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Prostitution – which stance to take?

Report
Committee on Equal Opportunities for Women and Men
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Summary

Forced prostitution and trafficking in human beings should be unreservedly condemned as modern-day slavery and one of the most serious violations of human rights in Europe today. These crimes must be resolutely combated, and its victims protected, ideally on the basis of the Council of Europe Convention on Action to Combat Trafficking in Human Beings.

Child prostitution needs to be combated as energetically, if not more, than other forms of forced prostitution. A zero-tolerance approach based on prevention, protection of victims, and prosecution of clients should be adopted.

Regarding voluntary prostitution, defined as prostitution exercised by persons over the age of 18 having chosen prostitution as a means to make a living of their own accord, the approaches adopted in the 47 member states of the Council of Europe vary widely. Historically, three different approaches can be defined, prohibitionist, regulationist and abolitionist. Sweden has recently invented a new approach, which is generally defined as neo-abolitionist.

Council of Europe member states should formulate an explicit policy on voluntary adult prostitution. They must avoid double standards and policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable – instead they should seek to empower them.

In particular, member states should refrain from criminalising and penalising prostitutes. They should develop programmes to assist prostitutes to leave the profession should they wish to do so, and address personal vulnerabilities of prostitutes. Underlying structural problems also need to be addressed, to prevent people being “forced” into prostitution by circumstances.

A. Draft resolution

1. The Parliamentary Assembly unreservedly condemns forced prostitution and trafficking in human beings as modern-day slavery and one of the most serious violations of human rights in Europe today.

2. The Assembly believes that one of the most efficient tools in the fight against trafficking in human beings – due to its approach based on victim-protection – is the Council of Europe Convention on Action to Combat Trafficking in Human Beings (CETS No. 197), which was opened for signature in Warsaw on 16 May 2005. So far, the Convention has been signed by 29 Council of Europe member states, and ratified by 7. While the Assembly expects the Convention to enter into force soon (it can be expected that the required 10 ratifications will be reached by the end of 2007), it believes that the efficiency of the Convention depends to a large extent on continent-wide ratification and application – including by the European Community and all the member states of the European Union – as well as on the means made available for the monitoring mechanism of the Convention (GRETA).

3. The Assembly also believes that child prostitution can never be voluntary, as children do not have the capacity to “consent” to prostitution. Following the United Nations Convention on the Rights of the Child, the Assembly defines children as anyone under the age of 18. The Assembly believes that child prostitution needs to be combated as energetically, if not more, than other forms of forced prostitution. It recommends a zero-tolerance approach based on prevention, protection of victims, and prosecution of clients.

4. Regarding voluntary prostitution, defined as prostitution exercised by persons over the age of 18 having chosen prostitution as a means to make a living of their own accord, the Assembly notes that the approaches adopted in the 47 member states of the Council of Europe vary widely. Historically, three different approaches can be defined, prohibitionist, regulationist and abolitionist. Sweden has recently invented a new approach which is generally defined as neo-abolitionist.

5. About a third of Council of Europe member states (17) subscribe to the prohibitionist approach, which prohibits prostitution and penalises prostitutes and pimps alike (although not necessarily clients). A substantial minority of member states (9) subscribe to the regulationist approach, which seeks to regulate rather than prohibit or abolish prostitution. The relative majority of member states can be considered abolitionist (20), which means they seek to abolish prostitution by penalising procurers and pimps rather than prostitutes. Sweden’s neo-abolitionist approach takes the abolitionist logic one step further and penalises the clients.

6. As an organisation based on human rights and respect for human dignity, the Council of Europe should take a stance on prostitution which reflects its core mission. Basing one’s judgment on respect for human dignity does not mean taking a moralistic approach, however. It means respecting people’s decisions and choices as long as they harm no-one else.

7. The problem with prostitution is that in many countries (in particular prohibitionist ones, but also in abolitionist and neo-abolitionist ones to a varying extent) prostitution is forced underground. As a consequence, more often than not, organised crime becomes involved, and prostitutes are made more vulnerable (most cannot work independently, and become dependent on pimps and procurers, and are at the total mercy of their clients, who may demand unsafe sexual practices). This is important from a public health point of view in the era of resurging STDs and an HIV/AIDS pandemic. For this reason, international organisations such as the World Health Organisation have abandoned moralistic approaches and adopted a pragmatic one, instead.

8. The prohibitionist and abolitionist approaches furthermore have the disadvantage of enshrining a certain double standard. In many countries applying these approaches, for example, having paid sex itself is not prohibited, but offering paid sex is. What is particularly hypocritical is that even where prostitutes are sanctioned clients often are not.

9. The regulationist approach has the advantage of regulating prostitution as a profession. In countries which subscribe to this approach, prostitutes are not criminalised and have labour rights (which means they can work more independently, and are less likely to be at the mercy of pimps or procurers), access to medical care, etc. This does not mean, however, that prostitution in regulationist

countries is unproblematic. There tends to be a certain gap between theory and practice even in regulationist countries; not all prostitutes avail themselves of the rights bestowed upon them.

10. Personal vulnerabilities (pathological aspects such as mental health problems, low self-esteem and childhood neglect or abuse, as well as drug abuse) and structural problems (poverty, political instability/war, gender inequality, differential opportunity, lack of education and training) can have a very negative impact on prostitutes. It is important that no-one should feel “forced”, even by circumstances, to engage in prostitution. This is the advantage of the neo-abolitionist approach: it makes very clear that the demand side, and not the supply side, needs to be tackled.

11. The Assembly thus recommends that:

11.1. *concerning forced prostitution and trafficking in human beings*, all necessary measures be taken to combat forced prostitution and trafficking in human beings; and in particular, that:

11.1.1. all Council of Europe member states, which have not yet done so, sign and ratify the Council of Europe Convention on Action to Combat Trafficking in Human Beings as soon as possible, and apply its provisions (in particular those on victim protection) in the meantime, including to victims of trafficking in human beings who have been forced into prostitution;

11.1.2. the European Community become a party to the Convention without further delay;

11.1.3. all necessary means be made available for the Convention’s monitoring mechanism (GRETA) to be able to work independently, efficiently and comprehensively once the Convention enters into force;

11.2. *concerning child prostitution*, all Council of Europe member states prohibit child prostitution (under the age of 18), since it cannot be considered voluntary (whether a minor has given consent or not is irrelevant):

11.2.1. the approach taken when dealing with prostitution of minors should mirror the Council of Europe’s approach on trafficking in human beings, i.e. the minors should be considered as victims and protected as such – they should not be prosecuted;

11.2.2. there should be an active policy to systematically prosecute the clients of minors;

11.3. *concerning voluntary adult prostitution*, Council of Europe member states should formulate an explicit policy on prostitution; they must avoid double standards and policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable, instead they should seek to empower them, in particular by:

11.3.1. refraining from criminalising and penalising prostitutes and developing programmes to assist prostitutes to leave the profession should they wish to do so;

11.3.2. addressing personal vulnerabilities of prostitutes, such as mental health problems, low self-esteem and childhood neglect or abuse, as well as drug abuse;

11.3.3. addressing structural problems (poverty, political instability/war, gender inequality, differential opportunity, lack of education and training), including in countries from which prostitutes originate, to prevent people being “forced” into prostitution by circumstances;

11.3.4. ensuring prostitutes have access to and enough independence to impose safe sexual practices on their clients;

11.3.5. respecting the right of prostitutes who freely choose to work as a prostitute to have a say in any policies on the national, regional and local level concerning them;

11.3.6. ending the abuse of power by the police and other public authorities towards prostitutes by developing special training programmes for them.

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2007) on "Prostitution - which stance to take?".
2. The Assembly believes that all necessary measures must be taken to combat forced prostitution and trafficking in human beings. The Assembly thus recommends that the Committee of Ministers:
 - 2.1. encourage all Council of Europe member states which have not yet done so to sign and ratify the Council of Europe Convention on Action to Combat Trafficking in Human Beings (CETS No. 197) as soon as possible and apply its provisions (in particular those on victim protection) in the meantime, including to victims of trafficking in human beings who have been forced into prostitution;
 - 2.2. make representations to the European Community to accede to the Convention as a matter of priority, in accordance with the recently signed memorandum of understanding between the Council of Europe and the European Union;
 - 2.3. make all necessary means available for the Convention's monitoring mechanism (GRETA) to be able to work independently, efficiently and comprehensively once the Convention enters into force.
3. The Assembly further recommends that the Committee of Ministers address the issue of child prostitution (prostitution of anyone below the age of 18) in its relevant steering committees and the on-going Council of Europe programme on "Building a Europe for and with children".
4. Regarding adult voluntary prostitution, the Assembly encourages the Committee of Ministers to recommend that Council of Europe member states formulate an explicit policy on prostitution. In particular, they must avoid double standards and policies which criminalise and penalise prostitutes.

C. Explanatory memorandum by Mr Leo Platvoet, Rapporteur

I. Introduction

1. To my knowledge, this is the first time since 1958¹ that the Parliamentary Assembly is preparing a report on prostitution – voluntary prostitution, that is. Forced prostitution and trafficking in human beings have been the subject of several debates in the Assembly over the years. While no-one in his right mind would try to defend forced prostitution, opinions are divided over how to combat it. In the Council of Europe (including the Assembly) a consensus has emerged that protecting the victims of trafficking in human beings (and thus, often, of forced prostitution), is paramount – which is why the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197, opened for signature in May 2005) is so important. It has so far been signed by 29 states and ratified by seven, so that it will hopefully enter into force soon.

2. In this report, I thus intend only to touch on forced prostitution and trafficking in human beings, and concentrate on voluntary prostitution (I use the word “voluntary” for lack of a better term). Here, opinions both between and within member states are sharply divided – there are many viewpoints, ranging from the moral over the feminist to the economic. What stance to take in Europe on prostitution is not a rhetorical question – it is a question which deserves an answer from an organisation founded on the value of human dignity.

3. The Committee on Equal Opportunities for Women and Men organised a hearing on this question on 13 September 2006 in Paris, the minutes of which have been declassified and are available from the Committee Secretariat². In this report, I intend first to describe the main ways the Council of Europe’s member countries deal with prostitution and the reality on the ground, before analysing the advantages and drawbacks of each approach – and making appropriate conclusions and recommendations.

II. Forced prostitution and trafficking in human beings

4. The Parliamentary Assembly has always unreservedly condemned forced prostitution and trafficking in human beings as modern-day slavery and one of the most serious violations of human rights in Europe today.

5. We all believe that one of the most efficient tools in the fight against trafficking in human beings – due to its approach based on victim-protection – is the Council of Europe Convention on Action to Combat Trafficking in Human Beings (ETS 197), which was opened for signature in Warsaw on 16 May 2005. So far, the Convention has been signed by 29 Council of Europe member states, and ratified by seven. While I expect the Convention to enter into force soon (it can be expected that the required ten ratifications will be reached by the end of 2007), I believe that the efficiency of the Convention depends to a large extent on continent-wide ratification and application – including by the European Community and all the member states of the European Union – as well as on the means made available for the monitoring mechanism of the Convention (GRETA).

6. All necessary measures must be taken to combat forced prostitution and trafficking in human beings. All Council of Europe member states, which have not yet done so, should sign and ratify the Council of Europe Convention on Action to Combat Trafficking in Human Beings as soon as possible, and apply its provisions (in particular those on victim protection) in the meantime, including to victims of trafficking in human beings who have been forced into prostitution. The European Community should become a party to the Convention without further delay. All necessary means should be made available for the Convention’s monitoring mechanism (GRETA) to be able to work independently, efficiently and comprehensively once the Convention enters into force.

¹ See Recommendation 161 (1958) calling for the speedy ratification of the International Convention of 2nd December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution.

² AS/Ega (2006) PV 7 addendum.

III. Child prostitution

7. Child prostitution can never be voluntary, as children do not have the capacity to “consent” to prostitution. Following the United Nations Convention on the Rights of the Child, the Assembly defines children as anyone under the age of eighteen. Child prostitution needs to be combated as energetically, if not more, than other forms of forced prostitution. A zero-tolerance approach based on prevention, protection of victims, and prosecution of clients should be recommended.

8. While most member states criminalise sexual relations between an adult and a minor (and all, of course, criminalise rape), some states set the boundary for the capacity to consent to sexual relations not at eighteen, but at sixteen years of age (or even younger, in some cases). It is thus useful to have a law on the statute books which penalises clients of underage prostitutes only, as is the case in Sweden. This Swedish law is not to be confused with the general Swedish law criminalising clients of prostitutes: It is a special law which foresees much harsher penalties than the general law. This special law could serve as a model for other member states when it comes to combating child prostitution.

IV. The situation in Council of Europe member states regarding “voluntary” prostitution: an overview

9. At the hearing held last year, Ms Sophie Jekeler, a lawyer and Chairperson of the NGO “The Nest” (Belgium), member of the network ENATW-Aretusa, presented a comparative study on the legal situation in Europe. I will draw heavily on her presentation, as well as that of Ms Gunilla Ekberg, former Special Advisor on Issues Regarding Prostitution and Trafficking in Human Beings, Government of Sweden, who was heard by the Committee at its meeting in Paris on 12 December 2006 (Ms Ekberg having been unable to attend the original hearing for health reasons).

10. According to Ms Jekeler, the various legal systems in Europe are based around three traditional views of prostitution: the prohibitionist, the regulationist and the abolitionist views. The prohibitionist view is that prostitution (regarded as an offence), and of course the exploitation of prostitution, should be outlawed. In my view, the prohibitionist approach has a double standard (due to a male-dominated culture), as it prosecutes only the prostitutes, not the clients. Regulationists favour some form of official control of prostitution and its exploitation while abolitionists believe that prostitution (which they regard as a private act) should be completely unregulated and that living on the earnings of prostitution should be banned. Thus, abolitionists tend to regard prostitutes as victims whereas regulationists see them as workers like any others. Abolitionism as a concept stems from the debate that took place among the medical profession after regulationism failed to stop the spread of STDs, giving rise to the International Convention of 2 December 1949 (the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others), a UN instrument that has been ratified by a large number of European countries (and which was supported by the Parliamentary Assembly in 1958). A fourth approach, termed “neo-abolitionist”, has recently been invented by Sweden, which – according to Ms Ekberg – sees prostitution as a “gender crime” and has thus outlawed the purchase (and the attempted purchase) of sexual services, punishing the client rather than the prostitute.

11. Ms Jekeler classed countries as follows: a few prohibitionist countries such as Ukraine, Albania and Romania; a number of regulationist countries, such as Germany, Austria, Netherlands, Switzerland, Greece. A third group tends more towards abolitionism (e.g. France, Portugal, Italy, Denmark, Belgium, Finland, Poland, the United Kingdom and Spain), but with strong regulationist leanings. Sweden is the only country so far with a neo-abolitionist approach. As to the other Council of Europe member states, from the information I could gather (I stand to be corrected, of course), Andorra, Armenia, the Czech Republic, Georgia, Ireland (the act of prostitution itself is not penalised), Liechtenstein (the prostitute is only sanctioned if her/his conduct is a public nuisance), Lithuania, Malta, Moldova, Montenegro, Russia, San Marino, Serbia and “the former Yugoslav Republic of Macedonia” are prohibitionist; Azerbaijan (women engaged in prostitution are not liable for criminal charges, but exploitation of the prostitution of others is a criminal offence³), Bosnia and Herzegovina,

³ OMCT, Violence against women in Azerbaijan, Alternative Country Report to the United Nations Committee on Economic, Social and Cultural Rights, November 2004:
http://www.omct.org/pdf/VAW/2004/Azerbaijan_CESCR33rd.pdf.

Bulgaria, Croatia (with prohibitionist leanings, as solicitation is penalised), Estonia, Iceland, Luxembourg, Monaco, Norway, Portugal, Slovakia and Slovenia are abolitionist; Cyprus, Hungary, Latvia and Turkey are regulationist. I have tried to summarise my findings in Appendix I and Appendix II.

12. The realities on the ground do not always fit these classifications as neatly, as Ms Jekeler herself also pointed out during the hearing. Thus, she said, “prostitutes are seen as a “tool” enabling the industry to operate smoothly. They have a difficult role to play as far as “straightforward” procuring is concerned, i.e. outside the context of trafficking. They practise their profession freely, on an individual basis at any rate, in all European countries, including Sweden where only the purchase – or attempted purchase – of sexual services is prohibited, because it is deemed to be incompatible with the notion of women’s dignity. The freedom to practise prostitution is severely hampered, however, by the fact that it is an offence to solicit, and it tends to be only unmarried women who work as prostitutes.”⁴

13. On the subject of social protection, with the exception of the Netherlands and Germany, prostitution is not legally recognised, so prostitutes have no social protection. They can, however, qualify for basic social cover if this cover is granted irrespective of the type of business activity, as in the UK, Italy, Denmark and Sweden. As far as taxation is concerned, however, almost all states tax income from prostitution, whether it is legal or not. In France and Belgium, for example, income from prostitution is taxable as “non-commercial profits”.

14. In most European states, procuring is a criminal offence that carries penalties of varying severity. In Germany and the Netherlands, where prostitution is legal, benefiting from it is too, provided that the prostitution is voluntary. In Greece and Spain, procuring is likewise permitted in certain circumstances. In the United Kingdom, France, Denmark, Sweden, Italy, Portugal and Belgium however, procuring is a criminal offence.

15. Speaking of brothels, Ms Jekeler said that visible prostitution was becoming less and less acceptable in major European cities. As a result, there was greater tolerance of brothels, both in countries where prostitution was legal and in many others where it was officially banned. Brothels were seen as an alternative to street-based prostitution. In the Netherlands, Spain and Germany, maintaining brothels was legal provided that the people working there were doing so voluntarily, were of full age and in possession of a valid residence permit. In France, Italy and Sweden, however, maintaining brothels was still prohibited. In many countries, advertising prostitution services was against the law, but in practice such advertisements were widely tolerated.

V. The reality of prostitution

16. Most prostitutes do not use their real name, and few have informed their family and friends that they engage in prostitution. In countries where prostitution is illegal, and prostitutes thus risk punishment, the reason for this wish to remain anonymous is obvious. However, even in countries where prostitution is legal (and there are benefits to be had from registering with the authorities), many prefer not to reveal their real name. I do not think this is simply due to a wish to evade taxation; it is also due to the fact that, like it or not, the majority of people do not consider prostitution a profession like any other⁵. As “Chris”, a member of the European Network of Male Prostitutes, pointed out during the hearing: “Many people would like to join the profession, but do not for fear of exposure and the negative judgment of others which might follow in its wake”⁶.

17. What are the attractions of prostitution? “Easy” money? Flexible working hours? A good salary without a need for qualifications? The wish to live one’s sexuality in an independent,

⁴ AS/Ega (2006) PV 7 addendum, p. 2.

⁵ In fact, there do seem to be some countries where public opinion is less severe on prostitutes. For example, in the last years of the Soviet Union, a fair number of young girls answered, when asked what they wanted to become, “an intergirl” (a high-class prostitute serving foreign customers) – following the success of Vladimir Kunin’s novel with the same title (and the film based on the novel). See “From Vixen to Victim: The Sensationalization and Normalization of Prostitution in Post-Soviet Russia” by Katherine P. Avgerinos, <http://www.sras.org/news2.phtml?m=773>.

⁶ AS/Ega (2006) PV 7 addendum, p. 5.

autonomous and self-reliant way⁷? It is difficult to find out, because, more and more, prostitution is practised behind closed doors, in private apartments, brothels, or over the internet. It seems to me that the reality of voluntary prostitution is often as far removed from Hollywood clichés (think of films such as “Pretty woman” on female prostitution, or “Wedding Date” on male prostitution) as it is from the gritty picture painted by TV documentaries, whose producers often have access only to street prostitutes or prostitutes seeking help (i.e. prostitutes in the most precarious situations). However, the question of how voluntary “voluntary” prostitution really is must be asked when, for example, people turn to prostitution to finance a drug habit, or single mothers with no relevant qualifications go into the business because of its comparatively high pay and flexible hours. What real alternatives do these people have? One NGO representative pointed out during the hearing that, according to one study, the majority of prostitutes entered the profession because they had been in love with someone who then made them sleep with others for money. The boundaries between “voluntary” and “forced” prostitution are thus not always as clear as they would seem at first glance.

18. In October 2005, 120 sex workers and 80 allies from 30 countries attended a European Conference on Sex Work, during which they elaborated and endorsed “The Declaration of the Rights of Sex Workers in Europe”⁸ and the “Sex Workers in Europe Manifesto”⁹. In these texts, they target “discriminatory legislation and behaviour, which cannot be justified on the grounds of protecting public health or combating organised crime, restrict the fundamental rights and freedoms of sex workers, at local, national and international levels”¹⁰, which they say occur across health and social care, housing, employment, education, administrative law and criminal justice systems.

19. In parallel, also in October 2005, a press conference was held to make public the “Survivors of Prostitution and Trafficking Manifesto”¹¹. The participants at the press conference declared prostitution “violence against women”, and demanded its elimination rather than its legalisation or promotion.

20. How easy is it to leave the profession? This seems to depend on the individual’s circumstances. Certainly, some prostitutes are proud of their profession and do not want to leave it – as Ms Terry van der Zeijden from “De rode Draad”, a Dutch trade union of prostitutes, pointed out during the hearing. Others “graduate” to become the mistress of one or two “sugar daddies”. But many others do find it difficult to leave the profession even if they want to – be it because they could not otherwise earn so much, be it because they see no other way of financing a drug habit, be it because they are afraid that others will guess – and judge – what they have been doing from the glaring hole on their CV. As Ms Jekeler said during the hearing, the main reason why abolitionism had proved ineffective was that few countries had implemented the main plank of the policy, the reintegration of prostitutes¹².

21. Similarly, even prostitutes who have entered the profession voluntarily may be exposed to certain risks directly connected to the profession and the way it is practised. Risks to personal safety (violence, harassment, stalking) and health (sexually transmitted diseases, including HIV/AIDS) are certainly real especially in the more precarious situations of prostitution, such as street-based prostitution or prostitution which is not truly independent (i.e. controlled by pimps). As Dr Linda Cusick from the University of Paisley (United Kingdom) said during the hearing, “sex workers are vulnerable from the time they enter the sex market, and sex work exacerbates this vulnerability. To reduce vulnerability, efforts need to be made on both the personal (pathological aspects such as mental health, low self-esteem and childhood neglect or abuse) and structural front (poverty, political instability/war, inequality, in particular gender inequality, differential opportunity, lack of education and training).”¹³

⁷ This was the position of Ms Terry van der Zeijden from “De rode Draad”, a Dutch trade union of prostitutes, during the hearing.

⁸ Available at <http://www.scot-pep.org.uk/declaration.pdf>.

⁹ Available at http://www.sexworkeurope.org/site/index.php?option=com_content&task=view&id=24&Itemid=54.

¹⁰ The Declaration of the Rights of Sex Workers in Europe, p. 1.

¹¹ Available at

http://www.womenlobby.org/site/1abstract.asp?DocID=1457&v1ID=&RevID=&namePage=&pageParent=&DocID_sousmenu=

¹² Ibid, p. 4.

¹³ Ibid, p. 7.

VI. Advantages and drawbacks of the different approaches

22. The prohibitionist approach to prostitution has many drawbacks and few, if any, advantages in my view. It tends to make all prostitution a criminal offence (not just forced prostitution and prostitution of minors), but it is usually the prostitute, not the client, who is prosecuted. In countries which adopt this approach, prostitution is thus pushed underground and becomes a criminal activity, with all the disadvantages this entails. Prostitutes are particularly vulnerable in these countries, are seldom independent, and are thus very much at risk of, for example, being pressurised into having unprotected sex – which, of course, is a public health concern, especially in the era of HIV/AIDS. The United Nations has thus developed a “rights-based” approach which the World Health Organisation implements even in prohibitionist countries such as Ukraine, based on three pillars:

- reducing vulnerability, expanding choices and addressing structural issues related to HIV and sex work;
- supporting scale-up of social and health services and addressing barriers to access in the sex work context;
- promoting participation and empowerment of the sex worker community.¹⁴

23. The regulationist approach has the advantage of decriminalising prostitution (both for prostitutes and their clients), and thus – at least in theory – empowering prostitutes, granting them certain rights and making them less vulnerable to abuse, STDs, etc. However, it seems that even in regulationist countries, the percentage of prostitutes who take the necessary steps to comply with social and tax legislation is relatively small. Ms Jekeler explained during the hearing that very few prostitutes intended to stay in the profession in the long term and declaring oneself officially and paying income tax tended to defeat the object of the exercise, which was to make as much money as possible in the shortest possible time. In addition, non-visible prostitution, which was becoming increasingly popular, remained beyond the reach of inspectors and many of those who practised it were anxious to remain anonymous.¹⁵ Furthermore, whether the regulationist approach increases or decreases prostitution is subject to debate.

24. Allow me to inform you about the experience of the Netherlands, where a new study has just been published six years after the legalisation of prostitution¹⁶. The study concluded that all the Dutch municipalities have practically completed the licensing process and are carrying out inspections to a greater or lesser extent. The police (still) play the most important role in monitoring the licensed sector and in carrying out inspections. The police are primarily occupied with inspections in the licensed sector and thus lack the capacity to play a major monitoring and investigative role with regard to punishable forms of operation outside the licensed sector. The change in the law has led on the one hand to legalisation (of the commercial operation of prostitution services by voluntary adult prostitutes who have the required documents) but on the other hand has led to tougher penalties for undesirable forms of prostitution. The legalisation has received the most attention. Nevertheless, it is not so much the legalisation as the stricter enforcement of the regulations in respect of punishable forms of prostitution that seems to have caused the most disquiet. In fact, there can be said to be a paradoxical situation: where formerly commercial operation was prohibited and is now legalised, prostitutes and operators feel that the *regulations* have become stricter, whereas in practice it is a matter of stricter *enforcement*. Both the demand and supply of prostitution services appear to have decreased in the past years. However, it is debatable as to what extent this is a result of the lifting of the ban on brothels and the accompanying stricter enforcement. It is more probable that the drop in demand has been caused by other factors such as the economic downswing and the growth of the Internet. Other possible causes that are mentioned in the study are a lack of innovation in the prostitution sector, as a result of which supply and demand are less well-matched; the eroticisation of nightlife, as a result of which voluntary unpaid sexual activities have increased; and the deterrent effect on clients of camera monitoring in prostitution areas.

¹⁴ See speech of Dr Gundo Weiler, HIV/AIDS Team Leader in Ukraine, World Health Organisation, during the hearing, *ibid*, p. 8.

¹⁵ *Ibid*, p. 3.

¹⁶ Prostitution in the Netherlands since lifting the general ban on brothels, by Daalder, A.L., the Hague 2007, summary available at http://www.wodc.nl/eng/onderzoeken/overkoepelelend_rapport_evaluatie_opheffing_bordeelverbod__1204d_.asp?soort=publicatie&tab=pub.

25. The abolitionist approach is “neither here, nor there” in my view. While this approach is in theory harsher on pimps (those benefiting from the prostitution of others) than on prostitutes themselves, in practice, laws outlawing soliciting (even passive soliciting), common in countries with the abolitionist approach, make it more difficult for prostitutes to go about their business, and tend to further hurt those vulnerable groups of prostitutes who are already in a precarious situation (such as street-based prostitutes). As “Thierry”, a French male prostitute, testified at the hearing, in response to the police crackdown on street prostitution, prostitutes had moved to the *banlieue*, where they were more likely to fall into the hands of the pimps. “Thierry” had himself begun working as a street prostitute four years previously and had experienced at first hand the lack of police protection.¹⁷ Furthermore, it defines all prostitutes as “victims”, thus treating adult women and men like children – incapable of consenting to prostitution.

26. The neo-abolitionist approach adopted in Sweden has the advantage of being crystal clear – buying or attempting to buy sexual services is a crime. This is the only approach which tackles the demand, rather than the supply side, and it has apparently led to a decrease in prostitution and a change in mentalities – Ms Ekberg claimed that a study during the last FIFA World Cup in Germany (where prostitution is legal) had shown that Swedish men had said they did not want to pay for sex. However, the danger of pushing prostitution underground cannot be denied, even if the prostitute is not as vulnerable in this kind of set-up as in a prohibitionist set-up, since the person who must fear prosecution is the client, not the prostitute.

27. In 2006, the UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, presented a report to the Commission on Human Rights on the relationship between trafficking and the demand for commercial sexual exploitation. According to this report, “For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability.”¹⁸ In her conclusions, the UN Special Rapporteur thus favours the Swedish neo-abolitionist model: “The Swedish law that prohibits the purchase of sexual services is a particularly apt expression against the demand side of trafficking, for it not only formally condemns the use of prostituted persons, but does so in a context which explicitly recognizes the gendered nature of the commercial sex industry.”¹⁹

28. I fundamentally disagree with these conclusions. First of all, I believe that it is possible for men and women to make a conscious and voluntary decision to work as a prostitute – as evidenced by the two prostitutes who testified at our hearing last year. Thus, not all prostitutes are victims of trafficking in human beings. Second, the commercial sex industry is not as “gendered” as is suggested by the UN Special Rapporteur. Not all prostitutes are female – so how can prostitution be a violation of women’s rights?

VII. Conclusions and recommendations

29. As an organisation based on human rights and respect for human dignity, I think that the approach we should take on prostitution should be characterised by our core mission. Basing one’s judgment on respect for human dignity does not mean taking a moralistic approach, however. It means respecting people’s decisions and choices as long as they harm no-one.

30. As I already stated in my introduction, forced prostitution and trafficking in human beings must be resolutely combated, and its victims need to be protected, ideally on the basis of the Council of Europe Convention on Action to Combat Trafficking in Human Beings (which will hopefully enter into force next year at the latest).

31. Prostitution of minors (under the age of 18) should also be prohibited, since it cannot be considered voluntary (whether a minor has given consent or not is irrelevant). The approach taken

¹⁷ Ibid, p. 4.

¹⁸ Document E/CN.4/2006/62 of 20 February 2006, available at <http://action.web.ca/home/catw/attach/Special%20Rapporteur%20trafficking%202006%20report%20demand.doc> paragraph 42.

¹⁹ Ibid, paragraph 83.

when dealing with prostitution of minors should mirror the Council of Europe's approach on trafficking in human beings, i.e. the minors should be considered as victims and protected as such – they should not be prosecuted. However, there should be a possibility to prosecute the clients of minors (again, mirroring the provisions of the Council of Europe's Convention on Action to Combat Trafficking in Human Beings). Sweden has a specific law which penalises the clients of prostitutes who are still minors (providing for a prison sentence of up to two years); this law could perhaps serve as a model in the field.

32. However, it is my belief that the decisions of adult women and men who have made a conscious decision to work as prostitutes deserve to be respected. We should not victimise people who do not consider themselves victims. On the other hand, however, we should not make people vulnerable because they have chosen to work as prostitutes, either. This means addressing personal vulnerabilities (pathological aspects such as mental health, low self-esteem and childhood neglect or abuse, as well as drug abuse) and structural problems (poverty, political instability/war, gender inequality, differential opportunity, lack of education and training). It means avoiding policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable – we should seek to empower them instead. This is important also from a public health point of view in the era of resurging STDs and an HIV/AIDS pandemic. At the same time, we should make sure that prostitutes who want to leave the profession can find a way out; no-one should be "forced", even by circumstances, to exercise a profession which has such strong moral connotations. To answer the question the report poses – what stance to take on voluntary prostitution – I would thus recommend a pragmatic, regulationist approach based on the respect of human dignity.

APPENDIX I:
The situation in Council of Europe member states regarding voluntary prostitution

Country	Approach	Prostitute penalised	Procurers/ pimps penalised	Clients penalised	Other observations
Albania	prohibitionist	yes	yes	no data available	none
Andorra	prohibitionist	yes	yes	no data available	none
Armenia	prohibitionist	yes	yes	no data available	none
Austria	regulationist	no	no	no	underage prostitution forbidden; mandatory health checks for prostitutes
Azerbaijan	abolitionist	no	yes	no data available	none
Belgium	abolitionist (with regulationist leanings)	no	tolerates organisers that do not gain excessively at the expense of the prostitute	no	none
Bosnia and Herzegovina	abolitionist	no	yes	no data available	none
Bulgaria	abolitionist	no	yes	No data available	none
Croatia	abolitionist (with prohibitionist leanings)	solicitation is penalised	yes	no data available	none
Cyprus	regulationist	no	procuring is a misdemeanour	no data available	none

Czech Republic	prohibitionist	no	yes	no data available	in 2005, the Czech government proposed changing the law to a regulationist approach
Denmark	abolitionist (with both prohibitionist and regulationist leanings)	no (but local police rules forbid loitering in the street, and prostitutes are not allowed to advertise their services)	recruiting prostitutes is illegal	no data available	in 1999, Denmark decriminalised prostitution as a primary source of income, but did not recognise it as a legitimate occupation
Estonia	abolitionist	no	yes	no data available	none
Finland	abolitionist	no (except in public places)	yes	since June 2006, buying of sexual services is penalised if linked to trafficking in human beings	none
France	abolitionist (with prohibitionist leanings)	no (advertising sexual services and passive solicitation are prohibited)	yes	no	none
Georgia	prohibitionist	yes	yes	no available data	none

Germany	regulationist	no	no	no	change in the law in 2002 to a regulationist approach – prostitution no longer considered immoral
Greece	regulationist	no	yes	no	registered prostitutes have to undergo health checks twice a week
Hungary	regulationist	no	no	no	change in the law in 1993
Iceland	abolitionist	no	yes	no	none
Ireland	prohibitionist	no (the act of prostitution itself is not penalised, but prostitutes are not allowed to advertise their services)	yes	yes, e.g. for “curb crawling”	none
Italy	abolitionist	no	yes	no	none
Latvia	regulationist	no	no	no	none
Liechtenstein	prohibitionist	only if the prostitute’s conduct is a public nuisance	yes	no data available	none
Lithuania	prohibitionist	yes	yes	no data available	none
Luxembourg	abolitionist	no	yes, in cases of exploitation	no	none

Malta	prohibitionist	yes	yes	no data available	none
Moldova	prohibitionist	yes	yes	no data available	none
Monaco	abolitionist	no	yes (there has to be an element of force)	no	none
Montenegro	prohibitionist	yes	yes	no data available	none
The Netherlands	regulationist	no	no	no	change in the law in 2000: first recognition of prostitution as "work" in contemporary European history
Norway	abolitionist	no	yes	no	none
Poland	abolitionist	no	yes	no	none
Portugal	abolitionist	no	yes	no	none
Romania	prohibitionist	yes	yes	no data available	none
Russian Federation	prohibitionist	yes	yes	no data available	none
San Marino	prohibitionist	yes	yes	no data available	none
Serbia	prohibitionist	yes	yes	no data available	none

Slovakia	abolitionist	no (except organised soliciting)	yes	no	none
Slovenia	abolitionist	no	no data available	no	change in the law (move from prohibition to abolition) in 2003
Spain	abolitionist	no	only when there is exploitation	no	change in the law in 1995 – from strict to more liberal version of abolitionism
Sweden	neo-abolitionist	no	yes	yes (buying of sexual services and attempting to buy sexual services)	change in the law in 1999: first country to introduce far-reaching penalisation of clients
Switzerland	regulationist	no	no data available	no	none
“the former Yugoslav Republic of Macedonia”	prohibitionist	yes	yes	no data available	none
Turkey	regulationist	no (if registered)	no data available	no data available	registered prostitutes must undergo regular public health checks
Ukraine	prohibitionist	yes	yes	no data available	none

United Kingdom	abolitionist	no (the act of prostitution itself is not penalised, but prostitutes are not allowed to advertise their services)	yes	yes, e.g. for "curb crawling"	none
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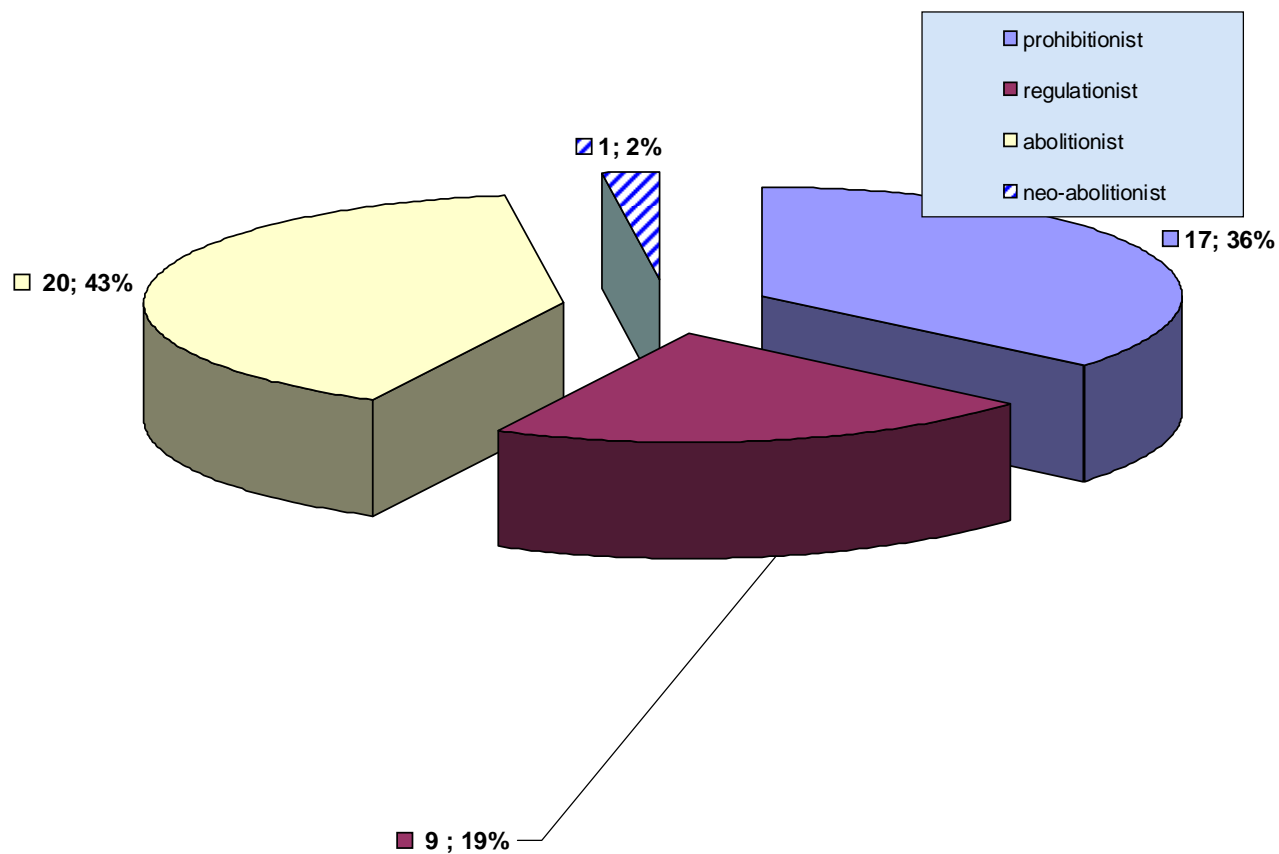
Additional sources:

Daniela Danna, "Trafficking and prostitution of foreigners in the context of the E.U. countries' policy about prostitution", published on the occasion of the NEWR Workshop on Trafficking, Amsterdam 25-26.4.2003;

Marjan Wijers, "Criminal, victim, social evil or working girl: legal approaches to prostitution and their impact on sex workers", presented on the occasion of a seminar on prostitution, Instituto de la Mujer, Madrid 21-23 June 2001.

APPENDIX II

Approach on "voluntary" prostitution: situation in Council of Europe member states



Reporting committee: Committee on Equal Opportunities for Women and Men

Reference to Committee: Doc. 10895, reference No. 3233 of 26 June 2007 and Doc. 11267, reference No. 3356 of 25 June 2007

Draft resolution and draft recommendation unanimously adopted by the Committee by on 28 June 2007

Members of the Committee: Mrs Gülsün **Bilgehan** (Chairperson), Mrs Anna Čurdová (1st Vice-Chairperson), Mrs Svetlana Smirnova (2nd Vice-Chairperson), Mr José **Mendes Bota** (3rd Vice-Chairperson), Mrs Željka Antunović, Mrs Aneliya Atanasova, Mr John Austin, Mr Denis Badré (alternate : Mr **Branger**), Ms Marieluise Beck, Mrs Oksana **Bilozir**, Mrs Raisa Bohatyryova (alternate : Mr **Popescu**), Mrs Olena Bondarenko, Mr Pedrag Bošćević, Mrs Mimount Bousakla, Mr Paul Bradford, Mrs Ingrida **Circene**, Mr James Clappison, Mrs Minodora Cliveti, Mr Cosidó Gutiérrez, Ms Diana Çuli, Mr Ivica Dačić, Mr Marcello Dell'utri, Mr José Luiz Del Roio, Mrs Lydie **Err**, Mrs Catherine **Fautrier**, Mrs Maria Emelina Fernández Soriano, Ms Sonia Fertuzinhos, Mr Piotr Gadzinowski, Mrs Alena **Gajdušková**, Mr Pierre Goldberg, Mrs Claude Greff, Mr Attila Gruber, Mrs Carina Hägg, Mr Ilie **Ilaşcu**, Mrs Halide Incekara, Ms Nataša Jovanović, Mrs Eleonora **Katseli**, Mr Marek Kawa, Mrs Krista Kiuru (alternate : Ms **Asko-Seljavaara**), Mrs Angela Leahu, Mr Dariusz Lipinski, Mr Arthur Loepfe, Mrs Mirjana Malić, Ms Assunta Meloni, Mrs Danguté Mikutienė, Mrs Ilinka **Mitreva**, Mr Burkhardt Müller-Sönksen, Mrs Christine Muttonen, Mrs Hermine **Naghdalyan**, Mr Kent Olsson, Mrs Vera Oskina, Mr Ibrahim Özal, Ms Elsa Papadimitriou, Mr Jaroslav Paška, Mrs Fatma Pehlivan, Mrs Maria Agostina Pellegatta, Mrs Antigoni Pericleous-Papadopoulos, Mr Leo **Platvoet**, Mrs Majda Potrata, Mr Jeffrey Pullicino Orlando, Mr Kamal Qureshi, Mrs Mailis Reps, Mrs Marlene Rupprecht, Mrs Klára Sándor, Mr Steingrímur J. Sigfússon, Mr Giannicola Sinisi, Mrs Darinka Stantcheva, Mr Vasile Ioan Dănuț Ungureanu, Mrs Ruth-Gaby **Vermot-Mangold**, Mrs Betty Williams, Mrs Jenny Willott (alternate : Ms **McCafferty**), Mr Gert Winkelmeier, Ms Karin S. Woldseth, Mrs Gisela **Wurm**.

N.B.: The names of the members who took part in the meeting are printed in **bold**

Head of the Secretariat : Ms Kleinsorge

Secretaries to the Committee: Ms Affholder, Ms Devaux, Mr Diallo