

# Prostitution policy under construction – December 2008

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## 1. The Amsterdam Red Light District (“Walletjes”): Project 1012

On 5 December 2008, the City of Amsterdam presented a ‘strategy paper’ with a set of plans that will have a huge impact on the Red Light District. The “Coalition project 1012” (named after the postal code of the inner city) aims to make the area safer, more attractive and more liveable. The two main reasons:

1. during the last decennia the inner city has become more and more under the influence of organised crime.
2. the inner city needs a quality impulse, to upgrade the entrance of Amsterdam (from Central Station to Dam square).

### Crime

The Red Light District consists of shop window prostitution, coffee shops (for cannabis), smart shops (for mushrooms), money exchange locations, mini supermarkets, gambling halls, sex shops, bars and 1 – 2 star hotels. This is defined as a fertile infrastructure for criminal activities, such as drug trafficking and dealing, trafficking of women, laundering of money. Criminological research has detected some groups of organised crime that have obtained real estate. This is seen as a treat that needs to be countered.

The argument is this: **prostitution is not criminal, but the social and economic structure of prostitution give criminals opportunities. Therefore prostitution shall not be abolished but decreased and concentrated.**

### BIBOB (Bevordering IntegriteitsBeoordeling door het Openbaar Bestuur)

This is the name of a new law, that gives municipal authorities the option to refuse or withdraw a license (for a hotel, bar, brothel) if the owner cannot prove that his background and finances are legitimate. The license can also be refused if the city suspects that the license will be used to do criminal business. Note: unlike normal laws, the burden of proof is for the accused, not the accuser. This has already proved to be a strong instrument. Some brothel owners have lost their licenses, and as a consequence sold their houses to housing corporations, under the direction of the city. (This happened to some 100 of the total of 482 windows in this area). These houses may or may not be used for prostitution again, depending on the future plans of the city.

## Amsterdam Top city: upgrading

The desire of the politicians is to create a downtown Amsterdam that caters the wishes of general visitors and affluent, mainstream tourists; and not the young, alternative tourists that are mainly attracted by drugs and sex. In the eyes of the authorities these functions have become too dominant and also have become too sleazy, dirty and low level. It is not a good presentation of Amsterdam: so many pizza vendors, too many coffee shops, drug users and homeless people on the streets, cheap bars and hotels, sex shops and heaters, public display of sex business by young foreign girls, drunken short-stay tourists shouting along the canals. To summarize: **too much nuisance for the inhabitants and too little quality for the decent tourist.**

## Plans

The municipality want to take the following action:

- draw a new economic activity map of the inner city and decide what functions can take place on what location.
- To redesign the public space.
- Attract qualitative hotels, shops, restaurants.
- Invest in the presentation of monumental, historical buildings and museums in the area (the oldest part of the city).
- Attract big investors to finance and build this.
- Lower the number of low quality businesses (snack bars, mini supermarkets, pizza vendors).
- Lower the number of coffee shops (76 in stead of 139)
- **Lower the number of shop windows for prostitution (240 in stead of 482);** and tighten the conditions for operation. The brothel owners will be made responsible for screening potential prostitutes, connections with trafficking of women and nuisance on the street.
- **Zoning of shop window prostitution:** restrict them to the smallest canal “Oudezijds Achterburgwal” and the adjoining alleys.

## Discussion

The motivations seems to be 1) cleaning up the inner city and 2) combating criminality. It also fits in with a swing to moral conservatism: restricting the display of sexuality in the streets and immoral behaviour, like drunkenness of young tourists; combined with the diminishing of acceptance of cannabis. There is a new emphasis on serving the neighbourhood and prostitution is considered a threat to residential peace.

Furthermore, in the press and in public opinion prostitution is often connected to criminality, trafficking of women and pimping. There is - we regret – often good reason to draw the attention to these negative things; but more and more we witness a tendency to make an automatic connection. Or, in other words: **in the eye of the public and politicians, it seems not possible to have prostitution without crime.**

At present (December 2008) the association of brothel owners (SOR) is organising its opposition to the municipal plans. In the spring the city council will discuss the proposals and decide what the future will bring.

For those who can read Dutch: you can find documents (and some maps and pictures of the area) on <http://www.amsterdam.nl/?ActItemId=159117>

## 2. A new law to regulate prostitution

(I use the word prostitute as in Dutch the term 'sex worker' is seldom used).

Since the legalisation of the exploitation of prostitution (see chapter 3 and 4 of this representation), there is an ongoing discussion of the effects of the regulation that is a result of this legal reform. Municipalities, have designed a licensing system, police and state prosecution have developed new strategies to combat trafficking, new tax systems have been put into effect, labour conditions are changing. But also prostitution has changed: increased mobility of sex workers, both voluntary and forced (trafficked), more pimping, more part time and independent sex workers, new forms of prostitution outside the regulatory system (internet, escorts, massage parlours, swinger clubs where sex workers seek clients). These developments have been discussed, researched, scientifically and morally evaluated. The press has extensively reported on the negative trends: no significant improvement of labour conditions, increase of forced prostitution, less overview on the market in general due to fragmentation: there are probably more prostitution businesses and sex workers outside than inside the regulated, licensing system.

The government consisting at the moment of a coalition of Christian Democrats, Socialists and a Christian political party that works 'direct from the Bible' (my wording, JV). As a result we find within the government a majority of anti-prostitution sentiment. This is not only founded on religious motives but also based on the conclusion that, after eight years, the law has not brought what was expected from it. The supporters of the legalisation law blame the government and the state: too little is done in the implementation process, or in other ways: to 'invite' the prostitution community to integrate in mainstream social and economic society: there have not been made a transition situation to accommodate this, there has not been an active policy to influence the public to change stigmatisation and there has been little done to lift discriminatory regulations and attitudes in governmental institutions. The politicians on the other hand blame the people in prostitution and the Ministers of Interior and Justice have drawn up a law proposal that aims to 1) more strictly regulate all form of prostitution businesses and all prostitutes and 2) to increase repression of trafficking and forced prostitution.

The new law is formulated in a negative way:

### Prostitution is forbidden unless

- a. the prostitute works in a licensed sexbusiness (shop window, sexclub, escort agency etc.)
- b. the prostitute that works independent must register at the municipality, with her ID, address, picture, working name and telephone number.
- c. They will get a document that certifies their registration. The argument is that in this way the authorities have a better view of this end of the market, can 'screen' the prostitutes to detect prostitutes that are forced. And during this moment of contact, the municipality can educate prostitutes on their rights and even on possibilities to terminate their profession.
- d. Prostitutes that work in a licensed sexbusiness are not required to register with the municipality.

A business of prostitution is forbidden unless it has a municipal license. This includes escort and internet agencies that must present a real address and a non-mobile telephone number which will all be included in a national register.

Proprietors will be held personally responsible for any wrong doing.

Municipalities may set a maximum or refuse businesses of prostitution all together, on the basis of planning regulations or public order. Explicitly not on moral grounds.

Businesses that offer prostitution without having a license will be closed.

Independent prostitutes that work without registration will be fined.

Clients of prostitutes that go to unlicensed brothels and unregistered prostitutes may be sentenced to a term in jail. To prevent this they should verify the licence of the sexbusiness or the registration of the independent prostitute. This measure is motivated by the opinion that clients should be criminalised if they visit a victim of trafficking or a person that is forced to prostitute herself or himself.

The law might include that a prostitute must be over 21 instead of 18, which is now the case.

#### Discussion

We anticipate an intense debate, on the one hand by people who find that prostitution is by its nature defined as immoral and degrading or that it is intrinsically linked to crime, trafficking and violence. A minority of them might say that the new law is not enough, that the aim should not be to control prostitution better but to get rid of it all together. But the majority will be pleased by this stricter regulation, and they will be confident that the state now will have ample instruments to combat crime and exploitation.

There will be opposition by the 'pro prostitution lobby' (or one could say libertarians). They will argue that the law will not work. Criminalisation of 'illegal' businesses, unregistered prostitutes and their client will not result in a more transparent and safer prostitution, but will drive prostitutes and their clients underground, the end effect will be an increase of hidden prostitution and thus more dangerous working atmosphere, more chance of trafficking and forced prostitution.

And historians might be critical: from the 19<sup>th</sup> century we can learn that reglementation has not brought anything positive, neither for society nor for prostitutes. It has resulted in branding prostitutes as second class persons, deprived from protection of the state. The disturbing fact may be that the people that are in favour of this law proposal do not seem to know this prostitution history or worse: do not care to learn from it.

Amsterdam, December 2008

Evaluation research reports and summaries can be found on:

<http://english.wodc.nl/>

type 'prostitution' in the search option

The annual reports of the National Rapporteur on Human Trafficking can be found on:

<http://english.bnrm.nl/>

Two annexes:

The situation in 2000

The situation in 2006

### 3. The Dutch Law Proposal on Prostitution: text and explanation

24 oktober 2000

**On July 1st 1997 the Minister of Justice, Mrs. Winnie Sorgdrager presented the text of the proposal to lift the present general ban on the exploitation of prostitution.** In this paper I present and review this document.

#### 1. The text of the proposal (unauthorized but literally translation)

##### *Article 250a*

- 1. With a prison sentence not exceeding six years or a fine of the fifth category will be punished*
  - 1. he or she who, by physical coercion or another act of violence or by threat of physical coercion or another act of violence, coerces another person into making him- or herself available to engage in sexual activities with a third party against remuneration or who otherwise, by abusing the predominance ensuing from physical coercion or by deception, induces another person to make him- or herself available to engage in sexual activities with a third party against remuneration, or who otherwise, under aforementioned circumstances, undertakes any action that he or she knows or can reasonably suspect will induce the other person to engage in these activities.*
  - 2. he or she who recruits, brings back or abducts another person with the intention of inducing this person to make him- or herself available to engage in sexual activities with a third party against remuneration in another country.*
  - 3. he or she who induces another person to make him- or herself available to engage in sexual activities with a third party against remuneration, or who otherwise undertakes any action that he or she can reasonably suspect will induce the other person to engage in these activities, whilst the other person is a minor.*
  - 4. he or she who deliberately takes advantage of another person's sexual activities with a third party against remuneration, while he or she knows or can reasonably suspect that the other person makes him- or herself available to engage in these activities under the conditions mentioned under 1..*
  - 5. he or she who deliberately takes advantage of another person's sexual activities with a third party against remuneration, if the other person is a minor.*

*2. The culprit will be punished with a prison sentence not exceeding eight years or with a fine of the fifth category, if:*

- 1. the criminal offences, defined in section one, are perpetrated by two or more joined parties:*
- 2. the minor has not yet reached the age of sixteen:*
- 3. grievous bodily harm is caused by physical coercion or another act of violence as referred to in section 1. .*

*3. The criminal offences, defined in section one, which are perpetrated by two or more joined parties under the conditions referred to in section two under 2. and 3., will be punished with a prison sentence not exceeding ten years or with a fine of the fifth category.*

#### 2. In ordinary words

This new article combines the different articles dealing with the exploitation of prostitution, pimping and trafficking of persons.

The penalty is a maximum of 6 years for the following situations:

1.1 punishes the brothel owner and his accomplice who forces somebody to prostitute himself or herself.

1.2 punishes the trafficker who brings somebody across borders for the purpose of prostitution.

Because of international treaties, the this also goes for voluntary prostitution.

1.3 punishes the brothel owner and his accomplice who organizes the prostitution of a minor (=under the age of 18 years), also when that person does it voluntary.

- 1.4 the person (pimp) who takes money from a prostitute who is forced.
- 1.5 the person (pimp) who takes money from a minor prostitute.

The penalty is a maximum of 8 years in these situation:

- 2.1 when the crimes are done by two or more persons
- 2.2 when the minor is under 16 years,
- 2.3 the crime results in severe bodily harm

The penalty is a maximum of 10 years when two or more person commit the crime either to a minor under 16 years or resulting in severe bodily harm.

The law came into effect in October 2000.

### **The social background**

Prostitution has always been very present in Dutch society. The visitor of Amsterdam will not have a hard time finding the red light district where in the centre of the city women in shop windows offer sexual services for cash. Throughout the city one will find houses of prostitution in business or shopping areas or in respectable neighbourhoods. They advertise in the newspapers in very graphic terms, as do the so called private houses. Escort services present themselves in full page advertisements in the yellow pages. Homosexual prostitution is equally readily available in gay bars in swinging Amsterdam or in the hall of the central station. And the city council has designated and designed a somewhat remote area for the purpose of streetwalking, where drug using women and transsexuals solicit men in cars. Homosexual prostitution is equally readily available in gay Amsterdam.

What we see is the **typical Dutch principle of tolerance** put into practice. Openly intended pragmatism makes it possible to see the sex industry as just another social phenomenon. A number of 'private' activities that take place in public or semi-public locations are officially tolerated if they do not interfere with public order. So if prostitution is not disrupting ordinary life in a residential area the brothel, shop window or sex club will be allowed to exist openly. Local municipalities have designed a detailed system of regulation on the basis of this principle of monitoring public order.

But does this mean to say that prostitution is dealt with in a different way than in the rest of Europe? Not necessarily. The moral attitude of Dutch people is not different than that of other countries in the European Union. **Prostitution is on yonder side of what is considered proper or acceptable behaviour.** In other words, prostitutes face the same condemnation and stigma. But there is a typical element in Dutch political practice, called pragmatism, which makes it possible to see the sex industry as just another social phenomenon. A number of 'private' activities in the sphere of morality are officially tolerated if they do not interfere with public order. So if prostitution is not disrupting ordinary life in a neighbourhood it will be allowed to exist openly. Dutch people then seem not to be so quickly offended by public exposures of different lifestyles. They show more tolerance or is it indifference: "I do not care what you do as long as it does not take place in my backyard". This somewhat open attitude is the foundation for the new policy. Prostitution itself is not seen as the problem, rather the cases where this is happening involuntary or in situations where public order is violated.

The new element is the formalisation of this practice by legalising prostitution businesses.

*Where this typical Dutch form of tolerance comes from is not easy to determine. For centuries The Netherlands have been a safe haven for intellectuals that were prosecuted for their political opinions or religious beliefs in their own countries. There are some factors that might play a part. The Netherlands are a small country in the centre of Europe, with open borders and many (trading) connections all over the world. Dutch people are therefore exposed to differences in values and norms from their contacts abroad. But also within the Netherlands there is not one dominant culture, rather different subcultures (catholic, protestant, non-religious) cultures living in co-existence. This is*

*reflected in the political arena: governments are always built in a coalition form of at least three different political parties. This means that in social life in general the focus is always in finding compromises, which includes the respect of other people's wishes. In other words: everybody is allowed to have a place under the sun as long as you make room for somebody else. There simply is no majority group to force their way of living or thinking on the rest. So, as long as prostitutes and other people in prostitution are not threatening public order, they can do what they want. This does not mean that we live in anarchy. Rather the dividing line of what is accepted or tolerated behaviour is drawn not by the principle of force and violence and not by the measure of a given set of moral values.*

## **The legal translation**

Until the first of October 2000, like in the other European countries, prostitution itself (though not accepted as a respectable activity) was not regarded as a criminal offence. The Penal Code defined third parties who exploit women and boys for the purpose of prostitution as criminals who should be put in prison. However, these laws were not put into practice. Prostitution was treated as a fact of life and brothels were openly or tacitly tolerated. This practice of tolerance was official policy, it was not an individual policeman or civil servant who decided to turn a blind eye. In the Dutch legal system the **Ministry of Justice can declare that public prosecution will refrain from prosecuting in certain fields.** (in judicial terms: **the opportunity principle**). This is the case with cannabis, with euthanasia and it was with the exploitation of prostitution. The rationale behind it is that to prosecute this will produce more problems than it solves. Many years ago the conclusion was drawn that to fight prostitution in this way would make it go underground, thus causing greater problems for surveillance by the police and would cause more misery for the persons concerned. And should the state prosecute activities carried out between consenting adults? By tolerating brothels under the condition that there is no associated crime like forced prostitution and prostitution of minors, and that the business poses no nuisance to residential areas, prostitution could better be monitored by accepting it as an integrated element of city life.

Since October 2000 the Dutch government has formalised this tolerance. By legalising the proprietors of prostitution-establishments it hopes to open the way for an even more effective approach to tackle the problems that are associated with prostitution. **The Dutch Penal Code will no longer treat "organising the prostitution of an adult female or male person" as a crime when this is done with the consent of the prostitute.** If a person regards prostitution as the best option to earn a living she shall have the same rights as any other worker has. And any form of forced prostitution, pimping and trafficking will remain in the Penal Code, the maximum penalty will go up to 6 years imprisonment. The brothel or sex club will need a licence from the council and will have to meet standardised occupational health and safety conditions.

So this is not a major change in the way the Dutch society is handling prostitution. It is the logical next step. What we see here is that the way in which accepted from unacceptable behaviour is distinguished is no longer done on the judgement of the moral content but of this conduct but on the assessment if violence or force is being used.

Politicians justify this policy by referring to the principle of pragmatism. Actually, they hardly discuss the moral aspects of the prostitution issue. They speak of the advantage that by treating prostitution as just another branch of the economy, it can be regulated efficiently in the interest of three areas: public and social order, combating crime and improving working and living conditions of prostitutes.

So on October 1, 2000 the law on prostitution changed in The Netherlands. From that day on prostitution businesses are no longer illegal, they are treated as any other business and the prostitute has a legally protected profession.

## **Research and evaluation**

The Mr A. de Graaf Foundation did research on the situation of prostitution short before this legal change. In 30% of the Dutch communities prostitution does exist, especially in the bigger cities and in

border areas (with Germany and Belgium). In 12 cities we find window prostitution, where daily 2000 prostitutes work. Street prostitution can be found in 10 cities, an average of 320 women work there daily. Next to that there are about 600 to 700 sexclubs and apartments where on a daily basis 3500 to 4000 prostitutes work. All in all we calculated that **on a given day at least 6000 prostitutes work** in The Netherlands. We could not include figures on prostitutes who work in their own house and escort service; the data from our research are too incomplete on these issues. We could not give figures on the number of illegal prostitutes for the same reason, but at least in some regions foreign, illegal women were a majority. Due to increasing police controls their number is going down rapidly. In this context “illegal” means “not in possession of a working permit”, this means in practice that **only persons with a EU passport can work legally**, it is national policy to deny anybody from outside the European Union to work in prostitution.

In order to facilitate a smooth transition into a new regime, the Ministry of Justice has, in collaboration with other sectors of the government, compiled a handbook that deals with all aspect of the new situation: with blueprints of a licence, guidelines for the police, help for victims of trafficking, etc.

## **6 objectives of the legal reform**

Six main objectives have been mentioned during the parliamentary hearing of the new law. These lie in the area of administrative regulation (control and containment of the prostitution industry), the area of prosecution (combating involuntary prostitution, the protection of minors against sexual abuse and the combating prostitution related crimes), in the social field (improving the position of prostitutes) and in the field of alien policy (diminishing the number of illegal aliens in prostitution).

## **The new policy measures**

In the new article 250a of the Penal Code only forced prostitution and trafficking are mentioned. Thus local governments are free to develop a system of their own to regulate houses of prostitution. But in order to create the desired uniformity and integration of local policy, the national government has prepared a number of blueprints and suggestions how to organise this legalisation on a community and regional level. They have been published in the **Handbook Local Prostitution-policy**. The most important proposals and measures are:

1. The national government developed an overall model to implement local and regional control of prostitution. It is a “contract of control” with a set of agreements between local government, the police and the public prosecution on the correlation of administrative and punitive measures.
2. Local government can organise a licensing system in order to regulate the prostitution sector on the basis of a model published by the Association of Dutch Municipalities.
3. For the Public Prosecution guidelines are published on how to proceed in cases of trafficking in persons and forced prostitution.
4. A special guideline is written on how to deal with victims of trafficking in the legal procedures.
5. A code of conduct is drawn for civil servants and policemen on how to behave in the prostitution milieu.
6. Mayors (who are responsible for the issuing of licensed) will have access to criminal records in order to check the background of owners and managers of brothels.
7. The Law on Identification is amended, prostitutes must identify themselves to the police.

## **Prostitution in The Netherlands in 1999**

In the framework of the research that is the basis of this report, questionnaires have been sent to all Dutch municipalities, police regions and Municipal Health Departments. The objective was twofold. First to get a detailed picture of the nature and scope of prostitution in The Netherlands shortly before the legal reform in order to establish a point of reference for future evaluation. And it was meant to describe policy measures on all these levels.

The outcome was that in one third of the Dutch municipalities prostitution can be found. It is most prominent in the larger cities and in border regions (with Germany and Belgium). In 12 cities we find window prostitution, where daily 2000 prostitutes work. Street prostitution can be found in 10 cities,



an average of 320 women work there daily. Next to that there are about 600 to 700 sexclubs and apartments where on a daily basis 3500 to 4000 prostitutes work. All in all we calculated that on a given day at least 6000 prostitutes work in The Netherlands. We could not include figures on prostitutes who work in their own house and escort service; the data from our research are too incomplete on these issues. For the same reason there is a lack of specific figures for alien and illegal prostitutes. Insiders estimate however that in 1999 at least half of the prostitutes working in The Netherlands came from outside the European Union.

### **Local and regional policy**

The parliamentary debate on the legalisation of the prostitution industry started in 1985. In the larger cities, with clear concentrations of overt prostitution the city councils were looking for ways to regulate this industry that was officially forbidden but condoned for pragmatic reasons. The city of Amsterdam was one of the cities who started experimenting with forms of licensing. The new article in the Penal Code only deals with forced prostitution and trafficking, therefore prostitution businesses have become legitimate enterprises and local governments can regulate them by way of licensing. The vast majority of city councils have drawn up a local policy that includes:

- the number of brothels that are appropriate, this is often the number of existing brothels,
- the geographical areas where they are allowed,
- the required details of the structure and the interior of the building (safety, hygiene, working conditions),
- the style of management, guaranteeing utmost freedom of work for the prostitutes (safe sex, choice of clients, no compulsory drinking of alcohol, etc),

These conditions are written into a special chapter of the Local Bylaw (or Local Regulations regarding Public Safety). The license is based on this bylaw and is given to the owner of the business. He will be held personally responsible of any violations. The penalty will be the loss of the license.

The preparation and the issuing of licenses is monitored by a municipal working party, that generally consist of representatives of the mayor (department of public safety), the police, the housing department, the municipal health service and sometimes the fire brigade and the labour inspection.

This working party coordinates the regular inspection by its members. The task of the **municipal health service** is twofold. They are responsible for proper and hygienic working conditions and they are responsible for activities **to promote safer sex** and they **coordinate medical facilities for prostitutes**. It is general policy in The Netherlands that **prostitutes are not mandatory tested for STD or HIV**. It is felt that the government is responsible to make medical check ups and treatment available, but it is the responsibility of the individual to use them. In larger cities there are special free clinics, but many prostitutes prefer their private doctor or a specialised dermatologist.

The contact between civil servants and brothel owners is in many cases still a bit uneasy. Both parties need time to adjust to the new situation and the new relationship. The social acceptance of prostitution as a social phenomenon and the legal acceptance of the profession of brothel owner does not automatically mean that the latter is seen as just another businessman. From their part too there is a lot of suspicion about the aims and activities of the public administration, this is partly due to a lack of exchange of information. The suspicion is fed when the activities and signal from different governmental bodies are contradicting each other.

The national government stresses the necessity co-ordinate policy on a regional level. In many part of the country this is done, the police region comprise generally some 10 to 20 cities, the mayors synchronise their actions on that level. One police team will then be in charge of the regular visits to the brothels.

### **The local policy in progress**

Nearly all of the municipalities that have no prostitution now (70%) prefer not to attract prostitution. **They would prefer to ban it**, but that is probably legally not possible. So most cities adopt a policy whereby only one brothel is allowed under very strict conditions, thereby hoping to discourage

potential entrepreneurs. A few municipalities will probably challenge the law, because they want to keep prostitution out of their communities because of religious reasons. More than half of the municipalities with prostitution only recently contacted the brothels, they admit that they have little knowledge of what is going on. They have no information of the location of sexclubs, prostitution in private homes or the existing of escort agencies. Because there were never problems reported, the local government was happy not to have to intervene. Although in general the police is better informed, they have in many regions very little insight in the number and nationality of the prostitutes, in the identity of owners, in the working conditions and potential crimes.

### **The position of “legal” prostitutes (=prostitutes with a working permit)**

One of the aims of the new law is to improve the position of the prostitute. Policy makers have little idea what this means. For many of them measures with regard to safer sex are sufficient. And the local governments do not think that they have a task by improving labour condition and labour relations. Both brothel owners and prostitutes do not know how the Labour Inspection or the Tax Office will decide on these issues. For instance, a brothel owner and a prostitute might agree that the prostitute works self employed, but the Tax Office might decide after an inspection that she is actually employed. Such a decision has lots of repercussions and unfortunately nobody can anticipate due to lack of information from the governmental agencies. **In general there is little information given to prostitutes about all the changes that are brought about by the legal reform, prostitute rights groups are also not given the means to inform the women.**

It is felt that Ministries like the Ministry of Finance, Economy and Social Affairs should take a stronger role in order to support the emancipation of prostitutes in their work.

### **Illegality in prostitution**

Until some five years ago prostitutes without valid legal papers were widely tolerated in Dutch prostitution. But in more and more regions the police is carrying out systematic controls in order to remove them. One of the main motives given is that by allowing illegal aliens to work in prostitution, a market for traffickers is maintained. By prosecuting the brothel owners if they employ illegal aliens, the police hopes to destroy this market and thus end the trafficking. The owners are then treated as traffickers and as an additional measure they will lose their license to operate a brothel. The expectation is that this will be effective in order to get illegal prostitutes out. Opponents of this policy point to the fact that illegal prostitutes might go underground in illegal circuits and will have to work there under worse conditions. At the moment there are no indications of a large underground network, but we anticipate three possible ‘escapes’ for illegal prostitutes. One is to work in illegal brothels that are operated in a hidden way, with fronts or covers like a singles bar or a private club. A second possibility is to work with false papers or via a paper marriage. A third option is to work in informal ways, like in private homes, via middle men and in private homes. To counteract this, an appendix to the Law on Identification was drawn, this makes it mandatory to identify oneself when working as a prostitute. This is an exception to the general rule in The Netherlands, a self employed person is not obliged to identify himself to the police while working.

### **Trafficking**

The legal reform has two principal aims: to regulate voluntary prostitution and to increase the prosecution of forced prostitution, trafficking and the prostitution by children. The penalties for these crimes have been raised from 1 to 6 years. For both the police and the public prosecution this has become a policy priority. In 1998 there were 72 cases of trafficking in the registers of the public prosecution. The Foundation Against Trafficking has dealt with nearly 200 victims of trafficking. Each police region has its special task force concerning trafficking, although it seems difficult to uphold the capacity of these teams. The official guideline from the Ministry of Justice prescribes that in every case where there is a suspicion of trafficking, the victim must be given the option to report or to contemplate this by allowing her the shelter of a safe house. In the case of prosecution of her traffickers she can stay in The Netherlands under a temporary staying permit and receive social benefits. This does not officially allow her to work. And because many fear reprisals from the traffickers, not many women press charges and not many of them stay for the duration of the trial.

### Effects for the prostitution market

Although the law intends to normalise relations in prostitution and between prostitution and the rest of the society, **the majority of representatives of governmental bodies do not regard brothel owners or prostitutes as ordinary discussion partners.** In many municipalities the brothel owners have to 'fight' their way to the negotiation table. It will still take time before they are seen as ordinary businessmen. It is generally expected that a number of brothels will close down, as they cannot or will not fulfil the requirements by the condition of the license.

Brothel owners with criminal records will not be accepted in the new situation, but they might be able to evade this by letting friends or relatives pose as manager. The big gain for the municipalities remain however, they can withdraw the licence when there is something wrong in the brothel.

In regions where the police are actively looking for illegal aliens, the number of prostitutes have gone down dramatically and brothel owners complain that they cannot find women to work for them. This is especially the case in cheaper form of prostitution, like window prostitution and simple sexclubs.

There are a number of issues where parties do not agree upon, they have been presented to the courts and in due time judges will make the decision. Examples are:

- Under which conditions can non EU women work in Dutch prostitution (or can they be denied this categorically),
- In which way do prostitutes have to organise their working conditions with brothel owners in order to be accepted by the Tax Office as self employed,
- Do local municipalities have the right to ban prostitution businesses from their territory?

### Conclusion:

The new law covers several aspects:

- 1) give local municipalities the tools to control and regulate businesses: this process is going as planned at the moment.
- 2) to combat forced prostitution and trafficking: this is done by fighting illegality in the prostitution market, **it is unclear if this works**: will an illegal circuit emerge where illegal prostitutes will work under more severe forms of exploitation?
- 3) to improve the position of prostitutes in their work through the labour law: in theory this is now possible under the new law but **in practice the relevant governmental agencies offer little or no support to prostitutes** and their representatives to develop a stronger position in the brothels and in the prostitution milieu in general.

*This summary is based on two reports that describe the state of affairs with regard to prostitution in The Netherlands, short before the legal reform that deals with the legalisation of the exploitation of voluntary prostitution by adults. The research is conducted in the project "De Profeit Studie" by the Mr. A. de Graaf Foundation in Amsterdam, commissioned by the Scientific Research Department (WODC) of the Ministry of Justice.*

*The Dutch titles of the reports are "Prostitutie in Nederland in 1999" and "Trends in prostitutie en beleid". The research of the first report was done by Jan Visser and Hetty Oomens, the second was done by Liesbeth Venicz, Lorraine Nencel and Jan Visser.*

*Methodological advice was given by Guillaume Beijers of the section Criminology of the Department of Penal Law and Criminology of the Free University of Amsterdam.*

## 4. Prostitution and Dutch policy

April 2006

In his report I give a picture of the developments in Dutch prostitution from October 2000 until March 2006. Is it possible to describe the changes that the legalisation has brought about, indeed: is it possible to distinguish the relevant weight of the factors that play a role of shaping the new prostitution landscape in The Netherlands? It might still be too early to draw exact conclusions, we are in the middle of this historic process and it would be partly looking in a crystal ball if one wants to understand what is really happening, let alone predict where we are going. This report draws heavily on anecdotic information since the second series of scientific evaluation studies is currently in progress and the results will be published in the fall of 2006.

But on the basis of experiences of many different participants we can come up with some tentative conclusions to contribute to the ongoing European discussion on how to deal with the prostitution issue.

**On October 1<sup>st</sup>, 2005 the Penal Code on the exploitation of prostitution was changed.** It was no longer a crime to organise the prostitution of somebody else. Brothel owners became businessmen. Although it was already accepted in 1985 as a basic principle to legalise the organisation of voluntary prostitution it took until 2000 before the law was rewritten. It did not cause a big disturbance in the prostitution world of The Netherlands, because the law reform was the next logical step in bringing the prostitution economy under administrative control. Before 2000, prostitution businesses like the famous shop windows in the Red Light District of Amsterdam and sex clubs and other forms of indoor prostitution were tolerated by the public prosecution as long as they could not be linked to other criminal activities like prostitution of minors, violence or trafficking of drugs. The reasons behind it were of a pragmatic kind: prostitution is simply a part of our society and by tolerating the less harmful forms one could better fight real criminal situations. The other argument was that if two persons freely decide to exchange sex for money it is no task for the state to forbid that. Unlike other political systems, where moral behaviour is the basis for punitive laws, the Dutch legislator does not focus on the behaviour itself but whether violence is used against a persons. This view was supported by the vast majority of the Members of Parliament. During the late 80s the prostitution debate became more and more influenced by the growing phenomenon of trafficking of women. The politicians had to integrate this into their legal reform. That is one of the main reasons why this legal reform took so long. The law of 2000 had two main tiers: the legalisation of the voluntary prostitution and to improve the prosecution of violence, fraud and exploitation in prostitution. The government did not merely change the law. It took great pain in providing models and blueprints of rules and regulations that needed to be developed in the new situation.

The law had six explicit goals:

1. to control and regulate the voluntary exploitation
2. to improve the position of prostitutes
3. to improve the combat of involuntary prostitution
4. to protect minors against sexual exploitation
5. to lower the number of illegal aliens in prostitution
6. to detangle criminality and prostitution

The execution of the first goal, the regulation of voluntary prostitution, was handed over to the municipalities; they were regarded as best suited to design a tailor made licensing system.

This carried a strong element of logic, the landscape of prostitution in The Netherlands was a very complicated one. In cities one would find shop windows, sexclubs, massage parlours, private homes, escort services, street prostitution etc. And on the countryside maybe only a few clubs or a private home. This meant that although the Ministry of Justice and the Association of Dutch Cities had made a model for a municipal licence, the local government was not obliged to adopt this new scheme. Some smaller villages with a majority of religious conservatives tried to avoid the implementation of a licensing system and were indeed successful. But the majority of the Dutch cities adopted the prefab model to their local situation. In fact one of the factors to change the law in the first place was to give municipalities an instrument to bring this tolerated sexindustry under administrative control. And now they could prescribe the building and sanitary conditions of prostitution businesses. If they would disobey or disturb the neighbourhood the mayor would be able to close the brothel. The majority of the municipalities decided on a maximum number of prostitution businesses, as a part of the licensing system. This number was often identical with the number of already existing brothels. This meant that newcomers on this market were not welcome. And even if someone shuts down his or her business, it does not mean that somebody else can start. Often the municipality has complicated additional conditions regarding the location of simply lowers the maximum number. Paradoxically: the law reform was meant to improve the position of the prostitute, but if she want to work independently at home she is denied that right by the municipality. And thus her only option is to work for a boss in a club, where the balance of power is still as uneven as it was before.

**All in all we can conclude that the legalisation has brought the municipalities the benefit of a solid instrument to simply control the number and the modus operandi of prostitution parlours.** On the other hand, the system is quite rigid and is designed to suit the interests of the municipality, it is practically impossible to set up innovative new businesses. There is a tendency, not yet thoroughly documented, that persons who want to start something new will try to develop that outside the legalised system and thus becoming illegal entrepreneurs. It reinforces the tendency of the shift away from mainstream prostitution by new forms of prostitution (via internet and mobile phones) and new forms of commercial sexual entertainment (swinger clubs, kinky sex parties, lap dances in discotheques). In some major cities the number of 'traditional' prostitution enterprises has declines rapidly the last years. We anticipate a shift to these other forms of sex entertainment that will loosen the grip that municipalities have on prostitution. The licensing model is meant for a building with an address, an escort agency is not dependent on that and can evade the control of the city.

The second aim of the legal reform, the improvement of the position of the prostitutes, was another important goal of the legal reform. It had a lot of sympathy of the general public and the Dutch women's movement. The Red Thread [www.rodeDraad.nl](http://www.rodeDraad.nl) is the prostitutes rights organisation that is subsidised by the government to give prostitutes a place in the debate. The new law meant that prostitution became identified as a profession, with all the rights and obligations that are connected to that. Prostitutes (sexworker did not become a substitute for that term) and brothel owners were supposed to negotiate on working conditions and relations and in the beginning there was hope that roundtable meetings and the support of experts would lead to models of contracts for employed and self-employed prostitutes. But unfortunately, a dramatic stagnation occurred. This has various reasons. First of all the **lack of expertise and level of organisation amongst prostitutes** and brothel owners. Coming from an illegal economy, they were all used to hide from authorities and the bureaucracy. Given the fact that they did not see the immediate advantages of working completely legal and paying taxes etc, the vast majority tried to remain relatively invisible. But maybe just important are the **policies and the attitudes of agencies** (like the tax office and the social security system)

that have to develop and carry out new rules and regulations based on this new economic and social position of prostitutes and their employers. These **agencies and the government as a whole have failed to design transparent and clear procedures for the sex industry**: what are the criteria for self employment, what are fair labour relations, what health insurance exemptions are applicable). It must be said that the trade unions did not show much interest in concrete support for the development of labour rights for prostitutes. At the moment there is a standstill in the development of operational schemes and there is no national coordination with regard to implementation of these kind of policies. The fact that both the Minister of Justice and the Minister of Labour are Christen Democrats might have something to do with that.

**Apart from the financial gain that persons in the sex industry have by staying out of the picture, they fear the public exposure that for sure will harm them in their private live and their contacts with agencies.** The changing of the law did not automatically stop the social stigma. This can for instance be observed in the financial sector: banks are very reluctant to loan to the sex industry.

The third, fourth and fifth goal of the law reform concerns violence and exploitation against adults and children in the sex industry. The law reform of 2000 was exclusive aimed at the sex industry; on January 1, 2005 an extension was made to include other work and services and to include the removal and traffic of organs.

There are no exact data but there is general agreement that the majority of sex workers in The Netherlands come from abroad. Since the late 90s they come primarily from Central and Eastern European countries and West Africa, but in lesser numbers also from Latin America and Asia. The total number of sex workers is calculated at about **20.000**. Only persons with an **EU passport** are free to work in the Dutch sex industry like in other sectors of the Dutch economy. Citizens of Rumania and Bulgaria, as Associate countries, can apply for special working permits. All other nationalities are excluded. The 25 police regions in The Netherlands had until 2000 a lot of leeway to make their own policy, which often meant tolerating foreign women, regardless of their nationality. Some regions kept a close eyes, some did not make a priority of that branch of policing. It took some years to reorganise and the repeated criticism of the National Rapporteur on Trafficking before a national policy took shape. All regions have a specialised squad for prostitution and trafficking and they cooperate on the national level. They are well instructed on the procedure to protect victims of trafficking and organise support and shelter when they come forward to the police. In 2003 **257 women** were counted officially, the dark number is considered to be at least tenfold. Trafficking in Human Beings has become high on the political agenda during the last few years. The concept also includes Dutch women and girls who are being brought into prostitution against their will. The definition problem is obvious: violence, force and exploitation is hard to prove if some young or foreign girl is under the influence of dominant men. The police can act upon indications like “not having the possession of your own passport, not having money, not knowing where you are working”, but to develop a case in court it remains vital to get the testimony and cooperation of the victim.

Victims and witnesses are offered a protection scheme and a temporary staying permit for the duration of the trial against their traffickers. This model is not working satisfactory, because the women will have to return to their country of origin when the trial is over. There they might await revenge by the criminal organisation that brought them to The Netherlands. And their stay might be for years and years as the trials take that long. During that time they are not encouraged to integrate into Dutch society.

The government has launched a National Action Plan on Trafficking as a result of the growing concern of the public opinion. This includes an expert centre of the national police and an

awareness campaign in the media to draw the attention of – among others – customers of prostitutes to the fact that they might encounter victims of trafficking. There is a special anonymous telephone number to report these cases.

There is not much attention given to the sixth goal of the law reform. In Amsterdam there is a special municipal bureau that follows the ways in which prostitution and drugs money is laundered by buying real estate. The city can cancel it if these transactions are suspicious. And they can try to buy the houses themselves.

There is not much evidence that brothel owners themselves are the traffickers of women or trade drugs.

Final remarks

The overall picture of prostitution in The Netherlands is complicated.

The **legalisation process is stagnating**. The municipalities have the official locations and these buildings under control, but they do not pay much attention to the fringe of the sex market; thus leaving the possibility open that prostitution takes place there too.

The government and its agencies are not developing rules and regulations and are not giving direction to the normalisation process and integration process of the sex market into mainstream society.

**Prostitutes and brothel owners themselves see no advantages of becoming part of the official economy, they might prefer to stay underground for as long as the state allows them.**

Prostitution itself is changing rapidly, because of technological innovation: internet, mobile telephones. The current mechanisms and tools of the state are not equipped to control these developments.

In public opinion itself we see a change of atmosphere, in the 80s and 90s there was a lot of sympathy for the emancipation of prostitutes; nowadays there is much more attention for the negative side, prostitution as oppression of women, customers as dirty or even criminal men; the prostitute as victim.

Confusing and disturbing times.

## Appendix Penal Code 273a

The previous Article 250a (Trafficking in Human Beings) of the Dutch Criminal Code has been replaced by a new Article 273a which came into force on 1 January 2005. The new article covers the Palermo definition, including sexual exploitation, forced labour and trading in organs. The sentences vary between a fine to a maximum of fifteen years imprisonment.

Other relevant articles of the Penal Code which may be used to prosecute traffickers include Article 242 (sexual violence/rape), Article 231 (forged travel documents), Article 140 (participation in a criminal organisation), Articles 282 and 283 (deprivation of freedom), Article 284 (coercion), Article 285a (threats/intimidation) and Article 300 (abuse).<sup>9</sup>

Article 273a Criminal Code,

Section 1 (1)-(-9):

A fine or up to 6 years imprisonment (who, through coercion, force or other act of

violence or through the threat of force or other act, extortion, fraud, deception or who abuses a situation of dominance arising from given circumstances, through abuse of a vulnerable situation or through the giving or receiving of payments or benefits in order to obtain the consent of a person who possesses control over another, transports, delivers, accommodates or takes in another person with a view to exploiting said person or removing said person's organs; recruits, takes with him or kidnaps another person with a view to take said person to another country to be available for sexual services; through one of the means listed above coerces or induces another person to be available for work or service or would make his organs available; who intentionally profits from the exploitation of another, from the removal of organs if the organs have been removed under the circumstances listed in section one).

Section 3 (1)-(2)

A fine or up to 8 years imprisonment (if the offences listed in the first section were committed by two or more associated persons: if the person to whom the offences were committed has not reached the age of sixteen).

Section 5

A fine or up to 12 years imprisonment (if one of the above mentioned offences results in severe bodily injuries or it is feared that a person's life may be in jeopardy).

Section 6

A fine and up to 15 years imprisonment (if the offences described above results in death).

If the victim is a child/minor or has not reached the age of sexual consent:

Section 1:

A fine or up to 6 years imprisonment (enlists, transports, delivers, accommodates or takes in another person with a view to exploiting said person or removing said person's organs, causes another person to be available for sexual services with or on behalf of a third person in return for payment or to make his organs available in return for payment, or with respect to another undertakes activities about which he knows, or must reasonably suspect that the other person would thereby make himself available for sexual services or would make his organs available in return for payment; who intentionally profits from the exploitation of another, from the removal of organs of another or from the sexual services of another with or on behalf of a third person in return for payment, or the removal of said person's organs in return for payment while said person has not reached the age of eighteen).

Section 3/2:

A fine or up to 8 years imprisonment (the person with respect to whom the offences listed in the first section were committed, has not reached the age of sixteen)

Section 4:

A fine or up to 10 years imprisonment (the offences described in the first section, which are committed by two or more associated persons in the circumstances referred to in the third section, paragraph 2.

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