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Non-discrimination in enjoyment of the right to health by the
sex workers in the Netherlands

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Abstract

By legalizing the brothels, the Dutch government was aiming to improve the position of sex workers by providing them with essential social protection and benefits. As a result of the new policy, this profession became equal to any other, therefore, there should be no difference in treatment between the sex workers and any other profession when it comes to enjoyment of human rights. This work establishes the impact of the prostitution policy of the Netherlands on the sex workers' access to healthcare and non-discrimination in that sector. It is important to distinguish the notions of prostitution, trafficking and sexual exploitation, as voluntary sex work should not fall under the scope of trafficking or forced exploitation. This paper then looks at the international instruments regarding prostitution and the right to health, their importance and state obligations. In order to focus on the example of the Netherlands, first a brief historical introduction is given and then the current policy is discussed, which is later compared to the healthcare of sex workers before the brothels ban lift. Finally, the work provides legal background on non-discrimination in the field of healthcare and the factual data on the failure of sex workers to enjoy their right to health without discrimination.

Introduction

Prostitution existed, exists, and most likely will exist in all countries, regardless of their cultural development and measures taken against it. For many centuries this phenomenon attracted public attention. Today, at a time when practically the whole world is trapped in the epidemic of HIV and sexually transmitted infections, in the spread of which sex workers are involved, this problem becomes more urgent than ever. Add the problems associated with the reproduction of healthy future generations and connection with criminal activities and see the importance. Practically in all countries of the world today there are disputes about decriminalization or prohibition of prostitution. All these problems require solutions and in-depth studying. The emergence of the movement for the rights of prostitutes in the late 1970s led to the fact that in some countries prostitution became seen as a profession. But, despite the fact that prostitution has existed since ancient times, more and more new features, forms and issues related to this phenomenon are constantly being discovered and effective measures are necessary in order to regulate the sector.

Should sex workers have human rights? The answer to this question varies from country to country depending on the approach they take in their legislation regarding prostitution. By decriminalizing prostitution sex workers obtain protection from the state in forms of social benefits, healthcare and combatting the violence and exploitation in the industry. However, in order to acquire such security, prostitutes often have to give up their anonymity and face discrimination. Being openly a sex worker, while there exists so much social stigma around this occupation, can be problematic and harmful for their wellbeing due to public judgment and prejudice.

In the Netherlands prostitution has been fully decriminalized since October 2000. The state believes that the policy it has developed is aimed at decreasing the scale of illegal prostitution, human trafficking and abuses in the industry. Among the most important motivations behind lifting the brothels ban was also improving the status of sex workers in society by providing better protection and social security. Being the first country in the world to fully decriminalize the sex industry and making prostitution a legal occupation equal to any other profession, it has attracted many researchers to look at this model from sociological, legal, medical and other perspectives.

While there exist studies that are related to the Dutch policy on prostitution, most of the time the Netherlands is either used as an example of the decriminalization approach, or as part of the descriptive or comparative analyses. Not much research is being done in relation to the actual state of affairs as regards the implementation of the policy in practice, or how effective it is and whether the initial goals have been achieved. Moreover, there is no regularity in the reporting procedure by the government in its reflection and evaluation of the policy. At the moment there is a debate on the new bill regulating prostitution in the Netherlands that is aimed at tightening of the regulations.

As sex work is considered a legitimate profession, just as any other work, sex workers are entitled to enjoy their rights equally with others. This means employment rights, social security and access to healthcare should all be provided to them without difference in treatment compared to other people. However, these newly acquired rights cannot be enjoyed to the fullest due to the discrimination that sex workers face from various social entities. When it comes to healthcare, it is essential that prostitutes get enough protection and help from the state, both physical and mental.

This paper is going to analyse non-discrimination in access to healthcare for sex workers in the Netherlands. This country sets an example of decriminalization policy and can, therefore, demonstrate whether or not those newly acquired rights are being enjoyed by the sex workers. What is promised in theory and what happens in everyday practice are two different things and this is exactly what no recent research has done. What complicates things is the fact that there is no state law on prostitution, as the regulation is given to the local municipalities, each of which deals with the system differently, using only general guidelines. In order to assess the situation the following research question will be answered:

Equality and non-discrimination for sex-workers: How has the decriminalization of prostitution in the Netherlands affected the social status of the sex workers in terms of their right to health?

The paper is going to examine which obligations the Netherlands has taken upon itself regarding healthcare for its population including the sex workers. Which rights are guaranteed to them by the mere fact of the implementation of the new policy, how and whether it works and how discrimination in this regard is dealt with. In order to

answer the research question, the first chapters deal with more general topics while subsequent chapters progress to the eventual focus on this paper. It starts with defining prostitution and demonstrating the importance of differentiating it from human trafficking and sexual exploitation. Next, it covers the international legal framework on prostitution, focusing mainly on the Council of Europe and the Women's Convention. It then describes healthcare, emphasizing the importance of the issue and the states' obligations that come with it, after which the focus moves to the case of the Netherlands. A short historical introduction into the prostitution policies in this country before the brothels ban was lifted is given in Chapter 4. Chapter 5 analyses the case of the Netherlands in more detail, looking at the current policy in comparison to how it used to work, why there is a debate regarding a new prostitution bill and how this may change the state of affairs. The final chapter deals with non-discrimination in healthcare.

This research raises awareness of the still existing social stigma of sex work that leads to the decision of sex-workers to stay anonymous which will put their enjoyment of human rights under threat. It also emphasizes the importance of non-discrimination of sex workers on any grounds, be it health, sex, or position in society. Further research can be done based on other rights that should be guaranteed to the sex workers equally with other professions, as healthcare is not the only sector, in which prostitutes face discrimination.

The research methodology used in this study is first of all desktop research consisting of studying various materials that give legal, academic and factual basis. Primary sources include international treaties, Council of Europe Conventions, General Comments of the Committee on Economic Social and Cultural Rights, General Recommendations of the Committee on the Elimination of All Forms of Discrimination against Women and national legislation, mainly the Dutch Criminal Code. Among the secondary sources are academic articles, reports of the non-governmental organizations (NGOs), especially those that promote the improvement of the status of sex workers and information websites on the Dutch case and medical developments. The research is a combination of both descriptive and comparative parts: it both demonstrates the differences between the current and previous prostitution policies in the Netherlands and explains state obligations and legal

framework of the matter. The work sets a legal and academic foundation of the issue and then analyses their effectiveness in practice by looking at the reports and online resources that give the most current information.

Chapter 1

Definition of prostitution

For a very long time people have attempted to give an accurate and clear definition of the concept of ‘prostitution’. The complexity of researching the issue, but also the extraordinary interest in it, is due to the fact that prostitution is an extremely multifaceted phenomenon in the history and culture of mankind. Because of this, the dispute about the nature of prostitution and its distinctive features has been continuing for many centuries.¹ The difference in the methodological basis of various researchers (the opinions of physicians, lawyers, sociologists, philosophers and other specialists often differ greatly) proves that the exact concept of the term ‘prostitution’ is very difficult to determine. Difficulties of definition follow from both the subject itself, which is diverse, and from the attitude of society towards it, as everything else connected with sex.² In addition, it is difficult to draw boundaries as prostitution is closely related to other forms of sexual activity.

Lawyers and legislators, however, have dealt relatively little with the precise definition of the concept of ‘prostitution’. But this is not surprising, since this issue belongs to one of the most difficult ones in law and differs from state to state.³

One of the modern definitions of prostitution was given in the Joint United Nations Program on HIV/AIDS (UNAIDS) defines sex workers as “female, male and transgender adults and young people who receive money or goods in exchange for

¹ E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 6, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf), (accessed 12 July 2017).

² I. Vanwesenbeeck, 'Sex Workers' Rights and Health The Case of The Netherlands', 2011, p. 2. Available from: ResearchGate, (accessed 12 July 2017).

³ M. van den Brink, M. Wijers, '30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution', in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 135.

sexual services, either regularly or occasionally, and who may or may not consciously define those activities as income-generating”.⁴

Other important term was given by the United Nations in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. It claims that a process when “any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person” is exploitation.⁵ The exploitation of prostitution of another person, even with their consent, is punishable.

It should be noted that while there are different opinions of what constitutes prostitution, there are two kinds of it: voluntary and forced.⁶

In forced prostitution there is a clear violation of human rights, especially of women and children, who are considered easy victims of violence. Forced prostitution was mentioned in the Beijing Platform for Action: “Accordingly, violence against women encompasses but is not limited to the following: ... b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution”.⁷

The definition of voluntary prostitution (without coercion or force) has less clear and vague boundaries due to the fact that it is extremely difficult to prove the presence of consent in such situations, which makes it harder to implement the laws criminalizing forced prostitution.⁸

As an example, in the Netherlands a significant distinction is made between forced and voluntary prostitution. On the basis of their right to sexual self-determination, women should be free to choose prostitution as a profession.⁹ This creates a relationship between the State and the sex-worker, where the prostitutes can enjoy

⁴ ‘Sex work and HIV/AIDS’, UNAIDS Technical Update, 2002, p. 3.

⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, art 1 (1).

⁶ I. Vanwesenbeeck, ‘Sex Workers' Rights and Health The Case of The Netherlands’, 2011, p. 6. Available from: ResearchGate, (accessed 12 July 2017).

⁷ Beijing Declaration and Platform for Action, 1995, art. 113b.

⁸ E. Schulze, ‘Sexual Exploitation And Prostitution And Its Impact On Gender Equality’, Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 7.

⁹ M. van den Brink, M. Wijers, ‘30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution’, in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 142.

their rights and can be guaranteed protection by the state, when it comes to violence, working conditions or anything else.

1.1. Prostitution vs Trafficking

It is important to note that there are differences between the notions of prostitution and trafficking – another complex and widespread criminal issue.¹⁰ The problem is that it is also hardly separated from the term “sexual exploitation”, and all three are often used as subsets of one another or even in the same contexts.¹¹ While there are countries that differentiate between these concepts, many of them still consider prostitution as a form of trafficking, be it voluntary or not. While the UN Protocol on trafficking of 2000 brought some clarity into the definition of ‘trafficking’, it also included the acts of sexual exploitation, which were still not defined.¹²

The variety of viewpoints and definitions of trafficking and prostitution are so broad that they reach completely opposite stands at times. For instance, in the case of the neo-abolitionist Coalition Against Trafficking in Women (CATW), or the French Abolitionist Movement,¹³ which define prostitution as a form of human slavery, opposed to the opinion of the Global Alliance Against Trafficking in Women (GAATW), that promotes the empowerment of sex workers.¹⁴

In 2005, the Council of Europe adopted the Convention on Action against Trafficking in Human Beings, which defined trafficking the following way: “Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring 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 a 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

¹⁰ J. Sanghera, ‘Unpacking the Trafficking Discourse’ in K. Kempadoo, *Trafficking and Prostitution Reconsidered. New Perspectives on Migration, Sex Work and Human Rights*, Paradigma Publishers, London, 2012, p. 10.

¹¹ E. Schulze, ‘Sexual Exploitation And Prostitution And Its Impact On Gender Equality’, Directorate General For Internal Policies, Policy Department C: Citizens’ Rights And Constitutional Affairs, Gender Equality, 2014, p. 6.

¹² M. van den Brink, M. Wijers, ‘30 Years Women’s Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution’, in I. Westendorp (ed.), *The Women’s Convention Turned 30*, Intersentia, Cambridge, 2012, p. 136.

¹³ *Ibid.*, p 138.

¹⁴ I. Vanwesenbeeck, ‘Sex Workers’ Rights and Health The Case of The Netherlands’, 2011, p. 2. Available from: ResearchGate, (accessed 12 July 2017).

exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.¹⁵

What is essential to mention is that even though there is no international consensus regarding the definition of prostitution or the status of sex workers, it is important to provide them with protection, when necessary. By equalizing prostitutes with any other profession, giving them labour rights and recognition, they are also granted protection in cases of abuses, violence, trafficking and exploitation. This is a phenomenon that has existed for centuries and instead of fighting against it and criminalizing it, it is possible to provide the sex workers with their human rights.

While prostitution is a very complex issue to define and understand and it does not have any international consensus, it is still widely covered in the international legal framework as human trafficking and forced prostitution are serious offences.

Chapter 2

International Instruments Regulating Prostitution

The problem of establishing the responsibility for the crimes related to prostitution is one of the most important ones worldwide. Prostitution laws differ from country to country and various models regulating sex work get criticized by the sides with opposing views. Nowadays there is no consensus regarding the issue of how to regulate prostitution, however, international law is clear when it comes to sexual exploitation and forced prostitution.

The following chapter is aimed at distinguishing different approaches in regulating prostitution and the role international instruments play in this, focusing on the Women’s Convention and the Council of Europe. It also raises a question of why those instruments are aimed at women, making prostitution an exclusively gendered issue, while gender neutrality is significant when it comes to protection of sex workers.

¹⁵ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, art. 4a.

2.1. Different policy models regarding prostitution

The models of regulating prostitution are generally divided into two categories: regulatory and abolitionist approaches. This chapter is going to analyse both notions, explaining the debate and the different forms they can take.

2.1.1. The ideas of abolitionism (in relation to prostitution) originate in the 19th century British feminism. Although the term was borrowed from the opponents of slavery and the slave trade, initially feminists did not mean a complete fight against prostitution, but rather a fight against the attempts of the state to regulate it.¹⁶

Josephine Butler, one of the founders of abolitionism, and other feminists believed that prostitution, as a phenomenon, was a result of the male sexual desire, that no woman would ever consent to voluntarily engage in prostitution and, therefore, women involved in prostitution had to be immediately saved, as they were victims of sexual violence.¹⁷

Although prostitution is not a crime in the abolitionist paradigm, the main targets of abolitionism are sex workers. Often within the abolitionist policy they cannot join trade unions (as this can be regarded as propaganda of prostitution) or work together (one of them may be accused of pimping). To modern abolitionism you can, for instance, include the policy of criminalization of the client (sometimes it is also called neo-abolitionism). Also, neo-abolitionists reject the term “sex work”, not recognizing prostitution as work and preferring the term “prostitution”, and advocate the criminalization of brothel owners and clients, but not the prostitutes themselves, claiming the necessity of the rehabilitation of the latter.¹⁸

As noted earlier, to modern abolitionism can be attributed the policy of criminalization of the client, also known as the “Scandinavian” or “Swedish” model.¹⁹ This approach implies a ban on the purchase of sex services, making it a criminal act,

¹⁶ E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 14.

¹⁷ M. van den Brink, M. Wijers, '30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution', in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 138.

¹⁸ S. Voronova, A. Radjenovic, 'The gender dimension of human trafficking', European Parliamentary Research Service, February 2016, p. 5.

¹⁹ *Ibid.*

while their sale remains legal.²⁰ The client's criminalization model is based on the same idea that prostitution is a form of sexual violence, and that women do not go voluntarily into sex industry.

If the client's criminalization approach does not consider sex work to be a crime, the policy of full criminalization prohibits any activity related to prostitution, i.e. makes both the purchase and sale of sex services illegal. Punishment for breaking the law varies from country to country. In Ukraine, where prostitution is criminalized, a sex worker has to pay a fine equal to fifty to five hundred minimum incomes of citizens or community service for up to one hundred and twenty hours.²¹ But most likely, it all ends with a bribe of the police because in countries where sex work is prohibited, the police often “cover” brothels and street sex workers. Because of this, sex workers are in an unprotected and very vulnerable position; they cannot seek help in case of violence, since their activities are illegal. Moreover, they are deprived of labour rights and other related opportunities.

2.1.2. According to the regulatory approach to prostitution policies, in addition to full and partial criminalization of sex work, there are also options for full or partial legalization and decriminalization. Legalization implies that all aspects related to sex work become legal and regulated by the state. State regulation, in turn, can mean forced medical check-ups of sex workers, registration of brothels, sex workers and regular inspections of brothels.²²

Advantages of legalization are that, as a rule, sex workers in exchange for registration get access to labour rights, as well as health care. Also, legalization often does not solve the problems with the labour migration, allowing legal employment as sex workers only to the citizens of certain countries. For example, in the Netherlands since 2000, when the ban on brothels was lifted, sex work has been regulated by administrative and labour laws. However, at the time of legalization, about half of the Dutch sex workers were not from the EU countries, and their situation has not

²⁰ *Legislation on the Purchase of Sexual Services*, Government Offices of Sweden, [website], 2011, <http://www.government.se/articles/2011/03/legislation-on-the-purchase-of-sexual-services/> , (accessed 12 July 2017).

²¹ Criminal Code of Ukraine, 2001, art. 303.

²² E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 20.

improved, as only EU citizens are legally engaged in sex work in the Netherlands, and a migrant permit for work (more specifically, for sex work) can not be issued.

In the Netherlands there is a brothel licensing system, i.e. brothels become legal only after they receive a license from the state. Sex workers can work as regular employees of the brothels, but in practice most prefer to be independent contractors. Such a system occasionally causes criticism, as often sex workers do not want to advertise their identity to the owners of the brothel.

Another possible way to regulate sex work is to decriminalize it. The essence of decriminalization is that activities related to sex work are derived from the sphere of criminal legislation. Unlike legalization, decriminalization involves less government intervention in the regulation of sex work. Decriminalization is often accompanied not only by the recognition of sex work, but also by the care of the health and safety of sex workers.²³

Undoubtedly, decriminalization is not a panacea and does not eliminate problems associated with sex work immediately; but this may not be the worst way to regulate sex work. Especially if enough time to working out legislation related to sex work is devoted, taking into account the interests of the sex workers themselves and monitoring the consequences of the adopted legislation.

2.2. Role of the Women's Convention

The international documents recognize that the development of legal norms guaranteeing women the provision of basic human rights and freedoms is a necessary but insufficient step to overcome their discrimination.

The preamble to the Convention on the Elimination of All Forms of Discrimination against Women explains that, despite the adoption of a number of treaties, women still do not have equal rights with men. In all countries, discrimination against women continues to persist.²⁴

The Convention, which is generally referred to as the Women's Convention, was adopted by the General Assembly in 1979 with a view to strengthening the provisions

²³ S. Voronova, A. Radjenovic, 'The gender dimension of human trafficking', European Parliamentary Research Service, February 2016, p. 5.

²⁴ Convention on the Elimination of All Forms of Discrimination against Women, 1979, preamble.

of existing international treaties aimed at ending the practice of discrimination against women.

The only provision of the Convention related to sexual exploitation and prostitution contains in 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.*”²⁵ The drafting procedure of the article was arguably short and repeated the text of the previously existing Declaration on Elimination of Violence against Women (1967).²⁶ However, the very fact of including a provision covering the sexual exploitation issue into the Women’s Convention is a big step, while some of the drafters were against considering it as a human rights issue at all.²⁷

An important role is played by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), a body monitoring compliance with the Convention by the countries, especially since the State Parties are obliged to provide regular reports to the Committee, getting recommendations in return. Since the establishment of the Committee, the Netherlands has submitted 6 reports, the last being in 2014. After the meetings reviewing the periodic reports of the Netherlands, CEDAW issues its concluding comments. In 2007 it was concerned with the lack of research done regarding the issue of the legalization of brothels in recent years, especially when it comes to migrant women. The Committee then suggested the appointment of a neutral body that would assess the effects of the law abolishing the ban on brothels, and specified that it should also cover the risks of violence and health risks, in particular of women engaged in prostitution, who do not have resident permits.²⁸

The last periodic review took place in 2014 and it is mostly devoted to empowering women in prostitution and the discussion of the new bill regulating prostitution: its changes, tightening of the regulations and goals. The new rules will create better conditions for monitoring the sex industry and protect the sex workers from

²⁵ Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 6.

²⁶ M. van den Brink, M. Wijers, ‘30 Years Women’s Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution’, in I. Westendorp (ed.), *The Women’s Convention Turned 30*, Intersentia, Cambridge, 2012, p. 142.

²⁷ *Ibid*, p. 144.

²⁸ Committee on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Netherlands, 2007, paras. 21-22.

exploitation and violence.²⁹

Speaking of violence, it had never been specifically covered in the Women's Convention, as it appeared as a human rights issue on the international arena later after the drafting of the Convention.³⁰ The issue found its coverage in the General Recommendation No. 19 (1992). The Committee addressed the issues related to the Article 6 of the Convention and claimed that the reasons many women and young people got involved in prostitution were poverty and unemployment. This makes these social groups more vulnerable and more in need of legal protection from violence. The Recommendation also underlines that, among others, there are new forms of exploitation, such as sex tourism, organized marriage and that the increase in violence against women can be seen in the situations of wars and armed conflicts.³¹

According to the CEDAW, prostitutes are the ones that need protection and help integrating back into society. It can be done through education, prevention of stigma and access to healthcare. It has also expressed its concerns regarding the fact the prostitutes are the ones being punished and penalized, not the clients.³²

2.3. Role of the Council of Europe

The Council of Europe pays a lot of attention to the fight against human trafficking, including for the purpose of sexual exploitation and violence against women. It has so far adopted three Conventions, related to these issues: The Council of Europe Convention on Action against Trafficking in Human Beings (2005); The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) and The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).³³

²⁹ See Chapter 5 for more information on the Sixth Periodic Report of the Netherlands to CEDAW.

³⁰ 'Convention on the Elimination of All Forms of Discrimination against Women', *LSE Centre for Women, Peace and Security*, <http://blogs.lse.ac.uk/vaw/int/cedaw/>, (accessed 13 July 2017).

³¹ Committee of the Elimination of Discrimination against Women, General Recommendation No. 19, 1992, paras. 14 - 16.

³² M. van den Brink, M. Wijers, '30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution', in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 153.

³³ E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 73.

The latter one, also known as the Istanbul Convention, is the first legally binding instrument in Europe on violence against women and domestic violence. The Convention obliges States to apply the Convention for the protection and assistance to all victims of domestic violence. States that do not act properly to prevent, investigate and punish the violations by private individuals may be prosecuted and may be required to provide compensation.³⁴

The Convention includes all forms of violence against women: physical, sexual and psychological violence, and economic harm, including the domestic violence about which women are particularly sensitive.

The Istanbul Convention treats violence against women as a violation of human rights, as well as a form of discrimination based on gender, and obliges the States to respond appropriately.

The Convention against Trafficking in Human Beings (2005) appeared as a result of the Council of Europe Parliamentary Assembly Recommendation 1325 (1997) on the Traffic in Women and Forced Prostitution in Council of Europe Member States.³⁵ The Recommendation defines prostitution as degrading treatment and separates the notions of human trafficking and forced prostitution.³⁶ The Convention, in turn, mentions prostitution only once in Article 4, while defining trafficking of human beings.³⁷

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) contains measures for preventing, protecting and helping the victims; various procedural issues. It underlines the strong link between the child prostitution and trafficking and the need for criminal sanctions for those using such services of children.³⁸

³⁴ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011. Art. 30.

³⁵ Parliamentary Assembly of the Council of Europe Recommendation 1325 on Traffic on Women and Forced Prostitution in Council of Europe Member States, 1997, para 4.

³⁶ *Ibid*, para 2.

³⁷ Convention on Action against Trafficking in Human Beings, 2005, art. 4.

³⁸ E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 74.

2.4. Only Women's Issue?

Prostitution as a negative social phenomenon exists in society since ancient times.³⁹ However, most research consider only female prostitution, not paying due attention to the studies on men. Meanwhile, the studies of male prostitution as a component of this phenomenon could make it possible to define an integrated approach to the problems associated with prostitution in general.

In laws criminalizing the purchase of sex services in Sweden, the buyer and seller of sex services are registered gender-neutral, i.e. it is understood that the male sex workers are also protected by this law⁴⁰. However, in practice, due to the fact that sex work is considered to be predominantly a woman's occupation, men who are involved in prostitution are much less likely to seek support from social workers or health care workers, and less often and less willingly report problems with clients. Historical evidence suggests the existence of prostitution in various cultures of the world not only in a heterosexual form.

The international instruments on prostitution and trafficking seem to be gendering the issue and considering mostly women and girls the victims of such actions. While statistically speaking, it is indeed true, however, the exclusion of legislation on the protection of other genders from forced prostitution, violence and trafficking is undeniable. Such international texts as The UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the UN DEVAW, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, all specifically emphasize the fact that prostitution is a female occupation.⁴¹

What is curious is that even though the male prostitution exists in any society, due to the stigma around the term, male sex workers prefer not using the term “prostitutes”.

³⁹ ‘Prostitution’, *New World Encyclopedia*, <http://www.newworldencyclopedia.org/entry/Prostitution> , (accessed 14 July 2017).

⁴⁰ *Legislation on the Purchase of Sexual Services*, Government Offices of Sweden, [website], 2011, <http://www.government.se/articles/2011/03/legislation-on-the-purchase-of-sexual-services/> , (accessed 12 July 2017).

⁴¹ E. Schulze, 'Sexual Exploitation And Prostitution And Its Impact On Gender Equality', Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Gender Equality, 2014, p. 75.

This is how the term ‘pay dates’ emerged, which lets people first meet online, arrange a date and discuss in exchange of what the sexual services will be provided. In the Netherlands the Prostitution and Health Centre of the Public Health Care (GGD) use those websites to inform the users about the health services available to them, which include STD tests, legal advice or psychological support.⁴²

When it comes to forced prostitution, it is important to connect it to human trafficking as well. The studies have been conducted that trafficking is also a gendered phenomenon. Not only are women and men trafficked in different amounts, but also the sole purposes, roots and reasons for that are also different.⁴³ The fact that females are still considered weak, vulnerable and victims is the reason why most research about sex work is done on them. Most international texts protect women from forced prostitution, most national legislations do. However, there is a need for a deeper analysis of the other genders sex work, as it will help understand the phenomenon overall better and create better protection for everyone.

To conclude, the international legal framework has developed a wide range of instruments to regulate human trafficking and forced prostitution in order to combat exploitation. It also has been established that the phenomenon of prostitution is gendered and sometimes male sex workers lack protection because of that. As sex work is closely related to various health issues, it is necessary to now look at what constitutes the right to health, which is so essential for this occupation.

Chapter 3

Healthcare

The following chapter is going to analyse international legal framework on the right to health, state obligations that follow from those international instruments and the importance of providing the highest attainable standard of health. It underlines the importance of inalienable human rights and the sex workers’ right to enjoy them. The

⁴² L. Cheng, L. de Die, E. de Kroon, ‘Just Business? The Unknown World of Male Prostitution in the Netherlands’, *Humanity in Action*, 2011, <http://www.humanityinaction.org/knowledgebase/369-just-business-the-unknown-world-of-male-prostitution-in-the-netherlands> , (accessed 12 July 2017).

⁴³ S. Voronova, A. Radjenovic, ‘The gender dimension of human trafficking’, European Parliamentary Research Service, February 2016, p. 4.

chapter also uses the most recent reports of the Special Rapporteur regarding the right to health and demonstrates the significance of mental health.

3.1. Human rights for sex workers?

Human rights are natural and inalienable; they belong to every person from birth for being human.⁴⁴ The source of human rights is in essence a person. The basis of the concept of human rights is the core values, such as human dignity, freedom, equality, tolerance and justice.⁴⁵ Universality of human rights can be argued by the supporters of cultural relativism. However, the essential underlying principles cannot be questioned.⁴⁶

An important value of human rights is freedom. The term “freedom” can be seen in the legal literature in two meanings. In general terms, it means the state of an individual person and the whole people, which is characterized by the ability to act on their own. A different matter is freedom as a subjective possibility to perform or not to perform any actions (for example, freedom of conscience, freedom of speech, etc.).

Thus, the concept of human freedom is characterized as the absence of any restrictions, constraints of a person in something (activity, behaviour). It is always needed, but not always allowed by the government, the state or the law.

Freedom of the individual is seen in virtually every law: the right to personal integrity, freedom from slavery, violence and torture, freedom of speech, thought, conscience and religion, freedom of assembly and association.⁴⁷

The value of freedom expresses the idea of protecting a person from dictate from someone else's side. The value of freedom means a person's self-determination, their independence and autonomy, the ability to think and act in accordance with their own

⁴⁴ Universal Declaration of Human Rights, 1948, preamble.

⁴⁵ D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights Law 2nd Edition*, Oxford University Press, 2013, p. 174.

⁴⁶ M. Lower, 'Can and Should Human Rights be Universal?', *E-International Relations Student*, 2013, <http://www.e-ir.info/2013/12/01/can-and-should-human-rights-be-universal/>, (accessed 14 July 2017).

⁴⁷ 'Human Rights', *Stanford Encyclopedia of Philosophy*, 2014, <https://plato.stanford.edu/entries/rights-human/>, (accessed 14 July 2017).

will.⁴⁸

From one of the main postulate of human rights, “All human beings are born free and equal in dignity and rights”⁴⁹ follows the basic value of their equal importance in political, economic, social life, and hence equality in rights. The principle of equality can be traced in many rights: the right to equality before the law and the court, the right to cultural, religious diversity, the right to integrate people with disabilities, the elderly, etc. Equality should be understood as equality of guaranteed opportunities and treatment, and whether these opportunities will be used depends on the individual.⁵⁰

The right of women to control their bodies must be ensured legally and economically, and equality cannot be achieved until this is the case. If a woman decides to use her body for sale of sexual services, it is her own decision and right, which cannot be judged by the others. The fact that people engage in prostitution does not make them any less human, therefore, any restrictions on their rights are unacceptable.

Sex workers have historically undergone lots of pressure from the society. In various parts of the world the opinions about them have not differed significantly, as they tend to be of a negative value. However, nowadays many organisation support human rights for sex workers and promote their empowerment.⁵¹

3.2. Importance

Spread of HIV/AIDS and other sexually transmitted infections (STI) is often linked to sex-workers. Historically, it was a case that the rise of the STIs within the population had caused a wave of protests against prostitution; women were subjected to random medical check-ups, especially initiated by the police.⁵²

⁴⁸ ‘Freedom’, *Oxford Dictionaries Online*, <https://en.oxforddictionaries.com/definition/freedom> , (accessed 14 July 2017).

⁴⁹ UDHR, 1948, art. 1.

⁵⁰ D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights Law 2nd Edition*, Oxford University Press, 2013, p. 158.

⁵¹ C. Murphy, 'Sex Workers' Rights and Human Rights', *Amnesty International*, 2015, <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/> , (accessed 14 July 2017).

⁵² M. van den Brink, M. Wijers, ‘30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution’, in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 137.

While sex workers are considered an important factor in transmitting such diseases, it is essential to minimize such risk. This can be achieved by providing the highest health protection for the people involved in this sphere. The state plays an important role in providing such protection and countries where prostitution is criminalized suffer more from the HIV/AIDS spread. There the illegal sector covering prostitution does not require health check-ups, does not provide sex workers with condoms and does not protect them from violence that can be caused by the clients.⁵³

The importance of healthcare for the sex workers includes not only their physical health; this occupation can cause various mental health issues that also need to be dealt with. For this reason, there is a need for special consultations and psychological help established for sex workers in order to ensure their safety and stable emotional state.

As the majority of people involved in sex work are women, it is also essential to take into account their reproductive rights, pre- and post- natal period and childcare. Due to a high risk of being exposed to STIs and HIV/AIDS it is of significant importance to guarantee the healthy development of future generations by minimizing the initial causes of transmission of such diseases from mothers to children.

Protection of women's health has been enshrined in a number of international documents, including the Women's Convention, which states in its article 12 that there can be no discrimination between men and women in their access to healthcare.⁵⁴ As said earlier, prostitution is mostly connected with women. Does not this mean that sex workers should be guaranteed their access to healthcare without prejudice or discrimination?

3.3. State Obligations

In international human rights law, according to the system developed by the UN treaty bodies, there are three main obligations that States have regarding human

⁵³ J. Butler, 'The Lancet Special Theme Issue on HIV and Sex Workers', 20th International AIDS Conference, Melbourne, 22 July 2014, <http://pag.aids2014.org/session.aspx?s=2016> , (accessed 12 July 2017).

⁵⁴ Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 12.

rights: to respect, to protect and to fulfill human rights.⁵⁵

The obligation to respect human rights can be explained as an obligation of the state not to take any measure that can lead to the violation of human rights. This obligation is considered to be one of the most essential ones,⁵⁶ as it prevents states from consciously abusing the rights of individuals in any way.

Protection of human rights has a different interpretation and a rising importance in the field of human rights. It should be understood as actively ensuring that within the state's jurisdiction there is no suffering from human rights violations committed by any third parties. This means that a certain state can be held responsible in case of a failure to protect the individuals from violations of their rights when they could be prevented by that state (also known as the indirect horizontal effect of human rights). This obligation has been linked to violence against women, especially domestic violence, for the amount of cases when women suffered or died due to the failure of the state to act and protect them from their abusive partners.⁵⁷

Lastly, the obligation to fulfil human rights finds its meaning in the obligation of the states to take steps in order to provide a greater enjoyment of rights. To give an example, when it comes to the prohibition of torture, it is not only the case that the state is obliged not to torture anyone, but also to ensure that all necessary measures are in place in order to avoid and punish it.⁵⁸ Similarly, it can be linked to the right to health, where the states have their own specific obligations.

The right to health has been enshrined in the International Covenant for Economic Social and Cultural Rights article 12, which states:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

⁵⁵ D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights Law 2nd Edition*, Oxford University Press, 2013, p. 101.

⁵⁶ *Ibid.*, p 102.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

(b) *The improvement of all aspects of environmental and industrial hygiene;*
(c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

(d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”*⁵⁹

The interpretation of this article was elaborated by the Committee on Economic Social and Cultural Rights in their General Comment 14: The Right to the Highest Attainable Standard of Health. It connects the right to health with living the life in dignity,⁶⁰ while also specifically describing the obligations put upon the State Parties regarding Article 12. While the right to health should not be understood as the same as being healthy, it should be interpreted as the right to the highest attainable standard of physical and mental health.⁶¹

There are four main pillars of the state obligations regarding the right to health.⁶² These are availability, accessibility, acceptability and quality. Availability includes the sufficient amount of healthcare facilities, goods, services and programs. This directly depends on the given state's level of development, standard of living and financial resources, which is why it has to provide health-related care to its best abilities.⁶³

Next, accessibility refers to a number of factors. Health facilities, goods and services have to be accessible to the persons in a certain state without discrimination, they need to be accessible physically, meaning the equal distribution within the urban and rural areas. Another factor is economical accessibility, which refers to the monetary issues and emphasizes the importance of having essential drugs and services available for all no matter what income they have (also called affordability).⁶⁴

Another right to health related obligation that states have is acceptability, which can be seen as a synonym to non-discrimination. People of all cultural backgrounds, genders, ages and social groups should have an equal access to healthcare. Non-

⁵⁹ International Covenant for Economic Social and Cultural Rights, 1966, art. 12.

⁶⁰ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000, para. 1.

⁶¹ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000, para. 7.

⁶² *Ibid.*, para. 12.

⁶³ *Ibid.*, para. 12 (a).

⁶⁴ *Ibid.*, para. 12 (b).

discrimination in healthcare is an essential issue and will be addressed later in this work.⁶⁵

Lastly, the Committee on Economic Social and Cultural Rights in its General Comment 14 underlines the importance of the quality of healthcare in a given state. It includes the quality of the drugs, trained medical staff, working equipment, etc.⁶⁶

In the most recent Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health of 2017 the main focus is on mental health.⁶⁷ It emphasizes that international human rights law guarantees non-discrimination in access to healthcare, however, in practice discrimination is often both cause and consequence of mental health problems.⁶⁸ “Diversity must be broadly understood, recognizing the diversity of human experience and the variety of ways in which people process and experience life. Respecting that diversity is crucial to ending discrimination”.⁶⁹

When it comes to the right to health it should be noted that it has a deep connection with other human rights, such as the right to food, housing, education, freedom from torture and many others. These rights often have an interdependent relationship and therefore should be implemented by the states in the same manner.⁷⁰

Regarding sex work, art. 12.2 (b) provides the right to healthy natural and workplace environments, which includes, among other issues, preventive measures in respect of occupational accidents and diseases.⁷¹ Only proper State care can make an impact in this area and guarantee health protection for sex workers, which, however, will not be possible in cases of criminalization of prostitution. The importance of occupational health is highlighted in the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

⁶⁵ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000, para. 12 (c).

⁶⁶ *Ibid.*, para. 12 (d).

⁶⁷ UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, June 2017, para. 1.

⁶⁸ *Ibid.*, paras. 45-46.

⁶⁹ *Ibid.*, para. 50.

⁷⁰ D. Moeckli, S. Shah, S. Sivakumaran (eds), *International Human Rights Law 2nd Edition*, Oxford University Press, 2013, p. 101.

⁷¹ International Covenant for Economic Social and Cultural Rights, 1966, art. 12.2 (b).

Anand Grover.⁷² He demonstrates the coverage of occupation health in various international instruments and by the International Labour Organization. “The ILO recognizes both the right to a safe and healthy working environment and the protection of the worker against sickness, disease and injury arising out of his employment to be fundamental human rights”.⁷³

As it was said before, the importance of the right to health cannot be overrated. This essential right needs to be in place in any state despite its level of development. International treaties provide for the highest attainable standard of health, which consists of many factors. The states have certain obligations regarding healthcare, which can be categorised into four groups: availability, accessibility, acceptability and quality. These obligations need to be fulfilled in the best possible manner as they also have a tight connection with other human rights. As sex work is closely connected to the high risk of serious STIs and HIV/AIDS, mental problems and violence, it is important to look at how states can provide protection for prostitutes. This will be done by examining the case of the Netherlands.

Chapter 4

History of Prostitution in the Netherlands

In this chapter the history of prostitution in the Netherlands will be discussed together with its relation to the European tendencies in prostitution. It is meant to give more insight into the development of current policy that is in place in the Netherlands.

For hundreds of years, numerous ways have been tested to overcome or abolish prostitution. In view of the fact that complete eradication had not been achieved, there existed a desire at different time periods to introduce a system of regulation to at least somehow limit the problem of prostitution in Europe.

First, the church got engaged in the search for a solution to the problem of prostitution, then the state. Later, the medical science was included in the process.

In the Middle Ages, the view of prostitution was determined by Christianity. Attitude to prostitutes was at the same time stigmatized and negative, on the other - tolerant.

⁷² A. Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Human Rights Council, 2012, para. 1.

⁷³ *Ibid.*, para. 8.

According to the church, prostitutes were sinners who had to repent of their sins.⁷⁴ At the same time, the church was tolerant towards prostitutes, because in Christianity there was a place for the “fallen” women. The priests developed several standards and rules of conduct for sexual relations, however, these rules concerned only women, as men were given complete freedom. Due to the feminine ideal of chastity, matrimonial fidelity, and the cancellation of divorce, the situation developed so that men sought to find an opportunity to satisfy sexual needs for money from women who needed the latter.⁷⁵ These church principles pushed society to develop prostitution.

The kings of the medieval European states also tried to fight against prostitution. The more attempts were made to end this phenomenon, the more secret prostitutes appeared. The eradication of prostitution was not successful. The state and the church were gradually moving towards the legalization of prostitution.⁷⁶

The history of the development of prostitution in the Netherlands has common features with the development of it in Europe, but it also has its own typical characteristics.

The introduction of the Criminal Code in 1811, led to the need to abolish the penalty for engaging in prostitution due to becoming part of the French Empire.⁷⁷ There remained only the punishments of pimping of minors, which did not allow brothels to use underage women and allow underage men.⁷⁸ The desire to protect somehow women of impeccable behaviour from forced employment in a brothel and girls from the village who came here as servants was the introduction of an article that obliged the owners of brothels to explain to a woman that she would work in a brothel.

With the introduction of the Criminal Code, the authorities have the opportunity to teach women and to discipline and control them. Throughout the nineteenth century, increasingly municipalities appeared in which supervision of brothels and private prostitutes was regulated in local police orders, which also established rules for

⁷⁴ M. H. Ditmore, *Encyclopedia of Prostitution and Sex Work: A-N. Vol. 1*, Greenwood Publishing Group, 2006, p. 299.

⁷⁵ О. Karabashyna, Проституция в Западной Европе, (Eng. *Prostitution in Western Europe*), Proza, 2010, para. II.

⁷⁶ E. McCoy, 'Has the Oldest Profession in the World Really Changed? A Short History of Dutch Prostitution and Government Regulation of Prostitution in the Netherlands', *NEH Summer Seminar for School Teachers*, 2013, p. 3.

⁷⁷ P. J. P. Tak, *The Dutch Criminal Justice System*, Wetenschappelijk Onderzoek- en Documentatiecentrum, 1999, p. 5.

⁷⁸ E. McCoy, 'Has the Oldest Profession in the World Really Changed? A Short History of Dutch Prostitution and Government Regulation of Prostitution in the Netherlands', *NEH Summer Seminar for School Teachers*, 2013, p. 6.

working as a prostitute. If a woman wanted to work anywhere as a prostitute, she had to apply for registration, where she was bound, at least twice a week to check with a doctor for the presence of sexually transmitted diseases. If she was diagnosed with such a disease, she was forbidden to engage in prostitution until she recovered. At the same time, the police had great powers. A woman who did not follow the instructions of the doctor could be taken to the police station, taken into custody, or forced to undergo a medical examination. The most extreme measure was the imprisonment of women in a special hospital or other compulsory treatment.⁷⁹

The regulation of prostitution, which became a controversial political issue in Europe in the nineteenth century, was not spared by the Netherlands. Influenced by the attitude towards prostitution, the feminist movement led by Josephine Butler also influenced the attitude towards prostitution.⁸⁰

The Netherlands Women's Union was established in 1884 to enhance moral consciousness. Participants in the movement believed that the state promoted sin and undermined the authority of women. The profound aversion to prostitution as the exploitation of women was now accompanied by a fundamental criticism of male sexuality, the economic dependency of women and their lack of rights as citizens and wives.⁸¹

Under the influence of the abolitionist movement, the regulation of prostitution tendencies disappeared at the beginning of the 20th century. An extensive national campaign was launched called the Morality Laws, caused by the religious parties begging a majority in the parliament,⁸² which was crowned in 1911 by the introduction in the Penal Code of art. 250 bis (prohibition of brothels) and 250 ter (trafficking in women), which prohibited any exploitation of prostitutes, deliberate incitement or encouragement of debauchery.⁸³

With the development of the second wave of feminism in the twentieth century, new views and concepts were emerging that referred to sexual relations. Just as in the XIX

⁷⁹ О. Karabashyna, Проституция в Западной Европе, (Eng. *Prostitution in Western Europe*), Proza, 2010, para. II.

⁸⁰ M. Van den Brink, M. Wijers, «30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution» in Ingrid Westendorp, *The Women's Convention Turned 30*, Intersentia, Cambridge, p. 137, 2012.

⁸¹ О. Karabashyna, Проституция в Западной Европе, (Eng. *Prostitution in Western Europe*), Proza, 2010, para. II.

⁸² J. Outshoorn, 'Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control', *Sex Res Soc Policy*, Springer, 2012, p. 2.

⁸³ О. Karabashyna, Проституция в Западной Европе, (Eng. *Prostitution in Western Europe*), Proza, 2010, para. II.

century sexual restrictions determined the subject of public discussion, in the 60s of the XX century the needs of women to have sexual autonomy, freedom of reproduction, the right to dispose of their bodies and other new concepts that were expressed in political and legislative requirements were discussed.

As a result, in the 80s a new view of the rights of prostitutes appears. As a result of the necessity and development of human rights and the protection of prostitutes, the definition of “prostitution as violence” changes to be the definition of the “violence against female prostitutes”.⁸⁴

In the Netherlands, the organization ‘Red Thread’ was created, which protected the interests of prostitutes. It promoted a positive image of the profession in the press and brought to the political arena the definition of prostitution as “workers” and providers of sexual services.⁸⁵

Under the influence of the new definitions on the part of the women's movement regarding sexual self-determination in the early 1980s, the first step was taken in the state policy on sexual violence. Trafficking in women and other forms of slavery were the main reasons for the introduction of a ban on brothels in the Netherlands.⁸⁶ At the end of the XX - beginning of the XXI century, the reverse situation arose. At a conference on sexual violence in Kijkduin in 1982, it appeared that the lifting of the ban on brothels was a possible step towards improving the life of prostitutes and combating human trafficking.⁸⁷ In 1984 a significant distinction between voluntary and forced prostitution was introduced. On the basis of their right to sexual self-determination, women were required to freely claim prostitution to be their “profession”. The views had become a recurring topic on an endless path to repealing article 250 bis of the penal code.⁸⁸ The authorities' focus was not only on the interests of women, but also on the search for the possibility of communicating and agreeing

⁸⁴ O. Karabashyna, Проституция в Западной Европе, (Eng. *Prostitution in Western Europe*), Proza, 2010, para II B.

⁸⁵ H. Verbeek, T. van der Zijden, ‘The Red Thread: Whores’ Movement in Holland’, in F. Delactose, P. Alexander, *Sex Work: Writings by Women in the Sex Industry*, Virago, London, 1987, p. 298.

⁸⁶ M. van den Brink, M. Wijers, ‘30 Years Women's Convention and the Struggle to Eliminate Discrimination of Women in the Field of Trafficking and Prostitution’, in I. Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, p. 138.

⁸⁷ M. Gruenell, ‘A Good Practice: The Role of Women's Studies in the Coalition of Feminists and the State against Physical and Sexual Violence’, *European Journal of Women's Studies*, vol. 6, no. 3, 1999, p. 343.

⁸⁸ E. McCoy, ‘Has the Oldest Profession in the World Really Changed? A Short History of Dutch Prostitution and Government Regulation of Prostitution in the Netherlands’, *NEH Summer Seminar for School Teachers*, 2013, p. 10.

with the municipalities on the allowance of prostitution and the creation of appropriate legislation.

Since October 1, 2000, the general prohibition of brothels in the Netherlands has been repealed. This means that prostitution in this country is legalized. Sex shops, brothels with showcases, private homes and escort companies are all legal enterprises as long as they comply with the rules of the municipality.⁸⁹

To conclude, having legalized the sex industry, the Netherlands became the first country in the world officially considering prostitution as a job, and the prostitution industry as an economic sector. In general, the development of attitudes towards prostitution has been in line with European tendencies. Nowadays, the system in the Netherlands is worth studying deeper to see how and whether it is effective.

Chapter 5

The Case of The Netherlands

During the course of its development, the Dutch policy on prostitution has reached the point of complete decriminalization. The current policy has certain advantages and disadvantages; it has introduced a lot of changes into the previous system. This chapter is going to discuss the current policy on prostitution in the Netherlands, its possibly new developments and compare how the healthcare for sex workers has changed in relation to the times when the brothels were banned.

5.1. Dutch current policy on prostitution

The Netherlands is one of the first countries in the world to legalize brothels and recognize sex work as a legitimate occupation.⁹⁰ Since the ban was lifted, it has become legal to own and run a brothel, given that it satisfies certain conditions and has obtained a license. The motive behind such policy implications lies in the attempt to fight human trafficking for the purposes of sexual exploitation, stop violence against women, improve health situation by stopping the spread of HIV/AIDS in the

⁸⁹ J. Outshoorn, 'Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control', *Sex Res Soc Policy*, Springer, 2012, p. 1.

⁹⁰ K. Werkman, 'Briefing on legal prostitution in The Netherlands: policies, evaluations, normalization', Institute for Feminism and Human Rights, Stockholm, 2016, p. 1, <https://feminismandhumanrights.files.wordpress.com/2014/06/karin-werkman-2016-briefing-on-legal-prostitution-in-the-netherlands.pdf> , (accessed 13 July 2017).

sector and collecting taxes.⁹¹

There is no state legislation governing prostitution, except for the brothels ban lift that took place in 2000. Supervision over the sex industry is given to the local municipalities, which are responsible for the licenses and particular policies related to certain regions.⁹² The local authorities have special guidelines when it comes to deciding whether a place should obtain a license to run a brothel business. The main criteria include the size of the working space, hygiene, fire safety and water supply. They also regulate the age of consent of the sex workers and the clients and make sure the work is done voluntarily.⁹³

Even though the brothels were prohibited in 1911, it had never been really enforced⁹⁴ and with a purpose to end abuses in the sex industry, the Netherlands decided to regulate prostitution in order to have more control over the issue.⁹⁵ The police regularly check the brothels and make sure there are no signs of human trafficking.⁹⁶

What exactly does this legalization give to the sex workers? A lot of protection. Not only are there specific requirements in terms of working conditions put on the owners of the brothels, but also the state support is significant. Prostitution has become a legal occupation, taking forms of self- or contract- employment and complying with labour and social security standards. Sex workers have to pay taxes; in return they can enjoy various employment benefits.⁹⁷

As mentioned earlier, municipalities have the control over the licensing and inspection of the brothels. The reasons for withdrawal or refusal to provide a license include, but are not limited to, a failure to provide a certificate of good conduct of the brothel owner, location conflicts, disturbing of public order, employment of minors or forced exploitation, etc. This system applies only to brothels and not to other

⁹¹K. Werkman, 'Briefing on legal prostitution in The Netherlands: policies, evaluations, normalization', Institute for Feminism and Human Rights, Stockholm, 2016, p. 2.

⁹²A. Daalder, *Prostitution in the Netherlands in 2014*, The Scientific Research and Documentation Centre of the Ministry of Security and Justice, 2014, p. 11.

⁹³Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 5.

⁹⁴M. Wijers, *Prostitution Policies in the Netherlands*, International Committee on the Rights of Sex Workers, 2008, p. 2, http://www.sexworkeurope.org/sites/default/files/resource-pdfs/wijers_m_pros_policies_nl_2008.pdf, (accessed 01 July 2017).

⁹⁵Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 5.

⁹⁶*Ibid.*, p. 6.

⁹⁷*Ibid.*

businesses related to sexual services or home workers, which implicates the risk of illegal prostitution in those areas.⁹⁸

There are various forms that sex work can take. In the Netherlands the most widespread are window soliciting and brothels, however, there are also escort agencies, those that work in the street and other forms that take place in the bars and other establishments initially not created for these purposes. The most controversial is streetwalking, as many municipalities forbid it on the grounds that it disturbs public order. In other places special areas and times have been organized where it is allowed and such a policy has improved the safety situation in this sphere.⁹⁹

By regulating sex work through the labour law of the Netherlands, the sex workers have obtained certain rights and obligations. It is important while being in a contractual relationship with the employer that the worker can leave any time; otherwise a risk of forced prostitution appears. Among the rights obtained by the sex workers as a result of legalization of prostitution are rights to social security. They are eligible for unemployment benefits in case of sudden involuntary loss of job, and if they voluntarily quit their job they can apply for social assistance.¹⁰⁰

The existence of De Rode Draad (The Red Thread), which was a strong association for sex workers, had a great impact on the improvement of the position of sex workers in the Netherlands. However, due to the lack of funding, it went bankrupt and fully closed in 2012.¹⁰¹ Since then special centres and organizations to support the sex workers have been created, such as PROUD and P&G292. The organizations take care of the educational activities, legal issues, health and public opinion regarding the sex work. It is important to note that sex work now constitutes part of the *Federatie Nederlandse Vakbeweging* (FNV) – Dutch Federation of Trade Unions.¹⁰²

⁹⁸ Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 9.

⁹⁹ *Ibid.*, p. 11.

¹⁰⁰ 'FAQ – Prostitution in the Netherlands', *Radio Netherlands Worldwide Media*, [website], <https://www.rnw.org/archive/faq-prostitution-netherlands>, (accessed 12 July 2017).

¹⁰¹ 'The founding of the Red Thread (De Rode Draad in Dutch)', Global Network of Sex Work Projects, <http://www.nswp.org/timeline/event/the-founding-the-red-thread-de-rode-draad-dutch>, (accessed 12 July 2017).

¹⁰² FNV – Grootste Vakbond van Nederland (Biggest Trade Union of the Netherlands), Federation of trade unions in the Netherlands founded in 1976 with strong socio-democratic orientation, <https://www.fnv.nl>, (accessed 12 July 2017).

5.2. Prostitution under the Dutch Criminal Law

The basic concepts of criminal law are crime and punishment. Criminal law has its own specific tasks. Its main task is to protect the rights and freedoms of inhabitants and citizens, property, public order and public safety, the environment, the constitutional system of the Netherlands from criminal encroachments, to ensure peace and security of mankind, as well as crime prevention.

The norms of criminal law regulate questions about which socially dangerous acts are recognized as crimes and what types of punishments or other measures of a legal nature can and should be applied to persons who commit them.

After the articles banning the brothels in the country were removed from the Penal Code in the Netherlands, one provision remained regulating such aspects connected to prostitution as exploitation and prostitution of minors. Article 273f reads as follows:

“Section 273f

1. Any person who:

1°. by coercion, act of violence or any other act or threat of violence or threat of any other act, by extortion, fraud, deception or abuse of a position of authority arising from de facto circumstances, by abuse of a position of vulnerability or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, transfers, harbours or receives another person with the intention of exploiting this other person or removing his organs; (...)

3° recruits, removes or abducts another person with the intention of inducing this person to make himself available for the performance of sexual acts with or for a third party for remuneration;

4° compels or persuades another person with one of the means referred to in 1° to make himself available for the performance of work or services or to make his organs available or under the circumstances referred to in 1°, takes any action which he knows or has reasonable cause to suspect will lead that other person to make himself available for the performance of labour or services or make his organs available;

5° induces another person to make himself available for the performance of

sexual acts with or for a third party for remuneration or make his organs available for remuneration or takes any action in regard of another person which he knows or has reasonable cause to suspect will lead that other person to make himself available for the performance of these acts or services or make his organs available, whereas this person is under the age of eighteen years;

6° intentionally profits from the exploitation of another person; (...)

8° intentionally profits from the sexual acts of another person with or for a third party for remuneration or the removal of his organs for remuneration, whereas this other person is under the age of eighteen years;

9° compels or induces another person by any of the means referred to in 1° to provide him with the proceeds of his sexual acts with or for a third party or of the removal of his organs;

shall be guilty of human trafficking and as such shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.”^{103 104}

The article further explains what is meant by exploitation. “Exploitation shall at least include exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.”

As sanctions for the offences the Criminal Code established certain ways of punishment, namely imprisonment or a fine. While the general period is eight years of prison time, in cases of aggravating circumstances this term can be increased. This way, if the following conditions are met the sentence rises to maximum of twelve years:

- the offences, defined in subsection (1), are committed by two or more persons in concert; or if
- the offences defined in subsection (1) have been committed against a person who is under the age of sixteen years.

Article 273f (4) provides that in case of any of the offences defined in subsection (1)

¹⁰³ A fifth category fine is a fine of maximum € 67.000.

¹⁰⁴ 'Het Nederlandse Wetboek van Strafrecht', Criminal Code of The Netherlands, art. 273f (1).

results in grievous bodily harm or is likely to endanger the life of another person, a term of imprisonment not exceeding fifteen years or a fine of the fifth category shall be imposed. The article finishes with the highest possible punishment for such offences:

*“5. If any of the offences defined in subsection (1) results in death, a term of imprisonment not exceeding eighteen years or a fine of the fifth category shall be imposed. (...)”*¹⁰⁵

Among the prohibition of forced exploitation, human trafficking and exploitation of minors, it is also not legal to employ the illegal immigrants. The clients are only allowed to make use of the services of the registered sex workers or licensed places, and engaging in sexual activities with an unregistered prostitute makes it an offense. Additionally, people who perform sexual acts with sex workers that reached 16 years old but are under the age of 18, become punishable under articles 248b and 248a of the Criminal Code. In case the prostitute was between 12 and 16 years old, the client can be prosecuted without the victim's or the parents' consent according to art. 245 of the Dutch Criminal Code.¹⁰⁶

5.3. Right to health as a fundamental right for sex workers

As a whole, the sex industry in the Netherlands is regulated by the municipalities, it is their responsibility to provide the necessary access to health services, without discrimination or prejudices. However, as it was mentioned earlier, the right to health is interconnected with many other human rights, which is why in order to fully enjoy it, it is important to take care of many other working conditions.

The owners of the brothels need to obtain a license and one of the conditions for its issue is providing proper working conditions. This way responsibility to provide the sex workers with the essential health support at workplace shifts to the employers. By having an authority over issuing and withdrawing the licenses, the local authorities ensure that the employers comply with their duties.¹⁰⁷

¹⁰⁵ 'Het Nederlandse Wetboek van Strafrecht', Criminal Code of The Netherlands, art. 273f (5).

¹⁰⁶ *Ibid.*, arts. 248a, 248b, 245.

¹⁰⁷ Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 10.

Among the obligations related to health that are given to the employers are safe sex policies, encouragement to undergo regular medical check-ups, educational events and activities, etc.

Surprisingly enough, the medical check-ups are encouraged, but not obligatory. “Obligatory check-ups reinforce the idea that sex workers transmit infections. Moreover, clients use medical check-ups as an excuse to ask for unsafe sex.”¹⁰⁸ Normally, sex workers are encouraged to undergo medical check-ups at least four times per year; such policy seems to have recognition and support.

Cities in general have certain locations, where it is possible to undergo free and anonymous medical examinations. In Amsterdam, medical institutions that deal with the sex workers’ problems are Prostitution Health Centre (P&G292) and STI policlinics.¹⁰⁹ P&G292 promotes the rights of sex workers, physical and mental health, de-stigmatization and improvement of their status in the society. They also take care of various educational activities from secondary school age. They offer a variety of services for the sex workers, such as legal and social help, psychological support, information services and others. As Amsterdam is the most famous city for prostitution, with the Red Light District, they also established a so-called “Mobile team” that can provide the sex workers with the information in their native languages. It is part of the Amsterdam Public Health Service (GGD) and is fully confidential. “This team works on the basis of an emancipatory vision and focuses on increasing self-empowerment and independence of prostitutes.”¹¹⁰ Apart from various tests and vaccinations offered at the center, they provide for courses, both in English and in Dutch, such as self-defense and empowerment.¹¹¹

Recent developments in the medical and pharmaceutical fields have led to a creation of a drug that can be used as a preventive mechanism against HIV. The drug is called

¹⁰⁸ Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 10.

¹⁰⁹ Y. Van Osch, 'Finding Your Way Around the Work of the Amsterdam Public Health Service', Amsterdam Public Health Service, 2014, p. 15, www.ggd.amsterdam.nl/publish/pages/472704/algemene_brochure_ggd_engels.pdf, (accessed 13 July 2017).

¹¹⁰ 'Red Light District Dossier: Frequently Asked Questions', Amsterdam, p. 8, https://www.iamsterdam.com/media/pdf/mediacenter/faq_red_light_district_complete_oct13.pdf, (accessed 13 July 2017).

¹¹¹ *Ibid.*

Pre-exposure Prophylaxis (PrEP) and is prescribed to the people who are in a high-risk zone, such as those having regular contact with a HIV positive person. While it is mostly recommended to the people whose partners suffer from this virus, it should be suggested that sex workers are included in this category as well. Currently, this medication can lower the chances of acquiring the virus by 90%, and depending on the state can be partially or fully covered by the insurance. What is important is that the countries with legalized prostitution could implement the use of this medicine in their national health policies, and therefore, decrease the risk of getting HIV for such a vulnerable group as sex workers.¹¹²

The importance of the mental health cannot be overrated. According to the data from the Briefing on legal prostitution in The Netherlands on the legalization of prostitution in the Netherlands, lots of health issues are related to the emotional state of the workers, such as problems with sleeping, feeling tense, angry, waves of rage, loneliness and various kinds of depression. Due to their past experiences and certain events that took place in the past, they may suffer from the disturbing thoughts and memories.¹¹³ The way to help them deal with these issues is psychological services made available at the health centres, unions, brothels and other locations.

5.4. Healthcare before the brothels ban lift

The difference in treatment towards sex workers regarding the right to health will become rather obvious once the comparison is made with the situation before the ban lift. Due to the fact that the brothels used to be formally prohibited but practically existed, the sector was falling under the so-called “grey” area.¹¹⁴ The case was that the brothels ban was not enforced unless their activity involved minors or human trafficking. However, by not fully legalizing prostitution, state could not guarantee any protection from its side. What exactly is a grey area?

¹¹² 'Pre-exposure Prophylaxis', U.S. Department of Health & Human Services and the Secretary's Minority AIDS Initiative Fund (SMAIF), <https://www.hiv.gov/hiv-basics/hiv-prevention/using-hiv-medication-to-reduce-risk/pre-exposure-prophylaxis>, (accessed 13 July 2017).

¹¹³ K. Werkman, 'Briefing on legal prostitution in The Netherlands: policies, evaluations, normalization', Institute for Feminism and Human Rights, Stockholm, 2016, p. 14, <https://feminismandhumanrights.files.wordpress.com/2014/06/karin-werkman-2016-briefing-on-legal-prostitution-in-the-netherlands.pdf>, (accessed 13 July 2017).

¹¹⁴ Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 8.

The Oxford Dictionaries defines it as “An intermediate area between two opposing positions; a situation, subject, etc., not clearly or easily defined, or not covered by an existing category or set of rules.”¹¹⁵

Prostitution as such was not prohibited. It was living off the sex worker’s earnings that was not legal. Therefore, the legal sector of prostitution was not controlled by the state, and taxes were not paid. Not providing the sex workers with protection caused a rise in abuses in this sector, sex workers could not seek professional help of the doctors if necessary, which also led to the spread of sexually transmitted infections. The current policy also does not allow forcing the sex workers to drink alcohol and obliges to use protection, such as condoms.¹¹⁶

While the previously discussed implications of legalization of prostitution on the right to health are rather clear and now give the sex workers physical and mental health protection that they did not have before, the sex work itself had a special reputation within the society. Due to the negative social stigma around this occupation the sex workers had to face discrimination on a regular basis. What is worse is that this discrimination influenced the access to health that they needed so much. In times when the access to official health services is denied there is a risk of self-treatment or using illegal medical help, given by unqualified specialists without proper sanitary conditions.

5.5. New Bill Debate

Recently, the conversations about tightening of the regulations in the sex industry have become more widespread.¹¹⁷ The initial aims of decriminalizing prostitution, preventing and punishing abuses of the sex workers, fight with human trafficking - all seem to not work as planned initially.¹¹⁸ This led to a rise of discussions about making the rules in the sex industry stricter and, therefore, stop violence against the sex workers. The Government of the Netherlands created a new bill on prostitution that

¹¹⁵ 'Grey Zone', *Oxford Dictionary Online*, https://en.oxforddictionaries.com/definition/grey_zone , (accessed 13 July 2017).

¹¹⁶ Dutch Policy on Prostitution, Questions and Answers 2012, Dutch Ministry of Foreign Affairs, 2012, p. 6.

¹¹⁷ 'Prostitution – Health and Safety in the sex industry', Government of the Netherlands, [website], <https://www.government.nl/topics/prostitution/health-and-safety-in-the-sex-industry> , (accessed 13 July 2017).

¹¹⁸ M. Wijers, Prostitution Policies in the Netherlands, International Committee on the Rights of Sex Workers, 2008, p. 9.

was submitted to the House of Representatives, that now needs passing in order to become a law.¹¹⁹

Among the main changes that the new bill is going to introduce into the system is mandatory. Before, it was a case that brothels and sex clubs needed to obtain such a license from the municipality. However, due to the fact that prostitution can take a variety of different forms nowadays, other agencies, through which these services could be acquired, could avoid the licensing system. With the new regulations, it will only be possible to run the business in any way related to the sex industry with a license. And in order to obtain the license there are certain conditions that have to be met, such as health and safety of the sex workers or the fixed phone number and address.¹²⁰ Moreover, these rules will apply in all the municipalities equally, and it will no longer be fully under the local authorities' discretion. The new policy, however, will not apply to home workers who will not need a licence. This may cause a significant impact on brothels, as this may lead to many starting and existing sex workers to work from home.¹²¹

Another important amendment is conducting the background checks on the owners of businesses in the sex industry. This needs to be done in order to identify those people who have been convicted of human trafficking before, or those who have an abuse history, or if there is any doubt that the person will not maintain the necessary health and working conditions for the sex workers. When this is the case, the license has to be denied.¹²²

One more significant novation in the system will be the introduction of a new working age of the prostitutes. While at the moment the minimum age is 18 years old, it will be raised and become 21 years old. Not only will it not be allowed to hire a sex worker under the age of 21, but clients will face a punishment for being involved with a sex worker under 21. The prostitutes themselves will not be held liable, as there can be many reasons for them to get involved at this age, including forced prostitution and lack of knowledge about the new system.

¹¹⁹ 'Prostitution – Health and Safety in the sex industry', Government of the Netherlands, [website].

¹²⁰ 'FAQ – Prostitution in the Netherlands', *Radio Netherlands Worldwide Media*, [website], <https://www.rnw.org/archive/faq-prostitution-netherlands>, (accessed 12 July 2017).

¹²¹ 'New Dutch Prostitution Law Expected in 2017', [website], 2016, <http://www.amsterdamredlightdistricttour.com/news/new-dutch-prostitution-law-expected-in-2017/>, (accessed 13 July 2017).

¹²² M. Wijers, *Prostitution Policies in the Netherlands*, International Committee on the Rights of Sex Workers, 2008, p. 6.

As mentioned earlier, this has not become a binding law yet. When and whether the House of Representatives passes it is currently unknown.¹²³ On 15 March 2017 the Netherlands held parliamentary election in which the People's Party for Freedom and Democracy (VVD) obtained 33 seats and, therefore, won.¹²⁴ Formation of a new coalition is still in progress and there is a possibility that the new parliament will not pass the new bill.

The new bill was also brought up in the Sixth Periodic Report of the Netherlands to CEDAW. While reporting on the implication of article 6, which deals with human trafficking and sexual exploitation, the state claims that the current situation is “undesirable” and leads to an uneven distribution of sex businesses due to the fact that municipalities have different licensing approaches. Among the previously mentioned regulations of the new bill, the owners of sex businesses will have to provide a business plan, in which they are expected to provide information regarding health and safety of the sex workers, their autonomy and prevention of criminal acts.¹²⁵ Among the previously mentioned measures that need to be taken by the owners of sex businesses in order to obtain a license, the prostitutes will be granted freedom to choose their own doctors and freedom to refuse to perform sexual acts.¹²⁶ The information on all these measures have to be given to the sex workers in a language they would understand.

The report raises the issue of empowering prostitutes. It is part of the program that local municipalities and the government work together on; it mainly deals with improvement of the position of sex workers in the Netherlands. It is important that the sex workers know where to go to get information on health subjects, if they become victims of abuse or if they would like to leave the industry. Such help is provided

¹²³ 'Prostitution – Health and Safety in the sex industry', Government of the Netherlands, [website].

¹²⁴ 'VVD wins 33 seats but coalition partner Labour is hammered', DutchNews.nl, [website], <http://www.dutchnews.nl/news/archives/2017/03/vvd-wins-33-seats-but-coalition-partner-labour-is-hammered/>, (accessed 13 July 2017).

¹²⁵ 'Consideration of reports submitted by States parties under article 18 of the Convention, Sixth Periodic Report of States parties due in 2014: Netherlands', UN Committee on the Elimination of Discrimination Against Women (CEDAW), 2014, para. 120, <http://www.refworld.org/docid/58386dfb4.html>, (accessed 13 July 2017).

¹²⁶ *Ibid.*, para. 121.

either in special centres that they have access to, or in cases of some organizations, they visit the prostitutes at work to provide necessary counselling.¹²⁷

Currently in the Netherlands there is an effective system in place. Prostitution is regulated by the local authorities that are responsible for issuing licences to brothels. It allows any activities in sex industry, as long as they do not disturb public order, do not involve minors or force anyone into prostitution which will then become the matter of criminal law. The policy is aimed at improving position of the sex workers in society, providing them with social security and access to healthcare. What is important is for them to be able to fully enjoy these benefits.

Chapter 6

Non-discrimination in healthcare

This chapter is going to analyse the problem of discrimination in healthcare that sex workers face. After introducing general directions that public opinion on prostitution can take it moves to international legal framework on non-discrimination. Moreover, it provides information from the official Government reports on the experiences that sex workers have in this regard. It continues with discussion of the need for a new evaluation as currently there is no consistency in that area.

6.1. Social stigma?

The problem that any profession in the world that has doubtful reputation has to face is the stigma that comes with it. Sex work has never been considered a respectful occupation, which is why there is a need for more education and information of the public about it. Moral values change with time and now sex work in the Netherlands is an official legitimate occupation. However, even nowadays and even in the country where the sex industry has been decriminalized for over a decade, prostitutes have to deal with discrimination and social judgment on a regular basis.

Very often people fail to understand the reasons and motives behind this choice of a

¹²⁷ 'Consideration of reports submitted by States parties under article 18 of the Convention, Sixth Periodic Report of States parties due in 2014: Netherlands', UN Committee on the Elimination of Discrimination Against Women (CEDAW), 2014, para. 122.

field and conclude that women involved in prostitution go into the profession due to the lack of skills and knowledge to do anything more decent. While it may be true for some cases, it is not entirely like that. If one imagines a situation where the child is supposed to take care of poor elderly parents and the only way that would give enough money and flexibility to provide care is engaging in prostitution, is this choice to sacrifice their body and morals shameful? Does the fact that the state of the Netherlands pays for the sexual services to be provided for those with mental and physical disabilities and illnesses make it disrespectful?¹²⁸

Why is the attitude to prostitution negative? Laws in different societies differed in this regard. But even from the laws it is a little understandable why. Dispose of the body is difficult to forbid. Distinguishing prostitution from regular sex is generally not so simple, especially from the legal perspective. Nowadays people are effectively fighting venereal diseases, and just 100 years ago, syphilis and other STIs were extremely common. And adults not only infected themselves but also transmitted the viruses to the children.

In general, public opinion can be categorized with regard to prostitution, specifically into three following main approaches to the problem.¹²⁹

The first approach is characterized by severe condemnation, calls for an active fight to completely eliminate prostitution. Its basis is the prevailing morality, in which there is a negative attitude towards prostitution. At the same time there is no systematic approach towards the consideration of its causes. In general, negative public opinion, on the one hand, helps to limit prostitution, and on the other hand it hinders its legalization and regulation, which may lead to a more proactive spread of illegal and criminally active sex industry and trafficking.¹³⁰

The second approach is a conciliatory attitude towards prostitution. It is supported by the theory that this phenomenon cannot be fully eliminated in principle. Indeed, at this stage of the development of society, the opposition against those who have the highest

¹²⁸ M. Ward, *The Surprising way the Netherlands helps Its Disabled Have Sex*, [website], 2014, <https://mic.com/articles/85201/the-surprising-way-the-netherlands-is-helping-its-disabled-have-sex#.o0mzIO4nb>, (accessed 13 July 2017).

¹²⁹ G. Mavrov, G. Chinov, and A. Yaroshenko, 'Medical and Social Aspects of Commerce Sex', *International Medical Journal*, no. 3, 2006, p. 155.

¹³⁰ *Ibid.*

profits from prostitution, meaning the owners of sex businesses, as well as the lack of self-control and willpower of the sexual needs of many people lead to the opinion that prostitution is inevitable. This approach is expressed in calls for the legalization of the sex industry, since prostitutes help to solve sexual problems of a part of the population. Proponents of this view believe that prostitution is a profession that a person chooses independently, and therefore this kind of activity needs to be included in the legal economy.¹³¹

The third approach is based on feminist ideas that prostitution is a product of the inequality between men and women, the result of brutal sexual exploitation of women by men. Here the principle is that the client is always wrong and the sex worker is a victim and is always right. The state is responsible for allowing social and economic conditions that cause prostitution and does not take sufficient measures to eliminate it. It is characteristic that among the adherents of this approach there are supporters of both a full prohibition and the legalization of prostitution with strict control by the state and special organizations.¹³²

Non-discrimination in various spheres, including the right to health, is enshrined in many international treaties and documents. Article 2 (2) of the ICESCR states:

“2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹³³

The interpretation of the article was given by the Committee on the Economic Social and Cultural Rights in its General Comment 20: Non-discrimination in economic, social and cultural rights. This document gives explanation regarding the states' obligations, namely, elimination of both formal and substantive forms of discrimination. Abolishing formal discrimination involves making sure that the country's law and policies do not discriminate on the aforementioned grounds. Substantive discrimination is rather important as the “enjoyment of Covenant rights is

¹³¹ G. Mavrov, G. Chinov, and A. Yaroshenko, 'Medical and Social Aspects of Commerce Sex', *International Medical Journal*, no. 3, 2006, p. 155.

¹³² *Ibid.*

¹³³ International Covenant on Economic Social and Cultural Rights, 1966, art. 2 (2).

often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination.”¹³⁴ It emphasizes that special attention should be given to those groups that face social prejudice on a regular basis, and not simply deal with formal treatment. Prohibited grounds of discrimination are the ones stated in Art. 2 (2) ICESCR and include “other status”, which means that the list is not exhaustive.

When it comes to sex workers, the grounds for discrimination can include various combinations, due to the fact how diverse those involved in the industry are. Among the reasons to discriminate can be economic and social situation, health status, sex, gender identity and membership of a certain group. All these bases are listed as the grounds of discrimination in the General Comment 20 and need to be addressed.¹³⁵

The Women’s Convention also covers non-discrimination in the healthcare sector. Article 12 (1) states: “1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”¹³⁶ Regarding health of women, CEDAW has issued multiple General Recommendations that, in one way or another, are related to the right to health. They include the previously mentioned General Recommendation 19 on violence against women.¹³⁷ This recommendation with regards to the right to non-discrimination in health services discusses the danger and harm of certain traditional and cultural practices, such as genital mutilation. General Recommendation 15 brings up the topic of women with AIDS and the importance for the states to take necessary measures to ensure their integration and non-discrimination in society.

The topic of sex workers was brought up in the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover in 2010. “Sex workers remain subject to stigma and marginalization, and are at significant risk of experiencing violence in the course of

¹³⁴ CESCR General Comment No. 20: Non-discrimination in economic, social and cultural rights, 2009, para. 8.

¹³⁵ *Ibid.*, paras. 16, 20, 32, 33, 35.

¹³⁶ Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 12 (1).

¹³⁷ See Chapter 2 for specifics on CEDAW General Recommendation No. 19.

their work”.¹³⁸ The report also explains the effects of criminalization of prostitution on the right to health and how stigmatization is one of the main reasons the sex workers cannot enjoy their rights.¹³⁹

Finally, General Recommendation No. 24 deals directly with the health of women. It encourages the states to provide detailed information in their reports regarding the health situation of women in the population. While discussing various factors in which men and women have different needs in terms of healthcare, among which are biological and socio-economic factors, the Committee underlines an important issue of confidentiality in healthcare. Women, tend to prefer to abstain from getting medical help when anonymity is not guaranteed. “While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”¹⁴⁰ In case of sex workers, anonymity is essential in getting health care, however, the conflict between this and obligatory registration arises. It is also true for the cases when due to the social stigma around sex work, prostitutes prefer staying anonymous and not register, therefore, getting themselves into the illegal area of this sector and thus undermining their own health and social benefits rights.

According to the most recent official government assessments of the prostitution policies in the Netherlands, the sex workers themselves are feeling an increase in positive experiences in everyday life. According to the report, “The prostitutes are generally satisfied about their personal experiences in dealing with various social entities, though they do feel that their treatment overall and the image of the occupation among institutions and citizens require improvement.”¹⁴¹ The improvement can also be seen in the wellbeing of the sex workers, especially

¹³⁸ A. Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2010, para. 27.

¹³⁹ *Ibid.*, paras. 36, 39.

¹⁴⁰ Committee of the Elimination of Discrimination against Women General Recommendation No. 24 On Women’s Health, 1999, para. 12 (d).

¹⁴¹ A. Daalder, *Prostitution in the Netherlands in 2014*, The Scientific Research and Documentation Centre of the Ministry of Security and Justice, 2014, p. 37.

compared to the initial evaluations of 2002.¹⁴²

6.2. Need for a new evaluation by the government

When implementing new policies in the society, it is important to evaluate the success of them on a regular basis. To analyse the advantages and disadvantages, public opinion, influence on other spheres of life, effectiveness of such implementation and others. When it comes to such life-changing policies as lifting the brothels ban, it is especially important to regularly check the state of affairs as this particular issue may meet with a mixed reception in society and has proven to have connections with criminal activities.

While various NGOs mention the issue in their general country reports, the main source of evaluation is the Netherlands. After removing articles prohibiting brothels from the Criminal Code, there have been three official government evaluations. The first one took place soon after the policy implementation, in 2002. As such a short period of time could not give any reliable information to draw any conclusions, it was necessary to look at this from a more long-term perspective.

The next assessment was conducted in 2006-2007. It was characterized by an improvement in monitoring and in reducing the illegal sector. However, it is worth noticing that it was the time of rapid technical development, which means a certain part of the market had shifted to the Internet and was harder to control. Among other improvements were the rapid reduction of minors and illegal migrants in prostitution. Although the overall situation in the licensed legal sector improved, there were still abuses of rights of sex workers, forced prostitution, and trafficking taking place.

Due to a need for a new evaluation, the next report took place in 2014. It was conducted by the Scientific Research and Documentation Centre of the Ministry of Security and Justice. It explains the difference in policies by municipalities and how this can cause problems. The street prostitution, which is one of the most dangerous

¹⁴² A. Daalder, *Prostitution in the Netherlands in 2014*, The Scientific Research and Documentation Centre of the Ministry of Security and Justice, 2014, p. 37.

forms, is prohibited almost everywhere and is not tolerated.¹⁴³ Regarding the police inspections, there is a need for new developments in this area, as at the time the report was issued there was a problem of a well-known sameness in their approach, which mostly consists of warnings to illegal sex workers and no proper enforcement. The positive aspect noted in the report is that even though it is difficult to establish exploitation in sex industry, due to the rise in awareness and control, exploitation seems to reduce.¹⁴⁴

The overall situation in wellbeing of the sex workers tends to be satisfying. Even though there are still recurring cases of discrimination and prejudice due to the status of prostitutes in society, and at least one third of the sex workers experience harrowing events at the workplace, they are generally satisfied with their experiences in the social sphere. Such satisfaction comes from the improvement of the position and destigmatization of sex work, and positive relationships and atmosphere built with colleagues and employers.¹⁴⁵ In order to further improve the situation, the government should start focusing more on destigmatization than decriminalization and communicate with the sex workers.¹⁴⁶

Discrimination in the field of healthcare is something that should not occur in any society. It undermines reproduction of healthy future generations and threatens the whole population with epidemics and low life expectancy. In case of sex workers, they are part of a risk group due to the dangerous nature of their occupation. This has to do with both physical and mental health issues. They also happen to be considered as a group that falls under certain grounds of discrimination due to their still stigmatized status in society. The progress in this area can be observed through official state assessments of the situation. It has been three years since the last government evaluation and there seems to be no system in place with regard to the frequency of reporting. Due to all the attention and conversations around the new bill, there is a need to promote awareness and consensus about it. The next report needs to

¹⁴³ A. Daalder, *Prostitution in the Netherlands in 2014*, The Scientific Research and Documentation Centre of the Ministry of Security and Justice, 2014, p. 37.

¹⁴⁴ *Ibid.*, p. 36.

¹⁴⁵ *Ibid.*

¹⁴⁶ J. Cruz, S. van Iterson, 'The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red Light District', *Humanity in Action*, <http://www.humanityinaction.org/knowledgebase/312-the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdam-s-red-light-district> , (accessed 14 July 2017).

be issued soon also due to the rapidly developing Internet and social media that lead to new forms of sexual services, prostitution and trafficking.

Conclusion

Nowadays there is still no clear definition of prostitution. Every discipline takes its specific approach to it. However, while defining prostitution it is important to distinguish between forced and voluntary prostitution and not to make it a subset of the notion of trafficking. There are various reasons why men and women get involved in this field, and it not always means that the person is a victim.

The paper has established that nowadays there is still no international consensus regarding sex work and whether or not it should be criminalized is left to the sovereign decisions of the states. The regulatory approach, taken by the Netherlands, tends to have more benefits for both the state and the sex workers themselves; however, it is not an option for many countries for cultural, religious or political reasons.

The goal was to answer the following research question: *Equality and non-discrimination for sex-workers: How has the decriminalization of prostitution in the Netherlands affected the social status of the sex workers in terms of their right to health?*

The paper looked at international and national legislation on sex work and the right to health, described the current prostitution policy in the Netherlands, compared to how it used to work before the brothels ban lift. It then analysed the data on the current progress in the sex workers' enjoyment of the right to health and established the discrimination in this sector.

As the phenomenon of prostitution is rather gendered and the majority of sex workers are women, many international instruments include prohibition of sexual exploitation and forced prostitution specifically stating the relation to women and girls. This can be seen in the Women's Convention (1979), The Council of Europe Convention on Action against Trafficking in Human Beings (2005); The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual

Abuse (2007), and The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011). By emphasizing the vulnerability of women in this sphere, such international treaties initiate a discussion that certain measures have to be taken in order to combat exploitation and at least protect those, who are involved in prostitution voluntarily.

Protection of sex workers is one of the main motivations used by the states that decriminalize the sex businesses. Elimination of prostitution is hopeless, since sexual needs are among the primary needs of human beings. Therefore, legislation and policies should not be aimed at eradicating prostitution, but at civilized regulation.

Among the reasons for the negative attitude towards sex work is the fact that prostitutes often serve as links for spreading HIV/AIDS and other STIs. However, it is just one side of the health problems that are associated with sex work. They also include rape, physical violence, and mental health problems due to harrowing events from the past and reproductive rights. The importance of proper access to healthcare cannot be overrated, it says a lot about the development level of the state.

In the Netherlands, due to decriminalization the health system has been adjusted to meet the requirements of the municipalities and the government: special help centres, STIs testing policlinics, psychological support and other medical facilities have been established to guarantee necessary protection. States have certain obligations under international law regarding the facilitation of the right to health on their territories and in the case of the Netherlands the reports do not provide information on the violations in that sector. The country actively promotes the rights of the sex workers and supports sexual and reproductive health rights through various cooperation programs by educating young people, providing enough access to contraceptives, affordable healthcare and launching projects to provide “more respect for the sexual health and rights of discriminated and vulnerable groups such as lesbians and gays, drug users, prostitutes and child brides.”¹⁴⁷ The sex workers are not obliged to undergo medical examinations, but they are encouraged to do so at least four times per year. This is due to the belief that obligatory check-ups create an impression that sex workers transmit infections and this way this stigma will eventually be eliminated.

¹⁴⁷ 'Sexual and Reproductive Health Rights – Dutch Development Cooperation Policy', Government of the Netherlands, <https://www.government.nl/topics/development-cooperation/the-development-policy-of-the-netherlands/sexual-and-reproductive-health-and-rights> , (accessed 13 July 2017).

If everything sounds so well regulated and adjusted to the current policies, then why is there a problem in accessing these specifically created conditions? The answer lies in discrimination. Not only the reports have shown that the sex workers face discrimination on various grounds in interactions with other social entities, but this leads to the fact that they prefer to stay anonymous. This scenario leads to gaps in their registration and it, in turn, is the key to access to social benefits and healthcare. Such problem can be solved by raising awareness about sex work and the stigma around it, educating people and establishing rules and penalties for the cases when prostitutes face discrimination. It is also important that the Netherlands focus more on fighting discrimination rather than the process of decriminalization and communicate with the sex workers, as they are the ones in need of protection.

“If nobody wants to sell sex, it is a crime to force anyone to do so. But when men or women do want to sell their bodies, they should have that full right without encountering punishment or discrimination. If the client behaves decently, the relationship between the sex buyer and the sex seller must be considered a purely private transaction.” - Nils Johan Ringdal, Love For Sale.

A purely private transaction - that is what it should be. Respect for sex workers comes from everyone's personal opinions on this occupation. However, despite the personal opinions, sex workers must be able to enjoy human rights equally with anyone else. So whether or not people respect it, does not give them the right to discriminate against them.

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