

EUROPEAN COURT OF HUMAN RIGHTS
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The Hague, 28 September 2021

Third-party intervention

On the case of M. A. and 256 others against France and 4 other applications (Applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20)

Observation by SekswerkExpertise on behalf of the following coalition of 25 Dutch non-government organisations, social work & municipal health organisations and one municipality (in alphabetical order):

1. Association Women and Law 'Clara Wichmann' (VVR)
2. Belle/De Tussenvoorziening, Advice and Help for Sex Workers, Utrecht
3. Black Pride
4. Bureau Clara Wichmann
5. Dutch CEDAW-Network
6. Dutch Association of People with HIV
7. Municipality of Tilburg
8. Under My Red Umbrella (Onder Mijn Rode Paraplu)
9. P&G 292, Advice & Help for Sex Workers, Amsterdam
10. PROUD, Dutch Union for Sex Workers
11. Prostitution Social Work Hart van Brabant, Advice & Help for Sex Workers, Brabant
12. Prostitution Information Centre (PIC)
13. Queer.red presents
14. Re Imagining Sex Work
15. Red Insight
16. SekswerkExpertise, Dutch platform for the advancement of sex workers rights
17. SHOP, Assistance & Advice for sex workers and victims of trafficking, The Hague
18. Stichting Aids Fonds-Stop Aids Now-Soa Aids Nederland
19. Sex Workers Against Violence and Exploitation (SAVE)
20. SWARP
21. SeksWorks, Tilburg
22. Transgender Network Netherlands (TNN)
23. Trans United Europe (TUE)
24. WO=MEN, Dutch Gender Platform
25. Wild Thing

Signed on behalf of the members of the Coalition,

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Introduction

1. In our submission we seek to assist the Court by providing an overview of the laws and policies on sex work and human trafficking in the Netherlands, the principles on which they rest, and the impact on:

- the safety and health of sex workers
- the fight against human trafficking and exploitation
- violence against sex workers and other forms of abuse
- the position of sex workers within Dutch society

In addition, we will pay attention to the obligations under CEDAW, the impact of the ban on sex work during the COVID crisis on the prevalence of violence against sex workers and the outcomes of an international comparative study on the relation between sex work policy and the prevalence of trafficking.

Decriminalisation of the sex industry: lifting of the ban on brothels

2. On 1 October 2000 the Dutch Parliament lifted the general ban on brothels. This allowed for the regulation of sex businesses under administrative and labour law and for the treatment of sex work as labour. Ever since, the Dutch Penal Code no longer treats organising the voluntary prostitution of adult persons as a crime. This means that it is legal to operate a sex business, when it takes place on a consensual basis and involves persons above 18 years of age. At the same time the exploitation of involuntary prostitution and of minors became more strictly penalized, as were clients of minors. Lifting the ban on brothels was not followed by a new national prostitution law. Regulation of the sex industry was left to the municipalities. After 2000 most cities introduced a licensing system for sex businesses, while setting a maximum on the number of licenses. Sex businesses have to be registered at the Chamber of Commerce and have to pay taxes.

3. Sex workers themselves have never been criminalized in the Netherlands, nor have activities like soliciting or loitering. Sex workers from EU countries can legally work in the Netherlands under the same conditions as national sex workers. The Migrant Workers Act (WAV), however, prohibits the issuance of working permits for work in the sex industry to non-EU persons.

4. The abolition of the ban on brothels served three major aims: to control and regulate voluntary prostitution; to be able to combat trafficking and other 'unacceptable' forms of prostitution (minors, undocumented sex workers) more effectively; and to protect the position of sex workers. It was expected that by bringing sex work into the Dutch administrative and welfare regulatory framework and by separating punishable and non-punishable forms of (exploitation of) prostitution, it would be easier to crack down on the criminal aspects of the prostitution sector. The Dutch stance is thus intended to give effect to both a regulatory and decriminalizing approach to sex work.

5. In order to monitor the effects of the law reform, evaluations were carried out in 2001, 2006 and 2014. Each evaluation consisted of three separate sub-studies: on the social position of sex workers; on municipal policies; and on illegal and prohibited prostitution (trafficking, minors, undocumented workers). Each study is based on interviews with sex workers, brothel operators, police, representatives of municipalities, service providers and other key informants. The Scientific Research Centre of the Ministry of Justice (WODC) is responsible for overseeing the studies.¹ Arguably, assertions that lifting the ban on brothels in the Netherlands has been a failure because abuses still occur are based on unrealistic expectations about the elimination of trafficking and other abuses by a sole change of the criminal law and do not consider a backlog of more than a century of exclusion of sex work from social and labour law protections.

BACKGROUND OF LIFTING THE BAN ON BROTHELS

6. The discussion on the abolition of the ban on brothels originates in the second feminist wave which put violence against women on the political agenda. Dutch feminists started to question the traditional divisions between 'good' women who deserved protection and 'bad' ones who could be abused with impunity. By challenging the 'whore

¹ See for overall summaries in English: Daalder A.L. (2004). *Lifting the ban on brothels*. The Hague: WODC. https://repository.wodc.nl/bitstream/handle/20.500.12832/10/ca2004-7-full-text_tcm28-66889.pdf?sequence=2&isAllowed=y; Daalder, A.L. (2007). *Prostitution in the Netherlands since the lifting of the ban on brothels*. The Hague: WODC. https://repository.wodc.nl/bitstream/handle/20.500.12832/1196/ob249a-fulltext_tcm28-68261.pdf?sequence=2&isAllowed=y; Daalder, A.L., (2015). *Prostitution in the Netherlands in 2014*. The Hague: WODC. https://repository.wodc.nl/bitstream/handle/20.500.12832/152/cahier-2015-1a-full-text_tcm28-73289.pdf?sequence=2&isAllowed=y.

stigma' as an instrument to control female sexuality and mobility they made prostitutes' rights central to all women's rights.² Sex worker and feminist activists argued that the principle of self-determination should also apply to prostitution and that the right of women to have control over their own bodies should also give them the right to sell sexual services.

7. The 1984 Parliamentary Note on the Policy to Combat Violence against Women of the Ministry of Social Affairs³ stated that, based on the right to physical and psychological integrity and the right to self-determination, women should have the freedom to choose prostitution as a profession. Not prostitution as such, but violence and coercion needed to be combated. Moreover, the State should strive to improve the position of prostitutes and abolish the stigmatisation of prostitutes. In 1985 a sex workers organisation, the Red Thread, was founded by (former) sex workers.

8. At the same time women's groups and third world solidarity groups drew attention to the exploitation of migrant prostitutes who were working under slavery-like conditions and called for harsher penalties for trafficking in women. In the same Parliamentary Note on Violence against Women trafficking in women was recognised as a form of sexual violence. In 1987 the Foundation against Trafficking in Women (STV) was founded, financed by the Ministry of Social Affairs.

9. This debate was the cradle for the Dutch approach towards prostitution: a sharp division between voluntary and involuntary prostitution, between consent and coercion. If a person considers prostitution an option to earn a living, he or she should be able to work under proper conditions and should have the same rights and the same protection against violence and abuse as any worker has. If a person is forced into prostitution or faces violence, abuse or deceit in the course of their work, the law should protect them.⁴

10. The second feminist wave and the debate on prostitution coincided with the expansion of the sex industry and the increase of migrant sex workers in the 80s. As a result of these developments, local administrators increasingly felt the need for more instruments to control and regulate the growing sex sector. However, to be able to regulate the sector, the removal of the ban on brothels from the Criminal Code was imperative.

REGULATION OF THE SEX SECTOR

11. Regulation of the sex sector was implemented by means of a licensing system under administrative law. After 2000 most municipalities introduced a licensing system, requiring brothels to meet certain standards concerning city planning, health & safety and management (e.g. no forced drinking, no unsafe sex, no minors, no undocumented workers and no trafficking). Brothel operators are responsible for preventing trafficking in their establishment and have to inform the police if indicators exist that a sex worker is a victim of trafficking. When they violate the requirements, they can be fined, or the brothel can be shut down. Operators also have to comply with the Public Administration Probity Screening, which makes it possible to refuse or revoke their license if they cannot sufficiently prove that their finances are upfront and legal.

LOCAL FORMS OF COLLABORATIVE GOVERNANCE

12. In some cities experiments have started with Participatory Action Research. Often prostitution policies are made without using the knowledge, experience, and expertise of sex workers. Participative Action Research is a successful method to have sex workers, municipalities, police and service providers work together to investigate a shared complex situation, reflect on it and co-create the best fitting interventions to tackle the situation together and achieve sustainable impact. By coming up with solutions together, participants feel motivated and strengthened to persevere, resulting in concrete results in a short time, e.g. joint initiatives of sex workers and police to combat abuses against sex workers. It forms a basis for de-stigmatization, promotes mutual understanding, cooperation, and meaningful participation of sex workers in the development and implementation of policies, and contributes to a safe and healthy sector. Often it is the first time that people from within and outside the sex industry meet one

² Pheterson, G (2001). *Dutch Prostitution Law "Reform". Emancipation Strategy or Colonial Instrument of Migration Control*. Presentation panel discussion on sex work, feminism, trafficking in women and migration policies, De Balie, Amsterdam, 12 February 2001.

³ DCE (1984). *Nota bestrijding van seksueel geweld tegen vrouwen en meisjes*. Parliamentary Papers 18 542 no. 2. Ministry of Social Affairs and Employment.

⁴ Van Doorninck, M & Wijers M (2009). "They Get What They Deserve: Labour Rights for Sex Workers", in: Canter, D, Iannou M and Youngs, D (eds.), *Safer Sex in the City, The Experience and Management of Street Prostitution*. Farnham: Ashgate.

another.

Obligations under CEDAW

13. Since the legalization of sex work in the Netherlands the CEDAW Committee has devoted attention to the situation of Dutch sex workers in several of its Concluding Observations on the Netherlands. In none of these has the CEDAW Committee suggested that the Dutch policy of legalizing sex work violates Article 6 of the Convention which obliges States Parties to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'. Instead, the CEDAW Committee has repeatedly expressed concerns about efforts by the Dutch government to restrict sex workers' liberties and rights. In particular, it has criticized attempts by the Dutch government to subject sex workers to mandatory registration through the Bill on the Regulation of Prostitution. In 2010 the Committee stated that it was: *'Concerned that the new bill on prostitution in the Netherlands making the registration of prostitutes compulsory may lead the majority of prostitutes to work illegally. Among those prostitutes are migrant women from third countries who will not have the possibility of registering. The Committee is therefore concerned that the law, rather than improving the situation of prostitutes, might on the contrary undermine efforts to combat the sexual exploitation of women and increase the vulnerability of prostitutes who are not able or not willing to register by worsening their working conditions and exacerbating their social exclusion. The Committee expresses concern that this new legislation may also create serious risks for registered prostitutes' privacy and safety.'* (CEDAW/C/NLD/CO/5, para 30).

14. After the Dutch government introduced a new bill on the regulation of sex work, from which the mandatory registration of sex workers had been removed, the Committee's Concluding Observations of 2016 recommended the Dutch government to: *'Ensure that upon the adoption of the draft law on the Regulation of Prostitution and Combating Abuses in the Sex Industry, municipal authorities are closely monitored to ensure that they do not engage in illegal registration of women in prostitution.'* (CEDAW/C/NLD/CO/6, para 30c)

15. It should also be noted that the committee has not only expressed concerns about the negative impact of measures that restrict the rights of sex workers in its Concluding Observations on the Netherlands. In relation to other countries, such as China and Fiji,⁵ the Committee expressed concerns about the disproportionate negative impact on women sex workers of the continued criminalisation of sex work. The Committee, e.g., urged Hungary to adopt measures aimed at preventing discrimination against sex workers and to ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.⁶ At several occasions it recognised the duty of States to address violence against women sex workers, expressing its concern about the social stigma, violence and discrimination against women in prostitution, including at the hands of police.⁷ In the case of Kyrgyzstan, e.g. it urged the Government to 'take all appropriate measures to ensure that the Convention applies to all women without discrimination and to further take all necessary steps to protect them from all forms of discrimination and violence by public and private individuals'.⁸

Social position of sex workers: safety, health and autonomy

16. There are different ways to practice sex work in the Netherlands. Sex businesses such as brothels, clubs, windows, and escort agencies need a license to operate. The number of licenses and the conditions to obtain one are determined by the municipalities. Contrary to other labour sectors, it is next to impossible for sex workers to work legally and independently as self-employed workers as most municipalities prohibit independent home-based and escort sex work on a professional basis. Some cities allow home-based work on the condition that the sex worker does not advertise and works alone in her/his own house. Working in the streets is forbidden in almost all municipalities, but some cities still have a street zone.

17. In practice, almost the only way to work legally is to work for a licensed sex business, such as windows, brothels, private clubs or escort agencies. However, most cities have maximised the number of licenses. In addition, there has been a steady decrease of licensed working places over the last years, often in the name of combating trafficking.

⁵ China (2006) CEDAW/C/CHN/CO/6; Fiji (2010)CEDAW/ /C/FJI/CO/4; Canada (2017) CEDAW/C/CAN/CO/8-9.

⁶ Hungary (2013) CEDAW/C/HUN/CO/7-8, para 23e.

⁷ E.g. Kyrgyzstan (2008) CEDAW/C/CO/KGZ/3; Thailand (2017) CEDAW/C/THA/CO/6-7; Kenya (2017) CEDAW/C/KEN/CO/8; Mexico (2018) CEDAW/C/MEX/CO/9; Macedonia (2018); Cyprus (2018) CEDAW/C/CYP/CO/8; Nepal (2018) CEDAW/C/NPL/CO/6; Kazakhstan (2019) CEDAW/C/KAZ/CO/5; Moldova (2020) CEDAW/C/MDA/CO/6.

⁸ Kyrgyzstan 42 (2008) CEDAW/C/CO/KGZ/3.

This causes an increasing number of sex workers to work outside the licensed sector, either because of lack of (access to) licensed working places, or because they prefer to work independently without interference of an operator.

18. Escort and indoor sex workers in brothels and private clubs mostly work according to the government-imposed so-called opting-in system, a fiscal arrangement in which the operator withholds income tax and VAT on the earnings of sex workers, on top of a percentage the operator charges as commission. To safeguard the autonomy of the sex worker, the opting-in system comes with a packet of conditions laying down fundamental rights, such as the right of the sex worker to refuse clients and/or certain sexual services and to decide about her/his own working hours. The operator cannot prescribe sex workers what to wear, nor oblige them to use alcohol or drugs, or impose fines or prohibit her/him working for others. In window and street prostitution sex workers are self-employed, registered at the Chamber of Commerce and paying taxes.

19. Only EU citizens can work in the Netherlands legally, since sex work is the only labour sector for which the law prohibits the issuing of a working permit. Sex workers who don't have an EU passport or a residence permit which allows them to work, are regarded as illegal workers and have no access to the licensed sex sector, thus making them more dependent on intermediaries. This negatively impacts their health, safety, and labour rights, as well as their willingness to report to the police in case of violence or abuse. Increased reliance on third parties, especially when working informally, increases the risk of hazardous working conditions. However, this does not mean that they are working by force or are being trafficked. Migrants move to the Netherlands and other countries for many reasons: the income gap between the country of origin and the country of destination, the lack of socio-economic opportunities in the country of origin, the institutional persecution of LGBT+ persons and the high levels of homophobia and transphobia. For women, escaping gender violence and discrimination in their home country can also play a role.⁹

ACCESS TO HEALTH & SOCIAL CARE

20. Most big cities offer health & support services that are specifically geared towards sex workers and where the medical and social staff is specialized in the needs of sex workers. They are mostly financed by the municipality. Services are accessible, anonymous, and free. Sex workers, regardless their gender, workplace, or immigration status, can turn to them for free STI-testing and treatment, PrEP and PEP, contraception, hepatitis B vaccinations and sexual education, but also for financial problems, questions about starting and stopping sex work, psychosocial support, and stress-related complaints. They offer information & advice to sex workers on how to work safely and healthy, as well as exit programs for those who want to switch careers, and specialised assistance to victims of trafficking. Some also offer assertiveness classes, Dutch and English lessons, or various group activities. Some run 'sounding board groups': meetings where the municipality enters into dialogue with sex workers and municipal policies can be tested against practice.

21. Most centres work with multi-disciplinary teams, consisting of social workers, nurses, educators, and expert-sex workers who speak various languages to enable conversations with all sex workers, regardless of their cultural background. They work closely with various aid agencies with the common goal of promoting the self-reliance and emancipation of sex workers by improving their physical health condition; strengthening their psychosocial health; improving their social and labour rights; and identifying and helping to tackle forms of violence and sexual exploitation. As expressed by P&G292, the Amsterdam centre: *"Autonomy is central to us. Every person has the right to freely choose and exercise their profession. There should never be any form of exploitation or oppression."*

22. They may reach sex workers through physical fieldwork, by visiting clubs, windows, etc.; internet fieldwork, e.g. targeting sex workers directly by sending emails or by calls to sex workers advertising on sex work websites; and through the chat function on their website. There are also websites for sex workers in Dutch and English with information on sex work and how to work safely, like www.prostitutie.nl and <https://prostitutiegoedgeregeld.nl/>.

EXIT PROGRAMS

23. The government provides about € 3 million for exit programs, annually. Some sex workers move on to other work completely independently. Others can use help in doing so. Sex workers who want support can turn to various organisations for professional help. These are often organisations that specialise in supporting sex workers in all kinds of areas and that offer so-called Prostitution Social Work. Many of them work with other parties who offer

⁹ James J & M. Hamburg (2020). *The Situation of Migrant sex workers in the Netherlands*. Save, TUE, ICRSE & Proud. <https://stichtingsexpower.nl/the-situation-of-migrant-sex-workers-in-the-netherlands/>.

life-oriented support, such as debt counselling, addiction care and reintegration support. Exit programs can include arranging access to social benefits and housing, debt relief, training & education, Dutch or English classes, but also, e.g., dealing with the stigma on sex work.

24. Exit programs are open to all sex workers, including female, male and trans EU and non-EU sex workers, and are tailored to their individual needs, wishes and competences. Examples of competences acquired through sex work are people skills, customer friendliness, communication and negotiation skills, creativity, the ability to set limits, stress resistance, independence, perseverance and entrepreneurship. These are all competences that can be of great value in many other professions and that form a starting point for moving on to other work. There is a national network of projects with diverse programs. Annually about 650, mostly female, sex workers make use of these programs, of whom about 300 sex workers quit sex work and start another career.

RELATION BETWEEN WORKPLACE & SAFETY

25. A recent study carried out by SoaAids and Proud, the sex workers union, showed that sex workers felt safer working in the windows, in clubs and private houses or in street walking areas, because of the presence of other people, the possibility to press an alarm button and the opportunity to screen clients and to reject them. Sex workers who operate outside licensed working places, like hotel rooms, massage parlours or at home, face an increased risk of violence. They are also less likely to report violence to the police for fear of negative repercussions. Violent clients and thugs know this and take advantage of it.¹⁰ In a study aimed at migrant sex workers in the Netherlands, respondents confirmed that they felt safer working in licensed places such as windows, clubs or private houses, due to the presence of alarm buttons and cameras, but also having colleagues around increased their sense of safety.¹¹

26. However, accessing licensed workplaces is impossible for undocumented migrants and is difficult for LGBT+ sex workers. The fact that there are almost no licensed places to work for cis-men and trans sex workers increases their risk to face violence while working (on top of the risk of violence due to homophobia or transphobia) and decreases their willingness to report violence. The lack of access to legal ways to perform sex work exposes non-EU migrant workers to greater risk of violence and exploitation. In general, sex workers working outside the licensed sector distrust the police due to the fear of receiving a fine and having to stop working or, in case of undocumented migrant workers, fear of deportation. Decriminalization and de-stigmatization of sex work would make it easier for sex workers to reach out in case of violence and unfair labour conditions.

Policies on combating human trafficking & exploitation and assisting victims

27. Dutch anti-trafficking policies combine a broad definition of trafficking in the Criminal Code (CC), specialised police, prosecutors and judges; a special residence scheme for victims; protection & assistance of victims through a national network of specialised support organisations and shelters; training of police, immigration officials and other professionals who might come in contact with victims; awareness raising campaigns; central registration of reports about possible victims; an independent National Rapporteur on Trafficking in Human Beings; and close cooperation between all 'partners in the chain', the so-called 'chain approach'.

CRIMINAL LAW

28. The current Article 273f CC on trafficking in human beings criminalises any use of coercion, (threat of) violence, deceit or abuse of authority or a vulnerable position regarding conditions of recruitment and/or conditions of work, as well as profiting from the prostitution of another person under the aforementioned conditions. It is not relevant whether the victim has worked in prostitution before, knew s/he would do so or wants to continue to do so under free conditions. The core of the crime is deceit, coercion, and exploitation; not prostitution. Offences that might be qualified as pimping in other countries fall under trafficking when any form of deceit or coercion is used. This includes traditional forms of pimping like so-called 'loverboys', young men who lure girls and young women into prostitution by pretending to be in love with them. This makes it difficult to compare Dutch trafficking figures to countries that use a more narrow definition of trafficking and/or prosecute cases as pimping, which in the Netherlands would be prosecuted as trafficking.

The recruitment and/or exploitation of minors is punishable irrespective of coercion or consent, as is the recruitment

¹⁰ Kloek M. & M. Dijkstra (2018). *Sex work, stigma and violence in the Netherlands*. SoaAids Nederland/Aidsfonds, Proud, Dutch Union for sex workers. <https://aidsfonds.org/resource/sex-work-stigma-and-violence-in-the-netherlands>.

¹¹ James J. & M. Hamburg (20210). *The situation of migrant sex workers in the Netherlands*. <https://stichtingsexpower.nl/the-situation-of-migrant-sex-workers-in-the-netherlands/>.

of sex workers across borders. However, following a 2016 ruling of the Supreme Court (Hoge Raad, 17 May 2016, no. 14/05782, ECLI:NL:HR:2016:857) the latter is only punishable when there is an element of exploitation or abuse involved. Since 2000 the article has been amended several times, among others to bring it in accordance with the UN Trafficking Protocol.

29. As of January 2022 clients of sex workers who know or have serious reason to suspect that the sex worker is a victim of trafficking will be criminalised.¹² The law was adopted despite doubts raised, including by the Council of State, as to its enforceability, feasibility and practicality as even for trained professionals it is extremely difficult to identify trafficking victims. Additionally, concerns exist about possible negative impacts, as an increasing body of research shows that any form of criminalisation, including partial client criminalisation, rather than protecting sex workers puts them at greater risk of violence and abuse.¹³ Similarly, fears exist that clients might be less willing to report possible cases of trafficking or help victims escape when it is unclear whether they risk being prosecuted themselves when they do so. Research from the Amsterdam Municipal Health Service, e.g., showed that almost 70% of clients feel responsible for abuses in the sex sector. About 40% is willing to report abuses. Clients mention guarantees of anonymity and safety; a low threshold for reporting; and transparency on how reports are dealt with as factors that encourage reporting.¹⁴

30. During 2015–2019 about 180 trafficking cases (suspects) per year were registered at the Public Prosecution Service (PPS). About 80% of these cases concerned sexual exploitation; in about one fifth of the cases the victim was a minor. Approximately 74% of the registered cases of sexual exploitation were brought to court. In the period 2015–2019 in total 406 cases of trafficking for sexual exploitation led to a conviction. In-land trafficking (as opposed to cross-border trafficking) for sexual exploitation is the most common form of trafficking.¹⁵

31. Since 2000, the Netherlands has a National Rapporteur on Trafficking in Human Beings and Violence against Children. The National Rapporteur investigates the nature and extent of trafficking, monitors developments, and advises national and local governments, other administrative bodies, international organisations and professionals who provide assistance and support, on how to prevent and combat human trafficking. The Rapporteur is independent and directly accountable to the Parliament.¹⁶

¹² Adopted May 2021, Kamerstuk 34 091, Handelingen I 2020/21, 32, item 7.

¹³ E.g. Amnesty International (2016). *The human cost of “crushing” the market: decriminalization of sex work in Norway*. <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>; Argento, E. et al. (2020). The impact of end-demand legislation on sex workers’ access to health and sex worker-led services: A community-based prospective cohort study in Canada. *PLoS ONE*, 15(4). <https://doi.org/10.1371/journal.pone.0225783>; Decker, M. R. et al. (2015). Human rights violations against sex workers: Burden and effect on HIV. *The Lancet*, 385(9963), 186–199. [https://doi.org/10.1016/S0140-6736\(14\)60800-X](https://doi.org/10.1016/S0140-6736(14)60800-X); Ellison, G., Ní Dhónaill, C., & Early, E. (2019). A Review of the Criminalisation of the Payment for Sexual Services in Northern Ireland. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3456633>; Fuckförbundet (2019). *Twenty years of failing sex workers. A community report on the impact of the 1999 Swedish Sex Purchase Act*; Levy, J., & Jakobsson, P. (2014). Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers. *Criminology and Criminal Justice*. <https://doi.org/10.1177/1748895814528926>; Oliveira, A., Lemos, A., Mota, M., & Pinto, R. (2020). *Less equal than others: the laws affecting sex work, and advocacy in the European Union*. <https://repositorio-aberto.up.pt/bitstream/10216/133560/2/461540.pdf>; Platt, L., Grenfell, P. et al. (2018). Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLOS Medicine*. <https://doi.org/10.1371/journal.pmed.1002680>; Sweetman, B. (2015). Is the criminalisation of the purchase of sex (the Swedish model) consistent with the European Convention on Human Rights? In *LAWPUBL 751: Comparative Human Rights*; UglyMugs Ireland (2019). *Crime has almost doubled in the two years since the new law came in*. <https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>; Vuolajärvi, N. (2018). Governing in the Name of Caring. The Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex. *Sexuality Research and Social Policy*, 1–15. <https://doi.org/10.1007/s13178-018-0338-9>; Vuolajärvi, N. (2021). *Preventing Violence Against Women or Violence Work? The Swedish Model of Prostitution*. <https://www.nsfk.org/publications-and-activities/nsfk-research-seminars/nsfk-researchseminar-2021-abstracts/niina-vuolajarvi-nsfk-researchseminar-2021/>.

¹⁴ GGD Amsterdam (2014). *In gesprek met de klant’; een onderzoek naar klanten van prostituees en hun rol bij de aanpak van misstanden*. E&G reeks 2014/3. https://hetccv.nl/fileadmin/Bestanden/Onderwerpen/Mensenhandel/Documenten/In_gesprek_met_de_klant/in_gesprek_met_de_klant.pdf.

¹⁵ National Rapporteur Trafficking in Human Beings and Violence against Children (2021), *Human Trafficking Offenders Monitoring Report 2015-2019*. The Hague. <https://www.dutchrapporteur.nl/publications/reports/2021/01/21/human-trafficking-offenders-monitoring-report-2015-2019-summary>.

¹⁶ See for English summaries of the reports of the National Rapporteur: <https://www.dutchrapporteur.nl/publications>.

32. Analysis by the National Rapporteur on Trafficking in Human Beings of the coercive means applied in 111 cases of sexual exploitation in 2009-2010 showed that only 22% of the criminal charges (and 16% of the proven cases) related to deception regarding the nature of the work.¹⁷ This means that, contrary to the stereotype of the ‘innocent’ victim being forced into prostitution against her will, the majority of cases do not concern coercion into prostitution, but coercion and exploitation within prostitution. That is, people who consciously choose to work in prostitution, but who subsequently end up in a situation of exploitation, where they are forced to work under unfree and abusive conditions and/or are forced to hand over their earnings. In addition, it should be noted that the idea of victims needing to be ‘innocent’ is a form of victim blaming, as if sex workers have a lesser right to protection from trafficking and other abuses than other people. Such thinking is closely linked to the idea that the right of women to be protected against violence is determined by their sexual purity or ‘honour’.¹⁸

IDENTIFICATION, ASSISTANCE & PROTECTION OF VICTIMS

33. CoMensha is the national coordination and expertise centre on human trafficking and is subsidised by the Ministries of Justice & Security, Social Affairs & Employment, and Health, Welfare & Sport. They coordinate the primary reception and care of trafficking victims. In 2019, they received 192 requests for primary reception of victims and/or follow-up shelter. When a victim is placed in one of the shelters, coordination of the assistance is transferred to one of the 10 regional coordinators. Coordination of assistance to minor victims is done by the youth care service. There are special shelters for non-EU trafficking victims who make use of the reflection period. There are also specialised shelters and support services for young, mostly Dutch and female, victims of so-called “loverboys”. Unaccompanied foreign minors who are trafficked or are at risk of trafficking can be accommodated in protected reception centres. A national referral mechanism has been in place since 2013.

34. Professionals who might encounter (potential) victims are regularly trained to be able to recognise indicators of trafficking and to know how to act in such cases. This includes, for example, police, labour inspectors, youth care professionals, health professionals, professionals working with (minor) asylum seekers, etc.

35. Measures are in place to protect victims in criminal investigations and to avoid secondary victimisation. Trafficking cases are handled by specialised judges. Victims are entitled to free legal aid. They can claim material and immaterial damages through the criminal proceedings, including compensation for the money they earned and were forced to hand over to their traffickers, and the Criminal Injuries Compensation Fund. If the offender has not paid the awarded compensation 8 months after the final verdict, the victim can seek an advance payment from the State.

36. At the slightest indication of trafficking, possible victims are entitled to a reflection period of 3 months, in which they can recover and decide whether or not they want to press charges. If they decide to press charges, non-EU victims are entitled to a temporary residence permit during criminal proceedings. When the traffickers are convicted or when it is not safe for the victim to return to their home country, they may qualify for a long-term residence permit on humanitarian grounds. During the reflection time as well as with the temporary or long-term residence permit, victims are entitled to social benefits, health insurance, shelter and/or housing, health & social care. When granted a staying permit they have also access to the labour market.

37. Reports of possible victims of trafficking are centrally registered by CoMensha in order to gain insight into the scale and nature of trafficking and the effects of anti-trafficking policies.¹⁹ Between 2015-2019, Comensha received about 5.000 signals about possible victims, of which about 62% (3.148) concerned exploitation in the sex industry. Most reports come from the police, others come from professionals in other sectors, like service providers, health professionals, or lawyers. Not all reported possible victims have become victims of trafficking in the Netherlands. Especially over the last years there is an increase of African (possible) victims who have been exploited in another

¹⁷ National Rapporteur on Trafficking in Human Beings and Violence against Children (2012). *Jurisprudentie mensenhandelzaken 2009-2010. Een analyse*, p. 57. <https://www.nationaalrapporteur.nl/Publicaties/Jurisprudentie-Mensenhandel-2009-2012/index.aspx>.

¹⁸ Debates on the ‘innocence’ of victims are always linked to the sexual behaviour and ‘morality’ of women, though a substantial part of sex workers and victims of trafficking are men and trans persons. See also Wijers, M (2015). ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, *Anti-Trafficking Review*, issue 4, 2015, pp. 56–79, www.antitraffickingreview.org.

¹⁹ Source para 37-39: National Rapporteur on Trafficking in Human Beings and Violence against Children (2020), *Human Trafficking Victims Monitoring Report 2015-2019*. An English summary is available at: <https://www.dutchrapporteur.nl/publications/reports/2020/12/14/human-trafficking-victims-monitoring-report-2015-2019>.

country, e.g. Italy, but report the case in the Netherlands in the context of a claim for asylum.²⁰

38. The number of reported possible victims between 2015 and 2019 who are exploited in the less visible sex sectors is much higher than the number of reports about possible victims exploited in the licensed sector. Moreover, the share of sexual exploitation in the visible, regulated sex sectors appears to be decreasing yearly.

39. On average 32% of the reported possible victims across all forms of trafficking is male. However, the proportion of male possible victims of cross-border sexual exploitation has increased significantly: from 9% in 2015 to 42% in 2019. The top 5 countries of origin of possible victims are the Netherlands (varying from 32% in 2015 to 18% in 2019), Poland, Romania, Uganda, and Nigeria. The average age of possible victims of sexual exploitation is 23 (inland) to 28 years (cross-border). About 31% of the Dutch possible victims is minor, against about 4% of the victims of cross-border trafficking. A group that deserves special attention are unaccompanied minor asylum seekers who disappear from protected reception centres.

40. While the number of reported (possible) victims at CoMensha has increased since 2000, it is difficult to interpret these figures, as the increase in reports can be both a sign of successful policies (better detection, identification, and assistance of victims) and failing policies (more victims) or they could simply indicate that the police report indications of trafficking to CoMensha more consistently, as they are obliged to do since 2012. Moreover, the figures concern 'signs of possible victims', which can vary from 'the slightest indication' to actual cases. On the basis of these figures, it is therefore impossible to establish the actual number of victims.

ESTIMATES OF THE NUMBER OF VICTIMS OF TRAFFICKING AND/OR EXPLOITATION

41. It is not possible to make a reliable estimate of the actual number of victims of trafficking and/or exploitation in the sex sector. Estimates are the subject of public and political battle and vary from 10-90%, depending on one's view on sex work. Some estimates also include 'force' by economic circumstances, thus going far beyond the definition of trafficking. However, the mere fact that someone has to work for a living does not qualify as trafficking, as is sometimes suggested by the media or politicians in order to (falsely) inflate the figures about the number of persons trafficked. Another factor that may inflate estimates is the moral judgement that may lie beneath it. In particular the assumption that women can't work in prostitution voluntarily and/or lack the agency to make the decision to do so. Within that view, all prostitution is forced, irrespective of consent or coercion, and regardless actual cases of violence or coercion. Moreover, most figures lack sound empirical evidence.

42. Research, however, consistently reveals low prevalence figures, varying from 4% to 10%. The 2006 evaluation of the lifting of the ban on brothels has found some indications of involuntary prostitution or prostitution by minors, but to a very limited extent. Of the 354 interviewed sex workers 8% were forced into sex work through trafficking or by a boyfriend or lover boy. Over 60% had started sex work before 25; 5% had started before the age of 18. Most of the sex workers did not start sex work because of financial problems or to earn something on the side; often they saw it as a way of earning more than they could in other industries.

Similarly, the 2014 evaluation found no indications of the large-scale existence of trafficking or prostitution of minors. Of the 365 interviewed sex workers 4% indicated that they had experienced some form of coercion. Two thirds of the interviewed sex workers thought that the majority of their colleagues worked on a voluntary basis. The average age they had started working was 28; 4% stated they had started working before the age of 18 (but not necessarily in the Netherlands, as some of the respondents came from other countries).²¹ These figures are in line with the findings of the research of Wagenaar et al. in 2013, in which about 10% of the interviewed sex workers stated that they had ever been forced to engage in prostitution or to work under unacceptable working conditions. Moreover, most of them had managed to break free of their exploiters by themselves, without interference of police. The latter indicates a remarkable level of self-determination, which at least puts the image of the sex worker as victim into perspective.²²

²⁰ If non-EU victims with a Dublin status are granted a temporary residence permit as possible victims of trafficking, their Dublin status is cancelled, which means that they are not sent back to the country where they originally entered the EU.

²¹ Bleeker, Y. et al., (2014). *Sekswerkers aan het woord. De sociale positie van sekswerkers in Nederland in 2014*. Amsterdam: Regioplan. <https://www.wodc.nl/onderzoeksdatabase/2389a-nulmeting-wrp-sociale-positie-prostituties-inlegale-prostitutie.aspx>; Daalder, A.L., (2015). *Prostitutie in Nederland anno 2014*. Cahier 2015-1. WODC.

²² Wagenaar H., Altink, S. and Amesberger, H. (2013). *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*. The Hague: Platform 31. http://lastradainternational.org/Isidocs/Prostitution_policy_report.pdf

43. Studies also show that for many migrant sex workers, migrating for sex work is a conscious and deliberate decision. Usually, they do not recognize themselves in the definition of victim of sex trafficking. Rather, they see themselves as migrants who fled their country of origin for lack of economic perspective and are now working in the sex industry in the Netherlands.²³

PREVENTION & MEASURES TO DISCOURAGE DEMAND

44. Measures to discourage demand predominantly consist of awareness-raising campaigns aimed at, in particular, (male) clients to encourage them to report possible cases of trafficking. An example is the Crime Stoppers campaign on trafficking and forced prostitution encouraging clients to anonymously report suspicions of trafficking and other abuses.²⁴ Other preventive measures include awareness-raising campaigns about the phenomenon of so-called 'loverboys' in schools and among parents, trainings to prevent youth prostitution for social workers, police officers, local and provincial governments and schools, and websites where young people can chat with social workers on topics such as loverboys, online sexual abuse or relationships.

Stigma and health & safety of sex workers: Sex Work Alliance De-stigmatisation (SWAD)

45. Sex work is a legal profession in the Netherlands. Yet, the stigma attached to sex work is high. Sex workers are often seen as victims, instead of as people with a legal profession. This is because sex work and human trafficking are often conflated, while they are two different things. Politicians and policy makers tend to only pay attention to the link between sex work and human trafficking. This leads to a one-sided approach and to the stigmatisation of sex workers who consciously choose this work. The effects of stigma are manifold. It has a negative impact on the social position of sex workers and puts them at greater risk of violence and exploitation. Stigma also leads to reduced access to health care and justice; exclusion from services such as mortgages or bank accounts; negative treatment by family, friends or third parties; psychological complaints due to a negative self-image.

46. The link between violence against sex workers and STIs and HIV is strong.²⁵ Violence hampers sex workers' rights and threatens their health. Besides different kinds of injuries that violence can cause, violence also affects mental health and well-being. Moreover, violence increases vulnerability to STIs and HIV. Internal injuries, for example, can increase the risk of infection. Violence and threats can also be used as a means of pressure for unpaid, unwanted or risky and unsafe sexual services.

47. SWAD is an alliance of 22 initiatives and organisations working together to implement a five-year programme to reduce the stigma around sex work and improve the social position of sex workers so that they are also less vulnerable to stigma and related violence.²⁶ The program is funded by i.a. the Ministry of Justice & Security. The idea underlying is that by connecting the many initiatives in the Netherlands that aim to improve the social position of sex workers, and joining forces, sex work can be put on the map in a positive way. De-stigmatisation of sex work will ensure meaningful participation and inclusivity of (former) sex workers in policy and practice, both by institutions and by their environment and themselves (self-stigma).

Impact of COVID on the increase of violence against sex workers

48. The COVID crisis made clear what happens when sex workers from one day to the other are forced from a legal working situation into illegality, i.e. from a decriminalised into a criminalised situation. During the lockdowns, sex workers were not allowed to work but at the same time most of them did not qualify for state support. As a result, many of them ended up in precarious situations which prompted some to continue working despite the health risks to themselves and others. Confronted with violence or theft, sex workers did not dare to go to the police for fear of

²³ E.g. Wagenaar, H., Amesberger, H., & Altink, S. (2017). *Designing Prostitution Policy. Intention and Reality in Regulating the Sex Trade*. Bristol/Chicago: Policy Press; James J. & M. Hamburg (2020). *The Situation of Migrant sex workers in the Netherlands*, SAVE, TUE, ICRSE, Proud. <https://stichtingsexpower.nl/the-situation-of-migrant-sex-workers-in-the-netherlands/>.

²⁴ See: <https://www.meldmisdaadanoniem.nl/campagnes/gedwongen-prostitutie-3/>.

²⁵ Shannon et al., e.g., found that globally between 33-46% of new HIV infections among female sex workers could be averted over the following decade if sex work were to be decriminalised. Shannon, K., et al. (2015). 'Global epidemiology of HIV among female sex workers: influence of structural determinants'. *The Lancet*, vol 385, p. 55. Available from [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(14\)60931-4.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60931-4.pdf). See also: Decker, M. R. et al (2015). 'Human rights violations against sex workers: Burden and effect on HIV'. *The Lancet*, 385 (9963), p. 186-199. [https://doi.org/10.1016/S0140-6736\(14\)60800-X](https://doi.org/10.1016/S0140-6736(14)60800-X).

²⁶ <https://www.prostitutie.nl/nl/de-sekswerk-alliantie-destigmatisering-swad/>

finances as they worked illegally. Violent clients and thugs abused the vulnerable position of sex workers. The result was a marked rise in violence and aggression against sex workers. In total a minimum 25 cases of violence, varying from theft to severe abuse, were reported to service providers.²⁷

Dutch international policies

49. For many years, The Netherlands has been a supporter of the human rights, well-being and protection of sex workers through their development aid funding practices and public appearances in international spaces. In the 2018 policy document “Investing in Global Prospects” of the Ministry of Foreign Affairs sex workers are, e.g., explicitly mentioned in the section “Investing in rights and services” of the chapter on “Education, work and freedom of choice for women and girls”, where they are recognized as stigmatized people whose rights should be supported.²⁸

50. The Dutch government has financially supported grant making practices intended to directly benefit self-led organisations of sex workers that work towards strengthening their human rights, including their right to life and physical integrity and the right to privacy, including freedom of self-determination. These funds have globally supported human rights trainings and legal support for sex workers, direct services (HIV and health services, access to condoms, social services such as support to find shelter, protection services such as in cases of abuse or violence, etc.), skills building and mobilization and advocacy efforts. This has improved the lives and integrity of sex workers and protected them from violence including murder by police, clients, family, criminals, or the general public.

51. By speaking out in international spaces about the human rights of sex workers, favouring a decriminalisation approach, and providing opportunities for sex workers to speak out for themselves, the Dutch government has explicitly recognized sex workers as people before the law and as rights-holders. In many other countries where sex work (the work itself, sex workers and/or their clients) is criminalized it tends to be very difficult and dangerous for sex workers to organize, speak up and access justice when their rights are violated.²⁹

Relation between prostitution policies and the prevalence of human trafficking

52. In response to a motion made by Dutch members of parliament, a literature study was conducted comparing prostitution policies between several countries in North Western Europe and the effects of those policies on the prevalence of human trafficking.³⁰ The selected studies were conducted in The Netherlands, Belgium, Great Britain, Germany, Sweden, Norway, Finland and Denmark. The main conclusion was that the coded studies were not valid and reliable enough to provide dependable estimates of the effects of prostitution policies on the prevalence of human trafficking. In addition, for those countries that use some form of regulation the researchers did not find convincing evidence for the scale theory (i.e. the prevalence of human trafficking will increase), nor for the substitution theory (the prevalence of human trafficking will decline as a result of more lenient policies). In countries where prostitution is illegal/criminalised they also did not find convincing evidence that this leads to a decline in demand for prostitution services, nor to a decline in the prevalence of human trafficking as a result of this criminalisation. The quality of data of the coded studies was simply not strong enough to make sound estimations of the prevalence of human trafficking, let alone to elaborate on the causal relation between prostitution policies and human trafficking.

²⁷ SoaAids Nederland (2021). *Toenemend geweld tegen sekswerkers in Coronatijd*. See also De Wildt, R. et al (2020). *De impact van de coronacrisis op sekswerk*. Utrecht: Verwey-Jonker Instituut. <https://www.verwey-jonker.nl/wp-content/uploads/2020/11/coronacrisis-sekswerk.pdf>.

²⁸ *Investing in Global Prospects*. Available at: <https://www.government.nl/binaries/government/documents/policy-notes/2018/05/18/investing-in-global-prospects/Investing+in+Global+Prospects.pdf>.

²⁹ See e.g. Frontline Defenders (2021). *First Global Report on Sex Worker Rights Defenders at Risk*. <https://www.frontlinedefenders.org/en/statement-report/first-global-report-sex-worker-rights-defenders-risk>; and Frontline defenders (2020). *LGBTIQ+ and Sex Worker Rights Defenders At Risk During COVID-19*, <https://www.frontlinedefenders.org/en/statement-report/lgbtiq-and-sex-worker-rights-defenders-risk-during-covid-19>.

³⁰ G. Lensvelt-Mulders, G. et al (2016). *Aan de grenzen van het meetbare. De methodologische kwaliteit van internationale studies naar de omvang van aan prostitutie gerelateerde mensenhandel met nadruk op Noordwest Europa (On the boundaries of what we can measure: The methodological quality of international studies on the prevalence of prostitution related human trafficking with emphasize on North West Europe)*. Universiteit voor Humanistiek (UvH). <https://repository.wodc.nl/handle/20.500.12832/2235>. An English summary is available at: https://repository.wodc.nl/bitstream/handle/20.500.12832/2235/2667-summary_tcm28-74315.pdf?sequence=3&isAllowed=y.