

PRESENTATION OF THE RESULTS OF THE INTERNATIONAL COMPARATIVE STUDY ON PROSTITUTION POLICY:

Austria and the Netherlands

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1. INTRODUCTION.

The purpose of the study is to compare the implementation and effects of prostitution policy in two countries, Austria and the Netherlands, that have comparable policy approaches. The focus on policy implementation issues from the fact that 1) in prostitution policy, as in most policies, a considerable gap exists between policy formulation and its actual implementation in the field, and 2) it is the actual delivery of public policy that determines the impact on the target group and on society at large. Prostitution policy has rarely been studied in sufficient detail to have a clear understanding both of the major challenges that policy makers in this domain face as their answers to these challenges. The main purpose of this study is therefore to provide a detailed, in-depth description of the implementation of prostitution policy in the countries of study. The two other researchers in the project were Sietske Altink (Netherlands) and Dr. Helga Amesberger (Institut für Konfliktforschung, Austria).

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2. RESEARCH QUESTIONS AND DESIGN.

The project focused on the following research questions:

- 1.** What is the size and state of the prostitution market in the Netherlands and in Austria?
- 2.** How is prostitution regulated in both countries at the implementation level?
Which policy instruments are used? Which rationale is given for the use of different policy instruments? Are the policy instruments used in an effective and efficient manner? Which conditions have to be fulfilled (organizationally, financially, political-administrative relationships) for the effective and efficient use of various instruments? Is the use of the mix of instruments consistent, effective and efficient?
- 3.** What are the effects of the mix of instruments in the prostitution field? Effects are based on the stated goals of the policy. But we will also look for general effects such as public order, trafficking and illegal prostitution, labour rights, work conditions and human rights of sex workers, and unintended consequences such as a transfer of prostitution to different areas (national or international) or types of prostitution.

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- 4.** What unintended consequences does the policy have? Here we think of increases or decreases in the number of sex workers or sex facilities, transfer effects, the disappearance of prostitution into an invisible underworld, increased risk for sex workers, an increase in trafficking or juvenile prostitution. Given the nature and limits of the design, we often cannot do much more than register the negative unintended consequences and carefully trace the relationship to a policy intervention or instrument, taking into account alternative explanations for the unintended outcome.

The study is designed as mixed-methods, comparative case study, that allows us to map regulatory approaches, the societal and administrative context in which regulation operates, and the impact of regulation on the prostitution field. The main comparison is between The Netherlands and Austria. The participating Dutch cities expressed a desire for a most similar systems design (MSSD). The scientific rationale of a MSSD is that, when most independent variables are held constant, differences in the dependent variable are explained by those independent variables that differ. A MSSD, as well as its counterpart, a Most Different Systems Design (MDS), are strong designs that yield important comparative knowledge. One should distinguish between large n and small n comparative studies. Clearly this is a small n study: a comparison of 2 countries. Such a comparison does not allow the researcher to hold the independent variables constant, simply because there are too many of them.

A key feature of the project is the way that data are collected. One of the weaknesses of much prostitution research is the low quality of data. In this project the emphasis has thus been as much as possible on original data collection by local researchers, mostly insiders, who are familiar with the local situation. We have interviewed more than 130 sex workers in the two countries. In addition we have interviewed a large number of administrators and professionals in the cities and regions that we have studied.

3. RESULTS.

- 1.** Because of the high mobility among sex workers, it is extremely hard to estimate the number of sex workers who work at any given day in a city. Accurate, reliable statistics form the foundation of the design of effective policies, but on this dimension prostitution policy largely operates in the dark. However, our best estimates, as described in the main text and given the restrictions in our sampling that we mentioned there, suggest that the numbers in Austria and the Netherlands are rather modest (in the cities we researched more a matter of hundreds than thousands). We feel it is safe to conclude that the numbers that are reported in the media and in more serious academic

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publications are often inflated. In fact, the attention prostitution receives in the media is out of proportion to its scale, and is probably attributable to its moral nature.

- 2.** Prostitution in Austria and the Netherlands is one of the occupations that attracts labour migrants. In Austria over 90% and the Netherlands over 70% of sex workers are of immigrant origin; mostly from one of the Eastern European countries, Nigeria and, recently, China. The migratory background of sex workers makes them vulnerable to economic and sexual exploitation.
- 3.** On almost all dimensions sex workers are a heterogeneous population. Migrants have many different motives for coming to North-Western Europe, ranging from poverty, a lack of perspective, a desire for luxury goods, to curiosity. Sex workers vary in terms of educational background, age, and life prospects. In this sense they do not differ from the general occupational population, but given the propensity to project one-dimensional images of sex workers, mostly as hapless victims, in the popular and policy debate, we feel we need to emphasize this observation.
- 4.** Contrary to popular images in the media and film industry, earnings in prostitution are generally low. It is difficult to obtain accurate data as sex workers are reluctant to discuss earnings, but in our sample hourly gross (extrapolated) earnings rarely exceeded €8. Many sex workers reported to regularly experience days without clients. Prices in Austria seemed to be higher than in the Netherlands. Also working hours are long. Nevertheless, for immigrants these low earnings still represent a considerable improvement over the situation in their home country. Therefore a sizeable proportion of sex workers, particularly in Oberösterreich, reported moderate satisfaction with their income and, perhaps more importantly, reported that they were able to sustain a child, send money home, and take an annual holiday to their countries of origin.
- 5.** Work conditions and labour relations in the licensed sector are still suboptimal. Proprietors still take a big cut from earnings (usually 40-50%), sex workers make long working hours, proprietors make sex workers pay for various 'services' or force them to clean the facility, and prescribe in what sexual activity to partake. In some instances we found evidence that sex workers were expected to engage in unprotected oral sex. There is no contractual security about the nature and length of the labour relationship in the prostitution sector. It should be added that in the current situation many sex workers are attracted to the low-threshold nature and cash economy of prostitution. But in general it is still the case that in the business model of the sex industry the profits fall to the proprietors and the risks to the sex workers.
- 6.** Despite its many intrinsic obstacles, prostitution policy may have large consequences, both positive and negative, for public order and the rights and life quality of sex workers. While the desired

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societal effect of a policy intervention may be weak or absent, it may nevertheless result in positive or (unintended) negative consequences for individual sex workers. For example, the abolition of outdoor prostitution in residential areas in Vienna has reduced public nuisance, but has also had negative effects on the work circumstances of the sex workers. Or, the public health outreach in the Netherlands has resulted in the near disappearance of STD in Dutch prostitution. On the other hand, immigration rules often result in the forced mobility of sex workers. The one area where policy can have an unmitigated positive effect is in respect for the rule of law when it comes to the treatment of sex workers by officials.

- 7.** All policy regimes in prostitution are equally vulnerable to the twin laws of 'no effect' and 'unintended consequences'. If we were to make a generalization about policy regimes, we would say that abolitionism, the desire to eradicate prostitution from society, usually has negative consequences for the rights of sex workers. In abolitionist policy regimes, sex worker rights are generally ignored and, apart from more or less strict law enforcement, there is little appetite for the details of policy implementation. There is, however, a real risk in regulatory regimes for sex worker rights to take a backseat to public order and crime fighting goals.
- 8.** The media plays a mostly negative role in the prostitution debate in The Netherlands. Through the clever use of a number of rhetorical devices, prostitution is almost universally portrayed as crime-ridden, and sex workers as the powerless victims of brutal and ruthless traffickers.
- 9.** A particular obstacle to policy making is the moral nature of prostitution policy. As a result of this circumstance, media can have an undue influence over the design and implementation of prostitution policy. It can also be difficult for politicians and administrators to prevent being unduly influenced by the framing effects of the media.
- 10.** The implementation of prostitution policy, the design and realization of policy programs and the careful selection of policy instruments, is a crucial factor in the success or failure of prostitution policy. Through implementation failures the outcomes of prostitution policy can deviate strongly from its goals. To reach the desired effect it is necessary to carefully design the implementation process parallel to the development of the law. Often undesired effects derive from belated considerations about implementation procedures.
- 11.** A stable cadre of experienced administrators and professionals is a necessary, but not sufficient, condition for successful prostitution policy. Continuity in personnel is important for building trust with the major stakeholders in the field and for understanding the interconnectedness of prostitution.

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- 12.** Conclusions 10 and 11 are amply demonstrated in the realization of prostitution policy in Vienna. Through strong pressure from the media and residents, and because of the influence of politics over program implementation, the relatively small (in size) problem of street prostitution dominated policy design and implementation. As a result, the work conditions and rights of outdoor sex workers were seriously compromised. The first steps have been taken to address the much larger issue of prostitution in clubs by creating a licensing system. Although relatively modest number of clubs have applied for license, it is still too early to draw conclusions about this part of Viennese prostitution policy. We know little about work conditions and labour relations in Viennese clubs.
- 13.** Prostitution policy in Vienna relies heavily on organizational and authoritative instruments. The first to check on STDs and to provide social services to sex workers; the second to constrain outdoor prostitution. An interesting development has been the introduction of networking instruments in the design of the new Viennese prostitution law.
- 14.** Licensing is the cornerstone of the Dutch approach to regulation. To assess the value of licensing one has to compare it to the situation of regulated tolerance in which there was no licensing. The benefits that licensing has generated are: 1) police and inspection officers have the legal title to enter sex facilities, 2) licensing makes it possible to set conditions for the adequate management of sex facilities, 3) it has led to improvements in hygiene, 4) has banned the under-aged and foreign sex workers without legal papers from licensed facilities, 5) has made the enforcement of public order more easy under the threat of revoking or not renewing the license. The licensing system has now matured into a system of dense and frequent inspection on different dimensions of the prostitution business, which has increased the amount and quality of information about work conditions inside sex facilities. However, licensing has resulted in only limited improvements in the work conditions in sex facilities, more so in the clubs than in the window facilities. More seriously, in some instances licensing has not always been able to prevent gross, criminal and violent exploitation of women from the window sector. It is unclear at the time of writing to what extent licensing will extend to newer forms of prostitution such as Internet-generated home prostitution and individual escort. The conclusion is that licensing is not the cure for all problems afflicting the prostitution sector, but licensing is to be preferred over a situation of no licensing.
- 15.** The introduction in the Netherlands of the legalisation Act of 2000 was accompanied by, what in hindsight turned out to be, an error of policy design. By freezing the number of sex facilities at the current level (out of a misplaced fear that the new law would lead to a wave of new sex business), Dutch municipalities de facto created an oligopoly of proprietors. These were the same proprietors who had created their business in the times that owning and managing a brothel was still illegal and who operated on, what observers have called, a “shady business model”. It made the entry of new

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entrepreneurs in the market for licensed sex facilities impossible. Innovation had to take place outside the market of clubs and windows.

16. The introduction of the 2000 Act was also accompanied by an implementation error. The government indicated from the start that it would not get involved in labour relations between proprietors and sex workers. The government considered labour relations an issue of civil law that needed to be negotiated between the two civil parties involved. It overlooked the structural power imbalance between these two parties. The government's position allowed proprietors to successfully frustrate any improvement in work labour relations, and to keep intact a *modus operandi* in which sex workers, although in name and for fiscal purposes self-employed, are *de facto* treated as employers, and a business model in which the risks fall onto the sex worker and the profits onto the proprietor.

17. Almost all types of policy instruments have been used in Dutch prostitution policy, but the most important developments in the decade after the passing of the 2000 Legalization Act were the increasing importance of authoritative and information/networking instruments. Under the influence of increased migration from Eastern Europe and a number of high profile cases of organized, violent exploitation of sex workers, Dutch cities have mobilized more authoritative and information/networking instruments to control and reduce window prostitution.

18. The most important authoritative instruments are the increased vigilance toward indicators of trafficking during the inspection of sex facilities and the use of a combination of information tools and the licensing system to close down window facilities (and a few clubs). Police organizations in all three cities are much more vigilant in fighting those who exploit sex workers, resulting in an increase in criminal investigations. However, this increased vigilance often results in regulation-induced mobility of individual sex workers. The instrument of administrative notations makes it impossible for sex workers to work in certain facilities and, often, in the city as a whole.

19. An emphasis on implementation and policy instruments contains a risk for regulatory drift and goal displacement. Regulatory drift is the subtle shift in instrument choice over time, where each choice in itself is legitimated by what, at the time, seemed good reasons. Goal displacement may imply the increased emphasis or *de facto* abandonment of policy goals. In the Netherlands we see this in the abandonment of the improvement of labour relations in the prostitution sector and the almost exclusive emphasis on fighting and preventing trafficking.

20. The most important information/networking tools were the emergence of Regional Information Centers and chain management. For it to be effective, chain management required careful design, which includes among other things a focus on concrete cases, sufficient power to make decisions, the presence of a "chain manager", and the support of higher administrative and political ranks.

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21. The registration requirement in the new Dutch national prostitution law is meant as a comprehensive national information instrument for the purpose of fighting trafficking. Both for empirical as theoretical reasons, we have doubts about the effectiveness of the instrument. First, as experiences in Austria show, not all sex workers will register, in particular not the groups in the unlicensed sector that are most at risk for exploitation. Second, the obligation of authorities to register, even when they perceive indications of exploitation, will decrease the effectiveness of registration in preventing trafficking. Regulators claim that the contact with the sex worker at the time of registration allows them to build trust, provide information and even empower the sex worker. Yet, there is little evidence to support these claims. Registration is vulnerable to high mobility and, as the Austrian experience shows, leads to evasion of the registration system. Theoretically, the policy literature indicates that rules that are perceived by the target group as disruptive or onerous will be resisted and evaded.

22. The concept of trafficking remains one of the most problematic issues in prostitution policy. While sexual and economic exploitation, as we saw, is a real risk for sex workers, the concept of 'trafficking', as defined in law, is so inclusive and inflated, as to be almost useless in the realization of prostitution policy. More importantly, its use in policy implementation results in negative consequences. One of them is that it places the burden of the fight against exploitation on the shoulders of the sex worker, who is prohibited from working after she has been designated as a victim of trafficking, and leaves the proprietor, as the employer of exploited sex workers, more or less untouched. In addition, the notion of being a victim of trafficking does not correspond with the lived experience of many sex workers. They see themselves as economic migrants who have fled from a situation without perspective to work in the sex industry in North-Western Europe.

4. RECOMMENDATIONS.

1. The dynamic complexity of the prostitution field requires commensurate coordination mechanisms within public administration. The organization literature call such a situation one of 'reciprocal interdependence' that requires a form of 'mutual adjustment' as mechanism of coordination. In everyday terms, mutual adjustment means continuous, ongoing and open communication between the actors who are involved in policy implementation. In instrument terms this amounts to an emphasis on information/networking tools. Chain management in the Dutch cities and the experiments with networking in Vienna are examples of this form of policy coordination by ongoing mutual adjustment.

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- 2.** To further augment the learning and information capacity of the administrative system we suggest giving a greater voice to the sex worker in the design and implementation of prostitution policy. Both in the Netherlands and Austria sex workers have no effective input in the design and implementation of prostitution policy. In this the New Zealand approach could be an example, in which organized sex workers play a role in every aspect of policy making, from policy design to policy implementation. While the situation in Austria and the Netherlands is different from that in New Zealand (more porous borders, more migration) the government could explore how it could facilitate the empowerment and organization of sex workers.
- 3.** Instead of trafficking we suggest to employ the concept of sexual and economic exploitation as a key category in prostitution policy. We have broken each of these two concepts down into three aspects, each of which exists in degrees of seriousness. The concept of exploitation has a number of advantages over trafficking. It respects the migratory nature of prostitution, it highlights the similarity of exploitation in prostitution with that in other occupations that attract labour migrants, and it shows that exploitation is not a homogenous phenomenon and it shows that a legal and administrative apparatus to fight and prevent exploitation is already in place.
- 4.** Traditional forms of prostitution, such as clubs and windows, are in decline in the Netherlands. Newer forms that make use of the Internet as a recruiting mechanism and make the sex workers (more) independent from proprietors, such as home prostitution, hotel and escort, are becoming more popular. We suggest that municipalities find ways to deal with these newer forms of prostitution in a safe and constructive way. Sex workers collectives might be an effective instrument in gaining access to this group.
- 5.** As sex work is regular work in the Netherlands since 2000, we would advise the government to support sex workers in their attempts to collectivize. For various reasons sex workers are by far the weakest party in the sex trade. As a result, and for some of the reasons outlined above, their legal position is unacceptable from the perspective of labour law and, in general, a rule of law and human rights perspective. In such a situation the collective representation of group interest is the only way forward. The government should explore how it can facilitate such collectivization of sex workers. A strong sex workers collective would be able to fulfill several policy functions: signal instances of sexual and economic exploitation, assist in healthy innovation in the prostitution sector (With 'healthy' we mean innovation that respects sex workers' rights, client safety and public order.) and advise government about effective policy design and implementation. A strong sex worker collective could also be helpful in fighting the persistent stigma of prostitution and provide for some basic societal goods such as being able to open a bank account, close a rental contract, or obtain a mortgage or health and disability insurance.