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Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands

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Authors:
Hendrik Wagenaar, Leiden University, Campus Den Haag and University of Sheffield
Sietske Altink, Leiden University, Campus Den Haag
Helga Amesberger, Universität Wien

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1. Introduction

1.1 D's story

D is Rumanian. She came to Austria at the age of 20 to work in prostitution. She says she had a normal youth. She finished school at the age of 19. Her mother always pushed her hard: "Learn, learn, learn. My mother was obsessed by it". She wanted some quiet now. She says that perhaps "she had it too good".

She traveled to Austria with a girlfriend from school and the father of the girlfriend. Later three more women joined them. The father agreed with the women that they would give him their earnings. He would save these for them and when they would stop working he would give them the savings. D says she trusted him, but in hindsight she concludes that "he said one thing and what really happened was something quite different." One of the women had been with this man much longer. One evening she drank too much and said in tears that the man lied and that he would never return their earnings. D tells that the evening before his arrest the man fought with his son. His son accused him of treating the women badly. The son's girlfriend also worked for the man.

The women decided to jointly file a complaint against the man for pimping, rape and physical abuse. D only filed a complaint for pimping; she said he never beat or raped her. The man received two years. The witness testimonies in court were not anonymous. He is now free and lives in Germany. Although he is her neighbor in her hometown in Rumania, she says she doesn't fear him. "These people often threaten but they don't do anything; although you're never sure. After she accused him the police has guarded her parental home for a while.

D went to work in the establishment in Wels where she works now. She worked there from 2003 to 2006. After a change in Austrian immigration law she had to leave the country in 2006. She didn't want to go back to Rumania so she and her partner (who is also a sex worker) decided to go to Italy. She and her partner worked in Italy for six months. "It was very difficult. The work is illegal there, you don't know anybody, you live with someone, and you don't even know what papers you have.' D and her partner work as dancers, but they had few clients. She never did escort work because she was too afraid of that. She gets to know a man. D and this man get into a fight over money. He wanted 100 Euro a month from them. She asked him if he was out of his mind and offered him a one-time payment of € 200. After that he damaged their car all the time, so that she had to have it repaired constantly.

D, her partner and two other women were arrested at work. "The police was funny. I started flirting with them. The police took them into another room and asked if the women would show their breasts. D said "No problem". She thinks she was lucky because she had nice breasts. She was able to get all the women released. However, they were on the street now, without house or car, because the car was in the garage because of the damage inflicted by her former partner. At the station they got to know some Rumanian people. When they heard of their hopeless situation they invited them to stay with them. D thought that one of the man wanted to have sex with her, but when he came to her in the middle of the night he just put a blanket over her. It turned out that he was from Interpol, but he had no information on them and when he checked that the car was indeed in the garage, they were free to go, but they had to leave Italy.

D and her partner decided to go to Spain. Rumania was not yet part of the EU then and they had overshot the legal period of stay in the EU by then. They were once more illegal. They were arrested when the police controlled the club where she worked. She spent 28 months in a detention center waiting to be extradited. They had a right to engage a lawyer, but the lawyers said, and the other inmates confirmed this, that their case was hopeless. They then opted for voluntary return to Rumania. The living circumstances were tough. There were women there who had been in prison who said that prison was better. The guards were all "arseholes". While she was awaiting the trial, they put D and her partner in a cell with men. She was handcuffed to an older man and the guards made fun of them. The food was terrible ("In Rumania that food would only be good for pigs."). They mostly ate bread. When she later asked to be locked up in one cell with her partner, the guards deliberately separated them. She cried a lot in those days. She and he partner wrote to each other every day; that made it easier. She still has the letters. A client who liked her visited her sometimes in 'prison" and brought them some of their possessions. When she was at last deported to Rumania, all her belongings were returned to her, also her money.

Her entry into sex work "just happened" ("war einfach so"). She didn't have much experience as a young woman in Rumania. She had had sex 10 times perhaps, and she detested blowjobs: "With this mouth I kiss the pictures of saints in church!" A woman in Austria who was a friend of the father of her school friend explained to her what sex work entailed. She also had little experience with alcohol. The night before they left for Austria she got drunk on gin-tonics; for the first time in her life. She had to throw up. She is grateful that she hasn't become an alcoholic.

D is happy to work in Austria again because sex work is legal here. She says that the illegal work in Italy and Spain caused her much stress: "You always have to be careful whom you to talk to, which clients you take, when there would be police controls. It burdened me a lot. I have done enough illegal sex work. I never want to do that anymore." However, in Austria "you go to sleep with one law and wake up with another. Things are very uncertain here". (Here D. refers to the abolishment of the so-called prostitution visa in 2006; that is why she had to leave Austria and she went to Italy.)

She says that her legal position is nevertheless far from ideal in Austria: "I am powerless here. I don't get a wage slip. I can't take out any credit or loans. I can't lease a car. I pay the Tax office, I pay social security, but I won't get a pension. I don't get anything. I also don't get unemployment benefits. I don't need them because in this profession you always find work easily. I can't do anything in my name." She adds that she needs a work permit for gainful employment, although she lives already for a long time in Austria and pays taxes and social insurance.

D's story is representative of the story of many sex workers that we encountered in the course of our research over the last three years. What does her story tell us? What lessons does it contain about sex work in contemporary Europe? And how does it speak to the challenges of regulating prostitution in a fair and effective manner? First, the rule of law is crucial for the position of sex workers. In the fierce debates about the best 'policy regime' for sex work, this basic fact is often overlooked. Even imperfect forms of regulation are better for the human rights of sex workers than the illegality that automatically comes with the prohibition of prostitution. D's story suggests that illegality is inextricably bound up with arbitrary behavior of state officials, police corruption, and living in constant fear of being arrested. One argument that we will develop in this report is that policy choices have consequences. What looks good and morally just on paper has concrete, real-world consequences once policy is operationalized and implemented. It is every nation's sovereign right to prohibit or legalize sex work, but in the final analysis such policies come as 'packages' of laws, rules, agencies, professionals, policy instruments, practices, and consequences, both intended and unintended. Whenever we talk of policy, what we should have in mind is the totality of what policy entails in the real world.

Second, and the numbers that we will present in chapter 3 will bear this out, sex work is an occupation which is easily accessible to immigrants. Over 90 percent of female sex workers in Austria and 70 per cent in the Netherlands are immigrants. This has been the case historically, although in the past much of the migration was internal. Sex work requires no diplomas or entry requirements, earnings are immediate, it is a cash economy that operates in the shadows, it requires minimal language skills, and it allows for high mobility. This makes it attractive to recent immigrants. Sex work is not the only entry occupation for immigrants as we will see, but the migratory nature of sex work has profound implications for the position of sex workers. One of those implications is that it makes them vulnerable to exploitation, both sexual and economic. This is in addition to sex work's intrinsic vulnerability as a stigmatized occupation. Another implication is that the same qualities that make sex work attractive to immigrants make it an exceedingly difficult 'object' for public administration and legal regulation.

The third lesson is the opposite of the first, legal rules and regulations can make life very difficult for sex workers. Many migrant sex workers struggle with arcane and constantly changing rules that regulate the conditions for legal stay or work in the country. As D puts it: you go to sleep with one law and wake up with another. In D's case she had to leave the country after the law changed. In the Netherlands a change in the rules prohibited Rumanian and Bulgarian sex workers to make use of a special tax arrangement that allowed them to work independently. In many cases the women became dependent on proprietors or marital partners for finding a job or staying in the country. Female asylum seekers who are awaiting a visa decision can according to Austrian law *de facto* only work in prostitution. Non-EU women can only stay in the country for a few months at the time and have to leave to leave temporarily to avoid becoming illegal. And for those migrant women who have lived and worked in the country for many years and have paid income tax and social security benefits, it is inexplicable that they don't have the same rights as other citizens, or at a minimum the right to work as an employee.

Finally, D's story is the story of trafficking. An older male acquaintance takes advantage of these young women's vaguely articulated urge to leave Rumania and try their luck in one the affluent countries of Western Europe. Yet the story also shows ambivalences that complicate the straightforward trafficking story. D is well educated and can hardly be called naïve. She is vague about her entry into sex work ("It just happened"), but it is not a story of violent initiation. After the Rumanian trafficker was convicted D goes back to sex work. She says that the proprietors take amounts to about 45 per cent of her earnings, that she works 8 hours a day (and at most 48 hours a week) and can more or less set her own hours, can decide herself which sexual activities she want to engage in and complains about the hygienic circumstances in the club. She says she earns enough to live off, and regularly sends money home – " as every girl does", she adds. Her legal situation in Austria is tenuous. D doesn't complain, but from the perspective of what is considered legally and normatively acceptable in Austria, D's work situation is one of economic exploitation. And although D can be seen as a victim, she doesn't behave like one. Instead she shows to be plucky and resourceful in many difficult situations.

1.2 The Primacy of Policy in Prostitution

In contemporary societies prostitution as a social phenomenon cannot be seen apart from the efforts of authorities to prohibit, contain or regulate it. The different ways in which prostitution manifests itself – as streets of softly red glowing windows with scantly clad women behind it, as groups of women huddled on the sidewalk of a city street, as discrete clubs whose advertisements greet you at the airport, as the woman who asks guests if they want to share a drink with her in a hotel bar, as the Chinese masseuse who offers a 'happy end' for an additional fee – are the joint outcome of autonomous social-economic forces and government intervention. While attitudes towards sexuality, poverty rates, education and employment possibilities, and migration trends influence the "supply" of sex workers, an array of government interventions shapes the size and organization of the prostitution market. Zoning laws determine which streets are designated for prostitution purposes, na-

tional laws determine the legal position and human and labor rights of sex workers, the skills and expertise of professionals and administrators determine the health and work conditions of sex workers, and, as we saw in the interview with D, immigration laws influence the mobility of sex workers. Also, for reasons that we will explain later in this chapter, in most European countries prostitution is considered a matter of considerable moral urgency. Policy makers and the media award it substantial amounts of their attention. No matter how policy towards prostitution is formulated, in every country policy leaves its imprint on the market for sexual services.

This, interestingly enough, is not a forgone conclusion in the academic debate about the regulation of prostitution. Several scholars argue that the shape of the sex trade is not so much influenced by public policy as by "rapid and large-scale economic and cultural transformations" (Bernstein, 2007, 168; Agustín, 2010; Scoular, 2010) These authors urge us to see prostitution as "'sex labor' and thereby as one manifestation of profound changes in the nature, diversity and spatial location of service work in general. These changes then lead to "new configurations of intimate life as well as in new erotic dispositions". These larger economic and cultural transformations are deemed to be so powerful that national responses to prostitution are hardly more than the enactment of this "postindustrial" sociological script. Policies as diverse as the Swedish attempt at client criminalization and the Dutch attempt at legalization of sex facilities, result in the same outcomes: the banishment of outdoor sex work from the gentrifying city centres and the proliferation of venues of sex work for a more affluent clientele (Bernstein, 2007, 168-169; Scoular, 2010).

This is an argument that is interesting, dubious and risky. It is interesting in that it forces us to think of prostitution, and prostitution policy, in broader terms, as embedded in and influenced by larger developments in the wider economy, culture and labour market. We will do just that when we argue in chapter 6 that prostitution in Western Europe cannot be seen apart from the large migration streams of the last decades of the 20th and the first decade of the 21st century. It is dubious in that it is based on very thin empirical evidence. Outdoor prostitution has been banned from many cities in Western Europe (Tampep,2009). The motivation has been diverse, however. In the Netherlands the tolerance zones that were set up for vulnerable, addicted sex workers, began to attract large numbers of young Eastern European women, many of whom were quite likely victims of trafficking (source: interviews service providers The Hague). It is in fact the downsizing of window prostitution in Amsterdam, not the abolition of outdoor sex work, that has been part of a larger drive to regenerate the inner city. In Vienna street prostitution has been banished to the periphery of the city because of complaints of residents. And in Italy, the crackdown on street work was part of a populist law-and-order campaign of the Berlusconi government. But more important perhaps is the gross misrepresentation of the policies of the two "test cases" Sweden and the Netherlands. Where the Swedish approach failed to provide funds for social and health services, although these were an integral part of a policy design that seeks to deter clients and help sex workers to leave the sex trade through social interventions (Florin, 2012), the Dutch legalization saw a continuation of the generous provision of health and social services to sex workers in al types of prostitution. Moreover, observers of the Dutch prostitution world agree that, despite the many problems of legalization (Altink and Brokelman, 2007), a large number of sex workers can work in a safe environment, a sharp contrast with the Swedish situation (Florin, 2012; Östergren and Dodillet, 2011).

The prostitution-as-sociological-outcome argument is risky as it downplays both the entanglement of prostitution and the state (Wagenaar, 2006) and the possibilities of government interventions to have a positive or negative impact on the position of sex workers. One reason for this state of affairs is perhaps that until recently

policies regarding prostitution received little attention in the scholarly literature.[1] Despite the abundance of scholarly and popular literature on prostitution, publications on prostitution policy are relatively scarce (for exceptions, see Wagenaar, 2006; Danna, 2007; Agustín, 2008; Sullivan, 2010; Skilbrei & Holmström, 2011; Weitzer, 2012). When prostitution is discussed in the literature it is usually in terms of law, discourse, social movements, sociology, or political science (Outshoorn, 2004; Scoular and O'Neill, 2007, Bernstein, 2007). These are important aspects of public policy, particularly at the agenda setting and policy formulation phase (We will come back to this later in this report.). Also critical discourse analyses of large changes in policy approaches undeniably help us to position prostitution policies within broader societal trends of moral judgement and social control (Scoular and O'Neill, 2007; Scoular, 2010; Garland, 2003). When policy is discussed at all, it is usually in a perfunctory reference to national "policy regimes". We will discuss these below (1.4), but these analyses lack the detailed, fine-grained empirical underpinnings that ground them in the everyday reality of urban governance. For example, the crucial elements of policy design and implementation – crucial that is for the outcomes of policy and its immediate impact upon the position and the rights of sex workers – are rarely if ever discussed in the scholarly literature.

In this report we describe and discuss the results of a 3-year research project that focuses on policy toward prostitution: the concerted attempts of administrators and elected officials to deal with the societal impact of different forms of prostitution and the position and rights of sex workers. The study is designed as an extensive comparison of two countries, Austria and the Netherlands. The countries were chosen because they have comparable – although certainly not identical – approaches towards prostitution. (See Appendix 1 for a more detailed exposition of the research design.) In Appendix 3 we will report separately, although in less depth, on the Swedish approach of criminalizing clients. The focus throughout this report is on policy *implementation*, the phase of the policy process where plans and intentions have to be put into effect. This is the mundane but difficult work of establishing sufficient funding, assigning personnel, developing rules of procedure, selecting policy instruments, entering in negotiations with stakeholders, and organizing public agencies, all with the purpose of making a difference in a particular societal domain. (Howlett et. al., 2009, 160; Stone, 1997) Policy implementation relies on administrators, civil servants and professionals to design and manage the necessary actions (ibid.), and for this reason usually takes place outside the glare of media attention. What distinguishes policy implementation from policy formulation is that it is always immersed in real-world situations. Policy formulation deals with ideas and ideals on the one hand and images and data that function as a proxy for the issue on the other; in any case policy formulation is at some remove from the world that is the subject of a policy initiative. Policy implementation, on the other hand, is always situated in a world where concrete individuals (administrators, sex workers, police officers, proprietors) work and live. Administrators and professionals are likely to have face-to-face contacts with members of their target group. Those engaged in policy implementation have to be highly attentive to the contextual particulars of the problem at hand. And they can be sure that their interventions will generate reactions, resistance and attempts at accommodation by the target audience and their colleagues. Policy implementation is crucial because it determines the outcome of a policy initiative. No matter how lofty, important or urgent a policy initiative is, if it cannot be translated into effective policy measures, the policy will fail, or worse, result in negative unintended outcomes. But perhaps even more important in the case of prostitution policy: policy implementation has a profound influence on the rights and the position in society of a vulnerable group, sex workers.

1 The last couple of years have witnessed an increased interest in prostitution policy. The New Zealand Collective published an excellent collection of papers on the implementation and effects of the 2003 Prostitution Reform Act (Abel et al, 2010). Swiss and German researchers have engaged in comparative studies of several middle-European countries (Pates and Schmidt, 2009; Vorheyer, 2010. There are excellent studies done by national policy institutes such as the Dutch WODC and the New Zealand, and Queensland (2004). Recently, Ron Weitzer has published a book-length study of the (effects of) the legalization of the prostitution business in some European countries (2012).

1.3 What is Public Policy?

Whoever discusses the subject of public policy in an international context immediately encounters semantic problems. 'Policy' is a concept that has different meanings in different countries.[2] For this reason it is important to state that we largely follow the Anglo-Saxon meaning of the terms 'policy' and 'politics'. The term 'policy' then attempts "to capture the idea that policy-making is a techno-political process of defining and matching goals and means among constrained actors". (Howlett et. al., 2009, 4) Howlett et. al. argue that policy has two dimensions. First a technical one that seeks 'to identify the optimal relationship between goals and tools". This is generally seen as the business of state agencies whose task it is to manage public problems. (Ansell, 2011, 4) The second dimension of public policy is a political one "since not al actors typically agree on what constitutes a policy problem or an appropriate 'solution'". (ibid.) Politics is thus society's ways of dealing with the deep pluralism, the inevitable conflicts of belief, religion, value and interest that characterize all societies. (Wagenaar, 2011, ch. 10) It refers to practices and institutions' that "seek to establish a certain order and organize human coexistence in conditions that are always potentially conflictual". (Mouffe, 2000, 101) These institutions are the executive and parliament who bargain, negotiate, and deliberate over policy goals and broadly defined courses of action.[3] In democratic terms, policy making as a technical process of managing public problems is at the "tail end" of the representative chain that starts with election campaigns and parliamentary debate. (Ansell, 2011, 4). We will return to policy implementation in more detail in chapter 6.

1.4 Policy Regimes

It is common in the literature on prostitution policy to distinguish between different, so called policy regimes. The term 'policy regime' is commonly used in the policy literature to express a certain coherence and continuity in a policy field. These derive from the way a problem is formulated, the actors and organizations that are involved and who decide, and the kind of instruments and solutions that are favored. Howlett et. al. say for example: "The term 'policy regime' attempts to capture how policy institutions, actors, and ideas tend to congeal into relatively long-term, institutionalized patterns of interaction that combine to keep public policy contents and processes more or less constant over time". (2009, 86) Prostitution regimes are thought to coincide with national borders.

2 In the Anglo-Saxon world it is common to make a distinction between politics and policy. The latter roughly refers to the executive arm of government, the public agencies that manage societal problems, and the first to the decision making process by elected officials. In the German-speaking world there is no term for policy; policy, polity and politics are all referred to as '*Politik*'. There is a separate term for public administration ('*Verwaltung*') that strictly refers to the executive branch of government. In the Netherlands there is a distinction between '*politiek*' (the activities of elected officials), '*bestuur*' (the management of societal sectors by both elected officials and civil servants, usually by 'bestuursorganen' such as city councils, umbrella organizations, corporatist bodies, etc) en 'beleid' (which involves all public agencies, including those that have been privatized, such as housing corporations.) In Norway 'politikk' covers both policy and politics. (oral communication May-Len Skilbrei). In Italy there is no word for policy; everything is politics. (oral communication David Nelken) To make things even more complicated: nowadays the concept of 'policy' has fallen out of favor as being too statist and is being replaced with the term 'governance' signifying the decentered nature of contemporary policy making.

3 The implicit normative principle is that there is a division of labor between the executive and public agencies in the management of public problems. While the first is at all times democratically accountable, the latter operates in relative freedom, although under a strict political mandate, to design and implement public programs. In this way politics and administration are more or less kept separate. The key argument is that this allows specialized technical expertise to inform the design and implementation of policy programs. In fact, as Manin (1997) argues, a cadre of specialized experts, wedged in between elected officials and the people, and who design and execute solutions to politically identified issues, is one of the key characteristics of representative government. However, in practice the normative boundary between politics and administration is highly permeable. Politicians regularly ignore or intervene in administrative processes, and in an increasingly plural, complex and adversarial society public agencies have to engage in complex negotiations with stakeholders to attain a modicum of effectiveness. (Wagenaar, 2011, ch. 10; Ansell, 2011, 4).

Classifications and definitions differ somewhat (Outshoorn, 2004) but the most commonly mentioned regimes in prostitution policy are criminalization of the sex worker, client criminalization, regulation and decriminalization (Kantola and Squires, 2004; Agustin, 2008; Scoular, 2010; Abel et. al., 2010).

1 *Criminalization of the sex worker.* In this policy type every form of sex work is illegal. Sex workers, pimps and proprietors are arrested and prosecuted; clients are arrested and often sent to awareness programs, so called John schools. Examples are among others the USA (except Nevada), Canada, Ireland and Italy. Criminalization of sex workers is based on a public order and/or moral order discourse in which prostitution is considered a threat to the public space of a city, the family or public health (Kantona en Squires, 2004). Ideologically it has strong affinities with the next regime, client criminalization. Both see "sexuality ... to be at the root of women's subordination to men, with sexual objectification constituting the egregious substratum of all forms of gendered exploitation". (Bernstein, 2007, 11, characterizing the position of radical feminist anti-prostitution activists such as Kathleen Barry and Catherine MacKinnon.) When sex workers are criminalized they have few rights. This generally results in arbitrary behavior of authorities and police corruption. D's story is an example of that. Some countries choose to criminalize prostitution but to tolerate it in practice, or to enforce the law with some types of prostitution (such as street prostitution) and be more tolerant with others (escort and clubs). It might be remarked that there are no known examples where criminalization has resulted in the actual abolition of prostitution.

2 *Client criminalization.* In this policy type clients and pimps are prosecuted. The goal is to abolish prostitution by quenching the demand for it. Where the criminalization regime in its realization (tacitly) accepts the presence of prostitution in the urban environment, as long as it is not too visible and limited to certain urban spaces, client criminalization has the more utopian goal of doing away with prostitution in society altogether.[4] Client criminalization is carried by a radical feminist discourse that depicts prostitution as an institutionalized form of (sexual) violence against women. According to this discourse prostitution can never be a free choice because the women who work in it are by definition victims of circumstance or of structural male domination. One of the main purposes of client criminalization is pedagogical: to imprint upon men that women need to be treated with respect. Client criminalization has been developed in Sweden and is now adopted in Norway, Finland and Iceland. It is a morally persuasive approach that pays an ever larger role in debates about prostitution policy.

3 *Regulation.* Like criminalization regulation has a public and moral order rationale, but in addition harm reduction is a major goal. Regulation can, but does not necessarily, be part of the legalization of the sex industry. For example, the Dutch policy of regulated tolerance, in the 1980s, in which brothels were still illegal, was a form of (proto-) regulation (Brants, 1998; Wagenaar, 2006). The aim of regulation is by and large to control the criminal and public order aspects of prostitution, such as restricting the number of sex workers and sex facilities, containing sexually transmitted diseases, restricting prostitution to certain parts of the city, and fighting trafficking. Most regulatory regimes engage in harm reduction by providing health and social services to sex workers and to victims of exploitation. Regulation involves a broad range of policy instruments, such as information tools, licensing and registration. It can be debated to what extent regulation is a distinct type at all as all prostitution policy involves some form of regulation. The Netherlands and Austria are examples of regulatory regimes.

4 *Decriminalization.* The goal of decriminalization is to abolish all laws that are specifically aimed at prostitution and let it be regulated by regular criminal, corporate and administrative law. Sex work is considered a regular profession, but because of its stigmatized nature, sex workers require support in obtaining their rights, such as the right to adequate work conditions, privacy, bodily integrity, freedom

4 A good example is the recent announcement by the French minister for women Najat Vallaud-Belkacem, to abolish prostitution in France and Europe in general and to create a "society without prostitution". Apart from vague references to client criminalization, there was no announcement of how to attain this lofty moral objective. (The Economist, July 14, 2012).

from coercion, and access to health care, social security, and financial services. A decriminalization approach requires an active involvement of the state; in this sense there is considerable continuity with a regulatory approach. However, in contrast to a regulatory approach, authorities and sex workers consider each other as equal partners, and sex worker organizations have a considerable say in the design and implementation of policy. If necessary, government assists in empowering sex workers. New Zealand and the Australian state of New South Wales are the only examples of decriminalization (Abel et. al.; 2010), but the 2000 Act that legalized sex facilities introduced decriminalization aspects into the Dutch regulatory approach. Perhaps it is safe to say that the ambition of decriminalization is to provide the prostitution business with a recognized place in society so that sex workers can work safely and without coercion and public order is respected. This does not necessarily mean that policy makers morally accept prostitution.

The regime approach has been criticized on several grounds. First, it can be questioned if these regimes are sufficiently coherent and consistent to be recognizable as regimes; particularly as they allegedly neatly coincide with national borders. In reality the boundaries between regimes are fluid and considerable within-country differences erode the regime concept. For example, between the different *Länder* of the Austrian federal republic prostitution policy ranges from near prohibitionism in Voralberg to a much more tolerant regulatory approach in Vienna. And even within the criminalization regime of the USA there is a pocket of regulation in the state of Nevada.

Second, the concept of policy regimes has nothing to say about implementation. In almost every policy there is a considerable gap between policy intention and implementation. This has various reasons (Presman & Wildavsky, 1992; Hill and Hupe, 2008). Policy is implemented by different actors than those that formulated it. This can for example result in a more lenient approach by the police than a more repressive city council stipulates. In most countries a considerable tension exists between national and local policy makers. This is particularly, but not exclusively, the case in federal republics where the states have considerable autonomy from the federal government. For example, despite the fact that the German federal government has legalized brothels in 2001, not a single German *Land* has implemented the law so far (Pates, 2011). But even in unitary national states such as Sweden large differences between cities (Stockholm and Malmö) and even public agencies (police and National Council for Health and Social Work) exist in implementing the law (Florin, 2011). In other words, regime indications say little about what happens 'on the ground'.

The conclusion is that the term policy regime refers primarily to the intentions of policy makers. They are a classification of policy goals. Criminalization of the sex worker indicates that prostitution is seen as a more or less inevitable, perhaps ineradicable, but morally unacceptable part of urban life that must be contained through enforcement of criminal law. Criminalization of the client expresses the intention to abolish all prostitution from society. Regulation expresses the pragmatic acceptance of prostitution as a social phenomenon but strives to contain its presence in society. Decriminalization, finally, expresses the intention to take the rights of sex workers seriously by bringing prostitution under the remit of regular law and giving sex workers a voice in the design and implementation of policy. However, regime indications say little or nothing about the acceptation or realization of these intentions. Policy regimes thus function at best as descriptive markers that help the policy analyst to recognize and roughly classify policy measures. Perhaps it is better to speak of policy types or approaches than regimes.

1.5 Challenges to Prostitution Policy

The wider context to this project is the rapidly changing nature of commercial sex, and the European, national and local policy responses this generated, in particular in the last three decades. We increasingly see a spatially

and technologically mobile population of actors buying and selling sex in different venues (street, massage parlours, hotels, flats, clubs, saunas) and through different mediums (mobile phone, internet and via third party brokering). At the same time prostitution manifests itself most urgently at a local level, putting pressures on neighborhoods and municipal administration, and conflicting with changing ideals of public spaces. The drivers for these changes include migration, transformations in attitudes towards sexuality and gender, the emergence of mass tourism, the ensuing gentrification of inner cities, and an increasing emphasis on the competing demands of equality and human rights alongside concerns about security and social control in prostitution, particularly related to cross-border prostitution and human trafficking.

National policy responses have been diverse, varying from client criminalization to the decriminalization of prostitution. Local policy responses have diversified in response to these pressures tending either towards regulation or repression especially of street prostitution. Media attention towards prostitution is strong, with an emphasis on violence, coercion and trafficking. In the current climate of economic austerity migrants are looked upon with greater distrust, and we witness a resurgence of anti-immigration sentiments that directly affects national and local attitudes towards prostitution. As the story of D testifies, in some countries this has led to the violation of the democratic rights of a vulnerable group.

Prostitution as a social domain thus presents policy makers with a number of challenges that makes the design and implementation of public policy exceedingly difficult. First, due to the high mobility of sex workers, prostitution presents itself as a social phenomenon that is exceedingly difficult to control or manage. (We will discuss the extent of and reasons for mobility in chapter 2) In addition, the main actors – proprietors, sex workers and clients – have strong incentives to resist and deflect policy measures. Due to the stigma that rests on prostitution, sex workers actively guard their anonymity, making it difficult to reach them or to get them to talk about their experiences. In addition stigma makes their organization as an interest- or pressure group difficult to accomplish. (Abel and Healey, 2011). Proprietors, even in countries were prostitution has been legalized, tend to operate on a shady business model that aims at maximizing profits by denying sex workers basic labour rights and decent working conditions (Zuidema et. al, 2006; Roessing & Ramesar, 2011; Wagenaar & Altink, 2012). Third, these real-world obstacles are augmented by the observation that prostitution policy has all the characteristics of morality politics (Mooney, 1999). This explains a number of peculiar aspects of prostitution policy, such as, the lack of a robust policy theory, the confusion around core concepts, the persistent lack of, and we will show, disinterest of key actors in reliable data, the prominence of ideology in formulating prostitution policy, the impatience of policy makers with the implementation of formulated policies, the abrupt swings in policy course, and the absence of an international community of experts. Morality politics usually results in adversarial politics driven by the values and opinions of opposing sides. This places administrators and professionals who implement such policies in a difficult position. As Ansell puts it: "Agencies must now manage their business in an environment of divisive politics, in which their actions are scrutinized and challenged by opposing sides." (2011, 4) (We will discuss morality politics in chapter 4.) The effect of these challenges is a sector that prefers to operate in the shadows, that is not shy to resist or accommodate policy measures, that is therefore highly policy resistant, and in which stakeholders invest deeply held values and strong emotions and scrutinize the public agencies that implement policy.

1.6 Overview of the report

In chapter 2 we present quantitative indicators of the sex business in Austria and the Netherlands. In chapter 3 we discuss the shape of national prostitution policy in the two countries. In chapter 4 we discuss the moral nature of prostitution policy and its implications for policy making. In chapter 5 we present local policy design

and implementation. Chapter 6 discusses some implications of our research for the concepts of trafficking, migration and exploitation. In chapter 7 we summarize our main findings and formulate some recommendations.

In Appendix 1 we discuss the design of our study, our methods and our data sources. Appendix 2 is linked to chapter 6 and contains an operationalization of sexual and economic exploitation. Appendix 3 finally describes the Swedish Sex Purchase Act and its effects.

2. Prostitution in Austria and the Netherlands

2.1 General Country Information

2.1.1 Austria

Austria is a federal republic with nine provinces *(Länder)*. It has about 8.4 million inhabitants[5], of which 20% lives in the capital Vienna. 51% of the residents are female, 49% male. Like in other industrial countries the population above the age of 64 is nearly as high as the population between the 0 and 19 years (17.7% resp. 20.4%). 11.5 % are non-EU nationals, of which about 40 % are EEA-citizens and 60 % so-called third-country nationals.

Five political parties are represented in the Austrian parliament: The Social Democrats (SPÖ), gained the most votes in 2008 and form a coalition with the Peoples Party (ÖVP). The third largest party is the populist, right wing Freedom Party (FPÖ), followed by the Greens (*Die Grünen*). Together with the FPÖ's offspring *Bündnis Zukunft Österreich (BZÖ)* these parties form the parliamentary opposition. The National Council is elected every five year.

Vienna. Vienna is the capital, the largest Austrian city and one of the nine provinces. Administratively Vienna consists of 23 districts. About 1.7 million people live in the city, 2.4 million in the metropolitan area. 19% of the Viennese population are 19 years or younger, 17% are 65 years and older. Approximately 29% of the Viennese population are non-EU nationals, of which 36% are EEA-citizens and 64% third-country nationals.

For most of the time since the First World War (with the exception 1934 – 1945) the Social Democrats (SPÖ) have formed the political majority. The last elections in 2010 resulted in a coalition of the SPÖ and the Greens, which are the fourth largest party. The FPÖ was elected by 25.7% and is therefore the second largest party after the SPÖ. The FPÖ and ÖVP form the opposition in Viennese Parliament.

Oberösterreich. Oberösterreich is in respect to its population the third largest province after Vienna and Niederösterreich. Nearly 1.4 million people live in this primarily rural region. Administratively the province is organised in 18 political districts, of which 3 are so-called *Statutarstädte* (Linz-Stadt, Steyr-Stadt und Wels-Stadt, which are the major cities). The provincial capital is Linz. The population of Oberösterreich is younger than the Viennese: 22% are 19 years or younger, 17% are 65+. Only a bit more than 9% of the population of Oberösterreich is of non-Austrian nationality, of which 35% EEA-nationals and 65% third-country citizens.

The province has been primarily governed by the ÖVP, a conservative, Christian orientated political party in the decades after World War II. Since the provincial election of 2003 a coalition of ÖVP and the Greens forms the government, which was strengthened in the elections of 2009. Four political parties are represented in the provincial parliament (*Landtag*): ÖVP, SPÖ, FPÖ, the Greens. In the major cities (Linz, Wels, Steyr) the Social Democrats have the majority in the municipal councils.

5 Statistik Austria (http://www.statistik.at/web_de/statistiken/bevoelkerung/index.html), 30.11.2012. The data refer to the year 2011.

2.1.2 The Netherlands

The Netherlands is a constitutional monarchy that is ruled by a coalition government. Its population is 16.8 million. In 2012, the three participating cities had the following population count: Rotterdam 616.500, The Hague 505.000, and Utrecht 316.000. Compared to Austria, the Netherlands is somewhat younger; in 2010 14,7 % of the population was 65 or older, while 24% was 20 or younger. Almost 3,5 million people in The Netherlands were not born there; of these over 1.9 million were born in a non-western country (www.statline.cbs.nl), with the largest groups coming from Turkey, Morocco, Surinam and Poland. The percentage of residents from foreign origin is much higher in the large cities. In Rotterdam and The Hague 50% of the population is from foreign origin, in Utrecht this is 32%. In al three cities a sizeable majority of foreigners is non-western.

The Netherlands is a parliamentary democracy. Political power in Dutch parliament is currently divided between 11 political parties. None of these can ever hope to attain a majority. The Netherlands is for this reason sometimes called 'a republic of minorities'. The result is that The Netherlands is governed by a coalition of 2 or more parties. Currently the Conservative and Social Democratic Parties form a majority.[6] Although strictly speaking the Dutch parliamentary system is dualistic (ministers cannot be members of parliament), in practice no coalition will begin its governing term without a clear agreement between the parties involved about the goals they want to attain while in power.

In the Dutch political system municipalities occupy a strong position; stronger in fact than the provinces. Although The Netherlands is a unitary state, meaning that many laws are implemented in a nationally uniform way, many other tasks fall within the remit of the municipality. Constitutionally, local governments have either independent authority over tasks or implements national legislation (Andeweg & Irwin, 2002, 166). The implementation of the legalization of prostitution is an example of the latter as it has been devolved to the municipalities. In practice the relationship between the national and local government can be quite intricate. Although prostitution is arranged within the so-called APV, the General Local Ordinance, a measure of uniformity is attained through the umbrella organization of municipalities, the Association of Dutch Municipalities. Andeweg and Irwin conclude that the co-governance regime enables local governments considerable discretion to the point that local policy can deviate from national intentions (cit. 167). It is safe to say that in the realm of prostitution municipalities have considerable autonomy, which they are not shy to use, as the examples of Amsterdam and Utrecht demonstrate.

2.2 How many sex workers?

2.2.1 Obstacles to Obtaining Reliable Numbers

Numbers play a key role in policy making. Numbers indicate the size and nature of a societal problem, trends in its development, the composition of target groups, and the effectiveness of policy interventions. No nation can formulate effective macroeconomic policy without reliable statistics of economic growth, the money supply, employment and national debt, the health status of its population, or developments in crime for example. Without precise and reliable numbers policy makers are quite literally blind. Not surprisingly numbers are often contested in the adversarial environment in which policy is formulated. (Stone, 1997, ch.7) There are good reasons for that. In most cases obtaining good statistics of a natural or social phenomenon is exceedingly difficult. Also, critics will contest the selection or interpretation of statistics. Under every act of counting, usually invisible to the reader, lies a decision what to include and exclude from the category that is counted. (ibid.) And,

6 Through historical contingency the conservatives are called liberals in The Netherlands. The party, the Party for Freedom and Democracy, began its life as a true liberal party in the 19th century. The Netherlands also has a more progressive liberal party, called Democrats 66, referring to the year that it was founded.

numbers are often used strategically in policy debates. In the field of prostitution all the above problems are compounded, as we will demonstrate below. Numbers are imprecise, unreliable, based on vaguely defined categories, and sometimes wildly off the mark. More seriously, numbers in prostitution are often used in strategic ways, not to inform but to promote. In fact, one central finding of this study is that, for good reasons, precise and reliable numbers on key aspects of prostitution are hard to come by. Some studies and reports have gone out of their way to carefully generate precise numbers. We describe some of these in this report. This should put policy makers on alert, as media reports and academic publications blithely, and with seeming authority, report prostitution statistics as if they were hard facts. In fact, we have come to conclude that no statistic on prostitution should be accepted without questioning its sources and the mechanics by which it has been generated.

Nevertheless, it is an important goal of the project to try to establish reliable and precise data on the number of sex workers in the participating cities, and possibly countries. There are two arguments why these are important, particularly in prostitution policy. The first is that without a good understanding of the size, age or composition of the population of sex workers in a particular locality it is difficult to make policy. Second, reliable, precise numbers form a factual counterweight in the moral debates about prostitution. We will discuss moral policy in chapter 4, and its effects on numbers below, but already here we observe that since the mid 1990s prostitution has received unprecedented attention in the media, the entertainment industry, as well as in government reports, research studies, international conferences, and statements from politicians. Bernstein speaks of a "discursive explosion" and thinks that the almost obsessive attention for prostitution mirrors that of social reformers of the early 20th century. (2007, 12-13) Nevertheless, there are few precise, reliable facts available in prostitution policy. The media, despite their interest in prostitution, are remarkably deficient in reporting reliable numbers.[7] But more serious scholars also uncritically cite numbers they have found in other publications. For example, Bernstein, in her otherwise readable and interesting book, claims that there are 30.000 sex workers working in the Netherlands. She bases this number on a Swedish source and concludes that the number of sex workers per capita is much higher in the Netherlands than in Sweden (2007, 163).[8] 30.000 is a number that circulates on the Internet and is often quoted in reports about the Netherlands, but there are good reasons to assume that it is a serious overestimation of the size of the prostitution market in the Netherlands.[9]

Conceptual Obstacles. There are several reasons why it is difficult to obtain reliable, precise numbers about prostitution. The first is conceptual and relates to the contested nature of prostitution policy, which aggravates political struggles over numbers. As Deborah Stone explains, numbers in policy have symbolic value. To count is to count *as*, and where you draw the line, so that some things are included and some excluded from your categories, is always a political decision. (Stone, 1997, 164) All numbers in public policy present moral images to their intended audience: "Numbers make normative leaps". (Stone, 1997, 167) They are a call to action. Struggles over conceptual boundaries and definitions are inherent to public policy.

The above applies in particular to prostitution policy. Even the central concept – prostitution – is the subject of intense debate. People hold different images of what constitutes prostitution. For one it is the autonomous woman

7 For example, a recent report on the prostitution market in Amsterdam (van Wijk et. al., 2010) gives several well-founded, estimates of the number of sex workers working in the city in all forms of prostitution. The researchers were careful to distinguish between daily numbers and cumulative numbers (that is, the number of different women that have at any one moment in the year worked as a prostitute in the city). They estimated the annual, cumulative number at 1090 to 3380, with the daily numbers for all types of prostitution about half the lower estimate. Nevertheless all newspapers and media reported that "5000 sex workers were working in Amsterdam", with some newspapers, wholly unwarranted, adding another 50 per cent to that number to arrive at a total of 7500.

8 To be fair to Bernstein she does mention in a footnote that providing precise statistical accounts of the sex-industry is notoriously difficult. But she then uncritically asserts that her numbers provide a "rough portrait" of the size of respective national prostitution markets (2007, 234).

9 The number about the Netherlands that is most often quoted nationally and internationally is 25.000 sex workers nationally. This number dates from 1999 and represents an extrapolation of estimates of Municipal Public Health Agencies. (van der Helm and van Mens, 1999) Van Wijk et al. report that a few years later (2004) the Municipal Health Agency in Amsterdam estimates that 8000 sex workers are active in the city. That number has been quoted since. (2010, 32) In both cases the estimates are highly dubious. For one thing, they probably represent annual numbers, although that is not clear from the original sources.

who freely chooses to sell sexual services. For the other it is a young woman from a poor, underdeveloped country who has been threatened and cajoled into prostitution in the developed West by criminals. For a third prostitution is the outcome of a disorganized life that is marred by abuse and addiction. For yet another the face of prostitution is a young, vulnerable girl whose need for emotional support is sexually exploited by callous young men in her environment. The problem is that all of the images of prostitution are available 'out there' in the 'real world'. They merge fact, moral belief, and calls for action, and their adherents hold on to them with sincere conviction. Yet, the choice of what image of prostitution prevails has large consequences for the nature and size of the issue that is the subject of public policy, as well as the type of instruments that are required for its solution.

This insight about the role of numbers in policy explains two persistent features of the prostitution debate: the inflated estimate and the ubiquitous rhetorical trope of the "sad story". In the first case we encounter unsubstantiated estimates, albeit delivered with great authority, about the number of (street) sex workers, Internet sex work, victims of trafficking, etcetera. The second feature is about the absence of numbers. Here, the argument is grounded in, often lurid, tales of a single sex worker or victim who, by implication and through the use of vague quantifiers, is supposed to represent a large population. The purpose in both cases is the same: to make a moral point and to incite the audience to action. Numbers have symbolic value in all public policy. What distinguishes morality politics, as we will discuss in chapter 4, is that numbers are primarily used for their symbolic value, uncoupled from their factual, descriptive role, and with little reflection about the assumptions that determine the delineation of key categories.

Practical Obstacles. There are also practical obstacles in counting the number of sex workers. Prostitution is not a homogeneous phenomenon. It comprises different work types such as street, window, club, home and escort prostitution, each of which poses its own challenges to counting. Moreover prostitution forms a world that is closed to outsiders and, particularly in countries where it is not regulated and operates in the shadows. Moreover, as we will explain below, the level of mobility in prostitution can be extremely high. As a result most data sources are problematic. Police records only register sex workers who have been involved in some kind of criminal activity, mostly violations of visa requirements or as victims of pimping. Tax records are rarely updated, contain many expired files, while an unknown number of sex workers work outside the tax system or not accessible as in Austria.[10] It is not surprising then that most countries do not have centralized data banks that keep track of basic statistics on prostitution. And even where such data registers exist they are often based on unreliable sources.

In Austria since 2007 each year a "Review of Situation" (*Lagebericht*) with regard to prostitution is produced by the Federal Ministry of the Interior, where relevant data of the so-called redlight-milieu are collected. The 'Lagebericht' is compiled from data that are requested each year from the departments of the Criminal Intelligence Services in the *Bundesländer* by the department of Criminal Intelligence Service Austria of the Federal Ministry of the Interior. However, the police/criminal departments in the *Bundesländer* are not obliged to report to the Ministry of the Interior, because prostitution lies in the responsibility of the provinces. Therefore, the data are not collected and compiled in the same way in each province. The "reviews of situation" seem to give a comprehensive picture at the very first glance. Indeed the data derive from various sources like police investigations, checks of work sites, police district investigators in the milieu, reports of patrols, reports on imprisonment. However, the data are in fact highly unreliable. The definition of sex facility differs per province[11],

10 In the Netherlands from October 2008 till March 2010, about 5000 sex workers registered with the Tax Office.

11 According to the information of the Criminal Intelligence Service Austria there is no written definition about the types of facilities. It is said, that the designations are related to the licenses given, but the licensing procedure does not distinguish between brothels and nightclubs for example, while it leaves out Turkish-Albanian cafés or "*Tischdamenlokale*", where prostitution takes place on a large scale, altogether.

registration of sex workers is differently organized per province, which results in different bases for estimates, and the number of unregistered sex workers is anybody's guess.[12]

The Austrian criminal statistics of the police reported 20 complaints regarding Human Trafficking (§ 104a StGB (penal code)[13] and 52 complaints regarding the interrelated offence "Grenzüberschreitender Prostitutionshandel (§ 217 StGB; trading into prostitution across national borders) in 2011. In total 114 victims of trafficking were identified by the police, of about 70 of them a final report was sent to the public prosecutor. Most of the victims between 18 and 40 years. The majority of them were Rumanians, Bulgarians, Hungarians and Nigerians. The crime clearance rate is 85% in human trafficking (§ 104a StGB) and 78,8% in "Grenzüberschreitender Prostitutionshandel" (but the clearance rate does not say anything about the conviction rate).[14] These figures illustrate that

- There are relatively few complaints of human trafficking;
- It is easier (as the numbers suggest) to file complaints concerning § 217 StGB;
- There are two categories of victims in the statistics. Only when there is enough evidence about victims they are listed in the report to the public prosecutor. Nevertheless the police still define the other ones as victims. It is another incidence of the symbolic value of numbers.

The police regards § 217 StGB outdated. In times of the Internet advertisements and of free movement within the EU this law is hardly eligible anymore. Furthermore, until now the range of punishment is higher than for human trafficking (currently the sentences for human trafficking are raised to 5 years). "Grenzüberschreitender Prostitutionshandel" does not refer to violence, but the High Court decided that only making travel arrangements or announcing jobs in brothels is not enough for a conviction. The police pleads for an integration of § 217 into § 104a StGB (human trafficking). So far too many conditions have to be satisfied for a conviction of human trafficking. Contrary to "Grenzüberschreitender Prostitutionshandel" human trafficking needs resorting to dishonesty, which is difficult to prove. Therefore using loverboy-methods would not lead to a conviction after § 104 StGB. According to the police recruiting should not be a crime, but the intent to personal enrichment. (Sources: interview Steiner; oral communication Tatzgern (both Federal Criminal Intelligence Service)[15]

In the Netherlands there is no central registration of the number of sex workers. The Dutch authorities order periodical evaluations of the effects of the 2000 law that legalized the sex industry (Daalder, 2002, 2007), in which educated guesses as to the size of the national population can be found. The Tax Office can only provide data on the number of sex workers who are registered tax-payers, and admits that their files are unreliable because they are incomplete and women who have left the country. The National Reporter on Human Trafficking, presents annual data about the number of "registered" victims of trafficking; in practice this number is based on the number of cases that are brought to court or in the investigation phase (about 450 in prostitution in 2009). (Nationaal Rapporteur Mensenhandel, 2010, 98) Some municipalities contract research agencies on a regular or an incidental basis to make an inventory of the sex-industry in their region or town. (Verwey Jonker, 2006, van Wijk et. al, 2010, Oude Breuil, 2011) They rely on various data sources ranging from police and tax records to personal observation.

Given the practical obstacles to counting the number of sex workers it is not surprising that there are no national databases. Due to the considerable mobility of the population, these estimates provide information about

12 The number of non-registered sex workers differs greatly according to the source one uses. The police estimates the number at 3,000 to 4,000 nationally. According the investigations by LEFÖ-Tampep which rely mainly on the observations of provincial health directorates, health services and women's organisations, the ratio of registered to non-registered sex workers is 1:6 In the Austrian Tampep report of 2008/9 it is assumed that 27,000 to 30,000 sex workers (registered and non-registered) work in Austria. It is not clear if these are daily or annual numbers.

13 The statistics do not allow discrimination according to the type of human trafficking. That is, not only human trafficking for sexual exploitation is included in the number.

14 Statistics delivered by the BK.A (Federal Criminal Intelligence Service) on May 15, 2012 and November 20, 2012. In 2010 18 complaints because of human trafficking and 47 complaints because of "Grenzüberschreitender Prostitutionshandel" were filed; that is not a big increase. (Sources: Security Reports 2010, 230 and 2011, 226f. by the Ministry of the Interior).

15 We will return to this point in chapter 6 where we discuss the concept of trafficking.

the number of sex workers in a single time unit. All authors and actors mentioned mention that there are sex workers who do not (only) work in the licensed sector, although police officials whom we interviewed were of the opinion that the unlicensed sector was probably small.

High Mobility. Challenged by the absence of reliable numbers, we set out – in hindsight rather naively – to obtain more precise and reliable data on the number of sex workers who worked in the various types of prostitution in a particular location. First, we clarified the numbers issue by distinguishing between daily and aggregate numbers. The *daily number* (the number of women working in prostitution in a particular area on a given reference date) will give an indication of the actual size of the prostitution market in that area. The *aggregate number* (the number of different women who worked in the area at least once in a given year) gives an indication of the total number of women who engage in prostitution in that area and of the intensity of mobility. The aggregate number cannot be used as an indication of the size of the local, or even national, prostitution market as it contains a large amount of double counting (women working in different cities in a particular year). It is useful, though, for service agencies to get an indication of the capacity needed.

We started out with what we thought would be the easiest type to count: window prostitution. The number of windows is available from the city administration, and that number does not fluctuate very much. We used different sources: police records, municipal statistical offices and health agencies. We also went out to do our own counting. Our field workers took position on a street corner and counted the number of women working the windows within our field of observation on several successive days. They also counted the number of women working in a representative sample of clubs. What we discovered was another, and as far as we know unreported, obstacle to obtaining reliable numbers: an astonishing amount of mobility. For example, of a particular group of 6 windows, 3 would be occupied from 13.00 to 18.00 hours, then all of them until midnight. However the next day, none were occupied until 18.00 hours and only 2 in the evening, and so on. Some women would only work for 2 hours; others the whole day. Through our interviews we discovered that mobility applied to location, geography, type of sex work, and working hours. We report on mobility in the next section, but subsequent discussion with police officers and other professionals confirmed our initial observation: many told us that because of the high turnover of sex workers in a particular location, they had stopped bothering about the precise numbers. In the remainder of this section, using different sources, we will nevertheless present estimates that we trust are as reliable and precise as it gets given the limitations described above.

2.2.2 How Many Sex Workers?

The Netherlands

In Table 1 we have summarized our estimate of the number of sex workers per city. Our sources are research reports, police data, client websites and records of the tax office. Rotterdam refers to a report of a study it commissioned from the Verwey-Jonker Institute. (Goderie & Boutellier, 2006, 4)[16]. These are the data that we also have used. 'We also observed two clubs and a number of so called "animeerbars". The numbers we counted on different evenings were quite low and did not lead us to conclude that the Verwey-Jonker estimate should be changed upwards.' For Amsterdam we used the numbers as reported in van Wijk et. al, 2010. We were not in a position to check the accuracy of these data. In cities with window prostitution we based our estimate on the number of windows multiplied by a factor 2, as cities claimed that all windows were rented out in 2 shifts and had a 100 per cent occupancy rate. Based on our observations in The Hague and on the literature (van Wijk et al, 2010) this is probably an overestimation. (Wagenaar, et. al., 2011, 100) We observed many unoccupied windows

16 The researchers of the Verwey-Jonker Institute estimate the number of illegal sex workers per day In Rotterdam at 450. "Illegal" is a broad category in the report that includes all forms of unlicensed and criminally illegal prostitution. The researchers do not specify how they arrive at this number. In our own interviews with police officers in Rotterdam and The Hague, the general opinion was that they though that the extent of unlicensed prostitution was quite small.

in The Hague during daytime hours; van Wijk et. al. estimate the occupancy rate in Amsterdam at 70 per cent. With regards to clubs we based our estimates on the occupancy rates that our insider researcher observed in a number of small and large clubs throughout the country. In small clubs she rarely found more than 4 women working, increasing to 6 or 7 in weekend evening hours. In large luxury clubs the numbers are 6 to 8 during daytime hours and 15-20 at weekend evening hours. (See also van Wijk et. al,, 2010, 74) We were unable to count the number of sex workers that worked in escort, hotels, home prostitution, temporary sex facilities, or massage salons.[17] Particularly the latter results in an underestimation as it is at the moment a rapidly expanding element of the sex industry.[18] Also, stakeholders mention a so-called 'dark number', sex workers who work in unlicensed facilities. No one however was willing to estimate the dark number, although some police officials were fairly certain that in the regulated environment of The Netherlands it was quite small. Thus, the numbers in Table 1 represent a lower boundary of the number of sex workers in the four largest Dutch cities.

Table 1: Number of sex workers in the licensed sector per day per city in window, street and club prostitution (Estimate based on sources described above; publication dates between 2006 and 2010).

Utrecht	285
Rotterdam	400
Den Haag	600
Amsterdam	650
	1.935[1]

[1] Since 2010 local authorities in Amsterdam and The Hague have continued with the downsizing of window prostitution.

We also counted the number of unique mobile phone numbers on Internet prostitution sites according to the methodology described in 2.5.We only counted sex workers who, according to their ad, did not work in a club or escort service that day. We counted 10 different sites on different days. This resulted in 282 unique numbers per day that lead to a total of 28602 hits on the different sex sites. The last number suggests an avalanche of Internet prostitution, but as we explained in chapter 2.5 most mobile numbers generated between 2 and 2000 hits. On an average day only 282 unique numbers are offered on al the sex sites combined in the Netherlands. These sex workers cannot easily be traced to a specific city, as most of them advertise regionally.[19]

17 The escort sector is not insignificant. In 2007 researchers estimated the number of escort agencies in Amsterdam at 120. They also estimated that 350 to 500 women worked for these agencies, and 200 offered escort services independently. The numbers should be approached with caution though. First, escort agencies operate in a much wider geographical area than other types of prostitution, so that the number cannot just be added to the day count of a particular city. Second, the numbers are cumulative numbers. Third, sex workers are active in different types of prostitution simultaneously, which would result in double counting. Fourth, many escort agencies may operate under different names, but may be different branches of one owner.

18 In 2008 the *Rode Draad* published a report on Thai massage parlours. Initially they report a list of 150 allegedly erotic parlours nationwide. A large number of these were no longer active. Field workers of the *Rode Draad* visited 63 parlours. On average 4 to 5 women worked in these. It is unclear if they all engaged in erotic massage. Since 2008 the number of Chinese massage parlours has increase rapidly. In July 2011 in The Hague alone the *Rode Draad* counted 29 Chinese parlours. Again it is not clear if they all provide erotic massage, although in circulars aimed at the Chinese community one finds ads for sexual services by Chinese 'students'. (Young Chinese women enter the country on a student visa.).

19 Although it was not the primary goal of this research, we collected numbers of male sex workers in the Netherlands. However, to assess the number of male sex workers is even more difficult. There are very few facilities where they can work: two clubs nationwide, the odd sauna and a few 'businessbars' in Amsterdam. The great majority recruits clients through the Internet. Together with former male sex worker we looked on a Friday afternoon at the profiles on the Internet on the then relevant websites where men tried to attract male clients. We looked at the profiles of men who explicitly named their prices but we also looked at the signs the men put for insiders: a dollar sign in their name, or a telling remark, like 'not for free'. That afternoon we counted 172 active profiles nationwide. Apart from the segment: men for men, there are males who work together with a woman to cater for the bisexual market and there are men who offer their services to women. To judge from the increase in advertisements for 'this gender diversity', this is a growing market.
The transgenders, (transsexuals, transvestites and shemales) sometimes work in the areas where women are working, but are also known to receive clients at home and in temporary brothels.

Excluding sex work in massage salons and (some) of the escort sector, we can safely say that in the four largest Dutch cities about 2200 sex workers are active on an average day, with somewhat more in weekends and somewhat less on weekdays.[20] We do not venture to estimate the cumulative annual number.[21] This exercise in estimating the number of sex workers is deeply frustrating to anyone who aspires to precision and reliability. However, it forms an accurate reflection of the reality of doing research on prostitution. Nevertheless, Table 1 allows us to draw two important conclusions. First, unless we have made very large estimation errors – which is unlikely given the range of sources – the number of sex workers and thus the supply of sex work in the four largest cities in the Netherlands is not particularly large; more a matter of hundreds per city than of thousands. We do not imply of course that this in any way diminishes the problems that sex workers encounter, or the problems that prostitution might create in a city, or the challenges it poses to policy makers and professionals. If, for example, half of the 400 sex workers in Rotterdam were victims of traffickers or were being exploited and abused by pimps, this would constitute a large social, humanitarian and criminal justice problem. Also, the 470 or so sex workers who on any given day work in window prostitution in The Hague, attract clients, pimps, hangers-on etcetera and thereby may be a considerable nuisance factor in the city. (Or a tourist attraction, as the Amsterdam red light district.) But the relatively low numbers do put the overheated rhetoric of the media and some politicians in perspective. Given the restrictions of our data that we articulated above, we are dealing, in the Netherlands at least, with a social phenomenon of relatively modest size.[22]

Second, this exercise in counting also demonstrates that we should approach any report of numbers in prostitution research or the prostitution debate with considerable skepticism, particularly if the authors are vague about their sources. The obstacles we encountered are more or less universal and not easy, if not impossible, to overcome. We therefore do not believe that anyone is in a position to generate numbers that are much more accurate or reliable than the estimates we reported in Table 1. Imprecise numbers are a fact of life in prostitution research. In prostitution the informed estimate is the best we can hope to aspire to.

Austria

It is impossible to compare the Austrian and Dutch number of sex workers. The registration regime in Austria makes it possible to simply count the number of registered sex workers. However, this generates what we have called an aggregate annual number that does not tell us much about the number of sex workers that work in a particular Austrian location on a given day. For this reason the Austrian numbers are much higher than the Dutch numbers. This is largely an artifact of the way the numbers have been collected. The figures in the next paragraph indicate the number of "registered" sex workers at the end of a year. This is an *annual* number and it comprises all sex workers who were working legally the respective year and were still "registered". This does not mean that they work the whole year or the respective day of inquiry. Day numbers are not collected in Austria, so it is not possible to estimate the size of the prostitution market in Vienna and Oberösterreich the way we did this for the four large Dutch cities. These caveats should be taken into account when we read Chart 1.

Counting the number of registered sex workers allows for compiling trend data. However, these turn out to be misleading. Between 2007 and 2010 Austria saw an increase in the number of registered sex workers, also the provinces Vienna and Oberösterreich (see chart 1).[23] 1506 sex workers were registered with the police in Vienna

20 For two reasons this is an overestimate. First, the Internet number is national, and second, since we estimated the number of sex workers per city per day, The Hague and Amsterdam have reduced the number of windows.

21 We also refrain from estimating the national number of sex workers who work on an average day in the Netherlands. To arrive at this we would have to estimate the number of sex workers in windows and clubs in the smaller cities and towns and in clubs in the countryside. We would also have to estimate the number of women who work for all escort agencies and in massage parlors in the country.

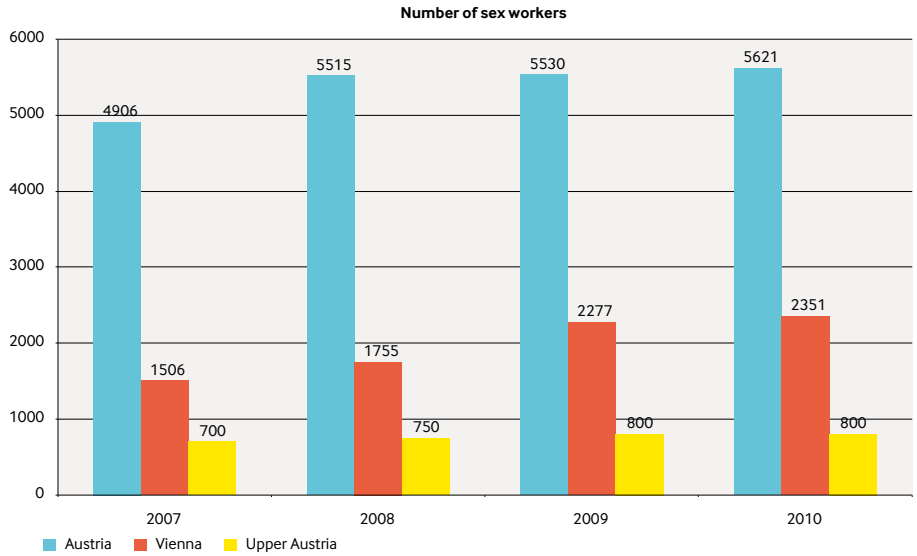
22 As we have no information of the number of sex workers in Vienna's clubs, we are reluctant to make any statements about the size of the prostitution market in Vienna. We do know that in 2011 at most 120 outdoor sex workers are active at any one time.

23 The data are based on the information by the Ministry of the Interior which provided annual reports of the so-called red light-milieu for the years 2007 to 2010. The Criminal Intelligence Service Austria requested from the respective departments information each year in the middle of January. But the criminal departments of the *Bundesländer* were not obliged to report. In 2011 the Ministry of Interior started to develop a new nationwide data base. As this is not finished yet, no data are available for 2011.

in 2007, in the year 2010 it has been 2351. This is an increase of 56%. In September 2012 about 2800 sex workers were registered in Vienna[24]; this is a further increase of 19%. The figures about registered sex workers in Oberösterreich are approximations as there is no centralized database and no obligation for registration with the police by the sex worker. But brothel owners have to report several data of sex workers working in the facility to the police. The data provided by the Ministry of the Interior suggest also an increase of about 14% in numbers of sex workers, the ones provided by the health offices and collected by *maiz* indicate a much larger increase (60%).[25] This difference can only be partly explained by the different reference dates. For the reports by the Ministry of the Interior (*Lagebericht)* the data were collected at the end of December, *maiz* collected the data in March and April each year. Another cause might be that nowadays more sex workers follow the obligation for regular health checks. These divergent data in Oberösterreich illustrate the problems of counting which exist in Austria as well in the Netherlands (see above).

Relying on the official data by the Ministry of the Interior the number of sex workers in Austria increased from 2007 to 2010 with about 15%. According to this data the increase in Oberösterreich is in line with the national development, whereas the increase in Vienna is nearly four times higher. The numbers furthermore suggest that the general increase is primarily attributable to an increase in the *Länder* Vienna, Carinthia, Upper Austria and Salzburg; in the other provinces the number of sex workers decreased. The explanation might be that this is due to legal measures in the area of migration policies (e.g. EU-citizens can work legally as self-employed persons when they fulfill certain criteria) as well as to the geographical patterns of migration as larger cities provide more job opportunities. The vicinity of Vienna to countries of origin of the majority of sex workers might be also an important aspect. Finally, fluctuations in the numbers might be related to the way of counting. For example: Styria reported in 2007 and 2008 1000-1200 sex workers, in 2010 only 750. This decrease does not correspond with a similar decrease in sex facilities (2007: 130; 2010: 110). In general, there is no uniform correspondence between an increase/decrease of sex workers and an increase/decrease in facilities. In both *Länder* Burgenland and Niederösterreich the numbers of sex workers decreased despite an increase of brothels.

Chart 1: Number of *registered* sex workers in Austria, Vienna and Upper Austria (annual numbers). See explanation on page 26 and 27.



Source: Helga Amesberger, based on statistic of the Ministry of the Interior, Lageberichte 2007 – 2011.

24 Wien., ORF.at: Prostitutionsgesetz gilt seit einem Jahr, http://wien.orf.at/news/stories/2556922/, (02.11.2012). The police officer would or could not provide any exact numbers in the last interview (Interview Dillinger, LPD Wien, 28.09.2012).

25 According to the data collection by maiz in 2008 the health offices counted 655 and in 2011 1088 sex workers.

2.3 Mobility

Sex workers are as a rule very mobile in different senses of the word: they move geographically, from facility to facility, from one type of prostitution to another, and they move in and out the sex trade. Yet, mobility is neither uniform, nor only transnational and geographical, nor linear, as our interviews show. And we will see that it is influenced by many aspects (legal, personal, economical, work climate). One of them, as the interview with which we started this report showed, is regulation itself, in which case mobility must be considered an unintended consequence of the very rules and measures governments employ to try to control prostitution. Mobility presents large problems for administrators who want to regulate prostitution. Most rules and regulations require a fixed address or work place; many sex workers, particularly migrant sex workers, have neither.

Mobility is not a uniform phenomenon however. Not all sex workers are equally mobile and some groups of sex workers report that they prefer to work in one place for years. This applies to older Dutch sex workers in some window areas in Utrecht and Amsterdam, such as the Amsterdam Singel area and the Utrecht Hardebollenstraat who have been working for years in the same room (Van Wijk, et al, 2010 and Evaluatie Utrecht, 2009), some small private clubs, where the women said they supported each other emotionally, and male Rumanian sex workers who work in the same square mile in the centre of Amsterdam for years. The data from Austria show that about a fifth of all interviewed sex workers worked for at least three years in the same facility, half of all interviewees had worked for one year or more in the same place at the time of the interview.[26] They stated that they didn't feel a need to move as they were reasonably happy with the work conditions in the facility. In general, it seems that mobility in clubs is much less prevalent in Austria as in for example window prostitution in the large Dutch cities.

Geographical mobility comes in different types. It may be a form of commuting, a moving between facilities, between cities or, as in labour migration, between countries. Many interviewees migrated with the intent to carry out sex work in a foreign country. The descriptions of their careers illustrate that at least half of all interviewees moved to various countries and/or within one country while being in sex work. Migration and commencing sex work were in most cases motivated by economic concerns and the lack of a perspective in the home country. Unemployment, the lack of job opportunities and the low income level in their home countries caused many sex workers to migrate as well as desires for buying an apartment or luxuries. But there were very individual and personal reasons too, like to flee the parent's home and love for adventure. In addition, we found that sex workers frequently worked for short periods in neighboring countries such as Germany, Belgium, Italy or Switzerland. At least half of the Austrian sample had worked outside of Austria during their career as a sex worker. The conclusion is that prostitution in Austria and the Netherlands is overwhelmingly an immigrant occupation. In addition, international job mobility in prostitution is considerable.

Regulation is one of the root causes of mobility, both transnational as within countries. Particularly immigration law (limitations of residence and working) – in this respect labour migrants in other trades then sex work are concerned by that too – but also prostitution related laws that have an immediate impact on mobility. For example, the abolishment of the so-called "prostitution visa" in Austria in 2005 forced non-EU nationals to move to another country or into illegality. Some married an Austrian to avoid illegality and the loss of residence/work permit. Nowadays non-EU nationals need a D+C-visa which is issued only rarely for sex work and which enables to work at a maximum of 6 months per year. The implementation of the law(s) is also a crucial factor for inducing mobility. Again an example: In May 2012 the Viennese police decided – it is not clear why and how that came about – to enforce a law which forbids non-EU nationals with a visa of another EU-country to work in Austria as

26 Not included here are sex workers who worked at another facility of the same proprietor. Possibly these results are influenced by the fact that highly mobile sex workers were not accessible for outreach workers/ interviewers. But nevertheless it shows that mobility has to be looked at in a differentiated manner.

a sex worker. When a member of this group register at the police, the application for registration is declined and the immigration authorities are informed. Already registered sex workers were recommended to leave Austria and in some cases also fined. There are also indications that the immigration authorities of the country which issued the visa is informed too; something which may have severe consequences for the sex worker's residence status there. Or, as happened recently with Bulgarian and Romanian women in the Netherlands: they could not work in clubs any longer and had to find a window where they could work as an independent entrepreneur: the ministry of Social Affairs and Employment issued a letter, dated on November 17, 2011, announcing that the taxation regime that was the result of the discussions between the managers of the facilities and the Tax Office was no longer valid for sex workers from Bulgaria and Romania. Also, police procedure contributes to mobility. In The Hague, when a police officer has reason to believe that a woman is exploited by a trafficker, he will give her "an indication" and flag her to the proprietor. The proprietor, wishing to avoid any risk to his license, then asks the woman to leave his facility[27]. The police admit that this procedure contributes to unwanted mobility, but says that they encourage the women to press charges, that most deny to do this, and that can't just condone the situation of exploitation as is. (source: interview) Such laws and procedures do not only have an impact on the legal status and on the economic situation of the sex workers, it increases also their dependency on third parties (middleman, facility owners etc.) as well as their vulnerability.[28]

Few (native) sex workers live in their place of domicile. (Van Wijk, 2010, Goderie and Boutlier, 2011, Rode Draad Inventarisatie Deventer, 2008). One reason for this is the persistent stigma; sex workers fear to be recognized by their neighbors. Another reason might be that, because of high housing prices in the large cities, since the 1980s commuting in general has increased.

Geographical mobility is also often instigated by the desire to move to another facility. A large fraction of sex workers does not remain in one place for a very long time, although this conclusion applies more to the Netherlands than Austria. This kind of mobility takes place when sex workers want to increase their income (a new face can raise higher incomes) and when the working climate is not at their satisfaction. We realised in the interviews that sex workers changed the work place more often and within shorter periods especially at their entry in the trade. Similar to the regular labour market, it takes new entrants some time to find the right work environment. Later on at least half of the Austrian sex workers were less mobile in respect to changing the work place. About one fifth of the Austrian interviewees had stayed for three years and more in the same place and about 50% worked at least for one year in the same facility. Additionally one has to consider that changing the work place does not necessarily mean to change the "employer". When sex workers are satisfied with a facility proprietor it is customary to move between his/her facilities, voluntarily as the sex workers stressed. The movement from one type of facility to another (e.g. from a night club to a *Laufhaus* or studio) is mainly driven by considerations of health and independency. Many sex workers changed from a brothel or nightclub where animating clients to drink alcohol is often required, to places where no alcohol is served at all. Some mentioned that working during the night was reason for moving to another sector. Only a few interviewees move forth and back between the various business types.

Apart from 'pull' factors, mobility between facilities is also driven by 'push' factors. One common reason for mobility is the oft-stated fact that 'a new face' attracts more clients. Several Dutch respondents reported that they were let go from a facility as a group (by sms) because the management wanted to bring in a 'fresh' team. Police officers report that young women who are exploited by a pimp or trafficker are regularly forced to work in other facilities, cities and even countries to optimize their earnings potential. Insiders call this the "caroussel". (See also van Wijk et al. 2010, 57) Mobility between clubs is quite common these days; using Tax Office data van Wijk et al report that many women are registered with more than one club or with a club and an escort agency.

27 The city also offers the sex worker social services.

28 We will encounter Dutch examples of regulation-induced mobility further later in this report.

(2010, 82) Another often stated reason for this is, that women may develop contacts with law enforcers if they stay somewhere for a long time. Another reason for mobility is the closure of facilities. Some facilities lose their popularity with clients; others are closed by the authorities, such as large numbers of windows in Amsterdam and (possibly) The Hague. A common reason for mobility is conflict. The lack of a formal labor contract, the presence of economic and sexual exploitation, and the asymmetrical relationship between proprietor and sex workers, are a breeding ground for dissatisfaction and conflict. Dismissal or the sex worker leaving the workplace often solves these.

Intermezzo

People think we do it for fun: changing so often between facilities. But sometimes we are forced. We are fired. The owners frame this dismissal in the terms: we must end our cooperation. In the course of the research (March 2010- may 2012) I changed my working place at least five times. This was mostly because of a conflict. I also applied in other facilities. In one of them I was refused because they preferred younger women. In the other case I decided not to work in a particular window facility because I had to pay lots of extra's for towels etcetera. (Source: diary of the insider.)

A relatively new kind of mobility in the Netherlands is the movement between the licensed to the unlicensed sector. Although we cannot make any estimates of the size of this phenomenon, we encountered several examples in our Dutch sample. 7 of our Dutch respondents had only worked in the unlicensed sector: the temporary brothel, illegal escort, bar prostitution or working from one's own home without a license. This included the males for whom there is no licensed sector to speak of. 18 respondents had experience in both the licensed sector as the unlicensed sector. In three cases this had to do with the fact that they were not welcome (any more) in the licensed sector. Three others did not like the working conditions in the licensed prostitution and for the others it was a way to supplement the disappointing earnings in the licensed sector. For two others it was a movement to independence and organized sex work, and back, just as the opportunity presented itself. Three women only took resort to working from their home with regular clients, to make some extra money besides the work in clubs and as an escort. The mobile phone and the Internet makes it relatively easy to generate work outside the licensed sector, and low earnings and unsatisfactory labor relations in the licensed sector propel women to try their luck in unlicensed prostitution.

It is probably fair to say that mobility in prostitution is a manifestation of a general increase of mobility in the labor market that is increasingly internationalizing. Lifetime employment contracts become more and more scarce throughout the labor market. Workers are more willing to travel or migrate for work. And, in general, labor market mobility has become more accepted among the current generation of workers.[29] In addition, sex workers have their own reasons to change facility of sector, but all in all increased mobility has changed the face of prostitution in contemporary society. For example, until the end of the 1990s women who worked at the windows claimed that once sex workers have tried the windows, they would never go back to a club. (Verbeek, 1996) The consensus among sex workers and experts was that sex workers would 'graduate' from sectors where they could not work independently to a sector where they could.[30] However, this assumption no longer holds. In our Dutch sample we found many women who moved from 'low dependency' facilities such as windows or home prostitution to 'higher dependency' facilities such as clubs or massage parlors, or who worked in both simultaneously. The Internet afforded them the possibility to recruit clients independently from the mediation of a proprietor. The reason is simple. As one of our respondents put it: "You go where the money is." However, this statement must be placed in perspective: many of the women we interviewed where not on the move to make

29 For example, *Mobiliteitsbalans 2009*, Kennisinstituut voor Mobiliteitsbeleid, 2009.

30 Van Wijk et al, 2010, and Biesma et al, 2006, confirm this for Amsterdam.

extra money, but to make any money at all.[31] In Austria the majority of interviewed sex workers has also changed the type of work places. In most cases they moved from classical brothels and nightclubs to studios and "Laufhäuser" where no alcohol has to be consumed. A few women went back and forth between different types. With the exception of escort it is rather rare that sex workers work in more than one facility simultaneously.

A indicator for mobility might be change of profession. About 10% of interviewed sex workers in both countries carried out another profession simultaneously with sex work, nevertheless, the majority regard sex work as a temporary occupation and about half of the interviewees indicated that they wanted to quit sex work at the time of the interview. The reasons given were not a bad work climate, exploitation or another form of violence, but shame, health problems, problems with the husband, age, and decline in earnings. To quit sex work is not easy for well-educated migrant sex workers and even more difficult for the majority of poorly qualified sex workers. The exit is primarily hindered by a lack of legal job opportunities and/or well paid jobs in Austria and the Netherlands, but some favour the freedom (in respect to working time, reconciliation of family and work, issues of directives etc.), which goes along with sex work. And it is a matter of fact that sex work is an entry occupation in a very restrictive and closed international labour market and an occupation in which one still can earn much more as in other unqualified trades at home and abroad.

To sum up: the evidence on mobility is a mixed bag. High transnational mobility goes together with high mobility in workplace and proprietor. However, the latter applies more to certain sectors and countries than others. The Netherlands has higher mobility than Austria and mobility in window prostitution is higher than in clubs. Regulation is a potent factor in inducing mobility. Mobility can be caused by pull and push factors.

2.4 Key Indicators of the prostitution Sector in Austria and the Netherlands

2.4.1 Number of Establishments

Between 2000 and 2012 the licensed prostitution sector in the Netherlands has contracted in size considerably. In 2000 the number of (private) clubs was estimated at 800 (Visser, 2000). In November 2010 the president of the association of 'relax parlors', the umbrella organization representing small clubs, told us there were only 360-370 clubs left. Also the number of windows has decreased in this period. In 1999 there were 2096 windows, in 2009 1466. Since then more windows have been closed in Amsterdam, Alkmaar and the Hague through the use of the "wet Bibob" (see Ch.4) and through direct policy measures aimed at reducing the size of the prostitution sector (Sources: Association of Municipalities, (2009), window owners answering questions in 2009 on Hookers.nl, and data provided by the municipalities themselves). We do not want to suggest that the 2000 legalization per se was instrumental in the downsizing of the prostitution market. Although it takes more effort to obtain a license and abide by the health, safety and immigration regulations that are required to obtain and maintain a license, we believe that other factors are at work here. First, the decline of the licensed club sector has been partly offset by the rise of Internet generated prostitution. Although the numbers are not huge, as we saw before, there is a definite trend – in line with a general rise of e-commerce – towards more prostitution transactions taking place via the Internet. Although we do not have firm numbers, we think this is accompanied by an increase in home prostitution and individual escort. Also, massage parlors (licensed and unlicensed) have taken up some of the decline in clubs and windows. Second, clubs in particular seem to suffer from the current

31 We know of at least 4 women in our sample that they worked in clubs (including migrants) and also made money on the side by working in a temporal (illegal) brothel or at home. They made appointments with clients through the Internet. One respondent had a relatively short career between working in a massage parlor and at home. One woman had done virtually everything: window, escort, had sex in cars and was currently working in a club. Another had applied for a license to work on the streets, but had to wait too long and started to work in an SM facility, which she combined with receiving clients in a temporary brothel. The insider diary provided some extra information of mobility of her colleagues: Two of them worked the windows after working in a club and then moved back to a club.

economic crisis. Perhaps it is safe to conclude that the traditional sex club is becoming obsolete as a business model in the sex industry. The decline in window prostitution is the direct consequence of policy interventions that are triggered by concern over the level of trafficking in the licensed window sector.

Interestingly enough Austria presents a different picture. According to the data from the Ministry of the Interior, a total of 990 sex industry facilities[32] existed in Austria in 2010. More than half of them are located in Vienna (532); Oberösterreich had 109 facilities. Included in these numbers are "legal" and "illegal" facilities.[33] The Viennese police estimate that only about 250 are eligible for a "license". (source: interviews) These numbers constitute a remarkable increase. Between 2007 and 2010 the total number of facilities increased with 13% from 879 to 990. The increase in Vienna (33%, from 400 to 532) is far above the Austrian average. In Oberösterreich the increase is more modest – from 103 facilities in 2007 to 109 in 2010, about 6%. The overall Austrian increase is mainly due to an increase in the *Länder* Vienna, Lower Austria, Carinthia and Burgenland, and to a lesser degree, in in Salzburg and Upper Austria. In Tyrol and Styria the number of sex facilities decreased (-19% and -15%).[34] It is difficult to explain the differences between Austria and the Netherlands in facility trends. One reason for the Austrian increase could be that the data collection by the Ministry of the Interior has improved as more sources are consulted and other ways of data collection are used. Another explanation could be that, because of the absence of a licensing system, it is easier for sex workers to start their own business. Cristina Boidi, director of LEFÖ, argues as much when she notices that due to an increasing independency of sex workers more of them found their own studios. This would mean, we have an increase in studios or small clubs.[35] This is an important argument as we see a similar trend towards independent work without proprietors among Dutch women, but with fewer opportunities to start their own business. We will return to this point in later chapters.

Little can be said about the type of facilities in Austria. Figures are not available, only observations by the police and NGOs. According to these observations, most facilities are brothels or night-clubs/bars, but there is a continuous trend towards "Laufhäuser", sauna clubs and massage parlours. At least in some Austrian regions a tendency towards big facilities with financially potent investors in the background is recognisable (see: Lageberichte 2007-2010 and Empfehlungen der Arbeitsgruppe Länderkompetenzen Prostitution, May 2012, p. 22)

Also no information is available about the owner structure. Maiz noticed that the monopoly position of facility proprietors diminished in Upper Austria in the last few years. Nowadays only a few people own more than one facility. This means that the pressure of competition increased too. After the full implementation of the authorisation procedures in Vienna and Upper Austria we will know more about the type, the size, and the owner structure.[36]

By way of conclusion we think that the trends in the number of sex facilities reflect important developments in the nature of prostitution. Bernstein argues that large-scale economic and cultural transformations have led to what she calls "an increasing diversification in the way that sexuality is transacted". (2007, 14) She points out that the sex industry is connected to other sectors such as tourism, hotel chains, the leisure industry, the mobile telephone industry, information technology, and urban governance. (2007, 13) Prostitution has become a global phenomenon where both sex workers and clients travel to find respectively opportunities for work

32 Such facilities are: brothels, "Laufhäuser", massage parlours, escort services, sauna clubs, night clubs, go-go bars, peep-shows, table dance facilities, swinger clubs, sado-maso-studios, etc.

33 It is difficult to distinguish between legal and illegal facilities as for example in Vienna there was no licensing/ authorisation procedure before the new prostitution law 2011 (WPG 2011). The police speak of illegal brothels when they are not able to meet the requirements set in the law.

34 Vorarlberg reported in 2007 12 sex facilities, in 2008 zero, in 2009 22 and in 2010 again zero. These figures are a good illustration of the problems with the data.

35 Conversation with Cristina Boidi (LEFÖ), January 20, 2011. In Vienna there are no announcement and licensing procedures for brothels or clubs as long as no alcohol is served, which makes it more easy to open a sex industry facility.

36 For Vienna the first figures most probably will be available in June 2013; in Upper Austria the transition period lasts until March 2014.

and sexual consumption. Local prostitution markets reflect these wider trends. It goes without saying that this poses particularly difficult challenges for local policy makers.[37]

2.4.2 Age

Although the Dutch sample doesn't allow us to draw conclusions about the age distribution of the total population of sex workers in the Netherlands, we nevertheless provide some data about age here. The youngest sex worker of our sample was 19, the oldest 51.[38] The average age was 34,4. This may seem old, but most of the sex workers we interviewed, including the migrants, worked in clubs and massage parlors. The women working there are usually older than for instance window sex workers. The women in the Amsterdam clubs and private houses have an average age of 29,8. (Rode Draad, 2012, Van Wijk et al, 2010)

The averages age may vary from sector to sector or even from shift to shift. In the windows the women working on day shifts are mostly a bit older than the sex workers who work in the night shifts. (Van Wijk, 2010, Evaluatie Utrecht, 2009). The women working in Utrecht on Zandpad window prostitution are young (around 20), the women working in Hardebollenstraat window prostitution are much older. (Evaluatie Utrecht, 2009.) Also in Amsterdam we see this variety in age between the window areas. The women working for escort services are in general younger than the women in the clubs. (Daalder, 2006) Eysink Smeets (2007) in his research on escort agencies notes that women who work for the cheaper and middle range escort agencies are mostly around 20, but the women working for the more expensive agencies are older (25-30). This is consistent with other research (Oude Breuil et al., 2010), Regioplan, 2006).

The Internet profiles of the women who offer sexual services usually contain a statement about their age. We took a sample and found that the average age was 31,05. This may even be a bit too young, because women may lie about their age to appear younger. Also the (few) women who work in the tippelzones are not that young. In 2003, before the closing of the Tippelzone in The Hague, the average age was 36. (2003, jaarverslag SHOP)

There is also a difference in age between groups of migrants. The Thai and Latin American sex workers are generally older than the women from Eastern and Middle European countries. (Van Wijk et al, 2010). We can't say much about the most recent groups that have arrived: the Roma and Chinese workers. We know that the Chinese women are advertised as 'young' in Chinese newspapers. (Rode Draad, 2012)

About the age structure of the Austrian sex workers only data for Vienna are available. In 2010 nearly two thirds of all registered sex workers (63%) were between 18 and 30 years old. That is an increase compared to 2007, when 57% belonged to this age group. Furthermore within this age group the number of younger sex workers increased too.[39] 65 registered sex workers were older than 50 years (2010). (in Übersicht Alterstabelle Vgl. 2007 – 2010 einfügen) [The interviewed Austrian sex workers were on average 33 years old, the youngest was 21, the oldest 54 at the time of the interview.]

37 Bernstein goes further to argue that prostitution should be seen in the context of wider changes in sexual consumption such as the intrusion of pornography in the public domain, eroticism in advertisements, popular music and movies, and the sexualization of the leisure industry. All this is fuelled, she argues, by the increasing commercialization of many areas of life. She summarizes these broad sociological trends as follows: "For many sectors of the population, these shifts have resulted in new configurations of intimate life as well as in new erotic dispositions – ones which the market is well poised to satisfy. (2007, 4) Bernstein's conclusions are rather speculative and not well supported by empirical evidence, but its value lies in reminding us that prostitution is not an isolated phenomenon.

38 Stempvoort, M. (*Acting Subjects? Service Providers and their attitude towards Sex Workers*, Amsterdam, 2008) in her thesis about service providers for sex workers that they all encounter sex workers over 50.

39 11,6% of sex workers were between 18 and 20 years, 29,1% between 21 and 25 years and 22,4% between 26 and 30 years in 2010. For 2007 the respective figures are 9,4%, 22,8% and 24,8%. (Source: LKA Wien).

2.4.3 Entry into Sex Work

The reasons for migration and for entering sex work are rather similar: All interviewees mention financial constraints, debts and/ or desires for special goods. Commencing sex work was often influenced decisively by employment and income opportunities in the home as well as in the target country, but not exclusively. As already mentioned above the access to the labour markets of Western European countries is either very restricted (still in the case of Non-EU nationals and to a lesser degree for Bulgarians and Rumanians), or only open in sectors with low wages, temporal employment and substandard labour contracts (e.g. agriculture, cleaning and tourist businesses as well as sex industry). But as friends were informants about the sex industry, one can assume that this helped to put aside some reservations and/ or prejudices. After interpreting our data and surveying the literature we conclude that 1) sex work is one of the 'entry occupations' for new labour migrants in both countries; similar in this respect (but not all respects) to agriculture, the construction industry, restaurants, domestic work, and the cleaning industry. (Roessingh and Amesar, 2011), and 2) that migrant nature of sex work profoundly shapes the work conditions, income position, labor rights and experience of sex workers. We will return to this conclusion and its implications for policy making later in in our report.

In the discourse about migrants it is widely assumed that poor women from other countries enter sex work as a form of survival. Wesenbeeck (1994), for example, seems to acknowledge this. 'More than in the western world, severe economic necessity in a situation, characterized by very few societal opportunities seems to be the prime motivation for women in the non-western world to enter prostitution'. This has led authors such as van Wesenbeeck to frame coercion more broadly as 'forced by circumstance'.[40] A problem with the 'survival' and 'forced by circumstances' argument arises – as will be the case with quite a lot of sex workers as we will see – when sex workers indicate that they have more opportunities than just sex work. Bernstein (2007) remarks that policy makers are baffled when they learn that middle class women with more options in life than prostitution choose for the profession. Some women engage in prostitution to obtain some luxury, to achieve some financial independence or to become part of the world of entertainment. Lim et al (1998) note that the search for a more materialistic lifestyle is also in South East Asia a motive for migration for the purpose of entering the sex business, from rural areas to urban areas. In that case she becomes 'the bad woman'.[41] The absence of training requirements may also contribute to the decision to enter the sex trade. The independence and the freedom to choose the working hours are also often mentioned. (Groen, 1987, Forum DVP Kinky.nl) Additional reasons catalogued in the literature (Wesenbeeck. 1994 in Stempvoort, 2008, Blaak, 1998) are the need for male attention, a craving for adventure and rebellion against the environment. One of the women interviewed by the Dutch team said that curiosity was one of her reasons to enter the trade. Wagenaar in his earlier interviews with Dutch sex workers repeatedly interviewed sex workers in clubs, some of them married and entertaining a middle class life style, who said that curiosity or the possibility to earn extra money were the reasons for entering sex work. Regioplan (2006) also states those extra reasons as a search for excitement and to 'have a good time'.

The migration scholar Wood studies migration on the level of the household and the experience of migration on an individual level. One of the defining factors in this process is the availability of role models of people who have already migrated and have returned with money. (J.Wood, cited in Asian Pacific Development Centre, 1989) They are the first in a chain of migration of friends, family members etcetera. This model seems the most ap-

40 This is an echo of the nineteenth century notion of the prostitute as a victim of class differences and (international) capitalism.

41 When (Christian) moralism became a dominant force in the fight against 19the century regulation of prostitution the idea of prostitutes as victims of capitalism was forgotten. The idea of the fallen woman replaced the earlier imagery from the eighties of the nineteenth century onwards. This state of a fallen woman was considered a transient state. But that changed, due to the invention of 'the common prostitute as a legal category in England'. (Walkowitz, 1982) This meant the consolidation of the stigma in a category that was not only one of deviant sexuality but also one of social exclusion. In the Dutch language this has been epitomized in the saying: 'once a whore, always a whore'. In this view prostitution is not an activity but a personality trait. The fallen woman had succumbed to materialism and glamour, to all the dangers of modern life, to 'uithuizigheid en pretzucht'. (Kompagnie, Bossenbroek, De Vries 1997, Koenders, 1996) A hundred years later, in the 1980s, this idea was challenged by sex worker's rights organizations who called themselves sex workers, to stress to activity instead of the personality.

propriate model for the women we spoke with in the course of the research. This also explains the choice of the country of destination. The newcomers use the networks and the information of migrants who have arrived earlier. Pheterson (2004) also suggests to decide the matter of voluntary/ involuntary prostitution by inquiring about the decision making process. But in most publications about sex work little attention is paid to this process. It may be difficult to reconstruct this afterwards with the interviewees. Even those studies (Jansen, 2007, Westerik, 2009) that are based on life stories provide very little information about this process. Jansen mentions the ambivalence: the shame but also the prospect of money. Both Jansen en Westerik, as well as many of our respondent, mention network of friends and relatives who already work in prostitution. The testimonies of trafficked women or victims of loverboys mostly tell cases of women who were forced into prostitution by a third party: a boyfriend or an organization. (Ziverte, 2004, Werson, 2010) A wider survey of the literature and our fieldwork reveals the following factors in the decision making process.

- Coercion
- A romantic relationship
- Comparison with other job opportunities
- Role models or other involvement in the sex trade.

Coercion. Three of the women in the Dutch sample said they were forced into sex work by a (group of) pimps. One woman we interviewed was already active as a sex worker but was forced, according to her, by Roma men to leave her country and to work in Austria. A fifth woman, described the boyfriend who suggested her entry in sex work afterwards as a pimp.

Intermezzo

When business slowed down and I could make less money in Hungary, I took up on offer to work in Austria, in Graz. Two gipsy's served as intermediaries. When we were on our way they offered me something to drink. The two men forced me to take XTC. They would hurt me if I refused. I took the XTC and I took another XTC and I took some more XTC. Eventually I passed out. When I came round I found I was tied up. They beat me up and forced me to work for them. They took all my money. (Source: Interviews)

Drugs as an explanation often occurs in the literature. (Ziverte, 2004). The woman who is talking in the intermezzo above was reluctant to talk about this episode. She declines to talk about the kind of promises she was made, the way of transportation and her interaction with the traffickers.

Roughly 10 per cent of the interviewees in our two samples said they were deceived as to the circumstances. All but one knew that they were going to work in prositution. Given the fact that these are qualitative samples, we cannot generalize this number to the population of sex workers in the two countries. Moreover, 'forced', as we will see, is a vague term that allows for various shades of meaning. Nevertheless the relatively low number and the nature of the sex workers' stories contradicts the public discourse hype about forced prostitution and human trafficking. Such discourses often leave aside the agency of these women, labelled as victims. The interviews repeatedly – and sometimes impressively – showed how sex workers freed themselves from exigency circumstances and oppression despite their legally and economically precarious position. Another result gained from the interviews is that making an autonomous decision to enter sex worker is no guarantee for being not exploited in manifold ways (as we will see below).

Romantic relationship. Some women fall in love with a man who then manipulates or forces them into prostitution. Mostly they are emotionally dependent on this person. In the Netherlands these men are called 'lover boys'. Much has been said and written about these lover boys. The most common stories about this phenomenon follow a particular pattern: a young woman or a girl, who does not get enough attention from her – usually divorced parents – and who has low self esteem, falls in love with a guy who gives her presents and makes her

feel important is, is isolated from her family and friends and then groomed for sex work. (Bovenkerk et al, 2004) A generation ago such men were called pimps. 4 women interviewed by the Dutch team said they entered prostitution because of a relationship. Only two of them identified themselves as a victim of trafficking.

Intermezzo

At the time I got involved with a Moroccan boyfriend. He suggested that I could make money in prostitution. So that is how I started when I was 18 in a club in Antwerp. I did quit for a few months but then I went back into the work. I still had the same partner and I still lived in Belgium. But during the last eight years I only work because I want to. I have left that partner. (Source: interviews)

Role models or other involvement in the trade. Most women had friends, relatives and acquaintances from whom they learned about income possibilities within sex work. These did not only provide information about the job, but also helped them in the process of migration, with formal procedures and finding a work place. Again the majority in both countries emphasises that it was their own choice. No one forced them into prostitution. A few women admitted openly having or having had a pimp. Taking these interviewees seriously puts the issue of pimping in a nuanced light. Pimping exists without doubt, but we can't say to what extent.[42] The statements of sex workers showed that a simple victim-perpetrator classification does not match the reality. On the one hand not all interviewees define them as perpetrators or exploiters (but as facilitators or service providers) and on the other hand – defining pimping according to the Austrian penal code – also parents, siblings and partners who receive regular contributions from the sex worker would be pimps.

We don't know how long migrants took in deciding to become a labour migrant. It may be very difficult to reconstruct, if at all possible. We have some data on the time it took women to decide to become a sex worker. In the Dutch sample at least four respondents took a long time to consider the option of sex work. 2 a few years, 2 more than a few months, and some of the women said they had been toying with the idea for years. 1 woman waited two months till she took on a second client. Another one just stayed a while in a club as an onlooker, before she decided to join the team. One of them said she was hesitant because she was weighing the consequences of her family finding out about her.

Comparison with other job opportunities. Like other people looking for a livelihood, sex workers compare different options, what is feasible with their education, how much money are they going make and what is their job satisfaction in other jobs. When there is a dramatic change in a personal life, as was the case with three women in our sample, long-term solutions like getting an education and applying for all sorts of jobs may not be perceived an optimal solution. The Dutch sample provides some examples which show the diversity among this group. Two interviewees had to become a breadwinner overnight when their partner fell ill. Two of the migrants we interviewed came to the Netherlands to live with a Dutch partner. The relationships went wrong and she tried to stay on her own in the Netherlands, but could not find a job. Three interviewees – all Dutch- financed their studies with sex work. Nine of our respondents entered the trade because they got fired from other jobs, or because a company went bust. 19 respondents had another job or studied next to sex work. Three respondents had unemployment benefit. This may be the case with more respondents, but in general sex workers are reluctant to talk about this, for fear of being accused of fraud. For 6 respondents sex work was their first and only occupation. 33 of them had had other jobs before entering sex work. 3 respondents indicated that they were not financially dependent on the job. One of the male migrant sex workers worked as a cleaner beside the sex work. He did not want to state specifics but the interviewer had the impression he was exploited as a cleaner.

42 The informed outsiders also hesitated to give numbers or percentages. Only one estimated that about 75% of the sex workers would have a pimp in the background. (Interview M. Bauer, LKA Oberösterreich, 31.03.2011) This would mean that indoor and outdoor sex workers alike have pimps, while others often associate pimps only with street prostitution.

Quite a few of our respondents were well educated: 3 had a university degree, 1 an unfinished university education, 4 had completed a hbo (college training), 1 had not completed this, 1 had an incomplete mbo, 2 had not finished their high school and 9 respondents had had a professional training. 1 migrant had an unfinished training for a paramedical profession. 2 respondents were drop-outs from high school, 3 did low paid work in their home country before entering. On the forum of Kinky.nl, where women exchange experiences, some participants state that it is more relaxed to do sex work as an extra, because they don't have to rely on the income from prostitution, and don't feel stressed when there is a lack of clients. However our findings may be biased because we had to select migrants who spoke Dutch or English which is a necessary condition for having a job outside the sex industry.

Conclusion. The association of prostitution and migration has important implications for policy. First, sex work is one of the occupations in which new labour migrants end up. It requires few entry requirements, it offers cash payment often outside the tax system, and the job requires no employment contract so that high mobility is possible. Although these jobs offer low pay, long hours and deplorable work conditions, they fit the life style of the new immigrant. Even the low pay is a lot more to many immigrants than what they could ever hope to earn in the country of origin. This was borne out by the fact that many sex workers in our samples speak in rather positive terms about their work, despite making long hours and having to give 50% of their earnings to the brothel owner. Second, new immigrants in occupations at the low end of the labour market are particularly vulnerable to exploitation. They don't speak the language, they are unfamiliar with the laws, customs, and institutions of the new country of residence.[43] Third, new immigrants rely on third parties such as family members, friends, or middle men whom they pay, to help them navigate the administrative system of the new country of residence, find housing, medical services, schools, etc. Fourth, sex workers suffer from a double stigma in the eyes of the national population: that of being a sex worker and an immigrant. This increases their vulnerability to exploitation. We will return to this in chapter 6. Fifth, our interviews show a very diverse picture when it comes to motives for entering sex work. Although for many money was the major reason, for many others it was curiosity, and craving for luxury, or extra earnings on the side. In line with this diverse picture was the observation that a large fraction of our respondents had some form of advanced education. Finally, although we encountered numerous instances of coercion and gross exploitation, overall the picture was more nuanced here too. The relationship between the women and their 'pimps' was often unclear, many were able to get out of an abusive relationship, and quite a few then voluntarily returned to sex work. As we argued in chapter 1, these different 'faces' of prostitution make it exceedingly difficult to design effective policy measures for improving the position of sex workers. In the final chapter we will make some recommendations that address the diversity and dynamic complexity of prostitution.

2.4.4 Working hours

In the 1990s it was a common complaint that Dutch proprietors considered it normal that women worked twelve hours a day, six days a week. (Vanwesenbeeck et al, 1989) Holidays, days off and flexible hours often resulted in conflict but since the year 2000 proprietors have to accept part-timers. Work schedules are still a perennial source of conflict however. From the interviews, from the diary of the insider and on basis of our observations we can conclude that women in clubs, private houses and parlors tend to work a few days for long hours and don't work in that facility for the rest of the week. Some of the websites of the facilities publish the schedules of

43 Again, this is not restricted to sex work. An article in The Guardian on the Latin American population in London states the following:" It is also found that while the largely young and well educated Latin American population had high employment rates of 85%, it was being subjected to serious victimization, with 40% of Latin American workers experiencing work place abuse and exploitation and 11% being paid less than the national minimum wage – a proportion 10 times higher than the national average.(...) (P)oor English and insecure immigration status – compounded by a lack of awareness of employment law – make the community easy prey for companies that pay less than the minimum wage and which refuse to pay overtime or for holidays. Workers are often made to work for 16 hours a day, are racially abused, and can find themselves victims of physical or sexual violence." (Guardian, 23-06-2012, 8).

the women. This is understandable: the sex worker has to travel from another town to the facility and a working day requires a lot of preparation. In that case it is not efficient to work for only a few hours a day.

In our sample 28 out of 44 respondents gave us an estimate of their working hours.[44] Of the 28, 3 worked only when they felt like contacting a client. We distinguish these workers from those who went to a place to work, and just waited for clients to arrive. Two only worked when they were asked to do so (on call). Especially the males found it difficult to give information about their working hours, because they combined it with cleaning and also had to spend a lot of time recruiting clients. The remaining 23 gave the following answers:

2 worked 7 days a week, long hours

5 worked 6 days a week, long hours

2 worked 5 days a week for 8 hours

1 worked 5 days a week for 6 hours

4 worked 4 days a week for long hours (11 hours)

1 worked 2 days and one night a week

8 had irregular hours.

As working hours are often irregular, the data don't allow clear conclusions. Especially in window prostitution sex workers tend to make long hours. This is related to the fact that they are required to rent a window for a whole week or even longer. Due to the lack of clients and the high rent, sex workers are forced to take as many clients as they can in the time they have paid for the room. Leaving the window unoccupied is a luxury they can't afford. (Rode Draad, 2012, van Wijk et al, 2010)[45]

Contrary to the Netherlands, the average weekly working hours of the interviewed Austrian sex workers lay with 60 hours considerably above the average working hours of self-employed people or dependent employees. These long working hours have nothing to do with jobs outside of sex work (in total 8 of 85 sex workers had a side job). The analysis has shown that there are large differences between sex workers who work in classical brothels, night clubs or outdoors and the ones who work in "*Laufhäuser*". In the first ones the average weekly working time is about 50 hours, in the "*Laufhäuser*" it is 70 hours.[46] The reasons for these differences might be that the working schedule of sex workers goes along with the operation hours of the facility. Women working in *Laufhäuser* can themselves determine their working hours. Nevertheless, they work much more than their colleagues in brothels. This is on the one hand due to often stated aspirations by sex workers, to make as much money as possible within the shortest period of time; on the other hand, the rents for the work apartments in *Laufhäuser* are often very high. Additionally, these apartments often are used as private living spaces. Being present anyway seems to reduce the time off. The average working hours are also influenced by the family status of the sex worker. Women with dependent children who live with them in Austria or in a neighboring country work fewer hours.

Breaks. During observations in the window areas we saw that in the absence of clients, the sex workers did not sit down to read or to do something else. They spent these hours standing up, gesturing at potential clients and bargaining with clients who did not enter. In (private) clubs and parlors the women cannot concentrate on

44 Of 2 others we only know that they worked 'a lot'. Some did not know exactly how many hours they worked. 3 of the 44 had stopped.

45 The recent measure of the city of Utrecht to introduce minimum rental period of one month, has exacerbated this problem for sex workers. The rationale for this measure is to prevent the rapid turnover of sex workers that, the city claims, is one of the characteristics of being trafficked.

46 In these calculations regular breaks like 2 weeks working and 2 weeks off are considered. The waiting time for clients is included, as the sex workers do not leave the work place.

anything else but watching television or talking in the absence of clients, the insider told us. It is also not done to finish a meal or to have a break when a client enters the place or wants to be introduced.

Holidays. For the sex workers who work in window prostitution a holiday can be very expensive: they have to pay for the window while they are away. There is another reason why holidays can be expensive. In the report on the Thai parlors (Rode Draad 2008) the Thai women complain that going home for the holiday is a costly affair because the (extended) family in the homeland expects expensive presents. Based on the information given by Austrian sex workers, the majority tends to take holidays for a maximum of four weeks per year. Here again, the length of time off depends on the family status, but also on the income and the distance of the home country. The facility owners seem not to restrict the days off. As the apartments in *Laufhäuser* are rented on a weekly basis it is no problem for sex workers to be away.

2.4.5 Earnings

Compared with other countries, the prices for sexual services in the Netherlands are quite low.[47] The average transaction in the window areas (Geleenstraat, the Hague, and Utrecht Zandpad) is 50 Euro for a standard service (vaginal and oral). In the cheaper areas it is 25-30 Euro (Doubletstraat, the Hague and Utrecht, Hardebollenstraat), though it may be even less than that. The prices in (private) clubs are higher, because the handover to the brothel owner for the room has to be paid by the client. The prices for standard sexual services in Vienna and Upper Austria range from 50 to 120 Euro for half an hour, but varies – like in the Netherlands – according to the type of the sex facility. In all facilities the minimum prices for standard services are set (mainly by the facility owners). The sex workers appreciate this as a mean to limit price dumping. Outdoor sex workers demand the lowest prices; here the price deterioration was severe.[48] Most of the interviewed sex workers complained about the decline in prices in the last years, which is ascribed to the financial crisis and to higher competition because of the increase in the numbers of sex workers.

Price development in prostitution is hard to predict. In 1999 Kruize en Slot calculated that the prices in window prostitution had decreased with 50 per cent (in terms of purchasing power) during the previous decades. The authors explain this as a result of the decreasing influence of the taboo on prostitution and a larger supply of sex workers. We have found no evidence however for this relation between legalization and an increase of the number of sex workers. An alternative explanation may be that there is no regular market mechanism in prostitution. A market mechanism implies some equality between the actors and a free choice of both providers and clients. But that is not the case for several reasons. First, the authorities have regulated the number of work places. Secondly quite a few women are forced by third parties to lower their prices in order to increase the turnover. And thirdly, brothel owners have a strong influence in setting prices.

Many researchers (Van Wijk, 2010, Regioplan, 2006 and Amesberger) note that it is difficult to get information from sex workers about their earnings. Sex workers say that they don't want to talk about this because they are afraid the tax office will use this information against them. But we speculate that there may also be another reason why sex workers are reluctant to talk about their income. It may be that they are aware that their earnings are disappointingly low so that they are defensive about revealing their earnings: why work in a stigmatized profession if the proceeds are so low? The Dutch team approached the sensitive topic of earnings indirectly by asking sex workers when was their last day without a client. This turned out to be a useful approach because they realized they were not the only sex workers with a low income. In our Dutch group of respondents we had 23 women who worked at a facility where they had to wait for clients. 13 of them reported days without clients.

47 Website Rode Draad, based on research on Hookers.nl and fieldtrips to several Eastern European countries.

48 At the Viennese streets between €10 and €40 are usual for 15 minutes and €40 to €70 for half an hour. Bookings for an hour are quite uncommon. In window prostitution in the Netherlands, the rate applies to the service. In Dutch and Austrian clubs rates are based on a combination of service and time.

6 did not experience this. Two were too new on the job, but being new is not always a safeguard against lack of clients. One woman experienced this on her first day: "There you are, nice and pretty in your lingerie, and no client chooses you." One of the women in a private clubs had on an average 7 clients a day, but the others had to make do with one to three clients a day. One of our respondents tried a massage parlour, but had only one client, a reason for her to turn to an escort agency.

Two women made 100 euro per (twelve hours working) day before tax. A third woman had 150 euro and another had some days that she took home 25 Euros. In the Red Light District one woman said she could make at most 350 Euro on a good day. But this required a 12 hour day, and both on good and bad days she had to pay 220 Euro for the window. A third source for the earnings of the women is the diary of the insider. She also wrote down the remarks and – if possible- the number of clients of her colleagues.

Intermezzo

...Today we have to swallow the fact that only five clients came to our place. The three of us have been waiting for them from 12.00 to 22.00 hours. ...
...At first there were some customers, but after all of us had served two clients each it became very quiet. I myself won't have another client that day. The next day I go home with 35 Euro for which I had to work eight hours. My colleague made no money whatsoever and the others had had no more than two clients each. The others only had had just one or two clients. ...
--- Today it is quiet and I will make no money, like my colleague who had to drive three hours to get here.
...I am at a different place. Three women had 14 clients in sum total. ...
---Today I got my paycheck: I made six days of 11 hours: in sum total, 350 Euro'. Oh no, that means 6,50 Euro per hour. This place is also open on Sundays. Last week 5 men came. Fortunately in this place a Sunday lasts only five hours. So I work fewer hours for no money instead of many hours for no money. I had no client.
... This week I was without clients for two days. It is no exception here to sit here all day for only one or two clients...
... I am trying my luck behind the windows. I had a few clients, but my neighbor did not have any client. The other colleague has eight clients, some of them for only 30 Euro's. And that is not with VAT included. So with the rent, the taxes and you loose all your optimism...
...I rented a room (illegally) and had 330 Euro in one day...
(Source: several fragments from the diary of the insider)

Despite the difficulties in gaining information about the income, at least some sex workers provided insights, however contradicting and vague they were. Some confirmed the cliché of very high incomes: They still are very satisfied with their income, they were able to purchase a house or an apartment without debts, and they are still able to save money. Others did not have the minimum for living: They can't pay the rent; they have debts with the social insurance administration or telephone company. Despite the long weekly working hours a third of the Austrian interviewees considers their economic situation as not satisfying, respectively insufficient. Calculating average hourly earnings based on the average weekly working time of 40 hours and a supposed average income of 2000 Euro per month[49], results in gross earnings of 8.30 to 10 Euro per hour (sometimes before social insurance payments and other expenses like ads, paraphernalia etc.).

We can conclude that the incomes are irregular, and – allowing for exceptions – usually low. Also the discussions on the forums on the Internet sites where sex workers exchange experiences contain many complaints about

49 Those women who were willing to specify/quantify their income, mentioned incomes between €1000 and €5000 per month. Given the self-selection in these self-reports, in addition to sex workers' defensiveness regarding their earnings, these figures should be treated with circumspection. They cannot be considered representative.

the low earnings and the lack of clients. They are angry about the many fake telephone calls of would-be clients and the waiting in vain for clients who fail to honour the appointments.[50]

The Dutch insider tried several window areas and had to pay 145 – 220 Euro a day. In some cities the owners make extra money on 'services'. A towel could be rented for 8 Euro and the use of a massage table might cost 25 Euro extra. In (private) clubs the managers may charge for food, lodging and sometimes for cleaning. The share of the owner of what the clients pay in (private) clubs is deducted from the payments of the clients. This is usually formulated in terms of opting-in. (see chapter 3) Sex workers also make considerable costs travelling to and from the workplace. At night they may have to take taxis. Not all sex workers in the window areas are able to do their own bookkeeping and have to hire bookkeepers. They also use the services of 'shoppers', men who charge a little or a lot for doing some shopping: like buying sandwiches or paper towels. Sex workers also have to buy all sorts of paraphernalia that go with the job: condoms, massage oil and sex toys. This is only partly tax-deductible; they have to proof these purchases are job related. In the opting-in arrangement they can deduct a fixed amount. Costs of hairdressers, make-up and work-clothes are not tax-deductible.

The fixed expenses Austrian sex workers have are also high. The interviewees paid for rents in *Laufhäuser* or studios between 270 and 630 Euro per week. In brothels on average about 40 to 50% of their income is deducted by the facility owner. In respect to service in return there is no discernible pattern: High rents or deductions do not necessarily go along with services provided by the owner. Some have to pay extra for ads, towels, and cleaning, others don't. Part of the fixed expenses is taxes and payments for social insurances, but not all sex workers these as the implementation of these laws vary from province to province. It can be assumed that in Upper Austria almost all sex workers pay the lump sum tax, in Vienna only a minority does so.

2.4.6 Labour Relations and Work Conditions

As we will discuss in chapter 5, the Dutch government considered labour relations an issue that belonged to civil law and should be arranged between proprietors and sex workers without interference from the government. This allowed proprietors to frustrate the introduction of adequate labour contracts and work conditions in their facilities. Although the Tax Office observed over and over again that sex workers worked in a de facto relationship of authority in sex facilities, proprietors argued successfully that sex workers were self-employed. In order to put an end to the stalemate between the Tax Office and the proprietors, and to arrive at some sort of legal definition of the labour relation between proprietors and sex workers, the so-called opting-in system was put in place This is a hybrid of self-employment and employeeship, a kind of fictitious working relation, that was adapted to the sex industry. In chapter 5 we give a fuller description of the opting-in arrangement, but important here is that, in order to safeguard sex worker's rights a 'package' of conditions was included. This concerned the right of sex workers to set their own working hours, to wear whatever they pleased, the right to refuse clients and certain sexual actions, the right to refuse to drink with clients, the right to get a receipt any time and the agreement not to hand over a percentage of extra services to the owner. The conditions were formulated in such a way the sex worker was safeguarded against the exercise of authority on sensitive issues. They were meant to prevent coercion in accepting certain clients, to perform unwanted actions, to prevent (small scale) economical exploitation and to guarantee the women that they did not have to spend more time in sexual services than they wanted. However, because the reach of (labour) law does not include sex facilities, work conditions in these

50 In order to get a snapshot of the turnover in one night we set down to make some observations. We sat during two hours at different places in three cities and counted the number of clients and women that arrived and left. We also held two counting sessions at the windows in the afternoon in The Hague. We selected three windows for the counting. Only one third was occupied. We saw that three women had each two customers. At the other occasion the same women had no client whatsoever during the two hours we sat there. From our observations we can conclude that the turnover cannot be very high and that some women stay without clients for several hours. We don't know if the men who went inside clubs also bought services of women and if they paid for an hour or half an hour.

deviate strongly from what is held as acceptable in other work places in the Netherlands. Below is a summary of our observations from fieldwork and statements from interviews with sex workers:

- Most facilities enforce a dress code;
- The interviewees and the insider reported complaints about the receipts being too few and far between or even totally absent;
- In (private) clubs about half of what the clients pay goes to the owner. There are frequent complaints about this system because some owners don't keep to the percentages that are due to the tax office but decide themselves which amount of the turnover should be handed over to the tax office and what will be the sex workers' cut. Three women we interviewed mentioned fraud with the tax money at the woman's expense. In the opting-in system it is a rule that the workers don't have to hand over a percentage of tips and extra's to the owner. This rule is often broken by the owners. In the clubs in Oberösterreich this is considered less of a problem. Similar complaints were reported by the respondents from Vienna;
- The large majority of sex workers report that they can refuse clients. However, most of Dutch respondents who work in clubs report that they cannot refuse sexual acts. From a report of a workers/owners meeting it transpires that the owner tries to set the scope of the actions offered. This we also saw at a private club: the owner made the appointments with the client and mentioned the services rendered. The insider reported that the (female) proprietor threatened to send her friends as pseudo clients to check the compliance of the women to this rule. Particularly onerous is that from the 'menus' of clubs and escort agencies on the internet (see section on internet) we infer that it is expected that sex workers are to perform unsafe oral acts. Austrian respondents reported the same problem with the inability to refuse sexual acts, albeit less frequently. None of the Austrian respondents reported to be forced into unsafe sex. Although clients put pressure on sex workers by demanding unsafe sexual services, many women stated that the request for unprotected sex is increasing, and a lot of sex workers feel a kind of competition, when colleagues also offer unsafe sex they nevertheless stress that it is absolutely their choice and decision to do so or not. According to the interviewees, no one is forced to have unsafe sex.
- Several facilities made use of surveillance cameras and hidden microphones;
- Hygiene is considered adequate in most facilities;
- The respondents in our Dutch sample reported that alcohol consumption on clubs was not much of a problem. This was different in Austria. In brothels and nightclubs it is appreciated when sex workers drink alcohol with clients. Most interviewees said that there are ways to circumvent alcohol consummation. However, some said that it is a must and because of the participation on alcohol sales, drinking is an incentive for sex workers. A few conceded having alcohol problems, and others changed to work places where no alcohol is served;
- Self-employment is most 'obvious' in the window sector. However even here, we encountered many problems. In the course of the research we have not heard complaints about the window owners in The Hague. The *Rode Draad* reported frequent complaints about a major proprietor in Utrecht. These concerned arbitrary raising of the rent and prices for extra services, like air conditioning. Some window-owners (outside the Randstad) exercise indirect control with house rules about for instance which clients not to accept. There are also complaints about window owners who don't provide invoices with the VAT amount.

These impressions from the period 2010-2012 are similar to the observations of the field workers of the *Rode Draad* in their industry-wide survey of licensed facilities in 2005. (Altink and Brokelman, 2006) It proved to be very hard for sex workers to find a facility where they can work in adequate conditions. Sex workers mentioned only two facilities where the atmosphere is good and the women are free to set their own work conditions. Most proprietors are 'bad employers'. The package of conditions that came with the opting-in arrangement was a well-meaning attempt to improve the situation of sex workers, but there was no clear procedure – let stand

alone sanctions – when the rights in the 'package' were violated. Though prostitution is considered work according to the 2000 Act, 12 year after it passed the Dutch Lowe House, adequate labour relations still elude the sector. However, it may very well be that this issue will be of historical relevance soon. The number of sex facilities has decreased dramatically, and the rise of the Internet and the mobile phone has increased the freedom of sex workers to choose their working hours, work venue and work conditions.

3. The National Governance of Prostitution

3.1 Policy Design

In this chapter we discuss the national policy frameworks that shape prostitution policy in Austria and the Netherlands; in a separate chapter we discuss local governance arrangements. The distinction is important because in both countries local policies may deviate considerably from national goals. This is a universal phenomenon. For example, while the German federal government made the work in a sex facility legal in 2001, the Länder (states) have so far resisted its implementation. (Pates, 2012) And while nationally prostitution has been decriminalized, many municipalities in New Zealand employ regulation of advertising and zoning laws to restrict prostitution. (Knight, 2010)

Local implementation may deviate from national formulation for various reasons. Local circumstances usually prohibit implementation to the letter of the law, local regulations contain design flaws which lead to unintended consequences, local actors hesitate to implement a measure they consider meaningless or onerous, or reversely local actors step into a void left by the national government (Crowhurst, 2012), and local actors may experience the unforeseen implications of one law as it contradicts established laws in relevant other areas.(Florin, 2012) Another important reason is that national politicians are further removed from the everyday reality of prostitution than local administrators. National politicians receive most of their information from policy reports and the media. (Edelman, 1985) Because prostitution is a highly moralized and contested topic (see chapter 4), this information is likely to be filtered through powerful cognitive-ideational frames. (Rein 1983; Stone, 1997). Local administrators are clearly not immune from these frames (no one is), but their proximity to the everyday world of prostitution exposes them to the immediate consequences of their and others' interventions on the actors in the field. The policy issues that they deal with are not abstract words or symbols but are embodied by actual people: sex workers, proprietors, and professionals. (Maynard-Moody and Musheno, 2004) The policy scholar Robert Reich puts this nicely when he says:

" Public Administrators may be in a better position than legislators to foster a national debate over certain value-laden issues simply because the administrators deal with specific application of general principles. Legislators, on the other hand, often have an incentive to keep their discussion to a fairly high level of generality: delving into knotty details will likely be seen an invitation to controversy," (in Ansell, 2011, 156)

Differently put, when dealing with a controversial topic, elected officials tend to keep their distance from its real world manifestations to avoid becoming embroiled in moral and technical complications. Administrators don't

have that luxury. At the local level "the world talks back", as the policy scholars Donald Schön and Martin Rein famously said.[51] We will see examples of this dynamic in chapter 5.

Although national and local governance of prostitution may deviate, they are united by the notion of policy design. Both are elements in an attempt to find a solution to a collective problem. Policy design, as Michael Howlett says:

"(C)ontains both a substantive component – a set of alternative arrangements potentially capable of resolving or addressing some aspect of a policy problem, one or more of which is ultimately put into practice – as well as procedural component – a set of activities related to securing some level of agreement among those charged with formulating, deciding upon and administering that alternative". (2011, 4)

Howlett speaks of policy design as contextually "constrained". What he means is that the choice of policy instruments is shaped by the larger governance context, "the sets of institutions, actors and practices ...which make up the 'environment' within which policy making takes place." (2011, 20) Howlett fails to mention the influence that powerful ideas, practices and traditions (Bevir and Rhodes, 2010) – the frames of Rein and Schön – exert on the design of policies. For example, as we will see, a long-standing Dutch tradition of taking the minority view into account in political decision-making and of deliberating with the direct stakeholders of a policy, has clearly influenced the choice of policy instruments on both the national and local level. On the other hand, the policy environment constrains but does not completely determine the design of a policy. As we will see, policy actors are free to insert elements from other governance styles into a design, thereby making every design in effect a patchwork of ideas and elements in which a national style is vaguely recognizable.

A key element of policy design is the selection of policy instruments. A policy instrument is a technique through which policy actors attempt to attain their goals. (Howlett, 2011, 22) The idea of a policy instrument arose in the policy literature from the need to bring analytical order to the enormous range of activities that governments engage in. Since the 1960s a succession of scholars has proposed a limited number of categories that capture the full range of instruments that states have at their disposal. (Hood, 1986; Salamon and Lund, 2009; Howlett, 2011). We will discuss and use one such classificatory scheme in chapter 5 on local governance. For the moment it suffices to say that the concept of policy instrument is important for analysing both the nature and the rationale of the governance of prostitution in the location of choice, for pointing out inadvertent bias in instrument selection or, reversely, overlooked possibilities for effective policy design.

Finally, according to the policy analysts Deborah Stone, the term policy instrument gives the misleading impression of a more or less mechanical procedure that will function and deliver in the same way every time it is activated. (Stone, 1997, 259) Instead, she suggests, policy instruments should be considered a kind of governance strategy, or as she puts it, "ongoing strategies for structuring relationship and coordinating behaviour to achieve collective purposes". She then adds an important caveat to the effect that policy instruments should be seen as much more relational and reactive than the mechanical instrument' concept implies:

51 The policy scholar Murray Edelman has trenchantly described this distinction between distal and proximate politics. Edelman speaks of politics as a 'spectator sport" in which symbolic elements, images and slogans that summarize a particular position on an issue, play a key role. These symbolic elements depend upon a certain distance from the real world of the social domain that is at stake: " For most men most of the time politics is a series of pictures in the mind, placed there by television news, newspapers, magazines, and discussions. The pictures create a moving panorama taking pace in a world the mass public never quite touches, yet one its members come to fear or cheer, often with passion and sometimes with action...There is, on the other hand, the immediate world in which people make and do things that have directly observable consequences. In these activities men can check their acts and assumptions against the consequences and correct errors. There is feedback." (21985, 5).

"Effective maintenance of a community or pursuit of common goals cannot possibly be accomplished by governing every action or decision of individuals and organizations. Societies rely instead on broad structures and rules that will have a 'multiplier effect', shaping people's behaviour without continuous and specific directions. And because individuals, groups, and organizations within society have their own goals, they in turn use these structures and rules to help accomplish their own purposes". (1997, 259)

Stone's relational conception of policy instruments leads to two important insights. First, when officials employ policy instruments they must be prepared to encounter considerable 'slippage' between the policy's goal as embodied by the instrument and the target group's actual behaviour. The latter will assess the impact of the policy on their work and life situation, and try to accommodate the policy so as to minimize its effect on 'business as usual'. (Wagenaar, 1995) For example, for more than 10 years Dutch proprietors have resisted the introduction of labour rights in sex facilities, as it would imperil their tried and proven business model in which the costs of prostitution are as much as possible carried by the sex worker and the profits by the proprietor. (Roessingh & Ramesar, 2011)[52] We must expect that the capacity of governments to influence other people's behaviour are limited, particularly if they are enticed or summoned to do "what they otherwise might not do". (Stone, 1997, 259) This applies a fortiori to situations where the social and cultural distance between policy maker and target audience is large, where the central behaviour is surrounded by a strong stigma, and where a large part of the target audience prefers to operate in the shadows. Second, because governments cannot – and should not – monitor people's behaviour all of the time, and because the cost of sanctioning undesirable behaviours is often high (monitoring, enforcement, resistance), in most cases a more promising avenue of intervention is to persuade stakeholders to agree to the norms and goals of the policy. This is a difficult and time-consuming approach that carries its own risks (co-optation of officials by stakeholders), but ultimately it is probably the more effective and cost-efficient approach to implementing policy. For example, after many years the pubic health authorities in most large Dutch cities have gained sufficient trust among sex workers and proprietors to run an effective SOA-prevention program that is completely based on voluntary cooperation by sex workers.

To sum up: the expected effect of a policy is highly unpredictable, encompassing the full spectrum from intended to unintended to no effects. Effective intervention is often based on a laborious and time-consuming process of creating trust among hard-to-reach and sceptical stakeholders. In the final chapter we will discuss some alternatives of policy design that promise to take the special nature of prostitution as a policy target into account.

3.2 National Policy in Austria

Austria is a federal state. Within a national legal framework, each of the nine regions or *Länder* has designed its own specific regulation of prostitution. This has led to considerable diversity in the extent to which prostitution is allowed or restricted in different parts of Austria. In Vienna for example, street position is allowed, while it is prohibited in Oberösterreich. And while the establishment of sex clubs is allowed (under certain conditions), it is actively discouraged in Vorarlberg. Given the considerable autonomy of the *Länder* it proves to be more or less impossible to design a unified national prostitution policy in Austria.[53]

52 We will return to this issue in section 4.3.2 when we discuss labor relations in prostitution.

53 Representatives of the *Länder* meet twice a year in a federal working group "Länderkompetenzen Prostitution" that is organized by the Women's Department (?) of the Federal Chancellery. The goal of this meeting is to reassassing the legal foundations for prostitution and to develop recommendations to reach a minimum of coordination and unification. However, the *Länder* are free to adopt or ignore the recommendations of the group.

As in many European countries prostitution is more or less accepted as part of the social landscape in Austria. In 1975 the Austrian Supreme Court removed prostitution from the criminal code. The background to this measure was that police discretion in enforcement of anti-prostitution laws led to too much inequality before the law. Similar to the Netherlands, prostitution is now within the remit of administrative, civil and administrative law and regional and local administrative ordinances. Pimping is still a criminal offence. Although prostitution is no longer a criminal offence, until recently it was according to Supreme Court '*sittenwidrig'*, literally 'against good morals'. This had far reaching consequences for sex workers, because prostitution could for this reason never be a legally recognized occupation that for example entailed the right to enter a contract or obtain workers' rights. Because of the *Sittenwidrigkeits*-clause sex workers could for example never sue a client for not paying for services or never enter into a legally binding contract with a proprietor. All this made the position of sex workers in Austria very ambivalent. In April this year the Supreme Court quietly removed the *Sittenwidrigkeits*-clause. It took everyone by surprise and so far the consequences for the prostitution field cannot properly be foreseen as sex work has not been integrated in the labour law and/or the trade law so far.[54]

Austria's national policy has a strong regulatory dimension with an emphasis on public order, public health and fiscal compliance. For example, most regions require registration of sex workers. Registration regimes vary. In Vienna sex workers have to register with the police. The situation in Oberösterreich with regard to registration is complicated. In Oberösterreich registration is part of the STD check in public health centres, but due to personal data protection regulations the Health centres refuse to provide registration data to the police. Instead, proprietors deliver the police and the Tax Office data about the women who work in their establishments. Not announcing sex workers at the authority may result in fines up to 5000 Euro (in case of recurrence up to 10000) for the facility owner. The fine for sex workers for non-registration in Vienna is up to 800 Euro (in case of recurrence up to 1600 Euro). The fact that registration is mandatory and that non-registration carries heavy fines does not mean that all sex workers do in fact register, as we will see in chapter 6.

The fiscal authorities consider sex workers as "new self-employed" (*Neue Selbständige*) who are obliged to register the business at the local fiscal office and the Social Insurance Authority for Business within the first month of starting to work as a sex worker. Depending on the income sex workers have to pay income tax and value-added-tax. Above a certain income threshold it is mandatory to insure oneself at the social security system for private enterprises (health, accident and pension).[55] Irrespective of the income self-employed persons have to register with the SVA (Social Insurance Authority for Business) within one month.[56] The insurance coverage for health and accidents starts with the registration, respectively the beginning of the self-employment. With the opting-in-system pension-insurance is not covered.

Public health is a central element of national Austrian prostitution policy and is coupled to registration. But as with much prostitution policy, while there is national agreement that every sex worker has to undergo a weekly health check, the implementation of this requirement varies by province. While the health checks are free in Vienna and Linz (capital of Oberösterreich), in the rural areas of Oberösterreich the checks are done by private physicians, charging considerable fees. Sex workers can only work when they carry a booklet that states that

54 It is not clear yet if the dismissal of the Sittenwidrigkeits-clause will lead to a change in the regulations about dependent employment. In other countries, like Germany, specific employment laws have been introduced for to protect the sexual integrity of sex workers (e.g. the authority of employers to give directives is restricted).At the moment there are no indications that such changes are discussed in Austria on the level of ministries."

55 All self-employed persons belong to the group of insurers of the Social Insurance Authority for Business (SVA). The compulsory insurance has to be paid only when the income is above a set minimum. There are two insurance limits: € 6,453.36 (pa), when there is no additional employment performed within the contribution year and € 4,395.96 (pa) if an additional employment is performed in that year. (SVA 2010) When the sex worker does not have her/ his own tax number then s/he can opt in at the SVA. In this case s/he is only insured against illness and accidents.

56 According to the verbal information of the SVA (January 27, 2011) the freelancer will be exempted from the insurance, when s/he will not reach the above mentioned income limits, but nevertheless she must register at the SVA. When the sex worker will earn less than the income limits it is up to her/him whether s/he will pay insurance (opting in) or not.

she passed the health check. When a STD has been found, she cannot work and her booklet is confiscated until she has been declared healthy again. When a sex worker in Vienna went on vacation she needed to inform the police of this; with the new prostitution act 2011 this regulation has been abolished.

Since 1983 sex workers have to pay taxes (as independent contractors); since 1998 they are also eligible for some social security programs. Some, but not all, sex workers make use of the latter possibility. For example, in 2010 160 of the 900 registered sex workers in Oberösterreich participated in social security laws that gave them access to retirement benefits and reimbursement of doctors' and hospital costs.[57]

As in most European countries, prostitution regulation is strongly shaped by immigration laws. About 95% of the registered sex workers in Austria are migrants. In 2010 only 7% of all registered sex workers in Vienna were Austrian citizens, in Oberösterreich 6%. (sources: LKA and maiz) With respect to the right of residency and work three groups foreigners are distinguished: citizens of the EEA (European Economic Area), foreigners, and asylum-seekers. In principle, EEA-citizens have the right to take up residence and, similar to EU-citizen shave full access to the labour market. That is they can work in paid employment and work as a self-employed person or freelancer – also as a sex worker. For the citizens of those member states which accessed the European Union in May 2004 and January 2007 access to the Austrian labour market was restricted up to a 7-year period.[58] They could only work as self-employed persons. Citizens of the former group have gained full access in May 2011, and those of the latter states will obtain full access in January 2014. Non-EEA-citizens, who want to work as sex workers in Austria, do need a specific visa (Visa D+C) according to the Alien Police Law.[59] Such a visa can be issued for self-employment or employment, but only for three to six months within a 12-month period. At the moment, this kind of visa is the only (and very difficult to obtain) opportunity for non-EEA-citizens to enter Austria. This policy was preceded by the so-called "prostitution visa" which was a short-term residence permit for individuals wanting to work in prostitution and as show-dancers and came into effect in 1997 (for show-dancers in July 2001) until 2005. Since 2003, asylum seekers can work as self-employed prostitutes after a period of three months of applying for asylum.

3.3 National Policy in the Netherlands

3.3.1 National Laws

In October 2000 the Dutch parliament abolished the so called "bordeelverbod", the prohibition on owning and managing a brothel. In the decade preceding this decision managing a sex facility was *de jure* prohibited but *de facto* allowed under a policy of "gedogen" or regulated tolerance. (Brants, 1998) Regulated tolerance is a deliberate decision by actors in the criminal justice system not to intervene when they observe activities that are formally criminal in nature. Regulated tolerance, as Brants observes, is

"(N)ot merely a matter of the police turning a blind eye. It is a well-tried policy strategy that sometimes develops gradually at a local level, but may well be deliberately designed by the central government. It is often elaborately described in policy documents from the Ministry of Justice and, as such, subject to a certain degree of political control."(1998: 624)

57 The number might be higher as only insured persons who declared being a sex worker were counted, but not dancers, masseuses, receptionists etc. who can but might not necessarily work in the field of prostitution. But it can be assumed that not all Upper Austrian sex workers are socially insured with the SVA. From the interviews we know that some sex workers are insured in their home country or have another type of insurance (like travel insurance).

58 Accession to the EU on May 1, 2004: Hungary, Czech Republic, Slowakia, Estonia, Latvia, Lithuania, Slovenia, Poland, Cyprus, Malta (Malta and Cyprus have not been subject to a transitional period for free movement). Bulgaria and Romania accessed the EU on January 1, 2007.

59 This law came into force on January 1, 2006.

Regulated tolerance is motivated by a pragmatic understanding of the limits of criminal law in regulating certain activities, or the acknowledgement that, although an activity might formally be illegal, it is nevertheless socially common in statistical terms or morally more or less accepted. Many see a policy of "*gedogen*", as the Dutch call it, as a political compromise in situations in which regulation or prohibition would be too politically divisive in the Dutch political system that in general favors compromise and consensual decision making (Andeweg & Irwin, 2002) Practically regulated tolerance was based on informal cooperation between the "potential offenders", prostitutes and brothel owners, with officials from the police and the municipal government. (Brants, 1998: 624) In some cities such as The Hague and Amsterdam, regulated tolerance evolved into an elaborate system of rules and licenses regulating sex facilities that the parties involved informally agreed to abide by. Although the agreements had no formal basis in administrative law, compliance was enforced by the threat of criminal law in the background. (Brants, 1999: 624; Visser et. al., 2000: 8)

The period of regulated tolerance is important for understanding the Dutch policy culture. National law and local rules are rarely imposed unilaterally. Preceding the decision to abolish the ban on brothels, organizations representing sex workers, proprietors, and social services were consulted by civil servants and members of parliament. At the local level the regime of regulated tolerance had created trusted consultation channels between officials and proprietors. By organizing conferences and courses the national government created support among municipalities for the new law. An indication of this is that proprietors formulated a covenant to keep trafficking out of their establishments and that they decided the discussion over the minimum age of clients by declaring to ban everyone under the age of 18. We will see later, however, that consultation that the proprietors played a somewhat duplicitous role in the implementation of the new law.

The Netherlands is described as a "decentralized unitary state", in which central government has delegated many tasks to provinces and particularly municipalities. The implementation of the "brothel law" was devolved to the municipalities who had to design and implement a licensing system of sex facilities. This process of devolution was facilitated by the powerful umbrella organization of Dutch municipalities (*Vereniging Nederlandse Gemeenten*) which designed, partly based on proto-licensing schemes from the regulated tolerance era and in consultation with a host of NGOs, a model licensing scheme. One cannot understand the course and results of Dutch prostitution policy without grasping the prominent role that municipalities have in its design and realization, and will see later that municipalities, particularly the big cities have become very active in shaping prostitution policy 'on the ground', in some cases even taking the lead in the national discussion on prostitution.

The purpose of the 2000 decision was to decriminalize prostitution by removing the sale of sexual services and its management from the criminal code and transform what traditionally was a market that operated in the shadows into a regular business sector to be regulated by the labor law, administrative law, the tax code and local health and safety regulations. Up to the present prostitution was no longer regulated by laws that were specifically targeted to this profession. This has changed with the proposal by the current government of a new National Law Regulating Prostitution. However, the national laws that were applied to prostitution had considerable consequences for migrants. National and international commentators have observed that with the passing of the 2000 law it had become illegal for sex workers from outside the EU or EAA countries to work in the Netherlands. This affected hundreds of women, but more important perhaps is that the design of the new law had the unintended effect of tilting Dutch prostitution policy towards a focus on migrants. Most of the national laws that had a remit for prostitution were laws that regulated work by non-EU nationals (*Wet Arbeid Vreemdelingen*) or were intended to combat trafficking (*Mensenhandelartikel 250a Wetboek van Strafrecht*). At the same time the licensing requirement in combination with mandatory identification by sex workers (since 2005 expanded to everyone residing in the Netherlands) made it impossible for persons without legal papers to work within the licensed sector of the prostitution market. Similar to Austria, laws and regulations aimed at migrants had a profound effect on the design and implementation of prostitution policy. We will argue that the 2000 legalization coincided with, or inaugurated, a renewed emphasis on the fight against trafficking. Partly this is the result

of a sharp increase in labor migration, since the 2004 expansion of the EU, of women from Eastern European countries who came to work in the sex industry in the affluent countries of North-Western Europe. Partly it is the effect of a renewed emphasis, on law and order, both nationally and internationally, in the political debate on issues of crime and safety in the Netherlands. And also similar to Austria rules and regulations pertaining to immigrants are changed more easily, less bound by administrative ethos than regulation in other domains. For example, in November 2011 the Tax Office, in a letter to Dutch local officials, issued a new ruling that made it impossible for Rumanian and Bulgarian sex workers to work under the opting-in regime.

Finally we need to mention two additional national laws that, although they are national regulations, have been applied to regulating prostitution. The first is the so called "opting-in' arrangement. The opting-in arrangement allows the wage-tax regime to be applied to persons who do not work in an employment relationship. The sex worker and the proprietor have to apply for the opting-arrangement at the Tax Office. The money reserved for tax purposes is deducted before the owner pays the sex worker. She does not pay social security but she also cannot claim the social protection rights that are connected with employment. In order to safeguard sex workers' rights a 'package' of conditions was included. This concerned the right of sex workers to set their own working hours, to wear whatever they please, the right to refuse clients and certain sexual actions, the right to refuse to drink with clients, the right to get a receipt any time and the agreement not to hand over a percentage of extra services to the owner. This 'package' served to remedy a flaw in the system. However, the opting-in system was originally designed for situations where authority cannot be exercised whatsoever. This is the case for example with preachers or pastors hired by a religious institution, with writers who are paid by publishers and with members of local councils. But the opting-in was never designed to cover up the exercising of authority in brothels. From the diary of the insider, the interviews and the reports of De Rode Draad (2012) we must conclude that most brothel owners violate the conditions of the package on all points except the right to refuse alcoholic drinks. The opting-in arrangement had the unintended effect of removing the issue of labor rights from the political agenda; with the imprimatur of the Tax Office sex workers are now officially regarded as self-employed.

The second is the so called "Wet Bibob", or "Enhancement of Integrity Assessment Public Administration. "The purpose of the law is to assess the integrity of the proprietors of certain 'sensitive' business sectors such as brothels, gaming parlors, bars, and public contracts over € 200.000. By combining a number of large databases, a national agency assesses the source of financing, the transparency of management and the integrity of the owner's business partners. The owner has the right to view and appeal his file only after his application for a license has been refused. The "wet Bibob" has been used by some municipalities, such as Amsterdam and Alkmaar to refuse owners of window facilities or clubs the renewal of their license. In this way, and by buying up buildings with a prostitution license, the city of Amsterdam has closed down 100 of its windows between 2006 and 2012. (Volkskrant, 29-05-2012) We will see in chapter 6 that the "wet Bibob" in combination with so-called administrative measures ("*bestuurlijke maatregel*") have been used effectively to downsize the prostitution business in some cities.

In the mid 1990s the perception took hold among politicians that the legalization of the sex industry and its key distinction between forced and voluntary prostitution had failed to prevent the incursion of trafficking into the licensed sector. One of the reasons for this was seen to reside in the fragmentary and uneven implementation of the licensing and monitoring rules by municipalities, and consequently a need for a national "framework law" was heard. As a result in 2008 the Dutch government began to draft the Law for the Regulating Prostitution and Combatting Abuses in the Sex Trade (*Wet Regulering Prostitutie en Bestrijding Misstanden Seksbranche*), in fact reversing the decriminalization impetus of 2000 by designing a law that was specifically targeted at prostitution. The most important measures proposed in the law are:

- The creation of a national registration system for sex workers.
- The criminalization of clients who bought services from sex workers who are exploited. Later this was changed to unregistered sex workers.
- Raising the minimum age for sex work from 18 to 21.[60]
- Introduction of the possibility of municipalities to ban sex facilities from within their borders (the so called "*nuloptie*"), if they could provide a convincing public order argument for this. With this measure the idea that prostitution is a regular business sector is abandoned.

The Law led to much critique on the privacy risks of the proposed registration and the infeasibility of the limited client criminalization aspects from NGOs and to a negative advice from the Raad van State, the country's legal advisory institution that assesses the quality of new legislation. Nevertheless the Lower House adopted the law. The Law encountered opposition in the Senate however. The government introduced some changes but on October 30, 2012 the Senate adjourned the Law. On May 28, 2013, the Senate, dissatisfied with the Minister's adjustments, once again adjourned the law.

3.3.2 Labour relations

The improvement of the "position'of the sex worker was one of the goals of the 2000 Legalization Act. The term "position" Is not quiet clear, but labor rights make up a large part of it. Twelve years after the Act passed parliament the conclusion is that the labor rights and work conditions of sex workers remain a lot to be desired. One of the main reasons for this was the organized resistance of proprietors against granting sex workers adequate labor rights.

Proprietors have been claiming up until 2008 that the sex workers in their facilities were self- employed, not employed. One of the reasons for this was their assertion that the exercising of authority was contrary to the sex workers' right to sexual autonomy. And exercising authority was one of the foremost characteristics of being an employer. However, based on "facts and circumstances" the Tax Office observed that the owners did in fact exercise authority. They set working hours, they sometimes ordered the women to clean, they had all sort of house rules and often imposed a dress code. (Zuidemaet.al, 2006) Almost every individual brothel owner who was informed by the Tax Office that, being an employer, he had to pay social security, went to court. This proved to be a time-consuming affair. Although the Tax Office won most court cases, proprietors were not cooperative.[61] In order to put an end to the stalemate between the Tax office and the proprietors the opting-in system was introduced.

3.4 Conclusions

In the international debate on the regulation of prostitution, Dutch prostitution policy has come to be regarded as a "symbol of political pragmatism and social tolerance". (Bernstein, 2007, 159) Although, given its origins in a policy of regulated tolerance and a long process of consultation among stakeholders, this reputation is not wholly undeserved, we have seen – and will see more evidence of this later – that in its implementation

60 In the extended debate on the new law the minimum age in the draft has changed several times from 21 to 23 and back to 21 again.

61 Another indication of the unyielding resistance of proprietors to granting sex workers proper labor rights was the experience of the Rode Draad. In the year 2005-2006 the Rode Draad received funding to inform sex workers about labor relations. The workers of the Rode Draad had a hard time getting the information about employer-employee relations across to the sex workers in the (private) clubs. Quite a few owners obstructed their attempts to give at least objective information about being an employee. Most sex workers had heard a rather exaggerated version of the disadvantages of being an employee. Although most sex workers saw themselves as self-employed, they tended to change their opinion when they were confronted with the disadvantages: no sick leave, no pensions, no maternity leave, no holiday bonus, no unemployment benefits and no disability provisions. (Altink and Bokelman, 2006).

the Dutch law quickly took on regulatory and even repressive features. This had a lot do with the increasing emphasis, both in the national debate as in the design and implementation of national and local regulation, on issues of migration and trafficking. We see a similar development in Austria. While Austrian legislation has drawn much less international attention than the Dutch, in its practical emphasis on harm reduction and regulating the health and social position of the sex worker, it displays broad similarities with the Dutch approach. However, similar to the Netherlands, immigration and trafficking laws have strongly shaped the realization of prostitution policy. And in both countries rules aimed at migrant sex workers have been revoked overnight, without the due process that is usually allowed regulatory revision in other domains. In chapter 5 we will see that this impetus at least in part originated at the local level. But before we turn to local regulation, we first need to discuss another feature of prostitution policy, its deeply contested, moral nature. In the next chapter we will argue that prostitution policy is an instance of what policy scholars call morality politics (Mooney, 1999; 2001). We will also see that the media play a large, and usually not very constructive role, in this. The observation that prostitution policy is morality politics has various effects on the design and implementation of prostitution policy. Part of the emphasis on crime and trafficking stems from this, but in general, the moral nature of prostitution policy makes it difficult to design and sustain a policy that, as is the goal of the Dutch 2000 law, takes the rights of sex workers and the quality of life in cities as its major objectives.

4. Prostitution Policy as Morality Politics

4.1 Introduction

We start with the observation that prostitution policy has all the characteristics of morality politics (Mooney, 1999; Weitzer, 2007). *Prostitution policy* we define as the concerted attempts of administrators and elected officials to protect the position and rights of sex workers and diminish the negative societal impact of different forms of prostitution. This in itself represents a moral perspective, as abolitionist policy makers would define prostitution policy as the concerted effort to eradicate prostitution from society. We do not seek to enter a debate about values or policy goals in this report. We think that the definition of prostitution policy that we propose comes close to the position held by the officials in Austria and the Netherlands with whom we developed this study. The attempt to define prostitution policy does show however that it is impossible to discuss it without occupying a particular moral position. In other words there is no neutral ground from which to discuss prostitution.[62] Even the intention to approach prostitution in a pragmatic manner – as many of the officials with whom we worked did – implies the, at least implicit acceptation of prostitution as a societal phenomenon. This makes prostitution policy an instance of morality politics.

4.2 What is Morality Politics?

Although policy theorists feel the need for the concept of morality politics, even a cursory glance of the literature shows it to be notoriously difficult to define in a clear, unequivocal way. Also, as we will see, it is exceedingly difficult to make general statements about morality politics, as there are always exceptions to the rule. In a general sense it refers to policies in which first principles are at stake, over which exists deep conflict in the public, and which do not necessarily coincide with the left-right, liberal-conservative political divide. (Mooney, 1999a, 675; Mooney, 2001; Engeli, Green-Pedersen and Larsen, 2012). This results in the ubiquitous list of 'issues' that belong to the class of morality politics: abortion, contraception, gambling, same-sex marriage, drugs, pornography, capital punishment, physician-assisted suicide, and prostitution.

In this report we choose to define morality politics through the effects that contestation over moral principles has on the policy making process.[63] We will argue that while it may be difficult to define morality politics in a clear and consistent manner, certain policies that are characterized by seemingly irresolvable conflict over deep values show characteristics that not only set them apart from other policy fields, but also have the effect of making the design and implementation of a pragmatic, effective and humane policy exceedingly difficult.[64]

62 This manifests itself among other things in the use of language. Terms such 'prostitution' or 'sex work' suggest moral positions towards the provision of sexual services for money. We have chosen to use the term 'prostitution' when we talk about the phenomenon of selling sexual services, and 'sex worker' when we discuss the women who are engaged in prostitution. We realize that this is not very consistent. Our argument is that 'prostitution' and 'prostitution policy' are widely accepted terms that almost, although not quite, transcend moral debates. However, the term 'prostitute', we feel, has an unmistaken denigrating feel to it. For this reason we prefer the term 'sex worker'. Moreover, this reflects our own moral position about sex work as work, with all the rights that accompany work in our society.

63 See Wagenaar and Altink (2012) for further arguments for this choice.

64 See also Engeli, Green-Pedersen and Larsen who move away from a listing of characteristics of morality politics and argue for an impact-based approach, which focuses on the political dynamics of conflict. (In press, 2).

We speak of morality *politics*, instead of policy, to indicate that the issue has moved from the realm of policy making (which despite unavoidable conflicts over ideas and instruments has the moral and instrumental aim to resolve or ameliorate a collective problem) to that of deep and intractable conflict (in which the struggle over the prevalence of symbolic positions takes precedence over resolving collective problems). Differently put, morality politics indicates a situation where the minimum common ground that is the condition for engaging in effective collective problem solving, has broken down into irreconcilable conflict over moral positions about what is right or virtuous with regard to the issue at hand. With the focus on the effects of morality policy we take a clear moral stance towards prostitution policy. 'Good' prostitution policy, we believe, is a policy that improves the rights – both human rights and labour rights – of sex workers and lessens the negative impact of prostitution on communities. We realize that there are different ways of attaining these goals, and that there are no blueprints for 'good' policy in this or any other policy field. However we take the position that the focus on rights and community impact should be the touchstone for assessing prostitution policy.

We define morality policy by a configuration of substantive characteristics and effects:

1 *Morality policy is ruled by ideology.* As Deborah Stone points out, all public policy is a struggle over the salience and interpretation of basic values. (Stone, 1997) Concrete policy solutions embody different interpretations of such values. Two things distinguish morality politics from 'regular' policies with an ethical dimension. First policies turn into morality politics when they are based on an unabashedly explicit ideology. Morality policy goes beyond the societal problem it professes to address and is usually a vehicle for a larger moral cause. For example, its supporters often use prostitution policy as a platform for various feminist causes, or to promote a conservative public order cause. Second, morality politics often has a pedagogical thrust. In its full-fledged form morality politics can turn into a moral crusade for one or another position (Gusfield, 1986). For example, one of the explicit aims of the Swedish Sex Purchase Act, for which the Swedish government allocates funds and mobilizes its foreign service, was to export it to other countries. As Dodillet and Östergren observe: "Pamphlets, websites, articles, books and movies have been produced and lobby activities have been conducted towards the European Union (EU) and the rest of the world with the help of this material and via workshops, seminars and debates ... At the core of the marketing campaign has been the stated success of the Sex Purchase Act." (2011, 2) However, as we will see in Appendix 3, there is very little impartial research on the effects of the Swedish law to support its alleged effectiveness. By way of contrast, and to show that even 'moral' topics such as prostitution do not necessarily need to transform into morality politics, the New Zealand decriminalization approach or the Dutch regulatory approach to prostitution policy have not been internationally marketed, while their effects have been subjected to extensive evaluative research (Abel et.al, 2010; Daalder, 202, 2007).The pedagogical thrust in morality politics is the dead-knell for the open debate that characterizes democratic politics. All argument in policy debates is aimed at persuading the opponent, but the overt goal of ideological politics is to become hegemonic in that it effectively crowds out other ideas and positions to the point that these appear dubious, wrong, or even utterly unintelligible. This makes mutual listening impossible.

2 *Moral policy is lay policy.* Mooney considers this one of the key characteristics of morality policy (Mooney, 1999, 676). Because the debate is about first principles and not the technical details of policy design and implementation, he argues, almost anyone can legitimately claim to be well informed. While in domains, such as pension, health or social security, experts occupy a central and generally accepted role of technical authority, in cases of moral politics everybody feels he has something worthwhile to say about the issue at hand. Morality policy is "owned" by everyone, while sources of technical authority that might arbitrate conflicts of belief or opinion are either absent or drowned out. Instead, every member of the public and of a nation's administration believes that he has an expert opinion about the issue at hand. The influence of the public makes it difficult for administrators to formulate and implement policy, as they always have to

take into account assertive media reporting, pundits pronouncing strong opinions on policy measures, or elected officials who, often spurred on by the media, impose abrupt changes in policy.

Generalized issue ownership in combination with the dominance of first principles gives the media an influential role in morality policy. In our research we found that the media exhibited a strong bias towards depicting prostitution as dominated by violent organized crime. Sex workers were overwhelmingly described as the passive, hapless victims of trafficking. In general the language in which prostitution was described was sensationalist, emotive and consisted of detailed descriptions of sexual and physical abuse. In addition, media reports are replete with vague, elastic, but unvaryingly alarming indications such as "hundreds of thousands", "millions", "rapidly increasing", "epidemic", or the currently popular "tsunami". (Goraj, 2012. See also, Fitzgerald and Abel, 2011)

3 The explicit ideology and the public ownership that drive a moral policy have several effects. *Morality politics is emotionally charged.* Measured discussions of prostitution policy are rare. The emotional charge of morality politics goes beyond the emotional investment that characterizes all public policy. Expert reports, opinion pieces and sometimes even government documents are often written in the style of a moral crusade: a great wrong lives among us, here are some representative examples, it is imperative that we act forcefully and immediately. (Asante and Schaapman, 2005; Roessingh and Ramesar, 2011; Tonkens, 2011)[65] The purpose of a policy discussion is not so much the dispassionate exchange of ideas or the measured assessment of the expected effects of a policy alternative, but rather an opportunity to demonstrate the correctness of the speaker's position in the face of much allegedly wrongheaded opposition. The result is that debates about prostitution and prostitution policy have all the characteristics of a "dialogue of the deaf": the angry reiteration of original positions, the unwillingness to listen to the opponent's point of view, the demonization of those who think differently.

4 *Morality policy is resistant to facts.* There are remarkably few precise, reliable facts available in prostitution policy. As we saw in chapter 2 there are good reasons for that, but more important for the characterization of morality policy is the apparent lack of interest to get the numbers right. It needs little commentary that those who are on a crusade will have a strong incentive to inflate numbers. Also, the media are remarkably deficient in reporting reliable numbers (Goraj, 2012). But even more serious scholars or government organizations uncritically cite numbers they have found in other publications as we have seen.[66]

5 A fifth characteristic of morality policy is *a certain impatience with policy implementation.* It has the appearance that the formulation and announcement of policy is seen as more important than its implementation. Mooney thinks that the clash of first principles that characterizes morality policy leads to a lack of interest in the outcomes of the policy. A stark example is again the Swedish Sex Purchase Act. Ten years after the Act was passed in Swedish parliament, the results are downright disappointing (Florin, 2012). The decision to prosecute clients of sex workers has led to only a modest decline in the number of sex workers and men's attitudes towards prostitution have not changed. (Dodillet and Östergren, 2011) More importantly, although health and social work organizations were supposed to play a central role in the implementation of the Act, no budget has been allocated for this (Florin, 2012). There is evidence that the situation of sex workers has deteriorated, with some cities phasing out all harm reduction policy. When confronted with these results, the Swedish minister brushed it aside as insignificant in light of the larger pedagogical goals of the law (ibid.). Without generalizing too much from this example, we can conclude that in moral policy the symbolic dimension of the policy is at least as, if not more, important than its instrumental aspect (Gusfield, 1984; Edelman, 1985; Yanow, 1996). The purpose of the policy is to send out

65 In Carinthia the prostitution law was amended in September 2012. The Governor of Carinthia, Gerhard Dörfler (FPÖ), did not give his approval, because he thinks that "prostitution is against human dignity" (http://kaernten.orf.at/news stories/2551544/ [25.09.2012]; http://diestandard.at/1348283973784/, [25.09.2012]; http://www.kleinezeitung.at/nachrichten/politik/3124900/, [25.09.2012] and "as a family father he disapproves prostitution" (http://kaernten.orf.at/news stories/2551544/ [25.09.2012]).

66 See Weitzer (2007) for a number of high profile examples.

a signal to the world – both to supporters and opponents – that proponents of a certain policy proposal hold the right position on the issue.

6 Finally, *morality policies are vulnerable to abrupt and drastic change*. With abrupt and drastic we mean changes towards policies that are based on wholly different values and underlying principles. While in the face of unsustainable budget deficits large changes in the organization and delivery of education, health care or retirement policy have been and are currently proposed in many countries, institutional drag or resistance checks their realization. Institutional drag is the awareness that the functioning of a social domain depends upon many taken-for-granted institutional practices, habits and traditions that support other valued or necessary elements of the domain. Institutional resistance emerges from actors who have a vested interest in the status quo, experts who have a deep understanding of the underlying principles and real-world effects of the current system, and/or the public who have come to appreciate the benefits of the program. Often such a situation does not exist in the case of morality politics.[67] In fact, it has been argued that the uncompromising nature of morality politics results in a situation in which policy debate is never settled. (Mooney, 1999a, 678; Tatalovich et. al., 1994) That is what makes it *politics* instead of policy.

To sum up, the purpose of this chapter is not to provide a hard and fast definition of morality politics. We have characterized morality politics through its extreme ranking on a number of characteristics of public policy and the effects this has on the policy making process. Our argument is that if policies are explicitly ideological, a proxy for a larger cause, almost exclusively owned by the general public, impervious to facts, discussed in emotionally highly charged language, concerned more with the symbolism of strong measures than the details of implementation, and prone to sudden policy reversals, we designate them as an instance of morality politics. We conclude that in most countries prostitution policy can be characterized as morality politics in this sense. That is not to say that there are no instances of dispassionate fact-finding, measured searches for workable solutions or patient implementation of pragmatic policies. We have in fact encountered quite a few in our research. Our general argument is that the moral nature of prostitution policy makes it vulnerable to extremist positions and breakdown of public dialogue. In addition to the lack of data, the inaccessibility of the prostitution world, and the many exogenous forces that drive its development, the moral nature of prostitution policy is an additional obstacle to administrators and front-line bureaucrats to formulate, design and sustain a reasonable, pragmatic and humane public policy.

67 Joyce Outshoorn points out that abortion policies might be an exception. In Western-European countries pro-life forces that attempt to roll back laws that allow abortion, run into stiff resistance from both the public and progressive political parties.

5. The Local Governance of Prostitution

5.1 Policy Design and Policy Instruments

Although the moral debate about prostitution is national, the design and implementation of prostitution policy is almost always a local affair. It is at the local level – regions and municipalities – that prostitution manifests itself. Prostitution is often seen as an ineluctable element of the urban landscape; although many clubs are found in small towns and rural areas. So it is at the local level that national objectives are translated into operational design.

Policy design is aimed at arriving at desired outcomes through the application of knowledge and experience about a particular policy domain. It is less a purely technical activity of drawing up a blueprint and sticking to it, as an evolving activity of channelling the efforts of many actors in working towards an agreed upon goal. A prime example of this is the so called "chain management" that the Dutch cities have adopted in fighting trafficking in which a large group of relevant actors regularly meet to inform each other and coordinate their activities. (See below.) As Howlett puts it: Policy design is

" (T)he effort to more or less systematically develop efficient and effective means through the application of knowledge abut policy means gained from experience, and reason, to the development and adoption of courses of action that are likely to succeed in attaining their desired goals or aims within specific policy contexts" (2011, 22).

A key element of policy design is the choice of policy instruments. Policy instruments are "the techniques or means through which states attempt to attain their goals" (Howlett, 2011, 22). The basic idea is that the concept of a policy instrument brings order to the dizzying array of activities and techniques that governments have at their disposal. It is common to distinguish between substantive and procedural instruments. Substantive instruments are "those policy techniques or mechanisms designed to directly or indirectly affect the behaviour of those involved in the production, consumption and distribution of different kinds of goods and services in society" (Howlett, 2011, 25). An example would be a licensing and monitoring system to induce proprietors to offer a safe and hygienic work environment to sex workers. Procedural policy instruments "affect production, consumption and distribution processes only indirectly, if at al. Rather they instead affect the behaviour of actors involved in policy implementation (ibid.)". An example of a procedural tool would be the creation of a centralized police unit to coordinate the fight against trafficking, or the organization of a stakeholder consultation effort in the formulation of a licensing system in The Hague. (Wagenaar, 2006)

The policy literature offers a number of taxonomies of policy instruments (Hood, 1986; Salamon and Lund, 2009; Stone, 1997). A common taxonomy is that by Howlett, Ramesh and Perl (2009, see also Howlett, 2011, 129) They distinguish between four types of instruments:

1 *Organizational instruments* "rely upon the use of government institutions and personnel to affect policy output delivery and policy process change" (Howlett, 2011, 63). Examples from the field of prostitution policy are municipal agencies, police departments, and the Municipal Public Health Service (GGD). But the creation of steering group of elected officials, administrators, police officers, and NGOs in Vienna to implement the new municipal prostitution law, is also an organizational instrument.

2 *Authoritative instruments* " involve, and rely primarily on, the ability of governments to direct or steer targets in the directions they would prefer them to go through the use of the real or perceived threat of state-enforced sanctions" (op, cit, 83). Examples are laws (such as the anti-trafficking laws that derive from the Palermo protocol that many countries have introduced) but also the myriad of quasi-judicial regulations that municipalities draw up to regulate prostitution.

3 *Financial instruments* are "specific techniques involved in transferring treasure resources to or from other actors in order to encourage them to undertake some activity desired by governments through the provision of financial incentives, or to discourage them through the imposition of financial costs" (op. cit. 101). Financial instruments involve taxes and user fees, but also grants. For example, the city of Vienna fined outdoor sex workers who were working outside the designated areas. Authoritative and financial instruments merge into one another: when a sex facility has to close down for a month because of a breach of the rules, this has negative financial consequences for the proprietor.

4 *Information-based instruments* are defined as "those policy techniques or mechanisms which rely on the use of information to directly or indirectly affect the behaviour of those involved in the production, consumption and distribution of different kinds of goods and services in society" (op. cit. 116). Good example are the information campaigns in various "source" countries to discourage women from migrating to the Netherlands to enter the sex trade, or the Dutch 'Wet Bibob" which allows for the collection of information on the antecedents of proprietors.

In the real world of policy design and implementation, the choice of instruments is a messy process that is influenced as much by knowledge (both formal and experiential) as tradition, ideology, unrecognized intellectual frames, convenience and accommodations. In addition, each type of instrument has a characteristic implementation 'profile' of advantages and disadvantages that policy makers take into account. This includes the amount of information needed, administrative costs, automaticity of implementation, and precision of targeting (Howlett, 2011, 56). For example, regulations are reasonably cheap (although they require a monitoring and enforcement procedure to give it bite), and can be targeted with precision. However, they often generate resistance, they are rigid in that they don't take individual circumstances into account, and they might distort markets by burdening producers and consumers with additional costs. Differently put, the choice of a particular instrument is always constrained by a wide range of contextual factors.

5.2 Policy Design and Implementation in Vienna and Oberösterreich

Similar to the Netherlands, Austria has an active, progressive and well-institutionalized women's policy in the years since the 1970s. When sexual violence is concerned, it has one of the first and still one of the best violence protection laws (1997) in Europe which was developed in close cooperation with feminist NGOs. The Women's department of the city of Vienna (MA 57) was founded in 1992, and it has been active in a number of areas such as financing research on prostitution and NGOs working in the field of sex work. Furthermore, it organized together with LEFÖ/Tampep and MILENA as well as in cooperation with La Strada (Prague) the seminar "Prostitution as a transnational phenomenon".[68] In Austria – on the national level – several conferences about sexual violence were organized in which sex work and trafficking was an important topic. These conferences were organized especially before and after the world women's conference in Beijing. Several booklets – one dealt exclusively with trafficking – were released by the Minister of Women's Affairs. The NGOs – esp. LEFÖ – in the 1990s and several others – now not existing any more – always acted from a perspective which defines prostitu-

68 MA 57 – Frauenförderung und Koordinierung von Frauenangelegenheiten: Prostitution as a transnational phenomenon. Seminar, December 6 and 7, 2001 in Prague.

tion as a profession, a service. At the end of the 1990s the Upper Austrian NGOs maiz and LENA were founded, in the 2000s followed SOPHIE (Vienna), SXA-Info (information and counseling for sex workers and multipliers) in Styria, the Caritas in Carinthia and "Frau & Arbeit" (Salzburg).[69] That is, not all *Länder* have NGOs specialized in sex work. And it has to be said, that most of these NGOs work on a very precarious level as they are financially dependent on the public sector. In Vienna the situation for both NGOs, LEFÖ and SOPHIE, improved with the implementation of the new Prostitution Act. As outreach work and counseling should be strengthened these NGOs got a financial contract with the City of Vienna for three years (2012-2014). Feminists also supported a sex workers association in the 1980s. Since the middle of 1990s feminists demanded rights for sex workers.

In Austria all state and federal laws are written by civil servants and/or the executive on behalf of politicians. The comparison of the process of law development and its implementation reveals big differences on various levels between the two provinces Vienna and Oberösterreich. Generally speaking, the political discussion and public discourse about prostitution were nearly non-existent in Oberösterreich whereas they were marked by heated debates and political pressure by politicians of all parties and various civil society stakeholders in Vienna. One indication among others is that between April 2004 and June 2011 (the WPG 2011 was accepted by the Viennese government) prostitution and human trafficking in relation with prostitution were addressed 29 times in the Viennese parliament. In the parliament of Oberösterreich these issues were only mentioned 11 times between 2004 and 2011, mainly in connection with the planned prostitution law and the International Women's Day. The content of the discussion and the framings of the discourse are nevertheless rather similar: in both provinces prostitution is discussed in connection with criminality (coercion, illegality, human trafficking and drugs), as a threat for children and juveniles as well as of the good mores. This kind of discourse is mainly led by the Freedom Party and the People's Party and to a lesser extent by the Social Democrats. This "criminalisation frame" often goes along with the victimisation of the sex workers. The view that prostitution is an outcome of our patriarchal system is especially followed by the Social Democrats; here again the sex worker is seen as a victim. The Green Party pursues an approach in which the socio-economic situation and the human rights of sex workers are emphasized.[70] The different presence of the topic is also reflected in the level of the media coverage; in Upper Austria reports about the prostitution law and prostitution in general are rare whereas in Vienna at least 80 articles in the newspapers (*Kurier, Die Presse, Der Standard*) dealt with the issues in 2011.

Prostitution has been the subject of intense attention in Vienna in the first decade of this century. It was the heated political climate around street prostitution, and the pressure from residents, their political representatives and the media that led, first, to a so called 7-item plan, and subsequently to the new municipal Act.[71] The 7-item plan was proposed in May 2010 by the Executive City Counsellor for Women's Issues Sandra Frauenberger. It involved support for residents of street prostitution areas and sex workers (a.o. the realization of a hotline

69 This list is not complete. There are some departments of organisations which offer counseling for sex workers and do outreach work; some are connected with churches. A special status has the *Sexworker-Forum für professionelle Sexarbeit* – it is primarily an internet platform, which nevertheless provides, besides information, support for sex workers. It is financially independent. (source: interview Christian Knappik). This forum is hardly acknowledged by the authorities as a stakeholder/ representative of sex workers.

70 This very rough summary of the political parliamentary discourse in Vienna and Upper Austria is based on the analysis of 38 minutes of the Viennese State Legislative Assembly (*Landtag*) and the City Council (*Gemeinderat*) (2001 – 2011) as well as of 17 minutes of the Upper Austrian Parliament (1994 – 2011). With regard to the discourse about prostitution in Austria see also Tertinegg et al. (2007), for Upper Austria see Hamen (2011).

71 In 2011 the three major Austrian newspapers reported in total over 80 times about street prostitution in Vienna. Residents of prostitution areas were in close contact with the media. The dailies and weeklies, but also Viennese TV-programs frequently reported on street prostitution, with an exclusive focus on the nuisance for residents. The media were very critical about politicians at the provincial and district level and their proposals for solution (esp. the 7-item program, but also later regarding the new law). The citizens' initiatives gained a lot of awareness by the media. The media reports were fuelled by district politicians of various political parties who exerted also a lot of pressure on the City Counselor for Women's Issues. They introduced motions and resolutions at the City parliament; they submitted parliamentary questions on this, such as the parliamentary questions by The Greens regarding the 7-item-program (20.07.2010; another one from 09.09.2010) The populist-right Freedom Party issued a resolution of all FP-district councilors in September 2010 in which they proposed client punishment. The SPÖ of the 15th district issued a bill concerning the relocation of street prostitution in February 2011. The politicians at the district level exerted also pressure through a large number of press agency releases.

for reporting nuisance and other problems), the relocation of street prostitution to two less populated streets, more police control of street prostitution, the intention to adjust the Viennese Prostitution Act, more outreach work by NGOs, and the financing of this research project.

The genesis of the 7-point plan, and its evolution into a new Viennese prostitution law, forms an apt illustration of the dynamics of policy design and implementation in this area. First, we notice the continuous pressure from media, political spokesmen, and the public. The intense media attention more or less forces elected officials into a particular definition of the problem of prostitution in the city. Despite the fact that Vienna has about 500 sex facilities, the focus of the debate, and of subsequent policy initiatives, is disproportionally on the 100 to 200 street prostitutes that work the streets of Vienna. There is little discursive space to consider alternative problem definitions or to listen to other voices, such as those of the NGOs which try to bring the rights of sex workers to the attention of policy makers.[72] We will see a similar dynamics in the Netherlands where an increasing emphasis on trafficking has crowded out attention for labour law and labour relations.

Second, based on experience the city feels that it has few effective means to control prostitution. In a moment of candour, Ms Frauenberger states that she did not know what was realistically possible in terms of steering prostitution. She added that she wanted to attempt to mobilize "community-political instead of legalistic means" to achieve structural change (source: interview). There is a lot of insight about prostitution policy packed into Ms Frauenberger's statement. She is aware that prostitution is a domain that is largely driven by exogenous forces that are difficult if not impossible to control. In Vienna, with its proximity to Eastern Europe, the most potent extraneous force is immigration. The Executive City Counsellor's statement also shows both awareness of different governance arrangements, as well as, given the policy-resistant nature of the prostitution field, a willingness to experiment with these. Governance arrangements are more or less consistent 'packages' of policy foci, understandings of state-society relationship, large governance aims and preferred policy instruments (Consodine, 2001; Howlett, 2011, 9). For example 'legal governance', focuses on legality or the promotion of law and order, frames the relationship of the state to society in terms of legislation and administration, and its preferred instrument are laws, regulations and taxes. Ms Frauenberger expresses awareness of the limitations of regulation in a field, such as prostitution, that is characterized by dynamic complexity. The alternative she suggests has elements of another governance arrangement, 'network governance'. Network governance focuses on relationships with the aim of promoting inter-actor problem solving, which sees the state as collaborating with society, and the institution of task forces, clientele agencies (such as NGOs) and stakeholder conferences. In the final analysis the Viennese approach is, similar to policy design in the Netherlands, a mix of legal and network governance modes.

Third, the nature of prostitution – intersectoral, rapidly evolving, and characterized by deficiencies in knowledge – more or less impels policy makers to turn to forms of collaborative policy design. In terms of instrument theory: to introduce organizational instruments of a collaborative nature. For example, in the implementation of the 7-point plan the city collaborates with a number of municipal departments (Promotion and Co-ordination of Women's Issues (MA 57) and the department for Elections and Specific Legal Affairs (MA 62), officials from the STD-outpatient clinic and representatives of the city boroughs in which street prostitution takes place. This was a limited form of collaboration with the purpose of de-escalating the conflict between residents and the city. In a subsequent phase of the project we will see that a formal steering group is formed to implement the new prostitution law. We see similar dynamic in the Dutch cities. First, in the design of the licensing procedure (Wagenaar, 2006) and later when trafficking began to dominate the agenda. We will return to this.

72 Although in a recent workshop in Vienna (June 2013) where Dutch and Austrian politicians and administrators met, it was striking that the Austrians did use the vocabulary of sex worker rights, while the Dutch participants spoke almost exclusively in terms of trafficking.

A fourth lesson, as will become clear, is that policy design is not a one-off process, but instead extends in time as an act or rule slowly winds it way through the policy cycle, the administrative bureaucracies and the professional organizations. At each step, as we will see, the same pressures that shaped problem definition also influence later design and implementation stages. The goal of the legislation was to move street prostitution out of residential areas, but to still enable street prostitution either in non residential areas and additionally in the designation of toleration zones (which also could be in residential areas). In addition the goal was to make the regulations more transparent, in particular the rule that states that no prostitution is to take place within 150 meters of schools and churches, which had in the past led to a large number of fines to sex workers. However, good intentions do not automatically translate into good outcomes. Prostitution policy, as we saw in the preceding chapter, is always vulnerable to moral pressure.[73] The road to the implementation of the new Viennese prostitution legislation vindicates this point. We will see that despite the involvement of many stakeholders, including sex workers, in the design of the new Viennese Prostitution Act, and a genuine desire among officials to try a more networked mode of governance, the situation of street workers deteriorated considerably.

The publication of the 7-point plan didn't decrease the pressure on the policy makers. Political parties, residents, media and NGOs all clamoured for a new prostitution act, albeit for different reasons. The Executive City Counsellor then decided to set the formulation for a prostitution act (Wiener Prostitutions Gesetz, WPG), as already announced in the 7-point plan, in motion. The Act was to contain the prohibition of street prostitution in residential areas, the designation of a toleration zone for street prostitution, a licensing procedure for brothels, and the fining of clients who solicit sex workers outside of the designated areas.[74] From the very start the WPG was developed in a climate that was characterized by contentiousness and political manoeuvring. It also took shape within a clear law and order framework. Although the police did not write the first draft of the law, they had a strong influence on the new prostitution law. The police informed the political level continuously about the shortcomings of the old law and they were involved in the development of the WPG in as far as they were invited to give their opinion on several measures and to comment on the very last version. In hindsight, the political discourse was marked by heated and conflictuous debates about the content of the law proposal from the very beginning. (source: interviews with politicians; media coverage, parliamentary debates). Contrary to Upper Austria the Viennese opposition politicians used the issue for political competition; a high number of press releases and the many statements in the Viennese parliament are evidence for this.

The political sensitivity of the topic had a strong impact on the work of the administrative personnel. As we observed earlier, the political requirements/ parameters were not only much more pronounced in Vienna than in Upper Austria, in the former the political level intervened much more in the process of writing the law. This meant a continuous exchange between these two levels. Political interventions on the one hand provide the staff in charge with guidelines; on the other hand it is a big challenge. They do not only have to provide and check continuously different solutions for the legal phrasing/ possibilities, it is also a problem of loyalty in cases of conflicting requests/demands by the political level. Writing a law about a topic which is not well known on the one hand and about which everyone has nevertheless a strong opinion and which is a highly moral issue on the other hand is a challenge in itself for all administrative staff. The administrative personnel of both provinces met this challenge with an extensive and close cooperation with other administrative departments, the police,

73 Although the emphasis in the implementation of the New Viennese Prostitution Act was on street prostitution, some implementation steps regarding improvement of work conditions have been made. A special leaflet for proprietors has been developed which informs them about the new regulations, and the police informs them during their routine checks of the brothels.

74 According to the police (BPD Wien) 1414 complaints against sex workers were filed because of the violation of the prohibition zone (§9 Abs. 2 WPG 2011) between January 1, 2012 and June 30, 2012. Clients were reported 106 times (§ 16 WPG 2011) in this period. For comparison: In the time period of January 1 to April 30, 2011 a complaint was filed against 1628 sex workers because of the violation of prohibited zone regulations (§ 4, Abs. 2 und 3 Wr. ProstG). That is, fewer sex workers were reported after the enforcement of the new law; nevertheless the number of complaints is still high. A police officer explained the still high number with the strict surveillance – especially of the second district – by the police since February this year.

districts, and to a lesser extent with NGOs. The people in charge with formulating the laws gained knowledge about sex work furthermore by their participation in the federal working group *Länderkompetenzen Prostitution*. According to the interviewed administrative personnel they did not have direct personal contacts with sex workers.

It was generally felt among politicians and administrators that the organizations that were involved in regulating prostitution in Vienna were working without coordination, which led to duplication of efforts and organizations which unknowingly were confounding each other's efforts. (Source: interviews) For this reason, the Executive City Counsellor Sandra Frauenberger ordered the municipal Law Department to involve the relevant stakeholders in the formulation of the new prostitution act. As the head of the Law Department emphasized, prostitution is a topic that straddles many administrative sectors and therefore requires the know how of a wide range of actors. A period of intense consultation began. In so called structured Dialogue Forums, political representatives, administrators of various agencies, NGOs, residents, proprietors and over 20 sex workers were consulted.[75] Participants had mixed feelings about the consultation forums. Although they appreciated them as innovative and potentially valuable innovations in the traditionally antagonistic Austrian political climate, they also felt the participants didn't come closer to each other or changed their positions. The 'dialogue' amounted to a repetition of familiar positions. Some participants attributed this to the high escalation level of the issue of street prostitution, but it is likely that the dialogue was not adequately designed.[76] The literature on deliberation and dialogue repeats that careful process design is crucial in achieving collaborative rationality and transformation. (Innes and Booher, 2010; Forester, 2009; Ansell, 2011)[77] For example, residents who did not have a problem with prostitution in their neighbourhood were not represented in the forums.[78] Moreover, soon after the consultation rounds the final formulation of the act was settled with great difficulty in intensive and unyielding ("*beinharte*") negotiations between the two coalition partners (source interview).

The goals of the new Act were to improve the work and life situation of sex workers in Vienna, to regulate street prostitution, and to fight trafficking. The major instruments were a licensing system for sex facilities, the prohibition of street prostitution in residential areas, the prosecution of clients who solicit outside designated areas, a lowering and if possible an amnesty of the fines that sex workers had accrued in the past years[79], and an extension of police powers.

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75 The Executive City Counsellor for Women's Affairs, who participated in the consultations of the sex workers declared later that she was struck by the fact that they were strong, self-determined women, who didn't give the impression of being dependent or victims, and who strongly defended their right to work on the street. Not surprisingly the sex workers argued for a repeal of the prohibition areas in Vienna.

76 The literature on public policy mediation and collaborative provides guidelines for the design of productive dialogue in contentious, adversarial policy situations. It would lead us too far away from the purpose of this report to describe this large literature in detail. In general successful dialogue requires careful and patient acknowledgement of each others' histories, identities and positions, something which, in a climate of deep and prolonged conflict, can usually only be accomplished with the help of an experienced mediator. (Innes and Booher, 2010; Forester, 2011).

77 "A process is collaboratively rational to the extent that all the affected interests jointly engage in face to face dialogue, bringing their various perspectives to the table to deliberate on the problems they face together. For the process to be collaboratively rational, all participants must also be fully informed and able to express their views and be listened to, whether they are powerful or not. Techniques must be used to mutually assure the legitimacy, comprehensibility, sincerity, and accuracy of what they say. Nothing can be off the table. They have to seek consensus." (Innes and Booher, 2010, 6) Collaborative dialogue, when done well, has the potential to turn conflict into "creative conflict" and transformation. "Transformation refers to the moments in the conflict process in which parties reach new understandings of their situation, ones that redefine the nature of the conflict, the relationship among the parties, or the problems they face. New understandings are marked by different meanings or interpretations of events. The parties involved have a fundamentally different view of what is happening than they did when they entered the negotiations. (Putnam, 2004, 276, in Ansell, 2011, 276) That collaborative dialogue and transformation is not a naïve or unattainable ideal in prostitution policy is borne out by the stakeholder dialogue that preceded the licensing system in The Hague (Wagenaar, 2006), and the creation of a citizen initiative around street prostitution in Dortmund. (Wagenaar, in press.) (The Dortmund initiative was recently terminated after 10 years.)

78 Although the meetings were announced as 'dialogue forum', officials of the city administration state they were not designed as such, but more as meetings in which residents could vent their feelings. They acknowledge that they fell short in calming the situation and make people listen to each other.

79 Policemen had fined street workers who had solicited outside the allowed areas. Many of them had outstanding fines of thousands of Euros. As they did not posses the means, they were in effect forced to work to clear their fines. The idea was to break through this vicious cycle. It turned out, however, that a general amnesty was legally not possible.

To expedite the implementation of the new Act a steering group was created in which political representatives, administrative agencies, police officials, NGOs, and officials of the affected city boroughs participated. The idea was to keep each other informed, coordinate policy making, and create broad support for the new Act among the stakeholders. However, the participants were frustrated in their hopes. Very soon the group focused almost exclusively on the selection of the designated zones for street prostitution in the boroughs, as was agreed in the difficult negotiations between the two coalition partners. This effort has failed so far. The steering group had no decision making power and the boroughs vetoed every proposal for a designated street walking zone.[80] In the end street prostitution was only allowed in two uninhabited areas: the Prater and the Auhof, the latter at the edge of the city.[81]

Further implementation measures have been introduced in Vienna: The Viennese government strengthened the role of the NGOs LEFÖ and SOPHIE. Both received three year contracts for the accomplishment of counselling new comers in sex work and accompanying them (if wanted by the sex workers) to the police for registration (LEFÖ). According to LEFÖ these services are welcomed and accepted by many sex workers.[82] SOPHIE received financial resources for outreach work and the operation of a hotline (for residents and sex workers). Additionally the City of Vienna published online city maps in which the areas where soliciting clients outdoors is allowed are designated.

All in all one can conclude that the City of Vienna set much more measures for implementing the new law – in the development phase as well as after enforcement – than the Upper Austrian government. Despite of some deficiencies Vienna at least has established new forms of political culture, although they still need some adaption in design to be effective.

At the time of writing this report, the implementation of the new Viennese Prostitution Act fell well short of its stated goals (relocation from residential areas, transfer to indoor prostitution, licensing of brothels, and reduction of human trafficking). While outdoor prostitution was moved out of residential areas, and clubs in Vienna have been summoned to apply for a license, no transfer from outdoor to indoor prostitution took place as far as we could see, and the data on trafficking do not allow us to make any statements on this. The policies did result in a number of negative unintended consequences such as the lack of infrastructure for outdoor sex workers, crowding and fights among sex workers, pollution of parking lots, and exercising sexual services in public spaces. The Viennese story underscores our claim that studying and understanding the dynamic of policy implementation is crucial in understanding the effects of prostitution policy. While the public debate almost exclusively focuses on broad design templates that embody clear moral principles, the real story unfolds in the myriad interactions between administrators and professionals on the one hand and sex workers, proprietors, clients and NGOs on the other. The Viennese story demonstrates the complexity and interconnectedness of the prostitution domain, the gap between policy design and the life world of sex workers and proprietors, and the continuing influence of problem framing and media pressure on each phase of the implementation process. For example, the licensing of the 500 sex facilities in Vienna, as an instrument to improve the work conditions of sex workers, has made hardly any progress in the year after the Prostitution act passed the Council. The Act stipulated that new facilities required a license, while existing facilities had one year grace to apply for one. In September 2012 70 proprietors had applied for a "license", 8 facilities were granted one, and one application

80 The process was considerably more complex than here described. Designation of tolerance zones is statutorily only done by the national police, the *Bundespolizei.* After some political pressure the police formally put in a request with the borough administration, which was subsequently rejected by this. The borough chairman explained that he feared that toleration zones would only attract more sex workers to the area.

81 Recently a third area has been recommended, a residential street in the 23rd District.

82 See LEFÖ 2012.

was turned down.[83] On November 1, 2012 all existing sex facilities must have a license, but, despite an information campaign by the police, this goal has not been met at the time of writing this report (December 2012). The proprietors' argument is that the costs of abiding by the new regulations for safety and hygiene as well as for structural alterations to their establishment are too high, especially for small establishments, but insiders believe that this is a tactical manoeuvre by the proprietors that has not been accepted by the city in other small business sectors. Possibly the need of the proof of the proprietors' reliability (also of the persons in charge) is another obstacle for applying for a license. Police officers assume that about 200 sex facilities will be authorised in the long run. This would be a reduction of about 300 facilities. So far it is not possible to give a clear picture of the effects arising from the hesitancy by the proprietors and the reduction in numbers of facilities. According to the law the police would be obliged to shut down all facilities without a 'license', which would mean a loss of legal working places for sex workers and might lead to an increase of illegal apartment prostitution. It is unclear so far if the city will enforce the licensing paragraph of the Act. Also there is little evidence that the city created an effective monitoring apparatus, of the kind that we will discuss in the section on Dutch local policy.

The prohibition of prostitution in residential areas can be called a success. Through an information campaign by NGOs and increased police presence in the affected areas, sex workers have disappeared from the areas in a matter of days. This did not result in a decrease of the number of street workers. A few months after the Act became effective NGOs counted the same number of women who were now concentrated in the two designated areas, the Prater and the Auhof, although half of the women were new. This is another example of regulation-induced mobility. However, under pressure from residents and businesses near the Prater, and with the argument that children and tourists should not be exposed to the sight of women soliciting, the city introduced two new regulations that constrained both the area and the times that street prostitution is allowed. Where until recently about 20 women worked, now more than 100 fight for a place. The result is that prices have decreased drastically (to as low as €5 for oral sex according to outreach workers) and physical fights among sex workers, often along ethnic lines, are quite common. Some businesses in the Prater have organized an informal "security service" that chase women away from parking lots and has been known to prevent outreach workers from doing their job. The police do not act against this form of vigilance yet. Despite the repeated assertions of politicians to create an infrastructure for outdoor sex workers, there are no sanitary facilities in the Prater and the Auhof and no sites where sexual services can be consummated. Sex in cars is forbidden and there are only a few hotels that border the Prater. Additionally, according to outreach personnel, sex workers going back from the hotel within a residential area to the designated zone risk to be fined for violating the rules; the police deny this. As a result, the public parking garage in the Prater has, according to an outreach worker, been turned in a big open-air brothel. The goal of improving the work situation of sex workers has not been reached in the case of street prostitution.

The story of Vienna leads to seven more general conclusions about policy making regarding prostitution:

1 Politics, media and through these two channels, residents, have a predominant influence on the design and implementation of prostitution policy in Vienna. Although the situation regarding the former protection/prohibition zones was confusing and unclear and led to the high fines for sex workers, the lived reality of the latter plays mostly a rhetorical role in the policy debate and has little influence on policy design or implementation. Particularly problem formulation seems susceptible to moral and political influence. In Vienna this led to a strong focus on street prostitution over the – in numbers – far larger club sector.

2 The complex and interconnected nature of prostitution and the recognized lack of knowledge about it, almost forces officials to take a consultative approach to policy design. However, such innovations do not

83 We put "license" in quotation marks as it is not a license in the strict sense of the Austrian law. The proprietors have to announce the brothel and fulfill the requirements after which will get an administrative decision if they fulfill the requirements. In the strict sense of the word a license would make it necessary that the neighbors and nearby residents are heard by the administration. This is not part of the procedure in Vienna.

guarantee a successful or effective policy implementation. In the course of the policy process a consultative approach increasingly gave way to a predominantly repressive approach and the use of authoritative instruments such as police enforcement.

3 In the end, traditional political habits of relentless negotiating and bargaining between political parties determine the outcome of the legislative process.

4 The mundane and less visible process of policy implementation is at least as important for the situation of sex workers than the earlier and more visible stages of policy formulation and design.

5 The same moral and political pressures that shape policy design also shape policy implementation. Perhaps even more so as much implementation takes place away from the public eye.

6 Policy implementation has focused on "easy" targets (street workers) and has been more circumspect with "difficult" targets (licensing for sex facilities). What made the latter target more difficult is among other things the legally prescribed one-year period in which proprietors could adapt to the proposed licensing. For street workers such a period of grace did not exist. It is probably too early to draw firm conclusions from the Viennese case about the success of the new licensing system for clubs, given the interim period of one year which will end on November 1, 2012.

7 So far, one-sided implementation measures have made the work conditions of street workers worse and have done nothing to improve those in the club sector, although, as we argued above, the licensing system is still under development, similar to the Netherlands, and might require a number of years to be fully developed.

In the next section we will discuss local policymaking in the three participating Dutch cities and see to what extent the above conclusions apply there too.

5.3 Local policy making in the Netherlands

5.3.1 The social and policy environment in the Netherlands after the legalization of sex facilities

When the Dutch parliament in October 2000 adopted a law that made it legal to own and manage sex facilities, it aimed for three broad goals: 1) to separate voluntary from involuntary prostitution, 2) to "protect the position" of sex workers (Outshoorn, 2004: 198, 199), and 3) to fight trafficking and other crime associated with prostitution, and 4) to prevent prostitution of under-aged. Prostitution needed to be decriminalized by making the business of prostitution the subject of administrative law, which regulates the operation of sex establishments, and labour law, which regulates the worker rights and workplace conditions of prostitutes. Criminal law, the original province of the regulation of prostitution, was to be restricted to the criminal activities that accompanied (some) prostitution. Barring criminal activity, the state has no business in the transactions that occur between women (or men) and their clients. The assumption was that by normalizing sex work and bringing it into the institutional core of the Dutch administrative and welfare regulatory framework, it would be easier to crack down on the illegal and criminal aspects of the prostitution sector. The key policy instrument in the implementation of the law was a licensing and monitoring system for sex facilities. The Dutch approach was thus designed as a mixture of regulating and decriminalizing impulses. The implementation of the law, as is common in the decentralized unitary state that is the Netherlands (Andeweg & Irwin, 2002), was devolved to municipalities.

When the law went into effect it had two immediate consequences. First, the new Act stipulated that only legal residents from EU countries or those having proper documents were allowed to work in licensed facilities. Proprietors ran the risk that they would incur fines or that their facility would be closed if they employed sex workers without proper documents. That meant that almost overnight a large number of sex workers from non-EU coun-

tries were illegal and could no longer work in the Netherlands.[84] It is unclear where they went, but it is once again an example of regulation-induced mobility. Second, the municipalities inherited a business sector that, according to the Dutch journalists Roessingh and Ramesar, operated according to a "shady business culture". Black money, tax avoidance, bribery, drug trade, and exploitation of sex workers were common aspects of the prostitution business. As Roesingh and Ramesar note: "Such a culture ... does not disappear because in The Hague the parliament declares that it wants to 'normalize' the sector." (2011, 173) This in itself difficult situation was made worse by two policy interventions that interacted in unforeseen ways to result in an almost complete lack of impact on the central policy goals of protecting the position of sex workers. First, almost all municipalities, fearing an uncontrolled expansion of the number of windows or sex clubs because of the legalization, froze the number of licenses in advance of the passing of the law in 2000. Thus, unintentionally, the government created a large oligopoly of proprietors who employed a business model of maximal profits for a minimal investment. This would become a stumbling block in the attainment of the goals of legalization.[85] Second, the government consistently refused to intervene in the labour relations between proprietors and sex workers, arguing that this is a matter of civil law and should be arranged between the two civil parties involved.[86] The second goal of the 2000 law, 'protection of the position of sex workers' was inserted under pressure from sex worker advocates. They argued for the phrase "improvement of the position", and in their discussions with the minister of justice and her civil servants, made it clear that they had improvement of labour rights and work conditions in sex facilities in mind. The position of the minister was, that now that sex facilities would become regular businesses according to the law, similar to the situation in other business sectors, labour rights would follow more or less automatically. Her argument was that proprietors would have to abide by labour laws, sex workers would join trade unions, and proprietor organizations and unions would negotiate labour rights and work contracts, as was the usual practice in The Netherlands. The minister and her civil servants took a neutral position as to the nature of the relationship between proprietor and sex worker – labour contract or a contract sui generis – and, in hindsight naively, expected that this relationship would, "as a by-product of the abolition of the prohibition of brothels sort itself out". (Zuidema et. al., 2006, 3) For this reason the minister settled for the less binding formulation "protection" instead of "improvement". What "protection" entailed was left unspecified in the law. In practice many municipalities interpreted it as providing public health services and STD checks. (Archives Rode Draad) In practice, these two developments, the emergence of an oligopoly of brothel owners and the self-removal of the state from the negotiations around the labour rights of sex workers, not only gave proprietors more or less a free hand to successfully resist any improvement in the legal position of sex workers, but also, as we will see, gradually led the government to abandon the goal of improving the labour rights and work conditions of sex workers.

84 In the days of regulated tolerance the police turned a blind eye to women from non-EU countries that worked in the sex industry.

85 In 2006 municipal prostitution policy in the Netherlands was evaluated (Flight et al, 2006). 95% of municipalities knew the number of licensed facilities within its borders. 23% said that it knew the number of sex workers that were active in the municipality. 52% claimed they knew know how many unlicensed facilities were active in the municipality. 68% of municipalities had an explicit prostitution policy that was documented in a policy report; 16% said it had a policy but no written documents, and 16% said it didn't have a policy. 47% of municipalities had created a ceiling to the number of facilities within their borders, and 11% operated within a regional limit. In total, 250 licenses for sex facilities were unused. Almost all municipalities with fewer than 40.000 inhabitants did not have a sex facility within its borders; all those with 100.000 or more inhabitants did. The eastern province of Drente had the highest proportion of municipalities with at least one sex facility (73%); Utrecht (23%0 and Gelderland (29%) the lowest. 98% of municipalities that said to have a policy had used the *Algemene Plaatselijke Verordening*, a form of local regulation with the force of law; 67% (also) used zoning regulation to regulate prostitution. 40% of municipalities have organized prevention projects, 23% offers social services, and 6% exit programs. In 2006, 16 municipalities still banned sex facilities within their boreders, although this is forbidden since 2000.
In 94% prostitution the Public Order and Safety department at city hall designed policy; in 73% of cases the Public Planning department was also involved. In 20% of cases the Tax Office was involved in prostitution policy. In 96% the police did monitoring of licensed sex facilities. 18% of municipalities required a proof of good behaviour from proprietors. In case of a violation of the licensing requirements, 78% of municipalities issued a warning to the proprietor. (Temporary) closure of facilities usually happened in cases of under-age prostitution or women working without legal papers. Only 3 facilities were closed because of below-standard working conditions.

86 As Zuidema et. al. say: "Minister Sorgdrager (Minister of Justice at the time. Authors) her successor Korthals, and after that Minister Donner, argued that the position of the prostitute is dependent upon the civil law framework in which her work is embedded and the agreements made within that framework: "Involved parties carry the responsibility themselves that such agreements also lead to improvements of the position of the prostitute. The government has no involvement in this relationship and the agreements that are made therein." (2006, 2).

Since the days of regulated tolerance the four large Dutch cities have used a mixture of legal and networking governance. For example, in the late 1990s, while the city of The Hague had regular consultations with the proprietors of the major sex facilities, it also created an emergency measure to provide the police with more powers to establish public order in the prostitution zones. Similarly, when the city of Rotterdam closed its street prostitution zone in 2005, it consulted extensively with NGOs and other stakeholder organizations. Dutch local prostitution policy differs from policy in Vienna in that it covers a broader range of issues and actors. Since the 1970s Dutch feminists, both outside and inside government, had kept prostitution on the national agenda and had organized a number of high-profile international conferences which involved all stakeholders.[87] The Netherlands also boasted a number of highly articulate opinion makers and active NGOs such as the *Rode Draad*. In the national discourse, emancipation of sex workers found strong adherence among national policy makers who were responsible for women's policy. (Outshoorn, 2002, 2004) At the local level, public order was probably emphasized more strongly. (Interview police officer; Wagenaar, 2006) The combination of a relatively favourable attitude towards prostitution among opinion makers and a tradition of consultation among officials, led to local policies in which it was common to deliberate with proprietors and involve NGOs and other stakeholders in policy design and implementation. This approach was not abandoned after the legalisation Act was passed, but it was sorely tested under the influence of a number of powerful social and political developments.

From the moment of the passing of the legalisation Act, Dutch local prostitution policy had to cope with strong exogenous influences, in particular the entry into the EU of Eastern European countries, a steep decline in the number of sex clubs, and the rise of the Internet as a platform for recruiting clients. In addition, in the first decade of the 21st century the political climate became more conservative, and the conservative-right national government as well as local governments of different political stripe were less hesitant to impose authoritative measures upon the sex business.

Probably the most important development for local prostitution policy was the accession to the EU of the countries of former Eastern Europe. Until 2004 Eastern European countries had accession status. For sex workers that implied that they could only work in the Netherlands as self-employed persons. As the self-employment status had to be proven in the country of origin before departure and involved a laborious bureaucratic procedure, this put a brake on the number of women who legally migrated to the Netherlands to work in the sex industry. In 2004 most Eastern European countries plus the Baltic states, except for Rumania and Bulgaria, received full EU membership status. In theory citizens from these countries could now work in salaried employment in the Netherlands. As economic conditions in these countries had not changed with their accession to the EU, and helped by affordable transportation possibilities such as budget airlines and bus services, labour migration began to increase – and not just in prostitution. (Engbersen et. al, 2009) The Polish construction worker or the Bulgarian agricultural day labourer became common figures in the Dutch labour market – and the media.

In the wake of this increase in migration, exploitation and trafficking seemed to be on the rise. We choose our words carefully as reality and rhetoric mix in difficult to disentangle ways. For example, around 2002, outreach workers in the, then still operating, toleration zones for street prostitution ("tippelzones") in the large cities, noticed a sharp increase in the number of Eastern European young women in the zones. Most of them were

87 To grasp the impact of feminist discourse on Dutch prostitution policy it is important to be aware of its institutionalized character. The feminist debate on sexual violence and prostitution was not a sideshow to official politics, but, instead, formed an integral part of it. It was the official goal of the Dutch administration to promote a policy on women's issues. As a result, feminists either actively participated or had ready access to the core political and administrative institutions, initiating and implementing policy on women's issues. Central in the development and institutionalization of belief was the *Directie Coordinatie Emancipatiebeleid* (DCE), the national women's policy agency that was part of the Ministry of Social Affairs. The DCE organized the key conference on women and sexual violence in 1982 (the so called *Kijkduin* Conference), and it wrote two key policy papers, one on sexual violence against women and one on the status of women. In both policy papers prostitution and trafficking were addressed. In addition the DCE initiated and financed research on prostitution and trafficking, it subsidized the First World Whore Congress in Amsterdam in 1985, and it funded two organizations that were to become key players in the prostitution policy arena: the *Rode Draad* and the *Stichting Tegen Vrouwenhandel* (Foundation against Trafficking in Women, STV). (Outshoorn, 2004; Haveman, 1998: 174).

dropped off by vans after the closing hours of clubs and picked up again when the toleration zone closed, strongly suggesting that they were exploited by third parties (interviews outreach workers; personal observations HW). Because of their large numbers they drove down prices and displaced the Dutch addicted women for whom the zones were designed as a relatively safe alternative to the street. Outreach workers felt increasingly uneasy as they faced the dilemma that by providing support to the women they abetted their exploitation. City officials also felt uneasy and in 2004 and 2005 Amsterdam, Rotterdam and The Hague decided to close down the toleration zones and abolish street prostitution within their borders. Utrecht still has a small toleration zone where access is regulated by a pass.

Coinciding with the increase in Eastern European migration was the struggle with proprietors over the employment status of sex workers and the fiscal status of the facilities. Although the Tax Office concluded time and again that on the basis of "facts and circumstances" sex workers had a de factor labour relationship with proprietors, the latter were successful in avoiding a full-fledged labour contract with the ensuing payment of social security benefits. Proprietors argued that sex workers were independent contractors to whom they rented out rooms. They went to court numerous times to appeal the decision of the Tax Office and to argue that the Dutch constitution did not allow them to order a woman to "sell her body". The government in the mean time, in answer to questions from parliamentarians, took the position that sex workers should go to court to challenge proprietors. However, sex workers were extremely reluctant to give up their anonymity. (Zuidema et. al, 2002, 12) In 2008 the Tax Office finally decided to break the impasse over labour relationship by the introduction of the opting-in arrangement (see chapter 4). This made it easy for citizens of EU-countries to work in prostitution. Until 2012 women from Rumania and Bulgaria were tolerated by the immigration service to work under the opting-in arrangement. At the same time there were more and more signals that exploitation of migrants in the sex industry was rampant. The *Rode Draad* published an extensive survey in 2006 that showed that different forms and degrees of sexual and economic exploitation were widespread in the licensed sector. (Altink and Bokelman, 2006) At the same time officials in the cities observed a change in migration patterns. Instead of single women who travelled on their own or with the help of relatives or friends to work in the sex industry, groups of young women from Hungary, Rumania or Bulgaria, often of Roma background, moved into the window areas, only to move out again after a few weeks. The fact that many of them didn't speak English and that they moved in groups, suggested that third parties organized their employment in the sex industry. Lately the cities witness a sharp increase in Chinese massage parlours with many of their young female employees working on a student visa.

But perhaps even more influential than these trends was an incident that had a profound effect on the national discourse on prostitution. In 2006 the national police started a large-scale investigation into a gang of Turkish traffickers (the Dürdan group) that forced women to work in the sex industry. The sheer number of women (in the end 120 women were thought to be under the influence of the Dürdan gang, of which, based on telephone taps, 78 were considered victims), the brutality of the violence, and the fact that it all happened in the licensed window sector, sent shock waves through the world of politicians, police and administrators. In the media the brutality of the Dürdan gang became the face of trafficking, and prostitution became synonymous with violence and organized crime. (Goraj, 2012) In the national policy discourse trafficking became the dominant theme, and many elected officials openly questioned the wisdom of the 2000 legalization Act.[88] Local politicians in Amsterdam and Utrecht stated that "between 50 and 90 percent of women behind the windows were

88 Simultaneously with the Dürdan affair, welfare and youth workers in the prostitution field were alarmed by the alleged rise in so called "lover boys". These were young men often from ethnic minorities, who seduced (sometimes very) young girls to groom them to work as sex workers. A bestselling book by one of the alleged victims of a loverboy (Mosterd, 2008) turned the Loverboy phenomenon into a moral panic, and many schools and welfare agencies started campaigns to warn young girls for the dangers of lover boys. A research study by a leading Dutch criminologist (Bovenkerk, 2006) concluded that the lover boys were a contemporary version of ordinary pimps and that the phenomenon was probably not as widespread as suggested. When the Mosterd book turned out to be a hoax, the lover boy panic subsided somewhat. But yet again, in the media prostitution was identified with crime and exploitation.

forced". And the police report that was written about the Dürdan investigation concluded that: "It is an illusion that a clean, normal business has emerged. For years in the licensed window sector in Amsterdam, Alkmaar and Utrecht, traffickers, pimps and bodyguards could do as they pleased." (KLPD, 2008, 8) Although, as we will see in the next chapter, trafficking is a fuzzy concept, and prostitution is not synonymous with trafficking, the lesson of the case was a real one: the monitoring of licensed facilities had not prevented the exploitation of the women of the Dürdan gang. The monitoring had been mostly administrative and had focused on the women's papers, but many of the women in the Dürdan investigation had legal papers. Signals that the women were criminally exploited were missed entirely. This lesson was not wasted on local policy makers.

5.3.2 Local Regulation of Prostitution

The regulation of prostitution in the four largest Dutch cities traditionally rests on two pillars: the protection of public order and the provision of health services and social care to sex workers. In instrument terms: regulation rests on direct provision and networking through organizational instruments, and the application of authoritative, financial and information instruments. This hasn't changed in the years after the legalisation, although we observe an increased emphasis on public order and trafficking through authoritative instruments. (van Rooijen, 2012) Also, the cities try to cope with new forms of prostitution, such as home and Internet prostitution, which are less visible than traditional forms. Enforcement ("*handhaving*") and chain management have become key instruments in the municipalities. Finally, the cities are now preparing for the implementation of the new National Act Regulation Prostitution. Although the Act has not passed the Senate yet, when it does the cities will have to adjust their licensing system and create a registration procedure for sex workers as Utrecht has done already.

Licenses are still the cornerstone of Dutch prostitution policy. In the 12 years since the passing of the Legalisation Act the system has been developed and refined. Licenses are awarded or renewed on the basis of information and advice by a range of agencies. In the large cities these agencies form a network with the purpose of collecting and exchanging information and executing so called "enforcement arrangements" ("*handhavingsarrangementen*"). The licensing of sex facilities is supported by an elaborate and dense monitoring system. For example, in Rotterdam licensed sex facilities are visited by the following actors: Department of Public Order and Safety, Police (3 times a year monitoring of licenses), Police (3 times a year illegality and indications of trafficking), Tax Office (monitoring of labour relationship), Office of Labour Inspection (monitoring of self-employment status), Technical Public Health (Public Hygiene, 1 per year), Public Health (STD and signals of trafficking). In addition, city officials have established a working relationship with many proprietors. The latter inform police officers when a new sex worker wants to work in their facility.

Direct provision through organizational instruments is traditionally a key element of local prostitution policy in the Netherlands. Health and social services are provided by the municipal public health services (GGD) and associated welfare agencies. The Public Health agencies employ health workers who visit sex facilities. Following national guidelines the health workers visit facilities every 3 months. During the visits health workers provide STD checks on a voluntary basis on location. They also provide Hepatitis-B vaccination when necessary. Once a year sex workers are invited to the GGD for a more extensive STD health and STD check. Health professionals think that given the physical trajectory of STD and its cure, this is more than enough. In case a sex worker tests positive, she is offered a referral to an STD clinic. Results of the test are communicated to the sex worker only; although proprietors often pressure the women to give them the results. This is illegal.

The system is based on a mixture of authority and trust. It is a requirement of the facility's license that health and other workers have access to the facility. Health workers report that proprietors are generally cooperative; they have no trouble talking to the women and doing health checks without interference from the proprietor. Health workers visit sex facilities for many years and build up an informal relationship with proprietors and sex workers. The system is effective; health workers in Rotterdam report that they haven't encountered a case of

STD in months.[89] If they encounter one it turns out that in the majority of cases the sex worker contracted it in her private relationship. Our respondents think that the incidence of STD among sex workers is lower than in the general population. They have no access to home workers or those working in unlicensed facilities. In the interviews with sex workers professionals look for signals of trafficking. In case they detect such signals they inform police authorities. This might lead to a notation in the police file of the sex worker that she at risk of trafficking and a prohibition of the proprietor to have her work in his establishment. The sex worker is offered social services but has to find a new licensed facility in which to work.

The collection of information is one of the key instruments in Dutch local prostitution policy in the three participating cities. Information gathering is particularly focused on preventing and fighting the exploitation of sex workers. Officials are aware that exploitation is a phenomenon that takes place in a murky netherworld that is exceedingly hard to track down. "Those guys (traffickers) are getting smarter and smarter", as a seasoned police officer says. Officials see it as their task to stay as close as possible to, or disrupting, the activities of pimps and traffickers. As one police officer expresses it: "Because we collaborate closely, we are able to quickly anticipate issues for which no policy has been designed yet." (Interview).

Information gathering takes different forms and is often an integral part of enforcement or networking. In Utrecht, sex workers who want to work in the window area of the *Zandpad,* are required to register with the Public health service first.[90] In this way the city hopes to be aware of the number and identity of the women who work there, and obtain early signals of trafficking. (Interview administrators) An example of enforcement-based information gathering comes from The Hague. As an element of the monitoring regime officers from the vice squad regularly visit facilities to talk with sex workers. (The officer we interviewed said they visit facilities on a daily basis.) Following the lessons of the so called 'Dürdan' case the purpose of the visits is to detect indications of "trafficking". (Interview) However, until recently, when police officers found indications of gross exploitation of maltreatment, they had no legal instruments to do anything about it. Criminal law stipulated that a proprietor had to be convicted for trafficking twice in the past 5 years for the authorities to close down his facility. This was seen as an overly limiting condition. The city acted to create an administrative instrument that allowed intervention. The Department of Public Order and Safety, the Police, the District Attorney and the City Council collaborated to create a so called "enforcement arrangement" (*handhavingsarrangement*). The arrangement is organized according to the principle that "we don't want to fight prostitution but the trafficking". (Interview)

When the police find signals of "trafficking" the "victim" receives a so called "negative work notation". This notation is restricted to the facility where she works. The indications need to be sufficiently strong to hold up in administrative court if the sex worker or proprietor decides to challenge the notation. In case the indicators are deemed insufficiently convincing, the officer puts the woman on a watch list ("*aandachtsvestiging*") to be followed up in future inspections. Indicators are among other things physical (bruises), not being able to speak Dutch or English yet possess proper papers, doesn't know her home address or doesn't know how to get there, and being brought and dropped off by a third party.[91] When there is a suspicion of being exploited the officer tries to persuade the sex worker to press charges and offers her social services. A negative work notation means that in practice she can't work any more in the facility were she was found. The proprietor can still rent her rooms but he runs a risk, under the terms of the enforcement arrangement, to incur an administrative measure, such as a warning or a fine. (More on this below.) In practice it means that the sex worker can no longer work in a licensed facility in The Hague as proprietors now regularly ask the vice squad to interview any new sex worker

89 Our respondents told us that STD is much more prevalent in street prostitution. They ascribe this to the risky life style of the sex workers, most of whom were addicted, and their desperation to make money,.

90 The Zandpad is the major licensed window sector in Utrecht. It is a small lane along the river *Vecht* with 35 houseboats that contain about 140 'windows'.

91 The Chamber of Commerce also alerts the police when they suspect that a sex worker who registers as self employed is exploited. Sometimes the national police (*Marechaussee*), alerts the police that a border control revealed that women and their handlers are on the way to the city.

who wants to work in the facility. Currently (autumn 2012) there are 80 woman in The Hague on the watch list and 40 with a negative work notation. According to the police officer we interviewed there is little evidence that sex workers with a negative work end up in the unlicensed prostitution sector.[92] Most go to other cities.

A second example comes from Rotterdam. The city has appointed a number of analysts, in a unit called Regional Centre for Information and Expertise (*Regionaal Informatie en Expertise Centrum; RIEC*) whose task it is to "collect, analyse and provide information", mostly on juvenile prostitution, non-licensed prostitution, and trafficking. (interview)[93] The source of the information consists of ads on the Internet. The results of this exercise are handed over to the police.[94] The police compare the information to their own information base and use it among other things to organize entrapment raids, in which police officers posing as clients invite sex workers to a hotel. The police then provide feedback to the analysts about the accuracy of their analysis. Police and analysts also engage in meta-analyses of possible networks of traffickers.[95] The purpose of the entrapment raids is to make Rotterdam less attractive as a site for unlicensed prostitution.

The RIEC analyst reveals a third type of instrument that plays an important role in local policymaking, networking tools. Information instruments often play a role in coordinating policymaking. Like Vienna, the Dutch cities are acutely aware that the complex and dynamic nature of prostitution requires close collaboration between a wide range of actors, each of which possesses specialized information or skills. However, one of the remarkable characteristics of local prostitution policy is the large number of actors that is involved. In most Dutch cities, the following actors are involved in delivering prostitution policy: city officials of the Department of Public Safety, different branches of the police (vice squad), Immigration and naturalization Services ("*Vreemdelingendienst*"), the district attorney, the Chamber of Commerce (where sex workers need to register as self-employed workers), Labour Inspection, Public Health (different branches), social work and outreach, youth services, and the Tax Office. In addition city officials consult with proprietors and representatives of sex workers. Each of these actors deals with different aspects of the sex industry, from regulating and monitoring licensed facilities to providing health services to sex workers to investigating and prosecuting trafficking. In the contemporary policy landscape, policy implementation in almost any domain, but particularly when it comes to social regulation (Moran, 2002), is highly decentred in that it involves a large number of actors with greater or lesser amounts of autonomy and mutual dependency. The large number of actors that are involved in the local regulation of prostitution shows two things. First, regulating prostitution is, at the operational level, a difficult and laborious activity. It is a social phenomenon of great interconnectedness and dynamic complexity – as we saw in the Viennese case – that cuts through the usual 'silos' of local public administration. Part of the complexity is self-induced. For example, the three cities have separate agencies that deal with licensed and unlicensed prostitution. This distinction is an inescapable artefact of the licensing system and makes administrative sense. However, reality doesn't always follow administrative rules; women without the proper papers or women who are suspected to be victims of trafficking are also to be found in the licensed sector. So, to be effective, agencies that deal with li-

92 The police officer thinks that these sex workers don't move to the unlicensed sector because "a trafficker wants to make a quick buck. Where can he do this? In window prostitution. Also clients don't like to go to a shady apartment and run the risk of being robbed. Moreover, the woman who opens the door is usually someone else than the one from the picture on the Internet." (interview)

93 There are 10 such regional centers and one national one. The RIECs and the LIEC support the "integrated fight against organized crime. It focuses on administrative tools by supporting municipalities, and it acts as an "information broker" to all parties who are involved in investigating and prosecuting organized crime, such drug production and smuggling, money laundering, real estate fraud, and trafficking. (www.riecnet.nl) For example, the RIEC website reports that on 13-09-2012 the police, triggered by information from the RIEC Limburg, raided sex clubs in the border area between the Netherlands and Germany. Two Dutch men were arrested on suspicion of having forced a number of women from Hungary and Rumania to offer sexual services. (website consulted on 28-09-2012)

94 To avoid contamination of actual or possible criminal investigations, the police is careful not to share information that is or may be used in criminal investigations.

95 Some of the information exchange extends to national networks. For example, district attorneys who prosecute trafficking regularly meet with representatives from a city to discuss local policy and the lessons that can be learned from that.

censed and unlicensed prostitution aspects need to coordinate their activities. This then, and this is the second conclusion, requires flexible collaboration and coordination arrangements.

The rationale for coordinating services is obvious: collaboration enables agencies to provide integrated services. To achieve that, the division of labour that follows the historical professionalization of service delivery needs to be undone when services meet real-world problems that do not respect institutionalized demarcation lines. However, multi-agency collaboration is exceedingly hard to achieve in public administration, and despite a proliferation of models and solutions, few administrative systems have succeeded in effectively integrating a wide range of different administrative and professional bodies. (Rein, 1983; Peters, 2006) Most cities have more or less formalized their collaboration and coordination in something they call "chain management". (Rosendal et. al., 2009) In chain management complementary services are linked in a sequential chain, often led by a 'chain manager', in an attempt to coordinate resources for realizing service delivery. But again, in practice chain management has hardly brought the hoped for improvements in service coordination. To be successful chain management requires continuity of personnel and an attitude, shared among all participants in the chain, of "further professionalization of one's own discipline and the importance of working together in multidisciplinary teams for the benefit of the client" (Huijsman, a.o., 2009, 384).

In the realm of inter-agency collaboration the legalization Act, and the subsequent problems in implementing it, has resulted in genuine collective learning. Immediately after the passing of the Legalisation Act the architect of the licensing system in The Hague complained about the problems he had in getting the different municipal agencies to work together. ("The chain is as strong as its weakest link" he repeatedly admonished the assembled agencies. (Wagenaar, 2006)) In the ensuing years most cities have mastered the art of multi-agency collaboration. The city of Rotterdam is a good example. It has developed a successful model of chain management that in slightly different form has been adopted by the other two cities. The Rotterdam system consists of 7 actors who regularly meet to manage prostitution at the operational level. The agencies are social work, police, the district attorney, labour inspection, municipal health services, youth services, and the tax office. Each partner in the chain has a mandate to make decisions for his or her agency to provide the organizational capacity to address the problem and implement decisions.[96] A "chain manager" manages the "chain". Her task is to follow up on any decisions that the partners have made and address any tensions that might arise in the collaboration. In the meeting concrete cases are discussed. (The meeting is called "case-meeting".) The purpose of the case meeting is "to get the victims out and prosecute the traffickers." (Interview) Victims of gross exploitation receive care and traffickers are either prosecuted, or, barring prosecution, further information is collected to make future prosecution possible. The meeting allows the partners to exchange information and use their collective intelligence to explore what would be the best way to address an issue. For example, when one of the partners has encountered a case of gross exploitation the partners deliberate what the most effective approach would be; for example to start a criminal investigation of the middlemen or to have the tax office go after their proceeds. Once every six weeks the group has a so-called 'chain-management" meeting in which more overarching issues are addressed, such as trends in prostitution or changing migration patterns. The members of the group have not changed in the past years. This

96 There is an important principle of administrative reform – recursiveness – at work here that needs to be brought out. Recursiveness, is a way in which organizations can overcome the limitations of hierarchy and bring the experiential knowledge of frontline workers into the rule and decision making of the management. Where hierarchy is important to safeguard democratic accountability, it usually results in rigidity in operational procedure and the inward looking perspective that thwarts multi-agency collaboration. Its limitations are acutely felt in situations that are characterized by dynamic complexity that require constant adaptation to circumstances that change in unpredictable ways. Recursiveness happens when an organization is able to mix hierarchy with heterarchy. "When a level of organization shifts back and forth between superordinate ... and subordinate ..., you have the possibility of a powerful form of recursiveness that possibly overcomes the tension between top-down and bottom-up organization." (Ansell, 2011, 107) In organizational terms this means that organizational spaces are created in which subordinate staff members have temporary decision-making power over higher levels of the organization. "In most organizations this is likely to happen on the behavioral rather than the structural level", Ansell adds. (ibid.) This leads to familiarity of top-level mangers with the operational world of day-to-day policy implementation, and shared ownership of problems. The power of recursiveness in organizations is that it allows for "a continuous and interlocking cycle of perspectives". (op. cit. 104) Recursiveness is considered a prerequisite for collective learning.

has allowed mutual trust to develop among the participants as well as an attitude that each partner, to be effective, has to take the interest and contributions of the other partners into account. Finally, the group is backed up by a so called "steering group" which is made up of the heads of the participating agencies. The steering group decides on the direction that prostitution policy should take and safeguards the quality of the coordination in the chain.

A fourth category of instruments in local prostitution policy in the Netherlands is authority instruments. An analysis of the design of local prostitution policy showed a considerable increase in the use of authority instruments. (van Rooijen, 2012) The two most important of these are the "administrative measure" ("*bestuurlijke maatregel*") in combination with the "*Wet Bibob*", and, recently the introduction of local registration (as of yet, 2012, only in Utrecht). As these measures are not aimed at work conditions or labour rights, the use of these authority measures also show their limitations in supressing the economic (and sexual) exploitation of sex workers.

In the case of administrative measures the district attorney and municipal officials impose punishments without involving courts or judges. These punishments can be fines, restraining orders, or the revocation of licenses and closure of sex facilities. Administrative sanctions have developed in between administrative and criminal law. The administrative measure has gained in popularity in the last years. For example, in 2008 Rotterdam used 7 administrative measures in regulating prostitution; in 2010 the number had increased threefold to 21. (van Rooijen, 2012, 55) but it is not always clear how effective it is. A common procedure in Rotterdam is the following: based on information from the information analysts and the police, the police sets up an entrapment by inviting sex workers who advertised on the Internet for an assignment in a particular hotel. When the sex worker does not have legal papers or cannot prove that she has a license in Rotterdam, she receives an administrative warning from the Department of Public Order and Safety. When she is caught again, she receives a fine of 5000 Euro. It can be argued how useful this measure is. Many sex workers in the escort business work at a remove from the town where they live. Even if they have a license in one municipality, it isn't valid in another. Warning them merely keeps then away from Rotterdam. This is another case of regulation-induced mobility.

Administrative measures are often used more effectively to regulate sex facilities, usually in combination with the Wet Bibob. The core of the Wet Bibob is the coupling of a number of large national databases from the Tax Office, the Immigration and Naturalization Service and the criminal justice system. Before issuing or renewing a license (not just for prostitution facilities but also bars, restaurants, coffee shops, and call shops) municipalities ask the national Bibob office to do a search for any improprieties or criminal antecedents of the owner. This can be an unpaid tax bill, prior convictions, or irregularities in the ownership of the facility. In case such irregularities are found the municipality can issue an administrative measure, usually to deny the license. Proprietors have the right to appeal the decision. The Wet Bibob has been successfully used in the three cities to contain and reduce the size of the prostitution sector. Amsterdam has closed dozens of windows through the use of the Act. In 2009 municipalities submitted 260 requests for advice with the national Bibob agency, 23 of which regarded prostitution; in 2010 the numbers were 212 and 19 respectively. The city of The Hague has denied or revoked a license to a sex facility through the use of the Wet Bibob. Rotterdam has used the Act successfully, and Utrecht has declared that its use will be intensified in the prostitution sector.

In 2010 the city of Utrecht introduced a registration system for sex workers who want to work in the "Zandpad" window area in the city. The measure is part of the so called "barrier-model" in the prevention of and fight against trafficking. Another such barrier is that sex workers can only rent rooms for a minimum period of 4 weeks. This is to prevent the rapid turnover that characterizes trafficking according to city officials. In addition the number of hours a sex worker can work has been limited to 12, inspection is intensified (from 4 to 40 per year), the number of CCTV cameras has increased and support services have longer opening hours. The rationale behind the measures is that erecting administrative barriers to working in the prostitution sector and the greater administrative scrutiny and visibility of the sex workers this entails, will act as disincentive to traffickers. All sex workers who want to work at the "Zandpad" area have a mandatory intake interview before they

are registered. The purpose of the interview is to detect 'signals' of trafficking to provide the sex workers with information about support, and to break the sex worker's isolation, if only momentarily. Proprietors can only rent out rooms to registered sex workers. With the registration measure the city look ahead to the new national law Wrp (Bestuursinformatie Gemeente Utrecht, 2012, 6).

The city has evaluated the measures. It concludes that the turnover has decreased. In 1 in 8 interviews intakers concluded that there were signals of trafficking and informed the police about this. The sex worker does obtain a registration in these cases. However the police has doubts about the possibility of the interviews to stop trafficking. Many women who hardly speak Dutch, English or German can nevertheless arrange for registration within a week (op, cit., 7). The police believe that the "quality of the signals" has improved (op. cit., 8). The city concludes that the collaboration between partners has improved. Sex workers are unhappy with the 4-week minimum rental period as it forces them to continue working when they are ill or have their period (op. cit., 7). The evaluation doesn't speak of the 'contamination' of the registration files; sex workers who move on to another city are not systematically deregistered as far as we know.

By being part rule, part incentive, registration is a hybrid instrument. It acts as rule by mandating sex workers to act in certain ways to be able to engage in desired behavior or obtain access to state-provided services (Stone, 1988, 282). Registration is also meant to act as a disincentive to traffickers and incentive to sex workers to get or remain in touch with officials and social workers. However, both in the cases of rules and incentives there is never a direct correspondence between the measure as designed by authorities and received by the target audience (Stone, 1988, 272; Wagenaar, 1995). The experiences with registration in Vienna might help us to obtain a better understanding of the way that this policy instrument works in actual practice. Registration is mandatory in Vienna since 1968. Sex workers can only obtain their health check booklet when they register with the police. (In other Länder registration is with public health authorities.) Since 2011 sex workers receive a leaflet when they register that informs them about social services, and contains a referral to Lefö, and NGO for sex work. Lefö declares that they have not observed an increase in the number of sex workers that get in touch with them. Lefö also declares that the mobility of sex workers interferes with the registration procedure. It takes about a week to register when there are no problems. However, when the sex worker has worked abroad for while or when the last STD check was more than three months ago, the sex worker has to undergo a new health check. Until then she cannot be registered and, thus, not work legally. Many sex workers, according to Lefö, don't bother and move to another part of Austria or work without registration. The police estimates that there were 3000 to 4000 unregistered sex workers working in Austria in 2010.[97]

One of the problems with incentives is that they mean something else to the receiver ss to the official. One problem with rules is that they lead to evasion or bending by the target audience. When rules are perceived to negatively interfere with the everyday practices or benefit structure of the receiver's life, he will attempt to tamper with the rule so that it is either ineffective or contributes to the receiver's benefits. (This is called 'playing the system'.) One of the reasons is that rules usually contain more than one objective, of which only one is penalized. In the Austrian system, registration aims at increased visibility and control by the police and the prevention of STD's. We see both problems at work in the registration system. In the life world of the Austrian sex worker the public health goal of STD prevention interferes with the goal of increased visibility, and in general with the high mobility nature of sex work, and results in evasion of the registration. In Utrecht we see similar conflicts with the aims of the measures. On the one hand the city want to establish a connection with what they see as 'isolated' sex workers, on the other hand they impose onerous measures on these sex workers.[98] The intended incentive to the sex worker to seek help is interpreted by the latter as one more obstacle towards making a living. Also, it

97 As so often in prostitution, this number cannot be verified.

98 Recently the mayor of Utrecht closed dozens of windows claiming the presence of trafficked sex workers on the premises. As a result 105 sex workers lost their workplace. These sex workers have moved to different cities.

is relatively easy to register, which suggests that either the interview does not sufficiently act as a filter and/or the sex worker knows how to manipulate the interview to obtain a registration.

We have focused on the feasibility and workability of registration in this section, not on the well-known objections regarding privacy and the disputed logic of singling sex work out as the only occupation that requires mandatory registration. Our conclusion is that registration has too many conflicting objectives and results in evasion or 'playing the system'. The experiences in Vienna and recently Utrecht throw doubt upon the ability of registration to attain its stated goals knowing who works in sex work, inducing sex workers to seek help and thus preventing trafficking.

5.4 Conclusions

In 5.2 we drew a number of conclusions from local policy making in Vienna. How does local policy making in the three Dutch cities compare to these and can we infer new insights from the Dutch situation?

1 At the local level politics and media play a smaller role in the three Dutch cities than in Vienna. We do not argue that Dutch media are more enlightened than Austrian media; our reserach shows that they are equally obsessed with prostitution issues. Also, policy definition in the Netherlands is not immune from the influence of media and political rhetoric. As we have seen, since the passing of the legalisation Act in 2000 prostitution is more frequently framed in terms of trafficking and (organized) crime than before. We will return to this in the next chapter. However, elected officials, administrators and professionals have managed to construct an administrative system that, so far, seems to function with more independence from the political level than is the case in Vienna. In that sense local policy design and implementation in the three Dutch cities is closer to the definition of policy as a "techno-political process of defining and matching goals and means among constrained actors" that we saw in chapter 1 than in Vienna.

2 Dutch local policy is a classic case of regulatory drift and gradual goal displacement. Regulatory drift denotes a gradual change in the focus of a policy as the result of succession of small decisions at the implementation level, without any formal decision at higher levels of authority. (Mitchell and Herring, 2006, 5) These concern in particular the selection of policy instruments. Since 2000, we observed a more frequent deployment of authority instruments such as punishments, fines and administrative measures. (We cannot establish a clear link, but it might be that the influence of media and politics is particularly felt in this area.) Ten years after the passing of the Legislation Act of 2000, one its central goals, improving the "legal position" and work conditions of sex workers, has been more or less abandoned in favour of a focus on fighting and preventing trafficking. We speak of drift as every implementation decision seemed in itself logical or warranted at the time; yet, taken together they result in goal displacement.

3 Given its reluctance to enter the area of labour relation in prostitution, despite repeated questions from Parliament, it remains an unanswered question to what extent the national government was really committed to improving the 'legal position' of sex workers. Either it was naïve about the proprietors' willingness to abide by the law, or it didn't want to enter of labour relations in the first place. When the government stepped in and entered into negotiations with proprietors, it only reinforced the latter's position, or perhaps 'fiction' is the better term here, that sex workers are self-employed, without. Either way we can conclude that at the very least the implementation of the 2000 Legalisation Act contained a glaring inconsistency on this point. It aimed to normalize the sex trade by transforming it into a regular part of the institutionalized small business sector, but failed to enforce the application of labour law as it applies to other small businesses. At the moment it is still the case that the sex worker and not the proprietor carry most of the business risks.

4 Network instruments, in combination with information tools, have been employed on a wider scale and with more consistency in the Netherlands than in Vienna. Aware that much prostitution, despite extensive licensing, takes place out of sight and on, or over, the edge of legality, city officials and professionals use different strategies to obtain up to date information. Through the deployment of networking instruments, such as chain management, this information is shared and the actions of a large number of municipal and other agencies are coordinated. In general information gathering and sharing is a key element of Dutch local prostitution policy. Interlocking information agencies on the regional and local level attempt to follow the continuous developments in the opaque world of prostitution.

5 We found greater awareness in the Dutch cities of the importance of close attention to the details of policy implementation than in Vienna. At the local level continuity of personnel is valued as a condition for effectiveness. Similar to Vienna, a large number of administrators and professionals have worked in the prostitution sector for over a decade. In addition, the architecture of the implementation system was problem-driven. Where developments in the prostitution sector revealed a weakness in policy design or implementation, local officials acted pragmatically to design an instrument to shore up policy implementation. The gradual emergence of the system of information and networking instruments, for example, demonstrated a collective awareness of the complexity, opaqueness, and dynamic quality of the prostitution sector. In addition, many of the professionals we spoke to emphasized the importance of building trust with the actors in the prostitution domain as a condition for effectiveness.

6 We found instances of evolutionary policy learning in Dutch local prostitution policy. Although the Dürdan case led to a media frenzy about prostitution and trafficking, the insight that the regular inspections of licensed facilities had failed to detect instances of gross exploitation was genuine and led to adjustments in the inspection regime and innovations in information and coordination strategies. The Dürdan case also contributed to the greater use of authoritative instruments with the purpose of reducing the size of the prostitution sector in many Dutch cities. Particularly the 'administrative measure" has gained considerable popularity among municipal policy makers. As the administrative measure involves considerable punishments that are administered without the usual administrative or criminal justice channels, this raise concerns about the legality (*rechtsstatelijkheid*) of these measures. Although the enforcement arrangements allow police and local officials a more effective detection of exploitation, the nature of prostitution limits the possibilities for effective action. The result is that in many instances enforcement results in regulation-induced mobility.

7 The use of registration, usually in combination with other measures which both raise administrative barriers to working in a particular area, as well as promote access to social services, raises questions. 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. However, there is as of yet 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. (Stone, 1988, chapters 11 and 12)

8 Rapid developments in the prostitution sector, driven by the increased use of Internet and mobile phones, force local and national governments to reassess tried and proven policy approaches. The Internet allows sex workers greater independence from proprietors and more flexibility in choosing a work site, thereby bypassing or undermining the licensing approach. It also opens up new possibilities for exploitation as Internet generated prostitution is less visible.

6. Prostitution, Exploitation and Migration

6.1 Introduction

An inquiry into trafficking did not formally belong to the research questions of this study. However, in the course of our research it became clear that we could not discuss prostitution policy without discussing trafficking. First, in the decade after the Legalization Act Dutch prostitution policy became increasingly dominated by a focus on trafficking. This was particularly, but not exclusively, on the rhetorical level of the media and politicians who were eager to influence the national debate.[99] A consensus began to emerge in the national debate that the extent of trafficking had increased since the legalization of the sex business. (Roessingh and Ramesar, 2011) We have also seen how, through clever policy design, local policy making tried to come to terms with the fallout of the Dürdan case which demonstrated that, despite extensive monitoring, brute exploitation had penetrated licensed window prostitution. This was a necessary reaction to the perceived weaknesses in the Dutch licensing system that were revealed by the Dürdan case. However the vocabulary ("trafficking"; "victims") of these local policy efforts showed not only the extent to which policy is framed in terms of trafficking, but also how this framing resulted in certain unintended and/or undesirable consequences. Second, our interviews with migrant sex workers often provided a picture of the experiences of sex workers who had migrated from countries such as Rumania or Bulgaria that was considerably at odds with the standard picture of the victim of sex trafficking. Instead of "victims" who were deceived, blackmailed or through violence forced into prostitution, we spoke to scores of women who had chosen to immigrate to Austria or the Netherlands to work in prostitution. Even where middlemen initially exploited them, these women often returned to prostitution after these were tried and convicted. The story of D at the beginning of this report is an example. We do not argue that such "victims" did not exist, of course. The Dürdan case was not the only and also not the last instance of the brute exploitation of women in the licensed sector. What our interviews showed is another instance of the many 'faces' or images of prostitution as we discussed in Chapter 1, which makes policy making so difficult in this area.

In this chapter we will discuss the intricate relationship between prostitution, trafficking and exploitation. First we will discuss the definition of trafficking as it is currently used in criminal law and local policy making, and discuss some its unintended negative consequences. Second, given the conceptual problems with the concept of trafficking, we will suggest using instead the vocabulary of exploitation. We will argue that this does not only more justice to the experiences of migrant sex workers than the trafficking framework, but that it also concurs better with the goals of the 2000 Legalization Act in the Netherlands, and in general, a humane and effective prostitution policy.

6.2 Grappling with the Nature of the Problem

In the concept of trafficking two phenomena are joined that are historically associated with prostitution: the exploitation of sex workers by third parties, under some form of coercion or duress, and the migratory move-

99 In Utrecht and Amsterdam policy making is now almost exclusively focused on fighting and preventing trafficking. *(Projectgroep Proeftuin Zandpad, 2012; Amsterdam, Nota van Uitgangspunten 2012- 2017).*

ment of sex workers. The latter can be internal labour migration, usually from rural areas to cities, as is still the case today in many Southeast-Asian countries, or external, across borders. Sometimes, but not always, the two combine and women are coerced, through intimidation, (threats of) violence, or deception to travel to another country to work in the sex industry. This is the standard image of the trafficked woman. However, although we do believe that labour migration and exploitation often go hand in hand, we will argue that the conflation of coercion and migration is misguided and leads to undesirable policy outcomes.

In the extensive literature on trafficking, the concept has been framed as sexual violence against women, as a form of organized crime, as a human rights problem, as a migration issue and a problem of labour rights. Each of these frames implies a different problem definition, demarcates different policy categories, brings in different experts and bodies of scientific research, and suggests different policy solutions. (Rein, 1983) For example, when trafficking is seen as sexual violence, issues of the violation of bodily and psychological integrity and the right to sexual autonomy are emphasized. (Barry, 1979) This results in a distinction between good prostitution (in which a woman makes an autonomous decision to work as a sex worker, and can refuse clients or certain sexual activities) and bad prostitution in which she is coerced into providing sexual services. (Buijs en Verbraken, 1985) Fighting sexual violence is traditionally the task of the vice squad. When trafficking is organized crime, it is part of a larger set of international crimes such as drug smuggling, arms trade, money laundering and economic fraud. (Cie Van Traa, 1996, bijlage VII; Altink en De Bruijn, 1996) Issues of international cooperation and fact-finding to map and prosecute internationally operating gangs become important, and special police units that collect and analyse information and infiltrate gangs are formed. In the organized crime framework, the position of the victim is ambiguous and her motivation becomes important. If she conceded to travelling to the Netherlands to work in the sex industry, she has participated in a process of human smuggling (*mensensmokkel*); if she was brought to the country against her will, she is a victim of trafficking (*mensenhandel*). It is therefore important that the woman can demonstrate that she was misled or coerced and was not an accomplice. (Davies, 2003) By framing trafficking as a human rights problem yet another set of issues is highlighted. Trafficking amounts then to a violation of the right to personal safety, liberty, and human dignity, and the protection against discrimination, indentured labour, slavery and torture. Central actors are international organizations that formulate and negotiate binding protocols, which become the basis for national and international law. (Wijers, 1996)

The point of revealing the different framings of trafficking is to show that problem definitions are not only based on factual evidence, but on a priori value positions, ideology, preferences for certain solutions, or cultural-historical climate, which drive the way we select, weigh and interpret the facts. (Rein, 1983, Hawkesworth, 1988; Fay, 1996)[100] Frame-critical analysis makes us aware of the deeper sources of our deeply-held problem definitions and policy solutions. (Wagenaar, 2011, ch. 5) The second point is that each frame has certain consistency: in assumptions, value positions, conceptualization, preferred solutions and a selected body of facts that support it. This makes it difficult to take the seemingly easy road and argue that because trafficking is a complex and multi-dimensional problem, we simply combine frames in one "complete" and inclusive problem definition. Although all policy making is an evolving mixture of ideas, values and solutions, frame combination may result in policy categories that are inconsistent and too broad. The resulting "complete" definition will only apply to a very few cases that indeed combine all frame-specific elements, while for most cases only one or two aspects

100 Philosophers of science call this 'perspectivism': "Perspectivism is the view that al knowledge is essentially perspectival in character; that is, knowledge claims and their assessment always take place *within* a framework that provides the conceptual resources in and through which the world is described and explained. According to perspectivism knowers never view reality directly as it is in itself, rather they approach it from their own slant, with their own assumptions and preconceptions. There is no escape from perspectivism. A 'neutral' or 'objective', completely detached position outside any perspective – philosophers call this the view from nowhere, or "God's eye view" – is impossible. (Fay, 1996, 72) Perspectivism is a widely accepted position, but critics say it leads to relativism. These are complex philosophical issues, but in summary form, relativism means that there is no neutral knowledge or experience that can decide between different views of reality. So, in this case witchcraft would be as acceptable as science. However relativism overlooks the common human experience that is not only ideas that make reality and that reality has the habit of resisting our ideas (That's why we call it reality!), but also that human beings of widely different cultures share a large and deep set of background beliefs, desires and needs to which they appeal to decide upon a value position or belief system. (Fay, 1996, 83-86).

will apply. Policymaking will be based on the wrong premises in such cases. We will argue in this chapter that this is currently the case with the legal definition of trafficking in the Netherlands. Moreover, and related to the preceding point, a formal or legal problem definition may not accord with the experiences of the sex workers themselves.

The different framings of trafficking have resulted in different legal definitions. In the Netherlands, until 1993, trafficking was a crime according to article 250 of the Criminal Code and was defined as; "Each act that has as its purpose to deliver a woman to prostitution irrespective if this happens with her agreement and irrespective if she works as a prostitute."[101] Under the influence of the trafficking as sexual violence frame that was popular in The Netherlands in the 1970s and 1980s, it was felt that coercion and violence needed to be part of the legal definition. (Kijkduinconferentie, 1982) In 1993, the *Werkgroep Vrouwenhandel van de Procureurs-Generaal* proposed a new legal definition of trafficking that included: " to bring a person into prostitution with (the threat) of violence, through deception and abuse of dependency."[102] In addition, it became increasingly clear that many sex workers in the Netherlands had come from other, and often poor or developing, countries. It is not surprising that from 1989 recruiting, deception and "undue influence" became key elements in the legal discourse about trafficking. In fact, in the definition itself the poor immigrant who lives in a situation of subjugation that follows from "factual circumstances"; is contrasted with the "autonomous prostitute as she exists in the Netherlands". The reference to "factual circumstances" functioned as a blanket description of women from poor countries. Even if these women "acted in an autonomous way", their choice was still dictated by "cultural circumstances". (Maria Koers, chairperson of the *Werkgroep Vrouwenhandel van de Procureurs- Generaal*, in Altink, 1993) However, this led to considerable debate. Parliamentarians wondered if the notion of deception didn't deny the autonomous decision making capacity of poor women? As Haveman summarized the debate: particularly the element in the legal definition that speaks of "undue influence" (*overwicht*) or another "factuality" as cause of trafficking, is often interpreted as "naiveté" or "ignorance" of a person from another culture. (Haveman, 1982) The next step in the modern development of the concept is the integration of the notion of exploitation in the legal definition of trafficking. The then Minister of Justice, Hirsch Ballin, argued that exploitation is both the goal and result of the "undue influence" over women that follows from "factual circumstances". Exploitation, and its intrinsic relation with deception were from then on key elements in the legal definition of trafficking. (de Boer, 1994)

The definition of trafficking that was in the end accepted by parliament in 2000 contained all the above elements.[103] In this it closely followed the legal definition of trafficking in the Palermo Protocol that was accepted in 2004 by 117 countries, among them also the two countries of this study:

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 of receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of 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".

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101 '*Elke daad die ertoe strekt een vrouw over te leveren aan de prostitutie onverschillig of zulks met haar toestemming geschiedt en onverschillig of zij als prostituee werkzaam is.*'

102 '*een persoon in de prostitutie brengen onder (bedreiging) met geweld, onder misleiding en misbruik van overwicht.*'

103 *Als schuldig aan mensenhandel wordt met een gevangenisstraf van ten hoogste zes jaren of een geldboete van de vijfde categorie gestraft: degene die een ander door dwang, geweld of een andere feitelijkheid of door bedreiging met geweld of een andere feitelijkheid, door afpersing, fraude, misleiding dan wel door misbruik van uit feitelijke omstandigheden voortvloeiend overwicht, door misbruik van een kwetsbare positie of door het geven of ontvangen van betalingen of voordelen om de instemming van een persoon te verkrijgen die zeggenschap over een ander heeft, werft, vervoert, overbrengt, huisvest, of opneemt, met het oogmerk van uitbuiting van die ander of de verwijdering van diens organen. (….)*

Lid 2: Uitbuiting omvat ten minste uitbuiting van een ander in de prostitutie, andere vormen van seksuele uitbuiting, gedwongen of verplichte arbeid of diensten, slavernij en met slavernij of dienstbaarheid te vergelijken praktijken."

However, this very broad definition does exactly what we discussed above: accumulate different problem framings into one seemingly inclusive, but in fact deeply problematic, legal definition. In the following section we will discuss some of the criticism that the Palermo definition has generated, but we introduce it by the practical experiences of a police officer whose task it is to fight trafficking.

6. 3 A Critique of the Legal Definition of Trafficking

Following the impact of the Dürdan case, local enforcement arrangements now call for police officers and others who monitor the situation in sex facilities, to be alert to indications of trafficking ("*signalen van mensenhandel*"). One of the police officers who is entrusted with this task says that some of the women whom he designates as a 'victim" (language is from the interviews) object to his characterization. This is not just because they receive a negative work notation, he says. He gives an example. "One of the women was from Rumania. She had a university education. But she only made €350 a month there. Here she makes €700 a day. It doesn't bother her that she has to pay someone €300 a day."[104] Literally dozens of time migrant sex workers confirmed during the interviews that one of the main reasons that they decided to migrate to North-West Europe was a lack of perspective in their home country.

However, the police officer continues. He says that the legal article that defines trafficking is very broad. It is not only just about coercion and violence. "You find the nuance" he says, "in the transport, the housing, the recruitment, and in taking advantage ("*voordeel trekken*") of the women. It is in those things that the cleverness of the trafficker resides." He goes on to complain that district attorneys and judges often 'don't get it". They don't understand how trafficking works, and he goes on to quote a District Attorney, who said of a woman who came from Hungary on "50-50 basis", that that was "reasonable wasn't it". The police officer expresses astonishment at so much naiveté. "No", he says emphatically, "It isn't reasonable. This is trafficking." The trafficking article is the longest and most unclear article in the Dutch Criminal Code.[105] Its main elements concern recruitment, transport and exploitation. The Palermo Protocol is interpreted widely in the Netherlands and declares all recruitment of women for sex work in another country as illegal.[106]

The issue of the motivation or advance knowledge of the woman to enter into the sex business has thereby become moot. Fijnaut has observed that the contacts in the country of origin between the women and the middle men rarely play a role in court proceedings as it is not considered illegal to ask someone if she wants to work abroad. (in: Altink and De Bruijn, 1996) The problem is that the current generation of sex workers is sufficiently informed not to be misled by unrealistic promises. They know that it is not easy to make a lot of money in North-Western Europe. (Davies, 2009; Werson, 2012) The "Natasha"-image of the helpless, naïve victim without agency is out-dated, at least when it comes to Eastern-European women. (Andrijesevic, 2004; James, 2011) The larger issue is – as we have seen over and over again on our interviews with sex workers – that there is no clear demarcation line between voluntary and coerced prostitution. As the example in chapter 1 also indicated, women and middlemen have a complex relationship, both in the countries of origin and destination, of which dependency is only one aspect. (O'Connel Davidson, 2006)

104 The fact that we heard this story repeatedly among police officers, probably suggests that the numbers on earnings are not accurate, but serve a rhetorical purpose. As our data show, earnings are generally lower and more erratic

105 Quote from District Attorney O.V.J. ten Kate at the presentation of the book *De Fuik* van Henk Werson, in Amsterdam January, 19, 2012.

106 Strictly speaking that would mean that someone who, for example, gave a sex worker who works in Dortmund a ride across the border to Amsterdam would be guilty of trafficking. However, the Dutch law makes a distinction between acts of trafficking that are '*strafwaardig*' and '*niet-strafwaardig*'. This translates roughly as 'punishable ' and non-punishable'. 'Punishable' requires the well-known elements of gain, deception and/or violence. Giving a cross-border ride to a befriended sex worker would be considered 'non-punishable' and would not lead to prosecution. One wonders why the legal definition of trafficking is not formulated less inclusively so that this operational distinction is not needed.

Police officials told us about cars from Eastern European countries with men and women ("The suitcase only contained lingerie.") that cross the Dutch border to drop off women to work in prostitution. Is this trafficking, or are these examples of the ambivalent relationship between the women and the middlemen that we discussed above? One of the major exogenous changes in the first decade of the 21st century has been the emergence of low-cost international travel. Eastern European women cannot be easily fooled anymore that an airline or bus ticket to Amsterdam costs thousands of Euros. In fact, our interviews showed us that most of the women regularly travelled to their family in the country of origin. In practice, trafficking, labour migration, mediation and smuggling of humans merge into each other. People from war-torn or underdeveloped countries often pay middlemen to arrange papers and transportation to find a job in a more affluent country. Smuggling of humans is a criminal offence, and in a world of great inequalities, one that is hard to root out. (Godfroid en Vinkx, 1999).

Since the signing of Palermo Protocol exploitation is a key element of the definition of trafficking in the Netherlands. Clause 2 of the Trafficking article states: "The exploitation of another person in prostitution, other forms of sexual exploitation, forced of indentured labour, other forms of sexual exploitation, forced or indentured labour or services, slavery or indenture that is comparable to slavery."[107] However, despite the centrality of exploitation in the definition of trafficking, there is little agreement among experts about its meaning.[108] The slavery metaphor has not been very helpful, and is actually regarded as misguided, in the articulation of the concept of exploitation. (Boonen, 2000, 44; van der Leun en Vervoorn, 2004; O'Connel Davidson, 2006). The basic meaning of exploitation centres on the notion of unacceptable work conditions and/or the deprivation of worker rights. For example, the employee receives unacceptably low wages, works excessively long hours, or works in very dirty or dangerous circumstances. For example, many of the sex workers in Oberösterreich and Vienna reported working weeks of about 60 to 70 hours and/or they had to hand over 40 per cent of their earnings to the proprietor.[109]

The Dutch *Nationaal Rapporteur Mensenhandel* has added he notion of coercion as a key element of the definition of trafficking. In practice, the creation of dependency, or more precisely, multiple dependencies, between victim and employer or middlemen is the means to coercion. For example, the employer or middlemen organizes housing, transport, food, work clothing, and papers. Many charge excessive, usurious sums of money for this through which another, financial, dependency is created. (van der Leun en Vervoorn, 2004) The latter also add the restriction of basic freedoms and freedom of choice to their definition of exploitation. For example, the employee is not allowed to have any contact with the outside world, is withheld identity papers, and is not allowed to choose another employer or leave the worksite.

Despite the ambiguities and discussions about the exact meaning of exploitation, the concept has considerable advantages. First, it reorients attention away from the complexities and ambivalences of what transpires between the women and the middlemen in the country of origin and the irresolvable issue if the women's alleged intentions or naiveté, to the work situation and labour rights in the destination country. (Andrijesivic, 2004; O'Connel Davidson, 2006) Second, it brings into the purview of the policy maker the endemic exploitation that is going on in sex facilities. (Altink and Bokelman, 2006; O'Connell Davidson, 2006, 11-14; Roessingh and Ramesar, 2011). Third, it moves us away from prostitution essentialism, or the belief that exploitation is a defining factor

107 '*uitbuiting van een ander in de prostitutie, andere vormen van seksuele uitbuiting, gedwongen of verplichte arbeid, andere vormen van seksuele uitbuiting, gedwongen of verplichte arbeid of diensten, slavernij en in met slavernij of dienstbaarheid te vergelijken praktijken*'

108 For example, "Just leaving it to professionals and jurisprudence to define the concept, puts everyone in a hold mode". (Borne en Kloosterboer, 2005) Jurisprudence has so far contributed little to a further articulation of the concept.

109 The Austrian jurisdiction distinguishes *Ausnutzung* (taking unfair advantage) and *Ausbeutung* (exploitation). According to the High Court taking unfair advantage is given when there is no or no commensurate reward and at least 50% of the income is taken away; exploitation is defined as a cut-off of 75% or more. (source: Ganze Ergänzung in FN) It seems that Austrian facility owners are aware of this distinction and play the system accordingly.

of prostitution only.[110] Instead, exploitation is a feature of many types of work at the lower end of the labour market, such as agriculture, the construction industry, the cleaning business and domestic services. (Roessingh and Ramesar, 2011) Moreover people with a vulnerable position in the labour market, such as children or recent or illegal immigrants, run a larger risk to be exploited.

6.4 An Alternative Conceptual Framework: Labour Migration and Exploitation

The conclusion from the preceding sections is that trafficking is an unclear and fuzzy concept. More seriously, in policy terms it has the effect of directing the attention away from what a number of scholars and analysts see as the real problem in prostitution: endemic labour exploitation. Let's, by way of illustration, return to the statements by the police officer with which we began this chapter. In retrospect it is easy to see that the police officer is engaged in a fight against labour exploitation of sex workers. The "signals" he describes all suggest a situation in which the sex worker is held in a situation of dependency by third parties. Yet, the consistent focus on trafficking, as exemplified by the vocabulary of 'trafficking" and 'victims" that the police officer, and other policy makers, employ has the undesirable effect that it makes the sex worker the leverage point for policy interventions. We have seen that the enforcement arrangement was a response to a situation in which the police had no means to intervene when they encountered a sex worker in exploitative circumstances. However, the enforcement arrangement now lays most of the burden of the intervention on the 'victim". While in other business sectors it is the employer who is prosecuted, in prostitution it is the sex worker who, by denying her the opportunity to work in the city, forms the leverage point for policy intervention.[111] Apart from the threat of an administrative measure when he offers the sex worker with a work notice, the proprietor, who actively contributes to the exploitation of the sex worker as we have seen over and over again (Altink and Bokelman, 2006), comes away unscathed. This situation is aggravated by the broad and inclusive definition of trafficking, both *de jure* and *de facto*. Once again, although the search for indications of gross exploitation was a necessary reaction to the deficiencies of the licensing and inspection system that were revealed by the Dürdan case, the effect is an inflationary use of the concept. As the police officer acknowledges, the definition-in-use as employed by professionals in the cities does not always accord with the lived experience of the sex worker. Nevertheless it is she who is denied the opportunity to work and forced into regulation-induced mobility. More seriously perhaps, the same wide and vague definition was at the basis of a recent parliamentary motion to change the law to designate trafficking as one of the serious offences that imposes upon police personnel the legal obligation to intervene to stop a crime, the so-called "*doorlaatverbod*." (artikel 126-ff, Wetboek van Strafvordering). In this final section we attempt to bring clarity to the conceptual (and statistical) confusion around the concept of trafficking by proposing to substitute labour exploitation as the basis of policy discourse and intervention in prostitution.

110 Essentialism is a common fallacy in social and political analysis. "If a group of objects referred to by a common term (be they people, institutions, or practices) do not have any universally shared attributes, then clearly they do not have a common essence. If they do have some shared attributes, this alone does not mean these are essential rather than accidental, even of they occur in 100% of cases. 'Associational thinking', which assumes that what happens to go together must go together, is therefore analytically feeble. If we are to understand the structure of any object of study, we need to distinguish those features that merely happen to coexist – and perhaps interact – but could exist apart from those that could not exist without a certain other feature." (Sayer, 2000, 84-85) Essentialism is important because it does two kinds of moral work. First, it cuts the object's ties with its social context and defines it as somehow unique, incomparable to any other object or activity. Essentialism thereby obscures the wider context that sustains a social object. To be aware of the constructionist nature of a social or policy definition helps us to look for similarities with and analogies to other social objects, which in turn enables us to broaden our understanding of the object. Second, as we have allegedly reached the rock bottom of determining factors, essentialist reasoning is meant to shut off any further discussion.

111 This refers to the enforcement arrangement in The Hague. Also, the middlemen are of course prosecuted when the sex worker choses to file charges against them.

Exploitation is a potential characteristic of many (employment) relationships. In prostitution we distinguish between two dimensions of exploitation: sexual and economic. Both dimensions can be broken down into different categories. *Sexual exploitation* consists of 1) the inability to choose or refuse clients, 2) the inability to refuse certain sexual activities, and 3) the inability to determine the conditions for sexual service provision. *Economic exploitation* also consists of three categories: 1) working for substandard wages or income, 2) overly long working hours, and 3) dependency upon third parties. Each of the two dimensions of exploitation ranges from mild to severe. For example, a milder form of sexual exploitation is being coerced into accepting non-extreme but unwanted activities such as kissing. A severe form of sexual exploitation is rape. A substandard income we consider an income below the minimum wage. There are many reasons why sex workers may earn less than he minimum wage (low demand, oversupply), but we consider it exploitation when this is the effect of their inability to set their own prices, or have to suffer usurious property rents. Dependency can take different forms. In prostitution it may be dependency regarding housing, transportation or identity papers. Each of the categories ranges again from mild to severe. For example severe dependency may imply the inability to leave the premises, or the involuntary handing over of identity papers and earnings to a third party.[112] In Appendix 2 we describe the operationalization of the different categories.

Reframing trafficking in terms of sexual and economic exploitation has five beneficial effects on policy making. First, we become aware that exploitation is not restricted to prostitution, but instead is a risk factor in the employment of all vulnerable populations such as children, recent and illegal immigrants and those with little education. We also realize, second, that exploitation in prostitution is not a monolithic phenomenon but that it exists in different forms and gradations. Third, the concept of trafficking prevents us from understanding prostitution as a social phenomenon that is associated with labour migration. In Austria and the Netherlands immigrants make up 90 and 70 per cent of the population of sex workers respectively. Prostitution is one of the occupations which are taken up by recent immigrants. In fact, the concept of trafficking with its emphasis on organized crime and what transpires in the country of origin obscures the exploitative relationships in the host country and the risks to which recent immigrants are exposed. As O'Connell Davidson observes, the Palermo Protocol has had the deleterious consequence that it put the alleged threat of organized crime instead of the human and labour rights of immigrants at the centre of attention:

"(T)he Trafficking Protocol is problematic from a human and migrants' rights perspective because it attaches special significance to situations in which abuses at the point of destination are linked to the use of force or deception within the migration process. State parties are not being required to meet newer or higher standards with respect to protecting the rights of any migrant person who is subject to deception, force and exploitation within their borders, but only with respect to those who have also been cheated and exploited within the migratory process."(2006, 9)

Fourth, by framing prostitution and its various forms and gradations of exploitation as a form of labour migration, restores agency to the immigrant sex worker. The concept of trafficking prevents us from grasping the diversity of reasons that immigrant women have to enter prostitution, the exploitation that occurs in the host country *after* the moment of immigration, and the fact that exploitation is experienced by immigrants and local women alike. Instead of a helpless victim she becomes an individual who makes conscious choices in a situation of, often considerable, constraints. Indeed in our field work we encountered many women who have voluntarily decided to move from, for example, Rumania of Bulgaria to Austria or the Netherlands to work in prostitution, who endure excessively long working hours and have to hand over part of their earnings to brothel owners, who nevertheless manage to send money home on a regular basis, and who claim that, despite everything, life is

112 So, the image of the trafficked woman as it figures in sensationalist media reports and popular movies would in our terms be someone who would fall into the "severe" range on all six categories of sexual and economic exploitation. One could raise the question how frequently this occurs in the total population of women who emigrate into prostitution.

better than in the home country where they had no perspective at all. (interviews sex workers) This doesn't detract from the exploitative nature of the labour situation in which these women find themselves. The measure of exploitation is the labour and work place laws of the host country.[113] However, it lays the responsibility, and the leverage points for policy intervention, at the doorstep of those who are responsible for this situation: the middlemen and the proprietors. And finally, the concept of coercion prevents from the awareness that there are long-standing laws, administrative measures and enforcement agencies that play – or *should* play – a role in preventing exploitation in the work place.

The concepts of trafficking (and its widely used corollary, forced prostitution) enjoy their popularity because of their symbolic meaning. They signal the moral position that prostitution is "essentially" a form of male domination over women. By reframing these concepts as different forms of exploitation creates a productive set of analogies with similar phenomena in other occupations. It also redefines the problematic and muddled concept of trafficking as one, extreme, manifestation of the sexual and economic exploitation of recent immigrants from low-wage, underdeveloped countries to high-wage, developed nations. The net effect is take the different forms of sexual and economic exploitation out of the morality politics of prostitution and bring it within the remit of labour, economic and administrative law.

113 The situation in Austria in this regard is somewhat different from the Netherlands because of the current uncertainty around the *Sittenwidrigkeit* clause and non-integration of sex work in the labor and workplace laws.

7 Conclusions and Recommendations

7.1 Conclusions

In this final chapter we will summarize our conclusions and formulate a number of policy recommendations. We will list our major conclusions, but, in the spirit of the purpose of this study, we want to start with a general conclusion about prostitution as the subject of public policy, the intervention of state actors in the realm of prostitution. Prostitution is an extremely policy resistant topic. It is subject to strong extraneous influences such as labour migration and developments in Internet and communication technology. New forms of prostitution, such as home and hotel prostitution and massage parlours, emerge that (still) elude the regulatory reach of authorities. The result is that developments in prostitution may happen extremely fast, far outpacing the adaptive capacities of policy makers, and forcing them in a highly reactive position. Although as a trade it is a public phenomenon that is highly visible in our cities (which poses its own set of problems), for various reasons (stigma, shame, criminal intent) the people who engage in prostitution – sex workers, clients, and third parties – prefer to work in a netherworld that is difficult to access to outsiders. In addition, as many sex workers are migrants, communication with the target group is difficult because of language and culture problems. Accurate and reliable data on prostitution are scarce and hard to obtain. Moreover, prostitution is not a unified phenomenon and takes multiple shapes. This in turn leads to widely different problem formulation and makes it difficult to design a policy that addresses all aspects of the problem. And, finally, prostitution is a sensitive topic that divides (policy) communities, makes reasoned debate difficult, and sometimes leads to moral campaigns for a particular solution for the problem as it is perceived by one or another group. All this, is in itself not surprising. *The importance of the observation is the implication that easy policy solutions to prostitution do not exist.* No matter the goals, whether they are the abolition of prostitution, its regulation or its decriminalization, effective policy intervention in the field of prostitution is a prime example of what the great policy scholar Charles Lindblom famously called "the science of muddling through": a succession of small and modest steps with painstaking attention to the details of implementation. (Lindblom, 1959) The "one best solution" simply does not exist.

We have divided our conclusions in two subject headings: conclusions about prostitution in the two countries and conclusions about policy making.

7.1.1 Prostitution

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 we 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), and that in terms of numbers prostitution is a relatively small social phenomenon. (Certain neighbourhoods can of course suffer from public order and nuisance issues because of concentration effects.) We feel it is safe to conclude that the numbers that are reported in the media and in more serious academic 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 attract labour migrants. In Austria over 90% and the Netherlands over 70% of sex workers is 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 the country 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%), prescribe dress codes and working hours, make sex workers pay for various 'services' or force then 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. Because sex workers have no employment contract, they can be let go on the spur of the moment. There is no contractual security about the nature and length of the labour relationship in the prostitution sector. It should be added that in he 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.

7.1.2 Policy

6 Despite its many intrinsic obstacles, prostitution policy may have large consequences, both positive and negative, for public order and the rights and quality of life of sex workers. While the desired 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 Prostitution is a diverse phenomenon. As a result people have different problem frames of prostitution. With frames we mean more or less coherent 'packages' of images, values, preferred solutions, and selected data. At the moment one of dominant frames in the public and policy debate is that of the sex worker as 'victim' of 'trafficking'. However, given the diversity of prostitution, each frame is liable to oversimplify matters and lead to one-sided or at worst misguided policy recommendations.

9 The media play 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.

10 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.

11 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.

12 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.

13 Conclusions 11 and 12 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.

14 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.

15 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 facilitates, 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.

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

17 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.

18 Regulation in the Netherlands is an example of the importance of careful attention to the detail of policy implementation in day-to-day operations. At the local level the design and implementation of prostitution policy is almost completely in the hand of administrators. Although they work within the frameworks set by local and national politics, and are subject to the usual accountability procedures, they have considerable autonomy in setting policy.

19 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.

20 One effect of the increased use of information and networking instruments is that at the local level the Dutch administrative system that deals with prostitution shows aspects of recursiveness and evolutionary learning.

21 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 increase 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.

22 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.

23 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.

24 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. However, there is as of yet 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. (Stone, 1988, chapters 11 and 12)

25 The concept of trafficking remains one of the most problematic issues in prostitution policy. While sexual and economic exploitation, as we saw, is 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.

7.2 Recommendations

For reasons stipulated in 7.1 prostitution policy, generally speaking has at best weak effects. It is an illusion to think that policy intervention will be very effective in achieving its, usually ambitiously formulated, goals. Where prostitution policy can have a real effect is in the realm of the Rule of Law ('*Rechtsstaat*'). A government that is serious about bringing the domain of prostitution within the remit of the full spectrum of law, and not just only one chapter such as criminal law, is by implication committed to protecting the human rights of sex workers. However, we think that some policies are better than others in terms of our stated values of protecting the human rights of sex workers and minimizing the negative externalities of prostitution for society. In this series of recommendations we will make suggestions for policy interventions that make a difference in a highly policy resistant domain such as prostitution. We refrain from calling these suggestions 'best practices', as these give the illusion that they have universal value and can be imported wholesale in any policy situation. By calling them 'policy suggestions' we emphasize that to make them operational, they should be adapted to local circumstances.

1 Regulation requires a form of careful monitoring of sex facilities and independently operating sex workers. Monitoring should address health, work place conditions and labour rights and exploitation. Monitoring should be organized in such a way that it facilitates and supports the agency of sex workers. The Dutch model of public health inspections is a good example. As we will argue below, an effective monitoring system should be designed and maintained in close collaboration with sex workers.

2 Effective prostitution policy requires sustained, careful and patient attention to its design and implementation. That is, the 'real' work of prostitution policy is not so much the choice of a policy regime, but the selection, implementation and evaluation of different policy instruments.

3 While it is important that elected officials set out a general policy framework and broad policy goals, it is equally important that they refrain from meddling in the design and implementation of this policy. The

moral character of prostitution policy can easily become an obstacle to effective policy implementation. Effective policy implementation requires a stable cadre of dedicated and experienced administrators, who are able to gain the trust of the field, and who have the discretionary powers – constrained by the usual procedures for financial and democratic accountability – to do their work.

4 Having said that, the risk of policy implementation is regulatory drift and goal displacement. It is important therefore that administrators and elected officials, in addition to the evaluation of specific policy measures, regularly convene to evaluate and reflect on the overall outcome and direction of the policy as realized over the past few years.

5 The dynamic complexity of the prostitution field requires commensurate coordination mechanisms within public administration. The organization literature calls such a situation one of 'reciprocal interdependence' that requires a form of 'mutual adjustment' as mechanism of coordination. (Thompson, 1967) 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.

6 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.

7 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.

8 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.

9 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 worker 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.

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Appendix 1: Research Design and Methodology

1 Goals of the project

The purpose of this study is to compare the implementation and effects of prostitution policy in two countries, Austria and the Netherlands, that have a discernible and more or less coherent policy approach in this field. 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. As explained in chapter 1, 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.

2 Research Questions

The project focused on the following research questions:

1 What is the size and state of the prostitution market in the Netherlands and 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 transfer of prostitution to different areas (national or international) or types of prostitution.

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 (see section 2.3), we often can not 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. In this fast-developing and contested domain, we believe this is the best we can do.

We want to emphasize that the participating cities were interested in the possibilities of effectively regulating prostitution. That implied that they were less interested in a study of trafficking.[114] Although trafficking is not

114 Like all EU countries, the Netherlands has a National Rapporteur in Trafficking in Human Beings. This agency collects data on trafficking. The reports of the National Rapporteur have been used in our work.

the subject of this project; if it emerged in the course of the study as a topic that respondents are dealing with (for example, local policies that were designed to recognize and fight trafficking), we have of course analysed it and integrated it in our conclusions.

3 Design of the Study

This is not a formal outcome study with a controlled pre-test and post-test design. The complexity of the prostitution domain, in combination with the rapid developments in this field (see 1.5) prohibit, in our opinion, a formal, quasi-experimental design (Shadish et. al, 2001). Such a design would provide us with a mere semblance of scientific control while the rigor of the design would result in missing out on most of the dynamic complexity that characterizes this field. Moreover, authoritative knowledge about actual approaches to the regulation of prostitution is so scarce, that a mixed-methods (quantitative-qualitative), process-based research design seems to be indicated. For this reason, we have opted for a comparative case study design. (Landman, 2000) A mixed-methods, comparative case study allows us to map regulatory approaches, the societal and administrative context in which regulation operates, and the impact of regulation on the prostitution field. Policies are put into effect to remedy or alleviate a particular problematic situation. By studying the prostitution field in depth we will obtain both an understanding of the societal origins and validity of the original problem formulation, the administrative context in which policy and regulation is designed and implemented, as well as of the impact, or lack thereof, of policy measures that have been designed to address the problem. Policy effects are the intended and unintended consequences that follow from the implementation of a range of policy instruments with the goal of solving problems and/or attain aspirations in the field of prostitution.

The main comparison will be between The Netherlands and Austria. The participating Dutch cities (see below) expressed the desire for a most similar systems design (MSSD; Landman, 2000) 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 do differ. (Landman, 2000, 71) A MSSD, as well as its counterpart, a Most Different Systems Design (MDSD), are strong designs that yield important comparative knowledge.[115] 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.[116] The value of small n comparative studies must be sought in the rich contextual comparison. Or as Landman puts it: "The comparison to the researcher's own country is either implicit or explicit, and the goal of contextual description is either more knowledge about the nation studied, about one's own political system, or both." (Landman, 2003, 5)[117]

The cities' argument for a MSSD was that a comparison with a most different policy regime (in particular client-criminalization, such as in Sweden) would generate important information, but from a practical point of view it would be more useful to see what the policy implementation and effects are of a country with a similar regime. The cities thought it unlikely that The Netherlands would move towards a client criminalization policy anytime

115 The participation of the city of Vienna, at the start of the project, resulted in an addition to the budget. This allowed us to free part of the budget for a secondary analysis of the Swedish literature on client criminalization. (See Appendix 3).

116 This is the notorious problem of " too many variables/too few cases". (Goggin, 1986).

117 Landman speaks of a tradeoff in international comparative research between a design with a large n, few variables, a high level of abstraction and rather robust conclusions versus a design with a small n, many dynamically interrelated variables, and detailed data and conclusions. Differently put: hard knowledge on a few, abstract variables versus less certain but more contextual, meaning-oriented, and practical knowledge about the dynamics of everyday societal systems. Given the paucity of knowledge about prostitution policy, there are strong arguments to choose for an in-depth comparison of a few countries.

soon.[118] On the other hand, we know so little of the effects of regulation (and decriminalization) that it is expected that an in depth comparison of such policy regimes would yield more interesting and relevant knowledge. Austria was selected for various reasons. Similar to the Netherlands Austria regulates prostitution. It has also experimented with decriminalization-type policy measures, such as improving labour conditions of sex workers, taxation, and eligibility for social security. Interesting to the Netherlands, Austria has a long experience with the registration of sex workers. Similar to the Netherlands, Austria has a large number of migrant sex workers from Eastern Europe and Nigeria. In an administrative sense the countries also show similarities. Both can be called a decentralized unitary state, although The Netherlands doesn't have a federalized structure such as Austria, and the Dutch cities are much less autonomous than the Austrian *Länder*. Prostitution policy shows therefore more regional variation in Austria than in the Netherlands. Politically, they are governed by coalition governments in which, until recently at least, Christian-Democrats and Labour were the dominant forces.[119] Both are relatively small and affluent; they do not have the extremes of poverty and degradation that is one of the drivers of prostitution. Finally, there were various pragmatic reasons such as language, available contacts, and accessibility.

4 Partnered Research

Nicis Institute – now Platform 31 – requires that the research team and the participating cities form a consortium. As a result the research has been developed and executed in close collaboration with three Dutch partner cities Rotterdam, The Hague, Utrecht; Nicis Institute since 2102 Platform 31) participated in an observing role. Soon after the start of the project the city of Vienna also joined. The three Dutch partner cities indicated that they would like to obtain policy-relevant information early on in the research and not at the end of the study. The study is therefore practice-oriented and designed and executed in close interaction between the research team and the partner cities. What did this co-production of research entail? As there are no blueprints or handbooks available that instruct researchers and partners how to engage in co-producing usable knowledge, the interactive design was developed 'in vitro' in the course of the research. In 2009 the research questions and research design were formulated in a series of meetings with the Dutch cities. In the meetings the participants jointly formulated questions that were practically relevant (that is emerging from and speaking to practical concerns of policy makers) and scientifically feasible (that, they can be researched in a scientifically adequate manner). In hindsight this resulted in a process of mutual learning and trust building. With regard to learning, the researchers obtained unique, "hands-on" insight into the challenges and particulars of designing and implementing measures for regulating prostitution at the local level (shaped by national legislation and (inter-) national developments). For the representatives of the cities it meant a growing awareness of the possibilities and limitations of scientific research. The cities, aware of the lack of knowledge about the regulation of prostitution, were above all interested in more precise and reliable data about the size and nature of the sex industry, in learning about policy theory, and in general in obtaining a knowledge base for effective administrative action in regulating prostitution.

From the start of the project the research team and the Dutch partner cities met every three months. At the meetings a program manager from Nicis Institute/Plaform31 was always present. A scientific advisory board was created to guarantee the scientific quality of the research. The board agreed to review all reports that were to be produced by the research team. The board consists of Professor Joyce Outshoorn, emeritus professor of

118 Although since 2009 when the design was discussed with the cities, the proposed new national prostitution law in the Netherlands – that has recently been adjourned by the Senate – contains elements of client criminalization, Somewhat similar to Finland, the law proposes to criminalize buying sex from non-registered sex workers. Recently some Dutch politicians have been flirting with the idea of client criminalization, and one of the fundamentalist Christian parties has introduced it in its party platform in the recent parliamentary elections. Although it is too early to draw any firm conclusions, it looks as if client criminalization is slowly entering the national prostitution debate in the Netherlands.

119 In both countries politics the grand postwar equilibrium has become destabilized by the increasing popularity of right-wing populist parties.

women's studies at Leiden University, Professor Ronald Weitzer, professor of sociology at George Washington University, and Dr Anton van Wijk, senior researcher at Beke, a research agency that has done extensive, policy-oriented, research on prostitution in Amsterdam.

5 Data-collection

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 the data. Data-collection in prostitution research faces numerous threats to validity. One important threat is the contested nature of prostitution policy, which affects the collection, interpretation and use of data. We will return to this in chapter 5. Data collection in prostitution research is also affected by numerous practical obstacles. A large proportion of sex workers is very mobile. Many migrant sex workers don't speak English. Because of the stigma attached to prostitution, sex workers protect their anonymity and are reluctant to be interviewed. Sex workers distrust government officials, as they expect nothing good to come from them. They also distrust researchers, as they believe that nothing is done anyway with the results. Given these challenges data collection in prostitution research will always be a compromise between ambition and convenience, and results and conclusions of any study will be surrounded by considerable uncertainty and problems of interpretation. In fact, only a series of carefully designed and executed studies comprising different policy contexts will gradually converge on more robust results and conclusions.

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. Not only will local researchers have better access to national and local data sources, but they are also in a better position to situate what the respondents say in its proper political-cultural-historical context.[120] The advantages of using insiders over academic field workers are obvious. Insiders have better access to sex workers and the sites where they work, find it easier to gain trust, and are in a better position to interpret the answers. In addition, insiders are in a unique position to obtain the serendipitous insights that come with moving about in the field. A risk of using insiders is that they share a context with their respondents and/or identify with them. In both case this can compromise the quality of interview and observation data. (Weiss, 1993)

Having said this, data collection in prostitution research is beset by difficulties. The design of the study calls for quantitative and qualitative data collection. Quantitative data have been collected on a range of variables such as the number of sex workers, ethnic background, mobility, age, and earnings. Collecting quantitative data proved to be far from straightforward. We report on this in chapter 2.

We have also interviewed key stakeholders in both countries. But here sampling turned out to be strongly dependent on the specific situation in the respective countries. Since 2000 the Dutch prostitution market has been the subject of a considerable number of research studies (Daalder, 1992; 1997, Van Wijk et. al, 2010). National and international researchers and journalists regularly approach Dutch field organizations for cooperation in gaining access to sex workers. Also, licensed sex facilities are subject to frequent inspections from various kinds of officials. In general in the Netherlands the prostitution field is much more interconnected with official organisations than in most countries. Outreach work is largely done by municipal health and social work organisations that have long-established, stable trust relations with the prostitution field in their city. Professionals often feel that they put this trust relationship at risk by mediating for research access. The only other

120 One of the major problems of qualitative international comparative research that is conducted by one researcher is the problem of understanding the history and, often tacit, cultural understandings of a research site. In our opinion it is simply impossible to obtain a valid and solid grasp of the meaning of issue by spending a limited time in a country, no matter how careful one is in selecting spokespeople. This problem is enhanced when the researcher doesn't speak the language of the country that she researches.

outreach is done by Christian exit organisations. We didn't approach these organisations for mediation purposes as we had reasons to believe that they worked with a biased sample of the sex worker population.[121] In a relatively small market where many actors know each other personally, this has resulted in a certain research 'fatigue', a reluctance among field workers to mediate for, and among sex workers to collaborate with, researchers. In those cases that we did get access to sex workers we discovered that the interviews were not without risk to the sex worker. In at least one case one of our interviewees lost her job in the brothel where she worked after being interviewed by us. Although we couldn't establish a clear causal link, it nevertheless proved to be demoralizing to our insider interviewer who felt guilty about this.

The Austrian prostitution market on the other hand has been much less researched. In addition, outreach work is largely done by independent NGOs who have to go out and find sex workers for purposes of providing information. Officials have a more arms-length relationship with the field than in the Netherlands. Sex workers and outreach workers suffer less from research 'fatigue'; in fact we had the impression that our fieldwork was one of the first instances that Austrian sex work had been researched 'on the ground'. We found two major outreach organisations (LEFÖ and MAIZ) willing to conduct interviews with sex workers. For most interviews specific appointments were made, a few were done in the course of their outreach-work.

The different situations in Austria and the Netherlands have led us to use different sampling and data collection strategies, each with their own strengths and weaknesses. In the Netherlands the emphasis was on the use of insiders on recruiting respondents, Internet prostitution (see below), and the use of secondary data. In addition to interviewing, the Dutch field workers engaged in extensive observations of management practices in sex facilities and proprietor – sex worker interactions, in which we had numerous conversations – although short of a formal interview – with hostesses, bar personnel and clients. From our participant observation we learned a lot from actors' off-hand comments in these informal conversations. The Dutch insider also kept a diary. We have interviewed 44 sex workers, and 6 to 8 administrators, professionals and police officials for every city covering administration, public health and the police. 3 of the sex workers had participated in the B9 arrangement for victims of trafficking. Interviews were held in Dutch or English. In the Netherlands our researcher (SA) and an insider, a sex worker whom we gave interview training, did the interviews with sex workers and other members of the sex industry.

In Austria we have interviewed 85 sex workers (59 in Vienna, 26 in Upper Austria), 3 facility owners, 29 administrators, professionals (NGOs), politicians, and police officers.[122] Outreach workers from two NGOs, *LEFÖ* in Vienna and *MAIZ* in Oberösterreich, did the interviews with sex workers; our Austrian researcher (HA) did 4 additional interviews with Austrian sex workers. The interviews covered topics ranging from the pathway into prostitution to earnings and working hours. The Austrian interviewers were fluent in languages the sex workers are speaking (Bulgarian, Romanian, Hungarian, Czech/Slovakian, Polish, Spanish, Russian, English and German). Tables 1 and 2 give an overview of the sample of sex workers that were interviewed in both countries:

121 Bias in sampling is an inescapable problem in research with sex workers. Bias operates among others along dimensions of language, legality-illegality, type of prostitution, victimhood, strategic considerations of the respondent sex worker, and self-selection. A perfect sample, in the sense that it is representative of the complete population of sex workers in a country, is an impossible ideal. Samples are at best better or worse. In the case of religious exit organizations in the Netherlands we have compelling reasons to believe (a.o. based on our interviews with sex workers and reactions of sex workers on the telephone hotline of the *Rode Draad*) that they only reach a limited, self-selected selection of sex workers.

122 Three sex workers were interviewed twice as in the first interviews several topics were not addressed.

Table 1: Dutch Sex worker interviewees: main characteristics

		Numbers
Gender (n=44)	female male transgender	38 4 2
Age at time of interview	18-20 21-29 30-39 40-49 50+	2 16 12 11 3
Nationality	Dutch Bulgarian Portuguese Ukrainian Chilean Moldavian Jamaican Israeli Rumanian Hungarian	31 3 1 1 1 1 1 1 3 1
Time in sex work	< 1 year 1-5 years 5-10 years 11-15 years 16-20 years > 20 years unknown	5 9 10 4 4 7 5
Age at the time of commencing sex work	N=34 18-19 20-25 25-30 > 30	 7 12 11 4

Interviewers in both countries were trained in interviewing by the main researchers and equipped with the same interview guideline. The interviews with sex workers took place at the work place of the interviewee, in cafés, at the office of the NGOs. One guiding principle for conducting the interviews was not disturbing the business. That is, if the sex worker solicited a client during the interview, the interview was terminated. This happened in a few cases. The interviewers tried to speak alone with the sex worker, but sometimes colleagues and friends were present which also gave information.[123] But the interviewers took care that the facility owner was not at the spot of the interview; not an easy task as in one case the interviewers were requested to lower their voice because otherwise the owner could listen to the interview via the surveillance cameras. In Austria, in the second round of interviewing sex workers were paid €50 for an interview; in the Netherlands we initially didn't pay sex worker respondents but as this became an impediment for participation, we decided to pay €50 per interview.

123 When more than one sex worker participated in the interview, it was counted as one interview nevertheless.

Table 2: Austrian sex worker interviewees: main characteristics

		Numbers (n=Percentage)	
Gender (n=82)	female transgender	80 2	97,56% 2,44%
Age at the time of interview (n=82)	21-29 years 30-39 years 40-49 years 50-54 years	39 25 14 4	47,56% 30,49% 17,07% 4,88%
Age at the time of commencing seks work (n=75)	15-19 years 21-29 years 30-39 years 40-49 years 50-54 years	13 38 18 3 3	17,33% 50,67% 24% 4% 4%
Nationality (n=82)	Bulgaria Rumania Hungary Austria Slovakia Czech Republic Dominican Republic Nigeria Others	15 15 11 7 6 5 5 4 14	18,29% 18,29% 13,41% 8,54% 7,32% 6,10% 6,10% 4,88% 17,07%
Type of seks work (n=85)	Brothel, nightclub Laufhaus Studios Outdoors Massage par Escort service Mixture of types Others	29 22 11 9 4 2 6 2	34,12% 25,88% 12,94% 10,59% 4,71% 2,35% 7,05% 2,35%
Average time in prositution (on average 7 years)	less than 3 years 3 years +		50% 50%

Because of the growing importance of the Internet as a platform for recruiting clients in the Netherlands, the cities asked us to do an analysis of Internet prostitution. (See chapter 3) This raises a number of methodological problems. A considerable number of sites exist and sex workers advertise on more than one site, although five large sites (Kinky, Sexjobs, Citygirls, Eromarkt and Speurders, a general advertising site that also offers sex work ads) capture most of the market. Simply counting advertisements is not an option as this results in double counting. Sometimes more than one sex worker can be reached through one ad, although client forums indicated that this happened less frequently than the opposite of one sex worker using more ads. Yet, it might result in underestimating the number of sex workers who recruit on the Internet. Clearly names cannot be used as an exclusive identifier in this market. Whoever clicks on a site is presented with 40 or more pages, although, because of the large number of mutations, only the first 4 or 5 pages are up to date. From client forums we learned that sex workers only advertise when they are actually available; this offered us an opportunity to estimate the number of sex workers who are active on the Internet per day.[124] Internet ads are not restricted to one city or region. And, Internet ads cover almost all types of prostitution.

124 This would apply in Austria more or less only to webcam-sex. Internet ads are paid on a weekly or monthly basis, so they are on the website for this time. This doesn't necessarily mean the sex workers work each day.

Sex workers provide the prospective client with one or more mobile numbers and ask him to call with number recognition. Sex workers indicate that they will not react to text messages or emails. This led us to try to google mobile numbers. This turned out to be a successful method to trace sex workers. As a mobile number is linked to the same person (or persons), it offers a good indication of the number of unique sex workers who were actively recruiting on a given day. We learned that the same number appears on the same site on successive times of the day. Sometimes the same number advertises on the same site with different ads (although the site managers discourage this). Less than half of the mobile numbers appeared on only one site. The conclusion is that the term 'double counting' is an understatement in Internet prostitution. It was no exception to see numbers appear 200 to 300 times in one day (2011) when entered as a Google search with some generating 2000 hits or more.

On 10 different days we counted the number of unique mobile numbers on a single sex site. (To do more was physically impossible for one person.) By double-checking two major sites on later days we learned that the number of unique numbers is quite stable. Finally, it proved to be impossible to count the number of sex workers who advertise via Twitter their Facebook account. Numbers can be an underestimation, as we cannot exclude that sex workers share a phone number.

Finally, we collected and analyzed policy and administrative documents, and newspaper and other media reports on prostitution. As one of the main goals of the study consisted of conceptualizing prostitution *policy,* we consistently confronted our empirical findings with the policy literature. Often the literature suggested insights and explanations of the data, but almost just as often the data suggested important revisions of the standard literature. Throughout the report we discuss our conceptualizations, thereby describing the relevant literature, in particular where it concerns policy formulation and the all-important concept of framing, policy instruments, moral policy and policy coordination.

Appendix 2: Operationalization of Sexual and Economic Exploitation in Prostitution

Sexual Exploitation

	Extreme	Serious	Average	Mild
Being able to refuse clients	Never being able to refuse work and never being able to refuse clients.	Not allowed to refuse clients as part of business model.	Incidentally not allowed to refuse clients.	Psychological pressure not to refuse clients.
Inability to refuse unwanted activities.	No control over activities to be engaged in.	Only allowed to refuse extreme sexual activities, such as multiple clients or sexual perversions.	Not allowed to refuse what clients expect from sex, such as kissing, sexual positions.	Expectation to allow non-extreme activities from regular clients.
Inability to refuse unsafe activities.	Always forced to work unsafe, vaginally and orally.	Forced to work unsafe vaginally and orally with regular clients as part of business model.	Expected to work unsafe orally as part of business model.	Pressure to work unsafe orally to compete with colleagues.

Economic Exploitation

	Extreme	Serious	Average	Mild
Substandard wages or income	No payment.	Only payment of tips or pocket money.	Less than €5 per hour.	Between €5 per hour and minimum wage.
Overly long working hours	7x12 hours or more; third party controls working hours.	6x12 hours or more; third party controls working hours.	5x12 hours or more; third party has some control over working hours.	5x12 hours or more; no external control of working hours.
dependencies	Sex worker lives in work space, or in house of third party in bad circumstances without privacy; does not know her address, accrues debts to third party for lodging. Basically indentured labour.	Sex worker lives in decent lodging provided by third party, has some privacy, is dependent on third party for transport to work place, pays too much for it and has debts to third party. Situation of dependency	Third party takes care of affordable, independent housing, sex worker has few small debts with third party, third party expects that sex worker works for him/her in return and pressures sex worker on working hours. Situation of some dependency	Third party assists in finding decent, affordable housing but expects something in return such as a fee or some work for him/her. No debts. Situation of mild dependency

Appendix 3: The Swedish Sex Purchase Act: Claimed Success and Documented Effects[125]

By Susanne Dodillet[126] and Petra Östergren[127]

Introduction

Sweden's criminalization of the purchase of sexual services in 1999 is said to be a unique measure: to only punish those who buy sexual services, not those who sell them. However this alleged uniqueness is questionable, and for several reasons. There are a number of other laws and regulations against prostitution, which effectively make Swedish prostitution policy similar to those countries in the world that attempt to reduce or eradicate prostitution with legislative means. Another reason the claim to uniqueness is doubtful is that one must examine more than the wording of a law or policy model ("it is only those who buy sex who are being punished") when analyzing it – one has to consider the actual consequences. For instance, a law against the purchase of the services offered in massage therapy, psychotherapy or sexual health counseling would obviously not only punish the buyers, but also carry negative consequences for those who offer the services. Therefore, to only focus on one of several prostitution laws, ignore its consequences and call this a "unique" policy model is not in concordance with a comprehensive view of prostitution policy.

But there are some aspects of the Sex Purchase Act that can be said to be unique. One such aspect is the way it has been justified by policymakers.

The Sex Purchase Act was introduced by feminist policymakers who argued that prostitution is a form of male violence against women, that it is physically and psychologically damaging to sell sex and that there are no women who sell sex voluntarily. Furthermore, it was claimed that if one wants to achieve a gender-equal society, then prostitution must cease to exist – not only for the above-mentioned reasons, but also because all women in society are harmed as long as men think they can "buy women's bodies".[128] If the ban would have adverse effects for individual women who sell sex, or if it violates their right to self-determination would not matter. The gender-equal symbolic value of the Sex Purchase Act is more important.[129] This radical feminist-inspired view of prostitution has existed in the West since the 1970s, but has not been applied at state level before. In Sweden, it was first embraced by the Social Democratic government in 1998, and later by the Liberal Alliance Government in 2006.

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125 The research for this report has been part of the *International Comparative Study of Prostitution Policy in The Netherlands, Austria and Sweden* (principal researcher: Hendrik Wagenaar), funded by the Nicis Institute, the cities of Rotterdam, The Hague, Utrecht and Vienna, and Leiden University. The conclusions and opinions that are expressed in this report do not necessarily represent those of the principal researchers in the larger project or its funding partners. The authors of this Appendix wish to thank Ola Florin, Hendrik Wagenaar and Ronald Weitzer for valuable comments, and extend a special thank to Michael Goodyear for his extensive comments on the text, legal translations from Swedish to English, editing and review of sources. Any remaining mistakes are the sole responsibility of the authors.

126 University of Göteborg.

127 University of Malmö.

128 Östergren 2006. & Dodillet 2009. & Proposition 1997/98:55, p 20 ff & p 104.

129 Östergren 2006, p 64. & Altstadt 2006.

Another unique aspect of the Sex Purchase Act is how persistently the ban, or the "Swedish model", has been marketed. One of the stated aims from the very outset was to export it to other countries.[130] Both governments, authorities, political actors and Non Governmental Organizations (NGOs) have devoted time and money to market it internationally. Pamphlets, websites, articles, books and movies have been produced and lobby activities have been conducted towards the European Union (EU) and the rest of the world with the help of this material and via workshops, seminars and debates.[131] Countries considering changes in their prostitution laws, have subsequently turned to Sweden for inspiration.

At the core of the marketing campaign has been the stated success of the Sex Purchase Act. It is said to have reduced prostitution and trafficking for sexual purposes, to have had a deterrent effect on clients, and to have changed societal attitudes towards prostitution – all this without having any negative consequences. Most recently these claims were stated in the 2010 official evaluation of the Sex Purchase Act, and repeated by Minister of Justice Beatrice Ask in an article for CNN.[132] The problem with these claims is that if they are carefully investigated they do not appear to be supported by the available facts or research. As soon as the official evaluation was published, it was also criticized from several directions.[133] In the consultation process following the publication of the evaluation, the critique was especially harsh from those referral bodies who conduct prostitution research, and those working with health and discrimination issues (when law amendments are proposed in an official inquiry the report is circulated for consultation before it undergoes further preparation).[134] The criticism has primarily been focused on the evaluation's lack of scientific rigor: it did not have an objective starting point, since the terms of reference given were that the purchase of sex must continue to be illegal; there was not a satisfying definition of prostitution; it did not take into account ideology, method, sources and possible confounding factors; there were inconsistencies, contradictions, haphazard referencing, irrelevant or flawed comparisons and conclusions were made without factual backup and were at times of a speculative character.[135]

In this report we will focus on the conflict between the stated success of the ban and the lack of data that can back up these claims. Because, when reviewing the research and reports available, it becomes clear that the Sex Purchase Act *cannot* be said to have decreased prostitution, trafficking for sexual purposes, or had a deterrent effect on clients to the extent claimed. Nor is it possible to claim that public attitudes towards prostitution have changed significantly in the desired radical feminist direction or that there has been a similar increased support of the ban. We have also found reports of serious adverse effects of the Sex Purchase Act – especially concerning the health and well-being of sex workers – in spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution.[136]

130 Proposition 1997/98:55, p 105.

131 The Swedish Institute was given extra funds in the National Action Plan to market the "Swedish view" on prostitution and trafficking. See BRÅ 2010, p 59 for a summary of these activities. & Svenska Institutet 2011.

132 SOU 2010:49. & Ask 2010.

133 Agustín 2010; Agustín & Persson 2010a & 2010b; Dodillet 2010; Berg & Lindberg 2010; Pion & RoseAlliance & Sexarbejdernes InteresseOrganisation 2010; Hagwall & Laakso & Rehbinder & von Schantz & Wagenius 2010.

134 Referral or consultation responses can come from government authorities, local authorities, police, the judicial system, universities, NGO´s, stakeholders and the general public. See "How laws are made". The critical bodies were: Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL), Swedish Association for Sexuality Education (RFSU), The Discrimination Ombudsman, The Department of Social Work at University of Gothenburg, The Faculty of Health and Society at University of Malmö, The Faculty of Law at Lund University, The Faculty of Law at Uppsala University, The Department of Criminology at Stockholm University, The Department of Clinical and Experimental Medicine at Linköping University, The Department of Gender Studies at Södertörn University, National Board of Health and Welfare (Socialstyrelsen). Also the The Swedish Agency for Public Management (Statskontoret), the Government's survey support and the Swedish Armed Forces criticized the evaluation in the consultation process.

135 Ibid.

136 Proposition 1997/98:55.

The authors of this report have researched different aspects of the Swedish prostitution policy over several years. One of us has also conducted field work among people who sell sex in Sweden.[137] This particular report is based on research we have conducted in the context of a larger project conducted through the University of Leiden and the University of Sheffield. It is written with an international audience in mind, the reason being that there appears to be a large demand for knowledge regarding the actual effects of the "Swedish model" – knowledge that is based on Swedish research but not filtered through the official discourse. To our understanding, the research presented here has not previously been compiled and translated into English.

We will begin this report by providing an overview of the laws and regulations surrounding prostitution, move on to discuss the documented effects of the Sex Purchase Act and end with a brief conclusion.

Background to the Swedish Sex Purchase Act

The Swedish Sex Purchase Act makes it unlawful to obtain, or attempt to obtain, casual sexual services for compensation. It entered into force in 1999 and when introduced the penalty for infraction was a fine or six months in prison. After a 2010 official evaluation the penalty was increased to twelve months in prison.

The reasons why the Act came into existence in Sweden can be understood on several levels and explained from different perspectives. The dominant understanding is that the Act is a natural consequence of many decades of work towards a gender equal society.[138] This understanding is often shared by feminists and scholars who also connect prostitution with male domination and violence.[139] It is believed that no woman can truly consent to selling sex, therefore there is no distinction between free and forced prostitution and prostitution cannot be considered work. Not only do men who buy sex oppress individual women, prostitution is believed to harm all women. Therefore, to allow prostitution is regarded as sending a signal that society finds it acceptable that men buy women's bodies. Scholars who employ a critical approach to the Act, and do not necessarily view prostitution as oppression and male violence, tend to view the Act as a consequence of specific cultural understandings of sexuality and gender. Here stereotypical notions of gender roles, traditional sexual morality, the existence of a whore stigma and the creation of new sexual deviancies, are important elements of understanding. They also place the emergence and adoption of the Act within other political traditions and changes, such as a Swedish communitarian tradition and the entering into the European Union.[140]

We would like to briefly discuss some of the more instrumental and historical factors that we believe were fundamental in bringing the Act into the Parliament in the first place, and for it to obtain support. These factors are: a Swedish tradition of anti-prostitution policy; modern anti-prostitution grassroots-movements; the emergence of a radical feminist discourse; a collaboration between party lines among female Members of Parliament and the inclusion of the Act within the omnibus Kvinnofrid ("Peace for Women") Bill. We will review them in order.

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137 Susanne Dodillet holds a PhD in Intellectual History and in her dissertation Är sex arbete? (*Is sex work?*) she compared Swedish and German prostitution policy 1970-2000. The material she analyzed was parliamentary documents and newspaper debates during four decades. See www.susannedodillet.com.
Petra Östergren is a PhD candidate in Social Anthropology. She is also a social commentator and writer. In one of her books, Porr, horor och feminister (*Porn, Whores and Feminists*) from 2006, she analyses the three decade long anti-porn and prostitution movement in Sweden, using a broad spectra of material – not only texts and discussions from parliamentary sources, but also following the grass roots activity that lead up to the current policy. She has also interviewed policymakers and many sex workers. The theme of her current dissertation is the Sex Purchase Act. See www.petraostergren.com.

138 Erikson 2011; Svanström 2004 & 2006.

139 Eduards 2007; Ekberg 2004; Olsson 2006: Waltman 2011.

140 Dodillet 2009; Kulick 2003 & 2005; Östergren 2006; Scholar 2004; Gould 2001 & 2002.

A Swedish tradition of anti-prostitution policy

Sexual relations outside marriage were outlawed in a 1734 law and might be viewed as one of the first bans on prostitution. The 1734 law also contained provisions regarding prostitution, making running a brothel and fornification (*skörlevnad*) illegal. (SOU 1981:71 p 36 f). The system of regulation, where sex workers were subjected to report to the police, medical examinations and lock hospitals for venereal diseases, began in Stockholm in 1859. By 1891 the system was in use in twelve other Swedish towns.[141]

Although regulation was abolished in 1918, prostitution was still regarded as immoral, and sex workers continued to be controlled. Until 1964 this was through the vagrancy law (*lösdrivarlagen*) designed to prevent "asocial behavior". Those whose way of life threatened conventional morality faced coercion of various kinds, including forced labor.[142] In 1964 the vagrancy law was replaced by the law on antisocial behaviour aimed at controlling street prostitution. This law was not used after 1969, and was dropped completely in 1981. However, the repeal of the law did not mean that prostitution activity was decriminalized or considered acceptable.

At the end of the 1930´s the law against procuring had been strengthened so that other third party activity became illegal, such as pimping. And throughout the century there were no public call for decriminalization of prostitution. When a Member of Parliament (MP) motioned in the early 1970's to have the state create safer work conditions for sex workers, he was met with ridicule in media and Parliament. His reasoning was regarded incomprehensible. Only four other Parliamentarians voted in favour of his motion.[143] Sex workers attempted to organize in the mid 1970's in order to change social attitudes and the legal system, but since their work was actively opposed by a budding anti-prostitution movement and lacked public support they soon disbanded.[144]

Modern anti-prostitution grassroots-movements

The first modern anti-porn and -prostitution grass root movement emerged during the mid 1970's. It gathered some fifty different left wing and feminist organizations, but Christian groups also took part. This wave had two defining rhetorical features – it was clearly anti-capitalist, typical of its times, and it had a strong aim to safeguard "good" values in heterosexual relationships, i.e. intimacy, love and equality.[145] At the same time, on a municipal and state level two large prostitution projects took place, one state inquiry and one action research in the city of Malmö, both aimed at combating prostitution. Many of the leading figures of these projects shared the above-mentioned ambitions and also played a part in the activism.[146] Since grass root movements and Non Governmental Organizations (NGOs) have great influence on Swedish politics, this had a legal impact: a strengthening of the prostitution law against third party activity (like pandering and procuring) and a new law against sex clubs was introduced.[147]

The second movement against commercial sex began in the mid 1980's and was directed more against pornography. Some of the arguments aimed at safeguarding "good" heterosexual relationships continued, but the anti-capitalist rhetoric was largely replaced by a radical feminist critique. Commercial sex was viewed as a result of patriarchy, that is, not solely a product of capitalism and a class divided society. Apart from activists inspired by anglosaxon radical feminism, the prominent figures at this time came from an influential sexual health NGO, as well as female politicians from the Social Democrats, the Left and the Center party. The movement resulted

141 Lundquist 1982; Svanström 2006a.
142 Söderblom 1992; Svanström 2006b.
143 Sjöholm 1972 & 1973; Dodillet 2009, p 52 f.
144 Östergren 2006, p 161 f.
145 Östergren 2006 p 39.
146 Dodillet 2009 p 95f, Östergren 2006 p 164, 269f.
147 Östergren 2006 p 39f.

in stronger censorship laws against "violent" pornography, but it was also instrumental in laying the ideological groundwork for future political work against prostitution – and for the Sex Purchase Act.[148]

The emergence of a broader radical feminist discourse

The 1990´s did not see any similar grassroots movements. Instead the work against commercial sex moved "indoors" to NGOs and the Parliament. One of the most influential NGOs, and the largest feminist organization at the time, was the National Shelters Movement (ROKS). It had a well-defined radical feminist understanding of commercial sex, where prostitution was placed at par with male violence. The NGO, sponsored by state funds, acted as a lobby group, arranging well attended conferences with prominent Anglo-Saxon radical feminists as speakers, participated in media and wrote motions for MP's from all different parties.[149] At the same time, an overall feminist identity politics gained ground in the media, academia and politics. This was also reflected in the parliamentary work against prostitution. From the late 1980´s until the time the Act was introduced in 1998 over forty motions were presented in Parliament, often crossing party lines, calling for a criminalization of clients. The trend was towards using radical feminist reasoning in its arguments, setting class and social welfare rhetoric aside.

Cross party collaboration and the Kvinnofrid bill

The issue of prostitution has predominantly been raised by women, as has the call to criminalize men who buy sex.[150] It was the Women's Associations within the Center Party and the Liberal Party that first suggested to make the purchase, but not the sale, of sex illegal. This demand was raised during the remit (*remissförfarande*) related to the 1977 Inquiry into prostitution In 1985 the Women's Associations of the Social Democrats and the Left followed suit.[151] Ten years later, when the next Inquiry into Prostitution[152] proposed to have both sex workers and clients criminalized, forceful critique from the Women´s Associations was voiced. The following year (1996) all Women's Assocations except the Moderates, jointly signed a parliamentary motion to criminalize sex buyers.[153] It is suggested that the collaboration was made possible since the criminalization was formulated as a women's issue, and since the politicians could make use of an already established network of collaboration between female MPs.[154]

As mentioned, the 1995 Investigation into Prostitution which proposed that both parties engaging in prostitution to be criminalized, was thoroughly criticized. The Social Democratic Government held off and did not make a separate law proposal, instead the issue of prostitution was included in the omnibus "Kvinnofrid" Bill (Peace for Women). This was a bill that in most part dealt with domestic violence, rape, sexual harassment and female genital mutilation. The theoretical arguments in the Kvinnofrid bill, connecting prostitution with men's violence against women is not always consequent upon and do not necessarily mimic a radical feminist analysis.[155] Nevertheless, we suggest that the inclusion of the Sex Purchase Act within the Kvinnofrid bill should be regarded as an important strategy of the lawmakers to create an intuitive association between prostitution and male violence, and hence pave the way for a criminalization.

148 Östergren 2006 p 39f.
149 Dodillet 2009, p 390 f, Östergren 2006 p 40.
150 Gould 2001, Scoular 2004.
151 Erikson 2011, p 138.
152 SOU 1995:15.
153 Segelström et al 1996.
154 Erikson 2011, p 150, Scoular 2004.
155 Kvinnofrid 1997/98:55.

The vote

During the consultation process for the round for the Kvinnofrid bill, most authorities, such as the The National Board of Health and Welfare, the National Police and the Attorney General opposed the proposal to introduce a sex-purchase law. But due to complex lobby work performed by the Women's Associations within their parties, the Social Democrats, the Left, the Green and the Center party were at this stage all in favor of the Act. This meant that regardless of respondents' criticism or the opposition parties, the bill would pass in parliament. Together the proponents of the Act had a parliamentary majority.

The bill passed on June 4, 1998 by 181 to 92 in a 349-member chamber. 13 MPs abstained and 63 were absent. As expected, the parties that voted in favor of the Act were the Social Democrats, the Left, the Green and the Center party. The Christian Democrats felt that both buyers and sellers should be criminalized and therefore abstained. The Moderates and a majority of the Liberal Party were against any kind of criminalization and therefore voted against the Sex Purchase Act.

Swedish prostitution policy

The "Swedish model" consists of several laws and regulations. The three main laws that criminalize or prevent prostitution involving adults are those addressing pandering, the forfeiture of rental apartments and rooms used for prostitution, and the purchase of sex.

The Pandering law prohibiting pimping or procuring (2005:90) provides for a fine and up to four years imprisonment, or eight years if the crime is serious. Pandering is when a person promotes or improperly financially exploits a person's engagement in casual sexual relations in return for payment. Serious crime is defined as large-scale activity, involving significant financial gain or involving ruthless exploitation of another person.[156]

To prevent the use of apartments and rooms for prostitution and pandering there are several provisions for criminal sanctions and confiscation. These include the Penal Code Chapter 6 § 12.2, the Land Code (1970:994) Chapter 12. § 42.1.9 and the Condominium Act (1991:614) Chapter 7. § 18.8 (2003:31). These provisions also mean that a landlord or tenant is required to terminate the tenancy if premises are used for prostitution and tenant-owners are required to move out of an apartment used for prostitution.

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers can not work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work). In addition, the law against pandering makes it difficult for the authorities to utilise harm reduction strategies. For instance distribution of condoms, although perfectly legal under the Social Services and Communicable Diseases Acts respectively, might be perceived by non-legal experts as encouraging prostitution.

The best known law, the Sex Purchase law (2005:90), entered into force in 1999 and makes it unlawful to obtain, or attempt to obtain, casual sexual services for compensation.[157] "Compensation" does not necessarily need to be monetary, but might include alcohol, drugs, meals or gifts that have been agreed upon on in advance. It is also illegal to have sex with a person who receives any consideration from a third party. The penalty for infrac-

156 Penal Code: Chapter 12 § 12.
157 Penal Code: Chapter 11.

tion is a fine or one year in prison. In this context, it is important to point out that Sweden did not decriminalize the sale of sexual services in 1999, as sometimes claimed in the international media. Neither the sale nor purchase of sexual services per se was a criminal offence prior to the passing of this Act, although repressive legislation against vagrancy and STIs were used against persons who sold sex during a large part of the 20th century.

The Trafficking law 2002 (2002: 436)[158] provides that any person, who by means of coercion or other improper means takes part in the cross-border process of recruitment, transportation, transfer, harboring or reception of a person for the purpose of sexual exploitation, may be sentenced to between two to ten years of imprisonment (§ 1a). If the victim is under the age of 18, evidence of coercion or other improper means is not required to obtain a conviction (§ 1a). In 2004 the wording of the Act was amended (2004:406) to make it more closely resemble the Palermo protocol. The legislation was also expanded to include trafficking for forced labor and removal of organs, as well as trafficking within a country. According to this wording a trafficker must be shown to have control over the victim in order to obtain conviction. In 2010 the wording was amended a second time (2010:371), because the 2004 version was deemed to "impede it from being implemented in an effective way."[159] Very few people had been convicted because it was difficult for prosecutors to prove that the trafficker controlled the victim. Consequently this requirement was removed.

There are two laws governing prostitution and young people. Under the Seduction of Youth law (1984:399)[160] it is unlawful to promise or give consideration for casual sexual intercourse with someone under the age of eighteen. The penalty is imprisonment not exceeding two years. An attempt to perform such an act is also punishable, and consent is irrelevant. Sexual conduct with a child under 15 is prohibited under § 10.

The Care of Young Persons Act (LVU; 1990:52) gives society the right to force the placement of a young person into care if they put their health or development at risk by substance use, criminal activity or "socially destructive behavior" (§ 3). This means a youth behaving in a way that deviates from society's basic norms, such as involvement in prostitution or working in a sex club. In normal cases this law applies only to those under eighteen, but "socially destructive behavior" may apply to persons under 21 years.

The Aliens Act (2005:716) contains provisions which, inter alia, relate to the right of aliens to enter, reside and work in Sweden. Foreigners who have residence permits may be refused entry if it can be assumed that the person will commit a crime or that he or she will not support themselves "by honest means" during their stay (Chapter 8 § 2.2). This includes engaging in prostitution.

The ban on public pornographic performances in the Public Order Act (1993:1617); Chapter 2 § 14 makes it illegal to show "real" sex on stage (as long as they are not artistic performances in a theater). Striptease shows are allowed in sex clubs, but touching is not allowed between dancers and customers, and alcohol may not be served in the room. The ban was introduced with the aim to combat prostitution and was mainly directed against the so-called sex club activity.

Besides these laws there are also rules and practices for tax purposes that affect the ability of people to support themselves in prostitution. All income is taxable, even prostitution earnings, but the tax office does not accept "prostitution" or "sex work" as a business if a person wishes to register a company (and because of the Pandering law they cannot be employees). This has the consequence that the person selling sex either needs to register a company as a different form of business or sell sexual favors illegally on the black market, in the informal economy. Those who choose the former could pay taxes and receive social insurance benefits but it becomes difficult for sex workers to deduct their business expenses. Sex workers who instead choose to sell sex on the

158 Penal Code, Chapter 4 § 1, 1a, 2, 4, 10.
159 SOU 2008:41, p 22.
160 Penal Code, Chapter 6 § 9.

black market may not qualify for social insurance, can not claim deductions for their expenses and could face arbitrary tax assessments if the Treasury made its own estimate of the income sex workers earned over a period of years, forcing them to pay large sums of tax retrospectively.[161]

When the Sex Purchase Act was proposed, it was stressed that social measures were to be the primary tool used in the attempt to reduce prostitution.[162] Such measures are governed by key legislation in the social services and health care sectors, such as the Social Services Act (2001:453) and the Health and Medical Service Act (1982:763), but neither contains specific provisions on people who sell sex. In relation to social assistance, the social services agencies have specialized services for people involved in prostitution in the three major cities: the Prostitution Unit in Stockholm, the Prostitution Group in Gothenburg and the Prostitution Knowledge Center in Malmö. Since there are no guidelines provided to govern this activity, nor any earmarked public funds, this has resulted in differing approaches. In Stockholm, for example, the focus is on getting people to stop selling sex with the help of therapy, while in Malmö it includes a harm reduction perspective.[163]

Finally we must consider the National Action Plan Against Prostitution and Human Trafficking for Sexual Purposes (here the National Action Plan). This contains 36 measures to be implemented over the 2008-2011 time period and the Government set aside 213 million kronor to finance this. The action plan includes greater protection and support for people at risk, more emphasis on preventive work, higher standards and greater efficiency in the justice system, increased national and international cooperation, and a higher level of knowledge and awareness. The ideological basis of all these measures is radical feminist and the objective is to reduce prostitution.[164]

Our material

In order to assess the validity of the claims that the Sex Purchase Act has been a success, we have mainly used material from authorities that have been responsible for reporting on prostitution and evaluating the policy. These are: the National Board of Health and Welfare, a government agency under the Ministry of Health and Social Affairs, that has conducted three reports;[165] the National Council for Crime Prevention, a council that functions as the government's body of expertise within the judicial system, from which we looked at four reports;[166] the National Police Board and its 11 annual reports on trafficking, one early evaluation of the ban and one local report on prostitution;[167] the previously mentioned 2010 official evaluation of the Sex Purchase Act and the response from 52 referral bodies.[168] These authorities have in their turn collected information from police, social workers, NGOs, academic research and some interviews with people with experience of prostitution. Some of the authorities have conducted their own surveys.

We have also consulted the findings from the official inquiry into prostitution that was published in 1995,[169] the special inquiry made by the Norwegian Ministry of Justice in 2004 "Purchasing sexual services in Sweden and the Netherlands";[170] the 2008 research project "Prostitution in the Nordic Countries", which was carried out on

161 Östergren 2003a. & Östergren 2003b.
162 Proposition 1997/98:55.
163 National Board of Health and Welfare 2004, p 13. & Sirling 2009, p 333.
164 Regeringens skrivelse 2007/08:167, Justitiedepartementet 2008, Ministry of Education and Research 2008.
165 See Socialstyrelsen and National Board of Health and Welfare in the bibliography. Two of the reports are available in English.
166 See BRÅ and National Council for Crime Prevention in the bibliography. Some of the reports are available in English.
167 See Rikskriminalpolisen, Rikspolisstyrelsen, National Criminal Police, National Police Board and SamO-Kut Nord 2008 in the bibliography. Some of the reports are available in English.
168 SOU 2010:49.
169 SOU 1995:15.
170 Norwegian Ministry of Justice 2004.

behalf of the Nordic Council of Ministers for Gender Equality by the Nordic Gender Institute (NIKK);[171] the 2008 survey "See me" by the National Board for Youth Affairs;[172] a 2010 report by the Prostitution Knowledge Center in Malmö[173] and; the 2011 report by the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL).[174] The material has been supplemented with our previous research and examples from current debates in the media and the Internet as well as statements by sex workers.

Prevalence

In order to assess whether or not prostitution has decreased since the introduction of the Sex Purchase Act in 1999 one needs to know how prevalent prostitution was before the law was passed. The most frequently used figures indicate that there were about 650 women in street-based prostitution in the three largest cities, Stockholm, Malmö and Gothenburg, and it is estimated that two to three times as many sold sex indoors. This is said to make the total number of sex workers working before the new law between 1,850 – 2,500, but sometimes the number 3,000 is used.[175]

There are several uncertainties here. The sources do not state if the number 650 is an exact headcount on the street on any given day, or if it is an annual estimate on how many women sell sex during a year – and if so, if these women sold sex full time or part time, for what duration, reasons and under what conditions. We also do not know who made the "twice or three times as many indoors" estimate – and on what grounds. Another uncertainty is that men and transgender persons selling sex are not accounted for. Given these uncertainties, one could conclude that comparing statistics before and after the Sex Purchase Act is simply not feasible. There are problems with the figures from after the introduction of the ban as well. The report by the Norwegian Ministry of Justice talks about a "general problem" with statistics from Sweden since they are "highly uncertain". They refer to their own investigations but also an early report where the police responsible for the figures admit that the method of measuring is "rough" and does not give an accurate figure, it just "indicates where things are going".[176] When Charlotta Holmström accounts for all the information available on the Swedish figures in the NIKK research report, she notes that a close reading of the material available regarding the scope and existence of prostitution shows knowledge gaps, and that research highlighting the extent of the phenomena is limited.[177]

Having said this, there is still a general consensus that street prostitution declined by about half after the introduction of the Sex Purchase Act. The question is whether or not this decline was a direct result of the Act or not.

The estimated number of street workers in the three largest cities in 2007 was 300, with 200 in Stockholm, 30 in Gothenburg and 70 in Malmö.[178]

As far as we can tell, these figures suffer from the above-mentioned uncertainties, but some other scientific concerns have been raised during the consultation process following the 2010 official evaluation as well. In its response the Department of Criminology at Stockholm University states that such marked changes in activities (50 percent decline) are rarely seen in the criminological literature. This raises a question of whether the reported changes are "too good", and this observation would need to be discussed if the figures are used to

171 Holmström & Skilbrei 2008.
172 See the National Board of Youth Affairs 2008 & Ungdomsstyrelsen 2008.
173 Malmö Stad Kompetenscenter prostitution 2010.
174 RFSL 2011.
175 SOU 1995:15. Although, 'two to three times' would be 1,950 – 2,600.
176 Norwegian Ministry of Justice 2004, p 9.
177 NIKK 2008, p 17. & Holmström 2008, p 303.
178 Holmström 2008, p 306.

exemplify the success of the ban. Secondly, the effects of the ban vary largely between the three cities, which also needs to be discussed. And thirdly, a longer time series before the introduction of the ban would have been needed since the 1998 figures might have been an exception, an "outlier".[179] Others have pointed out that the estimated numbers of street workers have been declining since the late 1970´s, suggesting that any observed decline since the Act – if there is one – is part of a much longer trend.[180] Furthermore, this trend is not a specifically Swedish phenomenon, as Holmström points out in the NIKK report, but an international one.[181] Another question is how stable this development is. In its 2007 report into prostitution, the National Board of Health and Welfare writes:[182]

The overall picture emerging from the interviews is that the sex trade virtually disappeared from the street during a brief period immediately after the law went into effect. It later returned, albeit to a lesser extent. For instance, representatives of the Stockholm Prostitution Centre say that prostitution initially vanished from the streets when the law was passed, only to later return at about half the former extent. Now about two thirds of street prostitution is back, compared to the situation before the law against purchasing sexual services went into effect.
The National Board of Health and Welfare

There are also some more specific objections to the relationship between the ban and its effects on street based prostitution. According to social workers interviewed by the National Council for Crime Prevention it has become more difficult to count the number of sex workers, since they have moved to side streets and cover a larger area than before.[183] Also, several sources report that the numbers on the streets have fluctuated, and some of the authorities claim that the fluctuation (and therefore any claimed decrease) is dependent more on the extent of police surveillance and enforcement rather than the law. The Council writes:[184]

A rather extensive disruptive activity has been targeted at street prostitution in large city areas. Traffic controls have been a part of these disruptions. For community police and traffic police the motive for these activities has primarily been to guarantee nighttime peace for the residents, while for those working against prostitution it has been a way to combat the prostitution problem. This means other laws are being used in order to combat the problem that the new law is designed to counter, which might mean that the new law in itself is not an efficient measure to counter prostitution.
The National Council for Crime Prevention

So how about the effect on prostitution overall, outdoor and indoor? It has been stated that one problem in assessing the effect on indoor prostitution is that the more "up-market" the prostitution, the less reliable data there is.[185] The official Swedish evaluation, while claiming that prostitution overall has decreased, is paradoxically also of this opinion:[186]

When it comes to indoor prostitution in which contact is made at restaurants, hotels, sex clubs or massage parlors, the available information on the extent to which this occurs is limited. We have not been able to find any in-depth studies of these forms of prostitution in the past decade.
The 2010 official evaluation

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179 Kriminologiska institutionen vid Stockholms universitet 2010.
180 Holmström 2008, p 306. & Institutionen för socialt arbete vid Göteborgs universitet 2010.
181 Holmström 2008, p 321.
182 National Board of Health and Welfare 2008, p 33.
183 BRÅ 2000, p 20.
184 BRÅ 2000, p 48. Also see Norwegian Ministry of Justice 2004, p 22, 23. & Swedish National Council for Crime Prevention 2008, p 124.
185 National Board of Health and Welfare 2004, p 8.
186 SOU 2010:49b, p 19.

Still, the authorities and reports conclude that only because there are less people selling sex on the streets, this does not mean that prostitution overall has been reduced. The general estimate in the reports we have looked at is that sex workers have begun using other means to find clients, and vice versa. Sex workers give out their mobile phone number to clients on the street or they make contact via the Internet (due to the ban against procuring, advertising on the Internet has to be done via a server in another country). It is also believed that sex workers and clients more frequently make contact in bars, restaurants and hotels.[187]

This shift from street to indoor is believed not to be necessarily a result of the Sex Purchase Act, but part of the general trend of decreasing street-based prostitution. The Board of Health and Welfare writes that prostitution has developed along with society in that new technology is being used, and that buyers and sellers of sexual services now make contact with each other by multifarious means.[188]

When it comes to the Internet, there have been some attempts to count the number of sex workers advertising there. Depending on the sources, the estimated figures are 300-500 people.[189] The count of the Internet figures is not standardized either, nor is much information gathered in order to know for what duration, under what circumstances and for what reasons people sell sex, etc. But the Prostitution Knowledge Center in Malmö, that seems to be the only body that measures internet advertising on a regular basis, reports that there has been a noticeable increase in the Öresund area during 2009 and the official evaluation claims that "when it comes to youth being exploited in prostitution, the Internet is a new arena that has increased with avalanche proportions".[190] Also, accordingly to the Malmö Knowledge Center, the changing technology has resulted in the "hidden" (indoor) prostitution now making up four-fifths (80%) of the overall prostitution prevalence, compared to two-thirds (67%) before the ban was introduced.[191] This would leave us with a similar total number of people involved in prostitution as before the ban, or about 1,500 people.

In short, due to the methodological problems, there is no way of knowing for certain what has happened after the introduction of the Sex Purchase Act. In its 2007 report the National Board of Health and Welfare summarized the situation in the following manner:[192]

It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the "hidden prostitution" – we are even less able to make any statements.
The National Board for Health and Welfare

The conclusion is that the official claims regarding the "success" of the ban cannot be substantiated given the data problems described above.

187 Holmström 2008, p 307. Also see SOU 2010:49b; Socialstyrelsen 2000 & 2004; Rikskriminalpolisen 1999, p 26, 28 & 29; National Board of Health and Welfare 2008, p. 47.
188 The National Board of Health and Welfare 2008, p 63.
189 Holmström 2008. & Malmö Stad Kompetenscenter prostitution 2010. & National Board of Health and Welfare 2008.
190 Malmö Stad Kompetenscenter Prostitution (not dated), p 3; SOU 2010:49a, p 112.
191 As reported in BRÅ 2000, p 20.
192 National Board of Health and Welfare 2008, p 63.

Trafficking for sexual purposes

It is often claimed that Sweden has done exceptionally well when it comes to reducing trafficking for sexual purposes, and that this is due to the Sex Purchase Act. But the trafficking numbers available out of Sweden are, if possible, even more vague and contradictory. According to The National Council for Crime Prevention, the Sex Purchase Act can both be a hindrance to traffickers, but also a tool to improve market conditions, due to the higher prices for sex that the ban creates. On the one hand it can reduce the number of women used in trafficking – but also provide a reasonably good profit for those traffickers that have the capacity to provide sexual services without being caught by the authorities. This in turn makes Sweden an attractive country for the more sophisticated criminal.[193] These contradictions can be noted in other documents. In the official evaluation it is stated:[194]

According to the Swedish Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers who are considering establishing themselves in Sweden.
The 2010 official evaluation

But in a press release only a few months before the evaluation was published, the same police authority stated:[195]

Serious organized crime, including prostitution and trafficking, has increased in strength, power and complexity during the past decade. It constitutes a serious social problem in Sweden and organized crime makes large amounts of money from the exploitation and trafficking of people under slave-like conditions.
National Police Board press release March 2010

If we look at the number of people involved in trafficking for sexual purposes the discrepancies and uncertainties continues. In its reports from 2002 to 2006 the National Police Board estimated the actual victims of trafficking to be 400-600 women. But since 2007 they have not published any numbers on women at all (and not given a reason why). It is also difficult to get hold of a comprehensive list of reported and convicted crimes against trafficking for sexual purposes, despite the many reports the police produce. One has to search in different documents to find all the data. When compiled they look like this:

Number of people reported and convicted for trafficking for sexual purposes:

Year	Reported	Convicted
2003	21	2
2004	29	0
2005	44	7
2006	26	11
2007	15	2
2008	15	0
2009	31	0
2010	31	?

193 BRÅ 2008, p 87.
194 SOU 2010:49b, p 9.
195 Rikspolisstyrelsen 2010b.

Judging from this, trafficking for sexual purposes does not seem to be a big issue in Sweden, there are few reported cases and even fewer convictions (also, the numbers fluctuate from year to year, rather than showing a steady decrease). The general trend as stated in the 1993 National Inquiry into Prostitution seems to be correct: Sweden has never been a country with much trafficking.[196] But on the other hand, in its annual reports the National Police Board criticizes the courts for not convicting more people for trafficking. As the national rapporteur on trafficking, the Board is obliged to annually describe the development of this crime. In the 2006 report the authority introduced a new term: "trafficking-like" prostitution. There was never a clear definition of the term, but the new category allowed the Board to describe more cases in its reports. "Trafficking-like" prostitution is also used in the official evaluation, where it is described as "foreign women who during a temporary visit to Sweden, offer sexual services".[197] What this shows is that the definition of trafficking by Sweden and by rapporteurs from other countries might differ considerably, which might cause even greater difficulties in comparing the extent of this crime between countries.

The many discrepancies and ambiguities in the annual reports from the National Police Board will not be discussed further here, but it should be noted that Malmö University criticizes the official evaluation for not presenting evidence that backs up its claim that the ban has deterred traffickers from establishing themselves in Sweden.[198] And in investigating the relationship between the Sex Purchase Act and the prevalence of prostitution, the Board of Health and Welfare has the following to say:[199]

We have determined in previous reports [1, 2] that prostitution is a multifaceted phenomenon that is affected by several interacting factors. No causal connections can be proven between legislation and changes in prostitution. It is also difficult to identify the impacts of legislation because social processes are affected by several complex and situational factors.
The Board of Health and Welfare

Does the law deter buyers?

The conclusion in most reports and research is that the Sex Purchase Act does not deter clients. In client interviews made by the Board of Health and Welfare, most men state that the ban has not changed anything for them, but describe it as a "punch in the air".[200] Anneli Sirling from the NIKK research project interviewed social workers who said that according to the clients they been in contact with, criminalization has not been an important topic to discuss and has not been seen as a problem. The decision whether to purchase sex or not was linked to other issues than to the fact that it was illegal.[201] Sirling and others also show that for many men the ban is of no concern at all, since they mostly buy sex abroad.[202] Clients interviewed in research projects by the Prostitution Knowledge Center in Malmö and RFSL, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights, express a similar sentiment: the ban does not affect their behavior.[203] And people who sell sex express the same conclusion: the ban does not deter their clients.[204] Even the official evaluation, that on one hand claims that the law deters clients, refers to "many police" who believe that the punishment clients risks is not particularly discouraging.[205]

196 SOU 1995:15, p 100.
197 SOU 2010:49, p 201.
198 Institutionen för Hälsa och samhälle vid Malmö högskola 2010.
199 The National Board of Health and Welfare 2008, p 46.
200 Socialstyrelsen 2000, p 42 f.
201 Sirling 2008, p 346. & Kuosmanen 2008, p 372.
202 Siring 2008, p 345 f.
203 Malmö Stad Kompetenscenter prostitution 2010, p 86. & RFSL 2011, p 194.
204 Malmö Stad Kompetenscenter prostitution 2010, p 50 ff. See also statements by sex workers, for instance in the blogs "Greta Garbo...en glädjeflicka", "Frida", "Secretary academy", "Isabella Lund" & "Njutning till salu" and the interview in Sveriges Radio P3 2008.
205 SOU 2010:49a, p 197.

If we look at additional surveys, we find similar results. The Swedish National Radio did a survey in the spring of 2009 in order to investigate the effectiveness of the ban. The Sex Purchase Act was up for evaluation and the radio wanted to know if it deterred men or not. Nineteen local radio stations placed a fake advertisement on the Internet, pretending to be a local woman selling sex who could be contacted via e-mail or mobile phone. The stations were inundated with answers. In less than a week they got over one thousand unique replies, equally distributed over the country. The radio reporters rang some of the men and found that the ban did not scare them off. Many compared the illegal nature of buying sex with speeding; it is illegal to drive a car too fast as well, and one might or not get caught doing it – but it was still worth it. When the National Radio contacted the coordinator for the National Action Plan to get a comment, the coordinator said that their findings did not surprise him:[206]

This is nothing that surprises me. I think this just confirms what we say all the time. We know that there is a great demand. It is also something we tried to point out – it is not just a big city phenomenon. (...) there is a constant stream of sex buyers in the street environment as well, so I think it sounds like what is going on in reality, nothing else.
Patrik Cederlöf, coordinator for the National Action Plan

In spite of this data, the official evaluation claims that the Sex Purchase Act deters clients, referring to one of the studies within the NIKK research project.[207]

It was a questionnaire survey about Swedish men's and women's experiences of and attitudes towards prostitution that formed the basis of Jari Kuosmanen's 2008 NIKK study, and contained questions intended to determine whether the ban had affected the pattern of actions of prospective sex buyers. Kuosmanen writes that the men who stated that they had bought sex were fewer in his study (8%) than in a study done in 1996 (13.6%), and that several of those questioned in his survey stated that the ban had affected their actions, making them give up or cut back on buying sex. But (and this is not translated in the English summary of the official evaluation), Kuosmanen himself hedges the results, one reason being the low response rate. Out of the 2,500 surveys that were sent out, only 45.5 percent responded, slightly less men than women, and young men especially were underrepresented. He also poses the question as to whether the result represents a real decrease, or something else. Finally he discusses the willingness to answer questions about purchasing sex in 2008, given that it has become a criminal act. He concludes that in order to know if there is an actual reduction in the number of clients, more population-based surveys are required.[208]

The criminologists at Stockholm University write in their response to the official evaluation that figures from surveys do not tell us anything about what is going on in reality, as opposed to what people say. They also show why the above-mentioned figures cannot be correct. If the responses are to be considered representative, then all men who answered "yes" to having ever purchased sex in 1996 should have also been represented in the 2008 survey (with the exception of the twelve oldest age groups) and would still have answered "yes" if they were answering truthfully. Even if no one bought sex after the Sex Purchase Act came into force, such a major decrease in the prevalence of buying sex amongst men simply cannot be achieved in that time.[209] The National Council for Crime Prevention is also among those who discuss the possible deterrent effect of the Sex Purchase Act. In an early report they state that it is not known if the new ban has deterred buyers in the hidden indoor prostitution market.[210]

206 Sveriges Radio P1 2009.
207 SOU 2010:49b, p 9.
208 Kuosmanen 2008, p 377 f. See also Kuosmanen 2010.
209 Kriminologiska institutionen vid Stockholms universitet 2010.
210 BRÅ 2000, p 49.

As with the figures from trafficking it is difficult to find all the numbers on convicted and prosecuted clients in one document. But going through the different reports we were able to compile these figures.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Prosecuted	94	92	86	110	300	156	460	163	189	187	352	1251
Pleaded guilty	5	7	18	22	52	26	47	88	51	48		
Sentenced	6	18	30	20	30	27	56	38	39	25		
Total	11	25	48	44	82	53	103	126	92	76		

In the top row of the chart are the numbers of people prosecuted from 1999 – 2010. In the second row are the figures on how many of those charged that pleaded guilty when confronted by the police (and in that way avoided a trial), and the third row shows how many men were sentenced to fines (as yet, no one has been sentenced to imprisonment).

The figures on how many pleaded guilty, and how many were sentenced in the years 2009 and 2010 have not yet been published, but as the table shows 352 people were prosecuted in 2009, and 1,252 in 2010 – an increase of over three hundred percent. These numbers cannot be interpreted as a huge increase in men buying sex, but should be understood in the light of The National Action Plan from 2008 where police resources were considerably increased. In their response the criminologists from Stockholm University discuss this relationship:[211]

The purchase of sexual services is a typical surveillance crime. If resources are allocated, more crimes can be detected and penalized. According to police officers interviewed in the evaluation, the number of reported crimes could be "multiplied if this crime was a priority in everyday operations" (p. 217). With this reasoning, one can get the kind of criminality one desires (Christie 2004). The police activity itself produces more and more crimes, which in turn can justify why more resources are needed to combat sex purchase via policing.
The Department of Criminology at Stockholm University

Has the law changed attitudes?

According to the official evaluation there has been an increased public support for the ban, and the Sex Purchase Act has influenced public opinion concerning prostitution. Swedes are to a larger extent viewing it as an undesirable phenomenon, it reads, and given that the support for criminalization is greatest among young people, it is expected that this normative effect will last. These statements are backed up by results from four population-based opinion polls conducted before and after the law.[212] Two of them have already been mentioned; the 1996 study and the Kuosmanen study from 2008. The other two were made by SIFO, the Swedish branch of TNS Custom Market Research. The polls show that in 1996, 67 percent felt that buying sex should not be considered a criminal act, whereas in 1999, 76 percent said that it was right to ban the purchase of sexual services. Support for criminalization was almost equally strong in the two latest surveys: 76 percent in 2002 and 71 percent in 2008. In the latest conducted surveys, women were more in favor than men (81 in 1999, 83 in 2002 and 79 percent in 2008) and the support for the ban decreased most amongst males (70 in 1999, 69 in 2002 and 60 percent in 2008).[213]

211 Kriminologiska institutionen vid Stockholms universitet 2010.
212 SOU 2010:49b, p 9.
213 As summarized by Kuosmanen 2008, p 362.

But one must ask what people are in favor of. Because, as Kuosmanen points out, the respondents not only wish to criminalize the buyer – they want the seller to be criminalized as well. In the 1999 SIFO poll, 71 percent wanted the sale of sex to be illegal (78 percent of the women and 64 percent of the men). In Kuosmanen's 2008 survey, 59 percent thought the sale of sex should be criminalized (66 percent women and 49 percent men). Kuosmanen therefore concludes that "most people seem to perceive prostitution as a general problem, and not first and foremost as an expression of gender inequality.[214]

A similar problem with the "educational" or normative aspect of the legislation can be detected in the NIKK study conducted by Sirling. In her interviews with authorities responsible for applying the law she found that police perceived it as a kind of "humanistic" law, not a ban aimed at improving gender relationships. Accordingly to her, this indicates that the authorities do not interpret the sex industry as a gender equality problem even if they, at a rhetorical level, describe all women as victims based on the radical feminist interpretation.[215] Therefore, the question that could be posed is whether the ban educates the general public in the desired normative direction. We will return to this issue, but first look at the claim regarding young people and attitudes, and that their support of the ban is the greatest and the normative effect therefore is expected to last.

In 2009 the Board for Youth Affairs sent out a questionnaire where 1.7 percent of the respondents, which would extrapolate to 20,000 girls and boys, stated that they had taken money for sex. But also, more than one out of ten would consider taking payment for sex, and four out of ten felt that it is acceptable to have sex for money if both parties are willing. Perhaps more significant is that 11.4 percent stated that they knew someone who had received payment for sex.[216] Therefore the proportion who actually sold sex may be closer to 10 percent than 2 percent. In relation to the claims made by the official evaluation, several of the respondents point out that these figures must be interpreted as a liberal attitude to prostitution, not the other way around.[217]

In order to further discuss possible changes in the general attitude towards prostitution and the Sex Purchase Act, it might be helpful to mention the public views as expressed in the media.

In 1998, the year the ban was passed in the parliament, there were only three public figures who opposed the law on the grounds that prostitution is a multifaceted phenomenon and that sex workers should be entitled the same rights as other citizens.[218] In 2011 the critics have proliferated to such a degree that they are difficult to keep track of. Prominent social commentators, as well as young bloggers write columns and articles against the ban and in favor of a more nuanced understanding of prostitution. Feminist and queer activists and academics, as well as artists, speak out against the way sex workers are treated in Sweden and the way prostitution is perceived.[219] Even sex workers are increasingly less stereotypically portrayed in media and in research, and they themselves have begun to voice their own opinions and relate their experiences and opinions on blogs, in books, article and to organize in forums like Rose Alliance.[220]

214 Kuosmanen 2008, p 367.

215 Siring 2008, p 354.

216 Ungdomstyrelsen 2006, p 113, 154.

217 RFSL 2010; Institutionen för klinisk och experimentell medicin vid Linköpings universitet 2010.

218 These were Alexander Bard, Don Kulick and Petra Östergen. Gould 2001 pp 445 ff.

219 See for example statements made by Laura Agustín, Carl-Erland Andersson, Alexander Bard, Magnus Betnér, Jesper Brygemark, Ulrika Dahl, Niklas Dougherty, Cordelia Edvardsson, Rolf Hillegren, Staffan Heimersson, Ida Kock, Johan Lundberg, Lotta Lundberg, Sakine Madon, Liza Magnusson, Paulina Neuding, Johan Nordansjö, Carl Johan Rehnbinder, Louise Persson, Mårten Schultz, Nathan Shachar, Oscar Swartz, Jan Söderqvist, Alice Teodorescu, Dick Wase, Charlotte Wiberg, Malin Westberg and blogs like "Röd Libertarian", "Reformera sexköpslagen", "Kamferdroppar", "Strötankar i samtidens liberala utmarker" and "Loke – kultur & politik".

220 See for example the work and statements by Lilian Andersson, Liw Enqvist, Johannes Eriksson, Pye Jakobson, Linnea Edvardsdotter, Ingegärd Granath, Christina Persson and Rosinha Sambo, and the blogs "Greta Garbo...en glädjeflicka", "Frida", "Isabella Lund", "Njutning till salu" and the discussion forum "Secretary Academy".

The nature of the political opposition to the ban has also changed. The National Inquiry into Prostitution from 1995, where the Sex Purchase Act was first proposed (along with a ban on the sale of sexual services), drew a lot of criticism from the respondents. More argued against banning the purchase of sex than in favor of it, on the basis that prostitution would be driven underground and make social measurements more difficult. It was also questioned whether a ban would actually deter clients.[221] This opposition soon subsided, and when the political parties who once voted against the ban in parliament won office, they embraced the radical feminist rhetoric as well as the quest to eliminate prostitution via criminalization rather by social interventions alone. But in the last years we have seen a new kind of opposition being raised by parliamentarians from left, center and right.[222] Some argue that prostitution is neither intrinsically bad, nor an expression of patriarchy and male violence. One high profile Member of Parliament, Fredrick Federley, even introduced motions to have the ban abolished.[223] The political parties´ youth wings have conducted lively discussions in a similar fashion, and politicians from youth parties and the municipalities have openly opposed the law.[224] Moreover, politically influential NGO´s like RFSL and the Swedish Association for Sexuality Education (RFSU) question the understanding of sex workers as female, victims and oppressed, and advocate that the Sex Purchase Act should be abolished. A non-judgemental and harm-reduction approach is increasingly prevalent in the work and writings by social workers and social authorities.[225]

This attitude seems to correspond to the mood of the general public, at least as it is manifested in the media and on the Internet. Every week there are several articles on different aspects of prostitution, and many are published in internet editions where readers can comment. The majority of these comments seem to express a multifaceted understanding of sex work and advocate a decriminalization of prostitution. When Federley moved to have the Sex Purchase Law abolished, he was interviewed in one of the evening papers.[226] A survey was conducted on the paper´s internet edition, asking people if they agreed that the ban should be abolished. Out of 57,336 answers, 63.2 percent agreed and answered yes, 24.3 percent answered no and the remaining 12.5 percent said no, but the ban should be made more extensive.[227] When the Minister of Justice, Beatrice Ask, argued for higher penalties more than a year later, 88 percent did *not* agree with her.[228] Newsmill, a much-read on-line debating forum, routinely lets their readers express their feelings ("mill") on the topics of the articles. As we write this article, 49 articles have been posted on the topic of the Sex Purchase Act where 13,855 people have voted on the question "How do you feel about: The Sex Purchase Act", out of whom 81 percent are "angry" with the ban, 12 percent are "happy" with it, 4 percent are "bored" and 1 percent are "curious".[229]

One should also consider the response to the official evaluation. As mentioned earlier, severe criticism was voiced regarding the lack of scientific rigor, but many were also critical of the way in which prostitution was described. In its response the Board for Health and Welfare says that it wishes to draw attention to the fact that people who sell sex constitute a "heterogeneous category".[230] The Criminology Department at Stockholm University think that the view of prostitution expressed by the evaluation is "obsolete".[231] RFSL are among those that criticize the evaluation for its hetero-normative perspective, ignoring data that show that more men than

221 Dodillet 2009, p 381 ff.

222 These are Maria Abrahamsson, Marianne Berg, Fredrick Federley, and Camilla Lindberg.

223 Motion 2009/10:Ju276. & Motion 2010/11:Ju249.

224 See the youth wings for the Centre Party, The Liberal Party and the Conservatives. See for instance politicians like Per Hagwall, Helena von Schantz, Tobias Schelin, Erik Svansbro, Hanna Wagenius, and Filip Wästerberg. See also Sveriges Radio Radio Sweden 2009.

225 See for instance in the reports conducted by The Board of Health and Wellbeing and their educational material (Socialstyrelsen 2011) and reports from the Malmö Knowledge Center.

226 "Låt folk få köpa sex!" 2009.

227 http://www.aftonbladet.se/debatt/article12035042.ab

228 http://www.expressen.se/nyheter/1.2307402/darfor-vill-ask-skarpa-maxstraff-for-sexkop

229 http://www.newsmill.se/millord/Sexköpslagen

230 Socialstyrelsen 2010.p. 3

231 Kriminologiska institutionen vid Stockholms universitet 2010.

women have experience of selling sex. The organization also criticizes the absence of a distinction between trafficking, on the one hand, and paid sex between consenting adults, on the other.[232] The Swedish Association for Sexuality Education (RFSU) recognizes there are people who are damaged by prostitution, but it also recognizes that there are those who state that they have freely chosen to sell sex.[233] The Equality Ombudsman thinks that the emphasis on prostitution where women sell sex to men leads to an excessively narrow understanding of the phenomena and should be complemented with a multifaceted analysis.[234] Sociologists from Gothenburg University think that the victim discourse in the evaluation ignores the autonomy and right to self-determination for sex workers. They also point out that this discourse is not consistent with the aim of contemporary social work:[235]

In other words it is problematic to approach people who sell sex with too strongly preconceived notions and definitions regarding their status as victims. This is not consistent with the ambition of empowerment that contemporary social work perceives as an important platform for its work. To unilaterally proclaim someone as an exploited victim or needy belongs to the so called paternalistic tradition where the experts have power to define the clients.
Department of Social Work, University of Gothenburg

Unintented effects

There are several reported unintended, negative effects of the Sex Purchase Act, concerning both sex workers and their clients. The effects have been reported in academic papers and research, the documents which form the basis for this report, as well as numerous articles in the media. Sex workers have also spoken on these matters in media, on internet forums, on their blogs and in their books.[236] Most tend to be critical of the ban, but here are some who say that it is positive since it "protects" the woman but criminalizes the customer, and that it might be an incentive to leave prostitution.[237]

When it comes to clients, it seems they are less willing to assist as witnesses in cases in which profiteers who exploit the sexual labor of others are prosecuted, since they now find themselves guilty of a crime. Clients are exposed to blackmail and robbery, and the stigma associated with buying sex means people often have to leave their jobs and positions, even on a mere suspicion.[238]

The most common and perhaps most serious complaint regarding sex workers themselves is that they experienced an increased stigmatization after the introduction of the Sex Purchase Act. Some also state that the ban is a violation of their human rights, and many say that they don't feel fairly or respectfully treated: they are not regarded as fully worthy members of society. Sex workers object to the fact that they were not consulted in the making of the law. Since sex workers feel they are not able to influence their legal or societal situation, they feel

232 RFSL 2010.
233 RFSU 2010.
234 Diskrimineringsombudsmannen 2010.
235 Institutionen för socialt arbete vid Göteborgs universitet 2010, p 2.
236 This summary is based on: Holm 2005; Institutionen för Hälsa och samhälle vid Malmö högskola 2010; Jakobson 2009; Lundström 2010; Lizdek & Rödström & Steko 2008; Malmö Stad Kompetenscenter prostitution 2010 p 12, 41, 50 ff & 67; National Board of Health and Welfare 2004, p 3, 32ff &77; National Board of Health and Welfare 2008, p. 46 ff; National Council for Crime Prevention 2008, p 21 & 47; National Criminal Police 2002; Norwegian Ministry of Justice 2004, p 12 ff, 19, 20, 52 & 53; Öster 2004; Östergren 2003a&b & 2006; RFSL 2011, p 162, 164, 166, 176; Rikskriminalpolisen 1999, p 14, 26ff; Rikskriminalpolisen 2000, p 21, Rikskriminalpolisen 2002, p 16 & 21; Rikspolisstyrelsen 2000; SamO-Kut Nord 2008, page 9; Socialstyrelsen 2000, p 33 & 43. See also the blogs: "Greta Garbo... en glädjeflicka", "Frida", "Secretary academy", "Isabella Lund" & "Njutning till salu".
237 RFSL 2011, p 164. & National Board of Health and Welfare 2008, p 48.
238 See for instance the "Littorin case", when the Minister of Employment resigned after he had been accused of buying sex, "Billström appointed employment minister" 2010; "Reinfeldt plays down Littorin 'crime' rumours" 2010; "Littorin denies buying sex: lawyer" 2010; "Littorin affair hits voter confidence in Reinfeldt" 2010; "Littorin: I wanted to protect my family" 2010; "Aftonbladet libelled Littorin: ex-watchdog" 2010. Regarding blackmail, see for instance "Man utpressade sexköpare" 2010; "Utpressarliga slår till mot sexköpare" 2010. & "Sexköpare lurad av utpressare" 2010.

powerless. And since the ban builds on the idea that women who sell sex are victims, weak and exploited, many claim that the law propagates stereotypical notions about sex workers.

The National Board of Health and Welfare report that due to the ban sex workers feel less trust in social authorities, police and the legal system, and half of the respondents in the RFSL study say that the current legislation prevents people seeking help.[239] Instead of the police being a source of protection, sex workers feel hunted by them, and are subjected to invasive searches and questioning. There is also a problem in that they are in an unclear legal position – they can be made to testify in a trial but they neither enjoy the rights of the accused nor of the victim. Some report that there is an increased dependency on third parties. Now that it is difficult to make direct contact with clients, sellers must rely on agents/pimps/helpers to find clients.

Reports also conclude that since street-based prostitution has decreased, sex workers experience higher levels of vulnerability in their contact with clients. This is explained in the following way: When clients are fewer on the streets, the clients have higher negotiating powers, which erodes the sellers´ bargaining power. This means that sex workers might not be able to demand safer sex practices, that they take greater risks and accept lower prices. Some refer to the ban as a class-law, since there often are no other venues accessible than the street for those who sell sex in order to support a drug habit. And since clients on the streets are fewer and potentially more dangerous, there are more negative consequences for those already marginalized. This seems to differ between the cities. In an ongoing study at Gothenburg University the situations is described as follows:[240]

One social worker says, for instance, that she can see how some women take greater risks, get into cars where there is more than one man and accept lower prices. Whereas people in Stockholm say that the demand is always greater than the supply on the street, the people in Malmö say that the clients are so few that women have to accept those they would have refused earlier, in order to make enough money for drugs.
Department of Social Work, University of Gothenburg

But there are other problems with the current situation for street workers as well. When the negotiating has to be done in a more rapid way (due to the clients' fear of being caught) it increases the risk of the sex worker making a faulty assessment of the client. And when clients are more stressed and frightened of being exposed, it is also more difficult for the seller to assess whether the client might be dangerous. On top of this, services have to be carried out in even more hidden, and therefore more unprotected, areas. There has not been any specific research done on levels of violence, but several sex workers express fear of increased violence, as well as an actual increase. This situation is summarized by one of the informants in the Norwegian Inquiry:[241]

The Swedish street prostitutes experience a tougher time. They are more frequently exposed to dangerous clients, while the serious clients are afraid of being arrested. Prohibition will never be able to stop the purchase and sale of sex. It could only make conditions worse for the prostitutes. They have less time to assess the client as the deal takes place very hurriedly due to fear on the part of the client. They (the prostitutes) are exposed to violence and sexually transmitted diseases. If the client demands unprotected sex, many of the prostitutes cannot afford to say no. Harassment by the police has increased and the clients no longer provide tip-offs about pimps, for fear of being arrested themselves. The social workers working on the streets have problems reaching them. They (the prostitutes) use pimps for protection.
The Norwegian Ministry of Justice

239 National Board of Health and Welfare 2008, p 12. & RFSU 2010.
240 Institutionen för socialt arbete vid Göteborgs universitet 2010.
241 The Norwegian Ministry of Justice 2004, p 19.

These kind of negative effects were also reported in the official evaluation. Seven women who answered a brief survey (conducted by e-mail) and who describe themselves as having chosen to sell sex, state that the criminalization has intensified the social stigma of selling sex, that they feel hunted by the police and that they resent being treated as incapacitated persons whose actions are tolerated, but whose wishes and choices are not respected. The evaluation comments on these findings in the following manner:[242]

For people who are still being exploited in prostitution, the above negative effects of the ban that they describe must be viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution.
The 2010 official evaluation

This conclusion was sharply objected to by the respondents that work against discrimination, and for sexual health. The Discrimination Ombudsman called it "remarkable" since lawmakers´ motive in criminalizing only the client was to not additionally stigmatize an already vulnerable group.[243] But the Ombudsman's office went even further in its criticism. Since sex workers had not been given enough opportunity to participate in the official evaluation and influence the definition of their own needs and their situation, it claimed that the evaluation contributed to their disempowerment. A fear raised by the Ombudsman was that the increased stigma would lead to worse prospects for health promotion and HIV-preventive work. It referred to UNAIDS, the Joint United Nations Programme on HIV/AIDS, that discourages criminalization for this reason: social stigma might influence the contact with social authorities, the health care system and the judicial system.

RFSL also referred to UNAIDS and expressed its great concern for the Swedish situation: the organization has knowledge of several instances where HIV-preventive measurements aimed at clients were stopped with reference to the ban. It further believes that the point of view expressed by the evaluation, that "increased stigmatization is positive" is an almost counteractive attitude to harm reduction. For example, sex workers with whom the RFSL has been in contact have reported that stigma prevents them talking about their prostitution experiences when testing for HIV/STI. To strengthen the stigma will lessen the chances to reach people who sell sex and to conduct harm reduction measures, concludes RFSL. The organization also points out that HIV-preventive needs are greater amongst men who sell sex to men and transgender people, but that the official evaluation almost totally ignores this population. Studies done by RFSL showed that 38.5 percent of the men who sell sex never tested for STIs.[244]

It is therefore possible that yet another negative consequence of the ban is an increased level of STI and HIV amongst sex workers and their clients. The Board of Health and Welfare, which also expresses concern about the consequences of an increased stigma, writes in its response that according to the 2010 Swedish UNAIDS report that only 18.5 per cent of drug-using sex workers used a condom during their most recent intercourse.[245]

Conclusion

We believe that one has to look at several factors to understand the discrepancy between the stated success of the Sex Purchase Act and its documented effects. While there are some police, social workers and former sex workers who claim that the ban has indeed helped reduce prostitution and trafficking and deterred clients without any adverse effects, the reports and documents that have a scientific rather than ideological base do not support these success claims. Hence, as we and others have written elsewhere, we believe that it is in the ideological and cultural domains that the creation of the "unique" Sex Purchase Act and the above mention

242 SOU 2010:49b, p 34.
243 Diskrimineringsombudsmannen 2010.
244 RFSL 2010.
245 Socialstyrelsen 2010.

discrepancy must be found. It has to do with a desire to create and uphold a national identity of being the moral consciousness in the world; with notions or "good" and "bad" sexuality; with the whore stigma; with creating new forms of sexual deviancy; with a communitarian, rather than liberal, political culture, and perhaps above all: a stereotypical and uninformed understanding of prostitution.[246]

Our stance when it comes to policy regarding prostitution is that it has to be based on knowledge rather than ideology. We also believe that when policy is developed, the actors at the heart of this policy must be adequately consulted and duly respected. In our opinion, this has not been the case with regards to "the Swedish model".

246 Dodillet 2009, Kulick 2005, Gould 2001, Östergren 2006.

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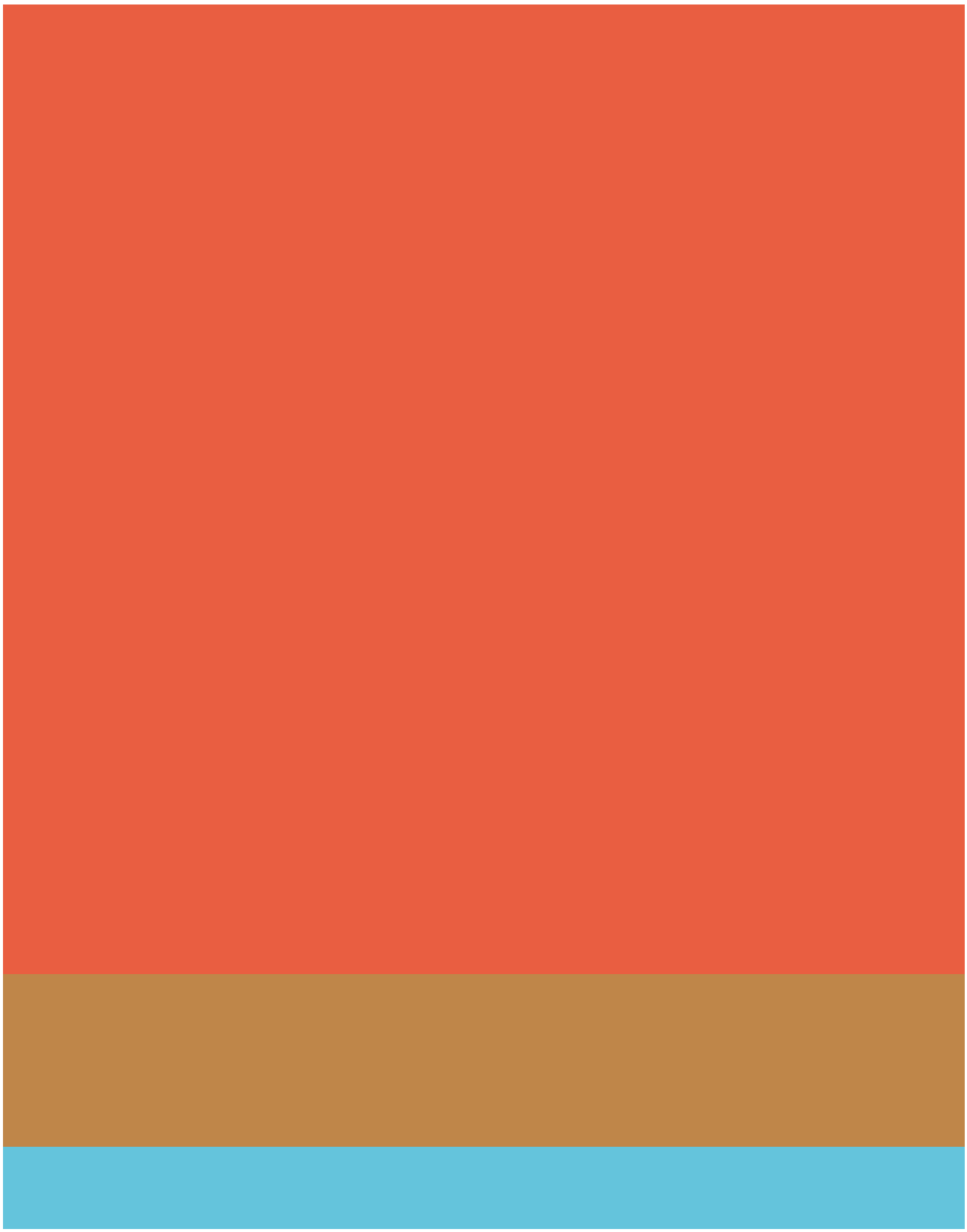

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