however, it initially failed in the First Chamber, and parliament accepted the repeal of the ban on pimping and brothel keeping only in 1999.

¹¹ In 1993, the Dutch legislature adopted the provision that forbids the use of “force, coercion, deceit or abuse of authority” to make a person enter prostitution (Wijers, 2018).

been coined the “system of regulated tolerance” and was applied by law enforcers in cities such as Amsterdam and The Hague. This informal system of regulation imposed a set of local rules on brothel owners in exchange for not prosecuting them or closing down their business (Brants, 1998, p. 624; Wagenaar et al., 2017, p. 98).¹² Formalizing the system of “regulated tolerance” through law seemed to be a logical part of a policy towards prostitution that would provide women and men with the possibility of a conscious choice for sex work. Additionally, the policy of condoning brothels, while holding on to their formally illegal status, was otherwise no longer regarded as practical (Outshoorn, 2005).

In 2000, together with the repeal of the Dutch brothel ban, the Dutch legislature introduced a license system for brothels and gave municipalities the authority to issue licenses and to formulate and enforce conditions such as owners/managers of sex work businesses having to ensure that they do not employ or otherwise engage with victims of human trafficking(?). With this policy, municipalities became coregulators of prostitution and administrative enforcement agencies at the same time. In addition, the owners/managers of sex work businesses were involved in implementing the rules, which comes down to private actors being expected to implement public rules. The idea of the licensing system was that as long as these private actors would meet the conditions set, for example, keep human trafficking out, they could acquire and keep a license to operate.¹³

The programmatic approach (PA)

The PA is an approach that includes prostitution policy as one of the means for preventing human trafficking alongside improving detection of instances of it (Staring, 2012, p. 61; Hilgers, 2012). The approach consists of collaboration between all criminal law and administrative enforcement agencies and

12 This “selective” toleration of prostitution rested on the discretionary power of the public prosecutor to refrain from prosecution on the grounds of public interests (see Wagenaar et al., 2017, p. 98).

13 Potentially, also sex workers could have acquired a kind of intermediary role at this moment of prostitution regime change. Sex worker advocates had lobbied for formulating “the improvement of the position of sex workers,” as an explicit goal of the new prostitution policy instead of their protection (Wagenaar et al., 2017, p. 95). The idea behind this lobby was that such a formulation would have bound the government to an active contribution to the empowerment of sex workers, for example, through facilitating their organization in trade unions that would defend and negotiate their labor rights. By settling for the goal of protection of sex workers, sex workers were presented as by definition being vulnerable helpless human beings that are in need of special care and regulation instead of being treated like any other worker.

between these agencies and private actors, for example, brothel and hotel owners.

The Dutch Public Prosecution Service (PPS) in cooperation with the National Crime Squad formulated the programmatic approach (PA) with respect to human trafficking six years after the license system had been installed (Staring, 2012). The PA intends to complement the preventive approach, in addition to pursuing criminal investigations (see Hilgers, 2012). The approach takes the chain of interactions between perpetrators and/or victims of this crime into account, starting from the point of recruitment to housing and finding a workplace for the victim and arranging financial transactions. The PPS wants to acknowledge that, apart from the traffickers themselves, facilitators of these interactions play a role at all stages in this chain, knowingly or unknowingly (Task Force Mensenhandel, 2009). In the phase of providing a workplace for trafficked persons, we will find not only owners of sexual businesses to be facilitators but possibly also doorkeepers and taxi drivers of escort services or even clients. Whereas the former in most cases are assumed to be “knowing facilitators,” clients are mostly assumed to be unknowing facilitators.

The central idea behind the PA policy is to put as many barriers as possible to the interactions between perpetrators and/or victims; in other words, structural hindrances must be created. In order to do so, the PPS wants to collaborate with public partners as well as private partners. With regard to the workplace, the public partners would be, for example, the police, municipality, licensing authorities, and health authorities. More interesting are the private actors that the PPS wants to involve, namely the legal facilitators of the interactions involved in human trafficking.¹⁴ With regard to the interactions concerning the workplace, this could be NGOs and operators of sex businesses or hotels.

Application of the alternative evaluation model

In order to present an example of application of the evaluation theory presented in the second section, I will address how the Dutch policy case

14 The approach distinguishes between knowing and unknowing facilitators of human trafficking, in which the knowing facilitators are illegal because they knowingly facilitate crime. The unknowing facilitators are those that have to be made aware of how they, although acting in good faith, are used by the human traffickers to make the crime possible. For some of the actors mentioned, for example, clients, it is not clear whether or not they do this knowingly, hence among them there are legal as well as illegal actors.

worked out in practice. The characteristic elements of this case, as described above, are, first, the involvement of private actors in the enforcement of the rules and procedures, and, second, the collaboration between criminal and administrative law enforcement agencies.

The Dutch legislator involved sex business owners and operators (SBOs) in the prevention of human trafficking in prostitution via the license system. A behavior change expected of these owners was—among others—to help PPS with enforcing the ban on human trafficking. In turn, the municipalities—as local regulators—would have to control these private actors in this by checking whether they met the conditions for a license and making the issuing and continuation of the right to operate a prostitution business dependent on this. In other words, the municipalities should license only the brothel owners and managers who succeed in preventing human trafficking from occurring in their business. The police played a role in visiting and checking the premises.

However, it did not work out this way in practice. Regarding the purpose of only condoning voluntary prostitution and distinguishing it from forced prostitution and human trafficking, the Dutch licensing system at first seemed to be functioning successfully as the licensed businesses seemed to be free from coercion (Vissers et al., 2000; Venicz & Vanwesenbeeck, 2000; Biesma et al., 2006; Dekker et al., 2006; Daalder, 2007; Pitcher & Wijers, 2014; Daalder, 2015). Although hard evidence for this was lacking, the evaluations assumed the government could attribute this to regular checks of the licensed business by the police. However, Dekker, Tap, and Homburg (2006, pp. 42, 82) concluded that the rights of sex workers had not improved, forced prostitution still existed, and prostitutes had not become independent workers (cf. Outshoorn, 2004). Because there were also indications of a huge shift of sex work from the licensed to the nonlicensed sector, the evaluations gave reason for concern.¹⁵

The Sneep case subsequently demonstrated that the licensed sector was not free from the occurrence of force, coercion, and violence against sex workers (Wagenaar et al., 2013). This case concerned a gang of Turkish human traffickers that the national police investigated regarding an accusation that they had forced 78 women to work in the sex industry by using severe violence.¹⁶ This painfully uncovered that monitoring of this sector had not

15 In addition, the Dutch Rapporteur on Trafficking in Human Beings observed a big dark figure in statistics on human trafficking, signaling that the real occurrence would probably be much bigger than the number registered (National Rapporteur on Trafficking in Human Beings, 2012).

16 The name “Sneep” was given to the criminal investigation by the judicial authority.

prevented brutal forms of exploitation from occurring in these facilities. The police report about this case concluded: "It is an illusion that a clean, normal business has emerged" (Van Hout & Van der Laan, 2008, p. 8). This and other cases demonstrated that owners and managers of prostitution facilities did not always check whether traffickers coerced sex workers to work within their premises. Instead, some of the owners and managers even made deals with traffickers.

The conclusion about implementation is that not all sex business operators helped by keeping human trafficking out of their businesses. With respect to the municipalities' authority to refuse or withdraw licenses, it was revealed that municipalities did not punish the brothel operators that appeared to not or to under-enforce the check on the prevalence of coercion by pimps and human traffickers in their businesses (Wagenaar et al., 2017). What municipalities should have done in such instances would have been to close down the brothel. In cities such as Amsterdam, there was a policy of closing down brothels and restricting their number, however, keeping out human trafficking was not the central criterion. As Wagenaar et al. (2017) noted, the targets of this were not transgressors of the rules concerning the prevention of forced prostitution but those (potential) owners and managers with worrisome antecedents (crime and minor offenses) (Wagenaar et al., 2017; Van Wijk & Mascini, 2019). By restricting the number of brothels, municipalities wanted to freeze the market. Motivating this were goals such as combating international crime and local nuisances rather than protecting sex workers.¹⁷

The evaluation above, based on the theory of the social working of rules, shows that SBOs and the municipalities did not change their behavior as expected. The analysis of the network of actors in which they had to operate could offer a possible explanation for why the SBOs did not feel compelled to do this. The actual operation of the license system made some (licensed) SBOs gain market power by acquiring an oligopolistic position (cf. Wagenaar et al., 2017, p. 95). Municipalities only made a restricted number of licenses available or applied a de facto zero policy, strongly reducing the number of businesses. This brought these large businesses extra power relative to their (potential) competitors.

What is more, sex workers did not exactly see their options grow with this new policy. In fact, their options became more restricted in cases where the

17 Wagenaar et al. (2017) observe how this policy was implemented not specifically for preventing human trafficking and categorize this as a case of regulatory drift: "a gradual shift in the focus of a policy as the result of small decisions at the implementation level" (Mitchell & Herring, 2006, p. 5).

number of legal businesses had been reduced (Daalder, 2015).¹⁸ In addition, municipalities almost exclusively issued permits to existing sex businesses, which prevented sex workers from acquiring more agency by becoming independent workers or business operators themselves. Meanwhile, efforts to organize sex workers, to make them aware of their individual rights, and to help them to act collectively in negotiating working conditions did not succeed (Ketelaars, 2015). Zuidema et al. (2006) and Wijers (2018) point to how the government did little to support organization and unionization and did not want to interfere with how the power relations between brothel owners and sex workers would develop.

Conclusion

The goal of this chapter was to draw lessons from the analysis above on how to evaluate the effects of the Dutch and other policy cases directed at the prevention and detection of HT in prostitution. The application of the alternative model for evaluating such policies would have clear advantages above a comparison of national statistics on human trafficking as an indicator of effectiveness. Firstly, it would establish whether the rules and procedures concerned have indeed led the key actors to change their behavior. Here, we need to acknowledge how not only public agencies but also private actors have been involved as regulatory intermediaries. As such they are expected to play a key role in helping the government to enforce the rules and consequently to erect barriers against the criminal behavior involved in human trafficking. Take, for example, the SBOs in the Dutch case study. The evaluation model looked into whether they indeed tried to keep human trafficking out of their businesses and informed the police in cases where sex workers appeared to be offering their services under coercion. Secondly, this model provides insights into the reasons behind noncooperative behavior by focusing on the relations—including the power relations—between the actors operating in the social field concerned, which in this case would be a local sex marketplace. The Dutch case study showed how the relative power position of sex workers worsened rather than improved as a result of measures intended to prevent human trafficking. In addition, it showed how the still existent and even growing nonlegalized part of the sex market provided opportunities to evade the legal rules and

18 According to Goderie & Boutelier (2006), for example, in Rotterdam, many sex workers disappeared to the back.

procedures. In sum, the alternative model of evaluation not only assesses whether noncompliance exists but also pinpoints which actors and relations are responsible for this and why this might be the case.

A caveat to be made is that this evaluation is somewhat limited because it focuses on how the Dutch licensing system functioned in the first decade of its existence. Enforcement agencies formulated the PA only halfway through this decade, when they must have become aware that not all rules worked out as expected. The licensed sector, for example, appeared to contain cases of human trafficking. With the programmatic approach, they strived to improve collaboration between the government agencies, as well as with the private actors involved in order to get a firmer grip on the human trafficking networks. The Taskforce on Human Trafficking has been set up to improve the coordination and the exchange of information between (government) partners and cooperation between them more generally. A further line of inquiry would be to evaluate whether this collaboration and guidance indeed worked out as expected. Did it lead to municipalities checking whether sex work is voluntarily and holding the SBOs accountable in case they facilitate forced prostitution or exploitation? Are the licensed SBOs and municipalities helping the police and PPS in detecting cases of human trafficking, or do they at least raise barriers against perpetration? These questions would have to be investigated anew.

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4. Trafficked and on the Run: Rights to Residence for Asylum-Seeking Victims of Trafficking in Anti-trafficking Law and Asylum Law

Gerrie Lodder

Abstract: Victims of human trafficking are often migrants. They may have become a victim in their country of origin, somewhere on the way, or in the country of final destination. International trafficking law is primarily focused on the prosecution of the perpetrators but also contains provisions obliging or encouraging states to provide for basic needs and (legal) counsel. Some instruments oblige states to provide for the option of a residence permit for victims of trafficking. However, this is often connected to criminal proceedings. Asylum-seeking victims of trafficking may derive residence rights based on asylum law. This contribution explores the options in international trafficking law and asylum law in securing residence for migrant victims of trafficking in the European Union.

Keywords: human trafficking, migrants, protective measures, residence right, refugees

Introduction

Migrants in general and asylum seekers in particular are extra vulnerable to human trafficking (Gallagher, 2010; ILO, 2014; FRA, 2015; FRA, 2019; Galos et al., 2017; David et al., 2019), and victims of human trafficking are often migrants (Lijnders & Robinson, 2013; UNODC, 2018; Nicodemi, 2019). This applies to victims of sexual exploitation, labor exploitation, and other forms

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of exploitation. The increase of migratory flows between countries these last decades, facilitated by better communication and transport, has fueled this practice (Hernandez & Rudolph, 2015). Migrants who are trafficked to be exploited in another country enter the country or area of destination both through official border checkpoints and illegally (UNODC, 2018). Migrants may also have been trafficked and exploited in the country of origin, escaped, and fled to a safer place (GRETA, 2020). Finally, migrants might have been forced to leave their country of origin by war, armed conflict, persecution, or a complete lack of economic opportunities, but end up in a situation of trafficking on the road or in the country of destination. For many migrants, return to their country of origin is not an option. For a right to remain in the country of destination, two possible international and European legal frameworks exist. For migrants who are afraid to return to their home country out of fear of persecution or other forms of ill-treatment, the legal framework on asylum could apply UNHCR, 2006, p. 3; UNHCR, 2022, p. 38). Based on this legal framework, a possible right to residence in the recipient country can be established. On the other hand, a person could also have become a victim of trafficking in a situation which does not meet the threshold for asylum, for example, because the trafficking took place in the country of destination or on the journey to the final country of destination. This person could still be in need of protection, including a right to remain in the country of destination (Stepnitz, 2012). In this constellation, the legal trafficking framework might offer a (temporary) right to residence.

The central question of this contribution is: What are the options and gaps for a right to residence for migrant victims of human trafficking in the international and European legal framework on trafficking and asylum? The focus lies on asylum seekers and applicable legislation in the European Union (EU). In the second section, the international and European legal framework, including protective measures for migrant victims of human trafficking in general, is outlined. In the third section, a short description of the relevant international and European asylum law framework is given, followed by an analysis of the residence options for asylum-seeking victims of trafficking based on this framework in the fourth section. Several organizations draw attention to the issue of asylum seekers transferred to an EU country of transit where they have been exploited based on the Dublin Regulation (GRETA, 2020; Noteboom & Glasgow-Kulu, 2017). This issue is discussed in the fifth section. In the last section, some concluding findings will be summarized.

Legal framework of trafficking

Sexual exploitation is one of the forms of exploitation that fall under human trafficking. The international and European legal framework is mainly directed at human trafficking in general. In order to determine whether a person is a victim of trafficking in human beings and what obligations states have with regard to the protection of these victims, multiple instruments are relevant. A few will be highlighted here. At the international level, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) is of great importance. In the Palermo Protocol, an internationally accepted definition of human trafficking has been formulated which has served as a model for definitions in regional treaties, EU legislation, and national law (Gallagher, 2010).¹ According to the Palermo Protocol definition, human trafficking is characterized by three elements: (1) an action like recruiting or transporting; (2) the use of physical or psychological force; (3) with the purpose of exploitation, including sexual exploitation, labor exploitation, and removal of organs.

This definition was adopted in almost the same terms in the 2005 European Convention on Trafficking in Human Beings (ECTHB).² Also in the EU Human Trafficking Directive,³ the definition of human trafficking is derived from the definition of the Palermo Protocol. As human trafficking often concerns migrant victims, it is important to acknowledge the special vulnerability of these victims. This is reflected in the recognition of typical forms of (psychological) force used to coerce migrants, like threatening with police and expulsion for irregularly staying migrants, the confiscation of travel documents, abuse of a vulnerable position (as migrants are vulnerable in general due to lack of knowledge of the language and rules of the recipient country), or debt bondage for travel costs (Lodder, 2022).

The international, European, and EU legal instruments mentioned above also contain obligations with regard to the protection of victims. In addition, EU Directive 2004/81/EC is of importance; it contains rules for granting a

1 See Gallagher (2010) for an in-depth analysis of the genesis of the definition and its meaning. Although the definition is broadly accepted, there is some discussion about the inclusiveness of this definition. See, for example, Hatheway (2008) and the reaction on his publication from Gallagher (2009).

2 Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005), Article 4.

3 European Commission, 2011.

residence permit to victims of trafficking in exchange for cooperation in the criminal proceedings against the traffickers.⁴

Identification of victims of trafficking

The protective measures included in the abovementioned instruments are directed at victims of trafficking, but who can be considered to be a victim is not defined in most instruments, with the exception of the ECTHB. According to Article 4 ECTHB, a victim is “any natural person who is subjected to trafficking in human beings as defined in this Article.” In other words, victimhood depends on the satisfaction of the definition of human trafficking. However, several authors have pointed to the low number of (successful) prosecutions of human trafficking in various countries, due to both evidentiary issues and practical problems (Farrell et al., 2014; Ward & Fouladvand, 2018). This begs the question whether a possible victim of human trafficking can be eligible for the protective measures without a criminal procedure and conviction in which the act of human trafficking has been established.

The Court of Justice of the EU (CJEU) has ruled that protective measures of Directive 2004/81/EC apply as soon as a Member State has reasonable grounds for believing that that person may be or has been a victim of trafficking.⁵ The ECTHB contains an explicit obligation to identify victims of trafficking in Article 10, apart from eventual criminal proceedings. According to the explanatory memorandum to the ECTHB, identification is crucial and must be carried out with particular care. Identification is necessary for victims to benefit from the protective measures of the ECTHB.⁶

The explicit need for identification is also recognized by the European Court of Human Rights (ECtHR) in the case of *V.C.L. and A.N. v. United Kingdom*, a case about two minor Vietnamese victims of trafficking who were arrested and prosecuted in connection with the cultivation of cannabis.⁷ According to the court, the identification of victims of slavery, servitude, forced labor, and human trafficking at an early stage is of a paramount

4 See Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (*PbEU* 2004, L 261/19).

5 CJEU, 20 October 2022 (*O.T.E.*), C-66/21, ECLI:EU:C:2022:809, with annotation Rijken & Hagama/*JV* 2023/1, para. 49.

6 Explanatory note to the Convention against Human Trafficking, paras. 130–131.

7 ECtHR 16 February 2021 (*V.C.L. and A.N. v. United Kingdom*), nos. 77587/12 and 74603/12, para. 160.

importance in order to guarantee to them the protection offered by Article 4 of the European Convention of Human Rights (ECHR).⁸

Protection measures for migrant victims of human trafficking

The protection of victims of trafficking in human beings is based on the principle that combating human trafficking should not only be directed at the prosecution of the perpetrators, but that a broader human rights–based approach is necessary. This approach to human trafficking is also referred to as the three Ps: prosecution, protection, and prevention. These goals are included, for example, in Article 2 of the Palermo Protocol, Article 1(1) of the ECTHB, and Article 1 of the EU Directive on Trafficking in Human Beings. As many migrant victims of trafficking and sexual exploitation have an irregular residence status, several authors underline the importance of a right to remain in the recipient country (Simic, 2004; William-Woods, 2018; Van der Meer et al., 2020).

The focus of the Palermo Protocol is mainly on the prosecution. The obligations with respect to protection of victims in the Palermo Protocol are formulated rather weakly. According to Article 6, State Parties shall consider implementing measures like the provision of housing, counseling, and information, and medical, psychological, and material assistance. Furthermore, based on Article 7(1), State Parties have to consider legislative or other measures that permit victims to remain in its territory in appropriate cases. Although states are called on to consider protective measures, including providing for a (temporarily) right to residence, they are not obliged to do so. The obligations for states to provide protective measures are formulated more strictly in the ECTHB. States have to adopt legislative or other measures which provide for, among other things, housing, an adequate standard of living, and necessary medical care.⁹ Articles 13 and 14 oblige states to respect a right to remain on the territory. If there is a reasonable suspicion that persons concerned are victims of trafficking, states have to provide for a reflection period of at least 30 days.¹⁰ During this period, these persons are entitled to the basic assistance mentioned above, and they may not be deported. Thereafter, Member States are obliged to issue a renewable residence permit if the authorities consider this to be

8 Article 4 ECHR contains the prohibition of slavery, servitude, and forced labor. This provision has been interpreted by the ECtHR to also include a prohibition of human trafficking. See ECtHR 7 January 2010 (*Rantsev v. Cyprus and Russia*), no. 25965/04.

9 European Convention against Trafficking in Human Beings, Article 12.

10 *Ibid.*, Article 14.

necessary on the basis of the victim's personal situation (paragraph 1(a)) and/or if it is necessary for the purposes of the investigation and criminal prosecution (paragraph 1(b)). So states do have some discretion in this area. According to the Explanatory Report of the Convention, the aim of the two alternative options is "to allow Parties to choose between these two,... or indeed to adopt both simultaneously." Personal needs should be interpreted widely, including the victim's safety, health, family situation, or other relevant factors. The requirement of cooperation with the competent authorities in criminal proceedings was, according to the explanatory note, introduced to convince migrants to cooperate. Furthermore, it would help to overcome fear of being deported when contacting the authorities. Although, in the explanatory note, the two options for granting a residence permit are interpreted as alternatives, the supervisory body GRETA (Group of Experts on Action against Trafficking in Human Beings) interprets these provisions as an obligation for (or at least an encouragement to) states to apply both options. In several evaluation reports, GRETA is critical about the link between a residence right and criminal proceedings and urges states to ensure that victims can fully benefit from the right to a renewable residence permit, also based on their personal situation (GRETA, 2022b; GRETA, 2023a; GRETA, 2023b).

In European Union law, the rules governing a right of residence for victims of trafficking in human beings are laid down in Directive 2004/81/EC. This directive provides for a reflection period and a temporary, renewable residence permit for as long as the presence of the victim is useful for the purposes of the investigation or judicial proceedings.¹¹ The granting of this temporary permit requires that the victim has clearly indicated his or her willingness to cooperate and that he has cut off all links with the suspected perpetrators.¹² A residence permit may only be issued under this directive if these conditions are met. The directive does not provide for a right of permanent residence.¹³ The protection of a right to residence under the EU Directive is weaker than under the ECTHB, because of the compulsory link to criminal proceedings and the strictly temporary nature of the residence right. However, the Court of Justice of the EU has ruled that the reflection period and temporary residence permit should be available to possible victims who have not yet been definitively established as victims as soon

¹¹ Directive 2004/81/EC, Article 8(1)(a).

¹² *Ibid.*, Article 8(1)(b, c).

¹³ *Ibid.*, Article 13(2).

as a Member State has reasonable grounds to believe that that person may be or has been a victim of trafficking.¹⁴

The legal framework of asylum law

Under international law, everyone has a right to leave any country, including their own.¹⁵ However, a corresponding right to enter and stay in another country is not an internationally recognized right. Based on the idea of state sovereignty, states are in principle free to decide whether they grant access to their territory and a right to remain to non-nationals.¹⁶ Just a few exceptions to this general rule exist (Boeles et al., 2014). For asylum-related protection of victims of human trafficking, the principle of nonrefoulement is of great importance. This principle holds that a person who is at risk of persecution or certain forms of ill-treatment, should not be sent back to the country where he or she faces such persecution or ill-treatment. The prohibition of refoulement is enshrined in Article 33 of the Refugee Convention, Article 3 of the Convention against Torture and Other, Cruel, Inhumane or Degrading Treatment or Punishment, and Article 19 of the EU Charter of Fundamental Rights. Next to these direct prohibitions of refoulement, several supervising bodies have inferred a prohibition of refoulement from the prohibition of torture, cruel, inhuman or degrading treatment as laid down, for example, in Article 7 of the International Covenant on Civil and Political Rights and Article 2 (right to life) and Article 3 (prohibition of torture and ill-treatment) of the ECHR.¹⁷

In EU law, the prohibition of refoulement based on the Refugee Convention and refoulement prohibitions in other human rights instruments are combined in the EU Qualification Directive.¹⁸ Taken together, these forms of protection are referred to as international protection. The protection other

14 CJEU, 20 October 2022 (*O.T.E.*), C-66/21, para. 49.

15 See Article 13(2) of the Universal Declaration of Human Rights and Article 12(2) of the International Covenant on Civil and Political Rights.

16 This has been a standard consideration of the ECtHR in respect of a right to residence based on Article 8 ECHR (right to family life) since ECtHR 28 May 1985 (*Abdulaziz a.o. v. the United Kingdom*), nos. 9214/80; 9473/81; 9474/81. See in respect of protection against expulsion based on Article 3 ECHR, for example, ECtHR 29 April 2022 (*Khasanov a.o. v. Russia*), nos. 28492/15 and 49975/15.

17 For the first instance in which the ECtHR applied the principle of nonrefoulement in an extradition case, see *Soering v. United Kingdom*, 7 July 1989.

18 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (PbEU L 337/9).

than refugee protection, based on, among others, Articles 2 and 3 ECHR, is called subsidiary protection. The right to seek asylum and prohibition of refoulement can give a right to remain on the territory or to be admitted, but it does not provide for a residence permit. However, in EU migration law, a right to a residence permit does exist.¹⁹

Status determination and assessment of the principle of nonrefoulement

Being a refugee is in principle a declaratory status. A person who fulfills the definition of a refugee is a refugee and should be granted the protection and rights listed in the Refugee Convention (Boeles, 1995).²⁰ The definition of a refugee is contained in Article 1A of the Refugee Convention. According to this provision, the Convention is applicable to any person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.

The definition consists of five elements which must all be satisfied. These elements are: a well-founded fear, persecution, based on one of the grounds listed in the definition, being outside the country of origin, and a lack of possible protection from authorities. The United Nations High Commissioner for Refugees (UNHCR) is the supervisory body of the Refugee Convention. The UNHCR provides guidelines for the application of the Convention and interpretation of the refugee definition (UNHCR, 2019). For refugee protection based on the Qualification Directive, the same definition of a refugee as in the Refugee Convention applies.²¹ The guidelines of the UNHCR for the application of the Refugee Convention are also applicable in determining a right to residence of an asylum seeker based on the Qualification Directive. Besides these guidelines, the Qualification Directive also contains some provisions to assess an application. For the interpretation of the meaning of

19 Directive 2011/95/EU, Article 24.

20 Boeles deduced this from the explanation provided in the UNHCR Handbook, see UNHCR, 2019, ch. 1, point 28.

21 However, the definition in the Qualification Directive is not applicable to EU citizens (Directive 2011/95/EU, Article 2(d)).

the principle of nonrefoulement as enshrined in Articles 2 and 3 in asylum-related cases, the case law of the ECtHR is leading.

In the following sections, the possible application of these instruments to the situation of victims of trafficking is explored.

Right to residence based on asylum law for a victim of trafficking

Victims or potential victims of trafficking could fall within the protection offered in international instruments to persons seeking asylum. This possibility is also recognized in Article 14(1) of the Palermo Protocol and Article 40(4) ECTHB.²² Therefore, next to protection as enshrined in human trafficking instruments, victims of trafficking might be entitled to international refugee protection, protection based on the various refoulement prohibitions, or a form of international protection as laid down in the EU Qualification Directive. In this section, the possibilities and hurdles for protection based on the Refugee Convention, Qualification Directive, and Articles 3 and 4 ECHR are explored.

Protection based on the Refugee Convention and the EU Qualification Directive

According to the UNHCR Guidelines 2006 and 2022, victims of human trafficking can fall within the scope of the refugee definition, provided all the elements of the definition have been satisfied (UNHCR, 2006, p. 3; UNHCR, 2022, p. 38).

The first element to be fulfilled is having a well-founded fear of persecution. According to the UNHCR Guidelines 2006, several serious violations of human rights which will generally amount to persecution are inherent in trafficking experiences, like “severe exploitation, abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labor, removal of organs, physical beatings, starvation or the deprivation of medical treatment” (UNHCR, 2006, p. 6). In the Qualification Directive, an act of persecution is defined in Article 9. A violation of the absolute human rights of the ECHR, which also includes the prohibition of slavery and servitude as listed in

22 See the first guideline of the OHCHR, which stipulates that “it is essential to place the protection of all human rights at the center of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers” (OHCHR, 2002, p. 3).

Article 4(1) ECHR, can in principle constitute an act of persecution. A special form of persecution is recruitment of children in armed conflicts to fight, for terrorist attacks, for sexual services, or to fulfill other roles like cooks or messengers (Tiefenbrun, 2007; UNODC, 2018; Meshelemiah & Lynch, 2019; UNHCR, 2019, pp. 151–152).

In respect of the meaning of well-founded fear, the guidelines refer to the general recommendations of the UNHCR Handbook. According to the handbook, in general, a refugee's "fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable" (UNHCR, 2019, para. 42). A well-founded fear can, for example, be made plausible by past experiences of persecution,²³ or by experiences of family members or persons belonging to the same group (UNHCR, 2019, para. 42).

A well-founded fear of persecution could also be based on past trafficking experiences without a risk of reoccurrence. If the past persecution was particularly heinous and the victim is still experiencing ongoing traumatic effects from it, return to the country of origin could be intolerable. In this situation, provided the other elements of the definition are satisfied, a victim could be recognized as a refugee (UNHCR, 2006, p. 7). Furthermore, victims of trafficking regularly fear reprisals if returned to their country of origin, or face re-trafficking. In a study about the asylum applications of victims of trafficking in the United Kingdom, Jobe found acts of persecution comparable to those listed in the UNHCR Guidelines, such as the risk of re-trafficking and risks of discrimination against women who have worked in the sex industry, or the risk of being subjected to "honor crimes" due to having worked in the sex industry or being raped (Jobe, 2020).²⁴

A further element of the definition is being outside the country of nationality or habitual residence (further referred to as *country of origin*). The crucial element in the assessment is not when or where persecution took place, but whether a fear of future persecution in the country of origin exists (UNHCR, 2006, p. 10).

Connected to the element of being outside the country of origin is the impossibility of availing oneself to the authorities of this country for

²³ Directive 2011/95/EU, Article 4(4).

²⁴ See also, for example, a Swiss court judgment about a Nigerian woman who was a victim of trafficking. The court argues that due to a deeply rooted faith in the so-called voodoo or Juju ceremony and a fear of the consequences of breaking their oath if returned to Nigeria, victims often feel obliged to be re-trafficked to Europe. The court also mentions the lack of support or even rejection by family members: Switzerland–Federal Administrative Court, 18 July 2016, D-6808/2013.

protection. In trafficking situations, the perpetrators will often be not the state, but nonstate actors. Persecution by individuals could also fall under the definition of a refugee if the state is unable or unwilling to protect the victim against these perpetrators (UNHCR, 2006, pp. 8–9).²⁵ In this respect, the adoption of laws criminalizing trafficking is not sufficient to assume protection by the state. Actual implementation and measures to assist victims like those listed in the Palermo Protocol should be available (UNHCR, 2006, p. 22). In practice, the impossibility of protection by the authorities is a difficult element to satisfy. See, for example, the Dutch cases of Mauritanian and Nigerian asylum seekers, who claimed to be victims of child slavery in their country of origin. Although their claim was not found to be incredible, the asylum application was denied because the authorities perceived protection by the state to be an option.²⁶

Finally, it should be established that the persecution is based on one of the grounds listed in the definition. In general, financial gain is the overriding motive for traffickers. However, according to the UNHCR Guidelines, traffickers may target a person based on race, religion, nationality, and political opinion for financial gain because a person belonging to a certain group might be especially vulnerable. On the other hand, they might also persecute a person because of one of the persecution grounds, without a financial motive. The trafficking of Yazidi women by the Islamic State is an example of this practice.²⁷ The ground “specific social group” is a broad category and could also be applicable to victims of trafficking, especially in situations where they fear reprisals from society or family (UNHCR, 2006, p. 14; Jobe, 2020).

Right to residence of victims of trafficking based on the ECHR

As is mentioned above, Article 3 of the ECHR has been interpreted by the ECtHR as containing a prohibition of refoulement.²⁸ Since the first case in

25 See also Directive 2011/95/EU, Articles 6 and 7. The same applies in respect of the assessment if a person is entitled to subsidiary protection.

26 See, for example, a case about a Nigerian victim of slavery: *Rechtbank Den Haag*, 19 April 2022, ECLI:N:RBDHA:2022:8689, or the cases of Mauritanian nationals: *Rechtbank Den Haag*, 10 July 2020, ECLI:NL:RBDHA:2020:6588; *Rechtbank Den Haag*, 11 March 2013, ECLI:NL:RBDHA:2013:BZ4160.

27 See, for example, the appointment of Nadia Murad Basee Taha, who survived trafficking by the Islamic State in Iraq (UN News, 2016).

28 In general, the ECtHR considers that in expulsion cases with a possible risk of refoulement, both Articles 2 and 3 imply that the Contracting State must not expel the person. For this reason, the court examines the two articles together and only refers to Article 3. See, for example, *F.G. v. Sweden*, ECtHR, 23 March 2016, no. 43611/11, para. 110.

which the ECtHR recognized this possibility, it has developed an elaborate set of criteria to determine whether expulsion would be a violation of the principle of nonrefoulement and hence of Article 3 ECHR. The main criterion is whether substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country.²⁹ The ECtHR distinguishes three different basic situations.³⁰ The first one is a general situation of violence existing in the country of destination. Normally, this is not enough to conclude that a person is at risk when removed to that country. However, in very exceptional situations, the level of intensity of the violence could be sufficient to conclude that any removal to that country would necessarily breach Article 3 of the Convention.³¹ The second situation arises where a person belongs to a group that is systematically victimized by human rights violations.³² In this situation, the applicant should establish, on the basis of the available sources, that there are serious reasons to believe the existence of the practice in question. The second step is to demonstrate membership of this specific group.³³ In the third situation, when there is not a general situation of violence and the person concerned does not belong to a specific group which is systematically victimized, the person has to show special distinguishing features which makes this person at risk of ill-treatment when removed to the country of origin.³⁴ The demarcation between the different situations is not unambiguous. From the case law of the ECtHR, it follows that the court is rather reluctant to acknowledge the existence of a group that is systematically subjected to ill-treatment.³⁵ The general situation in a country, the human rights violations against a particular group, and the need to demonstrate individual distinguishing

29 See, for example, *F.G. v. Sweden*, ECtHR, 23 March 2016, no. 43611/11, para. 111. This has been the standard formulation since the *Soering* case, except for the use of the word “extradition” instead of “deportation” (*Soering v. United Kingdom*, ECtHR, 7 July 1989, no. 14038/88, para. 90).

30 For a summary of the case law, see the ECHR, 2024.

31 *Sufi and Elmi v. the United Kingdom*, ECtHR, 28 June 2011, nos. 8319/07 and 11449/07, or *NA v. the United Kingdom*, ECtHR, 7 July 2008, no. 25904/07, para. 115.

32 *Salah Sheekh v. the Netherlands*, ECtHR, 11 January 2007, no. 1948/04.

33 *F.G. v. Sweden*, ECtHR, 23 March 2016, no. 43611/11, para. 111, or *Khasanov and Rakhmanov v. Russia*, ECtHR, 29 April 2022, nos. 28492/15 and 49975/15, para. 97.

34 *Vilvarajah a.o. v. the United Kingdom*, ECtHR, 30 October 1990, nos. 13163/87, 13164/87, 13165/87, 13447/87, and 13448/87; *NA v. United Kingdom*, ECtHR, 17 July 2008, no. 25904/07, paras. 114–116.

35 See *Khasanov and Rakhmanov v. Russia*, ECtHR, 29 April 2022, nos. 28492/15 and 49975/15, para. 100, and the cases mentioned here, like Christians in Iran or persons linked to terrorism in Algeria. See for a case where the court did find that belonging to a certain group was sufficient without having to demonstrate further distinguishing features the case of a person belonging to the Ashraf clan in Somalia: *Salah Sheekh v. the Netherlands*, ECtHR, 11 January 2007, no. 1948/04.

features can be described as communicating vessels. In determining the risks of ill-treatment in an individual situation, the court will consider the individual characteristics in the light of the level of general violence and or systemic violence against a certain group.³⁶

Comparable to protection based on the Refugee Convention and Qualification Directive, Article 3 ECHR does not only protect against danger coming from state authorities, but can also offer protection in case the violence or ill-treatment emanates from persons or groups of persons who are not public officials.³⁷ In that situation, the possibility of protection or relocation of the applicant in the state of origin is also of relevance.³⁸ For the existence of an internal flight alternative, it is a precondition that the person concerned should be able to travel to this area, can get access to it, and can settle there.³⁹

Article 3 ECHR can offer protection to victims of human trafficking and sexual exploitation.⁴⁰ The forms of exploitation itself, as mentioned in the definition of trafficking, are to be considered inhuman or degrading treatment. Reprisals or severe discrimination can also amount to a treatment which falls under Article 3 ECHR. If trafficked persons in a certain country can be regarded as a particular group which is systematically targeted, no further individual features are necessary. However, considering the high threshold for recognizing the existence of such a situation by the ECtHR, it is not likely that trafficked persons will be considered to be such a group. This means that for a prohibition of refoulement, individual circumstances should be demonstrated. However, so far, there is no case law of the ECtHR that assesses the prohibition of refoulement on the merits in a case of returning a victim of trafficking.⁴¹

36 *NA v. United Kingdom*, ECtHR, 17 July 2008, no. 25904/07, para. 117.

37 *J.K. a.o. v. Sweden*, ECtHR, 23 August 2016, no. 59166/12, para. 80.

38 See, *mutatis mutandis*, Directive 2011/95/EU, Articles 7–8.

39 See, for example, *Salah Sheekh v. the Netherlands*, ECtHR, 11 January 2007, no. 1948/04, para. 141.

40 See also Council of Europe, 2005, para. 203.

41 In the case of *J. a.o. v. Austria*, ECtHR, 17 January 2017, no. 58216/12, three Filipinos, victims of trafficking by Saudi employers, complained about a violation of Articles 3 and 4 ECHR. The complainants argued that the authorities did not act in accordance with their positive obligations under the Convention, especially in respect of criminal investigation and prosecution. The court ruled that the Austrian authorities had done enough by granting a residence permit and work permits and other protective measures and that no positive obligation follows from these articles to start criminal investigations in respect of acts which took place outside the state. The court did not make any distinction between the obligations following from Articles 3 and 4 ECHR.

The ECtHR has recognized the vulnerability of migrant victims of slavery, servitude, forced labor, and human trafficking who have stayed illegally as protected under Article 4 ECHR and recalled that the positive obligations of the Contracting States must be interpreted in the light of the Council of Europe Convention on Action against Trafficking in Human Beings.⁴² The question whether a prohibition of refoulement could also arise under Article 4 of the ECHR has not been answered so far by the ECtHR

Some complaints in which a person who had applied for asylum also claimed to be a victim of trafficking in human beings were deleted because the complainants had been granted a right of residence.⁴³ In the case of *V.F. v. France*, this argument was put forward by the complainant and considered by the court.⁴⁴ The case concerned a young Nigerian woman who was trafficked to France and forced into prostitution in Paris. After her escape, she applied for asylum. This application was denied, also on appeal, and she was detained to be deported. At that stage, she filed a complaint with the ECtHR. Invoking Articles 3 and 4 of the ECHR, she argued that if she was deported to Nigeria, she would be at risk of being forced into the prostitution again and being subjected to reprisals by the persons involved in her trafficking. Furthermore, she put forward that the Nigerian authorities would be unable to protect her.⁴⁵ The court notes that, in principle, the question about the extraterritorial application of Article 4 with regard to the state's positive obligation to prevent the re-enlistment into the prostitution network could arise, in particular in the light of the inviolable and absolute nature of Article 4. However, it considers that it is not necessary to rule on this issue in the present case since the complaint is inadmissible.⁴⁶ The court recognizes the risk of re-enlistment if relocation is not possible for Nigerian forced sex workers who are deported from a European country, especially if they have not repaid their debts.

However, these general observations, which all apply to the situation of the applicant, are overruled by other considerations.⁴⁷ First, the court states that although it might be difficult for her to return, the fact that her situation

42 See, for example, *Chowdury a.o. v. Greece*, ECtHR, 30 March 2017, no. 21884/15, para. 104.

43 See *L.R. v. the United Kingdom*, ECtHR, 14 June 2011, no. 49113/09, alleged violation of Articles 2, 3, 4, and 8 ECHR; *D.H. v. Finland*, ECtHR, 28 June 2011, no. 30815/09, alleged violation of Article 3 ECHR; *O.G.O. v. the United Kingdom*, ECtHR, 18 February 2014, no. 13950/12, alleged violation of Articles 3, 4, and 8 ECHR.

44 *V.F. v. France*, ECtHR, 29 November 2011, no. 7196/10.

45 *Ibid.*, para. 7.

46 *Ibid.*, para. 14.

47 *Ibid.*, paras. 14–15.

in Nigeria would be less favorable than in France is not determinative. The court further notes that she did not put forward any arguments to the national authorities in respect of her fears that they could assess. Finally, the court observes that the legislation of Nigeria in respect of the prevention and control of prostitution networks is developing and showing progress. There are also state agencies and nongovernmental organizations that offer assistance to victims of trafficking networks.

In this reasoning of the court, some elements of the Article 3 *refoulement* case law can be discerned, like, for example, the use of general information, in this case the lack of individual arguments and the (im)possibility of receiving protection from the state. However, the court did not apply the same structured approach that it has developed in its case law on Article 3 ECHR in cases of expulsion. This is regrettable, as this was a good opportunity to lay out a general structure in respect of how to assess a possible risk of *refoulement* in an expulsion case of a victim of trafficking.

Dublin III and the residence right of victims of trafficking

In the previous section, the possibilities and difficulties for asylum-related residence protection for victims of trafficking have been explored. For asylum-seeking victims of trafficking in the EU, an extra hurdle to victim identification and protection lies in the Dublin Regulation (also referred to as Dublin III).⁴⁸ Several organizations have drawn attention to the particular vulnerability of victims of human trafficking among asylum seekers in Italy (IOM, 2015; Save the Children, 2016; Noteboom & Glasgow-Kulu, 2017; GRETA, 2020). According to a report by the Centre for Child Trafficking and Human Trafficking, these are mostly West-African victims of human trafficking who fall victim to sexual exploitation in particular, but also to labor and criminal exploitation, and who often move on from there to other European countries (Noteboom & Glasgow-Kulu, 2017). If they apply for asylum in a second EU country, they can be returned to the first EU country, where they were the victims of trafficking, based on the Dublin Regulation (GRETA, 2020; in respect to this practice in the Netherlands, see Kollen et al., 2022).

48 Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (PbEU L 180/31).

The Dublin Regulation sets out the criteria to determine which country is responsible for examining an asylum application. These criteria relate, for example, to the presence of family in one of the Member States or the possession of a residence permit or visa issued by one of the Member States. The criteria are to be applied in the order in which they are set out in the Regulation. If none of the previous criteria apply, the country where the asylum seeker entered the EU illegally is responsible for examining an asylum application,⁴⁹ but Member States may decide to examine any asylum application themselves.⁵⁰ The Dublin Regulation is based on the idea that EU Member States can trust each other that the international human rights norms and EU standards in respect of the treatment of asylum seekers and assessment of asylum claims are respected. However, when there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, which would result in a risk of inhuman or degrading treatment, the Member State of final destiny can be designated as the responsible state.⁵¹

GRETA is critical about the practice of returning an asylum-seeking victim of trafficking and stresses the obligation to identify victims of trafficking among asylum seekers who are subject to the Dublin Regulation, also if trafficking took place in another EU country than the country of destination (GRETA, 2021; GRETA, 2022a; GRETA, 2023c; GRETA, 2023d).

Tensions between the right to a reflection period under Article 6 of Directive 2004/81/EC and the Dublin transfer based on the Dublin Regulation have led to preliminary questions.⁵² During the reflection period of Article 6, a (potential) victim of trafficking may not be expelled and is entitled to basic assistance and access to emergency medical treatment.⁵³ The court concluded that it follows from this provision, that a victim of trafficking may not be transferred based on the Dublin Regulation during the reflection period. However, a Dublin transfer might be adopted and prepared, provided that the eventual preparatory measures do not deprive the reflection period of its

49 Regulation (EU) no. 604/2013, Article 13.

50 Ibid., Article 17(1).

51 Ibid., Article 3(2). This article was inserted into the revised Dublin III regulation after case law of the ECtHR and CJEU in situations where the transfer of an asylum seeker might put this person at risk of a violation of Article 3 ECHR or rights granted by the EU asylum legislation. See *M.S.S. v. Belgium and Greece*, ECtHR, 1 January 2011, no. 30696/09; CJEU, 21 December 2011 (*N.S. and M.E.*), C-411/10 and C-493/10, ECLI:EU:C:2011:611.

52 See the cases CJEU, 20 October 2022 (*O.T.E.*), C-66/21, ECLI:EU:C:2022:809 and CJEU, 30 March 2023 (*S.S., N.Z., S.S.*), C-338/21, ECLI:EU:C:2023:269.

53 CJEU, 20 October 2022 (*O.T.E.*), C-66/21, ECLI:EU:C:2022:809.

effectiveness. Furthermore, the court ruled that Directive 2004/81/EC does not protect against expulsion (including a Dublin transfer) of a person who appealed against the decision that a residence permit pursuant to Article 8 of this directive is rejected. According to the court, a person in this situation cannot be equated with, in general, a person in respect of whom there are substantial grounds for believing that removal to a third country would be contrary to the principle of nonrefoulement.⁵⁴ In this ruling, the CJEU seems to generally accept the system of mutual trust also in respect of victims of trafficking who might be in danger of re-trafficking in the other EU country.

Concluding findings

What are the options for a residence right for migrant victims, and in particular asylum-seeking victims of human trafficking in international and European human trafficking law and asylum law, and what are the gaps in the protection of residence? These questions have been explored in this contribution.

Among organizations that defend the interests of migrants, asylum seekers, and victims of trafficking and ensure compliance with international regulations for the protection of these groups, like the UNHCR, the United Nations Office on Drugs and Crime (UNODC), the International Organization of Migration (IOM), and, in Europe, GRETA, the awareness in respect of the importance of residence protection of asylum-seeking victims of trafficking seems high. The impressive amount of guidelines, reports, and other documents testifies to this.

In several human trafficking legal instruments, the option to grant a (temporary) residence right is included. However, in the Palermo Protocol, states have a wide margin of appreciation to decide on a residence right, and in the EU Directive of 2004, the right is strictly linked to cooperation in criminal proceedings. Although the ECTHB also offers the option to grant a residence right based on personal circumstances, it follows from the evaluation reports of GRETA that State Parties seem reluctant to apply this option.

Asylum law also offers possibilities to grant a right to residence to victims of trafficking. A residence right could either follow from the prohibition of refoulement based on the Refugee Convention and the ECHR or from the Qualification Directive. The forms of exploitation listed in the trafficking

54 CJEU, 30 March 2023 (S.S., N.Z., S.S.), C-338/21, ECLI:EU:C:2023:269, para. 45.

definition fall under the various forms of damage against which asylum law offers protection. A condition for asylum protection is a fear of persecution, ill-treatment, or serious harm in the country of origin of the asylum seeker, and an inability by the authorities to protect the victim against this harm. Based on a very limited number of examples from case law, in practice this condition is a hurdle to residence protection. Furthermore, the EU asylum system and the Dublin Regulation result in returning victims of trafficking to an EU country where they might be at risk of re-trafficking. Empirical insight into how often and on what grounds asylum protection is offered to victims of trafficking in the EU is lacking. More research into the assessment of asylum applications of victims of trafficking is necessary to get a better picture of the national practices.

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II.

The Sex Worker

5. Sphere of Influence: The Governance of Sex Workers' Rights in Contemporary Europe¹

Irena Ferčíková Konečná

Abstract: The chapter will discuss the proposed amendment to Article 18(a), in which the European Commission has suggested that EU Member States should make it mandatory to criminalize the knowing use of trafficked persons to discourage demand. The chapter will explore the concept of demand, the roles of different stakeholders, including civil society organizations, against which the different understandings of “discouraging demand” among advocates of the abolition of prostitution and sex worker rights will be discussed. The chapter will also present the strategies that sex worker rights defenders have in eliminating exploitation and the counterstrategies that aim to eliminate, silence, or exclude sex worker rights defenders in the contemporary European political arena.

Keywords: human trafficking, sex work, exploitation, end demand

Introduction

On 19 December 2022, the European Commission proposed to strengthen the rules that prevent and combat trafficking in human beings by revising

¹ This chapter was drafted at a time when the European Commission proposed an amendment to the EU Anti-Trafficking Directive, shortly after the European Parliament and the Council finalized their positions and before the start of the so-called tripartite negotiations. Negotiations between the institutions on legislative proposals generally take the form of tripartite meetings (trialogues) between Parliament, the Council, and the Commission. Their purpose is to reach a provisional agreement on a text acceptable to both the Council and the Parliament. For details, see: <https://www.europarl.europa.eu/olp/en/interinstitutional-negotiations>

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, hereafter the EU Anti-Trafficking Directive (2011/36/EU). According to the European Commission, the updated rules will provide stronger tools for law enforcement and judicial authorities to investigate and prosecute new forms of exploitation. In particular, by making sure that knowingly using the services provided by victims of trafficking constitutes a criminal offense. The existing Article 18(4) of the EU Anti-Trafficking Directive stipulates:

Art. 18(4) In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offense the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offense referred to in Article 2.

In other words, the EU invites its Member States to prosecute not only the true perpetrators of trafficking in human beings, but also other actors if they have had knowledge that the service they received or used was provided by a trafficking victim.

To date, the provision of Article 18(4) was not mandatory, and according to the report of the European Commission (2016), there is a rather diverse legal landscape within the EU with regard to the criminalization of knowing use of victims of trafficking, which fails to effectively contribute to discouraging demand for such services. The report also draws attention to the limited availability of reliable data and statistics on investigations and convictions, while research on the impact of criminalization of users is limited. The report draws attention to the difficulties in establishing the necessary mens rea knowledge for these offenses. During the time when the European Commission published its proposal for the revision of the EU Anti-Trafficking Directive, La Strada International published a policy paper which includes an analysis of the state of play of the implementation among the EU Member States as of 2022. The policy paper concludes that there is currently no evidence of the impact of this criminalization on the fight against trafficking in human beings. Two thirds of EU Member States have already introduced this provision in their national legislation. In most cases states have either limited the legal scope of this provision to users of sexual services of trafficked persons, or in practice have (almost) exclusively applied the broader criminalization to this specific group by criminalizing purchase of sexual services entirely. This resulted in criminalization that

can be (mis)used to implicitly penalize prostitution (La Strada International, 2022).

The negotiations of the revision of the Anti-Trafficking Directive started shortly after the European Parliament adopted a resolution on the regulation of prostitution in the EU, its cross-border implications and impact on gender equality and women's rights, in September 2023 (European Parliament, 2023). The resolution called on the Member States to make it a criminal offense to solicit, accept, or obtain a sexual act from a person in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind, or the promise of such a benefit. Addressing the demand for prostitution through the criminalization of clients of sex workers was the key aim of this resolution.

The chapter will explore the concept of demand, the roles of different stakeholders, including civil society organizations, against which the different understandings of "discouraging demand" among advocates of the abolition of prostitution and sex worker rights will be discussed. The chapter will also present the strategies that sex worker rights defenders have in eliminating exploitation and the counterstrategies that aim to eliminate, silence, or exclude sex worker rights defenders in the contemporary European political arena.

Discouraging demand: Where does it come from?

Demand reduction in the context of crime prevention is usually associated with demand for goods or services that are illegal, such as drugs or firearms produced or acquired illegally. However, it is only in the context of human trafficking that addressing "demand" has been codified in international law as an obligation of the state.

The "end demand" notion is a residuum of the political negotiations that took place in relation to the Palermo Protocol (2000) between 1998 and 2000. The Palermo Protocol brought the first internationally accepted definition of trafficking in human beings, minimum requirements on legislation, assistance to victims of trafficking, and prevention. The United States, supported by the network of prostitution abolitionist NGOs (headed by the Coalition against Trafficking in Women, CATW), recommended addressing the "demand for prostitutes" (Wijers, 2021). However, this proposal was dropped because it could have blocked an overall consensus among states, as those that regulate or tolerate voluntary prostitution would not have been able to sign the Protocol. At the final stage of the negotiations, the US delegation submitted a document proposing prevention measures, including demand as currently codified by international law. The text was accepted

with only minor changes without further discussion and was seen as a compromise (Cyrus & Vogel, 2017; Wijers, 2017). Subsequently, the UN High Commissioner on Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR, 2002) has recommended that preventive measures shall address demand as a root cause.

Article 9(5) of the Palermo Protocol obliges states to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.” The same obligation has been codified by the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Convention, Art. 6) and the 2011 EU Anti-Trafficking Directive (2011/36/EU, Art. 18(1)). However, the provision does not make exceptions or focus on any particular sector; rather, it requires states to discourage demand that fosters exploitation that leads to trafficking in all sectors and for all purposes (Planitzer, 2020; ICRSE, 2021c).

The desire to discourage demand which drives or fuels trafficking in human beings was also the impulse to introduce additional provisions in international instruments, namely into the Council of Europe Convention and the EU Anti-Trafficking Directive that encourages states to criminalize the knowing use of the services of victims of human trafficking. While the criminalization of “knowing use” is nonbinding under both the Council of Europe Convention and the 2011 EU Anti-Trafficking Directive, the EU is currently negotiating to make the provision mandatory.

The contradictions between regulatory and abolitionist attitudes on the legal frameworks on prostitution, which were evident in the drafting of the Palermo Protocol, continued to manifest themselves in the context of proposals to criminalize the purchase of sexual services, including the services of trafficked persons. States' positive commitments to preventing trafficking are increasingly associated with these debates to date.

The drafting history of Article 19 of the Council of Europe Convention shows considerable variation between states' positions on the appropriateness of expanding the criminal response to clients in the same way as to traffickers. During the negotiations, the draft criminal chapter of Article 19 was contested by states. Its inclusion and the impulse to extend the scope of criminal law were justified by the desire to punish buyers of services in the same way that the law punishes recipients of the products of crime (Mullally, 2020). The Explanatory Report of the Council of Europe Convention explains that under this provision, for example, it could be a criminal offense for a business owner to knowingly use workers provided by a trafficker. In such a case, the owner of the business could not be held criminally liable for the offense of trafficking in human beings under Article 18 (he did not himself

hire the victims of trafficking, nor did he himself use any of the means listed in the definition of trafficking)—but he would be liable for the offense under Article 19. According to the Explanatory Report, the same applies if a customer of a prostitute who knew full well that the prostitute was being trafficked could also be considered to have committed the offense under Article 19, as could one who knowingly used the services of a trafficker to obtain an organ (Council of Europe, 2005). The requirement to demonstrate knowledge was recognized as potentially difficult for law enforcement authorities. However, it was noted that similar difficulties arise in other types of offenses where proof of the nonmaterial element of the offense is required. In this context, the difficulties identified were not considered sufficient against criminalizing the conduct of the purchaser or user of the services (Mullally, 2020).

The debate on prostitution and the different approaches of states to its regulation have accompanied the negotiation of the Council of Europe Convention throughout. The Explanatory Memorandum makes clear the Convention's limited scope in regulating prostitution as

the provision (Art. 19) is not concerned with using the services of a prostitute as such. That comes under Article 19 only if the prostitute is exploited in connection with trafficking of human beings—that is, when the components of the Article 4 definition are present together.... [T]he Convention is concerned with exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in human beings. It defines neither “exploitation of the prostitution of others” nor “other forms of sexual exploitation.” It therefore does not affect the way in which Parties deal with prostitution in their domestic law. (Council of Europe, 2005)

In its monitoring of the State Parties to the Council of Europe Convention, GRETA² has repeatedly commented that criminalizing the purchase of sexual services is not required by any provision of the Convention targeting demand (Mullally, 2020). The latest GRETA (2023) report on Sweden is quite illuminating. While GRETA notes the criminalization of purchase of sex in the Swedish criminal code, apparently it does not consider this provision as related to the obligations under the Convention to combat trafficking

² The Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

in human beings. Instead, GRETA invites Sweden to introduce a criminal qualification of knowing use of victims of trafficking following information on one case from 2020 in which the buyer of sexual services from a victim of trafficking was convicted of negligent rape, the first such case in Sweden. According to the report, the victim was granted compensation. In this regard, it is quite a coincidence, that the European Sex Workers' Rights Alliance (ESWA, 2023a), in its feedback to the European Commission on the revision of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, argued that, in terms of protecting the rights of victims of crime, it is much more practical to use the existing criminal qualification of rape whenever the client knowingly uses the victim of trafficking and in which the sexual act was not consensual. In such cases there is no need to prove the crime of trafficking in a very complex way and where it is certain that the victim should have had access to the service system and be entitled to compensation. ESWA also pointed out that it is not clear who individual states consider to be a victim when introducing the criminal qualification of knowing use of a victim and, possibly, whether a victim of this crime has the same rights as a victim of trafficking in human beings. This concern was also raised in connection to the findings of a La Strada International (2022) study, in which it is unknown whether proving the criminal qualification of the knowing use of a victim of trafficking will require first proving all the elements of the crime of trafficking in human beings, which in itself is very difficult to prosecute, or not.

Criminalizing the purchase of sex

While it is clear that the Palermo Protocol, the Council of Europe Convention on Action against trafficking, and the EU Anti-Trafficking Directive do not require states to criminalize the purchase of sexual services and leave it up to them how to regulate prostitution, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), in their General Recommendation no. 38 on Trafficking in Women and Girls in the Context of Global Migration (CEDAW, 2020), built its argument in favor of criminalizing the purchase of sexual services by applying the provisions of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (para. 8) and encouraged States Parties to adopt this Convention (para. 121). The 1949 Convention considers all prostitution to be trafficking in persons and all sex workers as victims, which deviates from the very way the Palermo Protocol defines human trafficking. It must be noted that the conflation of trafficking with sex work is one of the reasons why only 82 states globally are party to this

Convention. In Europe, not only are states such as Germany, Austria, and the Netherlands not parties to the Convention, but neither are states such as Sweden or Ireland. In 2000 the UN Special Rapporteur on Violence against Women noted in her report that

the 1949 Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the evils of prostitution. As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations. (Commission on Human Rights, 2000, para. 22)

Recalling the 1949 Convention, the CEDAW Committee in their General Recommendation no. 38 was denounced by human rights and women's rights organizations (Amnesty International, 2021; IWRAP Asia-Pacific, 2021; ICRSE, 2021a), which resulted in confusion and a lack of clarity, instead of guidance and human rights standards. It can be argued that the 1949 Convention has been superseded by the 2000 Palermo Protocol because, under international law, an earlier treaty signed by the same parties applies only to the extent that its provisions are compatible with those of a later treaty. All states that signed the 1949 Convention have since ratified the Palermo Protocol.

A thorough analysis of international human rights standards concerning sex workers' rights has been provided, for instance, by Amnesty International (2016), UNAIDS (2021), or the most recent analysis of the UN Working Group on Discrimination on Women and Girls (2023). Together with UNAIDS, UNFPA, and UNDP (2019), the analyses condemn conflation of sex work with human trafficking or violence against women.

Introduced in 1999, a year before the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), the Swedish model that criminalizes clients of sex workers as a strategy to end demand for prostitution and trafficking has now been adopted in Norway and Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), the Republic of Ireland (2017), and Israel (2018), and continues to be debated in many other countries (CNE News, 2023; Valdés & Álvarez, 2018).

Although prostitution policies remain within the purview of states, the international discourse and approach regarding sex workers clients'

criminalization has gained prominence through states' interpretation of their obligation to "discourage demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking" (Palermo Protocol, Article 9(5)). The Swedish model law, known also as the Nordic model, end-demand model or the equality model, is based on the criminalization of clients and is advocated as a humanitarian, woman-friendly solution to the problems of commercial sex where women who are already in an oppressed situation should not be further punished. The ideological goal of the law is to abolish commercial sex by shifting the focus from the sellers (mostly women) to the (presumed male) perpetrators: clients, traffickers, and pimps. This ideology is based on a radical feminist understanding of prostitution as a form of patriarchal violence, one of the most extreme examples of the subjugation of women. It is further rooted in the belief that sex work, according to this radical feminist discourse, is seen as a form of violence in itself, and exploitation. It is equated with slavery and torture, and those in the sex industry are generalized and associated as unstable, traumatized, passive, and exploited, with this pathologization leading to their "decision" to sell sex (Farley et al., 2004). Such an understanding leads to the belief that people selling sex have no agency over their own lives and bodies and as such it is appropriate for the state to make decisions about them and their sexuality, by restricting or limiting their activities or freedoms on the grounds that the goal is to "protect" them from harm or wrongdoing. This approach does not challenge gender discrimination, but rather reproduces it under the guise of protecting women.

While we see the framing of all sex work rooted in the radical feminist theory and approach, the topic of prostitution and sex trafficking is high on the agenda of religious groups, in many cases supported by (evangelical) churches from the United States. It's a surprising connection: secular radical feminists and conservative women usually find themselves on opposite sides of social issues. However, in relation to prostitution, the two groups coincide and form an alliance.

We can find the very same claims, such as that prostitution is inherently against human dignity, and that prostitution is never a choice, by both the radical feminist and conservative religious groups. For the religious groups, the fight against sex trafficking and—by extension—prostitution is based on values that resonate deeply with conservative Protestant sexual morality (Bernstein & Jakobsen, 2010). The traditional script of sex and gender roles is the basis of anti-trafficking activism, with the argument that prostitution itself is a threat to the traditional family (and women's traditional roles). Following this ideology, women in prostitution should

be rehabilitated to assume their true feminine roles, such as married women and mothers (Daniel-Hughes, 2018). Religious groups' promotion of this rhetoric has spread beyond openly religious spaces, and ending sex trafficking has become one of the most important issues for religious and humanitarian movements who have created an entire industry of nonprofit service providers, advocacy organizations, and missions, devoted to "ending modern slavery." Coined by social anthropologist Laura María Agustín, the industry around rescuing women from the evil of prostitution was framed as the "rescue industry" (Agustín, 2007). The rise of the evangelical groups active in anti-trafficking was first enhanced by the administration of President George W. Bush (2001–2009), which officially included trafficking in persons as part of the government policy and also provided faith-based organizations with access to government funding. The administration's passage of the anti-prostitution pledge prohibited anti-trafficking NGOs that received federal funding from "promoting, supporting, or advocating the legalization or practice of prostitution" (Devi, 2013). Along with the passage of the Trafficking Victims Protection Reauthorization Act of 2003 and 2005, this exemplifies a neoconservative, abolitionist effort to utilize the anti-trafficking movement as a joint anti-prostitution campaign (Pennybacker, 2021). The Trump administration intensified the crusade against sex trafficking further by increasing funding and introducing a few controversial bills, such as FOSTA–SESTA, or Fight Online Sex Trafficking Act–Stop Enabling Sex Traffickers Act (Musto et al., 2021). The laws were intended to cut down on sex and human trafficking online, but many sex workers who provide consensual sex work said it significantly compromised their independence, safety, and well-being (Blunt & Wolf, 2020). Contrary to the intended effect, sex workers lost their independence and had to rely again on third parties, pimps or start working on the street.

While abolitionists argue that female sexuality is so deeply rooted in patriarchal structures that women's sexual behavior cannot exist outside of these structures, and therefore criminalization is seen as the only response to abolish the industry, sex workers' rights feminists advocate for a social justice labor rights approach. This approach prioritizes self-determination, bodily autonomy, and sex work as a way for women to reclaim their sexuality and independence and break free from patriarchy (Mullin, 2021). The abolitionist approach challenges the key contemporary feminist issues such as agency, bodily autonomy, and the concept of consent. According to Amnesty International (2016), approaches that place decision-making about women's lives in the hands of the state are problematic from a human rights perspective because they deny agency and decision-making to an

entire group of people (most of whom are women). Refusing to accept that a particular group of women (those who sell sex) have agency and are able to give or withhold consent, and denying their bodily autonomy, is not only utterly patriarchal but it also actively disempowers sex workers and leads to severe violations of their human rights. The consequence is the silencing and exclusion from political participation of people concerned because, according to this approach, they are unable to assess their own situation correctly due to their pathologization. In an opposite case, the people concerned are framed as complicit with pimps and traffickers, as it is believed that no one could agree with payment for sex. The feminists whose political ideology is explicitly exclusionary to sex workers, are known as SWERFs (sex workers–exclusionary radical feminists).³

The policy has also been criticized for increasing the capacity of police and immigration authorities (of relevance to sex work because the estimated majority of sex workers in Western Europe are migrants), which has led to increased profiling, surveillance, and harassment of sex workers (Amnesty International, 2022; Vuolajärvi, 2022; Le Bail et al., 2019). As a result, these policies reduce the safety of sex workers significantly. A feminist approach that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women has been described as “carceral feminism,” a term coined by American sociologist Elizabeth Bernstein in her 2007 article, “The Sexual Politics of the ‘New Abolitionism.’” Bernstein examined the contemporary anti-trafficking movement in the United States by describing a type of feminist activism which casts all forms of sex work as sex trafficking. Carceral feminists recommend punitive approaches, such as increased criminalization and incarceration. In doing so, they fail to recognize how increased policing and state power leaves certain women—including racialized women, those of lower socio-economic status, of diverse gender identity and expression, with disability and/or with precarious or irregular migration status—more vulnerable to violence in general, and that greater criminalization often places these same women at risk of state violence (Bernstein, 2012).

Migrants make up the majority of sex workers (up to 70%) (Vuolajärvi, 2022) in Western Europe and a significant segment in Central and Eastern

3 SWERF is a sister term to TERF (trans-exclusionary radical feminist), a term coined by Viv Smythe in 2008 for feminists who exclude transgender women from their interpretation of feminism out of a belief that they are not women or that they reinforce sexist, binary roles. The term SWERF emerged online by 2013, notably used on a site, Everyday Whorephobia, which addresses challenges sex workers face.

Europe (TAMPEP, 2009). Although Nordic model policies claim to decriminalize the sale of sex work, these countries regulate it through immigration enforcement policies that thus intersect with the policing of commercial sex (Vuolajärvi, 2022). In Sweden and Finland, selling sex is grounds for deportation and denial of entry for migrants outside EU/EEA. Sweden has also deported EU citizens for selling sex. Similarly, Norway's immigration laws give police the authority to question, deport, and control migrant sex workers. Because of the threat of deportation, foreigners feared contact with the police even if they were in the country legally and could not rely on the police for help if they became victims of crime. The Swedish laws disproportionately affect migrant sex workers.

The ESWA approach

The European Sex Workers' Rights Alliance (ESWA) is sex worker-led membership organization, currently with 111 members in 33 countries in Europe and Central Asia. Half of ESWA membership is composed of organizations which are sex worker led. Members include traditional service providers in different areas, as well as less formal collectives relying solely on volunteerism. Services include harm reduction, HIV and STI prevention services, counseling and/or legal services, hotline services, outreach services (which aim to inform the most marginalized sex workers about their rights and provide them information about existing services) and organizations or collectives providing a safe space. During COVID-19, ESWA members demonstrated the strength and resilience of sex worker collectives and were essential in helping the most excluded and vulnerable sex workers in our society (ICRSE, 2021b).

Sex workers globally organize, unionize, and develop initiatives to protect themselves from violence, exploitation, and human rights violations. As critical enablers of addressing violence and exploitation in the sex work sector, they contribute to the creation of more resilient communities, despite having no or limited funding. They share strategies of how to work independently, where to work, and how to keep themselves safe (GAATW, 2011). Many sex workers' organizations also play a vital role in preventing children from entering into the sex industry and supporting women who have been trafficked into it. ESWA understands and conceptualizes trafficking in human beings as a broad migration, labor, and social justice issue. It advocates for addressing the root causes such as poverty, discrimination, and restrictive migration policies as a priority in tackling human trafficking. ESWA opposes punitive anti-trafficking policy frameworks that target sex workers' workplaces and their clients.

Sex workers face high levels of violence, abuse, and exploitation. They are also one of the groups at risk of human trafficking. Beyond individualized violence, sex worker communities face significant levels of structural violence, of which societal stigma, surveillance, marginalization, and over-policing are integral parts (ICRSE, 2015).

Advocacy for sex workers' rights and inclusion

Engaging in the debate over exploitation in sex work is a challenging task, as it requires confronting misconceptions about the nature of sex work, which are deeply rooted in various legal frameworks and ideological approaches to prostitution and the public's imagination (ICRSE, 2016). ESWA believes that treating all sex work as "sexual exploitation" contributes to obscuring the many forms of labor exploitation sex workers may actually face in different settings. Sex workers cannot be protected from exploitative and unjust working conditions as long as their work is not recognized as work and as long as they are not granted access to labor rights and unionization that empower them as workers (ICRSE, 2016). Longstanding experience and evidence demonstrates that exploitation and trafficking flourish in sectors where workers are isolated and unable to organize, have limited labor protection, or are not considered workers. The text below is compiled from two ESWA community reports (ICRSE, 2021c) and aims to illustrate the key approaches sex worker collectives take in addressing exploitation in the sex industry. It also features examples of backlash against ESWA members at the national levels.

Building collective power: Self-organization, unionization, and sex workers' leadership

Sex workers' work in many settings, such as in escort agencies, massage parlors, brothels, private apartments, lap dance clubs, or on the street, and they engage in various types of working relationships with parties other than their clients. Referred to as third parties, these individuals or entities play a key role in organizing and managing sexual commerce, handling transactions between sex workers and their clients, or providing other ancillary services. All of these third-party relations significantly shape sex workers' labor arrangements and working conditions. For long-lasting change, sex workers must be seen, and must see themselves, as agents of change, who, if unionized and organized, can challenge their unjust labor arrangements. The self-organization and unionization of sex workers and the strengthening of labor rights are therefore fundamental to the

elimination of exploitation in the sex industry. An official trade union has been formed in the UK: the United Sex Workers (USW), later renamed as the Sex Workers Union (SWU). The union focuses on supporting migrant sex workers, removing barriers to migrant organizing, and improving migrant sex workers' access to justice. In 2020 USW impressively won worker status for dancers at two London strip clubs through an Employment Tribunal claim made with Decrim Now. This was the first time strip club dancers were awarded worker status through the courts. USW also supported a migrant sex worker who won compensation for harassment by her boss. Positive results of these cases demonstrate the significant impact of unions on sex workers' access to justice and on eliminating discrimination, exploitation, and harassment in the workplace.

Backlash against unionization

In 2018, as part of the fight against exploitation, the Organización de Trabajadoras Sexuales (OTRAS), the first 100% independent trade union led exclusively by sex workers in Spain, applied for trade union status from the Spanish Ministry of Labor, which approved it as the country's first sex worker union. That same year, however, Spain's National Court annulled (AP News, 2018) the union's statutes as a result of campaigns of prostitution abolitionist groups supported by the ruling political party. The sex worker group appealed. The Supreme Court of Spain issued a decision recognizing the right of sex workers to form unions (AFP/The Local, 2021). The judges agreed with OTRAS, believing that its members "enjoy the fundamental right to freedom of association and have the right to organize."

Establishing shared trust: Outreach, safe spaces, and peer support

Migrant sex workers face the risk of deportation, criminalization through third-party or soliciting laws, and penalization for violating municipal bylaws. Sex workers are routinely criminalized through brothel-keeping laws when working together for their safety. For migrant sex workers this often results in their detention and deportation. They also face significant stigma that translates into a deep distrust of existing structures. This includes distrust of authorities, but also of service providers. To overcome this barrier, community organizations need to build trust through interventions where sex workers are consulted and, importantly, form part of the support system. UTSOPI, the Belgian union of sex workers, introduced a bicomunal approach to build trust by creating an outreach team consisting of one sex

worker and one member of the West African community. This team regularly visits the sites where West African sex workers work and provides a safe space for migrant sex workers. This trust has led to UTSOPI serving as a mediator between the police and sex workers, communicating women's demands in cases where migrant sex workers may fear direct encounters with the police. During COVID-19, sex worker rights organizations played a key role in the distribution of aid to the most marginalized sex worker communities (ICRSE, 2021b). UTSOPI used its collaborative platform to organize a food distribution scheme that reached a hundred people per week. Not only did this meet an immediate need, but it helped people understand the objectives of the organization and the importance of having a service specifically for sex workers. UTSOPI used the atmosphere of trust during the food distribution scheme to consult with migrant sex workers about their rights during COVID-19. This collaboration also opened a dialogue with the authorities involved in the platform about the situation of sex workers during COVID-19 and resulted in a legal reform in 2022 in which the first EU Member State (Belgium) decided to fully decriminalize sex work.

Exclusion of sex workers from COVID-19 aid for ideological reasons

Contrary to the Belgian case, in France any government aid to support the most marginalized sex workers was blocked for ideological reasons (St. Denny, 2020). During the health crisis, the French government rejected any emergency funding for sex workers, citing that it would be too complicated to implement (St. Denny, 2020). Any aid would be considered “pimping,” or the aid paid would be assumed to be immediately withdrawn by “pimps,” which would only feed the networks of traffickers they claim to be fighting. This is despite sex work being legal, recognized by the URSSAF (French social security office), and the tax authorities. The narrative that prostitution is violence against women blocks any meaningful consultation with sex workers. Fears that they would facilitate prostitution justify the exclusion of sex worker organizations from government funding and distributing emergency help, even though they play a key role in defending the rights of this most marginalized group.

Documenting evidence and developing partnerships: Community research and cross-sector collaborations

Sex workers' rights are intertwined with many other rights and issues. Sex workers' rights intersect with migrant and racial rights. A large proportion

of sex workers are gender diverse. According to ILGA-Europe (2018) and Transgender Europe (TGEU, 2017), 88% of murdered trans people in Europe are sex workers and racism, sexism, homophobia, transphobia and xenophobia exacerbate LGBTI sex workers' vulnerability to violence. Other examples where sex workers' rights intersect are victims' rights, rights to health and reproductive rights, housing, and the right to nondiscrimination. Evidence collection from the ground and the production of community reports summarizing key findings can serve in establishing new partnerships, as well as in promoting evidence-based policies. Sex workers and their organizations are best positioned to provide evidence on the effects of public policies that aim to address issues affecting them and their well-being, including anti-trafficking policies and laws. ESWA supports and builds the capacity of its members in collecting evidence from the ground. This has resulted in community research on migrant sex workers' access to justice in 2020, in which participating member organizations contributed to the analysis of key barriers that prevent migrant sex workers from reporting crime, based on concrete examples (ICRSE, 2020). In 2021, ESWA launched a methodological concept based on feminist participatory action research (FPAR), where currently 12 participating organizations are collecting national data and in which community members themselves conduct FPAR on the role of policing on access to justice.

Making the evidence from the ground unavailable

Members of Red Umbrella Sweden (RUS) are not allowed to display leaflets or other information materials through state-subsidized organizations, such as NGOs or health centers, because their association promotes the rights of sex workers and opposes the dominant narrative on prostitution as violence against women. These organizations were also unwilling to cooperate in reaching out to people for ESWA's research on access to justice for fear that they might contribute to challenging the dominant narrative by assessing the real impact of the law on sex workers' access to justice.

Challenging structural factors: Advocacy, campaign, and law reform

One of the key instruments for legal reform is strategic litigation. In April 2021 the European Court of Human Rights registered the complaint of 261 sex workers against France in a case (*M.A. and others v. France*, request no. 63664/19) to assess the French law "against the prostitution system." Faced with a government and institutions that deny their lives and ignore

the violence of their politics, sex workers have decided to challenge the state. In this context, community mobilization and sex workers' leadership were essential. The French sex workers' unions and many other collectives gathered signatures and testimonies to support the complaint against France. In this process, the sex workers' union and partners organized sessions to explain complex legal processes to sex workers from various migrant communities. As a result, 261 sex workers, a majority of them of migrant origin and of diverse gender, joined the lawsuit against France. On 31 August 2023, the European Court of Human Rights, without ruling on the merits at this stage, declared the application admissible after acknowledging that the applicants were entitled to claim to be victims, within the meaning of Article 34 of the Convention, of the alleged violation of their rights under Articles 2, 3 and 8 (ECHR, 2023). The court acknowledged that the mere existence of the law has a negative impact on sex workers: "The applicants have produced evidence broadly indicating that the clandestinity and isolation induced by this criminalization increase the risks to which they are exposed." The ECtHR also considered that the applications were "not manifestly ill-founded" and therefore recognized the necessity of the debate (ECHR, 2023).

Threatening and silencing sex worker rights defenders

In Germany, a sex worker rights defender gave a lecture and examined arguments of anti-sex work groups and movements and explained what was anti-feminist about them. The organizations working towards the abolition of prostitution took her presentation as an opportunity to take legal action against her (Ruby Rebelde, n.d.). This lawsuit has all the earmarks of a so-called strategic lawsuit against public participation (SLAPP). The EU is currently negotiating a directive that would prevent and protect human rights defenders and activists against SLAPPs (European Commission, 2022).

Community-led organizations are key to tackling exploitation, but far too often lack the resources and recognition they deserve and need. International organizations—including the Global Commission on HIV and Law, the Global Network of Sex Work Projects (NSWP), the ILO, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Programme (UNDP), the UN Population Fund (UNFPA), the World Bank, and the World Health Organization (WHO)—have called for the decriminalization of sex work and elimination of unjust noncriminal laws and regulations against sex workers (Global Commission on HIV and Law,

2012; ILO, 2010; UNAIDS, 2012; WHO, UNFPA, UNAIDS, & NSWP, 2012; WHO, UNFPA, UNAIDS, NSWP, World Bank, & UNDP, 2013; WHO, 2016). They have also recognized that violence against sex workers must be prevented and addressed in partnership with sex workers and their organizations, and that sex workers and their organizations should be meaningfully included in policymaking. The recent position paper “Eliminating Discrimination against Sex Workers and Securing Their Human Rights” issued by the UN Working Group on Discrimination against Women and Girls (2023) echoes these demands.

Exclusion, silencing, and backlash against sex worker rights defenders in the European policy arena

Organizations that represent and defend the rights of sex workers face serious barriers to accessing formal channels of political participation and representation, which are exacerbated by intersecting characteristics of the group representing, particularly gender, migration and economic status. This finding is also echoed by the latest EU Agency for Fundamental Rights report on civic spaces (FRA, 2023).

While the debate on sex work remains polarized in the EU, the political debate is often determined by the party that has access to policymakers and to funding. One example is the negotiations in the European Parliament on the revision of the EU Anti-Trafficking Directive. Of the 13 rapporteurs and shadow rapporteurs from the FEMM and LIBE committees mandated to prepare the European Parliament’s position, three—including one as rapporteur—were Swedish MEPs (European Parliament, 2022). This would not be objectionable if these two shadow rapporteurs from Sweden did not represent the Renew and Greens political groups. The Greens and Renew were the political parties that sought to oppose the overenthusiastic approach to the Swedish model during the negotiation of the EU resolution on prostitution that was voted on in September 2023. It seems no coincidence that MEPs from these parties were Swedish so that the European Parliament position in the EU Anti-Trafficking Directive remained clearly in favor of the Swedish model, as sex workers lost their allies in the two political parties.

Another finding when looking at the transparency register (European Parliament, 2022) is that out of the 15 CSOs consulted in the preparation of the European Parliament’s position, seven organizations were from Sweden plus one other organization, CAP International, which is financially supported by the Swedish government. Other organizations are the strongly pro-Swedish model, the European Network of Migrant Women, two organizations working in the field of children’s rights that can be assumed neutral in relation to the

criminalization of prostitution. Out of the four remaining organizations, only two oppose the criminalizing Swedish model. Strong lobby pressure from the Organization for Security and Co-operation in Europe (OSCE) also played a role in the negotiations, and their position was then prioritized by the European Parliament. This position concerns the removal of the “knowledge” element from the criminalization of the use of trafficked persons for sexual exploitation, and the retention of the knowledge element in other forms of trafficking. The position of the European Parliament was contested by ESWA and other civil society organizations in a joint statement (ESWA, 2023b).

The OSCE position is largely related to the trends outlined in the text above. During the Trump administration, the US government, which has strongly declared anti-trafficking as a policy goal and introduced national laws that conflate sex trafficking with sex work, nominated and subsequently received a mandate for its nominee (former prosecutor Valiant Richey) for the position of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings. It is worth noting that a year before Richey’s appointment, the internationally renowned Dutch anti-trafficking rapporteur Corrine Dettmeijer was the only applicant for the post and, despite being reputable, internationally recognized, and highly qualified, she did not get the post. According to a speech she gave in 2018, Dettmeijer’s nomination was not approved due to objections that did not reflect on her as a candidate but rather on the Netherlands as a country and to misconceptions about Netherland’s laws and policy regarding prostitution. So, the post remained empty for about a year before Trump’s anti-prostitution crusader Valiant Richey took the seat.

Richey’s office priorities and agenda reflect his previous work on ending demand and the related fight against online human trafficking, with a strong focus on sex trafficking. Throughout his mandate he prioritized voices of prostitution abolitionists from both the secular carceral feminists as well as religious groups, who were overrepresented in consultations, conferences, and other events organized by OSCE. In 2021, ESWA (then ICRSE) was nominated by PICUM, of which ESWA is a member, to represent PICUM at the OSCE Alliance Expert Co-ordination Team (AECT)⁴ meeting. However, this representation was rejected by the organizer—the OSCE—because, in their words,

4 The Alliance against Trafficking in Persons is a broad international forum that includes international, nongovernmental, and intergovernmental organizations in joining forces to prevent and combat human trafficking. <https://www.osce.org/cthb/107221>.

[i]n practical terms, it would be hardly feasible to work towards the alignment of efforts and practical cooperation among the AECT members if a representative of an AECT partner questions the need for combating trafficking in human beings or believes it to be harmful to their statutory activities.

In other words, the answer from OSCE seems to imply that OSCE thinks that ESWA (then ICRSE) or sex worker rights defenders in general question the need to combat trafficking in human beings and/or that ESWA does not believe that trafficking should be eradicated. This reflects the dichotomy explored above; that people in prostitution are either too traumatized to speak for themselves, or if that is not the case, are complicit with pimps and traffickers.

Access to funding is yet another challenge for organizations working with marginalized and criminalized communities, in particular, with sex workers. The EU provides networks and think tanks that do represent communities facing different intersecting forms of discrimination and which demonstrate that their work can contribute to implementation of key EU policies, strategies, and action plans with so-called operating grants. In 2021 ESWA, for the first time, applied for such a grant; unfortunately, a few months later, the application was rejected. The basis on which the application was rejected revealed truly disturbing arguments for why sex worker rights defenders should not be supported by this EU financial stream. According to the evaluation report, ESWA's profile "was not fully in line with the priority of the call for proposals with respect to promoting equality, preventing and combating discrimination." This evaluation shows that the evaluators were not aligned with the idea that sex workers should stand up for their rights on their own, or that, arguably, sex workers do not experience discrimination. Secondly, according to the evaluation, the "legislative competence on how prostitution and sex work is regulated remains within the discretion of the EU Member States." This statement justifies the view that national prostitution and sex work policies can remain discriminatory and may breach the rights enshrined in the EU Charter of Fundamental Rights (which was referred to in the call document and to which the submitted projects should relate). The other statement justifies exclusion of sex workers from policymaking as participation in some of the EU Member States is seen as a risk. The evaluation report contains many flawed statements and is a clear manifestation of structural discrimination in access to EU funding. Nondiscrimination, stigma, and access to justice can only be addressed through meaningful engagement with affected communities according

to WHO, UNAIDS, UNDP, and UNFPA. However, this information was not taken into account by the evaluators.

Conclusions

Sex worker rights defenders remain largely unrecognized. This is especially true when it comes to combating exploitation in the sex industry and trafficking in human beings. During the negotiation of the Palermo Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings, there was a divergence of views on prostitution between states that considered prostitution per se to be trafficking in human beings and those that did not. The matter was resolved by agreeing to disagree. However, Europe is the cradle of the Swedish model, and states and their politicians have been trying—with more or less success—to promote the criminalization of sex buyers as a straightforward solution to the problem of human trafficking. In doing so, they try to eliminate their opponents through various strategies. For instance, the European Parliament Resolution on Prostitution (2023) claims that people who describe themselves as sex workers represent only a minority of people in prostitution. With this logic, one could also claim that trade unions that represent only a certain percentage of workers (e.g., 8% in France, with the EU average being around 23%) don't represent the majority of workers and their representation is not legitimate. The European Parliament Resolution on Prostitution also suggests that those who are calling prostitution sex work idealize the reality of prostitution or mask the violence, abuse, and exploitation. The opposite is true. ESWA recognizes sex work as an industry in which there is a lot of violence and exploitation and that sex workers face various layers of discrimination that limit them in their daily lives. In addition, sex work is accompanied by a stigma that is deeply rooted in our society. ESWA rejects the so-called simple and obvious solutions, such as the criminalization of client and, in turn, through its membership, monitors how such policies contribute to vulnerability, create stigma, and create barriers to services. Sex worker rights defenders do very important anti-trafficking work; many of them are survivors of trafficking or different forms of violence themselves, however, they don't identify as anti-trafficking advocates as such. Often, they build very fragile ties with the most marginalized sex workers in which their identities as sex workers can help them to reach places traditional anti-trafficking advocates would hardly reach. In many cases, sex workers themselves associate anti-trafficking efforts with “raids and rescue”

operations that sex workers describe as imperialist, neocolonial, racist, patriarchal, and classist, and which they argue often have violent, harmful, and criminalizing consequences for the sex workers and survivors they are supposed to “rescue” (Frontline Defenders, 2021).

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6. Overcoming Insult and Injury: China's Transgender Sex Workers and Intimate Partner Violence

Eileen Yuk-ha Tsang and Jeffrey S. Wilkinson

Abstract: Transgender sex workers (TSWs) worldwide face challenges and obstacles affecting their mental and physical well-being. TSWs are biologically male at birth and have either transitioned physically, or are in the process of transitioning, to female. In-depth interviews with 25 TSWs revealed the various forms of violence they routinely experience. Although around half of the violent experiences came from clients, police, and others, the more disconcerting estimate was that the other 50% came at the hands of their heterosexual or bisexual partners. The issue of intimate partner violence (IPV) is a significant concern among the TSWs. It is difficult for TSWs to complain to the police. To survive, TSWs therefore rely on informal networks with other “sisters” for advice and support.

Keywords: queer criminology, sisterhood, commercial sex work, violence

Introduction

Violence and the threat of violence is an ongoing and pressing problem in transgender communities. In China, transgender individuals may be biologically men but identify themselves as women, or biologically women who identify as men. A transgender individual assigned a sex at birth finds their true identity emerges over time regardless of genitalia or social expectations (Nichols, 2010). Individuals who identify outside of the gender binary are often referred to as “nonbinary” and can identify as neither male nor female, both male and female, or hold a different gender at different times (Richards et al., 2016).

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There are no official estimates regarding transgender individuals in China, but one rough estimate suggested 400,000 (Jiang et al., 2014). Transgender-specific data collection, HIV programming, and outreach are almost nonexistent in China. Globally, transgender people disproportionately experience human rights violations through violence, stigma, and discrimination (Lyons et al., 2017; Liu & Wilkinson, 2017).

In terms of public health, TSWs are a significant at-risk group. TSWs are 49 times more likely to acquire HIV than all adults of reproductive age, and the rate of HIV infection among TSWs is 27.3%, nine times higher than among female sex workers and three times higher than among gay sex workers (Asia Catalyst, 2015). TSWs also face a markedly higher incidence of violence than other demographic groups. Perhaps most troubling is the violence from partners rather than clients or strangers. A US study found transgender respondents reported lifetime physical abuse rates by a partner of 34.6%, nearly three times the 14.0% rate reported by gay or lesbian individuals (Landers & Gilsanz, 2009). Another study found that up to 50% of violence experienced by transgender people comes from their boyfriends, lovers, or spouses, and referred to as intimate sex partners (Courvant & Cook-Daniels, 2001).

The link between TSWs and intimate partner violence (IPV) is particularly troubling. The partners of transgender sex workers (TSWs) are predominantly heterosexual men who are unable to independently sustain their livelihood. Hence, they rely on the financial support provided by the TSWs. IPV is associated with self-harm, suicide, violence, and bullying (Asia Catalyst, 2015). Among sex workers in China, TSWs are perhaps the most vulnerable. Anecdotally, TSWs say finding an intimate partner who will not treat them like a freak or novelty is difficult. To complicate matters, transgender identity is nonexistent under Chinese judicial law; the high court does not even mention the existence of this gender category in China, placing TSWs and IPV on the fringes of social and legal protections (McClenen et al., 2002; Owen & Burke, 2004).

This chapter deals with TSWs working in China, and how they suffer from IPV. It also attempts to answer the question how they can best be protected and what the role of the police and of informal networks play. Ethnographic data from in-depth interviews were collected from 25 TSWs, providing detailed accounts of the various forms of IPV by in-depth interview, participant observation and nonparticipant observation with the TSWs. These individuals were interviewed about the amplified stigma of IPV, health risks like contracting sexually transmitted illnesses (STIs), and occupational hazards like being arrested and given detention. All 25

interviewees admitted experiencing at least one of a half-dozen forms of IPV, including being verbally assaulted, swindled (financially cheated), stalked and extorted, sexually assaulted, and physically assaulted or battered.

In this chapter, these IPV episodes are presented against sociocultural structures that frame the interactions between TSWs and their partners and the informal network used to help TSWs cope with IPV. Their experiences help reveal the precarious existence of TSWs and their limited options for responding to violence in their day-to-day lives. They are often socially, economically, politically, and legally marginalized in ways that create an environment of routine sexual violence, financial difficulty, and under- or unemployment.

Conceptual framework

The formal criminalization of homosexuality in a nation gives law enforcement actors authority and discretion in this area (Dorf & Perez, 1995). Some officers manipulate these laws (in combination with laws relating to prostitution) by extorting bribes and abusing the sex workers. For example, interviews with sex workers in Calcutta found that effeminate male sex workers often faced verbal abuse and physical violence from the police (Sleightholme & Sinha, 1997). Police routinely extorted bribes from male sex workers to avoid arrest or took them to the station and levied hefty fines instead of detention (Sleightholme & Sinha, 1997). In China, the transgender population was easily recognized because of their transvestitism (cross-dressing) and were subjected to various social controls. These controls include police abuses such as arrest, detention, and forced bribes.

TSWs in China are stigmatized and stereotyped as “street prostitutes, criminals, and immoral” and often victimized because of the intersectionality of criminalizing sex work, sexual orientation, and transgender identity. Kulick (1998) noted that transgender sex workers are regularly robbed, beaten, and harassed by police officers. These are gendered reprisals because they include pulling out their “feminine” hair and nails.

Sex workers around the world complain about police mistreatment. Sex workers in India and Papua New Guinea report police abuses, including baseless arrests and violence (Jenkins, 2000). Economic necessity, often due to low status and limited opportunities, leads many women into the sex industry, as evidenced in Thailand (Lim, 1998). The criminalization of prostitution can worsen these abuses.

Studies typically identify how men use violence as an extension of patriarchy against female victims (Choi et al., 2021) or look at transgender as a general population (Dennison-Hunt, 2007; Farley & Barkan, 1998; Dozier, 2005; Girschick, 2008; Hines, 2006; Rubin, 2004; Schilt, 2006; Shapiro, 2004). Much of the literature affirms that the primary agents of aggressive victimizing behaviors against heterosexual women are heterosexual men, who likewise enact hegemonic masculinity and depict transgender people as victims of patriarchy (Connell, 1995; Connell & Wood, 2005). Men perpetuate their privilege at the top of the gender hierarchy by reinforcing gender heteronormativity and depriving groups like lesbian women, gay men, bisexual or transgender people of political, social, and cultural power.

The Foucauldian perspective asserts that power emerges from the discourse between individuals (Foucault, 1972). For transgender individuals, the power lies behind the cis-gendered discourse that shapes structural responses to IPV (Guadalupe-Diaz & Jasinski, 2017; Guadalupe-Diaz, 2019). IPV is a reflection of structurally informed discourses that marginalize transgender people and create distinct realities across race, class, sexual orientation, and gender identity.

Queer Criminology and the importance of informal sectors

Queer criminology adds to the knowledge on TSWs by “exploring the manifestations of transphobia and homophobia in the realm of crime and criminal justice” (Friedrichs, 2009, p. 216; Guadalupe-Diaz & Jasinski, 2017; Guadalupe-Diaz, 2019; Buist & Lenning, 2015). Queer criminology treats transgender as a fluid, dynamic, and nonbinary category but does not believe criminal justice and social policies can help TSWs to overcome stigma like in Western countries. Self-help programs and support networks could therefore be more useful for TSWs. Guadalupe-Diaz (2019) found that self-help programs, for example, enabled transgender communities to recover from IPV-related trauma. Studies in Brazil (Kerrigan et al., 2008), Turkey (Guler, 2020), India (Blankenship et al., 2008), and Swaziland (Fonner et al., 2014) found that trust, solidarity, and social cohesion among female sex workers increased condom negotiation with sexual partners resulting in higher rates of condom use. In China, Zheng (2008) found that bar hostesses’ support networks were enabled by blood relationships, common background or birthplace, and mutual benefits for female sex workers.

Informal social support networks can moderate the depression associated with societal factors like police harassment (Nichols, 2010) and various forms of IPV from their sex partners (Hussen et al., 2018). The existing literature as summarized above serves as a background to the analysis presented below.

Central issues that will be addressed in the analysis of the interviews are: typical characteristics of the IPV experienced by TSWs, fear of the police and other authorities, and the role of support networks.

Fieldwork and data collection

Ethnographic field notes were collected in Tianjin, North China, between May 2016 and August 2019. The data was collected primarily during two excursions. The first excursion occurred between May 2016 and August 2018. The first author worked as an unpaid bartender in one of the high-end gay bars in Tianjin, and she told the bar owners about her research project. She conducted multiple interviews, and out of the 51 male sex workers there, 10 identified as TSWs. All 10 said they had experienced IPV. The second excursion of data collection occurred from September 2018 to August 2019 in Northeast China. Twelve nongovernmental organizations (NGOs) associated with lesbian, gay, bisexual, transgender (LGBT) communities were visited. A Hong Kong NGO facilitated initial connections, and snowball sampling helped recruit additional respondents. After the second excursion of data collection in China, the author interviewed 49 TSWs, and 15 respondents admitted experience with IPV. The two excursions resulted in 25 respondents who experienced IPV, ranging from 23 to 48 years of age.

Data comprised recorded interviews, in situ note-taking, and postevent field notes. Consent forms were collected and each participant informed they could withdraw without prejudice at any stage. The informants were assured of confidentiality and anonymity; only their current ages and assigned pseudonyms were used. Personal information such as official identification numbers or date of birth was not collected. Protecting informants' privacy was of paramount concern due to the sensitive nature of the data.

Criteria for selecting interview participants were that they: (1) self-identified as TSWs; (2) were at least 18 years old; and (3) had experienced at least one form of IPV from their former or current intimate sex partners and were willing to talk about it. All participants characterized their intimate relationships as romantic, sexual, and emotional. The duration of these relationships ranged between 30 days (1 month) and four years (48 months).

The interviews were conducted one-on-one, in person, in private locations. Interviews generally ran around one hour in length. Topics included how they became TSWs, some family history or life story as to how they knew they were transgender people, how they connected with their sex partners, episodes of IPV and how they reacted, their perceptions about being bullied,

and preventive measures they took to help them avoid IPV. Additional questions examined the circumstances for them to leave their village and travel to the city and whether they originally intended to become sex workers. Details about how they entered sex work included critical moments when they made key decisions. Respondents were also asked about the role of drugs, sexual activities, the risk of HIV, and circumstances surrounding sex change. Also, details about sex change in China (where to go, how to get there) and the discrimination and resistance they have experienced since undergoing surgery. Finally, all respondents were asked about their intimate relationships—how they met, how the relationship progressed, the roles and behaviors each assumed, and instances where they experienced abuse.

Interviews were recorded, transcribed, and analyzed with the guidance of grounded theory (Glaser & Strauss, 2017). The interviewer translated the transcripts into English, and the software NVivo 11.0 was used for coding and analysis. Preliminary coding began by reading and rereading five transcripts. A codebook was then developed to cover themes drawn from the interview guides and new themes that emerged during the coding process. The ethical approval of this research protocol was obtained by the author's Institutional Review Board (reference number: 3-9-202003-04).

Descriptive data

Physically, all 25 TSWs had already undergone artificial breast surgery. Twenty-one had the work performed in Thailand, and the other four in China. None had undergone vaginoplasty surgery. Some took medication to combat their male hormones. They all came from rural villages in Northeast China, and 19 said they had followed social norms and were once married to women. At the time of the interview, many still had not divorced their heterosexual wives. Instead, they had simply moved away to work in the city while the wife stayed in the country village. The remaining six were single. All the respondents admitted difficulty in finding intimate partners, and this explained why most of them had difficulty fighting back or decisively ending the relationships. A common refrain was, "I was too scared of being alone as I don't have any close friends. I just needed a person next to me when I was alone."

Intimate partner relationships rarely emerge from sex work; only two admitted their partners had been former clients. Twenty-one of the 25 TSWs regularly use drugs or alcohol and said sex does not include condoms. Only four said their partners occasionally used condoms. The reasons given for drug use included pleasure and escape. Drugs were credited with helping them deal with the stress of being a TSW in Chinese society.

Results

Exemplar experience: Meiha's story

The author met Meiha (48) in summer 2018. Her experience reflected how IPV and conflicts with police made life difficult as a TSW. She has been a TSW for over six years in a theatre where she performed Chinese opera with heavy makeup. She was tall, slim, and looked delicate, even fragile. She was an outstanding performer and often received generous tips upward of 1,000 yuan (US\$150). She is older than most TSWs, but she keeps herself physically fit and skin moisturized and young-looking. She knew she wanted to be a woman at age 15. When she was 22, Meiha fulfilled the filial obligation to marry a woman and have children. With only a primary school education, Meiha worked in the village at a factory for 20 years. After the daughter and son became adults, Meiha told his family he was gay. They reacted by calling him a monster and asking him to leave the village.

Meiha moved to the city and, in early 2014, successfully transitioned via breast implantation surgery. Meiha said her only path then was to become a freelance TSW. She installed the gay dating app Blued onto her phone and began meeting interested men. She soon met her partner, whom she described as strong and tall, and they moved in together in December 2014.

Meiha said her partner is the only one she ever kissed in public. They would walk hand in hand despite hearing derogatory comments from people around them. However, she soon discovered that her partner was also very controlling, and the relationship deteriorated. Meihua said:

My partner wanted more money to buy drugs and alcohol. However, when he had them, they made him frantic and unstable. Once, he demanded that I find more clients to make more money, and I refused. He erupted like a volcano. He yelled at me, scolded me, then began beating me. The more I fought back, the angrier he became. He damaged my apartment, smashed my lamps and furniture, and even threatened me with a knife. Usually when we fought I would tolerate him. But that night, I finally told him he should move out. He was angry, but he left. The next day I was going to change the lock, but he came to my apartment and said he was there to pack his belongings. I was not paying attention when he walked up to me in our kitchen. Suddenly I felt pain in my arm. He had stabbed me with a small knife! I screamed and pushed him, then ran away. I left the building and hid in an alley. I called a friend to take me to hospital.

Meiha's case highlights the dilemmas faced by many TSWs. All 25 TSWs interviewed admitted they struggled with social stigma and interactions with police, then went home and struggled with IPV. Notably, each TSW said their partner was a heterosexual man who had expressed interest in them because they were transgender. Thirteen of the 25 said their partners could not hold a job or find work. The TSWs candidly said their partner's reasons for not working included low pay, poor work conditions, lack of skills, or sometimes the catch-all term "laziness." The other six were said to be employed but working in low-wage occupations like bartender, sales clerk, factory worker, and taxi driver. All 25 TSWs said they were the primary breadwinners, providing daily living expenses, food, and housing for their partners. Only five of the TSWs said they fought back against the IPV. The others admitted they did not resist or retaliate because they wanted to keep the relationship rather than be alone.

Verbal assaults

All 25 TSWs described name-calling and verbal assaults involving body shaming. Their partners disparage their bodies openly, mocking, teasing, and even laughing at them. Not surprisingly, verbal assaults often escalate to physical attacks once drugs or alcohol are involved.

Yoyo is a 44-year-old transgender woman who completed gender reassignment breast surgery. Afterward, she met her boyfriend in 2017 through an online app, and they conversed for two days before she worked up the courage to meet him in a bar. Yoyo had married a woman several years ago, and they had two sons. The sons, now 18 and 20 years old, study at a university in China. Yoyo said his wife knows he prefers men but is ignorant about her being transgender. When Yoyo came to Tianjin in 2015, she initially engaged in cross-dressing. She bought wigs, dresses, and high heels and learned to use makeup. She met her first and only partner at the club where she performed, a bartender who worked there. They quickly moved in together. Her partner always complained that his working hours were too long for the meager wages so he quit. Although the passion disappeared after the first two months, they stayed together for four years. Yoyo admitted they stopped having sex long before they eventually broke up.

We felt bored with each other. He asked for sex occasionally after our honeymoon, but I steadfastly refused him because he insisted I get vagina surgery. Each time I refused, we would argue, and eventually, he would laugh at me.... Recently, we had a huge fight that ended everything. He was very depressed one night and started drinking. He was soon touching

me and then started undressing me. I told him to stop. He pulled out his phone, pointed at my sexual organs, and laughed as he took photos. I was so shocked and speechless that I could not move. Finally, I told him that he is a scoundrel and that we are over.... I hate him. That night, he said I was desperate for a man, but no man would want me! He said I should be grateful even though he is a bully. He is allowed to conquer and control me because he is a heterosexual man! I am only a transgender woman, a double loser, neither man nor woman. I am a monster!

Another TSW, Jackie (32), had been living with her partner for six months. They met online and it was love at first sight. They were soon cohabiting. However, Jackie found that she and her partner were incompatible after the third month of living together. They fought almost daily. In 2010, her partner was in a car accident and, despite therapy and rehabilitation, remained wheelchair-bound. Jackie said he was hot-tempered, but she loved him and promised to care for him. Jackie discovered that her partner was emotionally and psychologically controlling through overt verbal attacks and subtle judging comments. Jackie says,

We still fight almost every day because he does not like my job as a TSW. It makes him jealous, I guess. Sometimes, he yells at me, calling me a “cheap duck, a chimpanzee she-male” because I sell my body for sex. The yelling and insults happen all the time. Still, I do not want to leave him because it is not easy to find a partner in the transgender community. He often says I am indecent, a slut, and he does not want me to be a sex worker. However, he cannot provide a solution for our financial situation. He calls me a sissy and an ass worker. I would love to find a man who wants me and accepts me for who I am.

Pan (38) experienced the same problem as well. She says,

My partner said I am unattractive, provincial, and look like a giant chimpanzee. His words hurt and made me seriously question myself: “Do I really look like a giant chimpanzee she-male?” However, he needs money from me, and I have to support him. He always says I am such a dirty woman, while he is clean, neat, and tidy. I think I lack the confidence to make a firm decision to leave him. I have been tolerating him lately, but I suffer from anxiety and insomnia. I lie awake in bed and think about the housework that I might have forgotten to finish, as this would irritate him.

Being swindled

Shenshen (42) has been working as a TSW for three years. She was so passionate about the topic that she brought her photo album to the interview. As she displayed the images of her boyfriend, she admitted that, at first, she enjoyed a sweet and intimate life with him. But three months later, the honeymoon was over. Shenshen said this memory is her only fantasy about romance. The reality was that the man only wanted her money. Shenshen (42) says

We had fights, and he would beat me. Afterward, he would beg me to forgive him. I was so eager to find an intimate partner to become a life partner so that I could have someone to live with. Therefore, I won't feel lonely and scared. However, I have to say, those heterosexual guys who want to be our partners usually do not have a good soul. He never had money for rent, bills, not even for drugs. I supplied everything! He asked me for a six-month allowance of 10,000 yuan [US\$1,400]. My hope was that if he could appreciate me, perhaps we could get back to being a normal couple. But I was wrong. He took the money and forgot about me. Now, I just want him out of my life.

Wen (45) shared another story of deceit:

My partner will try every excuse to ask for money. He said his parents needed money for surgery, he needed money for his new business, his brother needed money to go to college, or his relatives needed money to repair their house. I know they are all lies, but if I had any spare money, I would have given it to him. But I think it is unhealthy and unfair, so I finally yelled and asked him to leave. It was a painful decision. Living with him was one rip-off after another. I am still struggling with him.

Qiang (33) finally saw the truth when she recorded her boyfriend's drunk and abusive taunts one night and played them for the investigator:

Don't you dare think you are a virgin or a princess! Of course, I live with you for the money. You think someone will love you? A monster? Hello! Wake up, monster! I found out you are broke and mean. So, I am leaving to find another big fish. Of course, I want to dump you! You think it is easy to live with you? Never! I have to tolerate a lot of pain to be with you. Don't ever think that living with a monster, a she-male, is fun, huh?! I just want expense money, food, and rent from you. You should be grateful I haven't stabbed you.

Stalking and extortion

While the interviewees confirmed they had broken up with the partners described throughout this chapter, many of those relationships were still unresolved. Stalking and extortion were identified as some of the things they had to deal with. Fafa (29) said her partner continued to harass her for an entire year after they broke up,

I would get weekly deliveries to my apartment of packages containing urine, shit, or semen. I moved four times to escape him. He also threatened to send naked pictures of me to my mother and post them on WeChat, TikTok, and Weibo. Once, I gave him 10,000 yuan [US\$1,538] to leave me alone, and he agreed. But three months later, he demanded more money for drugs, and I gave him another 10,000 yuan. Then he returned a third time, demanding 50,000 yuan [US\$7,692]. This much, I could not afford.... So, he sent naked photos of me to my mother, my siblings, and even to people in my village.... Right now, everyone knows I am a transgender sex worker ... [sighs]. I guess I am famous now.

Hui (38) also experienced public humiliation from a vindictive ex-lover,

I broke up with my partner one month ago. For revenge, he sent naked photos of me to my sister and mother, complete with my female top and male bottom. He said: "Even if you were discarded in a landfill, no one would want to pick you up. You are a leech on society, and your existence is just a waste of people's oxygen and time." He also sent pictures by mail to the village mayor. So, everyone knows I am a transgender who works in the bushes selling sex. They are so ashamed of me. They cut all ties with me, and I am now dead to the family. I heard my father had a stroke, and my mother was denounced by the villagers, who blamed her for giving birth to a monster. My family is banned from the ancestral halls as I am dirty, sinful, and accursed.

Sexual assaults

Sexual assaults are the most discussed form of IPV among the TSWs. The 25 TSWs spoke at length about sexual assaults from their partners. For example, 24-year-old Yee said she lived with her partner for a year before they broke up. She said that initially, her partner complimented her about her breasts and that he was willing to accept that they both had male organs. For a while, they were compatible, and she accommodated her partner's sex drive. But after the first month, he began collecting sex toys and fantasy costumes.

The sex became progressively more extreme and less pleasurable. Yee did not know exactly when it turned abusive,

His favorite thing became using a dildo on me that pulses and throbs to music. Even now, he inserts it, and then I have to do a striptease dance for him. He says it helps arouse him, and he masturbates as I dance. In bed, he treats me like I am a toy for his pleasure. Sometimes he has me blow into his anus with a straw, and sometimes he wants me to urinate as I give him a blowjob. Once, I vomited from the filth and had to go to the hospital. I told him many times I don't like these things, but he doesn't listen to me.... One night, I refused his requests, and he shouted at me: "Who do you think you are? You are only a she-male, a monster! You are acting like a princess—What a joke!" He then beat me with the dildo and used it on me again.

Although they broke up, the IPV continued because he still visited her apartment and forced himself sexually upon her. Yee did not recognize that she was being serially raped. She shrugged dismissively, saying, "He is always hungry for sex," and shifted the topic to how he pushes her to get vaginoplasty, then to the neutral topic of the procedure itself. Yee went on at great length about the procedure and the cost. She said if she could raise the money, she would prefer to have it done in Thailand. Although the procedure is cheaper in China, she worried whether it would be done correctly.

Man (39) also said her partner sexually assaulted her. She says,

He played with my sexual organs like he was studying them, poking, prodding, squeezing my breasts and my penis. He acted like a stranger, a doctor taking measurements. There was no emotion or feeling and I felt hurt and humiliated. Afterward, he said he wanted to invite girls to our apartment to have group sex and even include a dog, if possible! In the end he backed down, but I don't know.... Some men and women want to cosplay as a cross-dressing queen or king.... My partner will also mix *maotai* [茅台 80–100 proof clear Chinese rice liquor] with the drugs, but it often makes him abusive. He gets loud and starts saying whatever he wants, like calling me a filthy dirty whore.

Physical violence

Fan (24) met her boyfriend through a gay dating app and lived with him for over two years. After several months together, he quit his factory job and told Fan he expected her to support him. Fan says,

After taking drugs, my partner can be physically brutal. We fight when he is like this, yelling at each other. He is so critical of what I do and who I am. Occasionally it gets so bad that he hits me. I did leave him,... but we are still in the midst of resolving this mess.... His stuff is still in my apartment. I need to see a doctor regularly for my depression.

The author met Juan (32) in a high-end bar. Her elegant tight dress, slim figure, and long black hair made her the picture of femininity. A noted dancer, Juan has regularly appeared on nationally televised variety shows and officials routinely invite her to perform in rural and poor areas. Her typical outfit is to wear elaborate makeup and a full-length traditional costume with no skin showing from the neck down.

Juan (32) said China remains socially conservative, and it is still frowned upon for men to hold hands—let alone kiss—in public. She and her partner, a driver for DiDi, a Chinese vehicle-for-hire company, had a seven-day honeymoon when they first got together, holding hands and kissing in secret whenever they could. But practical aspects replaced romance, and conflicts emerged.

One day, we argued over finances, like who pays for rent and who pays for food. I had been paying the rent and all the other monthly bills. He said his slim salary could not even buy him lunch and keep gas in his car. He thinks my salary is so easy to make and so much higher. Our argument became a fight and he ended up cutting me with a knife. I have not forgiven him and our hostility is still unresolved.

Faho (35) had a similar story of violent abuse, saying,

My partner hid a fruit knife in his sleeves. When I wasn't paying attention, he suddenly stabbed me and punched me, breaking my ribs. I had to stay in a hospital for six months. The attack that day resulted from a series of fights we were having. Still, I forgave him.... The hospital asked me what happened. I said I hurt myself.

Social support via the “sisterhood”

The interviewees all agreed they could not look for help from the police or social policymakers. For example, Xing (31) said once, when she asked for police help, they said the problem was of her own making:

After we broke up, my ex-boyfriend continued stalking me on WeChat and TikTok. I called the police and complained to them. They came to my apartment, and said: “You know your identity, right? Did you ever have your new identification card with your new gender? If you cannot provide this evidence, please do not waste our time. You transgenders affect our city image! This is not police business, go find your own way to clean up this mess.” I was so depressed a suicidal thought came to my mind. I called my sister at 3:00 a.m. and talked to her about what happened. She was so kind and nice, listening to my complaints for about three hours. Otherwise, I might commit suicide.

Fan (24) agreed that the sisterhood is indispensable. Fan says,

My closest social circle is my sisters. We treat each other as real siblings and have a WeChat group to share our concerns and common issues. They are my angel and sweetheart as they are the only one listen to me. Their benevolent spirit has the potential to eradicate all forms of discrimination and stigmatization within society. Unfortunately, both governmental bodies and some nongovernmental organizations are unable to offer direct assistance in this regard.

Instead, advice and support come from a tight circle of friends they see as a sisterhood of TSWs. The sisters are coworkers, colleagues, friends, and sometimes even one-time lovers. From their shared experience as TSWs, they lean on each other for advice, support, and sometimes escapist fun. Juan (32) said she finds strength by talking to her sisters about her experiences. She says,

When I am alone and feel depressed about being bullied by my partner, I can text my “sister” and she will stop by for a chat. I feel like I finally have a shoulder to cry on. She doesn’t judge, and I can trust her. I can talk to her about my partner and she will listen before giving advice. Sometimes she says I should be patient or forgiving. Sometimes she says my partner is taking advantage of me and I should leave the jerk immediately.

Yoyo (44) had an experience similar to Meiha (48). She says,

I got caught for selling sex to a client in a hotel and was told my family would be notified. In the past, your family would only be notified that you were engaged in prostitution. But now they call it “homosexual

prostitution.” This is so hurtful and negative. The police really look down on us. I remember my sisters and I once vowed to help each other improve our lives. For example, when I sell sex in the public park, I will ask the sisters nearby to keep watch for me. If the police show up, they can quickly call a gangster to our location to interrupt the arrest ... or even go with me in solidarity to the police station.... My sisters are my shelter.

Yee (24) said the NGOs provide a safe place to meet people and talk when she feels unhappy. She says,

I will go to the NGOs to find a staff to chat with if I have a problem. I think the ones at the NGO who understand me the best are gay or trans. I hope they will one day provide a qualified counselor or social worker to help us. Since I came out to my family, I have had a horrible relationship with them. I do not have many close friends and they definitely won't accept me as a transgender person.

Perhaps the most crucial function of the sisterhood is to provide a reality check and to help them feel “normal.” The TSW community is relatively small and vulnerable; they do not make friends easily. Most people judge them harshly for being transgender, and giving their bodies in sex-for-money transactions makes things even worse. Since the partner relationships are fraught with verbal and physical violence, TSWs rely on each other to be able to let down their guard. They actively arrange time with other sisters to accompany them to run errands, shop, and enjoy little pleasures like going out for a dessert. The sisters may gossip and criticize each other, but in a life full of danger and deception, they learn to trust each other, knowing they are each on the same trans journey in life.

Institutional stigma

Because of IPV, the home environment for TSWs may be as unsafe as the work environment. The 25 TSWs interviewed offered evidence that their partners routinely perform hegemonic masculinity (Connell, 2005), attacking them with a steady barrage of homophobic, sexist, and derogatory comments. Even though the home environment is full of intimidation and fear, the TSWs stay silent because their identity is not recognized in China.

The Chinese government, along with its National Radio and Television Administration (NRTA), local TV stations and newspapers, as well as

enterprises like the Sina Online services and games platform, have long practiced stigmatization of Chinese LGBT groups to keep them silent and invisible. Among the interviewees, 14 out of 25 TSWs had experience in detention centers for publicly engaging in immoral acts. They were judged to have transgressed cultural norms by acting seductive, manipulative, provocative, and having ambiguous relationships with men. Therefore, police routinely target TSWs as they receive complaints from people who live near public parks.

The informal networks and sisterhood, especially talking online to their sisterhood and friends, remain hidden and safe from the judging, criminalizing, and stigmatizing gaze of the public and, at the same time, helps TSWs develop a sense of intimacy and trust among themselves. The sisters offer assistance, support, and care, which helps them to exist in this hostile environment. The complexities of shame, isolation, and the stigma of gender identity and mental illness also force TSWs to rely on the Internet to access resources in a safe, nonjudgmental environment. TSWs have also learned to mobilize their communities and work together when dealing with the police. Being in groups is the best way to bolster the confidence of the TSWs in advocating for themselves and minimizing the effects of stigma, violence, and arrests from the police.

The sisterhood provides psychological and emotional comfort. The links are relational more than transactional. The perspective of queer criminology argues that criminal justice and social policies can help to solve the problems faced by TSWs. Still, there are glimmers of hope. For example, on 13 April 2018, Chinese LGBT people held an online protest against Sina Weibo after it had banned online content “related to homosexuality” that day. The success of the Chinese LGBT group was unprecedented in the battle against the widespread discrimination against them, which forced the Chinese authorities to guarantee the decriminalization and destigmatization of homosexuality in Chinese society (Tsang, 2020). It shows the importance of an informal network and how TSWs also can develop online communities to build cohesion and trust.

Absence of legal protections

According to Chinese law, the archetypical definition of sexual violence is “forced penetration of a victim through violence or intimidation” (WHO, 2002). The law is written to protect heterosexual women from sexual harassment and violence by heterosexual men. Although sexual harassment was included in the Chinese constitution in 2005 to protect women’s rights, it provided no legal definition of, or punishment for, the act, only stipulating

the nature of sexual harassment as a civil affair, rather than a criminal violation (An, 2002).

For TSWs, the law does not extend to men who transform to women, or even identify as women. There is no specific law from the Chinese government that protects them from violence or fraud at the hands of a transgender male's intimate partner. The Chinese government policies and documents broadly define TSWs using vague terms "not encouraging, not discouraging and not promoting," which enables institutions to ignore TSWs entirely (Mountford, 2010, p. 3).

Conclusion

The 25 participants in this study admitted they struggle with all forms of IPV. Such violence seems strongly related to the use of drugs and alcohol by their heterosexual partners. TSWs were continuously pressed to earn more money, since these men seemed unable to sustain their own livelihoods. TSWs are regularly assaulted, extorted, and ridiculed simply because of who they are and how they are.

Queer criminology affirms that gender is nonbinary, putting it at odds with China's criminal justice and legal system. TSWs experiencing IPV report depression, anxiety, high blood pressure, and migraines. The participants in this study do not see any helpful government policy changes coming soon. Countries like the United States have recently enacted laws to protect transgender individuals from discrimination in the workplace. For China, the first step is to acknowledge that transgender people exist and deserve the same protections as everyone else.

The TSWs have tried to find informal networks like talking to their sisters, meeting friends on the Internet, and looking for help through NGOs. Some NGOs provide counseling and rest areas for TSWs if they suffer from IPV. Therefore, the informal networks of the TSWs constitute a challenge to the Chinese government.

Including TSWs as homosexual "queered" objects can help guide policymakers, state actors, NGOs, and other social service providers. TSWs should not have to rely only on their informal network for help but should also be able to rely on the police and the courts when they are abused and assaulted. Government, police, and courts should focus less on punishment and control and more on providing professional counseling services, job training, and placements. TSWs need to be seen, heard, and protected like everyone else.

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7. “You Feel That You Could Have Done So Much More”: The Practices and Potentials of Sex Worker–Founded/–Led Groups in Tackling Sex Sector Exploitation

Emily Kenway

Abstract: What role do sex worker–founded and –led groups have in tackling trafficking and exploitation in the sex industry? In the context of anti-trafficking activities deemed oppressive and harmful by sex worker groups, this chapter explores the ways in which these groups themselves are intervening to prevent harm in their sector. It takes forward the examples of such interventions from other literature and contributes new primary data, using interviews with sex worker–founded/–led groups in Europe to show that they are a vital force in tackling exploitation, actively preventing trafficking from occurring as well as identifying and supporting people postvictimization. Their positionality as sex worker–founded and/or –led is found to be a key component in their efficacy.

Keywords: trafficking, modern slavery, prevention, sex work, prostitution, sex worker collectives

Introduction

In Durban, South Africa, one evening, Thulisile Khoza could see that something wasn't right. “We could see these young girls around the streets,” she

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explained in Yingwana et al. (2019), “and then when we were trying to talk to them, they were shaky, and you could see they are too scared to talk.” Khoza was working as a peer educator for Sisonke, “a movement formed by sex workers for sex workers.” She, along with other colleagues, were doing outreach in the street sex work community when they spotted the girls. They formulated a plan: “We said, okay, fine, we’re only going to give you the condoms. Then we’ll take our pamphlets and write the numbers on the pamphlet, then we’ll take the pamphlet and throw it in the dustbin.” One of the girls managed to fish a pamphlet out of the bin “whilst her pimps were not looking” and later she called the helpline run by Sisonke. Thanks to this intervention, 38 girls and women who had been trafficked into the South African sex industry were protected.

Sisonke is not the only sex worker–founded or –led organization documented as intervening in trafficking situations in the sex industry. Other examples have been identified in previous reports and research. These include the “peer-based model” implemented by Butterfly, a Canadian organization led by and for migrant sex workers (Lam & Lepp, 2019); the activities of the New Zealand Prostitutes Collective (GAATW, 2018, p. 105), and the English Collective of Prostitutes (ECP) (Kenway, 2021a, p. 86). In May 2021, the European Sex Workers’ Rights Alliance¹ launched its report, *From Vulnerability to Resilience: Sex Workers Organising to End Exploitation*, which detailed several interventions of relevance, including the creation of safe and trusted spaces, reporting mechanisms for victims, and activities that address vulnerabilities, such as supporting people to access state benefits as a vital source of income. In a complementary briefing to that report, the author of this chapter considered these activities under an anti-trafficking framework and found that many met the international aims to prevent trafficking and support people after victimization (Kenway, 2021b).

These activities occur in a context in which sex worker groups experience anti-trafficking activities as oppressive and harmful to their livelihoods and safety when performed by actors outside the sector (notably police), as documented in ample literature (see, for example, Doezema, 2010; Kempadoo, 2011; O’Connell Davidson, 2015; Mac & Smith, 2018; Parmanand, 2019; Yingwana et al., 2019; Kenway, 2021a). Their own work tackling exploitation and trafficking appears to be un- or under-recognized—for

1 Then called the International Committee on the Rights of Sex Work in Europe (ICRSE).

example, in the Sisonke case described earlier, despite the group's vital role in identifying and protecting the victims, "the media did not mention the Sisonke peer educators who had been instrumental in unearthing the case" (Yingwana et al., 2019). The purpose of this book is to consider methods of tackling exploitation and trafficking within the sex industry effectively. If we add to that aim a moral principle that we must not perpetuate and perpetrate harms against sex workers through the process of such anti-trafficking activities, it becomes crucial to explore how sex worker groups themselves take anti-exploitative action while retaining respect for their rights, safety, and livelihoods, and to refuse any continued obfuscation of their activities in this regard. This chapter takes forward this aim, presenting new primary data that builds an exploratory picture of how "sex worker–founded and/or –led" (SWF/L hereafter) groups intervene in exploitation, and why their positionality is relevant to the efficacy and safety of these interventions.

To explore this terrain, interviews were conducted with a purposive sample of representatives from member groups of the European Sex Workers' Rights Alliance (ESWA, formerly the ICRSE). These interviews were semi-structured and based the concepts of "prevention" and "protection" commonly found in anti-trafficking policy documents and frameworks (cf. UN, 2000; EU, 2011). Prevention was taken to include activities which address vulnerabilities (Gallagher, 2010; UNODC, 2012; Kenway, 2021a; Kenway, 2021b). Protection was taken to include activities which involve identifying people who have been victimized, extricating them or supporting their self-extrication, and postexploitation support (*ibid.*). Interviewees were also read a list of operational indicators of trafficking for sexual exploitation and asked whether they had encountered them through their work (ILO, 2009). Thematic analysis was conducted on the interview data according to the process described by Braun and Clark (2006) and using NVivo software.

A total of eight interviews were conducted, two of which were with representatives from the same organization, so seven organizations are represented. Interviewees were a mixture of paid staff and volunteers at the groups. Most (but not all) had backgrounds in sex work themselves and/or continue to provide sexual services alongside this work. The organizations and core characteristics of relevance are presented here, and information about the activities they undertake is provided in the findings sections:

Table 7.1. Relevant Characteristics of the Sample of SWF/L Groups

Name²	Country	Year founded	Founded by sex workers?³	Workforce⁴ (voluntary and/or paid) includes people who have current or past sex work experience?
Comitato per i Diritti Civili delle Prostitute (CDCP)	Italy	1983	Yes	Yes
English Collective of Prostitutes (ECP)	England	1975	Yes	Yes
Hydra	Germany	1980	Yes	Yes
Red Umbrella Athens	Greece	2015	Yes	Yes
Red Umbrella Sweden	Sweden	2017	Yes	Yes
Sex Workers against Violence and Exploitation (SAVE)	Netherlands	2020	Yes	Yes
UTSOPI	Belgium	2015	Yes	Yes

What is the role of SWF/L groups in tackling exploitation?

The findings and their discussion are divided into two sections. The first (“Thematic Findings 1: The perceived benefits of being SWF/L for tackling exploitation”), presents three themes that seem to be specific to the positionality of these groups as SWF/L. These themes act as preconditions to the efficacy of the second set of themes (“Thematic Findings 2: Practical ways in which SWF/L organizations tackle exploitation”) which describe the practical ways in which SWF/L organizations prevent, and intervene in, sex industry exploitation. But before exploring these themes, an overarching observation is presented. This informs the logic of both sets of findings and how they relate to tackling exploitation in the sex industry.

2 All groups gave their permission for their group names to be disclosed. The identities of the individual interviewees have been anonymized.

3 Two of the groups listed were founded by a combination of sex workers and nonsex workers: Hydra and Red Umbrella Athens.

4 The category “workforce” is necessarily loose for two reasons. First, most groups consist of both voluntary and paid workers, except Red Umbrella Sweden, which is solely voluntary at the time of writing, and the English Collective of Prostitutes, which varies between having paid staff and being entirely unremunerated due to funding fluctuations. Second, specifying whether paid staff or volunteers are sex workers would risk identifying individuals in some cases and so an ethical decision has been made to keep the categorization broad.

Complexifying the forced/free binary

The data shows a need to avoid an idea of a simple forced/free binary in which exploitation in the sex industry occurs separate to independently performed sex work. This should not be misunderstood as saying that sex work cannot be separated into free or forced circumstances, but rather that these differing circumstances may share the same spaces and networks, and that people may move between these circumstances in either direction over time. The data shows this in two ways.

First, some groups noted that, in their context, there was no clear spatial separation between people who were being interpersonally coerced within the industry and people who were not. This was not uniformly the case—for example, Red Umbrella Sweden expressly stated the opposite, noting that they found it almost impossible to encounter short-term migrant sex workers whom they considered most likely to be trafficked, an issue which will be returned to later in the chapter. But the majority of interviewees viewed free sex workers and forced victims as circumstantially different but spatially intertwined (i.e., their working conditions differ but their work locations may overlap), as explained by the interviewee from the English Collective of Prostitutes:

The network of women who are trafficked and the network of women who are working independently are not separate. Yeah, they overlap. So in one flat, there will be one woman who is being coerced, but she, she could be working alongside other women and those women know, and the maids and receptionist.

Likewise, the representative from Hydra explained that

just because they work in a legalized sphere doesn't mean that there is no trafficking or something, some exploitation. And it also doesn't mean that if someone's working in the nonlegalized sphere, that they are not working voluntarily on their own conditions. So there's existing both.

Secondly, and relatedly, all the groups described many people experiencing conditions that were somewhere in between these two poles, referring to this as a "grey area." Within this complexified spectrum of conditions, they also described people moving between positions over time. For example, Red Umbrella Sweden has members who were formerly trafficked and are now independent workers, and several groups had supported women to exit

exploitation and move to better conditions still within the sex industry. This reflects the idea of a “continuum of labor conditions” recognized in anti-trafficking scholarship in which conditions occur along a spectrum of best to worst, with various gradations in between (Skrivankova, 2010). People can occupy different positions on this spectrum at different times, rather than remaining in one alone, slipping into worse conditions if vulnerabilities are not addressed or shifting into preferable ones (Rijken, 2018).

Thus, the data shows that while people in the industry may be understood as forced or free in terms of the presence or absence of interpersonal coercion, many will exist in a grey area between these two poles; they will move between them over time; and wherever they are on this continuum, they may be occupying the same physical spaces and networks as people in other positions. Within this context, it is unsurprising that while SWF/L groups are usually founded and led by people experiencing low or no coercion themselves, every single group interviewed had contact with people who had been exploited and most were able to identify, extricate, and support people who needed intervention. Put simply, it appears that groups often construed as solely focused on the rights and needs of free sex workers or of their managers (see, for example, Sigel, 2016) are, in fact, well-positioned to intervene in exploitation within their sector. This idea is demonstrated in practice in the thematic findings that follow.

Thematic Findings 1: The perceived benefits of being SWF/L for tackling exploitation

The three themes presented in this section explore the interviewees' views of why being SWF/L as an organization is important for the efficacy of their work on tackling exploitation. In reality, these themes overlap, but they are presented separately for simplicity.

Theme 1.1: “In our own words”: Cultivating peer-based trust through similarity

The first theme was prominent in all the interviews and was frequently mentioned as a factor in the efficacy of their work: cultivating peer-based trust through similarity. This “similarity” was largely rooted in shared experience of doing sex work and the perception among interviewees that this helped to reduce feelings of shame, including for people who had been trafficked. The presence of “shame and mistrust” was identified in Contreras et al. (2017) as “factors that complicate a trafficking survivor’s readiness to benefit from services.” While that paper focused on how psychotherapists can navigate these issues to provide effective

support, in this data, interviewees identified their positionality as SWF/L groups as a beneficial factor. The spokesperson from UTSOPI, in Belgium, explained that she discloses that she is a sex worker when she’s doing outreach because

I want them to understand [I am one, too] because they’ve told me many times that women judge them, harsher than men, that’s their perception ... and so I’m telling them, I really don’t care, because I’ve done it. I understand that you need the money.

She caveated that this commonality can only go so far because “I have never worked in a window,” which these women do, so there are differences in their working lives. The interviewee from the ECP shared a similar idea:

Most of us got involved in the ECP because we first of all came for help as sex workers. So we never forget that, you know, it’s not like people [coming for help] are different from us. And we do we always relate, as, you know, kind of comrades or colleagues, rather than helper and service provider. That’s very helpful.

The specific language used was also described as being relevant. The interviewee from Comitato per i Diritti Civili delle Prostitute (CDCP) explained that, in her opinion, having sex work experience was “fundamental” because it means you “know how to approach sex work, how to talk about it.” She thought the police respected the CDCP for this knowledge, including “how to talk to women about sex work.” Similarly, the interviewee from Red Umbrella Athens thought that people with sex work experience were more likely to speak sex worker slang, and that being *au fait* with this lexicon put people at ease and built trust.

A case shared by the representative from SAVE in the Netherlands builds on this idea, layering the need for a shared understanding of sex work with the need for other experiential similarities. She told the story of her involvement with Emma,⁵ which shows the potential effectiveness of cultivating peer-based trust over time. Emma was trafficked from Brazil to Spain aged 18, at that time with the identity of a gay boy (she is now a trans woman). When the representative from SAVE first encountered Emma, they got to know each other initially based on their shared identities—they are both migrants from Latin America and are trans women in sex work. Through

5 Permission has been given to use her name.

this peer relationship, Emma began to disclose her experience and the SAVE representative recognized that it constituted trafficking:

She started telling me her story.... She kept telling me the stories when she was like, really young, 19, 20, 21, that older men will come in and then all the young boys need to be standing in line and then the client will choose which one, the boys had no choice. She was controlled, she was using drugs, and sometimes she would not have slept the night before and whoever was in charge would tell her you didn't come here to sleep, you have to work. They were only allowed out one day a week.

The SAVE representative encouraged Emma to apply for asylum on the grounds of being trafficked, but “she was like, no way, I'm not going to do that, because they're going to get me and they're going to deport me, I've seen it numerous times, she said, and I was googling the law and showing her.”

It took weeks of sharing knowledge about the law with Emma for her to “have the confidence to do it.” The SAVE representative was trusted by Emma and went with her to the meeting in which she disclosed her experience to the authorities for the first time. Emma has since gained asylum. The SAVE representative thinks her position of three-fold similarity—sex worker, migrant, and trans woman—was a crucial element in this positive trajectory.

The ECP described a working style which relates to the experience of Emma and SAVE in which multiple factors of similarity enabled disclosures and remedy. The ECP works in collaboration with several other collectives, including Women against Rape, the All African Women's Group, and Queer Strike. These collectives occupy the same physical premises in London, creating a locus of similarity for different identities and experiences. The representative explained that this aspect was crucial to the efficacy of their process and their work. For example, women would attend meetings of the All African Women's Group and, through witnessing the respected presence of the ECP in the same building (and sometimes in the same meetings), they would feel able to disclose sex work experience. In some instances, this includes trafficking victimization. From the ECP representative's perspective, this interplay of different groups, representing different identities and interests, is crucial for creating trust: “We couldn't do it on our own.”

Hydra added an additional facet to this theme, noting that while having sex workers as part of the team was very important, from their perspective some people preferred instead to speak to professionals who have not had experience of sex work, and that it varied between people. The interviewee

felt it was Hydra’s reputation for “competency” which cultivated trust the most, rather than the presence of sex workers on the team.

Theme 1.2: “The police is not always a synonym of safe”: Providing spaces of safety

Interviewees described their work as creating spaces of safety for the people coming for advice, support, or a sense of community. This was especially in relation to alternatives of going to the police or to agencies that act as proxies for police, such as health clinics that record and report immigration status or sex worker status. In the case of Emma, described above, she needed to be reassured by the SAVE representative about the things she’d done while in exploitative circumstances, as she feared criminalization if she went to the authorities. It is well-recognized that traffickers and exploitative managers will use the threat of criminalization as a method by which to coerce and control victims (see, for example, Hales & Gelsthorpe, 2012, p. 3; Focus on Labor Exploitation, 2021, p. 37), and in this case it seems that the SAVE worker’s position as a sex worker of similar characteristics made Emma feel safe enough to be honest and assess the risks of disclosure.

The representative from Red Umbrella Athens explained that, along with their center’s services being free and quick to access, she thought that safety was a key factor in effective work with the sector: “They’re coming to us because it’s a safe place.” When asked what made it feel safe, she said it was partly that everyone respected each other, and partly that “there is no place here for traffickers, bosses, or police.” She further explained that in Greece, identity papers of migrants may be checked by health-care workers in publicly run clinics, which deters migrant sex workers from seeking treatment. Red Umbrella Athens’ health workers do not do this. This is crucial from an anti-trafficking perspective as disclosures of exploitation frequently occur during testing appointments at the group’s center, as traffickers will allow people under their control to go for health testing (presumably for economic reasons).

The representatives from CDCP and UTSOPI shared similar thoughts: “They [sex workers] know they can give us information that will not be used against them” (CDCP); “We are never going to do anything against her will, against their will.... We are here to help you. And it’s up to you. The police ... the police is not always a synonym of safe” (UTSOPI).

This notion of police representing a lack of safety is common throughout the literature on, and data from, SWF/L groups. The Canadian Alliance for Sex Work Law Reform has reported that 95% of Asian sex workers in Toronto and Vancouver “never seek help from law enforcement—even if

they are experiencing violence, abuse, harassment or exploitation” (2018). Bowen et al. (2021) showed how sex workers using the support of National Ugly Mugs, a UK-based charity that aims to end all forms of violence against sex workers, are decreasingly willing to engage with the police about their victimization. Interestingly, this fear of police involvement is not confined to sex workers themselves: Birks and Gardner (2019) found that members of the public are also concerned about reporting trafficking to police, for fear that it “could actually make matters worse for the individual.”

Theme 1.3: “We are really realistic”: Demonstrating respect through judgment-free support

As noted earlier, the interviewees consistently described instances of people leaving or escaping exploitative working conditions, including trafficking, but wishing to remain in the industry afterwards. The interviews did not go deeply into the motivations of this choice, but mentions were made of earning potential, migration status issues, and discrimination against trans people in mainstream job markets (cf. Lam & Lepp, 2019, pp. 96–97, which reports similar motivations). This points to the question of choice—if a person is entering into sex work because they are excluded from alternative earning options by migration status, discrimination, or other factors outside their control, is it a choice? The notion of “constrained choice” is useful here: according to Bird and Rieker,

constrained choice takes into account that an individual’s decisions and even his or her allocation of resources reflect individual choices and preferences. We also recognize that the personal decisions involved are not isolated from the social forces that continually shape our lives. (2008, p. 5)

Thus, the choice to remain in the sex industry is made within a set of constraints, much like all labor market choices. The third theme relates to this complex reality: groups described avoiding making moral judgments or requirements on those seeking their services and help, contrary to their perceptions of non-SWF/L charities or government agencies which were viewed as encouraging, or requiring, total exit from sex work regardless of the constraints at play. From their perspective, this difference enabled people to come to them for help without fearing that their method of earning money would be taken from them.

The interviewee from UTSOPI relayed an interesting example of this aspect. She explained that the African migrant women she encounters during her outreach work are frequently in debt bondage: “The Nigerian girls are

very open about the fact they have to pay their debts, everyone knows it.” This is a form of human trafficking in which someone must work off inflated debts, often for migration passage and access to basic needs on arrival. She estimated that their debts would likely be between €20,000 and €50,000 and would take around a decade to pay off through interpersonally controlled sex work before the women could work independently. In her view, this was entirely normalized in the community. UTSOPI has been working to establish relationships with workers from this part of the Belgian sex industry via outreach activities. The interviewee explained that she opens outreach conversations by first stating that she is a sex worker herself and then asking questions like, “Do you have enough clients? How is business going? Anybody annoying you?” This communication begins with an example of the first theme explored earlier—similarity of experience—then contains an additional factor in the choice of questions: an implicit acknowledgement that the women need to earn money. Thus, rather than focusing on the exploitative nature of their circumstances, the SWF/L approach recognizes that, for these women, this situation is their work. She continued:

We had a very interesting meeting few months ago with the Nigerian girls because the prices were getting lower and lower. So for what we call a “pass”—so that is one session with a client of usually about, I don’t know, 15 minutes, and two [sexual] positions. And in my district, it’s 40 euro. But in the Nigerian girls’ district, it’s like 30, 20, 15. It’s like catastrophe. So we had that meeting to talk about several things but that’s mainly what the girls wanted to talk about.

The women had wanted a space in which to discuss their money worries in relation to the market price going down, in the context of needing to pay off their debts, and UTSOPI was able to facilitate that space so that they could improve their conditions without requiring exit or police involvement. This has twofold potential from an anti-exploitation perspective: first, it can improve the women’s circumstances now and, second, it can build trust and safety for future interventions and support. Indeed, the representative from UTSOPI noted that the work they have put into engaging this community is beginning to pay off—the month before the interview, a woman from this segment of the sector had attended one of the in-person meetings at the UTSOPI premises for the very first time, “and we think that little by little, hopefully, they’ll come.” She attributes this breakthrough to the time spent building trust and showing respect for the women’s livelihoods, despite their controlled circumstances, through these outreach activities.

The ECP explained a similar approach:

I think one of the primary things is that they know that whatever help we're going to provide, it is not conditional on a condemnation of sex work, and on expecting them to exit. We know the situation they're in, you know. We are really realistic.

This openness to individuals' choices about what to do postexploitation was described as a vital part in cultivating trust and safety, Themes 1.1 and 1.2, because women could seek the ECP's support to escape exploitation without fear of judgment about whatever course of action they wished to take next.

One group asked not to be identified with regard to this aspect for legal and funding reasons. They explained that they encounter people under exploitation in the sex industry who need to escape, but who also wish to remain in the industry—i.e., to move along the continuum of labor conditions to a better position. They help these people, but are not formally allowed to do so as they are required by legal or funding obligations to encourage exit and/or avoid any activities that might seem to promote sex work.

Thematic Findings 2: Practical ways in which SWF/L organizations tackle exploitation

Theme 2.1: Building resilience and addressing vulnerabilities

The organizations involved in this research are all providing forms of support which address vulnerabilities, preventing the likelihood of exploitative circumstances. Three types of this support are present in the data: support with accessing state-provided housing and benefits, immigration status advice and case work, and money or proxies of money.

Many of the organizations support people to access state support in the form of housing and/or benefits, including the CDCP, the ECP, Hydra, and Red Umbrella Athens. The ECP explained one such case in which this support prevented exploitative circumstances continuing. A single mother of two had come to the ECP when her benefits were cut off. Because of this reduction in income, she had ended up working in a “taxi cab flat,” which is a flat in central London in which there's a business arrangement between the cab firms and owners of the brothels; the latter bring the clients and get a cut.

And their working conditions are dreadful. It’s a massively high turnover of clients. And the women get so little money, it’s heart-breaking. The taxi, he gets a cut, and the owner gets a massive, massive cut. And so she was in this. She had been working there probably for about six weeks. By the time she came to us, she was completely wrecked. And we got her benefits reinstated. And she had a short break after that, because she got a back payment which she could live on for a period of time. And then she went back to work, but in a local place where the cut was 50–50 and she could choose her working hours. She had a much greater power to refuse clients as well.

The intervention by the ECP enabled this person to move back along the continuum to a safer working environment and to have more power over her working conditions. Of course, we can only hypothesize about what might have happened if she had not had the support of the ECP, but it is evident that this intervention came at a crucial moment in that woman’s working life. The ECP representative stated unequivocally that, “with the benefits, over and over, I have seen that women are able to work less, and in less oppressive and exploitative situations once their benefits were sorted.”

Many of the organizations also provide advice about immigration status or full case work, supporting people through the process of obtaining regularization and asylum. Having insecure immigration status is a recognized vulnerability factor that can make people more vulnerable to exploitation and trafficking in any sector, including the sex industry (see, for example, Hales & Gelsthorpe, 2012, p. 3; FRA, 2019; Focus on Labor Exploitation, 2021, p. 37). Therefore, work that supports regularization is necessarily anti-exploitation work. Here, the importance of the organizations being SWF/L again manifested in a specific way. In many of the cases relayed, people were unsure which parts of their stories were safe to tell to the authorities, particularly if they thought sex work was criminalized or were unsure about the legalities around it. Like we saw earlier in the example of Emma, supported by SAVE, people need to feel safe sharing their stories of sex work, including of victimization in the industry, before they can embark on legal proceedings.

Finally, several organizations provide direct money or proxies of money like shopping vouchers. Direct cash/vouchers are important for people when they are already in a dire situation and do not have time to wait for money from the state—as the interviewee from Hydra explained: “where we give out emergency funding for people who really need to get

money very, very quickly.” Red Umbrella Sweden was the only group in the sample that described feeling prevented by their legal context from doing this kind of direct support as they thought it would be construed by police as promoting prostitution: “We’re not allowed to talk to other sex workers, we’re not allowed to help each other because that’s against the law, if two sex workers work together or help each other, one of them can be charged for being the pimp.” Discussion of the various legal regimes in this sample is beyond the scope of this chapter but it is important to note that this was affecting Red Umbrella Sweden’s ability to provide important material support in any formalized way. This is reflected in other literature, such as Parmanand (2019), which argues that the Philippine Sex Workers Collective is prevented from registering legally and a slew of other activities, hampering their ability to be effective. At best, Red Umbrella Sweden representative explained, “We try to help each other, you know like, somebody’s writing, ‘Hey, I have no money for rent this month,’ ... and we’re like, ‘We can all send you a bit of money.’” In this regard, their practices reflect other SWF/L organizations with this sample in which mutual aid practices are used (see, for example, Shimei, 2022; SWARM, n.d.).

Theme 2.2: Sharing know-how and warnings

Interviewees described their organizations creating spaces and facilitating networks in which knowledge was shared in two ways, both of which pertain to the prevention of trafficking and the protection of victims.

First, information was being shared about risks and conditions in the sector which supported people to make safer choices within it. In the context of understanding working conditions in the industry as operating along a continuum, this can be seen as preventative of exploitation. Red Umbrella Sweden provide these warnings in their online chat group(s). In particular, the representative described sex workers in Sweden receiving messages online from men offering forms of resources, such as flats from which to work, or driving services. They warn each other about the risks of these approaches, potentially preventing highly exploitative circumstances occurring. Multiple other organizations described workers sharing intelligence about brothels and managers, and providing safety tips, but some did not wish to have this disclosed publicly as they felt there was a risk of being portrayed as supporting sex work in general, rather than helping people within the industry to avoid harm. This was also found to be a key activity in Lam and Lepp (2019) in the context of the work of the Canadian organization Butterfly, excerpted below:

Core to Butterfly's philosophy and approach is to build a grassroots and peer-based organizational network through which Asian and migrant sex workers can reduce their social isolation, build community, and foster resilience. Rather than relying on the so-called protection of law enforcement or solely on outside service organizations, a peer-based model provides an important alternative, which allows Asian and migrant sex workers to build capacity, exchange knowledge, and create a network of mutual support. For example, they are able to share approaches to deal with bad bosses or clients, develop their own safety plans to avoid dangerous and abusive situations, devise strategies to use their collective bargaining power to negotiate better working conditions, reduce exploitation and violence, change workplaces or find a place to work, and secure clients and advertize within a criminalized environment.

Second, information was shared from the sex working community, and related parties, to personnel at the groups about women/girls they suspected were being exploited. The CDCP representative noted that older sex workers in the community will call them and flag concerns if they have seen a girl they think is a minor. The ECP interviewee described a long-standing network of maids in London sex work establishments who would refer women to them and sometimes actually help them to escape. She explained that this pathway for escape was built on decades of fighting for rights and safety within the sector: "We're kind of seen as an honest broker. You know, the maids wouldn't go to the police. They wouldn't go to other any of the other anti-trafficking organizations, but they know us because we fought with them over many, many things."

UTSOPI described a similar situation in which an allied person adjacent to the industry helped a woman escape. A photographer who works with sex workers, including current UTSOPI personnel, was booked for a shoot and turned up to find a young woman, aged around 18, in a clearly forced situation. He helped her escape and took her to UTSOPI, where she received support and entered a program for victims of trafficking.

At Red Umbrella Athens, reports of suspected exploitation were also made by sex workers to personnel, and the interviewee was clear that these tended to occur in the context of the social spaces the organization provides and the chitchat facilitated by having coffee, tea, biscuits, and comfy seating available: "Most of those examples [of disclosures about suspected exploitation] were at a table with coffee, not in a room with a psychologist."

In sum, these groups play an important role in identifying people in exploitative or trafficked situations.

Theme 2.3: Enabling escape and providing support

The previous theme has dealt with the ways in which knowledge and warnings shared with SWF/L organizations leads to reduced exploitation and, in some cases, the identification of victims of trafficking. This theme—enabling escape and providing support—encapsulates the activities undertaken by these groups in which they directly identify potential victims of trafficking and provide postvictimization support. Two examples of direct identification follow:

We go out on the streets.... And our approach is not to just identify victims,... but the approach was to let them know they could have access to health services. And that was a way to build a trusting relationship, and then eventually know about your story, not why they're on the streets, and if they were forced to do that or not. That's how we get to identify those who are constrained and then tell them about the national anti-trafficking program. (CDCP representative)

[There was] a Belgian girl.... Basically, she was brought to sex work by her boyfriend.... You could tell that she was very young, she was very docile. You can tell her, "Do that," [and] she will do it.... She's very, almost scared.... And so we started getting closer to her. And sometimes we would come [and see her during outreach] and she had bruises. And psychologically, you could see she was a bit closed, she was a bit scared all the time.... And so it has happened that she mentioned, "Yeah, maybe I should talk to the police. Maybe he's not good to me." ... That was after lots of visits to her. (UTSOPI representative)

As we saw in the previous theme with legal regimes restricting the ability to safely provide material support to people in the sex sector, the feasibility of outreach strategies to reach and identify victims was also constrained in this way. Red Umbrella Sweden described their experience attempting outreach like this:

You can leave like a little piece of paper or something at the health care place, but we're not allowed to do that. They throw it away. They don't want anything that is pro sex work at the health care places. We tried to put up flyers [saying] that we actually exist so other sex worker would know, but they all take them down.... So we have a hard time to reach out to the short-term people [migrants] ... and that's really bad.

After identification and escape, several organizations provide postvictimization support, either directly or by referral and advice. CDCP runs three shelters for victims of trafficking. Those groups without their own shelters aim to find placements for people who need them, in a range of settings including charitable, public and private. The ECP explained that the UK legal regime constrains this aspect of their victim protection work, because many women migrants with "no recourse to public funds" are ineligible for beds in publicly funded refuges. This has made it increasingly difficult for the ECP to provide shelter: "We just have to find, try and find somebody to put them up, you know, sleep on the sofa until we could actually get a space somewhere."

The groups also help victims to navigate their legal options postvictimization, especially with respect to police. Red Umbrella Athens explained that "in Greece, there are some police stations who are corrupted. So we know those corrupted stations. And if it's necessary, we go to another police station, [and] we also advise people to go to another place than corrupted stations."

The ECP operates on a "collective self-help" model in which women who have been victimized come to meetings and tell their story to the extent they want. After disclosure, the individual decides what they want to happen next, for example, prosecution or other options, such as retrieving withheld pay or finding another, better, establishment in which to work. If they wish to pursue legal remedies, such as prosecution or asylum, a process is undertaken by which the woman is empowered to understand her own options and likely chances of success. The interviewee spoke about this process, specifically with regard to asylum applications for people who have been trafficked or subject to other forms of violence, like this:

We have to know our own case. If we don't know our own case, we're going to lose.... We need to know not only our own case, but how it fits into the asylum process, we need to know what we need to prove in order to win asylum in this country, we have to know that the Home Office is up to, and that we're up against a hostile authority. And that's why we're doing this.... We will read the law together, and the self help guide we have, together, because it's a really good way for us to have a collective education. So we read. What does the Refugee Convention say? And then women will say where they think their case fits into the Refugee Convention, which is really useful, because once you've got grasp, like, do I have an asylum claim? Do I have an articulate family and private life claim? Do I have a humanitarian protection claim? You know, what do I have? It completely transforms everything.

From her perspective, this process was not solely about legal remedy but pertained to a broader notion of postvictimization support: by putting the woman in the driving seat of her situation, it restored a sense of power and autonomy to her and was therefore therapeutic.

Finally, all the organizations described helping people to access medical and therapeutic support, and they directed people towards professionals deemed to be understanding of histories of sex work and sexual violence: “We can say that this therapist over there is sex worker friendly, or this health-care place is sex worker friendly” (Red Umbrella Sweden). Examples of direct support include Hydra’s provision of acute trauma support, Red Umbrella Athens’ on-site psychologist, and the ECP’s provision of complementary therapies.

Conclusion

This chapter has sought to explore the role of SWF/L organizations in tackling exploitation, including trafficking, within the sex industry. Through the interviews conducted, it is evident that the scattered examples described in the introduction are not anomalous but rather represent routine and widespread activities undertaken by these groups. There is evidence here, worthy of further exploration and of comparison with non-SWF/L groups, that these organizations’ are working in important ways which are specific to their positionality, and that this positionality appears to enhance their capacity for intervention and support.

From a policy perspective, the data presented here shows the importance of involving SWF/L organizations in strategies to tackle exploitation in the industry, such that their impact can be increased and more people can be moved to preferable conditions, whether within the industry but in a better place along its continuum of conditions, or exiting it entirely.

From a legal, and perhaps moral, perspective, the data presents us with a challenge. The importance of the work performed by SWF/L groups is evident: these are stories of building trust and safety, of creating resilience and enabling escape, of people trying to build better lives, and of helping others to do so too. They are stories of anti-exploitation and anti-trafficking interventions, rooted in rights and respect. But throughout the interviews, there were also frequent references to the work that is not being done, the stories that cannot be told, because of the perceived constraints of legal regimes, alongside underfunding and a general failure to recognize SWF/L groups’ importance. As the representative from

Red Umbrella Sweden put it, "It's just that you feel that you could have done so much more." This suggests that a meaningful strategy to tackle exploitation and trafficking in the sex industry must wrestle with these constraints in order to unlock the potential of SWF/L groups, amplify their impact, and improve experiences and outcomes for the people currently in harm's way.

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8. Profiles of Victims of Trafficking for Sexual Exploitation in Bosnia and Herzegovina

Darko Datzler and Eldan Mujanović

Abstract: Although declining in numbers, human trafficking for sexual exploitation still represents a prominent criminal justice and social issue in Bosnia and Herzegovina's transitional society. Using data from more than 80 finalized judicial cases tried before Bosnian–Herzegovinian courts involving nearly 300 victims, the present study describes trafficking patterns by focusing on victims' profiles. Information on family and economic status suggest young, unmarried, native young women with poor finances were the main target of exploiters. During the first 10 years, victim exploitation began in bars and nightclubs; later on, victims were exploited almost exclusively in private locations, such as apartments, hotel rooms, en-suite rooms at restaurants, bars, and the like. These findings suggest a somewhat different profile of victims compared to other countries in Southeastern Europe.

Keywords: human trafficking, sex workers, criminal organizations, demographics, recruiters

Introduction: Trends in human trafficking for sexual exploitation in Bosnia and Herzegovina

As with almost all other forms of human trafficking, trafficking for sexual exploitation is a worldwide phenomenon. However, some regions record more such victims than others (Kangaspunta, 2007). According to the United Nations Office on Drugs and Crime (UNODC, 2020a), trafficking for sexual

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exploitation is the most frequent type of trafficking detected in Europe, with Southeastern Europe being an especially hot spot. There are many reasons for this characterization. For instance, most Southeast European countries transitioned from a state-controlled market to a free market economy, which had massive social consequences such as the lack of employment opportunities, poverty, corruption, and a breakdown in social assistance. These developments caused people to migrate towards Western Europe, North America and the Middle East, many migrants lacking even basic information on the process of immigration and on the legal possibilities of getting a job abroad. As a consequence, many such migrants ended up working in the sex industry (Surtees, 2008; Vreja, 2005).

Being situated in Southeast Europe, Bosnia and Herzegovina shares most of the demand and supply factors that contribute to its prominent role in regional human trafficking. But Bosnia and Herzegovina is also a victim of an important additional circumstance: the war at the end of the last century. The chaos that often flows from war created a fertile social environment for all kinds of illegal activities, including the trafficking in human beings (Vreja, 2005; Wylie & McRedmond, 2010). Some women were sexually exploited by combatants and others simply trafficked into and around the region; these women provided sexual services for peacekeeping forces and civilian humanitarian personnel and met local demands for sex (Muftic, 2014; Rizvo & Mujanović, 2014; Surtees, 2008). Many problems typically linked to sexual exploitation were further exacerbated by the fact that the country was literally (re)building its institutional and legislative infrastructure. After the end of the war in 1995, the recorded number of trafficking victims in the country swiftly grew, with international organizations estimating that several hundred bars and nightclubs used trafficked women as sex workers (Longino, 2008). Some data suggest there were as many as 10,000 trafficked persons working in the local sex trade in early 2000s (UNICEF/UNOHCHR/OSCE–ODIHR, 2002).

In the first few years of this human trafficking “outbreak,” Bosnia and Herzegovina was considered both a destination and transit country. Studies of victims identified in early 2000s revealed that vast majority of them were foreign women. Most of the victims were from Ukraine, Moldova, and Romania. The number of exploited victims peaked in 2002 (Surtees, 2005; Obradović, 2004; Longino, 2008; Dawson, 2008), with smaller numbers of victims (but especially foreign ones) recorded over the study’s second decade. After roughly 2010, identified and assisted victims were usually domestic, with the exploitation venues also shifting from nightclubs to more private places. Many sources suggest that exploitation patterns have

changed recently, as internal trafficking for sexual exploitation has become the dominant configuration (Mujanović et al., 2016; OSCE, 2021; Rizvo & Mujanović, 2014).

Despite a growing body of literature about human trafficking for sexual exploitation, empirical research on the subject is rare. Much of the work refers to estimates of the problem's scale, mapping routes and relationships between countries of origin, transit, and destinations, or reviewing and comparing national legal frameworks and policy responses (Goździak, 2015). These general observations are valid for Bosnia and Herzegovina as well. There has not been much empirical research on the problem since the early years of the last century. Beside the works of Muftic (2014) and her colleagues (Muftic & Pehlic, 2012; Grubb et al., 2016) and Mujanović et al. (2016), which were based on criminal justice professionals' experiences and standardized questions countertrafficking personnel routinely collect from victims who seek shelter in safe houses, characteristics of trafficking victims were not being examined in great detail. This chapter examines trafficking patterns by focusing on victim profiles in Bosnia and Herzegovina and assesses how they compare with what has been recorded in previous research.

Methodology

The data for this study are from a larger research effort that examines the characteristics of both perpetrators and victims of human trafficking, some basic features of criminal proceedings, and the forms of both administrative and criminal law protection available to victims. The figures and tables included in this chapter come from this study.

The data are derived from all finalized judicial cases tried before Bosnian–Herzegovinian courts over a period of 20 years involving more than 300 victims. Although relying on a single source of data, this approach may be advantageous in several ways. Firstly, this research deals with some basic characteristics of victims, which are usually reported in judicial documents. These data are routinely collected through a similar set of questions (proscribed by procedural norms) in judicial proceedings, yielding a consistent approach. Secondly, official statistics, which are based on aggregate reports from the judiciary, the source this of study, tend to show at least a moderate correlation with survey reports on victimization. Both methods produce different kinds of errors. The correlation between these approaches suggests that they also at least partially reflect what is actually happening, so they are not totally measurement artifacts (Skogan, 1974).

After all, the present research does not seek to assess the victimization levels of hidden victim populations, but rather to describe basic characteristics of officially identified victims. Thirdly, the survey research on trafficking is largely based on relatively small and convenient samples of survivors (Goździak, 2015), usually identified by law enforcement agencies or others (Laczko, 2007). This characterization means that the bulk of such data shares many of the same shortcomings as studies that rely on official sources of data, such as judicial documents. Fourthly, survivors of human trafficking are a vulnerable category. Many of them might have experienced extreme forms of emotional or psychological stress, increasing their vulnerability. The stress associated with questioning that can cause them to relive their felt exploitations may do them additional harm, something the nonreactive methods of research utilized in this study can avoid (Withrow, 2014). Finally, this research is limited by both time and resources. Access to judicial documents was limited to a few weeks during the first half of 2022. While this limited access was suitable for the present study's archival analysis, the researchers would have faced insurmountable logistical difficulties if the intention was to question or observe the victims in the field.

Upon a formal request to authorities, the researchers obtained access to the digital forms of all judicial cases dealing with human trafficking and similar crimes for a 20-year period. Being a part of a larger study, data for several dozen variables were systematically collected for more than 300 victims of sexual or exploitation through forced labor, slavery, and the like. In the next step, cases not referring to sexual exploitation were filtered out, leaving 80 crimes with 286 victims in the database. Detailed data for all sexually exploited victims, however, could not be collected. This gap in the data was due to the fact that under the legal system in Bosnia and Herzegovina victims are considered nonmandatory participants of the procedure, meaning the process could be ended without their detailed questioning in the fact-finding activities. The ability to collect the data of victims varied greatly, which ultimately meant that the researchers could not collect information on some of the originally identified variables. Nevertheless, the data fairly addressed the study's aims.

Demographics and social and economic status

Nationality

Looking at the nationality of the victims in the present study (see Figure 8.1), the ratio between domestic and foreign victims that has been observed in

previous studies (e.g., Obradović, 2004; Surtees, 2005) could not be verified. In fact, with three times fewer domestic victims, the current study indicates there were far fewer foreign victims than reported in these previously published works. This finding could be an artifact of the present methodology, since almost all previous data came from service providers in the field. Not all victims who were assisted through NGOs and other organizations come to attention of the authorities, nor were their characteristics needed for the criminal proceedings from which our data derive.¹ But other data also suggest that the peak of victimization of foreign nationals occurred in early 2000s, and that there has been a steady decline ever since (Mujanović et al., 2016). Data in our study suggest that the most frequent countries of origin were Moldova (20), Ukraine (15), and Romania (12). Occurrences of the exploitation of foreign victims after 2005 involved citizens of neighboring countries, mostly Serbia (8) and Croatia (2). On the other hand, around the same period the number of domestic victims began to increase, a trend that subsequently continued. Citizens of Bosnia and Herzegovina reportedly dominated the local human trafficking landscape, according to other reports (GRETA, 2022; UNODC, 2020b).

Historically, the majority of registered victims in other Southeast European countries are trafficked internationally (UNODC, 2020a), a finding that is in stark contrast to our data, suggesting that Bosnia and Herzegovina is no longer a country of destination or transit for international sex exploitation. Such findings are in line with other data on the issue (Brunovskis & Surtees, 2019; Working Group, 2016). The most recent UNODC study (2022) suggests that this difference between Bosnian–Herzegovinian and Southeast European victims in matters of nationality may be lessening (with the proportion of national victims increasing), but a longer observation period is needed to confirm this.

There are no doubt many reasons why Bosnia and Herzegovina is nowadays less the country of destination than the country of origin and why there are many times more victims from within the nation than internationally trafficked victims. For example, one may argue that routes and destinations are changing, a factor that was reported in other countries as well. For example, Romanian victims in this period were beginning to be

1 Clearly the data that come from NGOs and other nongovernment institutions aren't without flaws. As noted in one important report, it was difficult to distinguish between data on trafficking, illegal migration, migrant sex workers, illegal border crossing, etc. Such studies often followed various socio-political agendas, not methodologically sound criteria for data classification (UNICEF/UNOHCHR/OSCE–ODIHR, 2002).

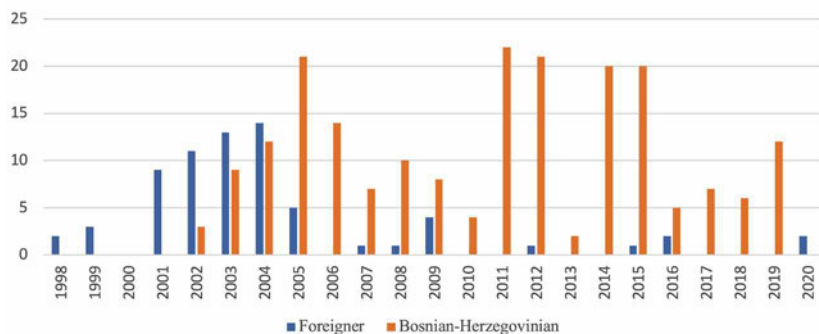


Figure 8.1. The number of foreign and domestic victims per year.

trafficked directly to the EU as a consequence of the waiving of Schengen visas (Vreja, 2005). Assistance from international police forces, previously very prominent in countertrafficking activities, ceased to be provided around this period, shifting the burden of identification of victims to domestic agencies. Since their resources were limited, it is likely national agencies in Bosnia and Herzegovina began recording fewer victims in the beginning (Surtees, 2005), a trend that continued throughout the data collection. More aggressive investigative and administrative countertrafficking actions from the mid-2000s reduced the number of highly visible locations for exploitation, which had the effect of reducing the number of foreign victims who were mainly exploited there. In the first 10-year period, the main exploitation venues were the nightclubs and bars, which could be identified and raided more easily than private locations. The average number of foreign victims per venue was seven (Obradović, 2004), suggesting that these nightclubs and bars could serve as easily set up and operated hubs for sexual exploitation. Foreign victims were also more commonly recruited through criminal organizations and controlled by physical force, psychological and other forms of pressure, and abuse (e.g., deprivation of victims' traveling papers and very often included transborder transport). Large criminal organizations are nonexistent in the more recent judicial decisions from which these data originate. Internal sex trafficking seems not to need such criminal networking (Dawson, 2008), as also discussed in the following sections.

Age and sex

The vast majority of victims were adult females, as just two victims were male, and 16.4% were minors. There are significant differences between domestic and foreign victims regarding age, as all minor victims were

Bosnian–Herzegovinian. Most of the clients of sexual services in the nation were (and probably still are) heterosexual men (Obradović, 2004), which may explain the demand for women as service providers. Other studies have reported that clients of prostitutes rarely concerned themselves with the reasons prostitutes engaged in their profession or why they were so readily available, thinking only about procuring the services of a young, compliant, and affordable sex partners (Shelley, 2010). This characterization appears to be the case in Bosnia and Herzegovina as well. Also, a small percentage of young women under 24 with elementary or high-school educations is legally employed in the nation,² leaving them with limited legal options for making money. The absence of skills and opportunities for legal employment makes young women especially vulnerable to traffickers. Bosnia and Herzegovina is a male-dominated society in which jobs are provided based on political sympathies and connections (Longino, 2008).

Minors were previously present in the foreign victim population to some degree,³ but are largely nonexistent in recent trafficking reports: only 15 of both foreign and local victims were underage in the last 10 years, with none in the last four. This trend is probably due to consolidation of state borders, which were rather porous in the immediate postwar period. Another contributing factor is no doubt the raised awareness of professionals about the forms and means of countertrafficking activities, formation of a task force intended to reduce illegal migration and trafficking, and other related activities. More recently, the national legal framework was significantly improved with respect to the trafficking of minors, as the proscribed draconian sanctions serve as an instrument of deterrence. As a result, foreign minors were harder and riskier to transport to Bosnia and Herzegovina. Minors in Bosnia and Herzegovina account for fewer sex-trafficking victims than is the case in other Southeast European countries, where they contribute upwards of two-thirds of internally trafficked victims (SELEC, 2019).

Family relations

Regarding family relations, data from about 40 victims were collected. All but five were unmarried. The majority (24) reported living with their parents, six with friends, five with partners, four with foster care, and three were homeless. Those living with their parents reported no particular

² Data available at https://arsbih.gov.ba/wp-content/uploads/2020/02/Mu%0c5%a1karci-i%0c5%beene-u-BIH_2020.pdf.

³ UNICEF/UNOHCHR/OSCE—ODIHR (2002) report about 10% of all foreign victims to be minors in the period 1999–2001.

problems, such as conflict, alcohol or drug abuse, etc. Those in other living arrangements had problematic family relations, causing or contributing to vulnerability to exploitation. Those living with friends were already in a problematic living environment. In one illustrative case, a mother left her 11-year-old daughter with grandparents when she was 11 years old, and the girl's father was totally absent from her life. Both the victim's parents and grandparents were divorced, all of which, according to the official forensic assessment, led to her lack of self-esteem, emotional immaturity, instability, and suggestiveness. These factors contributed to the young women's decision to abandon school and to take a job in a local bar, ultimately being offered sex work. While the findings on family issues does not comport with those made by Surtees (2005), who suggests that family issues were quite prevalent among victims, they do shed a bit of light on the situation. Growing up in unstable family conditions can make young people in their formative years less self-assured and confident about themselves, making them susceptible to untrustworthy persons offering them quick-money work. Being homeless or coming from foster care or a single-parent family can create a situation where individuals are more prone to conflict or poverty, which could contribute to trafficking.

Economic status

A large percentage of all victims (61%), about whom we have economic status data, are considered to be poor, a proportion reported for both domestic and foreign victims. Economic status was evaluated through explicit statements by judges or through the evaluation of sources by researchers or the volume of legal income. If, for example, the victim stated that he or she lived on social support (which is very small, usually less than €100 a month), this fact served as a crucial piece of information about victim's economic status. Very often the victims described some generic needs they wanted to meet by sex work (e.g., to take care of their impoverished parents), which may not necessarily mean they were poor by other objective standards. Their subjective perception of being poor helped to classify them as living in poverty.

People struggling to meet basic needs are often very vulnerable to exploitation, owing to feelings of desperation and the need to survive (Burke et al., 2022). While unfavorable economic situations may play an important role in exploitation causation, it cannot be seen as a decisive factor. As Deighan argues, "many regions of the world are poor and chaotic, but not all these regions are suppliers of trafficked women to the sex industry" (2010, p. 88). Poor economic status may indeed serve as a push factor that

contributes to the ease with which traffickers recruit women (Vreja, 2005). Some other ingredients are needed, foremost the presence of organized criminal groups or some sort of criminal networking that could provide a setting for sexual exploitation.⁴ Nevertheless, the relevance of poor socio-economic circumstances should not be underestimated neither; it may not constitute a necessary cause of victimization, but an important risk factor.

Recruitment experiences

The relationship to the recruiter

The relationship with the recruiter is another important dimension of the trafficking process. It ranged from a very intimate relationship, such as being recruited by a family member (six cases), to the involvement of a complete stranger (ten cases), the latter often involving recruitment through newspaper advertisements.

An example of close family members recruiting their relatives for sexual exploitation was a case where a husband essentially “pimped-out” his wife, the mother of a 10-month-old baby. Being materially deprived, mentally challenged, and undereducated (only two years of elementary school), the wife was especially vulnerable to her husband’s pressure to provide sexual services for very small amounts of money. Three cases followed a similar pattern where husbands forced their spouses into sex work, in one case it was a father trying to force his underage daughter into prostitution, and two cases that involved extended family members (an aunt and an uncle). An example of the latter includes an uncle beating his niece and forcing her to engage in street prostitution. He often struck her and threatened to run over her and her underage daughter.

Recruitment through a complete stranger is currently nonexistent in Bosnia and Herzegovina, largely found only in the aftermath of the Yugoslav Wars. One typical case involves a nightclub in the north of Bosnia and Herzegovina where a group of foreign nationals (any person who is not a national of Bosnia and Herzegovina) were held and sexually exploited. They all were initially offered jobs as hostesses or waitresses through newspaper

4 Brunovskis and Tyldum (2002) argue it is also a general breakdown of structures and corruption. Beside environmental factors, some other personal, psychological, and social factors play a role, too, such as physical and sexual abuse, neglect, family breakdown, homelessness, school exclusion, unemployment, substance misuse, low levels of self-esteem, and feelings of powerlessness (Dodsworth, 2015). Unfortunately, due to limited scope of the research from which the data in the chapter originate, these factors could not be addressed.

advertisements in Moldova and Romania, but ultimately found themselves in nightclubs compelled to provide sexual services. Typically, their travel documents were taken or they were smuggled into the country. This *modus operandi* was typical during the postwar years, when victims were often transported through Serbia and sold to pimps or club owners (Longino, 2008).

These two categories at the ends of a “recruitment continuum” are, as previously observed, very rare. In the middle of the continuum are other people’s recommendations (every sixth victim) and recruitment through friends or acquaintances (every third victim). A case in point of young women being recruited through the recommendation of other people was an instance in the early 2000s. Two young women were already prostituting themselves and were staying in Bosnia and Herzegovina without legal permits. Promising them better work conditions, the offenders persuaded the young women to work for them. They were initially contacted by a third person, also a prostitute, who recommended that they continue working under these new conditions. Another illustration is the case of a waitress whose boss suggested that she work in another situation, also a restaurant. The owner of the restaurant was a middle-aged female who prompted her to provide sexual services by promising lucrative rewards, but also threatening to take the waitress’s legal daily earnings. Ultimately, the waitress succumbed to these pressures and provided sexual services.

Recruitment through friends or acquaintances is illustrated by a case where a neighbor who, knowing about her difficult family situation, invited a young woman to a coffee shop, where it was suggested that she could earn money through sex work. Shortly afterwards, the young woman was escorted to a motel room, while her neighbor, in the role of a pimp, collected money from a customer. She was later introduced to further instances of earning money this way. She assumed that the introduction to other people, usually older and wealthy, meant having sex with them. As she came from a large family with a seriously ill father, she felt compelled to agree to such an arrangement. Another instance where acquaintances played a role in recruitment was when a landlord incited a young female tenant and her underage daughter into prostitution, pressuring them to sell sex as the only solution to their difficult social circumstances. False marriage promises also to fall into this category.

As represented in Figure 8.2, in the first few years after the war victims were usually lured into the sex industry by strangers, generally initiated by newspaper advertisements promising jobs in the entertainment or food

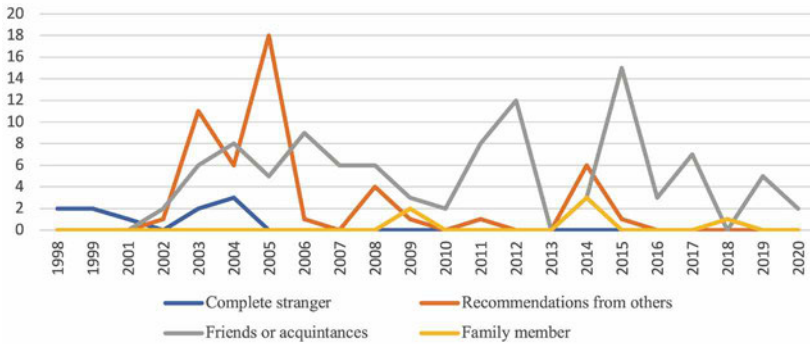


Figure 8.2. The relationship to the recruiter.

industry and ultimately forcing them to sell sex. Then, for a very short time, came referrals from other persons as the dominant relationship to the recruiter, followed by friends or acquaintances, which subsequently took primacy among recruitment patterns. This developmental pattern probably derives from the fact that initially the majority of exploited young women were foreigners providing services in nightclubs and similar venues. This practice changed with time, as exploitation venues became more and more private. By the end of the study period, the recruitment and entrance into the sex industry had become less visible to outsiders as it involved the actions of a recruiter who enjoyed a far more intimate relationship with the victim.

The patterns of actors involved in exploitation observed in the present research comport well with the broader picture of human trafficking in Europe. Promising low-skilled jobs through either newspaper advertisements or work recommendations by someone of questionable credibility was not unique to Bosnia and Herzegovina. It is a well-described pattern in Eastern and Southern Europe, where young women were offered jobs as hostesses and waitresses and to whom help with the transportation and accommodation was subsequently offered, making them even more dependent on the presumed largess of the traffickers. It is a fact that some who engaged in prostitution were enticed by friends, family members, or acquaintances. It could be seen as a strategic way for traffickers to mitigate some of the resistance of unwilling victims (Surtees, 2008). As documented elsewhere (e.g., Hodge, 2007), preying upon a victim’s poor finances, lack of legal opportunities, low skills, and other contributing factors, such as bad family circumstances or relations, traffickers betrayed the young women’s trust in them as friends, family members, or acquaintances, luring them into sex work.

The organization of human trafficking

The abuse of trust or betraying the interests of victims is further elaborated by the finding that most victims (three out of four) were victimized through a sole perpetrator. Perpetrators working in pairs was much rarer, reported by one in six victims, and those working as a part of an organized criminal group was even more rare, as about 7% of all victims were trafficked in this latter way.

Of all examined cases, only two groups of perpetrators were charged with organized crime and found guilty. One was a four-member crew, active at the end of the 1990s and the beginning of the 2000s, whose modus operandi included smuggling young women or transporting them legally to Bosnia and Herzegovina, and then depriving them of their travel documents. Being illegally in the country and intimidated by the prospect of denunciation to the authorities, they had few viable options other than to agree to sex work. Another case was closely followed by the media and included a group of 10 nightclub workers, including the manager, owner, chief of staff, waiter, etc. In reality, these individuals were managing or field working young women who were being sexually exploited. In some cases, the women were already prostituting themselves and, in others, the pimps exploited the young women's difficult personal circumstances, usually by promising them a legal job abroad, one that was "suddenly" no longer available once they arrived. Instead, the young women were offered the opportunity to make money through sex work. Both of these groups were working closely with criminal organizations in Serbia, groups that were well networked and had connections with other individuals and groups in Romania, Moldova, and Ukraine. Such high-level organized crime groups were a rarity. Generally, they followed a business model whereby a single person sits at the top of the pyramid and makes criminal contacts with other groups, while individuals further down the pyramid, usually relatives and close associates, ran the everyday business.

Criminal dyads often composed of the owners of restaurants, bars, and similar facilities and their relatives or associates. They exploited the difficult economic situation of young women, inciting them to work in the sex industry or, for those already active in the trade, offering mitigated exploitation conditions. They were often criminal recidivists either already involved in similar criminal activities or behaving opportunistically. In the latter case, there was a market for young women and the pimps were eager to exploit it.

Low-level dyads or individuals dominated the criminal organization of human trafficking in Bosnia and Herzegovina for 15 years. Such a conclusion,

however, needs to be taken with a grain of salt, since the data, as previously indicated, come from finalized judicial cases. It is well known that prosecutors tend to charge, as well as judges to adjudicate, the less complex and less evidentiary demanding human trafficking cases (GRETA, 2022; OSCE, 2021). This practice means that many cases in all likelihood were not successfully tried and finalized. It may well be that large-scale criminal networks are indeed very active in the field of human trafficking for sexual exploitation, but they are more flexible and adjustable to the current state of affairs. Such thinking is in line with the aforementioned reports of international organizations but also with other empirical research and reporting (Muftić & Pehlic, 2012; Rizvo & Mujanović, 2014; Working Group, 2016). Organized crime probably is still involved in human trafficking for sexual exploitation in Bosnia and Herzegovina; however, in all likelihood it went deeper underground and adjusted to new exploitation trends.

Trafficking experiences

Length of exploitation

The length of a victim's exploitation varied greatly. There are 16 instances where young women were exploited (or brought into a situation where exploitation could take place) for just one day, and there were four victims who were exploited over four years. As an illustration of one-day exploitation, a poor, young mother was offered work as a maid in a restaurant, and, ultimately, pressed into providing a sexual service for a customer. According to the court materials, the exploitation took place on just one occasion at a nearby motel. Another example of attempted exploitation was when a female exploiter with previous convictions for similar crimes mediated the sexual encounter between a young woman and a male acquaintance. The encounter was never fully realized and the circumstances were not further explained in court materials. The female exploiter, however, was found guilty of trafficking other victims, with the attempt to recruit the current victim found punishable.

The average length of exploitation is almost a year (353 days). On average, domestic victims are exploited just over a year ($M=366$, $SE=30$), while foreign victims find themselves in such situations for slightly shorter periods of time ($M=314$, $SE=37$). Although not statistically significant ($t(244)=-1.085$, $p>0.05$), this difference in length of exploitation suggests that sexual exploitation in nightclubs and similar venues, which are the typical venues for foreign victims, was easier to detect. Once the government made the decision

to curtail the practice, most such venues closed, shortening the time of exploitation for most foreign victims.

The exploitation venues

Four distinct places or loci of sexual exploitation could be identified: street prostitution; prostitution in apartments, hotel rooms, etc.; escorts; and entertainment/prostitution at erotic bars and nightclubs (see Table 8.1). In some instances, the forms were combined.

Table 8.1. The Exploitation Venues

	n of victims	%
Street prostitution	6	2.1
Prostitution in apartments, hotel rooms, etc.	222	77.3
Escorts	1	0.3
Entertainment/prostitution at erotic bars and nightclubs	40	14.0
Prostitution in apartments, hotel rooms, etc./entertainment/prostitution at erotic bars and nightclubs	3	1.0
Street prostitution/prostitution in apartments, hotel rooms, etc.	9	3.1
Prostitution in apartments, hotel rooms, etc./production of pornographic material	2	0.7

The great majority of all victims were exploited in rented apartments, hotel rooms, en-suite rooms at restaurants, etc. Illustrative of this place of exploitation was the case that local media closely followed, mostly because it included some prominent academic figures as clients. A taxi driver mediated between young women who were working in the sex industry and their clients, who were prominent university professors. One instance also included a young female student who agreed to sex in exchange for a better exam grade. The whole operation lasted more than two years and relied heavily on clients and trafficker arranging in advance where the sex act would take place: at multiple occasions it was hotel rooms/en-suite rooms at restaurants, and an apartment rented near the university. In another illustrative piece, a prolific perpetrator organized a complex web of services by contacting prospective clients and offering them sexual services. This involved mostly young women who were subsequently instructed to come to specific location and provide sex for money. While the usual fee per act was €100, half of which was kept by the trafficker and the rest paid to the

sex workers, due to seven-year lifespan of the trafficking scheme, the court decided that the monetary gain from this crime was close to €1 million.

Sexual exploitation at erotic bars and nightclubs was a far less common practice than the previous categories. All victims were foreign, usually working as dancers, entertainers, or similar occupations, who regularly provided sexual services. A case in point is a small, organized crime group, described previously, which was active at the beginning of the 2000s, managing several adult clubs. Young women were secured abroad, their passports taken, and subsequently forced to work as striptease artists, dancers, entertainers and, ultimately, prostitutes. Similar *modi operandi* are registered in other cases as well, typically involving foreign nationals lured into better working conditions if they were already prostituting themselves or forced into prostitution by exploiting their personal predicaments. With the web of associates abroad or within the country who were contacting the young women, the offenders offered them jobs and shelter, ultimately demanding sex work from them.

Even rarer were victims working as street prostitutes. Using their difficult circumstances, low education, drug addiction, and the like, perpetrators exploited them by demanding that they provide street-level sexual services, usually at traffic crossroads or in the proximity of bars. Exploiters were sometimes providers of food and shelter, but served as protection against possible maltreatment from their clients.

In one case, the young woman was identified as an escort. A criminal couple tried to lure her by promising work abroad. A newspaper ad was published, offering a job that provided companionship to those of wealth and power. During the visa procurement process, needed to enter the country for the job, the women in question concluded that the work would include sex with clients. She refused to participate further and called the police. The young women's refusal may have been due in part to the fact that her travel document was taken even before the journey, which made her realize she could be sexually exploited.

Over the course of the study period, the exploitation patterns seem to have changed. While previously, prostitution in nightclubs was the dominant exploitation place, more recently the location has become far more discreet. Rare exploitation through street sex work is clearly different from the regional trends, which suggest that up to 50% of victims are exploited in public, visible locations, such as streets, brothels, clubs, etc. (UNODC, 2020a). By the conclusion of the study period, sexual exploitation in Bosnia and Herzegovina largely took place in private apartments, hotel rooms, but

also in en-suite rooms at restaurants or similar venues, which can be best described as illegal brothels.

Conclusions

The data from this study suggest that the typical, recent victims of sex trafficking in Bosnia and Herzegovina are female, local nationals, frequently with problematic family relations, and poor. Being confronted with dismal economic and societal perspectives, someone they knew usually approached them, either a friend or acquaintance or, in some rare cases, by family members, and deceived or pressured them into the sex trade. It usually did not involve the use or threat of physical force, and the victims were generally paid some small amount of monetary compensation for their work. The bulk of the exploitation was organized by opportunistic individuals or, in some cases, by criminal dyads, often criminal recidivists, who took advantage of young, naïve, or helpless young women in difficult circumstances and exploited them over rather long period, on average a year. The sex work itself took place in discrete locations such as apartments, hotel rooms, and the like, with the victim–client encounter set up in advance. This procedure pushed the exploitation “underground” and made it harder to detect.

Victim profile in Bosnia and Herzegovina changed over last decades. Twenty years ago, the typical victim of sex trafficking was foreign national, to a non-negligible degree underage, and frequently experiencing or witnessing domestic violence (Obradović, 2004; Surtees, 2005). The current data suggest that Bosnia and Herzegovina has become a country of almost exclusively internal sex trafficking. The victims are poor, adult young women, not necessarily coming from dysfunctional families, and looking for financial getaway. While previously force was used regularly with freedom of movement restricted, more recently sex trafficking victims less commonly confront physical force.

This profile generally matches the one recorded in other Southeast European countries, where young women with poor economic and family circumstances are being lured into the world of sexual exploitation. However, while in other countries in the region, minors and foreign citizens are still present to a large degree in victimized populations (UNODC, 2020a), this pattern is not the case with the victims depicted in the present study. It also appears that the romantic relationships are not used in Bosnia and Herzegovina as frequently as in other countries as a recruitment technique (SELEC, 2019), and it also appears that most exploitation takes place more discreetly compared to regional counterparts.

A number of reasons may help us to understand why the profile of sex trafficking victims in Bosnia and Herzegovina changed and is somewhat different from the victim profiles reported elsewhere in the region. Among the possible reasons are new legislation introduced periodically, constant training of professionals, agency building in, better coordination of stakeholders, the persistent work of NGOs, especially in the field of awareness raising. Trafficking methods have become subtler and usually do not involve use of physical force. Instead, the persistent dismal economic circumstances with poor or nonexistent legal opportunities push young women into the world of exploitation. They are nowadays usually aware of their exploitative situation early in the process. However, they can usually move freely, are being compensated for the sex work, and are providing services to the clients over rather long periods of time. These characterizations of current sex work suggest that those being exploited may not agree to their role at the very moment they are recruited; nevertheless, they accept their new reality and usually do not report exploitation to the authorities. Being a topic heavily targeted by domestic and international organizations, it appears that sex trafficking organizations in Bosnia and Herzegovina moved from large, pyramid-based criminal organizations to opportunistic operations run by individuals or criminal dyads, ones that do business very discreetly.

The fact remains that the data used in the present analysis come from judicial documents. Only cases where the defendant was found guilty of serious crimes, such as human trafficking or enticement to prostitution, were analyzed. Despite long years of training provided to frontline professionals, identification of trafficking victims seems to remain problematic, with many victims going undetected. Once identified as a case of human trafficking, the judicial process usually takes years to finalize, with many instances of requalification from human trafficking cases to lesser offenses, such as such as child neglect or abuse or domestic violence (GRETA, 2022; OSCE, 2021). It is possible that the data used in this report may be biased towards cases which were reported and not being representative of the entire picture. However, since the aim of the chapter is to provide a profile of the victims and not to estimate the volume of the sex trafficking problem, and since the results presented in the chapter do generally concur with other sources of data, it seems reasonable to say that the findings are at least informative on the issue.

In the end, it can be concluded that Bosnia and Herzegovina became almost exclusively a country of origin for sex trafficking. The findings can provide a reference point for future empirical research on the profiles of sex trafficking victims and serve as a tool for improved anti-trafficking policies.

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III.

Combating Human Trafficking

9. The Programmatic Approach and the Barrier Model: Are We All on Board?

Warner ten Kate

Abstract: Human trafficking is an international crime against the self-determination of victims. There is a strong connection with organized crime. This chapter discusses the ways in which international cooperation between government organizations and NGOs can take place in the field of human trafficking. It explains various programs that are being used to combat exploitation in the sex industry, and it presents the outcomes of the so-called “barrier model” that aims at fighting human trafficking at various levels in society.

Keywords: human trafficking, international crime, barriers against exploitation, organized crime

Introduction

Human trafficking in the form of sexual, labor, and/or criminal exploitation is a very serious offense against the self-determination and physical integrity of the men, women, and children who are involved as victims: victims are forced to work under conditions that violate human dignity and minimum standards for pay and working conditions. It is generally considered as an international crime in which source, transit, and destination countries are involved, but domestic trafficking is also common. There seems to be a strong connection between human trafficking and organized crime.

Cooperation between organizations—governmental and nongovernmental—and countries is of the utmost importance to fight this hideous crime. A comprehensive approach to the crime of human trafficking is also considered important by the European Court of Human Rights (ECtHR).

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In the *Siliadin* case against France,¹ the ECtHR emphasized that Member States must provide legislation for effective criminalization and adequate means to prosecute and punish traffickers. In *Rantsev v. Cyprus and Russia*,² the ECtHR once again emphasized a joint approach:

The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers.

This chapter discusses the ways in which national and international cooperation between government organizations and NGOs can take place in the field of human trafficking. Its central question is: *How can human trafficking in the sex industry that takes place across borders best be combated?*

The programmatic approach and the barrier model are explained. On the basis of a number of specific human trafficking investigations, it is then explained how this approach and model work in practice, revealing the importance of cooperation between different organizations, nationally and internationally. The chapter continues by explaining how this cooperation took shape in practice when it came to Nigerian human trafficking, of which many women in prostitution in Europe fell victim. The focus is on Nigeria because it can be considered as a good and fruitful example of cooperation between an African country and Europe. Finally, unexpected consequences of measures to combat human trafficking are discussed. The chapter ends with conclusions.

Human trafficking, a more holistic approach

In the Dutch Programma versterking aanpak georganiseerde misdaad (Program to Strengthen the Approach to Organized Crime) (2007), recommendations are made to achieve cooperation between various (government) agencies. The aim is to mount an effective response to organized crime, at both national and international levels. The program focuses on a number of contexts, including preventive and administrative ones, criminal law, and international cooperation. These should be regarded as interconnected rather than separate elements of the program.

1 *Siliadin v. France*, ECtHR, 26 July 2005, no. 73316/01.

2 *Rantsev v. Cyprus and Russia*, ECtHR, 7 January 2010, no. 25965/04.

In terms of policy, the program *Samen tegen mensenhandel* (Together against Human Trafficking) (Ministry of Justice and Safety, 2018) and its latest version (2022) is important. This program was developed on behalf of the state secretary of justice and security and the ministers of different ministries within the Dutch government, and it fulfills the intention of the coalition agreement of the former Dutch Rutte³ III and IV administrations to intensify the approach to human trafficking. The Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe recommendation (Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, 2018) to draw up a national action plan is also being followed. The program consists of five lines of action, along which the approach to human trafficking is intensified on the basis of concrete projects and actions. How this works in practice is explained in the following sections.

Programmatic approach

Based on the idea that crime can be combated effectively only with the help of various public and private parties, the programmatic approach started in 2006 and is still being used in 2023.⁴ Organizations such as the Dutch National Police (NP), Koninklijke Marechaussee (Royal Marechaussee, KMar),⁵ municipalities, the Douane (Tax and Customs Administration) and special investigative services, including the Arbeidsinspectie (Labor Inspectorate, NLA) encounter various forms of exploitation in the context of their daily supervision and enforcement tasks: cooperation between them is therefore crucial. The programmatic working method focuses in particular on interventions that can combat specific elements of how the crime is structured. Use is being made not only of criminal law, but also of administrative law measures that can be both preventive and repressive.

Special attention is being paid to professions, companies, and institutions that—consciously or unconsciously—may facilitate crime. In the programmatic working method, tracing suspects goes hand in hand with the pursuit of structural policy changes (Van Gestel & Verhoeven, 2009,

3 Mark Rutte was the by then the prime minister of the Netherlands.

4 The programmatic method used is described in Ten Kate, 2022, p. 250.

5 The Royal Marechaussee is the Dutch military police and is responsible for airports and border control.

p. 3). Clear monitoring, information exchange between administrative bodies and the police, the erection of barriers, and international cooperation are elements that are necessary for preventing and combating human trafficking. These elements are combined in the programmatic method. For some time now, several organizations and agencies have been running multiple initiatives aimed at reducing human trafficking, both nationally and internationally (Kiemel & Ten Kate, 2007; Van Hout & Van der Laan, 2008). Information and instruments from the preventive administrative domain can be used in criminal investigations within the framework of the programmatic working method. Conversely, information from criminal investigations can lead to adjustments in administrative policy and administrative instruments

The barrier model

An important part of the programmatic approach consists of mapping the legal and illegal structures that underlay crime. Subsequently, on the basis of the so-called “barrier model,” cooperating organizations can erect various obstacles by which crime can be prevented, or at least made more difficult. For the criminal to succeed in their aims, these obstacles (critical processes or barriers) must first be overcome. The elements/domains involving the potential victim in which a barrier may be created consist of:

- Recruitment
- Entrance/identity
- Residence status
- Housing
- Labor/work
- Financial flows

The abovementioned organizations regularly address these elements in their daily work, and these elements may act as starting points or clues in the fight against human trafficking. For example, a (foreign) victim of human trafficking working as a prostitute might come successively into contact with a municipality, the Immigration Service (IND), the Tax and Customs Administration, the Kamer van Koophandel (Chamber of Commerce), a window operator or room lessor,⁶ the police, the NLA and NGOs

6 See below.

or caretaking organizations. Each organization mentioned can contribute in its own way to erecting barriers and may fulfill the role of gatekeeper by recognizing the signs of human trafficking and sharing these with other organizations.

The barrier model also takes into account the so-called layer structure (like an onion) around human trafficking and human smuggling. Surrounding a criminal core (top/core structure) are shells of criminals (pimps, counterfeiters, and bodyguards) and facilitators (drivers, abortion clinics, and cosmetic surgeons⁷) that, either knowingly or not, act as accomplices. Even government agencies can unknowingly support criminal activities in their regular duties. Table 9.1 contains a schematic representation of the barrier model⁸ in which the five barriers (or elements) are explained in more detail. It will be followed by a discussion of each.

Table 9.1. Barriers to Human Trafficking for Sexual Exploitation

Barriers	Recruitment	Entry/ identity	Residence status	Housing	Work	Financial
	First contacts in source country, false promises, travel instructions, often start of debt bondage (cf. Nigerian victims), also recruitment via the Internet	Visa application with valid or forged passport (to hide age), buying a ticket, actual transport, border crossing (legally or illegally) into transit or destination country	Legal or illegal, often tourist visa followed by overstay, identity card and temporary residence permit have to be shown in many places as well as social fiscal number	Renting a house that makes it possible to maintain control over the victims or letting them sleep at the workplace, often behind locked doors	Finding a workplace for the victims, seeking clients, advertising scenarios vary depending on whether prostitution is illegal, tolerated, or legal subject to regulations	Exactng money from the victims, opening a bank account, money transfers, avoiding taxes
Traffickers (core group)	Usually traffickers (pimps) steer the whole process and maintain tight control over their victims thorough coercion. In a more segmented scenario people smugglers make the travel arrangements and exploitation takes place later by a different group. For travel within Europe, a visa would not be needed. For citizens of EU countries, a work permit would not be required, with the temporary exceptions for some countries. This can be circumvented by registering as self-employed.					

7 Exploited prostitutes are regularly forced to undergo abortions and cosmetic surgeries to increase their market value.

8 This model was used for a lecture at a conference called Putting *Rantsev* into Practice, held on 16–18 April 2013 in Amsterdam, the Netherlands, organized by the Ministry of the Interior of Cyprus, the Ministry of the Interior of Poland, and the Ministry of Security and Justice of the Netherlands.

Barriers	Recruitment	Entry/ identity	Residence status	Housing	Work	Financial
Knowing facilitators	Local members of trafficking organization	Migrant smugglers, passport forgers, visa guarantors	Document forgers, identity fraudsters, people involved in arranging fake marriages	Landlords, slumlords, room brokers	Owner of the workplace, building administrator, doorkeepers, taxi drivers of escort services	Money couriers, money launderers, real estate agents, shell companies with hidden owner solicitors
Unknowing involvement	Websites offering recruitment services	Airlines or other transportation companies	Embassies that unknowingly grant (Schengen) visas	Landlords, housing associations, centers for asylum seekers	Clients (not always unknowing)	Banks, money transfer agents, solicitors
Partners in multidisciplinary approach to prevent and combat THB	National and local authorities in source country as well as community workers, schools, NGOs, organizers of awareness-raising activities, media etc.	Embassies, immigration services, border guards, cooperation with private sector (airlines)	Immigration services (aliens), police or border agency, municipal, administration/register	Municipalities, municipal register, housing and fire prevention inspectors, police, housing associations, neighborhood committees	Police, health authorities, doctors, labor inspection, municipality, licensing authorities, NGOs, cooperation with private sector (hotels)	Tax authorities, fiscal investigators, police, cooperation with private sector (banks)

Recruitment

Victims of human trafficking are often approached in source countries with attractive but false promises to work in Europe for a good wage and under favorable working conditions. Such recruitment can also take place in the destination country, for example, through the use of social media on the Internet. If the victims decide to accept the conditions of the human traffickers, they are burdened with a debt for the journey and accommodation expenses. This debt keeps them loyal to the trafficker. Debt binding is a common phenomenon in the recruitment stages, and it may act as a starting point for coercive measures later used by the human traffickers.

Entry

This barrier focuses on the entry of human traffickers and, in the particular context of this chapter, the entry of human trafficking victims into the Netherlands. Various criminal offenses are often committed in this phase, such as forgery of identity documents and in the transport of human trafficking victims. Human smugglers and (taxi) drivers often play a facilitating role in this phase and could be liable to criminal prosecution.

In terms of detecting human trafficking, the entry plays an important role for visa departments of the Dutch government, and it may create some sort of barrier. Before human traffickers and human trafficking victims coming from certain countries can enter the Netherlands, they must apply for a visa. Employees in visa departments are trained to recognize signs of human trafficking. The KMar has an important task in detecting human trafficking: it monitors the border and can pick up signs of trafficking.⁹ It inspects travel documents and is therefore an important player within the barrier model.

The immigration service (IND) also has an important role to play. If an EU citizen, a European Economic Area (EEA) citizen, or a Swiss citizen wants to settle in the Netherlands for longer than three months, he or she must not only register at a municipality, but also at the IND to be eligible for a residence document. Among other things, the IND checks the identity details of the applicant. IND employees are generally trained to recognize false identity documents. Furthermore, employees can recognize signs of human trafficking, whereby employees will be extra vigilant in the case of high-risk groups.

Residence status

The police, the KMar, and the IND all play an important role within this barrier, particularly during inspections. They check identity documents of prostitutes for authenticity and validity, creating a possible barrier. This includes inspections by the KMar at the airports and seaports and on roads, such as the so-called Mobiele Toezicht Veiligheid (Mobile Security

- 9 For border guards, the signs could be:
- Lacks control of identification documents or travel documents
 - Lacks freedom of movement
 - Shows signs of having been abused or physically assaulted (signs range from the more obvious, such as broken bones, to the more subtle, such as branding or tattooing)
 - Seems submissive or fearful in the presence of others
(<https://www.cbp.gov/border-security/human-trafficking>).
- Other signs of human trafficking:
- Living with employer
 - Poor living conditions
 - Multiple people in cramped space
 - Inability to speak to individual alone
 - Answers appear to be scripted and rehearsed
 - Employer is holding identity documents
 - Unpaid or paid very little
 - Under 18 and in prostitution
(<https://www.state.gov/identify-and-assist-a-trafficking-victim/>).

Supervision). The police can check documents of persons in the performance of their daily tasks, such as traffic control, providing assistance with accidents on the street, and the investigation of criminal cases. Detecting forged identity documents or employer statements, as well as “marriages of convenience” are central to this barrier.

Housing

A person who wants to settle in the Netherlands for longer than three months must register in a municipality, and this situation facilitates the so called “housing barrier.” The municipality is assigned an active role when it comes to checking addresses in its own basic administration. If too many people are registered at one address, it may be an illegal boarding house, thereby possibly conflicting with a zoning plan. The municipality must then take enforcement action. This administrative route can form an effective barrier in the fight against human trafficking.

Within this barrier, there is also a role for so called “window operators” who rent out rooms in prostitution areas to legal prostitutes, and room landlords. These parties have a unique information position with regard to detecting signs of human trafficking. A window operator or landlord generally knows whether a prostitute is self-employed or works for a pimp. It is therefore important to create objective criteria for reporting such situations, so that operators and landlords know when they must contact the police or the Public Prosecution Service.

Labor/work

Within the labor domain, various barriers may be set up. Exploitation, coercion, violence, and extortion are punishable acts that can occur within the labor field. Human trafficking victims are often paid too little, have to work too long and are obliged to hand over their identity documents to their exploiter. Some professional groups are interesting for human traffickers as facilitators. Examples include tattoo artists and people working in abortion clinics (see Blom & Janssen, 2023). Tattoo artists can act as possible (conscious) facilitators of human trafficking, as they may be commissioned by exploiters or pimps to provide victims with the name of the exploiter or pimp, even as a source of employment. In addition, abortion clinics will have to be alert to signs of human trafficking, since human trafficking victims may be forced by their pimps to have an abortion, so that the victim can quickly return to work.

When a “legal” sex worker applies for a citizen service number and a VAT number at the Tax and Customs Administration, there is an opportunity

to detect signs of human trafficking. The Chamber of Commerce also has this option, as a prostitute must register on the basis of the Trade Register Act and thus come into contact with the Chamber of Commerce. Finally, the NLA could also come across abuses or signals of human trafficking during inspections.

Financial flows

Criminal offenses such as money laundering and tax evasion enable a barrier to be created. Money couriers and money changers play a facilitating role in this phase. In the context of a programmatic approach, the Public Prosecution Service, in cooperating with banks and mortgage lenders and the Fiscale Inlichtingen en Opsporingsdienst (Fiscal Authority, FIOD), plays an important role within this barrier.

Information management and exchange

In order to be able to work well together within a barrier model, it is important that agreements are made with regard to the supply and use of information. Participating parties within a cooperation agreement are often not free to provide or receive information simply because of data protection regulations. Many laws and regulations must be observed when processing data. Indeed, the Public Prosecution Service (PPS), police, and other relevant parties may themselves become liable for investigation and prosecution as a result of unauthorized disclosure or acquisition of data.

As of May 2018, the General Data Protection Regulation (GDPR) (European Parliament & the Council, 2016) is applicable in the Netherlands. It is, however, not applicable to the police and judicial authorities when they carry out their duties for the investigation and prosecution of criminal offenses and the execution of sentences. The EU Data Protection Directive for Police and Justice¹⁰ then applies.

In practice, the joint processing of data by the organizations involved can sometimes encounter bottlenecks due to the lack of a legal basis, as required now by the GDPR. Each participant in a partnership is obliged to treat the data received by him or herself confidentially. This hinders, for example, joint case consultations, the linking of data about specific persons and companies, or the performance of a joint data analysis. A third

¹⁰ Directive (EU) 2016/680, protecting individuals with regard to the processing of their personal data by police and criminal justice authorities and on the free movement of such data.

obstacle is the lack of a legal basis for cooperating with private parties or allowing private parties to participate. After the GDPR came into force the rules for information sharing have become stricter, so that it is not always possible to share information with other parties as was done before that time.

The barrier model in practice (1): The Sneep¹¹ case

In the so-called Sneep investigation, which started in 2006,¹² practical experience was gained with the programmatic approach for the first time. A number nationally operating public prosecutor's offices worked closely together. Each took on a sub-aspect or sub-investigation and brought together knowledge about the structure of the criminal organization and their activities (*modi operandi*). Insight gained by one partner could be directly used by the other partners.

In the Sneep case, investigative authorities focused on a group of human traffickers who were active in several places in the Netherlands. Investigation activities started on each of the six barriers from the barrier model. The KMar investigated the smuggling of women to the Netherlands and document forgery (entrance and identity barriers). The then Social Affairs and Employment Inspectorate (now the NLA) focused on the housing and labor barriers by conducting research into the labor relations of women (self-employment or salaried employment). The Tax and Customs Administration and the Fiscal Authority (FIOD) conducted a tax investigation (labor barrier). The financial department of the public prosecution office (financial flows barrier) focused on bank accounts and real estate in the Netherlands, Germany, and Turkey. The National Police and a number of regional police forces investigated the various criminal groups. The Sneep investigation is therefore also a collective name for various (partial) investigations that have been brought to court separately.

11 "Sneep" is the codename of the investigation. It has nothing to do with the case—it is a kind of fish.

12 In 2006, the National Criminal Investigation Department started the Sneep investigation, an inquiry into a human trafficking gang that exploited prostitutes on a large scale and in a very violent and organized way for many years in the legal prostitution sector (licensed window brothels). It became one of the most extensive human trafficking investigations in Dutch history. In 2020 the case ended in the Netherlands after the Court of Cassation rejected the appeal of the head, who had been convicted for confiscating illegally obtained profits (HR, 28 January 2020, ECLI:NL:HR:2020:45).

The suspects were sentenced to long prison terms. The main suspect managed to flee to Turkey, but thanks to intensive cooperation with Turkey, the Dutch sentence of seven years and nine months was executed in Turkey, and he received a fine of €150,000.¹³ One of the conclusions that followed the Sneep investigation is that municipalities played a very limited or no role in the identification phase. In the municipalities studied, monitoring of permit conditions was largely outsourced to the police; municipalities rarely ensured that sufficient checks were carried out. Cooperation between the various partners, including the municipality, is therefore essential. Since the Sneep investigation, various so-called “testing grounds” have been started in which the programmatic method has been applied and work has been done on improving it. Furthermore, a programmatic approach has proven successful in criminal cases, such as the Koolvis case (see below).

The barrier model in practice (2): Action Baekelandplein

The Public Prosecution Service, in collaboration with various other authorities, including the National Police, Europol, the Expertise Center on Human Trafficking (EMM), victim care organization CoMensha, the IND, and the Health Service (GGD), carried out a large-scale inspection in the red-light district called the Baekelandplein in Eindhoven in 2012 (Ten Kate, 2022, p. 260). The Baekelandplein, an area in Eindhoven where many prostitutes work, was completely closed to the public for an entire evening. A total of 300 police officers and another 50 civil servants participated. The action was coordinated by the local authorities (the mayor, the head of the police, and the public prosecutor). During the action, investigators and investigating officers searched the prostitution premises on Baekelandplein. In addition, 50 sex- and human-trafficking detectives, together with lawyers and social workers, spoke with a total of 54, mainly young (under 20 years of age), Bulgarian, Hungarian, and Romanian prostitutes about possible trafficking and abuses in prostitution. The talks were held at the city hall of Eindhoven. The collaborating parties had deliberately chosen this location, so that the prostitutes could speak in peace with the various authorities in a safe and neutral location. The women were taken to the city hall in special buses.

In addition, the police checked and interviewed 34 customers. A total of six men were arrested, including three Eastern Europeans, on suspicion of involvement in international trafficking in women. Two other men were in

13 HR, 11 September 2012, ECLI:NL:HR:2012:BX4101 and HR 14 April 2015, ECLI:NL:HR:2015:939.

possession of thousands of euros in cash, without the origin of that money being clear. The sixth person was in possession of pepper spray. Furthermore, a mass of information was found during the searches that was used in subsequent (international) investigations.

The barrier model in practice (3): Koolvis,¹⁴ a Nigerian sexual exploitation case

The Nigerian–Dutch Koolvis case (which started in 2006 and is still pending in 2024) was an investigation into the smuggling and trafficking of mainly underage Nigerian women from Benin/Edo State, in southern Nigeria.¹⁵ Women were flown from Nigeria to the Netherlands, after which they applied for asylum at Schiphol Airport. They then stayed in an asylum reception center. The center was used by the traffickers as a cheap place for the victims to stay while waiting for their journey to their final destination in countries such as Italy and Spain, where the women were forced to work as prostitutes.

The young Nigerian women generally wanted to go to Western Europe to escape their hopeless situation in Nigeria. The women paid an average of about €50,000 each to get to and work in the Netherlands or other countries in Europe. In Edo State, the women had made a promise before a voodoo-baptism priest that they would pay back this amount of money to the human traffickers. Because of their religious beliefs, the Nigerian women attached great importance to this promise. The women's families in Nigeria were sometimes threatened by the human traffickers in order to enforce compliance with the agreements made with the women.

The Koolvis case was an international criminal case in which the Dutch public prosecutor, the police, and KMar worked closely with the Nigerian National Agency for the Prohibition of Trafficking in Persons (NAPTIP). It was the first time in history that this happened. The treaty basis on which cooperation took place was the United Nations Convention against Transnational Organized Crime (UNTOC). The investigation carried on for several years, and addressed a total of 89 potential victims.

14 “Koolvis” is a kind of fish (pollack) and was the codename for this case.

15 Rb. Zwolle, 3 December 2009, ECLI:NL:RBZLY:2009:BH6473; ECLI:NL:RBZLY:2009:BK5349; ECLI:NL:RBZLY:2009:BK5377; ECLI:NL:RBZLY:2009:BK5398; ECLI:NL:RBZLY:2009:BK5669; ECLI:NL:RBZLY:2009:BK5695. Hof Arnhem (hoger beroep, zp. Leeuwarden), 12 March 2012, ECLI:NL:GHARN:2012:BV8521; ECLI:NL:GHARN:2012:BV8567; ECLI:NL:GHARN:2012:BV8573; ECLI:NL:GHARN:2012:BV8576; ECLI:NL:GHARN:2012:BV8579; ECLI:NL:GHARN:2012:BV8580; ECLI:NL:GHARN:2012:BV8582; ECLI:NL:GHARN:2012:BV8583; Baarda, 2018, p. 3.

The main suspect in the Koolvis case has been sentenced by a Dutch Court of Appeal to a prison term of seven years. The other suspects have been sentenced by the court to prison terms ranging from 20 weeks to 30 months. A female suspect was sentenced to 34 months in prison.

In this case, the Public Prosecution Service experimented with an “expert by experience,” namely a former victim of human trafficking. This expert acted as a substantive interlocutor for contacting and interviewing the Nigerian female victims of human trafficking. In addition, a Nigerian pastor was deployed to discuss the influence of voodoo on the female victims with them, and—if possible—limit this influence. The Dutch Supreme Court¹⁶ finally approved the involvement of the expert by experience, as well as the Nigerian pastor.¹⁷

Nigeria, a source country for victims of human trafficking

Women from all over the world come to Europe to work as prostitutes and in many cases they end up as victims of sexual exploitation. Nigerian women working in the sex industry in Europe often come from Edo State. This small state, which makes up just 2% of the total population of Nigeria, is overrepresented in the sex industry in Europe, and particularly in Italy (Baarda, 2018, p. 76).

Most Nigerian victims of human trafficking reaching Europe are underage girls. They generally come from poor communities and are lured to Europe with the prospect of a paid job as a babysitter, hairdresser, or domestic worker. During the last five to 10 years there has been an awareness (among academics and policymakers) that many women from the south of Nigeria know they will end up in the sex industry, but have been urged (or coerced) by relatives to go. Their stay in Europe can be seen as a way in which they can lift themselves and their loved ones out of poverty. Most of these victims—whether they are aware of the fact that they will be employed as a prostitute or not—do not know that once in Europe they will see virtually nothing of the money they earn. They underestimate the extent and nature of the sexual exploitation. On arrival, they are informed that all their income will be used to repay the costs incurred for their crossing to Europe, amounts exponentially higher than the actual costs of the journey. Both on the way

¹⁶ HR, 4 March 2014, ECLI:NL:HR:2014:477.

¹⁷ The bottlenecks that occurred at the time of the Koolvis case are still not all resolved in 2023.

to Europe and while staying here, these women face serious forms of abuse and human rights violations. Especially in transit countries like Niger and Libya, human rights violations are a very serious problem. Often women are kept in detention centers in Libya where they are exposed to brutal treatments such as rape, extortion, and slavery before they can cross the Mediterranean Sea, and then often under dangerous conditions.

After having paid off their debts, many of these women end up as “madams” themselves. The work as a madam offers (former) victims the opportunity to earn money themselves and provide financial support for relatives in Nigeria. This work often seems to be the only source of income for these madams. On the one hand, these madams can be regarded as victims of human trafficking residing illegally in Europe who have no other work experience (Dutch Ministry of Foreign Affairs, 2021, p. 115). On the other hand, they can be seen as perpetrators, rendering their position rather complicated.

Nigerian “madams,” female pimps, often recruit young women from the madam’s state of origin, especially from Edo State. These madams either do the recruitment themselves or contract this out. Alternatively, a sponsor of the journey will recruit the women and then introduce them to a madam. The demand for illegal travel to Europe is high among young women and these migrants maintain close ties to the home country.

Among many female trafficking victims from southern Nigeria there is a strong fear of supernatural reprisals if they are fleeing their sexual exploitation circumstances in Europe before paying off their debt. Human traffickers operating from this region enforce most victims to swear an oath of obedience (“Juju oath”) under the watchful eye of a voodoo priest before departure. Victims fear that if they break this oath by evading the authority of madams and traffickers, they will suffer serious consequences as illness, etc.

Traditional spiritual leaders in Nigeria have been asked to help victims overcome their fear of reprisals.¹⁸ Together with 500 voodoo priests, the Oba (the spiritual leader in Edo State) in March 2018 declared all so-called “Juju oaths” as invalidated. Thanks to this intervention, the influence of these spells on trafficking victims from Edo State seems to have decreased. However, the sphere of influence of the Oba of Benin does not extend beyond the state of Edo and some sources indicate that human traffickers have returned to recruit victims and using voodoo priests from outside Benin

18 See above, Koolvis case.

City/Edo State. In recent years, the number of victims from the states of Delta and Anambra has increased (Dutch Ministry of Foreign Affairs, 2021, p. 117).

Recently, the revenue model of human traffickers is under increased pressure because it has become more difficult to transport women to Europe as a result of a more active role of the Libyan Coast Guard in combating people smuggling. This means that from a financial point of view it has become more important for traffickers to ensure that women stay at work and pay off their debts. The whole phenomenon of this type of trafficking related to Nigerian women and girls underlines the importance of a holistic approach: combating human trafficking is not something that can be done only by the police and the public prosecution service of the destination country. Many more organizations need to take their share of the responsibility.

The barriers revisited: Remaining and new bottlenecks

Below, some of the barriers and other elements of the barrier model are revisited and reviewed on the basis of the Koolvis case, and new and old bottlenecks are identified.

Recruitment barrier

The recruitment of girls and young women who want to go to Europe and the contact between the recruiter and (family or friends of) the woman, is the beginning of the chain and is therefore a very important moment. However, recruitment takes place far beyond the scope of the (Dutch) police and other partners in law enforcement. Prevention campaigns in Nigeria about human smuggling and human trafficking, for example, by former Nigerian victims as expert witnesses, could be helpful. This is a subject of discussion with Nigeria involving NAPTIP and the Dutch embassy in Abuja.

Entry barrier/inland

This part of the chain looks at the transport from the victim's place of residence to the airport in Nigeria and possibly accommodation before departure to the Netherlands/Europe. This is a phase in which no supervision or preventive actions are possible from the Netherlands, so appropriate measures are needed in Nigeria.

Entry barrier/travel source country—transit/destination country

False or falsified documents are often used for the journey. As soon as the check at the airport in Nigeria is over, the potential victim has gained entry

into the Netherlands/Europe. That is why earlier intervention is necessary, such as measures in the context of early victim identification.

The recommendation for the KMar and IND for future cases is to establish a preboarding check in Nigeria (in cooperation with the Nigerian Immigration Service): addressing potential victims about victimization before boarding, based on profiling. Check-in staff and flight staff could be trained in picking up signals of human trafficking before and during the flight.

Entry into the destination country

Some of the measures in this barrier have been realized, but most of the measures can be seen as a recommendation not only for lowering the number of Nigerian victims but for all victims of trafficking. When entering the Netherlands there could be a scan to search for potential victims at the gate control at Schiphol Airport on the basis of risk profiles. Nigerian priests or experienced witnesses can be asked for help, for example, when interviewing the victim. It should be standard procedure to examine potential victims of human trafficking by clothing and body for indications that lead to (members of) the criminal organizations.¹⁹

Reception and housing

One of the biggest bottlenecks is the way in which unaccompanied minors, not only Nigerian, are received in the Netherlands during the asylum procedure: they are received in open, decentralized centers. Security and protection policies and capabilities vary by location. If they are placed in an open shelter there is plenty of room for human traffickers to approach, pick up, and take the unaccompanied minors to their final destination. The open character of the shelter means that the girls can simply leave and disappear. Staff of these centers are aware of this problem (if they observe traffickers hanging around they will inform the police), but until now an easy solution has not been found because a complete separation or isolation of asylum seekers would be considered as imprisonment.

Identity

This point again concerns all victims of human trafficking, not only Nigerians. In general the travel documents used to enter the destination country will have been discarded, so that the identity of the potential victim cannot be established. In addition, the nonage of the asylum seeker cannot be properly established. In addition, tracing and repatriating victims after

19 This can be done under the Dutch Aliens Act.

they have gone missing is a recurring problem. So the identity barrier seems difficult to be made effective.

Displacement effect (the “waterbed”²⁰ effect)

Non-location-bound sectors within prostitution, such as escort services or the illegal circuit, are specially difficult to control. The possibility that criminals relocate their human trafficking activities can arise during investigation, detection, and control. As a result of the action by the authorities, the problem is displaced: it is spread around rather than resolved.

So-called hotel room checks can be used in the context of administrative supervision (Ten Kate, 2022, p. 266). Such control can be carried out in various forms. For example, an investigating officer can respond to a newspaper advertisement and then make an appointment through the escort agency in order to find out whether human trafficking is involved. Another option is to check whether hotels are doing enough to prevent illegal hotel prostitution and human trafficking.

The National Police used actresses posing as call girls in hotels. The actresses rented hotel rooms for a period of three days and received fictitious clients in their rooms. The control action was not aimed at tracing or arresting suspects, but served as an alternative way to combat illegal hotel prostitution and human trafficking and to raise awareness about human trafficking. An information film for hotel staff about illegal hotel prostitution and human trafficking has been developed.²¹ This film aims to create awareness about the problems of human trafficking and to achieve behavioral change. It encourages the hotel sector to take responsibility for combating abuses such as human trafficking by way of self-regulation.

Another example of the fight against location-bound prostitution is the closure of two escort websites. On the escort sites, human trafficking victims were offered as escorts to international clients. The National Police placed a warning on the sites after the websites were closed. In addition, they sent text message warnings to 1,300 telephone numbers belonging to (potential) clients who had recently had contact with the websites. The people contacted were also asked for information, tips, or signs of human trafficking. The action was intended to contribute to tackling and raising awareness of the dangers of human trafficking.

²⁰ This effect means that if you press on one place on the waterbed, it will rise somewhere else.

²¹ The information film *Please Disturb* can be ordered from the Koninklijke Horeca Nederland.

Closing remarks

In the introduction to this chapter, the following research question was raised: How can human trafficking that takes place across borders best be combated? In an attempt to answer this question, the chapter has addressed various ways for, in cooperation, combating human trafficking. Some of these have proved effective in at least a number of (famous) cases, and lessons have been learned about whether and how to use them in the future. However, new bottlenecks appear to emerge on a regular basis, and they ask for novel, focused attention.

Fighting human trafficking is not easy. A successful approach is not limited to the police and the judiciary. Effective law enforcement action is indispensable for all governments in source, transit, and destination countries to fight human trafficking. On top of that, protection is key to a victim-centered approach, entailing identifying victims, providing referrals for a comprehensive array of social support services, directly providing or funding NGOs to provide those services, and supporting these individuals as they rebuild their lives.

Prevention efforts are an equally important component of the global movement to combat human trafficking. Effective prevention efforts address the tactics of human traffickers head on. With the dissemination of accurate and targeted information, communities will be better prepared to respond to the threat of human trafficking. This can only be done by partnership and good cooperation on a national and international level. If this is achieved, we shall all be on board to fight human trafficking more successfully.

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10. Twenty-five Years of Enforcing the Ban against the Purchase of Sexual Services in Sweden

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Abstract: Sweden has developed an approach in which the user of sexual services has been criminalized while ensuring that women and others in prostitution are not subjected to any sanctions. It was the first country to adopt such an approach. This chapter discusses the original ideas on which the approach is based, deals with the laws that have been made to give form to the approach, and presents its enforcement and effects in legal practice.

Keywords: prostitution, trafficking in human beings, gender equality, demand, organized crime

Introduction

In January 1999, radical legislation that criminalizes the purchase of a sexual service came into force in Sweden. The legislation was the first in the world to center the demand that fosters all forms of exploitation of persons, especially women and children, as a root cause of prostitution and trafficking in human beings for sexual purposes. The passing of the legislation was the first step in the development of a comprehensive approach to tackle these undesirable phenomena.

This chapter discusses the introduction of the legislation and its effects in Sweden. It describes the roots of the approach, goes into discussions surrounding the new legislative approach, and presents research into its effects. The chapter is concluded with an overview of the countries that have taken over the Swedish approach in one way or another.

The roots of the Swedish approach

The first measures that regulated women engaged in prostitution in Sweden came into force in 1847. This law was amended in 1859 to curb the spread of venereal diseases. The legislation required the police to keep a register of women over 15 years of age who “worked in prostitution.” Women were required to attend regular gynecological exams to ensure that they did not transmit venereal diseases to men who purchased sexual services.

Thanks to the activities of the Swedish women’s movement, the legislation was repealed in 1918, and women in prostitution were no longer criminalized. Notably, the debate that accompanied the struggle to repeal the legislation highlighted the demand, and men that purchase sexual services as the root cause of prostitution, not prostituted women (Svanström, 2006).

The 1960s was a period of departure from determinist ideas about how biology should shape women’s lives. Outdated ideas about women’s (lack of) sexuality, the set roles of women and men, and traditional views of the family were questioned. The public debates led to new insights and new initiatives to strengthen and ameliorate the position of women in society, address structural discrimination of women in all areas of society, and counteract male violence against women (Schmitz, 2011).

During the 1970s and 1980s, feminists, including women with lived experiences of prostitution, analyzed women’s unequal position in Swedish society. They focused on how men exercise power through the use of different forms of violence against women in order to maintain the subordinate position of women. Their analysis included men who paid for and exploited the most marginalized women and children, mostly girls, for prostitution purposes.

A gender-equal society

In 1977, the Swedish government instituted a commission of inquiry tasked with investigating the issue of prostitution. During the course of the inquiry, women with experiences in prostitution voiced their lived realities. The commission emphasized the central role of men as procurers, as traffickers, and as prostitution users. The demand was considered as a root cause of prostitution. The outcomes were presented in a report in 1981, with the overall conclusion being that prostitution is incompatible with gender equality and with the political ambitions to create a gender equal society in Sweden (Prostitutionsutredningen, 1981).

Sweden played an active role in the negotiations for the United Nations Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). The recognition of discrimination of women as a structural problem that hampers the development of a society that must be eliminated by political, economic, social, and other means, was of particular concern. The mandatory requirement to eliminate prostitution and trafficking in women also informed the decision of Sweden to sign and ratify the treaty in 1980.¹ Between 1983 and 1993, the Swedish parliament debated more than 50 parliamentary motions on issues related to prostitution. Of those, more than 30 advocated for the introduction of criminal sanctions on those who purchase sexual services. Not one parliamentary motion suggested that women in prostitution should be criminalized (Siring, 2008).

The elections in 1994 resulted in an increase in the number of female members of parliament from 33% to 40%. The fact that the women who were elected were members of the feminist movement contributed to a radical shift in Swedish society. These members of parliament used their power strategically to raise issues that were of particular concern to women, such as the eradication of male violence against women and girls and other measures to eliminate structural discrimination of women: equal pay for equal work, and reproductive and sexual rights. Prostitution and trafficking in human beings were among the prioritized issues (Statistical Bureau of Sweden, 1994; Winberg, 2008; Wägnerud, 2015).

Cultural shift

The Kvinnofrid bill was debated in the Swedish Parliament in May 1998, and it passed with a large majority (Government Bill, 1998, pp. 100–106). In addition to new offenses that criminalized male violence against women in intimate relationships, a stronger rape offense, and more effective legislation against sexual harassment in the workplace, a number of comprehensive measures to prevent and eliminate prostitution were adopted. The bill also included the criminalization of the purchase of a sexual service.²

1 CEDAW, Article 6: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Personal conversation with Sweden's chief CEDAW negotiator (with Ekberg in 2011).

2 The Social Democratic Party (in government), the majority of the Center Party, the Left Party, and the Greens voted for the proposal, while the Conservative Party and the Liberal Party voted against (Swedish Parliament, 1998).

The Kvinnofrid bill caused a radical cultural shift in society by aiming to create a gender equal society without male violence, where the human rights of all women and girls are protected and strengthened. The bill shifted the focus of laws and policies to prevent and combat prostitution and trafficking in human beings onto the prostitution users, following the logic that if there is no demand, there will be no prostitution activities, and no women and girls will be victimized.

Swedish laws, policies, strategies, and actions to prevent prostitution and human trafficking rest firmly on international feminist and human rights principles. They recognize that prostitution and trafficking in human beings for sexual purposes impede the participation of women and girls in society. Summarizing, the core principles of the Swedish approach are:

- Prostitution is incompatible with internationally accepted principles of human rights: the dignity and worth of the human person and the equal rights of men and women.
- Prostitution is male sexual violence committed mainly against women and girls, expressly targeting those, who are economically or ethnically marginalized, or racialized (Eurostat, 2015)
- Eliminating the demand as the root cause of prostitution and trafficking in human beings for sexual purposes is a cornerstone of Swedish laws and policies.
- Women and others in prostitution are not criminalized or subjected to any form of administrative penalties. They have a right to live lives without being subjected to violence through the harm of prostitution.
- All forms of legal or policy measures that legalize prostitution activities, or that decriminalize the chain of perpetrators in the prostitution industry, are considered threats to sex equality and the human rights of women and girls to live their lives free of male violence (Ekberg, 2004).³

In January 2017, the government launched a 10-year national strategy to prevent and combat men's violence against women, combined with a comprehensive program of measures. The strategy focused on capacity building and collaboration between stakeholders (Government Communication, 2017). That strategy was followed by a new national action plan against prostitution and trafficking in human beings (Government Action Plan, 2018).

Also, in 2021, a financed package of measures was issued for the continuing work to prevent and combat men's violence against women. The package

3 The chain of perpetrators includes those who purchase sexual services.

consisted of measures to strengthen the support and protection of victims of prostitution and trafficking in human beings for sexual purposes, and an investigation to analyze the benefits of allowing individuals that are subjected to the purchase of a sexual service standing as complainants (Government Action Plan, 2021).

Procuring and trafficking

Procuring and trafficking in human beings for sexual and other purposes are offenses under Swedish law.⁴ The trafficking offense, which first came into force in 2002, applies to all forms of trafficking in human beings and has a maximum prison sentence of 10 years.⁵ Between 2017 and 2020, 391 cases of human trafficking for sexual exploitation of adults and children were reported to the Swedish police. Of these, only 5% led to convictions. Because of the complexity of the trafficking law that causes problems proving improper means,⁶ the majority of cases involving the exploitation of women in prostitution have been prosecuted under the procuring legislation.

The procuring offense applies to any prostitution-related activities such as holding brothels, including in apartments and bogus massage parlors, as well as escort services, and can lead to a maximum of four years of imprisonment.⁷ Procuring is considered as “aggravated” in cases when the activity was carried out on a large scale, resulted in considerable gain, or involved ruthless exploitation. It can lead to imprisonment for at least two, and at most 10 years.

Men who purchase sexual services

On 1 January 1999 a law that criminalized those who obtain or attempts to obtain casual sexual relations in return for payment came into force. The

4 The offense of trafficking in human beings, which came into force in 2004, reflects the definition of trafficking in Section 3 of the Palermo Protocol.

5 To increase the prosecution rates for other forms of human trafficking, a new offense of human exploitation (Criminal Code, ch. 4, section 1(b)) came into force in 2018.

6 Proof of “improper means” involves, e.g., that the offender has used threats, force or other forms of coercion, fraud or deception, or has abused their power or exploited the victim’s position of vulnerability.

7 Criminal Code, ch. 6, section 12.

sentence may be a fine or up to one year in prison.⁸ The offense applies to all forms of sexual services, whether they are purchased in the street, in brothels, in a hotel, or a bogus massage parlor, in someone's home, or in other similar circumstances. The offense also criminalizes a third person or group of individuals that purchase a sexual service for someone else.

The Supreme Court of Sweden has ruled that the minimum level of fines for a regular purchase of a sexual service should be set at 50 day fines (Högsta domstolen, 2001). In 2008, the Court of Appeal concluded that a purchase of a sexual service, which takes place in the context of organized prostitution is to be considered aggravated, and, hence, the offender should be sentenced to a conditional sentence and fines.⁹ Later, in 2011, an increase in the maximum sentence from six months to one year in prison came into force.¹⁰

In 2021, the government instructed a commission of inquiry into sexual violations to analyze the benefits and drawbacks of removing fines from the sentencing scale, making anyone, who is in breach of the offense, liable for a prison sentence of no more than one year (Inquiry Report, 2021). The government underlined that this law reform is necessary because "the penalty scale should reflect the seriousness of the crime" (Government Communication, 2017). Despite the explicit intent by the law makers, the first few convictions of prostitution users under the revised legislation resulted in suspended sentences and a lower number of day fines, and not in a prison sentence (see, for example, Göteborgs tingsrätt, 2022; Nordqvist, 2023).

This dereliction of duty by the courts is highly problematic, especially when weighing the low level of punishment against the serious harm caused by the offenders to those who are exploited in prostitution. Raising the minimum penalty is a step in the right direction. It still has to be vigorously enforced to have the intended effects.

Enforcement of the laws

Enforcement of the prohibition on purchasing sexual services and other prostitution-related offenses is highly prioritized by the government, as well as by the Swedish police and prosecution authorities (see, e.g., Polismyndigheten, 2018; Swedish Government, 2019).

8 Ibid., section 11.

9 In this particular case, in connection with gross procuring involving four accused: Hovrätten för Västra Sverige (2008).

10 Government Bill, 2011.

However, the Swedish Police Authority initially appeared to be reluctant to implement the law.¹¹ Research shows that male police officers felt empathy for those men, who were reported, or were reluctant to report them.

The effects of male bonding play a part in creating this situation. The police force is a male-dominated institution, which is asked to enforce a law, which threatens traditional male values. Their ability to fulfill this duty is compromised by the fact that policemen will be far more likely to identify with the buyers of sex than with its vendors. (Nordic Institute for Women's Studies and Gender Research, 2002, p. 23)

During the first years of the law, representatives of the police force also expressed serious concerns that prostitution activities would “go underground” if this offense was properly enforced (Morgonbris, 2004, p. 12). International sex workers groups, some United Nations institutions, and other organizations and individuals, critical of the Swedish gender-equality based approach to prostitution and trafficking in human beings, have persistently argued that the legislation would be a failure. When prostitution activities “go underground,” they claim, those that are in prostitution risk higher levels of violence from prostitution users, as well as from traffickers and procurers.

During consultations held by the Working Group, participants explained how, due to clients' fear of the police, sex work has been displaced to less safe places, and sex workers have less control over working conditions, including screening clients. (Amnesty International, 2016, p. 5)

The critical opinions have been addressed and refuted by several research reports, such as the 2016 European Commission report on the gender dimension of trafficking in human beings (European Commission, 2016), and the 2023 European Parliament report on the regulation of prostitution in the EU and impact on gender equality and women's rights, as well as reports in other jurisdictions such as the Republic of Ireland, France, and Northern Ireland (European Parliament, 2022).

Importantly, the 2010 Swedish Commission of Inquiry for the evaluation of the ban on the purchase of sexual services, which, after carrying out

11 Since 1 January 1999, 14,710 cases of the purchase of a sexual service, 2,585 cases of procuring and aggravated procuring, and 1,134 cases of trafficking in human beings for sexual purposes have been reported.

extensive interviews with individuals who were engaged in prostitution, victim support agencies, and other concerned stakeholders, did not find any evidence that the offense had negative effects for individuals in prostitution (Skarhedutredningen, 2010). Likewise, the Norwegian research report, that evaluated the 2009 Norwegian legislation that prohibits the purchase of a sexual service concluded that:

[T]his analysis finds no clear evidence of more violence against women in the street market after the introduction of the law. It is the customer that engages in illegal action and thus has the most to fear if reported to the police by a prostitute. The police have no indications on more violence following the ban on purchasing sexual services. (Vista Analyse, 2014)

On the other side, legislation that liberalizes prostitution appeared not always to have positive effects. A German government evaluation of the 2002 Prostitution Act, which decriminalized brothel keeping and regulated prostitution in order to improve the legal and social status of individuals in prostitution, found that:

As regards improving prostitutes' working conditions, hardly any measurable, positive impact has been observed in practice.... The Prostitution Act has not recognizably improved the prostitutes' means for leaving prostitution.... There are as yet no viable indications that the Prostitution Act has reduced crime. The Prostitution Act has as yet contributed only very little in terms of improving transparency in the world of prostitution. (Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, 2007)

Police investigations

Police investigations into prostitution activities may involve online surveillance of the actions of the perpetrators through prostitution advertisement websites, and social media such as Facebook, Instagram, TikTok, and OnlyFans. When a suspect activity has been identified, the police may call cell phone numbers listed in prostitution advertisements to identify the location of the prostitution activities. Police officers will be deployed to conduct surveillance outside the prostitution location to identify the perpetrators, which include the traffickers, procurers, and the men who purchase sexual services.

When a man intending to purchase a sexual service arrives at the site of an apartment brothel or a bogus massage parlor, he can be arrested and charged of purchasing of a sexual service. The police have the right to arrest the offender prior to his exploitation of the person in prostitution, because attempts to do so have also been criminalized. Evidence of an attempt to purchase a sexual service involves that a prostitution user initiates the commission of the offense, and that there is a risk that the offense will be completed (Hovrätten över Skåne och Blekinge, 2002, p. 4). The majority of the cases since 1999 that involve an attempt to purchase a sexual service have been initiated at the moment when the prostitution user initiates a contact¹² with a person to with the intention to purchase a sexual service (Solna tingsrätt, 2012, p. 3).

When a prostitution user has pleaded not guilty, he may be required to testify in the trial against the criminal organizers of the prostitution activity. The testimonies of prostitution users in court are important evidence in order to lift the burden off victims to speak about their experiences of sexual and other violence and exploitation at the hands of procurers and prostitution users.

When the identities of those who organize prostitution activities have been identified, the police can request permission to intercept their cell phones and other digital communications. The site of the prostitution activities can be subjected to camera and/or physical surveillance. When sufficient evidence has been collected, the police will apply to the prosecution services for the permission to search the prostitution premises, and a raid may take place.

During a raid, the police will look for signs of prostitution activities, such as used condoms, lubricants, and sex toys, as well as large amounts of cash. To secure additional evidence for the prosecution, the police will employ so called “sperm dogs,” dogs that have been trained to search for and indicate body fluids. This investigation method has proven very successful and has provided strong evidence in a large number of convictions under the procuring legislation.

The police will also take note of beddings, kitchen utensils, and other indications that the victims of human trafficking, who often originate from outside of Sweden, live at the premises under unacceptable conditions. Importantly, it is not illegal be in prostitution in Sweden, and those who are exploited in prostitution are always to be considered as victims. In the

12 Contact can be made, e.g., through an email, a phone call, or by soliciting a person face to face.

1998 Kvinnofrid bill, it was stated that “even if prostitution is not a desirable social phenomenon, it is not reasonable to also criminalize those who ... are the weaker party, who are exploited by others, who want to satisfy their own sexual desires.”¹³

This means that in cases of procuring and human trafficking for sexual exploitation, victims will be taken to a site away from the prostitution premises, where they can meet with victim support agencies and civil society organizations to be informed about their rights, including the right to court-appointed legal counsel. To be effective, the enforcement of the Swedish approach is accompanied by value-based awareness raising and training to combat sex-specific prejudices and victim blaming, in order to strengthen cultural understanding. These issues are addressed in annual trainings and capacity-building conferences for police officers and prosecutors organized through the Office of the National Rapporteur on Trafficking in Human Beings (2018, p. 58).

Organized crime groups

The organized crime networks and individuals that facilitate and organize cross-border trafficking of victims into prostitution activities in Sweden and other countries adapt their modus operandi to changes in the legal and policy frameworks, looking to utilize legal loopholes to their benefit. In 2020, the Office of the National Rapporteur on Trafficking in Human Beings initiated a two-year project to investigate the links between organized crime and trafficking in human beings, into such activities as bogus massage parlors and strip clubs, with the objective to close current loopholes, prevent money laundering, and increase successful investigations, and prosecutions. The project’s conclusion is that the responsible criminal individuals and organized criminal groups in Sweden and abroad pose serious threats to Swedish society. Their criminal activities have far-reaching, negative impacts nationally, and on local communities where organized prostitution activities are operated.

These organizations derive strong financial gains from the fact that men in Sweden pay to sexually exploit victims, mostly from third countries, who are particularly vulnerable and isolated. Criminal organizations transfer millions of untaxed funds from the profits gained through prostitution activities from Sweden to other countries through various legal and illegal means. They may also finance other serious criminal activities in Sweden with these

13 Government Bill, 1998, p. 104–105.

gains. The project resulted in a concrete plan of action against trafficking in human beings for the Swedish Police Authority during 2023–2026 to ensure robust enforcement (Nationell rapportör mot människohandel, 2023).

Feminist and community organizations

Feminist, community, and survivor organizations are central to a successful implementation of the Swedish approach to prevent and eliminate prostitution and trafficking in human beings. These associations offer their knowledge and experiences, and they provide safe accommodation and protection to women, including for prostituted women. They gather vital data, coordinate assistance to victims, and carry out awareness-raising campaigns to eliminate the demand.

Victims are also offered access to court-appointed lawyers, who support victims that decide to testify against the organizers and facilitators of prostitution and trafficking in human beings. These lawyers may also seek monetary compensation on the behalf of victims (Lag [1988:609] om målsägandebiträde). Third-country victims of human trafficking are given a reflection period and can access temporary residence permits during investigations and judicial processes.¹⁴ Specialized victim services with outreach and exit programs managed by municipal victim service organizations and community organizations provide sheltered accommodation, financial assistance, interpretation, and psychosocial support, independent of the victim's cooperation in investigations.¹⁵

Assessment of the Swedish approach

In 2008, the Swedish government appointed a commission of inquiry led by the chancellor of justice, which was tasked with carrying out a review of the implementation and effects of the offense that prohibits the purchase of a sexual service (Government Communication, 2008). The Commission produced a comprehensive report of its findings in 2010 (Skarhedutredningen, 2010).

14 The Aliens Act (2005:716), ch. 5, article 15. A temporary residence permit for a minimum of six months can be given at the request of the leader of the preliminary investigation.

15 See, for example, Mikamottagningen in Stockholm, <https://socialtstod.stockholm/missbruk-och-beroende/sex-mot-ersattning/>.

The number of individuals exploited in street prostitution appear to have halved since 1999, this report made clear, while neighboring countries had three times as many individuals in street prostitution. Concerns that prostitution would move to other arenas have not been fulfilled. Although the sale and purchase of sexual services via the Internet increased in Sweden during the 10-year review period, as it did in other countries, this was due to the development of online technologies and could not be linked to a lack of enforcement. The Commission concluded that “[i]t is reasonable to believe that this is due to the criminalization of the purchase of sexual services in Sweden.”

The Commission pointed to the criminalization as an effective deterrent for prostitution users. Interviews with persons with experience in prostitution, as well as with the police and social services agencies, confirmed that the behavior of men who purchase sexual services had become more cautious, and that the demand had decreased considerably since the law came into force in 1999. Despite expectations that it would be more difficult to reach out and offer support to women (and others) in prostitution, that prostitution activities would “go underground,” and that the conditions of prostituted persons would worsen, the Commission did not find any evidence that the prohibition had negative effects for individuals exploited in prostitution.

Monitoring the progress of the Swedish approach

In 1998, Sweden was the first country in the European Union to appoint an independent National Rapporteur on Trafficking in Human Beings following a joint declaration of the European Union in 1997 (European Council, 1997). The national rapporteur investigates, monitors, and analyzes the character, state and scale of prostitution and trafficking to, within and from Sweden, and the impact of current laws, policies, actions, and other initiatives. Annual reports are published with comprehensive recommendations based on current data collected from responsible public authorities, civil society organizations, and other relevant institutions. These annual progress reports have noted that there is firm evidence that the offense of purchasing a sexual service functions as a barrier against the establishment of well-organized trafficking crime networks and groups in Sweden. The legislation that targets the demand has a direct and negative impact on the prostitution market in Sweden over time.¹⁶

16 See consecutive annual progress reports by the National Rapporteur on Trafficking in Human Beings (1999–2008).

The Commission of Inquiry concluded in its 2010 review report that the legislation had strong support in Sweden among the public and had brought about significant positive and lasting changes in attitudes and norms.¹⁷ Since January 1999, several opinion polls have been carried out to measure public attitudes to the ban on the purchase of a sexual service. The first opinion poll, which was conducted six months after the law prohibiting the purchase of sexual services came into force, showed that 76% of all respondents agreed that it was “right to prohibit the purchase of a sexual service,” with only 15% opposed. The survey showed a difference between the opinions of male and female respondents, with 70% of men and 81% of women supporting the ban (Kantar Sifo, 2020).

The latest opinion poll was carried out in mid-2020. The survey was conducted digitally with nationally representative respondents, aged between 18 and 79 years. The results show that 86.2% had a negative or very negative attitude towards the purchase of sexual services (Kantar Sifo, 2020). Hence, the general public has remained strongly and consistently in favor of the ban since it was introduced 25 years ago.

International legal framework

In 2014, the European Parliament recommended the Swedish approach as a best practice example for how to successfully eliminate trafficking in persons for sexual purposes within a gender equality framework, while stating that the purchase of a sexual service should be considered a criminal offense in all Member States of the European Union (European Parliament, 2013).

In September 2023, a follow-up resolution on the regulation of prostitution in the European Union was passed in the European Parliament. The resolution included two important conclusions in line with the Swedish approach:

- Putting into place legislative and other measures to address the demand for women and girls for prostitution purposes is a core necessity for successful elimination of sexual exploitation and trafficking in human beings; and
- Prostitution is a form of violence, and both a cause and a consequence of gender inequality. The gender-specific nature of prostitution reflects the prevailing power relations in our society. Prostitution reproduces and

17 See studies below.

perpetuates stereotypes about women and men. (European Parliament, 2022)

Another sign that substantial changes are currently being made to the international understanding of prostitution as a harmful practice and discrimination of women and girls is the decision of the Canadian Ontario Superior Court in a constitutional challenge to the Canadian prostitution legislation. The court held that the Canadian prostitution legislation is constitutional, and

that the Parliament's response to a pressing and substantial concern is a carefully crafted legislative scheme that prohibits the most exploitative aspects of the sex trade while immunizing sex workers from prosecution. The offenses minimally impair the Charter rights of sex workers. The offenses also permit sex workers to take safety measures.¹⁸

Finland

In 2006, and despite strong public support for a total ban, the Finnish Parliament passed legislation criminalizing the purchase of sexual services only in cases when the offender had intent and knew that the prostituted person was a victim of procuring or trafficking in human beings for sexual exploitation.¹⁹ It soon became clear that the legislation was ineffective, resulting in very few convictions. It was difficult to obtain enough evidence that a prostitution user knew that a woman in prostitution was under the control of a procurer, or was a victim of human trafficking, to ensure conviction.

The offense was then partly amended, and the elements of "intent" and "knowledge" were removed. It was replaced by an offense that aims to increase the responsibility of the prostitution user. Today, it is a crime to purchase a sexual service if there are reasons to suspect that a woman is a victim of procuring or trafficking in human beings. Hence, there still is not a total ban on the purchase of a sexual service. The new offense has been roundly criticized by law enforcement officials for being difficult to enforce, with very few convictions as a result.²⁰ Therefore, a committee,

18 Ontario Superior Court, 2023.

19 Criminal Code of Finland, 1889.

20 Bogomoloff, 2015; personal conversations with Finnish law enforcement officers, including in 2021.

led by the Ministry of Justice, was appointed to examine the reasons why the provision in the Criminal Code concerning “the abuse of a victim of sexual trade” is rarely enforced.

Despite the experience in Finland, the European Commission proposed in December 2022, in its overhaul of the 2011 EU Anti-Trafficking Directive, to revise the offense in Article 18(4),²¹ making it “mandatory for Member States to establish as a criminal offense the use of services, which are the objects of exploitation, with the knowledge that the person is victim of a trafficking offense.”²² Even though the European Commission intends to monitor the impact of the proposed amended offense, the fundamental problem remains—that the vast majority of those, who purchase sexual services do not risk being prosecuted.

Conclusions

The experiences from 25 years of implementation of the Swedish approach show that it is necessary to target the demand for women and girls for prostitution purposes if we want to live in democratic societies where fundamental principles of sex equality and nondiscrimination are central. However, the Swedish approach has not been without criticism. A number of individuals and groups that represent the interests of sex workers²³ as well as countries where the prostitution industry is fully or partly legalized²⁴ have voiced concerns about negative effects of the Swedish approach. These concerns have, in turn, been addressed nationally in reviews carried out by commissions of inquiries, as well as by researchers in several of the countries where the Swedish approach has been integrated into the legal and policy framework.²⁵

21 Article 18(4): “In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offense the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offense referred to in Article 2.”

22 European Commission, 2022.

23 See, e.g., the Global Network of Sex Work Projects (NSWP), which defines its core requirements for membership as: “Acceptance of sex work as work, opposition to all forms of criminalization and other legal oppression of sex work (including sex workers, clients, third parties, families, partners and friends), and supporting self-organisation and self-determination of sex workers” (<https://www.nswp.org/who-we-are>). See also other chapters to this book.

24 For example, Australia, Austria, Germany, the Netherlands, and New Zealand.

25 For example, in the Republic of Ireland, Northern Ireland, France, Norway, and, ongoing, in Israel.

As time passes, more and more decision-makers in countries where prostitution is considered as work, where certain prostitution activities are legalized, and where men have the right to purchase women, girls and others for prostitution purposes are integrating the concrete results of the Swedish approach into their laws and policies. Early on during the development of the Swedish model, it was recognized that this approach would not work in isolation.

In 2002, the Swedish minister for gender equality made a policy decision to “export the legislation that criminalizes the purchase of sexual services” to other countries through vigorous awareness raising and information campaigns, diplomatic exchanges of experiences, and, vitally, advocacy support to feminist, survivor-led groups, and other community organizations in different countries. The Swedish approach has inspired parliamentarians, government officials, community groups, journalists, and researchers in many countries to advocate for similar changes. Today, the following countries have adapted this approach to their specific national contexts: Norway and Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), the Republic of Ireland (2017), Israel (2020), and the State of Maine in the USA (2023), with advances currently being made in, for example, Cuba, Colombia, Germany, Italy, the Netherlands, Scotland, South Africa, Spain, and the United States, among other countries.

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11. Tactics Used by Exploiters to Draw Their Victims into Sex Work¹

Marijke Malsch and Inga van Uchelen

Abstract: Dutch law and law enforcement in the area of sex work are relatively liberal. Sex work, procuring/pimping, and running a brothel or club have been decriminalized. The approach towards forced sex work is made more repressive. Court decisions can provide information about the tactics used to draw people into the sex industry, and to keep them there with the aim of obtaining more money. We investigated 50 Dutch court decisions in cases of the trafficking of human beings and identified seven categories of tactics. In this chapter, we present and analyze these categories. Taking advantage of vulnerability and dependency is the most prominent tactic, with actual violence being used less often.

Keywords: sex industry, human trafficking, exploitation, court decisions

Introduction

The legal ban on brothels and procuring/pimping was lifted in the Netherlands in 2000. Like sex work itself, running a brothel and procuring became, subject to certain conditions, legal activities. The intention of this legislative amendment was to decriminalize the capitalization of sex work, and to enable more effective and targeted judicial action by tightening up the criminalization of the exploitation of sex workers.² Article 273f of the Dutch

¹ In this chapter, some lengthier legal/document citations have been put in the footnotes, in deviation of the usual APA author–date parenthetical. This chapter is based on Van Uchelen & Malsch, 2023. It has been adapted for the purposes of the present book with permission from the publisher of the journal.

² *Parliamentary Papers II*, 1996/97, 5/6, Explanatory Memorandum (*Memorie van Toelichting*).

Criminal Code regulates the criminalization of all forms of trafficking in human beings. Pursuant to this article, a person is punishable who “recruits, transports, transfers, houses or takes over another person, including the exchange or transfer of control over that other person for the purpose of exploiting that other person or removing his organs.”

The terminology used by the law covers a range of actions (which we also refer to as “tactics” here), not all of which are explicitly referred to in Article 273f. Some of these actions are common, others less so (with some not being seen at all). The human trafficking article can be applied not only to the sex industry but also to exploitation in a range of other sectors such as the catering industry, agriculture, and horticulture (examples being seasonal work in asparagus cultivation, strawberry cultivation, or the mushroom sector). Exploitation takes specific forms in the different sectors. Our study focuses specifically on the sex industry and addresses the central question: Which perpetrator actions in the sex industry are covered by Article 273f of the Dutch Criminal Code?

The wording of the law is, inevitably, always rather broad. For instance, the “unlawful appropriation” of “property belonging to another” that criminalizes “theft” (Article 310 of the Criminal Code), like the wording relating to human trafficking, does not directly clarify the form the criminal behavior can take. In other words, it does not state how a thief could appropriate the property. Particularly in the case of a relatively new legal article such as one relating to human trafficking, it is important to know which forms of exploitation occur in practice and are considered punishable by the courts. An analysis of these types of situations can further the detection of situations that may develop into exploitation, which often extends over longer periods of time and may sometimes be preceded by a longer, or shorter, period of preparation. Since exploitation is not always clearly visible or detectable for the outside world, including the police and the judiciary, a concrete description of the different forms it takes may be conducive to identifying it better.

To answer the research question, we analyzed 50 cases in which a Dutch criminal court arrived at a conviction for exploitation in the sex industry. In all the cases we selected, the victims were women or girls. The fact that these cases were taken to court suggest that they are likely to be the more serious cases. Our analysis identified seven actions or tactics that perpetrators regularly use to draw their victims into sex work. We then assigned those tactics to categories and analyzed them further (grounded theory) (Van den Bos, 2021). It should be noted here that we use the terms “sex worker/sex work” and “prostitute/prostitution” interchangeably in

acknowledgment of both the sensitivity of the terminology and the legal terminology.

The analysis of exploiters in the sex industry is important for both academic studies and legal practice, especially in an era in which legislation is becoming more repressive again, for example, with the creation of offenses criminalizing sex workers' clients.³ We will first discuss the literature relating to the various forms of sex work and possible exploitation. We then present the research methods and discuss the forms that actual exploitation took in the selected court decisions. We allocate the actions we identified to categories and look for connections between those categories. In the conclusions and recommendations sections, we discuss the implications for tackling exploitation.

Literature

Sex work takes various forms. They can include consensual sex work but also exploitation (human trafficking). Some forms seem to involve hardly any exploitation, whereas others lead to more widespread forced work. The different forms of sex work will now be sketched briefly (Koolenbrander, 2019).

Window sex work

Window sex work is the most visible form of prostitution. It is seen in a number of cities in the Netherlands (Daalder, 2007; D'havé et al., 2007; Daalder, 2015). The prostitute (m/f/x) stands behind a window in an inviting position. If a client wants to make use of the services of the sex worker, the two consult in the doorway. If they come to an agreement, the client goes inside and the curtains are closed. The relative openness and visibility of window sex work allows it to be monitored and controlled relatively well by the city authorities and the police, but also by clients.

Clubs

Clubs, or brothels, are locations open to the public where sexual services are provided. There are usually several rooms to which the sex worker and the client can withdraw (D'havé et al., 2007). Clubs have been subject to licensing since the brothel ban was lifted in 2000 and they are regularly

3 See further below. See also Malsch et al., 2021.

monitored by local authorities. However, activities in clubs are not visible in the way that window sex work is, making direct control more difficult.

Escort sex work

In this form of sex work, the client makes contact by telephone or via the Internet with an intermediary or directly with the sex worker. The client generally chooses the location where the meeting takes place (Koolenbrander, 2019). The options available to the authorities to exert control in this sector are limited and difficult to implement.

Home sex work

In home sex work, the prostitute works from home, a hotel or another private location. Contact with clients is often established through offline and online advertisements (D'havé et al., 2007). There is currently no license requirement for sex workers in this sector but that may change in future legislation (Goderie & Boutellier, 2006; Malsch et al., 2021). This makes home sex work the most hidden form, meaning that it is more prone to abuse (D'havé et al., 2007). It is also unclear whether this sector is made up of prostitutes working for themselves or whether they work more often under a procurer/pimp in relationships involving sexual exploitation (Malsch, 2017).

Street sex work

Street sex work frequently results in nuisance for the neighbors and it is therefore often prohibited in the Netherlands. However, the law allows municipal authorities to establish areas where it is tolerated. There are only a few such areas in the Netherlands at present. In unofficial areas, sex workers are particularly susceptible to coercion, and exploitation and violence by clients is more common (Van Wijk et al., 2014).

Violence against sex workers

Sex workers are exposed to a range of forms of violence. One study found that 97% of sex workers had experienced some form of violence in the previous year (Kloek & Dijkstra, 2018). However, another study found hardly any reports of violence in their interviews with, among others, the sex workers themselves (Kennis et al., 2021). The latter study stated that police see many women from Eastern and Latin American countries in sex clubs who do not speak a word of Dutch or English. Those women were probably not identified by this study, with possible underreporting as a result (Van der Zee, 2013; Van der Zee, 2015). Since violence against sex workers is not

the main subject of our research, only limited attention is paid here to the literature on violence against sex workers.

Exploitation in sex work

Figures on the extent of exploitation within sex work are not very reliable, partly because of a significant dark number: many prostitutes do not report forced sex work. Human trafficking is increasingly concealed and since the victims are often afraid of reprisals, detection and prosecution are problematic.⁴ It is estimated that there are 5,000 to 7,500 victims of human trafficking every year, with most of them being in the sex industry (Nationaal Rapporteur Mensenhandel, 2013; Nationaal Rapporteur Mensenhandel, 2013-2017; Comensha, 2022; Defence for Children, n.d.). The number of prosecutions is not large, and that number fell from 257 in 2013 to 144 in 2017. The percentage of acquittals in human trafficking cases is also high: 23% to 29% of cases brought to court do not lead to a conviction.⁵ Fear of the trafficker sometimes leads to victims trying to withdraw their notification to the police, complicating the collection of evidence and leading to an acquittal.

Conditions that favor exploitation

There are similarities between the exploiter–victim relationship and partner relationships involving domestic violence. The umbrella term “violence in dependency situations” was introduced about 15 years ago. It links violence in private situations and in situations like human trafficking to dependency and power differences (Janssen, 2016). In both cases, there is control, isolation, intimidation, and violence and this process gradually increases a victim’s dependency. In such situations, there may be love and affection at the same time as exploitation (Verhoeven, 2017, pp. 76–93; Kennis et al., 2021) making it extremely difficult for victims to extricate themselves from the exploitative situation (Rijken et al., 2013).

The vulnerable position of victims is also an important factor in human trafficking in the sex industry (Kennis et al., 2021). Victims may have no home and no work, or find themselves in a threatening situation. Drug use, illegal residence in the Netherlands, and being underage also exacerbate vulnerability and dependency.

The combination of deception and the abuse of a victim’s vulnerability is also often exploited by “lover boys,” who target very young girls in order

4 On the invisibility of human trafficking, see the various reports of the Nationaal Rapporteur Mensenhandel; see also Malsch, 2013.

5 See reports and factsheets of the Nationaal Rapporteur Mensenhandel.

to entice them into sex work. They try to make the girls fall in love with them while, at the same time, isolating them. Girls brought to sex work by a lover boy often find it difficult to extricate themselves because they cannot distance themselves from the boys. They are also less likely to go to the police for the same reason (Bovenkerk et al., 2004; Rijken et al., 2013).

Method

Grounded theory

For the purposes of the research, we used a grounded theory approach: analyses and concepts are built up from the “ground,” in other words, from the material we use as a basis, namely the contents of the court decisions. This implies that certain tactics may not have been noticed because they were not reported to, or mentioned by, the police, are not included in the prosecution’s indictment, or were considered proven by the judge. The basic material we drew on consisted of the cases selected by the police, the Public Prosecution Service, and the courts. Nevertheless, the contents of the court decisions provide a great deal of detailed information about the tactics of the perpetrators and particularly about how trafficking victims end up in sex work and are kept there.

Our concepts and categories were constructed by systematically collecting and analyzing data from court decisions (Glaser & Strauss, 1967; Van den Bos, 2021). That involved working iteratively: the selection of the tactics and actions, and their categorization, nomenclature, and significance, were established by repeatedly returning to the basic material (the court decisions) and then analyzing and reclassifying the emerging findings. In this process, the academic literature discussed above served as a background.

Materials

We used the Dutch website Rechtspraak.nl as a source for court decisions about exploitation in the sex industry.⁶ We conducted a systematic search of court decisions made in the period from 1 July 2014 to 30 June 2020, selecting decisions using the search terms “exploitation” (*uitbuiting*), “273f” and “sex work” (*sexwerk/prostitutie*). The result was a list of 504 judgments from which

6 Only a small proportion of all court decisions are published on Rechtspraak.nl. However, the purpose of our analysis is not to provide a representative picture of all trafficking convictions related to forced sex work, but to gain relevant insights into the tactics used to introduce individuals to this work and keep them there. The sample suffices for this purpose.

we selected relevant decisions, starting with the first decision in the list. We stopped the selection process when we had identified 50 relevant rulings.

The criteria for the selection of decisions were:

- Cases in which the accused was acquitted were eliminated because the exploitative actions had therefore not been proven.
- Single exploitative situations (of one or more victims) sometimes involved several perpetrators. In order to avoid a potential overlap of actions (by different perpetrators), single court decisions relating to these situations were selected and the others were disregarded.
- A targeted search was made for descriptions of exploitative actions. If they were not explicitly described in a court decision, or only to a limited degree, that decision was not included in the study.
- Where there were multiple victims, we looked at the actions targeting a single victim, often the first victim to be described.⁷

We counted the number of times each action⁸ was seen in the sample of 50 cases. A single case may involve several types of action. Moreover, a single action often involved different—more specific—behaviors. The actual action of facilitating sex work included, for example, the following behaviors: housing the victim, arranging transport to and from clients, and drawing up sex advertisements. Our study is about the overall actions, with the behaviors being used for illustration purposes.

Representativeness

The cases analyzed may not be representative of all cases of exploitation in sex work, partly because only a limited proportion of all these cases are published on the website Rechtspraak.nl. Moreover, the decisions are based on a selection by the court of the actions considered: those actions or behaviors that to which the court believes the human trafficking Article 273f of the Dutch Criminal Code is applicable. Nevertheless, we assume that the decisions list the most pertinent actions and behaviors.

The number of cases examined is adequate as a basis for a satisfactory overview of the actual actions involving the exploitation of victims by the perpetrators that are considered legally relevant by the courts.

7 Occasionally, the actions targeting several victims in a single case were similar. In cases of this kind, we sometimes refer to “the victims.”

8 We decided not to use the categorization of elements/actions included in Article 273f of the Dutch Criminal Code.

Results

The analysis of the 50 court decisions yielded seven categories of actions that traffickers use with the intention of inciting victims to engage in sex work and keeping them in that work. Some actions are not punishable outside this context. However, they become punishable as a result of how they were performed and the perpetrator's intention. The criterion for the establishment of a category was that an action needed to have occurred at least 10 times in the sample of cases. The seven categories, ranging from most common to least common, are:⁹

- *Exploiting the victim's vulnerability* (occurred 44 times). For example: being underage, custodial placement, mild intellectual disability, psychological problems, abuse, and being incited to an addiction (particularly to drugs).
- *Facilitating sex work* (36 times). For example: transporting girls/women to appointments with clients and asking for money for this transfer.
- *Deception* (27 times). For example: suggesting that there is a love affair, creating "debts" to the perpetrator, pretending that one of the perpetrator's family members needs to pay medical costs.
- *Exercising control* (22 times). For example: perpetually calling and texting, driving by the victim's workplace, asking how much money has been earned.
- *Threats* (17 times). For example: threatening violence or other actions, such as telling the victim's family about her sex work.
- *Violence* (15 times). For example: kicking, hitting, assaulting another sex worker in front of the victim.
- *Giving instructions* (14 times). For example: giving instructions on what to do with the money, how much money to request from the client.

Categories

We will discuss each category of actions individually below. To illustrate the actions, we list a number of specific behaviors described in the court decisions for each category.

9 In a single case, there are often several categories of actions, which can and should often be considered in relation to each other.

Exploiting the vulnerable position of the victim

Abuse of the victim's vulnerable position was the most frequently mentioned action in the court decisions studied (in 44 cases). In some cases, the victim was already in a vulnerable personal situation when meeting the perpetrator for the first time; in others, the perpetrator deliberately placed the victim in a vulnerable situation. The combination of the two was also seen.

In several cases, the victims were living in a shelter because of problems at home. An underage girl met the perpetrator in the shelter through a codefendant, and he took her to a place where she could perform sex work.¹⁰ A convicted trafficker asked his victims, whom he had contacted through the Internet, to send him nude photos which he then used to blackmail them. One of his victims was particularly vulnerable: she had, according to the court, been bullied and abused as a child.¹¹

There was also incitement to use drugs. One perpetrator gave as a reason for this that the woman would then "do the work better."¹² Victims were sometimes deliberately made dependent on drugs by giving them some drugs every time they had performed sexual acts.¹³

Actions to place the—sometimes underage—victims in a vulnerable and dependent position and to isolate them were: not giving the victim access to a telephone and money;¹⁴ taking the victim's ID and housing the victim in a remote campsite;¹⁵ threatening women who had come to the Netherlands illegally that, if they were to stop the sex work, they would be reported to the police and that they would have to pay fines;¹⁶ taking the woman's child to stay with a trafficker's family.¹⁷

In some cases, an intellectual disability played a role: "The parents ... say that the victim is intellectually disabled and that she has also been diagnosed with PDD-NOS and a personality disorder,... that she never sees any ill intentions and can soon become dependent."

This victim was in love with the perpetrator and quickly became addicted to cocaine during the relationship.¹⁸

10 Rb. Amsterdam, 19 July 2018, ECLI:NL:RBAMS:2018:5134.

11 Rb. Zeeland-West-Brabant, 23 January 2019, ECLI:NL:RBZWB:2019:238.

12 Rb. Amsterdam, 25 January 2018, ECLI:NL:RBAMS:2018:390.

13 Hof Den Haag, 3 December 2019, ECLI:NL:GHDHA:2019:3173.

14 Rb. Rotterdam, 6 February 2019, ECLI:NL:RBROT:2019:1100.

15 Hof 's-Hertogenbosch, 5 April 2016, ECLI:NL:GHSHE:2016:1248.

16 Rb. The Hague, 6 July 2018, ECLI:NL:RBDHA:2018:9089.

17 Hof Den Haag, 30 January 2018, ECLI:NL:GHDHA:2018:2095.

18 Rb. Gelderland, 26 June 2017, ECLI:NL:RBGEL:2017:3281.

A lack of mastery of Dutch also makes women vulnerable, as was the case with several victims from Hungary. The perpetrator took advantage of this factor to, according to the court decision, “control the situation.”¹⁹

Multiple problems were a factor in many cases. One victim had fled from her ex-boyfriend, had nowhere to go, urgently needed money, had a drugs problem, was HIV-positive and was in love with the perpetrator. The court found that the perpetrator took advantage of these vulnerabilities.²⁰

Facilitating sex work

This category was found in 36 of the 50 cases. The facilitation of the sex work (or more accurately in the context of these cases, the obligation to use the arrangements made by the perpetrator) came in various guises. One trafficker arranged the hotel rooms where the sex work took place, the contacts with clients, and other matters (time, place, and nature of the work).²¹ The victim was driven to and picked up from clients, and the perpetrator placed sex ads on the Internet which the victim was forced to pay for. The perpetrator also had the bank card and the PIN code of this victim in his possession.²² One woman was, in addition to clothes, accessories, and makeup for work, given “[plastic] caps ... so that/so that she would/could continue to perform her [sex work] activities during her periods.”²³

In another case, the perpetrator brought the victim to the Netherlands from Bulgaria and arranged for housing, the rent for a window, and the papers she needed to work as a prostitute.²⁴

Deception

Deception was seen in 27 of the 50 cases. Traffickers deceived their victims into believing that they loved them. One perpetrator sustained the delusion in the victim “for a very considerable period of time that there was a relationship of love.” He claimed to have debts of €30,000, and that he needed €11,000 for the medical treatment of his grandmother, which the victim had to earn for him.²⁵

In another case, the perpetrator convinced the woman that they were going to build a future together. He gave her clothes and a phone. He later

19 Hof Arnhem-Leeuwarden, 25 November 2015, ECLI:NL:GHARL:2015:8966.

20 Rb. Amsterdam, 21 November 2014, ECLI:NL:RBAMS:2014:7911.

21 Rb. Amsterdam, 21 June 2018, ECLI:NL:RBAMS:2018:4378.

22 Rb. Gelderland, 26 June 2017, ECLI:NL:RBGEL:2017:3281.

23 Hof's-Hertogenbosch, 5 april 2016, ECLI:NL:GHSHE:2016:1248.

24 Hof Amsterdam, 1 February 2016, ECLI:NL:GHAMS:2016:301.

25 Rb. Amsterdam, 29 April 2016, ECLI:NL:RBAMS:2016:9500.

demanded that she return his money because he had “already invested enough” in her and her family.²⁶ In another case, the perpetrator convinced the woman that they were saving money for their marriage and so the victim had to earn more.²⁷ A convicted trafficker told the victim that he would use the money earned to open a café where the victim could work.²⁸

In one case, a complete family used deception to induce victims to engage in sex work. They gave the victims, who often lived in difficult circumstances, the idea that they were part of the family, instilling a sense of loyalty. They used the term “home” (also in the context of not being allowed to come “home” if not enough money had been earned). Victims would be offered a better future and the suspects made them jointly responsible for the income of the “family.”²⁹

A trafficker made his victims get a tattoo with letters that could be linked to him in order to demonstrate that they were a “team” and belonged to each other. The man promised to help solve all the victim’s problems and to give them a new sense of belonging—but all that was made dependent on the victim agreeing to sex work.³⁰

Exercising control

The tactic of exercising control was found in 22 court decisions, often in combination with Facilitating sex work and Giving instructions. In one case, the perpetrator took the victim to clients and picked her up in order to exercise control. The court found that instructions and enquiries by telephone about the number of clients were also used to exercise control.³¹

One perpetrator required the victim to report to him about when a client would be coming and for how long, and he sent WhatsApp messages to check whether clients were present. He waited nearby when the victim received clients.³² In another case, the court states that a victim was required to give unused condoms to the perpetrator at the end of her shift “so that he could calculate what she had earned.”³³

26 Hof Den Haag, 31 August 2017, ECLI:NL:GHDHA:2017:2587.

27 Rb. Amsterdam, 10 October 2019, ECLI:NL:RBAMS:2019:7542.

28 Hof Amsterdam, 8 October 2018, ECLI:NL:GHAMS:2018:3844.

29 Rb. Amsterdam, 11 November 2016, ECLI:NL:RBAMS:2016:7334.

30 Rb. The Hague, 13 April 2016, ECLI:NL:RBDHA:2016:3902.

31 Hof Amsterdam, 1 February 2016, ECLI:NL:GHAMS:2016:301.

32 Hof Amsterdam, 19 September 2016, ECLI:NL:GHAMS:2016:3765, see also Rb. Overijssel, 22 February 2018, ECLI:NL:RBOVE:2018:553.

33 Rb. The Hague, 13 April 2016, ECLI:NL:RBDHA:2016:3902.

Threats

This category was seen in 17 of the 50 cases. The threats involved violence and threats of other kinds.

The latter was seen in the case of a victim who voluntarily engaged in fellatio with the perpetrator, who filmed this without her knowledge. He then threatened to send the videos to her mother if she did not agree to sex work.³⁴ Another perpetrator threatened to break off his relationship with the victim if she did not earn enough money.³⁵ Yet another threatened to tell the police that the woman was neglecting her child; the woman would then not see her child again, he said, he would kill her and/or her child if she were to stop sending money to him or leave him.³⁶

There were also threats that a victim would be thrown out onto the street;³⁷ that the victim would be resold;³⁸ that something would be done to her family (the perpetrator told the victim that he had managed to find her family and he already had a gun);³⁹ that the victim would be sent back to the mafia in Hungary;⁴⁰ and that the victim would be raped.⁴¹ In one case, the trafficker threatened to “inflict a massacre that would cause shockwaves.”⁴²

The threats were usually designed to incite victims to earn more or to continue working, for example, if the woman actually wanted to stop with the sex work.

Physical violence

Physical violence was seen in 15 cases. The aims varied. One perpetrator assaulted the victim in order to break her will.⁴³ In another case, the court found “that the defendant pulled her by her hair and beat her because she wanted to stop working as a prostitute.”⁴⁴

Violence was also sometimes used as a sanction. One victim was beaten because she had earned less than other women.⁴⁵ Another victim was abused

34 Rb. The Hague, 27 February 2018, ECLI:NL:RBDHA:2018:2285.

35 Rb. Amsterdam, 23 March 2017, ECLI:NL:RBAMS:2017:1830.

36 Hof Den Haag, 30 January 2018, ECLI:NL:GHDHA:2018:2095.

37 Rb. Amsterdam, 25 October 2017, ECLI:NL:RBAMS:2017:10551.

38 Hof Den Haag, 21 March 2019, ECLI:NL:GHDHA:2019:2091.

39 Rb. Zeeland-West-Brabant, 19 December 2016, ECLI:NL:RBZWB:2016:8091.

40 Rb. The Hague, 13 April 2016, ECLI:NL:RBDHA:2016:3902.

41 Rb. Amsterdam, 25 January 2018, ECLI:NL:RBAMS:2018:390.

42 Rb. Amsterdam, 11 November 2016, ECLI:NL:RBAMS:2016:7334.

43 Rb. Gelderland, 26 June 2017, ECLI:NL:RBGEL:2017:3281.

44 Rb. Overijssel, 22 February 2018, ECLI:NL:RBOVE:2018:553.

45 Rb. Oost-Brabant, 4 July 2019, ECLI:NL:RBOBR:2019:7780.

and stabbed with a pen in her hand because she had not earned enough or did not want to go to work.⁴⁶ Physical violence sometimes targeted property, or other persons. Examples in this category included: destroying clothes and throwing them out of the window to force the victim to make more money,⁴⁷ kicking a door,⁴⁸ and assaulting another woman in the presence of the victim.⁴⁹

Giving instructions

Instructions about how the sex work had to take place were seen in 14 cases. The instructions varied. One victim was required to obtain payment from the client in the room where she worked and then to say that she had to go to the toilet so she could give the money directly to the perpetrator.⁵⁰

One woman was ordered to continue working with a client despite abdominal pain.⁵¹ One victim was taught English words for the purpose of sex work.⁵² Perpetrators also set victims' working hours,⁵³ gave instructions about how the victim should serve the client and how much money to charge,⁵⁴ or gave instructions about the sexual acts to be performed.⁵⁵

Conclusions

By studying 50 selected court decisions relating to exploitation in sex work, we have tried to answer the research question: Which perpetrator actions in the sex industry are covered by Article 273f of the Dutch Criminal Code? The abuse of the vulnerable position of the victim was the most common action in the cases investigated. Vulnerability seems to be highly conducive to exploitation. Actual physical violence and threats are less common.

The other tactics that were regularly seen included deception, facilitating sex work, instructions, or forms of control that made it easier to collect

46 Hof Den Haag, 27 June 2018, ECLI:NL:GHDHA:2018:1690, see also Rb. Zeeland-West-Brabant, 19 December 2016, ECLI:NL:RBZWB:2016:8091.

47 Rb. Amsterdam, 23 March 2017, ECLI:NL:RBAMS:2017:1830.

48 Hof Den Haag, 30 January 2018, ECLI:NL:GHDHA:2018:2095.

49 Hof's-Hertogenbosch, 31 March 2015, ECLI:NL:GHSHE:2015:1126.

50 Rb. Zeeland-West-Brabant, 23 January 2019, ECLI:NL:RBZWB:2019:238.

51 Hof Amsterdam, 13 October 2017, ECLI:NL:GHAMS:2017:4259.

52 Rb. Amsterdam, 4 March 2019, ECLI:NL:RBAMS:2019:1489.

53 Rb. Amsterdam, 21 November 2014, ECLI:NL:RBAMS:2014:7911.

54 Rb. Rotterdam, 6 February 2019, ECLI:NL:RBROT:2019:1100.

55 Rb. Gelderland, 26 June 2017, ECLI:NL:RBGEL:2017:3281.

money from the prostitute or induce her to make more money.⁵⁶ Many actions have a recruiting, misleading, and—consequently—controlling character. The actions are often intended to induce the woman to engage in, and continue with, sex work—even if she wants to get out—and to make her earn more money. Forms of isolation are also used, such as taking away a phone or credit card or making the woman work in a remote location.

The analysis presented in this chapter was restricted to Dutch court decisions involving the sex industry. In view of the relatively liberal nature of the Dutch legislation and policy, perpetrator tactics used may differ from those employed in countries with a more repressive approach. However, we expect perpetrators in other liberal countries to use tactics similar to those we found, and for there to be an overlap with tactics used in more repressive countries.

Due to the relatively liberal nature of Dutch legislation and the visibility of the sex work industry by comparison with other countries, perpetrators will benefit most from deception tactics rather than direct coercion. In countries where sex work is prohibited and sometimes even denied by the authorities, actual captivity and violence against women may take place on a larger scale.

Concealing the fact, even from the client, that a woman is being forced to work is in the interest of the procurer/pimp: the appearance that the woman is willing must be maintained. The client must believe in this fiction to such an extent that he can justify using a sex worker's services and not walk away immediately. All kinds of deception and control mechanisms are put into place to ensure that the women continue to work and do not stop and escape the control of the perpetrator.

In 44 of the 50 cases investigated, it was found that the perpetrator took advantage of the victim's vulnerable position. A vulnerable position means that the women are easy to deceive and manipulate, but also that they will not readily turn to the police, for example, because they do not know their way around, because they are afraid of reprisals, or because they still—incorrectly—think that the perpetrator loves them. This dependency is not always immediately apparent and so a significant number of exploitative situations are likely to remain concealed, allowing the perpetrator to continue the exploitation. The high level of vulnerability and dependency in the cases identified in the analysis should be a major focus in work to

56 These categories of actions overlap with, but are not the same as, the elements mentioned in Article 273f of the Dutch Criminal Code, such as: recruiting, cooperating, moving, coercing. For an analysis of the relevant case law, see Esser, 2020.

combat trafficking. Preventing vulnerable people from ending up in sex work should receive much more attention in the first place.

Sex workers' clients could help to identify and detect exploitation on a larger scale than at present. A new law has been introduced in the Netherlands that makes clients liable to criminal prosecution if they make use of the services of an exploited sex worker. However, research shows that clients are not very willing to go to the authorities. Although clients may often be aware of exploitation, they do not usually see themselves as being primarily responsible for taking action. Most clients believe that this is the responsibility of the authorities (Malsch et al., 2021).⁵⁷

Research into how the sex industry works and about types of exploitation may—in conjunction with legislation—increase awareness about the negative side of sex work. That negative side is clearly evident from the study presented in this chapter: the cases examined include a range of very unpleasant and invasive exploitative actions. No decent father would wish his daughter to be a victim of this.

Empirical knowledge about exploitative tactics and signs of exploitation could be used to identify exploitation in the sex industry—and especially situations that exacerbate the risk of such exploitation—in more targeted ways and help the work of the police, the public prosecutor, the judiciary and municipal authorities. In addition, the families of victims and potential victims, NGOs, and other organizations will be in a better position to detect signs of exploitation and intervene where necessary.

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57 See also Chapter 12.

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IV.

The Client

12. The Role of Clients in Identifying Forced Sex Work¹

Marijke Malsch, Miriam Wijkman, Anne Koolenbrander, Marthe Schotsman, and Rik Schoon

Abstract: In the Netherlands, sex work has been decriminalized, together with a number of related activities such as pimping and maintaining a brothel or a club where the work takes place. Today, Dutch legislation is becoming more repressive. In a liberal country, like that of the Netherlands, clients could potentially play a role as detectors of sexual exploitation. This chapter investigates clients' views on signs of forced sex work, preparedness to notify the authorities, and their sense of responsibility. Outcomes show that clients are able to identify a substantial number of signs indicating sexual exploitation, but that most demonstrate limited preparedness actually to notify the authorities. Neutralization techniques may play an important role in justifying client decision-making.

Keywords: sex industry, human trafficking, exploitation, customers, legislation

Introduction

Sex work has been decriminalized in the Netherlands, which enables government and social control. Decriminalization covers a spectrum of behaviors, allowing—albeit under specified conditions—sex work, pimping,

¹ In this chapter, some lengthier legal/document citations have been put in the footnotes, in deviation of the usual APA author–date parenthetical.

and maintaining a brothel or a club where prostitution takes place. The Netherlands legalized these activities in the years around 2000.² Women were expected to be able to work independently for themselves, without pimps to push them, control them, and profit from their efforts. With the pimps gone, prostitutes would organize and control their own work, protected by the state like every other profession.

Empirical research has revealed, however, that the practice of human trafficking still continues to occur in the Netherlands, with some evidence even suggesting that decriminalization has stimulated this activity in the sex industry (Van der Zee, 2013; Staring, 2012; Werson, 2012; Cho et al., 2013; Malsch 2017; Malsch & Tsang, 2020).³ One reason for the continuation of human trafficking in this field may be the move to the Internet (Staring, 2012).

Recently, new policy measures and laws have started to focus more on the role of the client.⁴ The legislature seems to be gradually adopting a more repressive stance. All forms of exploitation of a sex worker have been criminalized (Article 273f of the Dutch Criminal Code). On top of that, clients who are aware or have serious cause to suspect that a prostitute is working forcedly can today be subject to criminal prosecution.⁵ Another draft for a new law makes clients punishable if they use the services of a sex worker aged 20 or younger (the age limit for prostitutes is currently 18 years). Pimping will be prohibited as well. According to this latter draft, prostitutes themselves can be subject to criminal prosecution if they work without a license granted by the municipality. Even women who offer their services from their own home will be required to apply for a license and they may be subject to prosecution if they work without one.⁶

This new, more repressive approach by the Dutch legislature seems, to a certain degree, to be moving in the direction of the systems initiated in Nordic countries. The Nordic legal systems have made clients punishable

2 Except for prostitution itself, which was decriminalized sooner. On the Dutch model, see Siegel, 2009.

3 For overviews of such research, see various reports and factsheets of the Dutch Nationaal rapporteur mensenhandel (National Rapporteur on Trafficking in Human Beings) on its website: <https://www.nationaalrapporteur.nl/>.

4 On the client role in relation to human trafficking and sexual exploitation, see Raymond, 2004; see also Malsch et al., 2021.

5 *Kamerstukken* [Parliamentary Chapters] II 2014/15, 34091, nr. 2; *Kamerstukken I* 2015/16, 34091, A. The law has come into force on 1 January 2022.

6 Overheid.nl: Officiële bekendmakingen (Official notices), <https://www.officielebekendmakingen.nl/>.

for the mere act of visiting a sex worker.⁷ Empirical research into this criminalization suggests that reduced demand is one of the effects, as is displacement of prostitution activities to other countries. Indications have been found that human trafficking is less prevalent in countries where sex work is illegal and most prevalent in countries where this work is legalized. Criminalizing the buying and/or selling of sex might therefore reduce the amount of trafficking in persons (Kotsadam & Jakobsson, 2011; Waltman, 2011; Jakobsson & Kotsadam, 2013). An increased awareness of the negative sides of sex work among the general population has also been mentioned as an effect of criminalization (Kotsadam & Jakobsson, 2011; Jakobsson & Kotsadam, 2013). An empirical analysis of a cross-section of up to 150 countries suggests that, on average, countries where sex work is legal experience larger human trafficking inflows than countries where it is illegal (Cho et al., 2013). For a serious critique of (research into) the Nordic model, see Kingston and Thomas (2018), who comment on the ideological nature of the new laws and how they have been investigated.

This chapter attempts to add to knowledge of the role of the client. It examines clients' awareness of the actual signs of exploitation, their sense of responsibility in this respect, and the actions they undertake to report such a situation to the authorities. The chapter first briefly outlines sex work practices in the Netherlands, as a country with a relatively liberal system. In such a system, sex work takes place "in the open" to a certain degree; for example, from behind windows in areas that are accessible to the general public, including the authorities. Monitoring of these activities is consequently more straightforward than in systems that completely forbid everything related to sex work. Next, the existing literature regarding the role of the client is discussed. The research methods are then explained. Both an online questionnaire and in-depth interviews were conducted and, given the correlation between these methods, the results section presents the findings of both questionnaire and interviews in the same account. The chapter ends with conclusions.

This chapter focuses primarily on the clients of prostitutes who might be not working independently and who risk falling victim to human trafficking. Within the Netherlands and probably also in other countries, some prostitutes work independently for themselves and earn a living this way. Such situations are not the primary subject of the research that we

7 On the Swedish model, see Ekberg, 2004; for a comparison with the Dutch model, see Zeegers & Althoff, 2015.

conducted. Our research focused more on the visiting of prostitutes who might be victim of exploitation.

Developments in sex work practices in the Netherlands

In the Netherlands, with its acceptance of prostitution as “regular” work, sex work from behind windows is the most common and certainly the most visible form. The practice is found throughout the Netherlands, with De Wallen, the red-light district in the oldest part of the Amsterdam city center, being the most famous. Women, pimps, or organizations rent a room for a couple of hours or half a day and the sex workers sit or stand behind a window dressed in provocative lingerie. Potential clients deliberate with them at the apartment door, negotiating prices and services. Once an agreement is reached, the client enters the room and the curtains are closed (Van Husen & Van Dijk, 2014; Malsch, 2017). Presently (in 2024), the Amsterdam community is developing plans to establish an “erotical center” where sex workers can be relocated to, and to close a number of windows in De Wallen.

For many years, streetwalkers were also common in the Netherlands but they are less so today, the reason being that they cause nuisance in the neighborhoods where they work. Firstly, several different locations in and around the Amsterdam city center were tried, but each time sustained public outcry forced them to relocate. Finally, officials agreed to move the prostitution to a zone near the Amsterdam harbor. Since the area was far away from the charming city center with all its other facilities for eating, drinking, and relaxing, the location’s objectives were not fulfilled: sex workers and their clients were simply not prepared to travel there. This final Amsterdam location for streetwalkers was closed in 2003.

The present-day gradual move to the Internet makes it harder for the authorities to monitor risks and crimes related to sex work in the Netherlands and to offer protection. The direct detection of forbidden forms of work involving coercion or violence during execution has become even more difficult (Malsch & Tsang, 2020). However, the Internet can also be useful for the police, enabling them to use so-called “web crawlers” to scan advertisements on the Internet and thereby identify, for example, minors performing sex work.⁸ Some cues that might indicate human trafficking include: “24/7,” “without condom,” “all kinds of sex,” or a cell phone number

8 Information obtained during an interview with two police officers specialized in human trafficking in the sex industry, 7 January 2019.

that reappears in several ads. Another indicator is the routine movement of sex workers from one city to another. It is the combination of various cues that can lead to further criminal investigation. Internet forums on which ads are placed may thus help the police to identify illegal forms of pimping that could constitute human trafficking. The law enforcement perspective is that the more prostitution becomes invisible, the more the risk of human trafficking increases.⁹

The presence of visible indications of human trafficking (in both “live” sex work and in Internet ads) suggests that clients could also play a role in detecting forced work. They are the individuals who come in closest contact with the sex workers and they could therefore be best placed to identify forced prostitution or an underage woman.

The clients of sex workers

Several studies have explored clients' backgrounds (see Farley et al., 2011; Durchslag & Goswami, 2008). Men with varying backgrounds seem to visit sex workers. In their study, Van Husen and Van Dijk (2014) emphasize the different backgrounds of these men. Farley et al. (2011) suggest, however, that men visiting prostitutes have a number of characteristics in common. Clients would share certain attitudes, life experiences, and behavioral tendencies that distinguish them from other men (see also Durchslag & Goswami, 2008). They are significantly more often engaged in criminal activity, have committed significantly more sexually coercive acts against women, and have significantly less empathy for women working as prostitutes. Moreover, these men entertain a preference for power relations and are well aware of the physical and psychological harm of sex work. Durchslag and Goswami (2008) found that 83% of the clients considered purchasing sex to be an addiction, while 43% stated that if the man pays the woman for sex, she should do anything he asks (Durchslag & Goswami, 2008).

Although visiting a sex worker is not illegal in the Netherlands, this does not necessarily mean that it is considered socially acceptable behavior. Customers can therefore feel a need to neutralize their behavior and consequently decrease their feelings of guilt. Sykes and Matza (1957) described five different neutralization techniques: denial of responsibility, denial of injury, denial of victims, appeal to higher loyalties, and condemnation of condemners. Brooks-Gordon and Gelsthorpe (2003) interviewed clients in

9 Ibid.

the UK. Some of the clients reported that their behavior was beyond their control because of psychological problems. Other customers indicated that they did not intend to buy sexual services, but they wanted to help the sex worker. By using this argument, clients denied their responsibility (Brooks-Gordon & Gelsthorpe, 2003). According to the study by Lim and Cheah (2020), clients used all neutralization techniques on a regular basis. However, denial of injury was most often mentioned. Clients explicitly mentioned that sex workers were free to choose whatever profession they wanted and were not forced to work in that job. Although all clients were aware that some sex workers were being sexually exploited, they were all convinced that they had only used the services of women who were voluntarily working as a prostitute.

According to Di Nicola et al. (2009), most clients could be categorized as either “carefree” or as “not responsible.” Such clients either deny their own responsibility or blame the sex worker herself for what happens to her. If clients do feel guilty for what they see when visiting sex workers, they try to neutralize their feelings by using certain justifications. However, a small group of clients does take responsibility: by trying to identify sexual exploitation, by avoiding such situations, or even by ceasing to visit prostitutes (Di Nicola et al., 2009; see also Vanweesenbeeck et al., 1993; Van Husen & Van Dijk, 2014).

Why do men visit sex workers and what would possibly stop them from doing so? Most clients in the Netherlands say that sexual curiosity is the primary reason behind their first visit. Other reasons include: paid sex as the only option for being with a woman; paid sex as compensation for the lack of a satisfying sex life within a long-term relationship; need for sex and company due to advanced age or after the end of a long-term relationship; the excitement of searching and selecting; or escaping the monotony of daily life (Van Husen & Van Dijk, 2014).

Clients have been interviewed on the possible effectiveness of measures that could be taken against men visiting exploited sex workers (Durchslag & Goswami, 2008; Farley et al., 2011). The potential influence of “public exposure” was one of the measures investigated. Such exposure may consist of a man’s name or photo being published in a newspaper. Other measures would include jailing the man or sending a letter to their family revealing the man’s behavior. Exposure to wife/partner/family was said to deter men from buying sexual acts by 66% of interviewed men, while a prison sentence would deter sex buyers according to 69% (Jabbour, 2014). Public exposure is a measure that might be common in countries such as the United States, but it is largely absent as a measure per se in the legal system

of the Netherlands. However, some form of public exposure may occur when a client is prosecuted and has to appear as a defendant at a trial in open court, which may be attended by the public and the media. Although it is common in the media not to reveal the defendant's name, nevertheless the defendant may feel exposed by being tried in open court and running the risk of being recognized by family, friends, or colleagues.

Results from studies of customers as presented above raise the question whether clients, when confronted with signs of sexual exploitation, will actually notify the authorities—and if they are not prepared to do so, what their reasons are. This question is especially relevant in a liberal system like that of the Netherlands, where visiting a sex worker is legal. The detection of illegal sex work in such a system may be assisted by clients who can identify indications of sexual exploitation and act on their observations. Clients could play a role in detecting and reporting sexual exploitation more than is possible in other systems where prostitution has been forbidden and thus remains largely invisible (Tsang, 2019). The central issue dealt with in this chapter is therefore whether clients do indeed identify such indications and whether they are prepared to follow up on these signs.

Methods

Before starting the study, permission was obtained from the Ethics Committee of the Vrije Universiteit Amsterdam (Free University of Amsterdam). Client views on signs of sexual exploitation were collected by means of a digital questionnaire. A link to the questionnaire was included in five Dutch web forums visited by (potential) customers (Koolenbrander, 2019). The questionnaire inquired about reasons to visit sex workers, awareness of indications of forced work, and the clients' preparedness to notify the authorities of exploitation—both at the present time and when the new law criminalizing clients sex workers who are being exploited would come into force.¹⁰ A combination of closed and open questions were included in the questionnaire. Not all clients who clicked on the link went on to fill out the complete questionnaire; a total of 422 fully completed questionnaires was analyzed for the research.

In addition, 15 interviews were conducted with clients (Schoon, 2021; Schotsman, 2020). These interviews were semi-structured in nature. The interviewees were obtained from the abovementioned group that filled

¹⁰ This law was not yet into force at the time of data collection.

in the questionnaire. At the end of this questionnaire, respondents could indicate their willingness to participate in an interview and provide their email address. In total, 53 respondents consented to participate but, because of COVID-19 measures introduced during that period complicating live meetings, only 15 interviews actually took place; several clients appeared reluctant to take part in online interview meetings. Telephone, Skype, Zoom, and face-to-face interviews were held. Respondents remained anonymous and they signed an informed consent form before participating. The informed consent form stated that the interview was recorded, that the interviewee was free to withdraw from the study until four weeks after the interview, that the interview would be stored anonymously in a digitally safe place, and that the audio recording would be destroyed after five years.

The aim of the interviews was to explore in greater depth those issues identified as relevant during the quantitative part of the research. The interviews lasted between 30 and 105 minutes.

Saturation regularly occurs after a certain number of in-depth interviews: no new substantial information can be expected to be obtained in any further interviews; the results of new interviews merely provide approximately the same picture. In that respect, it may be assumed that the 15 interviews conducted were sufficient to obtain a relevant, valid picture of how clients deal with indications that the prostitutes they visit are undertaking forced work.

The questionnaires were analyzed using the SPSS statistical package and the interviews were transcribed and analyzed using Listen N Write.

Representativity

By using web forums, we were able to collect data from a large group of customers ($N=422$). However, since it is unclear what percentage of all customers uses this sort of forum, we do not know how many customers were not included in the sample because they do not share experiences online.

Regarding the interviewees, it is likely that only those customers responded who were willing to talk about this particular subject and perhaps have more experience of visiting sex workers. Clients with less experience, clients who feel ashamed about their behavior, or clients who do not feel responsible for sexual exploitation and prostitutes' well-being may have refused to participate in an interview.

The degree of representativity of the group participating in this study is thus not clear, but the outcomes provide highly relevant information on clients' motives for notifying the authorities of potential forced sex work or to refrain so.

Results

Because of the close correlation between the questionnaire and the interviews, the findings from both methods are presented below in combination.

Participants

A total of 422 clients completed the digital questionnaire. The largest group of questionnaire participants was 46 to 55 years old (N=114), with also a substantial group of who were 26 to 35 years old (N=87). One client was younger than 18, while 39 clients were older than 65. The age of interviewees ranged between 38 and 69 years. Their mean age was 56 years.

The professional backgrounds of the interviewed clients consisted of: civil servant, working in the logistics industry, graphic designer, administrator, social worker, and gardener. Five clients were retired. Eleven clients were single, two were married, and two had a partner. The professional backgrounds of questionnaire respondents are unknown. About 60% of the clients who filled in the questionnaire said they had visited a sex worker in the previous year at least five times. The remaining participants had visited a prostitute less than five times in the previous year.

Signs of forced sex work

In general, clients who filled in the questionnaire said they found it (slightly) difficult to identify signs of forced work (N=319, 62%). Nevertheless, 331 (78%) of the clients made clear that they knew, to certain extent, what to look out for when trying to identify signs of forced sex work.

The majority of the questionnaire respondents (60%) stated that they considered it their responsibility to notify the authorities of sexual exploitation. In the interviews, four of the 15 clients were of the opinion that it is not the client's responsibility to inquire about the prostitute's personal situation. Even if clients were to inquire, the sex worker "probably would not answer such a question, from fear of getting into problems" (Interviewee 4). Other clients agreed with this view, saying they only seldom become aware of the sex worker's situation; only when, for example, while chatting after the work is done. They would otherwise have no knowledge of the woman's situation. Although the picture emerging from the questionnaire and interviews is therefore not unambiguous, it may be concluded that some clients have a certain sense of responsibility, but most contend that it would be difficult to actually see or figure out whether the woman was working forcedly.

Table 12.1. Possible Signs of Sexual Exploitation, as Mentioned by Respondents and Interviewees¹¹

	Direct exploitation	Indirect exploitation
Visible	Certain tattoos Bruises on body Cigarette burns Sad or nervous mood of sex worker Young age Intermediary/boyfriend lingering nearby Risky services offered (i.e., without condom) Dirty/strange location Low price	Coming from a poor country (speaking foreign language) Addicted
Not/less directly visible	Sex worker regularly being moved between cities/locations Large number of clients Available 24/7 Texts ads/telephone numbers/pictures in ads	Poor living circumstances of prostitute

From the responses in the interviews and the questionnaire, a list of frequently mentioned (possible) signs of forced sex work was constructed (see Table 12.1). We divided the list into signs that are clearly visible/discernible and signs that are not. In addition, we made a distinction between signs of direct and of indirect exploitation. Indirect exploitation occurs when the woman is forced by her (living) circumstances to earn money; for example, poor living circumstances in her country of origin, or an addiction. Such a situation is not always directly evident to clients. Most signs seem to indicate visible, direct forms of exploitation, such as men taking the sex worker's money or signs of abuse on the woman's body.

During the interviews, respondents provided various explanations of the signs mentioned. Several clients, mostly in the online questionnaire, referred to tattoos that can indicate forced work. As examples they mentioned tattoos of a ribbon around the sex worker's wrist or texts in a foreign language, saying that these may originate from organized groups that operate in the background. Such tattoos can sometimes be seen on multiple sex workers.

11 See Malsch et al., 2021.

These explanations suggest that clients may have observed such tattoos themselves.

Sex workers being underage seems an obvious sign of exploitation. Of the 15 clients interviewed, nine mentioned this as an indication of sexual exploitation. The interviewees stated that they themselves would avoid visiting an underage girl.

Risky services, offered both via the Internet and “live,” were mentioned as a clear sign of sexual exploitation, occurring mostly during escort services or when the woman was working from home. In such a situation, the ad may mention that the service can be conducted “without condom,” or that all sexual acts are offered, or the sex worker may say so when offering her services to a man visiting her “live.”

Twelve interviewees mentioned the situation where the sex worker is working for a man. That may become apparent when she says so herself, or when a man constantly remains in her vicinity, monitors her work, takes the money she earns, drives her to a certain location or plans her meetings with clients. This man may also organize the ads. According to the clients, all these situations may be signs of forced work.

Of the 15 interviewed clients, 11 said that the sex worker’s mood can be a possible sign of exploitation, for example, if she seems tired, unhappy, scared, or uninterested. Clients mentioned sex workers who are trembling, who joylessly do their work, or who are anxious.

Interviewee 9 recounts:

It was a young woman, around 26. So I entered, paid, and took off my clothes. When we were on the bed, she clung on to me and I felt, oh.... And I said, “You don’t have to, I mean, if you really don’t want to, keep the money because that’s not how I am.” ... And she then kissed me on my shoulder and she said, “No, this is OK.” (Interviewee 9)

Eight interviewed clients identified sex workers regularly being moved from one location or city to another as a sign of sexual exploitation, with an organization or a pimp probably active in the background:

Just like the women who regularly move, that’s not good either. I mean, if your service is OK, then you can stay at the same location and keep the same name. A “traveling circus” is never a good sign. (Interviewee 3)

One sign, although only discernible if clients chat with the sex worker, would be the woman serving a very large number of clients on one day:

I asked “Have you been busy?” “Yes, you’re my 16th today.” You then think to yourself, 16, my God, how does she feel? She’s been going from one to the other for 12 hours. Looking back, that’s not normal, most women do seven to eight clients a day. And that is the max. (Interviewee 1)

Indirect signs of forced work were mentioned too, such as an addiction, or the sex worker not speaking Dutch, or coming from another country. Eastern Europe was mentioned several times.

It may be concluded that clients are able to list a substantial number of possible signs of sexual exploitation. Most of these signs are directly visible or otherwise identifiable and most suggest direct exploitation, such as ribbon tattoos on multiple women, bruises, cigarette burns on the body, young age, men hanging around, and a sex worker’s mood or trembling. Clients say that some of these signs no longer occur very regularly, or at least they are encountering them less often than before. The findings presented above seem to contradict another outcome of the study, namely that clients, when asked, regularly deny that they can actually discern the signs.

How do clients respond to the signs?

Of the clients who filled in the questionnaire, about two-thirds said that during visits to a prostitute they were not concerned or hardly concerned about possible indications of forced work. They would just be too busy with the sex to pay attention to the sex worker’s actual situation. A substantial proportion of the clients indicated that it would be too much hassle to go to the authorities if they did suspect a prostitute was working under coercion.

Client reactions vary, when confronted with signs of exploitation. Of the 15 clients interviewed, seven said they had once left when the situation was not what they had expected. These men would prefer to avoid risky situations. They may go to another sex worker if they feel something is wrong. One said he preferred to go to Germany, because there would be less trouble there. Others said they avoided window sex work for the same reason. One of the men avoiding risky situations stated that the sex worker’s mood was a reason: he suspected something was wrong.

Five of the clients interviewed said that in the past they had continued with the sex in such a situation, in spite of certain signs of forced work. The reason they gave was that it would be lucrative for the sex worker to be visited; she would earn money. Four clients interviewed said that sexual arousal was the decisive factor to continue with the visit: “You go to the woman for your sexual release.... The next thing you know, you’re lying on

your back. In 10 minutes, quarter of an hour, it's over. And then it's sorry, it's 'fire and forget'" (Interviewee 2).

Three of the clients interviewed stated they would be prepared to help the prostitutes. One mentioned having taken a sex worker into his own home. Another said he tried to make the sex worker aware of her own situation, but in vain:

She said, "I'm saving for a car." Later on she said, "You were right, he's off with my car." (Interviewee 8)

Four clients interviewed mentioned having approached the authorities after being confronted with a sign of forced work, or being prepared to do so. One of them said having contacted the authorities after seeing ads that would indicate exploitation. Two had gone to the police. The fourth one said that he would in theory notify the authorities, but it had not yet become necessary.

Most clients are of the opinion that the client plays a certain role, but only when the signs are very clearly visible. It is primarily up to the state to act against forced work, by far most of the clients say, and the client is not obliged to inquire further about the prostitute's circumstances. According to these men, the sex workers would probably not give honest answers to such questions if they were questioned—they would conceal their actual situation from clients.

Only one interviewee stated more explicitly that the client could play a role in an effective fight against forced work. But such a role would only be possible on the condition that contacting the authorities could happen anonymously:

I thought a long time about that. It's not easy. Of course, law enforcement should take place and special teams should be up to speed with it. [It] definitely costs a lot of money. But I think that it's a task for the citizen as well. That he can stay anonymous when notifying.... I think it's up to the client, to detect and to notify. As long as they know that this happens anonymously. (Interviewee 14)

In summary, identifying obvious indications of exploitation is one thing, apparently quite possible to do; but making active inquiries and then contacting the authorities seems a step too far for most clients.

The legal tendency towards greater repression

With respect to the initiatives by the Dutch legislature to "recriminalize" the visiting of prostitutes who work involuntarily, the questionnaire inquired

whether the law, once in force, would change client behavior. Even of the group who said they felt responsible for notifying signs of forced work to the authorities, a substantial part would not go to the police when the new law comes into force. Almost half of respondents (47%) indicated that such a new law would not affect their use of the services of sex workers. Over a quarter of the respondents said they would move to the Internet or to other, less visible forms of sex work (28%). Displacements to other forms of sex work as a consequence of the new law can thus be expected. Almost half (48%) said they would try to be more alert to signs of the sex worker being exploited.

When explicitly questioned on their views on the new Dutch law, the answers in the online questionnaire diverge. More than half of the clients think the new law is not a good idea (54%), explaining their answers as follows: "Hypocritical." "Very stupid and wrong." "Bad thing."

Some fiercely objected to the new law:

This law will have the opposite effect: the stigma on clients and sex workers will be increased. It obstructs the women's work and more of them will end up in the illegal circuit, which undermines their safety (Respondent questionnaire 116)

But other clients were in favor of the new draft law:

When force is clear, the client is as guilty as the individual exploiting the woman (Respondent questionnaire 63)

Reasons for skepticism about the new law included that sex workers would not give honest answers when questioned about their situation and that it falls to the state to monitor this work. Those who were negative about the new law emphasized that sex work would consequently move to the invisible forms, or that clients would go to Germany and Belgium. Four clients interviewed expected that the new law would deter clients from visiting sex workers.

To summarize, views regarding the amended Dutch policy and the new, stricter law appear to diverge. Many clients are negative, but some respondents support the new policy and the new law. The most problematic issue, according to a large proportion of the clients, is how to be certain that a prostitute is working under coercion. In spite of their ability to identify clear signs of forced work, clients still say that it would be difficult to see exploitation in practice.

Conclusions and discussion

The Dutch types of sex work—openly, from behind windows, but increasingly via the Internet—as well as present Dutch legislation and policy—still highly liberal but becoming more repressive, assuming free and independent women doing the work, combating human trafficking at the same time—might enable monitoring by both law enforcement and clients of whether sexual exploitation is actually occurring. Police officers and clients can visit areas where sex work takes place behind windows or on the street and observe how the women look, whether they show bruises or suspect tattoos, whether men are lingering nearby and taking the money being earned, what the women's probable age is, whether the women are being regularly moved to other locations, etc. They can visit web forums and see whether certain telephone numbers or photos reappear in different ads, if a woman is available 24/7, if she is offering risky services. They can have a closer look at the ad texts, assess the woman's age on pictures shown and so forth. This situation differs greatly from some other countries where sex work is prohibited, where it takes place almost completely invisibly, and where its existence may even be denied, such as in China (Tsang, 2019). The Dutch police do actually investigate indications of sexual exploitation in this way, both live and via web forums, and this sometimes helps them to find the exploiter.¹² But clients do not actively focus on signs of forced work, they say, or only to a minor extent. Additionally, the switch to the Internet is concerning because it makes sex work, including forced types of work, less visible and more difficult to monitor.

The findings presented in this chapter demonstrate that the clients who participated in the study are well aware of the various signs indicating exploitation. An extensive list of possible indications was constructed on the basis of clients' statements. Most of these indications concern visible and/or identifiable signs and most of them suggest direct forms of exploitation. The actual awareness of such signs and the high degree of detail in the accounts suggest that clients themselves have experienced them—possibly on a regular basis. Clients might therefore perform a role in identifying them and notifying the authorities of women being exploited. However, the general picture obtained from the questionnaire and the interviews is that clients, although they regularly say they feel responsible, are not eager to notify the authorities. According to the Dutch Nationaal Rapporteur

12 Information obtained during an interview with two police officers specialized in human trafficking in the sex industry, 7 January 2019.

Mensenhandel, the extent of exploitation in the sex industry mentioned by agencies is increasing, mostly involving underage and foreign victims. At the same time, numbers of actual prosecutions of human traffickers and trials against them remain comparatively very low. This suggests that clients have not yet opted in large numbers to notify the authorities of sex exploitation. Clients seem to deny their responsibility by claiming they are not really able to detect signals of sexual exploitation and by stating that the criminal justice authorities are responsible for tackling human trafficking and sexual exploitation, and not the clients. According to some clients, the new law will only have negative consequences, such as forcing prostitutes to work in illegal and unsafe settings.

Preparedness to report cases of involuntary sex work may even decrease under the new law; some clients will then be less prepared to go to the police. Several justifications were given for not contacting the authorities in cases of forced work, such as that signs would not always be visible, that the women would disguise any signs and lie when being questioned and, principally, that it is not up to the client to play such a role (he is only buying sex, which is legal). The state authorities should do the monitoring and controlling of this field, not the client. There are exceptions to the general stance taken by participants in the study, but few men participating in the study seem keen to promote an active role for the client in this respect.

The optimistic assumption expressed by the Dutch minister of justice and safety—that men would be prepared to notify the authorities if the sex worker they visited was evidently a victim of human trafficking—seems unjustified.¹³ Most men do not seem to wish to play such a role, even if they say they would. And any preparedness to do so would be reduced if they are risking prosecution. When confronted with a situation of exploitation, it is probably more likely that they will just go away and look for a prostitute who shows no sign of forced work, or that they nevertheless make use of the exploited woman's services without any further thought, than that they would go to the police to tell them where the coerced woman can be found.

Since it will be very hard for law enforcement to prove that a client was actually aware of the signs of exploitation but nevertheless continued his visit to the woman, the new law criminalizing such a man can be expected to remain without a direct effect. It is probable that very few clients will be brought to justice (Malsch et al., 2021). Hopefully the law

13 Letter from the Minister of Justice and Safety to the President of the Senate of the Dutch States General, The Hague, 13 January 2021; see also Malsch et al., 2021.

may, as was also intended by the legislators who initiated the law, have an indirect effect in terms of warning men and the public at large about the negative consequences of (forced) sex work. However, for such an effect to take place, more is needed than just a new law. A debate should be conducted on the pros and cons of buying sex and on the working circumstances of the women; enhanced education of clients, women, and the general public on these issues should take place. NGOs could play a role in this.

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13. A Critical Look at the Criminalization of the “Use of Services” of Trafficked Persons¹

Suzanne Hoff and Merel Brouwer

Abstract: This chapter investigates the criminalization of the “knowing use of services” of trafficked persons in Europe, based on desk research and interviews with experts. While two-thirds of the EU Member States have introduced this criminalization, very few criminal convictions have been imposed based on this provision across Europe. Regardless of this scarce application, in January 2024 the European legislators agreed to include a binding provision in the revised EU Trafficking Directive, obliging Member States to criminalize “knowing use.” This chapter critically discusses this move towards further criminalization of the “use of services” of trafficked persons in Europe, looks at its application and possible impact in Member States, and discusses the revision of Article 18a of the EU Trafficking Directive.

Keywords: human trafficking, prohibiting “knowing use,” demand, revised EU Trafficking Directive, sex work, EU policymaking

Introduction

On 23 January 2024, European legislators reached a political agreement to include the mandatory criminalization of the “knowing use of services” that are provided by trafficked persons in the revised EU Trafficking Directive.

¹ In this chapter, some lengthier legal/document citations have been put in the footnotes, in deviation of the usual APA author–date parenthetical.

With its formal adoption, Member States have two years to implement this provision in national legislation.² In recent years, the strong push among certain policymakers and lobby groups to change this recommendation into a binding provision, seems to be one of the major reasons for the evaluation of the EU Trafficking Directive in 2021 and the revision process in 2022–2024.³ Some of these groups even advocated for criminalizing all use of such services, without requiring that the user knew that the person providing the services was a victim of human trafficking. However, this proposal for a strict liability provision did not make it into the final text of the revised directive. Proponents of this criminalization believe it will discourage demand, and thereby lead to better protection for victims of human trafficking.

This chapter takes a critical look at the criminalization of “knowing use” at the national level, as well as the developments at the EU level. The very limited research and impact assessments currently available show only few prosecutions for “knowing use” and conclude that the criminalization has caused no relevant reduction in demand, nor is there any proof of other positive impact.⁴ It is therefore necessary to critically question whether the inclusion of this binding provision in the revised Trafficking Directive is a wise decision, and whether it could possibly generate any positive effects. The lack of thorough impact assessments looking into the real effects of this criminalization in practice, combined with the Commission’s proposal for a binding provision, have led La Strada International to examine the issue. Through desk research, as well as interviews with 19 anti-trafficking experts from 10 different EU countries, La Strada International researched the situation in practice in countries in which “knowing use” has been criminalized in national legislation.⁵

The chapter first provides an overview of the obligations aiming at discouraging demand as enshrined in international instruments (1) and then discusses the implementation and impact of the criminalization of “knowing use” at the national level (2). This sets the scene for a discussion

2 EU & EC, 2024. The revised Directive was formally adopted on 13 June 2024. The amended Directive is enforced as from 14 July 2024.

3 EU & EC, 2021, p. 6; EU & EC, 2017; See also the resolution by FEMM and LIBE: EU & EP, 2021.

4 EU & EC, 2016; GRETA, 2020c; KFN, 2021; Melander & Mahmood, 2022.

5 Experts from the following 10 countries have been interviewed: Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Italy, Ireland, the Netherlands, Romania. In addition to these interviews, further experts from Belgium, Cyprus, France, Lithuania, the Netherlands, Romania, and Portugal have been consulted in the process of writing and reviewing this policy paper.

of the reasons for the scarce application of this provision in practice (3) and the provision’s unintended harmful side effects, including increased stigmatization (4). These paragraphs examining the current situation at the national level form the basis to look into the developments at the EU level (5) and critically discuss the revision of Article 18a in the EU Trafficking Directive (6).

Current international obligations to discourage the demand for human trafficking

Multiple international instruments bind European states to take educational, social, cultural, and legislative measures to discourage the demand for trafficking in human beings. Primarily, these measures refer to training, awareness raising, research, cooperation, and prevention.⁶ Over two decades ago, this was first laid down as a binding obligation in the UN Palermo Protocol.⁷ This obligation was later further strengthened through its codification in Article 6 of the Council of Europe Convention on Action against Trafficking in 2005 (CoE Convention) and Article 18(1) of the EU Trafficking Directive in 2011.⁸

In addition to these binding provisions on educational, social, and cultural measures, Article 19 of the CoE Convention and Article 18(4) of the 2011 EU Trafficking Directive introduced a recommendation for states to consider criminalizing the use of services which are the objects of exploitation, in cases in which the “user” knew that the person providing the services was a victim of human trafficking. In both instruments, this proposed criminalization of “knowing use” applies to all types of exploitation.⁹ Before the revision of the Trafficking Directive, how individual states fulfilled their positive obligation to discourage the demand “that fosters all forms of exploitation related to trafficking in human beings” was left to their own discretion, using the measures they deemed most effective. This included the choice of whether or not to include a criminalization of the “knowing use

6 See: UN General Assembly, 2000, Art. 9(5); Council of Europe, 2005, Art. 6; European Commission, 2011, Art. 18(1).

7 UN General Assembly, 2000, Art. 9(5).

8 These commitments can further be found in OSCE, 2003, ch. 4, para. 3.3; UN General Assembly, 1979, Art. 6; UN General Assembly and CEDAW, 2020.

9 The drafting process of the CoE Convention reveals a preferred focus on prevention rather than prosecution, and a stress on the importance to distinguish between the obligation of Article 6 and the lesser recommendation of Article 9. See Mullally, 2020.

of services.” This changed in the beginning of 2024, when the EU legislators agreed to include a binding provision on this criminalization in the revised EU Trafficking Directive. These new rules have been enforced on 14 July 2024. The developments at the EU level are further addressed in paragraph 5.

The situation in practice at the national level

Implementation of the criminalization at the national level

Currently, two-thirds of the EU Member States have introduced a (partial) criminalization of the “knowing use of services” of trafficked persons into their national criminal codes.

National legislation on the criminalization of “knowing use” in EU Member States¹⁰

- Criminalization of “knowing use” for all forms of exploitation: “the knowing use of services provided by a trafficking victim”
 - Implemented in: Bulgaria, Croatia, Hungary, Republic of Cyprus, Greece, Lithuania,¹¹ Malta, Portugal, Romania, and Slovenia
- Criminalization of “knowing use” limited to sexual exploitation: “the knowing use of sexual services provided by a trafficking victim”
 - Implemented in: Austria,¹² Estonia, Finland,¹³ Germany, Ireland, Latvia, Luxembourg, and the Netherlands

In the states that have implemented a provision to criminalize the “knowing use” of services of trafficked persons, the scope of this provision is limited to those persons directly using services provided by the victim.¹⁴ For the mental element (*mens rea*), most national provisions require that the user “knew” that the person was a victim of human trafficking. In several

10 Based on data from the following sources, checked and updated through consulting national experts and recent GRETA reports: EU & EC, 2016, pp. 3–5; GRETA, 2020c, pp. 47–49; OSCE & OSR/CTHB, 2021a, p. 34; EU & EC, 2022c, pp. 20–22.

11 In Lithuania, in addition to the criminalization of the “knowing use,” the general purchase of sexual services is an administrative offense.

12 According to the Austrian authorities, Provision 205a of the Austrian Criminal Code can be applied to criminalize the “knowing use of sexual services of trafficked persons.” See further: GRETA, 2020a, pp. 44–46.

13 In Finland the criminalization is broader than only the “knowing use of sexual services of a trafficked person,” as it also covers victims of pimping and pandering. See: Criminal Code of Finland, ch. 20, sec. 8 (384/2015) on the abuse of a victim in sexual trade.

14 EU & EC, 2016, p. 7.

countries, the required level of knowledge is lowered to serious negligence: the criminalization applies in all situations in which the user “should have known” that the person was a victim of trafficking.¹⁵ Ireland is the only EU Member State that has shifted the burden of proof to rest with the defendant, who is to prove that they did not know and had no reasonable grounds for believing the person providing the services to be a victim of trafficking (European Commission, 2016).¹⁶ Cyprus applies the strictest regime of all EU Member States for the use of sexual services of trafficked persons. As of 2019, Cyprus introduced this criminalization as a strict liability offense, thereby completely removing the requirement that the user knew or should have known that the sexual services were provided by a trafficked person. For this strict liability offense in Cyprus, the user’s knowledge of the victim status is thus completely irrelevant.¹⁷

As the list above illustrates, the national legislation regarding the criminalization of “knowing use” in the EU shows a diverse legal landscape. Many EU Member States have deliberately limited the scope of the criminalization to the use of sexual services. Moreover, it seems that even where broader criminalization is introduced, this is in practice almost exclusively applied to prosecute the “knowing use” of sexual services of trafficked persons. This partial criminalization and implementation reveal a dominant aim and focus on combating demand in the context of sexual exploitation (Mullally, 2020). This also reveals a serious lack of attention for those who use other services provided through severe exploitation. There seems to be little interest to combat all forms of human trafficking with this provision.

When looking into the criminalization of the “knowing use,” it is necessary to also consider the changes in legislation related to prostitution. In the past decade, several EU Member States have expanded the criminalization around prostitution in their national legislation. Sweden, Ireland, and France have introduced the Nordic model, criminalizing all purchase of

15 This lowered bar for the mental element can, for example, be found in the national provisions of Germany, the Netherlands, Finland, Lithuania, and Cyprus (regarding Article 17 of the Criminal Code on “the use of services other than sexual services”).

16 EU & EC, 2016, p. 7.

17 See Article 17A of the Law 60(I)2014 as amended by the Law 117(I)/2019 in Cyprus, which is exclusively applicable to the use of sexual services. Further, Article 19 states that no defense may be raised against the strict liability offense of Article 17A. Additionally, Article 17 of this same law criminalizes the use of all other services (excluding sexual services), this article does require that the user “should have known” that the services were provided by a trafficking victim (this is thus not a strict liability offense). See GRETA, 2020b, para. 155.

sexual services, regardless of whether the person providing the services is a victim of trafficking.¹⁸ Research in Northern Ireland revealed that there was no evidence that this generic ban had any impact on the level of trafficking for sexual exploitation.¹⁹ Sweden, Finland, and Ireland also have comprehensive third-party regulations criminalizing all facilitation of the selling of sexual services, also in nonexploitative situations. Practice shows that these third-party regulations often result in the criminalization of sex workers themselves (Vuolajärvi, 2022).²⁰ This expansion of the reach of criminal law, criminalizing all purchase of sexual services as well as acts by third parties, is not required nor recommended by the CoE Convention and the EU Trafficking Directive.²¹ In certain countries, the criminalization of the “knowing use” or even the complete criminalization of all purchase of sexual services seems to be used as a means to criminalize prostitution under the pretext of anti-trafficking legislation. This expansion of criminalization in the realm of prostitution can contribute to the further conflation of human trafficking and prostitution.²²

Application at the national level

The European Commission’s evaluation report on its proposal to amend the EU Trafficking Directive finds that “[e]ven where available, legislation criminalizing the use of exploited services is not extensively applied in practice.”²³ The limited EU data available on the application of national provisions criminalizing “knowing use” show the scarce application of these provisions. The 2016 report by the European Commission on the impact of

18 The Nordic model (also referred to as the Swedish model or the equality model) was introduced in Sweden in 1999, in France in 2016, and in Ireland in 2017.

19 Department of Justice Northern Ireland, 2019, paras. 7, 15, 17–18. Moreover, Sweden was criticized by GRETA for relying on this generic ban in relation to Article 19 of the CoE Convention, see GRETA, 2022b.

20 Vuolajärvi, 2022, pp. 7–10, 13–14; Amnesty International, 2022, pp. 5–8

21 Mullally, 2020, p. 277; however, note that in Recital 26 of the revised Trafficking Directives it is mentioned that Member States may criminalize the purchase of sexual acts in national law (this is based on the Directive’s text at the moment of the political agreement on 23 January 2024). This note was likely added as a consequence of the pushes from the Nordic model lobby.

22 Effects of this expansion of criminalization include further marginalization and stigmatization, moreover, their access to the justice system is compromised due to the threat of being criminalized. The severe repercussions on persons providing sexual services include the deterioration of working conditions: their autonomy is severely affected, forcing them to operate in more risky situations, facing increased violence. See Vuolajärvi, 2022; Amnesty International, 2022, pp. 5–8; ESWA, 2022. Le Bail et al. (2019) found that even found that in France sex workers are more often criminalized than their clients. See also: Oliveira, 2020.

23 EU & EC, 2022c, pp. 20–22.

national legislation criminalizing the use of services of trafficked persons stresses the scarce statistical data.²⁴ This EC Report reveals that in 2015–2016 there had only been 18 convictions for the use of services of trafficked persons in the EU, of which 15 were in Romania alone. Strikingly, while Romania criminalized “knowing use” regarding all types of exploitation, these cases all concerned the use of sexual services.²⁵ Moreover, in Romania the provision is mainly used to criminalize the use of sexual services of minors, an offense which is already punishable under other legislation.²⁶ Based on the aggregated data from the 2016 EC Report and GRETA’s 2020 General Report, only four EU Member States reported convictions for the criminalization of “knowing use” up until the end of 2019 (Bulgaria, Romania, Greece, and Lithuania).²⁷

The 2020 EC data collection publication on trafficking in the EU shows an increase in conviction rates: a total of 133 convictions in the period 2017–2018, of which 85 were in Lithuania and 21 in Hungary.²⁸ However, research by La Strada International reveals that these data are incorrect. In the period covered by the 2020 EC data collection publication, “knowing use” had not yet even been criminalized in Hungary—criminalization was only enacted in July 2020.²⁹ For Lithuania, the 85 convictions were also found to be erroneous. The Lithuanian authorities informed GRETA of only one single conviction by a first instance court in 2017, and a human trafficking expert from Lithuania explained that the few convictions for “knowing use” by first instance courts in this period have all been quashed by the higher courts.³⁰ The 2020 EC data collection publication claiming 133 convictions in the period 2017–2018 is therefore not reliable as it includes incorrect data.

The latest available data on the application of the criminalization of “knowing use” have been published by the European Commission in December 2022: there were 51 convictions in the period 2019–2020 in the entire EU.³¹ It has not been possible to check whether these most recent data are

24 EU & EC, 2016, p. 6. This assessment report was required by Article 23 of the EU Trafficking Directive.

25 EU & EC, 2016, p. 7; See also OSCE & OSR/CTHB, 2021a, pp. 36–37.

26 Information provided by an expert from Romania.

27 Further non-EU CoE State Parties which reported case law on the criminalization of the “knowing use”: North Macedonia and Serbia. See: EU & EC, 2016, p. 6; GRETA, 2020c, pp. 48–49.

28 EU & EC, 2020, p. 243.

29 GRETA, 2019a, para. 165–167; GRETA, 2022c, p. 39.

30 GRETA, 2019b, para. 159–160.

31 EU & EC, 2022e, para. 4.

reliable, as the EU did not publish the segregated data, nor did they comply with our requests for segregated data.³²

In line with these scarce data at EU level, in the 2020 Commentary on the CoE Convention, Siobhán Mullally—currently the UN Special Rapporteur on Trafficking in Persons, especially women and children—concluded that in those countries in which a criminalization of “knowing use” has been introduced, “there is very limited prosecutorial activity as well as limited knowledge of the scope or import of the offence” (Mullally, 2020, p. 276). This scarce application of the provision, or even total lack of application in some EU Member States, was brought up in all the interviews La Strada International conducted with experts from countries in which a criminalization of “knowing use” has been introduced.³³ The interviewees from countries in which there have been a few criminal investigations, including Bulgaria and Finland, highlighted that it is very unpredictable when—if at all—this provision is used in applicable situations.

Impact of criminalizing “knowing use” on combating human trafficking

The recommendation to criminalize “knowing use” was introduced in the CoE Convention and the EU Trafficking Directive based on the idea that this would discourage demand, especially when all EU Member States would introduce such a criminal provision. The 2016 EC Report concludes that its analysis “demonstrates a rather diverse legal landscape which fails to effectively contribute to discouraging demand of such services.”³⁴ Whether a more harmonized legal landscape will actually have more impact on discouraging demand can be questioned, as there is no evidence to support this. The diverse legal and policy landscape across the EU would not readily support such a claim, as Member States generally enjoy considerable

32 We reached out to Eurostat, DG Home and the EU ATC’s office. Neither of these three EU agencies could provide the necessary information.

33 In only two countries could the interviewees provide us with recent data on the application of the offense: In Germany: convictions for the “knowing use” (Section 232a StGB) in low single digits in both 2019 and 2020 (as an offense that was sentenced along with at least one more serious offense). In Austria: 21 convictions for the provision on the violation of sexual self-determination (Section 205a of the Criminal Code) in both 2019 and 2020. As the Austrian provision is broad, it is not clear what number of these convictions pertained to “knowing use.” See: Austrian Federal Ministry of Justice, 2022, pp. 79–80.

34 EU & EC, 2016, p. 10.

discretion on how they transpose minimum rules set by EU directives into national legislation. Furthermore, based on the limited impact of this user criminalization on state practice and the reservations towards its effectiveness, it is to be seriously questioned whether this criminalization actually has any impact on combating human trafficking at all (Mullally, 2020). In Finland, a year after the introduction of this criminalization, both police and counselors warned that these new rules would make it harder to combat human trafficking, because sex buyers are less likely to report signs of trafficking.³⁵ Moreover, the necessity of this criminalization can be debated: the scarce situations in which it is applied, in practice mostly regarding the use of sexual services from underaged victims of trafficking or situations with clear indicators of an exploitative situation, were all situations which are covered by existing provisions on human trafficking, rape, and sexual assault.³⁶

In line with these observations, the experts interviewed for this research all expressed doubts about the enforceability of the criminalization of “knowing use” in practice, and shared the view that this provision would lead to only a few prosecutions. Almost all interviewees doubted whether the criminalization would contribute to combating human trafficking in practice. Several stressed that the criminalization does not have any added value and only leads to negative side effects. On the other side, a few proponents did highlight the possible preventative and normative function the provision could fulfill: the introduction of the offense in criminal legislation signals that the very use of services of trafficked persons is in fact an offense, and that users enable the persistence of this exploitation. One interviewee explained that to realize a preventative and normative effect in practice, convictions are necessary to raise awareness about the existence of this criminalization. This is in line with GRETA’s observation that the criminalization of “knowing use” could potentially have a normative effect and awareness raising function, if states introducing such a criminalization also disseminate information about it and promote its practical application (GRETA, 2020c, p. 49).

La Strada International notes that the expected impact of the criminalization of the demand for and prevention of human trafficking is merely based on an assumption that this criminalization would lead to a decrease in demand, and that there is currently no data proving this. Over a decade

35 YLE, 2016.

36 VVR, 2021; Lindenberg, 2014, pp. 4, 77–78; see also: Dutch Senate, 2021, contribution by Miss de Boer.

ago, the 2011 Joint UN Commentary on the EU Trafficking Directive recommended states to conduct an in-depth impact assessment before introducing this criminalization into their national legislation.³⁷ La Strada International did not find any information about in-depth impact assessments conducted at the national level before the introduction of this criminalization into national legislation. Finland and Germany are the only countries to have conducted an evaluation of the provision after its introduction in national legislation, of which only the latter included an impact assessment also covering the human rights impact.³⁸ This German evaluation report (KFN, 2021) concluded that the criminalization did not bring forward a relevant reduction in demand. It was stated that the provision had little practical relevance—as it is very difficult to prove the mental element of “knowledge.” Moreover, concerns were raised about the negative side effects, such as increased stigmatization.³⁹ At EU level, the European Commission included the issue in its evaluations in 2016 and 2021 for a possible revision of the Trafficking Directive. Strikingly, while both reports highlight the scarce use of the provision, and neither revealed evidence of any impact of the criminalization on combating human trafficking, the Commission concluded (EU & EC, 2022b) that there would be a need for a binding provision in the revised Trafficking Directive.⁴⁰

In the interview series, both proponents and opponents of the criminalization highlighted the restricted impact of criminal law in general and explained that this criminalization can only have an effect when it is part of a comprehensive set of tools tackling demand. Several interviewees argued that the answer should be sought outside the criminal code. To reduce demand, they said the focus should not be on criminalization, but instead on awareness raising and education. It is noteworthy that this necessary shift in focus was brought up by multiple interviewees without being specifically asked about this. These awareness raising and educational measures are exactly the types of measures which were already laid down as binding obligations in both the 2011 EU Trafficking Directive and the CoE Convention.⁴¹ Before its current revision, the 2011 EU Trafficking Directive

37 UN, 2011, pp. 99–100.

38 After the Finnish evaluation (2013) and the German evaluation (2021), both countries decided to lower the required mental element to also include “should have known.” See: KFN, 2021; Melander & Mahmood, 2022.

39 KFN, 2021, p. 105.

40 EU & EC, 2022b.

41 Article 18(1–3), EU Trafficking Directive (2011/36/EU); Article 6, CoE Convention on Actions against Trafficking (CETS 197).

still included a nonbinding recommendation to criminalize “knowing use.”⁴² Since the EU legislators reached a political agreement on the directive’s revision, after which it was formally adopted, the criminalization will now be included as a mandatory provision in the revised EU Trafficking Directive, which has come into force on 14 July 2024.⁴³

Reasons for the scarce application of the criminalization of “knowing use”

The interview series and desk research conducted by La Strada International reveal several obstacles to the application of the provision.

Lacking awareness and capacity

While two-thirds of the EU Member States have introduced a (partial) criminalization of the “knowing use,” there is only little awareness among the public of the existing legal provisions at the national level. Nearly all interviewees stressed that more awareness of this criminalization is necessary among both the public and relevant stakeholders. It is striking that—as far as La Strada International has been able to ascertain—Bulgaria is the only EU country which has launched a public awareness campaign to inform the public about the introduction of this new criminalization. It is peculiar that this campaign was only directed at users of sexual services, even though Bulgaria criminalized the “knowing use” of all services of trafficked persons.⁴⁴ In Cyprus, there was no public awareness campaign about the new criminalization, but the government did launch a video commercial following the introduction of the strict liability statute on the use of sexual services of trafficked persons. One of the interviewees stated that this video commercial contributed to the conflation of sexual exploitation and sex work, as it gave the impression that all those providing sexual services are being exploited. Also, the interviewee explained that the video could be said to have been intended to prepare the political landscape for a complete ban on the purchase of sex.

42 Article 18(4), EU Trafficking Directive (2011/36/EU); Article 19, CoE Convention on Actions against Trafficking (CETS 197).

43 EU & EC, 2024.

44 GRETA, 2015, para. 112. Furthermore, in France, where the purchase of all sexual services is criminalized, a poster campaign to inform the public about this new law was launched in 2016. See OSCE & OSR/CTHB, 2021a, pp. 52–53.

Problematically, there is a lack of awareness and knowledge of the existing provisions on “knowing use” among legal professionals. Even anti-trafficking experts in the field indicated that they themselves have only limited knowledge of the provision and know even less about its implementation in practice. Moreover, the majority of the interviewees indicated that there is a lack of knowledge among legal practitioners and uncertainty about the interpretation of the provisions at the national level. Investigating cases regarding “knowing use” requires a lot of resources, capacity, and knowledge of the police and the prosecutor’s office. These resources, if available in the first place, will have to be channeled away from other investigations, thereby leaving less resources to investigate the main crime of human trafficking. As the resources to investigate and prosecute human trafficking are already under pressure, this extra burden on the capacity of law enforcement could be detrimental to combating trafficking. Lastly, some interviewees mentioned that investigative authorities do not see “knowing use” as a serious crime and consequently not as a priority—which may well be another cause for the limited number of investigations. Taken together, this lack of knowledge in conjunction with the limited resources available and the capacity of police and law enforcement form an obstacle to the provision’s application at the national level.

Difficulties with proving the required knowledge

A main reason for the scarce application mentioned in the interviews is the difficulty to establish the provision’s required mental element (*mens rea*): the user’s knowledge that the person providing the services was a victim of trafficking.⁴⁵ This obstacle has been acknowledged in the evaluation by the European Commission (EU & EC, 2022c).⁴⁶ This difficulty also persists in countries where the required threshold for the mental element is lowered to “should have known”—like Finland, Germany, the Netherlands, and Lithuania. And even in Ireland, where since 2017 the burden of proof lies with the defendant (the buyer), to date there has not yet been a single conviction.⁴⁷ In Cyprus, where the use of sexual services of trafficking victims is even criminalized as a strict liability offense, there has only been one single conviction since the enactment of this legislation five years ago. In this

45 See further: EU & EC, 2016, p. 6; Mullally, 2020, p. 11.

46 EU & EC, 2022c, pp. 20–22.

47 Generally, prosecutions for trafficking are very low in Ireland, with no convictions for trafficking under the Criminal Law (Human Trafficking) Act of 2013 up until June 2021, and only two convictions in the period since. See GRETA, 2022a, para. 102–103, 113.

case, the user was sentenced to 2.5 years of imprisonment for receiving sexual services from the victim.⁴⁸ Due to the limited—or even complete lack of—jurisprudence, there is but little clarity on how to prove the mental element. A few interviewees mentioned circumstances that could be used to prove the mental element, such as the frequency of using—or repetitive use of—the (sexual) services or the presence of a pimp at the time of purchase. Crucially, several interviewees emphasized the unlikelihood that victims, coerced by their trafficker to conceal the actual situation, would reveal to the user of their services the fact that they have been trafficked. In line with this, the former UN Special Rapporteur on Trafficking in Persons (UN & ECOSOC, 2006) highlighted that even the best-intentioned purchasers of sexual services are probably unable to distinguish between trafficked and nontrafficked persons.⁴⁹

This reveals a twofold problem regarding the required mens rea for the criminalization of “knowing use.” Firstly, it is very hard to prove that a user “knew” or “should have known” that a person providing services was a victim of trafficking, because victims have good reasons to conceal their situation. These include fear of reprisals by the trafficker, fear of deportation, and sometimes simply the circumstance that the person does not recognize themselves as a victim. It is common knowledge (VVR, 2015) that even for professional counselors and police, identification is a difficult matter for which in most situations longer-term contact and the building of a confidential relationship is necessary.⁵⁰ Secondly, where the required mens rea for this criminalization is lowered to “should have known,” this is criticized in light of the legality principle and the principle of *lex certa*. These principles require it to be clear and foreseeable based on the wording of a criminal provision which acts will make a person criminally liable.⁵¹ This legal certainty requirement is problematic in the case at hand, because it is not clear in which circumstances a user “should have known” that the person from whom the services were bought was a victim of trafficking. It is thus unclear which conduct is criminalized when the required mens rea for this criminalization is lowered to “should have known.”⁵²

48 The man was convicted based on art. 17A of Law 60(I)2014 as amended by Law 117(I)/2019. Information provided by an expert lawyer in the human trafficking field from Cyprus. For further information, see Times of Malta, 2023.

49 UN & ECOSOC, 2006, para. 63.

50 VVR, 2015; SekswerkExpertise, 2021.

51 CoE and Registry of the ECtHR, 2022b, pp. 13–15

52 Dutch Senate, 2021, contribution by Miss de Boer; VVR, 2021.

Uncertainty whether a conviction for trafficking is prerequisite to prosecute “knowing use”

In the criminal proceedings against the user (buyer), it is uncertain what type of proof is required in order to establish that the person providing the services was a victim of trafficking.⁵³ Is a prior conviction for human trafficking a prerequisite to prosecute the user for the “knowing use” of these services? Almost all interviewees were unsure whether a conviction for “knowing use” would be possible in their country without a prior conviction of the trafficker. If theoretically possible, most argued that this would be very difficult in practice. An expert lawyer working in this field emphasized that the crime of trafficking has to be proven first, for the possibility to prosecute a user. Throughout the entire interview series, La Strada International has not been informed of any case in which “knowing use” was prosecuted without a prior conviction of the trafficker. In Finland, for example, there have only been prosecutions for “knowing use” connected to larger cases against the traffickers. Also, the single conviction in Cyprus (referred to above) took place in a joint case in which the trafficker was also convicted.⁵⁴ The uncertainty as to whether a prior conviction for human trafficking is required is striking. One of the claims in favor of introducing the criminalization of “knowing use” was that this would enhance the prosecution of human trafficking as it would allow for the possibility of “going after” the user when prosecuting the trafficker is not possible.⁵⁵ However, the above shows that it is unlikely that this would be possible. Taken together, this means that the effective use of the provision criminalizing “knowing use” will most likely depend on successful human trafficking prosecutions, which currently seriously lag behind, and which might be under further pressure when law enforcement capacity is partly channeled away to investigate incidents of “knowing use.”

Harmful side effects of the criminalization of users

The previous paragraphs discussed the scarce application of the criminalization of the “knowing use of services,” including several of the underlying reasons. When a provision is barely applied in practice, at best it might have a normative and symbolic function. However, one can question the advisability of such a

53 No further information on this specific issue has been found in available reports.

54 For further information, see Times of Malta, 2023.

55 See OSCE & OSR/CTHB, 2021a, pp. 33–49.

criminalization if there are serious negative side effects for victims. Academics, human rights organizations, organizations advocating for the rights of sex workers, as well as the Joint UN Commentary on the EU Directive, have all stressed the major negative side effects for victims when users are criminalized for the “knowing use of services” from trafficked persons, especially when this criminalization is limited to “sexual services.”⁵⁶ These concerns have also been recognized in the European Commission’s impact assessment and evaluation reports regarding its proposal for the revision of the EU Trafficking Directive. These include serious concerns that this criminalization can result in increased stigmatization and marginalization of victims and can hamper detection and identification.⁵⁷ In the interview series conducted by La Strada International, 90% of the experts expressed their grave concerns about the criminalization’s unintended negative effects on victims.

Erosion of rights and increased stigmatization

The main concern among the majority of the interviewees is that this criminalization promotes risks for (potential) victims rather than protecting their rights. The experts explained that the criminalization pushes sex work from the public realm and further underground, ultimately leading to an erosion of their rights. This can cause further stigmatization and marginalization, leading to a decrease in safety for persons who provide sexual services and rendering them all the more vulnerable to exploitation, coercion, and abuse. Several interviewees highlighted that this also makes it more difficult for social workers to access potential trafficking victims among this group. The Joint UN Commentary on the EU Directive (UN, 2011) stressed that a criminalization focused on sexual services can lead to unintended negative side effects for (potential) victims of sexual exploitation (UN, 2011). These concerns are also backed by research by Amnesty International, the European Sex Workers’ Rights Alliance (ESWA), and legal associations fighting for women’s rights (Amnesty International, 2022; ESWA, 2022; ICRSE, 2019). These harmful side effects have also been recognized in the 2023 “Non-Paper” by the Dutch and Belgian governments: “a system of criminalization will potentially increase the illegal market, increase the risk of exploitation and violence and will result in more vulnerabilities for sex workers being forced to provide their services in the hidden,” with

56 HRW, 2019; UN and Working Group on Discrimination against Women and Girls, 2023; Malsch et al., 2021; SekswerkExpertise, 2021; UN, 2011, pp. 99–100; Amnesty International, 2022; ESWA, 2022.

57 Ibid.; EU & EC, 2022d, pp. 22–23; EU & EC, 2022, pp. 20–22.

disastrous consequences to their rights (Governments of the Netherlands and Belgium, 2023).

While the 2011 Joint UN Commentary recommended states to conduct an in-depth impact assessment before introducing any such a criminalization into national legislation, only Germany has conducted a national assessment into the human rights impact on victims and vulnerable workers.⁵⁸ As the majority of the countries that did introduce this criminalization did not conduct such a human rights impact assessment, it is especially relevant to look at academic research into the issue. Analysis of quantitative and qualitative studies demonstrates the extensive harm which can be caused by criminalization in the realm of sex work, including user criminalization, confirming the concerns raised by the interviewees. This criminalization pushes sex work further underground, to places with poor public safety. This leads to negative effects on the safety and health of persons providing sexual services, as well their access to rights and health services. Moreover, it leads to their increased stigmatization, discrimination, marginalization, and deteriorated protection against exploitation (McCann et al., 2021; Platt et al., 2018).

Back in the drafting process of the CoE Convention, State Parties already debated whether the criminalization of “knowing use” was the right way to protect victims. Several State Parties stressed that this criminalization could actually worsen the position of victims (Mullally, 2020). Almost all interviewed experts came to the same conclusion: that victims would not be better off with the criminalization of “knowing use.” Most interviewees questioned what rights the victims would have in their countries, when a user would be prosecuted for the “knowing use” of their services. Specifically, the experts were unsure whether trafficked persons would be entitled to the same victim rights when the “user” would be prosecuted, compared to situations in which their trafficker would be prosecuted. Problematically, even among these experts it was unclear whether the prosecution of the “user” would entitle the victim to a victim status with related rights, including the right to a temporary residence permit. Considering these harmful side effects on the rights of (potential) victims of trafficking, it is doubtful whether the criminalization of “knowing use” can at all be said to fall under the human rights-based approach.

The harmful burden of the proceedings on the victim

Another major concern among the interviewed experts relates to the unintended side effects of the criminal proceedings against the “user” on

58 UN, 2011, pp. 99–100; see para. 2.3 (Germany).

the trafficked person who provided the services. This victim can be called to testify as a witness, both in the proceedings against their trafficker and in the proceedings against the “user”—who might be the person who helped them to exit the trafficking situation. These criminal proceedings may pose an extremely heavy burden on victims, as they are humiliating and pose high risks of secondary victimization and traumatization, even where countries allow for special measures to better protect victims during court proceedings.⁵⁹ Moreover, qualifying the victim as a witness may lead to an erosion of the trafficked person’s rights, because not all rights specifically intended for trafficking victims are always granted when they are called as witnesses. The heavy burden of these proceedings further raises the already high bar for victims to come forward to the police and report exploitative situations (Thesslund & Okyere, 2018).

Reduction in reporting by “users”

In addition to the direct harmful side effects for victims, the criminalization of “knowing use” could also lead to a reduced reporting of exploitative situations by “users,” thereby hampering the prosecution of traffickers.⁶⁰ The interviewed experts who have experience with providing direct support to victims, stressed that they have frequently seen “users” supporting victims through reporting the exploitative situation to the authorities. For this reason, these experts fear criminalization leading to a reduction in reporting. Coincidentally or not, the interviewees who did not share this particular concern—stating that those who make use of exploitative services are not likely to be the ones to report it—were mainly experts who have not worked directly with victims.

The risk that the criminalization will have a deterrent effect on users to report signals of exploitative situations, as they would thereby expose themselves to prosecution, has been recognized in the German evaluation report as well as by the Dutch and Belgian governments.⁶¹ Dutch research among users of sexual services also showed that they themselves are of the opinion that this new criminalization will likely lead to less reporting (Malsch et al., 2021). Further research on the willingness to report malpractices in the prostitution sector revealed that a guarantee of safety

59 See further: VVR, 2015; see also Thesslund et al., 2018.

60 These concerns are also backed by the Joint UN Commentary on the EU Directive, the German impact assessment, and organizations working on women’s and sex worker rights. For the latter two, see VVR, 2015; SekswerkExpertise, 2021.

61 KFN, 2021, p. 105; Governments of the Netherlands and Belgium, 2023, pp. 1–2; Dutch Senate, 2021.

and anonymity are stimulating factors for reporting, while stigmatization by the authorities is an important limiting factor (GGD Amsterdam, 2014, p. 6). The criminalization of “knowing use” is therefore likely to raise yet another obstacle for users to report exploitative situations.⁶² These apparent risks for a reduction in reporting raise the concern that this criminalization could hamper both the identification and support for vulnerable victims, as well as the combat against trafficking.⁶³

Risks of the user’s twofold position as a suspect and a witness

As discussed above, the conviction of the trafficker is likely to be a necessary prerequisite to prosecute the user for the “knowing use of services”—as the trafficked person’s victim status is proven through the conviction of their trafficker. This brings forward an additional problem: users can have a twofold position, both as a witness in the case against the trafficker, and as a suspect risking prosecution for “knowing use.” Since these users are protected from incriminating themselves, they can invoke their right to remain silent when they are questioned as witnesses in the case against the trafficker.⁶⁴ This obstacle to the prosecution of those who commit trafficking crimes has been recognized in the German Evaluation Report, as well as during the discussions regarding the introduction of this criminalization in the Dutch Senate.⁶⁵ The user’s twofold position as both witness and suspect can complicate the establishment of sufficient proof in the case against the trafficker, and thereby obstruct the prosecution of the trafficker.⁶⁶

Developments at EU level

The EU Strategy on Combatting Trafficking in Human Beings (2021–2025), adopted by the European Commission in April 2021, identified the need for an evaluation of the EU Trafficking Directive.⁶⁷ The strategy found that the

62 VVR, 2015.

63 See further: EU & EC, 2022c, pp. 23–24; Dutch Senate, 2021, contributions by Miss de Boer and Mister Dittrich. The latter emphasizes that users who would still report are more likely to do this anonymously for fear of prosecution, which means these unanimous witnesses cannot be heard in trial—complicating the prosecution of traffickers.

64 The right not to incriminate oneself (*nemo tenetur*) falls within the principle of fair trial under Article 6 of ECHR. See further CoE and Registry of the ECtHR, 2022a.

65 KFN, 2021, p. 105; Dutch Senate, 2021, contribution by Miss Baay-Timmermans.

66 Moreover, when the client cannot be used as a witness, it is likely that the victim will have to testify, as this might be the only way to establish the proof. See further: SekswerkExpertise, 2021.

67 EU & EC, 2021.

“instrument may not be fit for purpose any longer,” as it possibly does not sufficiently take into account victims’ actual needs.⁶⁸ Later in 2021, the evaluation and public consultation of the EU Trafficking Directive were launched, including questionnaires and interviews with stakeholders.⁶⁹ Based on the evaluation of the directive, the Commission published its proposal for the revision of the EU Trafficking Directive on 19 December 2022.⁷⁰ This proposal included a revision of Article 18(4), regarding criminalizing the use of services from a trafficked person.

European Commission: Proposal for a Revised Directive

The European Commission’s proposal (EC Proposal) put forward a revision of the current recommendation in Article 18(4), changing this into a binding provision that obliges Member States to criminalize the “knowing use of services” provided by victims of trafficking. The Commission proposes this mandatory provision to apply to all forms of exploitation, and to be subject to the user’s knowledge that the person providing the services was a victim of trafficking. This provision would only be applicable to the use of services, not to the use of products. It is relevant to highlight that the proposal for this mandatory provision was made despite the Commission’s evaluation and assessment reports, all confirming the lack of any proven impact of this criminalization. The Commission mainly refers to the need for more harmonized legislation across the EU on this issue, with the assumption that this will help to decrease the demand. In its proposal, the Commission commits itself to submitting a report to the European Parliament and the Council on the transposition and impact of national legislation within five years of the transposition deadline.⁷¹

Certain lobby groups and EU Member States supporting the Nordic model strongly advocated for the introduction of a strict liability offense in the revised directive, which would be solely applicable to the use of sexual services.⁷² In the interview series conducted by La Strada International,

68 Ibid., pp. 4–6.

69 See input by CSOs for this public consultation, including by La Strada International: EU & EC, 2023.

70 EU & EC, 2022b. After this, a second consultation was launched, reactions could be submitted until 22 of March 2023.

71 Ibid.

72 Including: OSCE, CAP International, Talita Child, Real Stars, Swedish Women’s Lobby, European Women’s Lobby and European Network of Migrant Women. See under “Transparency” in the procedure file when these organizations had meetings with the rapporteurs or shadow rapporteurs: EU & EP, 2022. For the submissions of these organizations, see: EU & EC, 2023.

multiple experts emphasized that a strict liability offense regarding sexual exploitation would risk leading to a de facto ban on prostitution. The fact that the Commission proposed a mandatory provision on the criminalization of the use of exploitative services, applying to all forms of exploitation and requiring the user's knowledge, can be understood as a compromise proposal aiming to prevent expected attempts pushing for a different approach regarding sexual exploitation based on the Nordic model. Recently, similar pushes by proponents of the Nordic model have also been seen in other EU legislative processes, such as the negotiations for a new directive on violence against women and the EU Report on Prostitution.⁷³ It should be kept in mind that while human trafficking falls under EU competency, defining prostitution policy remains a national competence.

Council position

The Commission's proposal to change the recommendation to criminalize "knowing use" into a binding provision, was a heavily debated issue among EU Member States. Especially the legality and advisability of such a mandatory provision, as well as the question whether it could realistically be applied in practice, featured prominently in the discussion. On 9 June 2023 the council agreed on its position for the revision of the EU Trafficking Directive.⁷⁴ In line with the EC proposal, the council position stated that this criminalization applies to situations in which "the user of the services acts with the knowledge that the person providing the service is a victim" of trafficking. In the council position, the revised provision thus applies to all forms of exploitation and requires that the "user" knew that the person providing the services was a victim of trafficking. In addition, the council proposed an essential amendment to the EC's proposal. Based on the council position, only "the *intentional* use of services provided by a victim" would be criminalized. The council position thus requires that the user of the service acts with the knowledge that the provider of the services is a victim, and that the user intentionally used these services provided by a victim.

European Parliament: FEMM and LIBE Report

The FEMM and LIBE Committees of the European Parliament (EP) adopted their position on 5 October 2023, with two clear modifications to the

73 See, for example, La Strada International, 2023.

74 EU & Council of the EU, 2023a; EU & Council of the EU, 2023b.

EC’s proposal regarding the criminalization of “knowing use.”⁷⁵ Firstly, the FEMM and LIBE Committees proposed a differentiation between the rules applying to sexual exploitation and the rules applying to other types of exploitation. Secondly, the EP Committees proposed to lower the required threshold for the mental element. Regarding the use of sexual services provided by a victim of trafficking, the Committees proposed a strict liability offense: for this offense the user’s knowledge of the victim status is completely irrelevant. Regarding the services related to other types of exploitation, it was proposed to lower the required mental element to “knew or could have reasonably known.”⁷⁶ In their position, the FEMM and LIBE Committees thus pushed for a strict liability offense and followed a different approach toward sexual exploitation, which is based on the Nordic model.

After the adoption of the positions of the Commission, the Council and the FEMM and LIBE Committees, the interinstitutional negotiations (trialogues) for the adoption of the revised EU Trafficking Directive started on 8 November 2023.⁷⁷ While the EP position of October 2023 shows that the FEMM and LIBE Committees initially pushed for a strict liability approach for sexual services, the negotiations in the subsequent months revealed that the rapporteurs meanwhile seemed to go along with the Commission’s proposal for Article 18a. The final triilogue was held on 23 January 2024, during which the Belgian Presidency of the Council and the representatives of the EP came to a political agreement to include the mandatory criminalization of the “knowing use of services” of trafficked persons in the revised EU Trafficking Directive. This revised Article 18a requires that the user “knew” that the person providing the service was a victim of trafficking, and that the use of these services was an intentional act. This means that a binding provision on the criminalization of the “knowing use of services” of trafficked persons regarding all types of exploitation is laid down in the revised EU Trafficking Directive. These new rules have entered into force on 14 July 2024.⁷⁸ Counted from this date, Member States have two years to implement this criminalization into their national legislation.

75 EU & EP, 2023b; EU & EP, 2023d.

76 EU & EP, 2023d.

77 EU & EP, 2023c.

78 The revised directive was tabled and adopted at the EP’s plenary sitting on 23 April 2024, and the final formal adoption was on 13 June 2024.

A critical look at the proposals for the revised EU Trafficking Directive

The push for a mandatory criminalization of “knowing use”

Whether criminalizing the user is an effective way to protect victims and prevent and combat human trafficking, should be critically questioned. Over the past years, proponents of criminalizing “knowing use” argued that the absence of such a criminalization fosters a culture of impunity for traffickers.⁷⁹ This argument can be questioned in light of the scarce application of the provision in practice, showing that this provision is unlikely to lead to more investigations and prosecutions of offenders, and the fact that there is generally no proof of any impact of the provision on combating trafficking.⁸⁰ Moreover, as revealed in paragraph 4, this criminalization does not only cause harmful side effects to (potential) victims of trafficking, but is also likely to lead to a decrease in the reporting of exploitative situations by clients, thereby potentially complicating the prosecution of traffickers.

To reduce demand, the answer should instead be sought in broader actions outside the realm of criminal law, such as awareness raising and education for the public. Moreover, it is of importance to keep the focus on the human rights of the persons affected by exploitation. Interviewees stressed that one must acknowledge that there is no simple or single answer to curb the demand that fosters human trafficking. Moreover, an expansion of the current EU legal framework on human trafficking with a binding obligation to criminalize the “knowing use,” potentially raises the very risks we try to combat. Creating more criminalization can cause potential victims to become more and more vulnerable to exploitation. Reliable data is necessary before one should consider any such changes in legislation. This is in line with recent research concluding that EU Member States should not expect too much from such a repressive and barely enforceable criminalization. Working on lowering the current obstacles to report signals of exploitation is likely to have more effect (Malsch et al., p. 10). Also, organizations fighting for women’s rights have stressed that treating clients as partners in combating exploitation, is likely to have more positive results than threatening these users with prosecution.⁸¹

79 EU & EC, 2016.

80 See paragraphs 2 and 3 for a detailed discussion of these topics.

81 VVR, 2015.

The push for lowering the required mental element

Since the very start of the developments regarding the criminalization of “knowing use” at the EU level, certain strong proponents of the Nordic model have been lobbying to remove the requirement that the user acted “with the knowledge” that the person is a victim of trafficking regarding the use of sexual services.⁸² This lowering of the required knowledge element would lead to a strict liability provision criminalizing everyone who uses the sexual services of trafficked persons, irrespective of whether they knew or could have reasonably known that the person was a victim of trafficking. The LIBE and FEMM Committees sided with the Nordic model lobby and proposed a strict liability provision in their position published on 5 October 2023. Over the course of the subsequent trialogue negotiations, the LIBE and FEMM Committees had to drop this proposal due to the strong opposition by the Council and the Commission. Nevertheless, as the directive only requires minimum harmonization, states have the option to set stricter rules. If states choose to implement a stricter provision, the harmonized legal landscape as aimed for by the Commission will not be realized.

La Strada International is concerned about the fact that Recital 26 of the revised directive mentions both the possibility to adopt a more stringent provision in national legislation, as well as the additional note that Member States may criminalize the purchase of sexual acts in national law.⁸³ This additional note to the recital seems to have been accepted in a haste at the very end of the negotiations. This addition is striking, as this was not expected based on the negotiations. Most importantly, this part of Recital 26 is not in line with the overall text of the directive, as it relates to sexual services irrespective of an exploitation situation.⁸⁴ A mayor concern of La Strada International is that with the inclusion of this recital, the revised

82 EU & EC, 2022b; see proposed new Article 18a; OSCE & OSR/CTHB, 2021b; European Women's Lobby, 2021. This view was also put forward by Juan Fernando López Aguilar (Libe Chair) at the Porticus Partners Meeting (Brussels) in June 2022.

83 Recitals can be found at the start of any EU act and set out the reasons for its operative provisions. These recitals are not legally binding alike the operative provisions, but they can be used for interpreting ambiguous provisions. Note that recitals cannot overrule a relevant operative provision: if they are inconsistent then the text of the operative provision will take precedence. This paragraph is based on the text of Recital 26 (initially Recital 9), as included in the revised directive's text when the political agreement was reached on 23 January 2024, before the formal adoption; EU & EP, 2022.

84 Moreover, this part seems to conflict with the first part of the same recital, which states that “the criminalization should only target the use of services provided within the framework of exploitation covered by the offence of trafficking in human beings,” and this is clearly not the case with the possibility of a generic criminalization of the purchase of sexual services.

directive will become the first binding international instrument within the anti-trafficking framework which in a way legitimizes the general criminalization of the purchase of sexual services. Despite the fact that this problematic note is merely included in a recital, using “soft language,” this is a problematic development. Up until now, the position of the Council has always been that prostitution policy falls outside the competence of the European Commission, as this is a competence of Member States.

A second concern is the possibility that the language in Recital 26 as referred to above could potentially encourage EU Member States to implement a strict liability provision into their national legislation. Generally, the legality and desirability of a strict liability provision regarding the use of sexual services should be critically questioned. Is it desirable, advisable, and legal to criminalize a person who did not know, and was not in the position in which they could or should have known, that the services were being provided by a victim of trafficking? This lowering of the required mental element would be in conflict with the principle of *lex certa*, which requires that the wording of a provision make it clear and foreseeable which acts make a person criminally liable.⁸⁵ This conflicts with the principle of legality, as also enshrined in national constitutional law, has been emphasized by the Dutch and Belgian governments.⁸⁶ The Non-Paper published by these governments as a reaction to the EU Parliament’s proposal argues “that criminalizing individuals without an intent (or even guilt) requirement is at odds with the basic principles of (our) criminal law.”⁸⁷ In line with the Council position, these two governments emphasized that it would be necessary that the new Article 18a required both that the user acted with “the knowledge that the person is a victim” and that the user “intentionally used the service provided by the victim.”⁸⁸

Almost all experts interviewed for this research also opposed such a strict liability provision. According to most experts, such a provision would be dangerous, entirely arbitrary, and in conflict with both constitutional law and the rights of the defendant. As to the possible impact of such a strict liability provision, it is relevant to note that the Commission’s evaluation and impact reports highlight that “the data collection does not support that standards stricter than knowledge (even only for sexual exploitation) be it under recklessness or strict liability, lead to higher numbers of prosecutions

85 See S CoE and Registry of the ECtHR, 2022b.

86 Governments of the Netherlands and Belgium, 2023, p. 1.

87 Ibid.

88 Ibid.

or convictions.”⁸⁹ Member States which adopted the lower standard of recklessness or even strict liability do not show higher prosecution and conviction rates compared to Member States with provisions requiring that the user “knew” that the services were provided by a victim of trafficking. For example, in Cyprus a strict liability provision in regard to sexual services came into force in 2019, and there has only been a single conviction since.⁹⁰

The negotiation process featured strong lobbying for a differentiation between the forms of exploitation in the revised Article 18a. This proposal should be critically questioned. Since many years, GRETA and the UN Joint Commentary on the EU Directive express their concerns about the dominant focus on sexual exploitation. GRETA has repeatedly requested states to criminalize the users of services of victims of trafficking for all forms of exploitation—without differentiating between these forms (Mullally, 2020). Also, the Commission’s Impact Report (2022) underlined that a different approach based on the forms of exploitation would result in different treatment for the demand which fosters labor exploitation and the demand for sexual exploitation.⁹¹ This differentiated approach regarding sexual exploitation increases the stigmatization of the prostitution sector, making persons working in this sector—including exploited persons—all the more vulnerable to exploitation and abuse.⁹² Swedish Commissioner Johansson has repeatedly opposed such a differentiation.⁹³ Several experts pointed out in their interviews that a strict liability offense regarding sexual exploitation would risk leading to a *de facto* ban on prostitution. This could bring forth the very circumstances the provision aims to combat and hamper the prosecution of traffickers and the protection of victims’ rights.

Conclusion

This chapter critically discussed both the situation at the national level regarding the criminalization of the “use of services” of trafficked persons, as well as the developments at the EU level. Based on desk research and an interview series with 19 experts from the anti-trafficking field, this research

89 EU & EC, 2022d, p. 50.

90 EU & EC, 2022c, pp. 23–24.

91 EU & EC, 2022d), p. 50.

92 See further: VVR, 2015.

93 Swedish Commissioner Johansson has stated her opposition to a differentiation between the forms of trafficking on different occasions and fora, including during the negotiations in the FEMM and LIBE Committees. See further: EU & EC, 2022a.

found that the EU Member States which introduced a criminalization of “knowing use” either limited the legal scope of this provision to users of sexual services of trafficked persons, or in practice (almost) exclusively applied their broader criminalization to this particular group. Although two-thirds of the EU Member States currently have a provision criminalizing “knowing use” in their national legislation, there are only few investigations into this offense. The scarce application of the national provisions is unpredictable and has led to only few convictions across Europe. Reasons for this scarce application include the limited knowledge among experts, the difficulty to establish the required mental element, and the high burden of these investigations on the limited available resources. In the few instances in which this provision is used, this is often to prosecute acts which were already criminalized under existing statutes on trafficking, rape or sexual assault.

A thorough look into the available EU data on this criminalization reveals that these data are not fully reliable, as certain data is evidently incorrect. Moreover, based on the few impact assessments conducted at the EU and the national level, complemented with the interview series conducted by La Strada International, we have to conclude that there is no proof of any impact of the criminalization of “knowing use” on combating human trafficking. This lacking evidence of any positive impact sharply contrasts with the abundant concerns about the unintended negative effects on victims and vulnerable (sex) workers, which are widely backed up by research. The majority of the interviewed experts within this research concluded that victims would not be better off with the introduction of this criminalization. Unintended harmful effects for (potential) victims include the increased stigmatization, erosion of rights, and the harmful burden of these proceedings. In addition to this, the potential reduction in reporting and the user’s twofold position as suspect and witness, can both complicate the establishment of evidence in the case against the trafficker, and thereby obstruct the combat against trafficking.

The Commission’s evaluations acknowledged the scarce application, the lack of proof of any impact and the existence of unintended harmful side effects. In spite of this, the Commission still concluded that there was a need for introducing a binding provision in the revised EU Trafficking Directive. The only simple argument repeatedly used in favor of a binding provision is the idea that a harmonized landscape would be more effective to tackle the demand for trafficking. However, there is no proof that a harmonized landscape would give a better result in this particular field, and no explanation or proof is given on why harmonized criminalization would work better than harmonized decriminalization. While there is no evidence

that criminalizing the user in any way positively impacts the combat against human trafficking, there is abundant research showing the harmful effects of criminalization for vulnerable workers and victims of trafficking in the prostitution sector. While the idea behind this criminalization is that it could address impunity, this chapter revealed that this criminalization is more likely to lead to fewer convictions of traffickers and thus hamper the combat against trafficking.

Both at the EU level and at the national level, a strong lobby for the Nordic model can be observed, focusing on the demand for sexual exploitation and pushing for a ban on the purchase of all sexual services. This strong lobby is likely to be the real reason for the Commission to propose a binding provision for all services, requiring knowledge as a mental element. This can be seen as the "best possible compromise," suggested by the Commission in the ongoing heavy debate regarding sex work. The European Parliament's initial position, prepared by the FEMM and LIBE Committees, was clearly pushing for the Nordic model, differentiating between the forms of trafficking and proposing a strict liability provision regarding the use of sexual services. This chapter argued that it is questionable whether such a strict liability provision would be in line with the principle of legality enshrined in national and regional (human rights) law. The Council's proposal applies to all forms of exploitation and requires both the user's knowledge that the person providing the services was a victim, as well as the user's intention to use this victim's services. In light of the provision's lack of impact on combating trafficking on the one side, and its unintended harmful side effects on the other, the effects of the mandatory criminalization in the revised EU Trafficking Directive should be monitored closely over the years to come. It is highly necessary that both the Commission and the EU Member States conduct proper assessments and adequately inform EU citizens about this criminalization of the "knowing use of services" of trafficked persons.

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V.

Conclusions

14. Human Trafficking in the Sex Industry: Practices and Law¹

Marijke Malsch and Janine Janssen

Abstract: This chapter summarizes the most important findings of the book. Specific attention is paid to recent developments, such as the move to the Internet and changes in the legislation worldwide. The chapter reflects on the outcomes of the book and gives a number of recommendations, such as strengthening the independence of women and increasing awareness activities. Furthermore, a careful glimpse into the future is phrased.

Keywords: legislation, sex work, independency, exploitation, awareness raising

The introduction to this book stated that a good solution to fight exploitation without inducing undesirable effects is not easy to find, but that does not mean that no efforts are being made to find solutions. Varying types of legal approaches towards human trafficking have been developed over the past decades. These approaches range from liberalizing all types of sex work and procuring, on the one hand, to criminalizing all or most actions within the sex industry, on the other. There are risks of stigmatization, of neglect of the rights of independent sex workers, of relocation of prostitution activities in response to repressive systems, of denial of forced work, of inactivity of law enforcement, and of increased violence in liberalized legal systems.

On top of that, the present-day move of sex work and procuring to the private sphere renders monitoring of risks of forced work by law enforcement more difficult. That makes sex work and human trafficking a problem with

¹ In this chapter, some lengthier legal/document citations have been put in the footnotes, in deviation of the usual APA author–date parenthetical.

many faces: it is a problem of regulation; of enforcement; of who is involved and what individuals' needs, wishes, and capacities are; of risks of trafficking and violence; of side effects inherent to particular interventions; of ideology; etc. This book has attempted to cover the most important of these issues and to involve a variety of legal systems worldwide in its analysis, with a special view to European countries. The most important findings of the chapters in the book will be summarized below. The chapter ends with a reflection, with recommendations, and with a careful glimpse into the future.

The book's main focus is on human trafficking and not on voluntary sex work, the reason being that exploited prostitutes form a relatively less visible and identifiable group that may have major difficulties in coming forward to claim their rights. Journalists and researchers generally know how to find the independent sex workers. It is more straightforward for independent sex workers to take part in interviews, to provide information about their activities in other ways, and to reach out to politicians in claiming their rights. There is a serious risk of getting a biased perspective when only independent sex workers that speak a language that both researcher/politician/journalist and sex worker master are being approached. That is the reason we pay relatively more attention to the exploited and less visible group of sex workers.

Legislative approaches as an instrument to combat trafficking

As has become clear in several contributions to this book, many states, but also international bodies like the EU and the United Nations, rely heavily on laws and other legislative instruments to combat human trafficking and other negative side effects of sex work.² National legal approaches may include criminalizing the sex worker herself,³ like in China (Tsang, 2019); criminalizing trafficking; legally combating nuisance in the street caused by clients looking for sex work; and, more recently, criminalizing the client, for example, in the situation where the work is done forcedly and he⁴ knows it. Several chapters in the book point out the lack of results of at least part of this legislation. In the few countries that have actively monitored the application of a law criminalizing the client in case of "knowing use" of a

2 Shobinath; Hoff & Brouwer; Malsch et al., this book.

3 Most sex workers are probably women, and that is the reason we generally use the female gender.

4 Most clients are probably men, and that is the reason we generally use the masculine gender.

sex worker's services, it appeared that it leads to only a very small number of cases brought before a court and to hardly any convictions.⁵ Dutch police officers have even heard Swedish colleagues refer to these types of laws as a "mockery."⁶

On top of that, several negative side-effects have been identified that seem inherent to the application of such laws. Criminalization risks stigmatization of not only the client but also the sex worker. Traffickers may, for their part, pressure sex workers harder to hide the forced nature of their work from clients and the authorities in case the client can be prosecuted. Another negative side effect of these laws is the risk that the police and other law enforcement officials will not only focus on traffickers and clients but on the sex worker herself, too, as well as on her personal relations. That may even occur in countries where prostitution is not a crime in itself. Finally, sex workers may decide to move to other countries with more liberalized legal systems in case the law becomes too strict, even in the situation when they might prefer to stay.

The chapter dealing with the Swedish model argues that the country's strict criminalization of clients if they make use of any sex workers' services leads to a reduction of both the work itself and of violence in the sex industry.⁷ Public sentiment towards prostitution also changed in the direction of more disapproval of men using the services of sex workers. The number of men who say they make use of the services of a sex worker decreased after the introduction of such laws (see also Kotsadam & Jakobsson, 2011; Waltman, 2011). So a highly repressive legislative model, directly criminalizing the client's actions, has certain effects, although sex work itself seems not to have completely disappeared (Waltman, 2011; Van der Lint, 2019). The Swedish model has been copied by several countries, such as Norway, France, Canada, Northern Ireland, Iceland, and Israel.⁸ However, the model has been, and still is, the subject of heated debate, and both the research findings and the presumptions on which the model rests have been vehemently contested (Ekberg, 2004; Cho et al., 2013; Weitzer, 2011; Weitzer, 2015; Jakobsson & Kotsadam, 2013; Van der Zee, 2013; Vanwesenbeeck et al., 2019; Wijers, 2022).

5 Hoff & Brouwer, this book.

6 As noted during an interview the first author conducted with two Dutch police officers on 7 January 2019.

7 Ekberg & Wahlberg, this book; see also Vanwesenbeeck, 1994; Björndahl, 2012; see also SOAIDS & Erasmus, 2021.

8 Konečná, this book. In the US, both sex worker and client have been criminalized, see Van der Zee, 2015.

It can be concluded that legislators should be more aware of both the positive and negative effects of the criminalization of clients and of other types of laws combating human trafficking. Also, the effects of new laws should be monitored on a larger scale than is the case today to be sure that choosing a particular legislative approach is the right way to combat trafficking. Such monitoring does not happen on a large scale yet.⁹ Ideological stances should be avoided as much as possible while making and amending laws, since they may obscure a correct and complete image of what is going on in the sex industry. Overly high expectations of new laws and legal approaches have to be mitigated.

Only a very strict model, like the Swedish one, seems effective in combating the demand for sex work, and then only in case of strict enforcement, which is sometimes lacking even there.¹⁰ Such rigorous enforcement seems absent in most countries. Highly repressive legislation and strict enforcement is a route that many other countries are not prepared to take, among other reasons due to the risks of stigmatizing (independent) sex workers and possibly denying them their rights. But there is another side of the coin of not choosing a very strict approach: the invisibility of forced work in the sex industry may lead to neglect because such exploited workers have great difficulties making their problems clear to the outside world, such as the authorities and journalists.

Practices of sex work and trafficking

Several chapters in this book have dealt with the practices of sex work, both forced and voluntary, and how traffickers lure their victims into the sex industry and manage to keep them there. The client has also been addressed: the focus there is on whether they are able to detect signs of exploitation and what they do when they witness them. And finally, the actual fight against exploitation, as well as the support of sex workers by a variety of organizations, among them law enforcement, NGOs, and various communities, have been the subjects of several chapters. Below, findings with respect to the factual landscape of these types of work, its various actors, and organizations in the field of the sex industry will be summarized.

Sex work may take various forms, including consensual work, but also exploitation. Which form occurs is largely dependent on the country where

9 Hoff & Brouwer, this book.

10 Ekberg & Wahlberg, this book.

the work is being done and the legal system it has. Countries with liberalized legal systems may tolerate more visible forms of sex work than countries with repressive regimes or countries where the mere existence of sex work is denied. Some forms seem to involve hardly any exploitation, whereas others lead to more widespread forced work. The different forms of sex work will now be sketched briefly.¹¹

Window sex work

Window sex work is the most visible form of prostitution. It can predominantly be found in countries with liberal legal systems, because the contact between sex workers and clients partly takes place on the street. In countries that deny the existence of sex work, such visible forms would probably be less tolerated.

Clubs

Clubs, or brothels, are locations where sexual services are provided. Activities taking place within the clubs are not visible to the same extent as window sex work is.

Escort sex work

In this form of sex work, the clients and sex workers make contact by telephone or via the Internet. The client generally chooses the location where the meeting takes place.

Home sex work

In home sex work, the prostitute generally works from home or another private location. It is not clear whether this sector is predominantly made up of independent prostitutes or whether they work more often under a procurer/pimp, which may involve sexual exploitation.

Street sex work

Street sex work may result in nuisance for the neighbors. In unofficial areas, sex workers are particularly susceptible to coercion, and exploitation and violence by clients seems more common. Street sex work is, for example, done by West African girls who have been trafficked via Italy to European countries. They face multiple serious problems during their stay in Europe.¹²

11 Malsch & Van Uchelen, this book.

12 CMK, 2017. See on the way victims from West Africa are deceived into the sex industry and the large number of victims of such trafficking: UNODC, 2020.

Victims of human trafficking

Sex workers who fall victim to human trafficking may have a vulnerable background.¹³ They sometimes have problematic family relations or are very young. They may be jobless or homeless, may come from poor countries, and may not speak the language in the country where they work. Their traffickers may confiscate their passports and/or their cell phones or isolate them otherwise, thereby increasing their vulnerability and dependence. Some victims have an intellectual disability or other mental vulnerability.¹⁴ The increased use of the Internet, accompanied by an increase of the sex work from home or other private locations, contributes to the prostitute's vulnerability; monitoring by the authorities and others then is difficult.

Several chapters in this book deal with these vulnerabilities and dependencies.¹⁵ Naturally, not every sex worker is vulnerable; there is a group that is not vulnerable and that works independently. But dependence and vulnerability regularly return in the extensive literature as well as the court decisions that have been analyzed for this book.¹⁶ A particularly vulnerable group is formed by transgender sex workers (TSWs), the primary reason being the way the outside world views them. They are regularly seriously stigmatized and even abused by their partners, on top of discrimination and sometimes violence by authorities and some clients.¹⁷

The client

All sex workers deal with clients, and some of them also with procurers and traffickers. Clients, procurers, and traffickers make use of the sex worker: clients to enjoy a sexual experience in exchange for a payment and procurers and traffickers to earn money. Some sex workers are in a position to make use of the clients: for earning money in the first place, but also sometimes for having a good time themselves.¹⁸ The group of exploited sex workers generally is not able to make use of clients: they need them to earn money for their traffickers or their family far away, and their relation to the client is different when compared to sex workers who are independent (Werson,

13 Datzer & Mujanović; Malsch & Van Uchelen; Tsang & Wilkinson, this book; See also Waltman, 2011; Sheu et al., 2021.

14 Malsch & Van Uchelen, this book.

15 Datzer & Mujanović; Malsch & Van Uchelen; Kenway; Ekberg & Wahlberg; Ten Kate, this book.

16 Datzer & Mujanović; Malsch & Van Uchelen, this book.

17 Tsang & Wilkinson, this book.

18 This seems to be true for some of the prostitutes who work as escorts. However, it does not apply to all escorts. See Tsang, 2019; Malsch et al., 2021.

2012; Van der Zee, 2015). It would not generally be correct to say that exploited sex workers enjoy their work. For many of them, the work is predominantly a way to survive or to support their family.¹⁹

Ability to notice signs of forced work and feelings of responsibility in clients of sex work have been explicitly addressed in this book. Clients appear very well able to identify the various possible signs indicating exploitation. An extensive list of possible indications of forced work was compiled on the basis of clients' statements.²⁰ Most signs suggest direct forms of exploitation, such as bruises on a sex worker's body, cigarette burns, or a male lingering nearby who takes in the money earned. Also, certain tattoos can be signs of exploitation, especially when the same tattoos can be witnessed on several sex workers or when they contain the exploiter's name. Other signs are less directly visible, such as that the sex worker has had over 15 clients that day or is being moved by the trafficker from one city or country to another on a regular basis.²¹

Clients could, in principle, notify the authorities when they see such signs. However, most clients do not seem eager to do so. They deny their responsibility by saying that it is the criminal justice authority's responsibility to combat exploitation. Clients pay for the sex work, which is legal (at least in some countries), so it is the authorities that have to fight exploitation. When noticing bruises, clients might leave and go to another sex worker because it diminishes their enjoyment, but they would not take the step to contact the authorities. Willingness to report cases of involuntary work would even decrease under a law criminalizing "knowing use" of exploited sex workers, some clients say. Moreover, they note that signs are not always be visible and that the women would hide any signs and lie when questioned about their work. There are exceptions to the general stance taken: some clients do go to the authorities when they perceive forced work, or express willingness to do so. Or they take steps to protect the well-being of the sex workers in other ways. But that seems a small group.²²

Traffickers

Human traffickers are very well aware of the vulnerabilities of sex workers. This can be deduced from the fact that they make use of them to actively

19 Malsch & Van Uchelen, this book; Weitzer, 2015, p. 81, seems to view prostitution in the first place as an "opportunity."

20 Malsch et al., this book; see also Durchslag & Goswami, 2008; Farley et al., 2011.

21 On moving victims between cities as a means of disorientation, see UNODC, 2009.

22 Malsch et al., this book.

deceive their victims into entering the sex industry, and when they have succeeded, keep them there using a plethora of tactics. Actively making use of a girl's or woman's vulnerable situation appears to be the most often-used tactic by traffickers (88%). That happens, for example, when the girl or woman is living in an institution for the mentally ill or for youth care; perpetrators may approach her there and feign a love affair.²³ But they also undertake activities to make the women they already exploit more dependent, such as isolating the woman; confiscating her belongings, like a credit card and telephone; threatening the sex worker or her family; giving her drugs; or directly using violence. All this makes it difficult for the woman to quit sex work, and it increases her dependence on the man who profits from her work. This situation also leads sex workers to work longer days; to perform more unhealthy work, such as being forbidden to use a condom; and to take more risks than in a situation of independency (Kennis et al., 2021).²⁴ Because of the reluctance of clients to contact the authorities in case of exploitation, such situations remain invisible to the outside world.

Fighting trafficking

Extensive collaborations have been set up to fight human trafficking. The prosecution may collaborate with several other organizations in the field, such as the police, municipalities, tax and customs administrations, and special investigative services, like a labor inspectorate. But working together with organizations in other countries is also helpful. Although a comprehensive overview of the effects of these collaborations cannot be provided, it is clear that they are a necessary condition for an effective fight against exploitation. Most cases of human trafficking are not bound to one country, but extend to several countries and locations.²⁵

The Swedish model, with its strict criminalization of all use of the services of sex workers, requires special efforts from law enforcement. Swedish police investigations into prostitution activities may involve online surveillance of the actions of the traffickers through prostitution advertisement websites and social media. When sufficient evidence has been collected, a raid may take place, during which the police will identify sex work with the help of used condoms, lubricants, and sex toys, as well as copious amounts of cash. So-called "sperm dogs," dogs trained to search for bodily fluids, may be deployed, which has been of significant help to collect evidence in a large

23 Malsch & Van Uchelen; Datzler & Mujanović, this book.

24 Malsch et al., this book.

25 Ten Kate; Zeegers; Lodder, this book.

number of cases. On top of that, the Swedish police will inspect bedding and other indications of exploitation on the premises. Sex workers, often not native to Sweden, may live at the premises under unacceptable conditions, and the police may detect that in this way.

When a Swedish client denies the crime, he may be summoned to testify at trial against the criminal organizers. Client testimonies lift the burden off the victims to speak in open court about their exploitation. Victims, on their part, are taken to a site away from the prostitution premises, where they can talk with victim support agencies and civil society organizations. They are also informed about their rights, such as the right to court-appointed legal counsel.²⁶

The Swedish approach does not only focus on repression. There is also awareness raising and training to combat sex-specific prejudices and victim blaming. This happens in annual trainings and capacity building conferences for police officers and prosecutors organized through the Office of the National Rapporteur on Trafficking in Human Beings.²⁷

Sex worker support

Where can sex workers go to when they are exploited, or when they wish to improve their living and working conditions? Several chapters in this book make it clear that the police cannot always be considered “safe.” Many sex workers are afraid to contact the police, either because of their illegal status,²⁸ or because they do not have the required permission to work,²⁹ or even because they have experienced police misconduct in previous situations.³⁰ Fear of authorities may be abused by traffickers, who threaten to contact the police if the sex worker wants to stop, refuses to work very long days, or perform specific services. Those sex workers who have been trafficked into a country where they do not speak the language have more difficulty contacting the authorities. It appears that some traffickers move “their” sex workers from one city to another in a country on a regular basis, thereby making it more difficult for these women to contact the authorities.³¹

Organizations of sex workers sometimes seem to play a more important role as protectors of prostitutes than the “official” law enforcement

26 Ekberg & Wahlberg, this book.

27 Ibid.

28 Konečná; Lodder, this book.

29 Malsch et al., this book.

30 Tsang & Wilkinson, this book.

31 Malsch et al., this book.

organizations, and that counts for both those who are working independently and those that work forcedly. Certain sex worker–founded and –led groups may cultivate peer-based trust through kinship.³² These groups may give advice about immigration status and support people in the process of obtaining regularization. They also provide direct money or proxies of money, create safe spaces and networks, and, when necessary, facilitate escape.

Wrapping up

Ideology

One of this book's original purposes was to critically evaluate the role of ideology in the approach to sex work and human trafficking.³³ The book was intended primarily to provide factual information on the state of affairs of forced sex work and how it is being combated in several countries.³⁴ We tried to avoid ideology, because that may stand in the way of a complete, factual picture of all types of trafficking and sex work. The image of sex workers who are always independent and have agency may lead to neglect of information on sex workers who are not free, cannot quit, and who cannot safely go to the police or ask for help. And the reverse is true as well. Images of sex workers as always vulnerable and coming from broken families may lead to dismissal of situations in which prostitutes work independently and earn a good living; such images may lead to stigma and a denial of labor rights.³⁵

One of the backgrounds for these ongoing debates on whether sex workers have agency or not could be that it is impossible to establish with certainty the number of sex workers who are dependent, those who are not, and those who are in between, one of the most important reasons simply being that part of the work is invisible to the outside world. The only thing that is certain is that there is a group of sex workers who are being exploited, and that that group generally is less visible than the independent group.³⁶

32 Kenway; Konečná, this book.

33 On ideology in lawmaking, see Van Rij, 2014.

34 Bernstein (1999) states that too little empirical research had been conducted and that prostitution has been abundantly theorized, yet insufficiently studied.

35 Vanwesenbeeck et al. (2019) are of the opinion that only a restricted part of human trafficking cases concerns the situation that someone is being forced to work against one's will. These authors also state that most foreign sex workers would come to the Netherlands out of a deliberate choice to work here in the sex industry. See also Wijers, 2018; Wijers, 2022.

36 Ten Kate; Datzler & Mujanović; Tsang & Wilkinson; Malsch & Van Uchelen; Malsch et al., this book.

Accusations that any writings or policy proposals on this subject are colored by ideology are still made, although probably less often than at the beginning of this century. Ideology may also creep into politics. The Dutch former manager of De Wallen commented on the then-existing resistance in some political parties in the Amsterdam community against a harsher approach to combating human trafficking in the sex industry.³⁷ According to him, political parties from the left (or liberal-left, at that point) had a romantic ideological perspective on sex work: they were of the opinion that women working in the sex industry should be stimulated to maximize their agency and independence in the sex industry, and thus should not be monitored by the authorities on a large scale. The more right-wing liberal party was in favor of the free market, also in the sex industry, and would object to too strict regulation from that perspective: these politicians were, according to the former manager of De Wallen, of the opinion that every male should have the opportunity to obtain his sexual experiences where he wanted to get them.³⁸ The former manager also knew, based on his extensive professional experience in this part of the city, that men from all walks of life, those without advanced degrees as well as CEOs of large companies and politicians, do visit De Wallen to satisfy their sexual urges. De Wallen can be visited relatively anonymously, and that may be one of the reasons for its popularity among men of diverse walks of life (Malsch, 2017). Restricting possibilities for men influential in politics and other important segments of society to go there would therefore not be generally applauded in society. Policymaking in the sex industry consequently would, to a certain extent, be influenced by the personal preferences of clients with leading positions in society. The former manager noted that, after many years of immersing himself in the goings on in the Amsterdam red-light district and providing policy recommendations, he had been completely cured of all ideological views because of what he had witnessed in terms of exploitation (Malsch, 2017; see also Van der Zee, 2013).³⁹

Laws and other interventions

This book shows that much energy is being devoted to legislative approaches, both on a national and an international level. Huge differences between

37 The manager of De Wallen (the red-light district) was an official appointed by the Amsterdam community who supervised prostitution practices, the nuisance it may cause, and organizational crime related to it, and gave advice for policymaking in De Wallen during the years 1997–2001 (for interviews with the manager of De Wallen, see Malsch, 2017).

38 Interviews with the manager of De Wallen, noted among others in Malsch, 2017.

39 Nigerian sex workers say that exploitation will only stop when clients realize that the women they visit are slaves (Van der Ploeg, 2020; see also CMK, 2017).

countries and their legislation can be witnessed. Since the turn of the century, some countries have become highly repressive and others very liberal, with other countries somewhere in the middle.⁴⁰ There are several reasons for this variety in developments. The type of legal approach that is chosen probably bears relation to the country's physical location. New Zealand, completely surrounded by the sea, can be expected to have a relatively smaller unnoticed influx of people looking for occasions to perform sex work or being trafficked there than most Western European countries with their still rather open boundaries over land, sea, and air. That may explain New Zealand's relatively very liberal legislation, which starts from a presumption of agency of all sex workers and their communities, while strengthening that agency at the same time (Rottier, 2018).

A country's physical location is only one of the determining factors. Among the others are the situations of sex workers: poverty, hopelessness, desperation and economic destitution, and limited access to health care. They may lead to people accepting jobs not knowing that they are fronts for human trafficking from which they cannot easily escape (Bales, 2012). On top of that, the present climate change leads to migration, which in its turn may act as a stimulus to human trafficking as well (Sheu et al., 2021). These latter reasons probably will lead to an increase of human trafficking in the near future.

Other factors that may influence the national legal model chosen are existing prominent political groups and ideas, cultural traditions, the degree and character of women's liberation, etc. Illustrative of cultural differences are the following two situations, as experienced by the first editor of this book. De Wallen in Amsterdam offers opportunities for window sex work: women, procurers, or organizations rent a room with a large window facing the street or canal for a couple of hours or half a day. Sex workers sit or stand behind the window in a provocative body posture. Potential clients negotiate prices and services with them at the apartment door. Once they agree, the client enters the room, and the agreement is fulfilled. This situation in Amsterdam, as well as in a number of other Dutch cities, is considered normal by most citizens and city authorities there, as well as by the voluminous numbers of tourists visiting such areas (Siegel, 2009). However, two people from Sweden and Hong Kong, visiting De Wallen on separate occasions, appeared to have great difficulty hiding their disgust when watching the sex workers doing their job behind the windows. This difference in responses suggests a considerable difference in cultural traditions between countries.

40 Shobinath; Konečná, this book.

Have the huge efforts that have been invested in the novel legislative approaches of the past decades as described in this book paid off? In other words, do they produce the desired effects? When looking at the various contributions, one can entertain serious doubts about that.⁴¹ According to some authors, the laws, international conventions, and guidelines that have been created either have marginal effects, in the sense that few or no cases are brought to the national courts and no considerable reduction of human trafficking can be witnessed, or have serious negative side effects, or both. The question therefore can be asked: Is it wise to proceed in this way? By making and amending laws and other legal instruments and debating phrasings of legal articles when they have only insignificant effects on the practice of exploitation, the Nordic countries allegedly being the exception.⁴² Would it not be better to make a turn and put more effort into preventive measures like raising awareness,⁴³ warning third-country and Eastern European women and girls not to too readily accept invitations to come to Western countries for work, helping women who are being exploited to get out of the sex industry, detecting forced work earlier, and educating girls and young women to become more independent and to make their own choices?⁴⁴ In addition, in the case of independent sex workers, should we not ascertain that their rights are indeed being guaranteed and that stigmatization of these women is avoided on a larger scale?

Presently, a so-called “escape container” is traveling through several Eastern European countries. Set up in the Netherlands in 2022, the container’s aim is to draw attention to issues related to human trafficking, forced labor, and sexual exploitation. Individuals that may be at risk of being approached for sex work in Western European countries are invited to enter the container and wander through a series of cabins resembling the work places of prostitutes, where they are made aware of the type of work they may end up in when traveling to Western Europe. With help of sounds, smells, tastes, high temperatures, and virtual reality goggles,

41 On the role and the limited effects of various types of legislation, see Van Rij (2014) and Daalder (2015).

42 Hoff & Brouwer; Lodder, this book. The repressive Nordic model and its proponents have established that their approach has affected the consumption of sex work, violence, and general attitudes toward sex buying, see Ekberg & Wahlberg, this book, for summaries of evaluations of the model.

43 Hoff & Brouwer; Konečná, this book.

44 Malsch et al., this book. The manager of De Wallen suggested the Dutch state take initiatives to discourage women in other countries to come to the Netherlands for sex (or other) work, in view of the risks of ending up in exploitation (interviews with the manager of De Wallen, see Malsch, 2017).

those risks are made clear to them. The goal of this awareness training is that participants learn what is going on in the sex industry and what situations may lead to trafficking. The container also features other types of labor exploitation. This relatively new approach is accompanied by trainings at national universities in these Eastern European countries, as well as other awareness activities like debates on the risks of falling victim to trafficking. Links to web crawlers that detect signs of exploitation can be provided to the local police in these countries. The same happens with gamification instruments, which can help youngsters to become acquainted with how the sex industry and other types of forced labor function and the related risks. The escape container travels through Poland, Hungary, Moldavia, and Romania. Although fairly new, this initiative seems highly promising in the fight against trafficking.⁴⁵ Investing in such preventive activities that may exert relatively quick efforts is highly recommended. However, this approach requires elaborate forms of cooperation between governments, various institutions and officials, and NGOs.

Trying to make people less vulnerable and more resilient to attempts to force them into sex work starting from early childhood is highly recommendable. Resilience could help to counter traffickers taking advantage of vulnerability. Part of that type of education or training should be that women develop their skills from a young age, enabling them to make well-considered choices for jobs and other activities they want to perform when grown up, in order to avoid being deceived into some kind of forced work. Also, becoming less dependent on men should be an important focus of the education of young women. Sending countries should, where possible, receive particular attention in this respect.

But not only women should be targeted. A substantial part of the educational efforts should be directed at (young) men, to convince them of the equality of all genders and of the human rights that apply to all members of the community. This may help prevent them from becoming traffickers and exploiters of the other gender(s) in the future.

45 Reshape Foundation, <https://reshapefoundation.net/>. For related activities regarding awareness raising in Eastern European countries, see: <https://thb.kormany.hu/anti-trafficking-research-center-to-open-in-pecs>; <https://csalad.hu/csaladban-elni/alszerelem-zsarolas-kenyszerprostitutio-i-kijutas-csak-segitseggel>; <https://www.police.hu/hu/hirek-es-informaciok/bunmegelozes/aktualis/escapevan>; https://univpecs.com/egyetemi_elet/escapetruck_drMohay; <https://prawo.uni.wroc.pl/node/46849>; <https://www.youtube.com/watch?v=yoWMo23ALSk>; <https://uwr.edu.pl/en/escapetruck-of-the-reshape-foundation-in-wroclaw/>; https://t.me/s/Politia_Republicii_Moldova?q=%23LaSTRADA; <https://www.youtube.com/watch?v=Ed7LMaSo5ao>.

For that all to happen, we have to take a step back from the general desire to bring about immediate and direct effects through (repressive) legislation and law enforcement, and to assume a helicopter view. Educating young women and men as described above has no immediate effects: results can be witnessed only years after the education has been taken place. But when such an approach has effects, it has the potential to engender consequences that may last for a long time, even across the generations, helping to avoid exploitation. These types of education probably are a better approach in the long run than where and how efforts are directed at present: in legal approaches that seem to serve primarily symbolic functions. More attention to the facts of exploitation and sex work should be stimulated. Research into exploitation in the sex industry should not be motivated by ideology.

It is clear that the toxic relationship between sex work and human trafficking can be found all over the world. Chapters to this book have described what is going on in several different countries. For the future it is important that researchers and policymakers not only focus on the national level but also take into consideration the international dynamics that influence the abuse of victims in this trade. Due to the international character of factors that influence the flourishing of human trafficking—just think of international political instability and economic problems—we should find ways to collaborate in eliminating these factors. At the end of the day, we are all in the same boat.

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Sex work is often called the oldest profession in the world. While it manifests itself in a plethora of forms, a move to private locations is currently taking place: contacts are established via the Internet and meetings happen at appointed locations. This makes it more difficult to monitor forced work, and exploitation therefore risks remaining undetected. This book presents empirical findings regarding exploitation in various countries, considering sex workers, traffickers and clients, and the fight against human trafficking. Countries differ vastly in their legislative approaches, ranging from highly repressive to very liberal. This volume asks whether the ongoing process of making and changing laws is sufficiently effective in fighting human trafficking. Other interventions could obtain better outcomes, such as promoting more independence among women and helping trafficked individuals to get out. Less ideology and more attention to the facts of exploitation and sex work might help to achieve these aims.

Marijke Malsch is a professor of Empirical Legal studies, Open University Netherlands, and fellow at the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR).

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“This book offers a nuanced and comprehensive overview of current debates in anti-trafficking discourse. The editors foreground the book with a necessary questioning of the forced/free binary which is integral for examining the continuum of harm and risk that sex workers and victim-survivors face. I recommend this text to all scholars and students interested in forced/free labour sex industry, and gendered inequality. ... This is a very valuable and timely book, and the editors have done an excellent job in bringing a range of authors together.”

– Dr Gemma Ahearne, Senior Lecturer in Criminology, University of Liverpool

“The chapters connect by examining human trafficking from multiple angles—legal, social, practical, and empirical—creating a comprehensive narrative that addresses both the challenges and potential solutions in combating human trafficking and supporting the rights and well-being of individuals in the sex industry.”

– Lisa R. Muftic, Western New England University

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