

**Prostitution in the Netherlands  
since the lifting of the brothel ban**



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Onderzoek en beleid

# **Prostitution in the Netherlands since the lifting of the brothel ban**

**A.L. Daalder**

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## Foreword

Prostitution is an age-old and world-wide phenomenon. Yet, the reality of its long existence and its occurrence almost anywhere in the world has not made prostitution a generally accepted phenomenon internationally. Quite the reverse, in most countries involvement in prostitution has been penalised in some form or other. The prostitute herself is punishable, for instance, or the sex establishment's owner, or the client. A combination of the penalisations of these parties frequently occurs as well.

In the Netherlands, since the general ban on brothels was lifted, we have the unique situation that on certain conditions the exploitation of prostitution by prostitutes of age is legal, provided that they do their work on a voluntary basis and possess the legal residence permit required for employment. In the eyes of the law, prostitution is interpreted as a (special) form of labour. This does not mean, however, that prostitution has become generally accepted by Dutch society and has moved out of the spotlight of public interest. Almost daily, the media give some kind of attention to prostitution, bringing up several of its aspects. Examples of issues recently brought up by the media, sometimes greatly enlarged, are: the arrest of a gang of human traffickers who have forced at least ninety women to work as prostitutes; the possible consequences of the impending shutdown of a large number of windows in Amsterdam as a result of the municipality's intention to revoke the license of a number of proprietors on the basis of the BIBOB Act; and the plan to put up a statue for prostitutes. Prostitution is a rewarding subject in various talk shows. In these shows, opinions frequently play a more important role than facts.

Internationally, there is much interest in the legalisation in the Netherlands and in the developments within prostitution which have been following it. Quite often, the observers lose sight of the fact that, although prostitution is legalised on certain conditions, at the same time the penalisation of particular forms of prostitution has been made more severe. This applies to various forms of trafficking in human beings, such as the exploitation of underage prostitutes and of prostitutes who are working under some form of coercion. In this evaluation of the lifting of the brothel ban, we have focused our attention on both the legalised and the punishable forms of the exploitation of prostitution. With the aid of the evaluation's results, we will be able to debate about prostitution on the basis of facts, instead of only on the basis of opinions. Because of the complexity and the extensiveness of the terrain, three sub-studies have been conducted by, respectively, the DSP Group, Regioplan Beleidsonderzoek, and Intraval. You have before you the overall report of the WODC, in which the most important results of the sub-studies are summarised and combined with relevant data from other research.

Our gratitude goes to the researchers who have carried out the sub-studies, and to all the respondents who were willing to talk to them. In addition, I would like to express our thanks to the members of the reading committee for their reactions, as well as to the researchers Zuidema, Aerts, and Boonstra of the Hugo Sinzheimer Institute of the University of Amsterdam, for allowing us an early look at their publication on labour law and prostitution.

Prof. Dr. Frans Leeuw  
Director, WODC

# Table of contents

<b>Summary</b>	<b>9</b>
<b>1 Introduction</b>	<b>17</b>
1.1 The reason for this research	17
1.2 Objectives	19
1.3 A definition of concepts	20
1.4 Research methods	22
1.4.1 The research among municipalities	24
1.4.2 The research among prostitutes and business owners in the licensed sector	25
1.4.3 The research on non-legal prostitution	26
1.5 Reading guidelines	27
<b>2 The prostitution sector</b>	<b>29</b>
2.1 Supply	29
2.2 Demand	33
2.3 Developments	35
<b>3 Legislation and policy</b>	<b>39</b>
3.1 Legislation	39
3.2 Suppositions behind the amendment of the law	41
3.3 Policy	42
3.4 The international context	44
<b>4 Controlling and regulating the exploitation of prostitution</b>	<b>47</b>
4.1 Municipal policy	47
4.2 The issuing of licences	48
4.3 Surveillance, enforcement and compliance	50
4.3.1 Factors benefiting spontaneous compliance	51
4.3.2 Factors benefiting enforcement	54
4.4 Developments	57
<b>5 Protecting the prostitutes' position</b>	<b>61</b>
5.1 Labour relations	61
5.1.1 Jurisprudence	62
5.1.2 The actual practice	64
5.2 Working conditions	68
5.3 Mobility	68
5.4 The possibilities of getting out	69
5.5 Developments	71

**8** *Prostitution in the Netherlands since the lifting of the brothel ban*

<b>6</b>	<b>Punishable forms of exploiting prostitution</b>	<b>73</b>
6.1	Non-licensed exploitation	73
6.2	Illegal labour	74
6.3	Minority	76
6.4	Exploitation of people	78
6.5	Developments	80
<b>7</b>	<b>Conclusions</b>	<b>83</b>
	<b>Literature</b>	<b>91</b>
	<b>Appendix 1 The reading committee</b>	<b>95</b>
	<b>Appendix 2 Article 273f of the Dutch criminal code</b>	<b>97</b>



# Summary

## Introduction and research questions

In the Netherlands, the general ban on brothels was lifted on 1 October 2000.

The essence of the amendment of the law is that, under certain conditions, those forms of prostitution in which prostitutes of age are voluntarily engaged are no longer prohibited. At the same time, the legislator intends to crack down forcefully on unacceptable forms of prostitution (in particular various forms of trafficking in human beings). A first evaluation of the amendment of the law was carried out in 2001 and 2002. The Minister of Justice promised Dutch Parliament that a second evaluation study would be carried out a few years after the amendment of the law had become effective. The Research and Documentation Centre (WODC) was asked to direct this evaluation. Three sub-studies were commissioned by and carried out under the supervision of the Research and Documentation Centre. In this report, the results of the sub-studies will be summarised and combined with relevant information from other studies and reports.

The aim of this study is to provide information on the state of affairs regarding prostitution in the Netherlands in 2006 in the context of the evaluation of the lifting of the brothel ban, in order to be able, if necessary, to develop flanking policy.

The research questions are:

- What is the current situation regarding prostitution in the Netherlands with regard to municipal policy, enforcement and compliance?
- What is the current social position of prostitutes in the Netherlands?
- What is the nature and scale of involuntary prostitution, prostitution by minors, and prostitution by women who do not have a valid work permit?
- Which developments have taken place in the prostitution sector during the past years, and to what extent is it plausible that shifts have (in part) been caused by the lifting of the ban on brothels?

## Research methods

The three sub-studies were carried out by several institutes under the direction of the Research and Documentation Centre.

The DSP Group carried out a study on municipal prostitution policy and its regulation and enforcement. A survey was conducted among all Dutch municipalities. The questionnaire was completed by a total of 385 municipalities (84%). Municipalities that had not completed the questionnaire were asked a number of questions over the telephone. The response was

so high that the results are assumed to be representative for all Dutch municipalities. A qualitative study was carried out in six municipalities, in order to gain more in-depth knowledge. For this study, Amsterdam, The Hague, Hulst, Leeuwarden, Nieuwegein, and Tilburg were chosen on the basis of a number of criteria. A total of 67 in-depth interviews were held with municipal officials, municipal services, prostitutes, sex business owners, members of the police force, and other people involved.

Regioplan Beleidsonderzoek carried out a study on the social position of prostitutes in the licensed sector. This study focused in particular on window prostitution, clubs, private houses, escort businesses, and massage parlours. The study was carried out in 20 municipalities spread throughout the country. Face-to-face interviews were conducted with 354 prostitutes and 49 owners, using structured questionnaires. Because the majority of the prostitutes was not born in the Netherlands, a substantial part of the interviews was conducted in a language other than Dutch (mainly English or Spanish).

Intraval carried out a study on the nature and scale of various forms of non-legal prostitution. The emphasis in this sub-study lay on more covert forms of prostitution. Owing to its subject matter, this sub-study presented the most problems with respect to drawing quantifiable conclusions and applying these conclusions more generally to prostitution in the whole of the Netherlands. In a general section, the researchers assembled outlined information about the various aforementioned forms of prostitution by means of desk research, interviews with 29 key informants, and an analysis of available registration data on trafficking in human beings. The core of the study consisted of an in-depth study in four regions into illegality and exploitation in the prostitution sector. In Amsterdam, Eindhoven, Groningen, and North and Central Limburg registration data were gathered, key informants, sex business owners, prostitutes, and clients were interviewed, and observations were carried out. For this sub-study, a total of approximately 190 persons were interviewed. Besides, for each region, the offering of prostitution services was mapped out by means of municipal data, and via (local) newspapers and the Internet.

The Research and Documentation Centre wrote an overall report, taking the objectives of the amendment of the law as a guideline. In this report, the most important results of the sub-studies are combined with one another, as well as with relevant information from other studies and reports.

### Legislation and policy

With the amendment of the law, which came into effect in 2000, the general ban on brothels and the ban on pimping were lifted; the relevant sections were removed from the Dutch Penal Code. At the same time, a more severe penalisation of undesirable forms of prostitution and the sexual abuse of minors was introduced. The new section 250a of the Dutch Penal Code penalised all forms of exploitation in the prostitution sector. In October 2002, during a partial review of the decency legislation, a number of relevant sections of the law were amended, particularly with a view to a more effective protection of minors. After section 250a was sharpened, extended, and renumbered, it was turned into the current section 273f of the Dutch Penal Code.

The administrative responsibility has been devolved primarily to the local government. The municipalities, therefore, play the most important role in determining the form of their policy regarding prostitution.

### Conclusions

Almost all the municipalities have completed the issuing of licences, and everywhere inspections are being carried out to a greater or lesser extent. As a result, the lack of uniformity found during the first evaluation study has been reduced (but has not been completely resolved). In the study on non-legal prostitution, the researchers concluded that the strict enforcement implemented in the regions studied in-depth does not seem to have led to a shift to non-licensed prostitution within the area. Relocations *between* regions or municipalities were found to occur less frequently than at the time of the first evaluation, but the researchers did find businesses that had been relocated to municipalities with less strict regulations or enforcement. The escort branch, in particular, still has the option of relocating to municipalities where no licence is required for escort services.

The police (still) play the most important role in monitoring the licensed sector and in carrying out inspections that might also be conducted by, for example, the Labour Inspectorate. A large part of the available police capacity is deployed for inspections in the licensed sector, thus limiting the capacity for monitoring and investigative tasks with regard to punishable forms of exploitation in the non-licensed sector. The feeling in the prostitution sector is that licensed businesses are inspected more often than non-licensed businesses. This situation undermines the willingness of owners of licensed businesses to adhere to the rules and complicates the combat against trafficking in human beings.

As a result of this amendment of the law, a legalisation has taken place (of the exploitation of prostitution services by voluntary prostitutes of age, who possess the required documents), on the one hand, but on the other hand, it has led to a more severe penalisation of unwanted forms of prostitution. The legalisation has drawn the most attention. Yet, it is not so much the legalisation, but the stricter enforcement of the regulations regarding punishable forms of prostitution that seems to have caused the most disquiet. In fact, a paradoxical situation can be said to have ensued: while the former prohibition of the exploitation of prostitution changed to a legalisation, prostitutes and sex business owners now feel that the regulations have become stricter, whereas in practice it is a matter of a stricter enforcement, which has replaced the former policy of tolerance. Internationally, the Netherlands is viewed by some countries as a country where anything goes with regard to prostitution, and where trafficking in human beings is facilitated. Trafficking in human beings, however, is likely to have become more difficult, because the enforcement of the regulations has increased in comparison to the former situation, when all exploitation of prostitution was prohibited.

### **The control and regulation of prostitution**

At this moment, the issuing of licences has been well regulated. The municipalities prefer a local maximum policy, but in the year 2006, there actually were possibilities to set up new sex businesses within such quota. The municipalities have a reasonable control of the location-bound prostitution businesses. Location-bound prostitution businesses without a licence are by far outnumbered. With regard to the non-location-bound businesses, however, the situation is more complicated. A purely local approach does not suffice when non-location-bound forms of the exploitation of prostitution are involved. It is very easy for businesses to evade this local policy by relocating to a different municipality or region, where no licence is required, or where the approach is less strict.

In addition, there are sectors that are difficult to monitor, such as couples clubs, sauna clubs, and massage parlours. The couples clubs and sauna clubs have in common that these businesses often do not officially provide prostitution services. Both prostitutes and their clients enter as paying visitors of the club, and the owner has no (official) involvement whatsoever with what the visitors then agree and do with one another. There are no grounds for enforcement authorities to check, for example, the documents of prostitutes who have entered the club as a sauna visitor.

During the past years, both the demand and supply of prostitution services appear to have declined. However, the question is to what degree this

is a result of the lifting of the brothel ban and the stricter enforcement that has accompanied it. It is more plausible 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 mentioned in the study are a lack of innovation in the prostitution sector, as a result of which supply and demand are less well attuned; the eroticisation of nightlife, as a result of which voluntary unpaid sexual activities have increased; and the deterrent effect on clients of camera surveillance in prostitution areas. Finally, the drop in demand can have been partially caused by a decreased diversity of the supply. This decreased diversity is positively related to the increased enforcement in the prostitution sector, which has made it more difficult for foreign women who do not possess the legal residence permit required for employment to work in the sex business.

### **Combating the exploitation of involuntary prostitution**

It is often very difficult for third parties to establish that involuntary prostitution is taking place. For that reason, it is virtually impossible to comment on developments in the number of prostitutes who are working in the sex business under some degree of coercion.

Indications of involuntary prostitution were found during the fieldwork of the study on non-legal prostitution, albeit to a minor extent. A number of the signs of exploitation that have been identified by the Dutch National Rapporteur on Trafficking in Human Beings were observed by the researchers in the field as well, but on a limited scale. Of the prostitutes interviewed in the licensed sector, 8 % stated that they had once begun working as prostitutes due to some form of coercion.

A complicating factor in combating the exploitation of involuntary prostitution is that policy, the issuing of licences, and enforcement are all mainly targeting the owners of sex businesses. Although owners might use coercion, such force is chiefly exercised by pimps who operate more in the background, and of whose existence the owners are not always aware. Pimps are still a very common phenomenon. Prostitutes with pimps mainly work behind the windows, in the escort business, and at home. These are the easiest sectors for the pimps to be able to (charge others to) keep an eye on the prostitutes. In the context of the combat against the exploitation of involuntary prostitution, the fact that the number of prostitutes with pimps does not seem to have decreased is a cause for concern. There does seem to be an increased awareness among owners and prostitutes about the need to prevent involuntary prostitution and exploitation.

In view of the problems connected with identifying and taking action against involuntary prostitution, there is a great need for instruments that might be of assistance in these activities. In this context, the campaign "Appearances are deceptive" of the tip line Report Crime Anonymously, was found to be a useful addition.

### **The protection of minors from sexual abuse**

The researchers of the sub-study on non-legal prostitution conclude that scarcely any underage prostitutes seem to be working in the licensed sector, and that there are no signs of a large presence of underage prostitutes in the non-licensed part of the sector either. During inspections in licensed prostitution businesses, the authorities find underage prostitutes only incidentally. However, it is difficult to get clear answers about the occurrence of underage prostitution, as the age of young sex workers is often difficult to estimate. For this reason, even social workers are in the dark about the scale of underage prostitution. The researchers of the sub-study themselves did not encounter any underage prostitutes during their observations.

However, there are indications that girls are forced to start working as prostitutes on the moment they turn eighteen. For this reason, a chain approach for youth prostitution was set up in both Eindhoven and Groningen. A chain approach for victims of so-called lover boys, focusing particularly on minors, is being used in Amsterdam.

The sub-study on the position of prostitutes shows that five percent of the interviewed prostitutes from the licensed sector began working in the sex business when they were younger than eighteen. At present, young starters are mainly working in the escort branch. More than half of the prostitutes working in the escort business were younger than twenty when they started, and more than ten percent was even younger than eighteen.

The available data do not enable any informed judgement upon possible developments over the years in the number of minors working as prostitutes.

### **Protecting the position of prostitutes**

During the past years, labour relations in the licensed businesses have scarcely changed; there has been no significant improvement. There still is confusion in the sector about the form which labour relations should take. Towards the Tax Administration, prostitutes and owners stubbornly maintain that prostitutes are self-employed, but at the same time the

involvement of owners in the prostitutes' activities takes on such forms, that these are, in fact, employer-employee relationships. The legal position of prostitutes is not good. Under the current circumstances, despite the factual existence of employer-employee relationships, the risk of being unable to work is completely shifted on to the prostitutes. It is not to be expected that improvements will automatically come about in the sector itself. Perhaps setting minimum requirements regarding labour relations and linking these to the licensing policy constitutes a way of bringing improvements about.

With regard to working conditions, few real instances of abuse were found, but there are large differences in the conditions under which the prostitutes do their work. Prostitutes partly respond to this situation by exchanging a business for another if the conditions are bad. However, the prostitutes' emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased.

Where the protection of prostitutes is concerned, it is important that they have sufficient options for leaving the sex business or to stop working whenever they wish or need to do so. When asked, only 6% of the municipalities reported that their policy pays attention to the subject of the possibilities to leave the prostitution business.

### **Disentangling the ties between prostitution and related, peripheral crime**

In this evaluation, criminal peripheral phenomena were only treated indirectly. In order to disentangle the ties between prostitution and criminal peripheral phenomena, it is important to support the licensing process by means of a solid examination. In that context, the Public Administration Probity Screening Act, hereinafter "BIBOB", can play an important role. Under this act, administrative bodies may refuse to issue a licence (or withdraw it), if there is a serious risk that it will also be used to commit criminal offences, or to make use of financial benefit from criminal activities. The majority of the municipalities have not yet used the act, but it is being increasingly used in the sexual services sector. In 2006, the authorities in Amsterdam began to use the procedure provided under the BIBOB Act to assess licence applications for the prostitution sector. At the time of this study, this resulted in the decision of the Amsterdam authorities to withdraw a large number of licences for window brothels, owned by a very limited number of operators, pursuant to the BIBOB Act. The outcome of any appeal proceedings will first have to be awaited, before any conclusions can be drawn about the effectiveness of the application of the BIBOB procedure.

### **Reducing prostitution by illegal foreign nationals**

The number of prostitutes from Russia, Romania, Bulgaria and Latin-American countries (who, as a rule, do not have the documents required for their work) has decreased. In all the sectors in the regions that were investigated in-depth, an increase was found of prostitutes from East European countries that fall under the EEA.

In part, they seem to replace the women from the countries mentioned previously. The number of women who apply for a job at clubs without having the required documents has decreased. The offering of foreign prostitutes to clubs by intermediaries has also decreased.

Moreover, the number of violations found during inspections has decreased, in particular with regard to foreign prostitutes working without the required documents. Both owners and prostitutes indicate that the implications of the amendment of the law have been the greatest for women who do not have the valid residence permit required for employment. All in all, a justified conclusion seems to be that the number of foreign prostitutes working without such a valid residence permit has decreased in general. Stricter inspections and enforcement have contributed to this development.



# 1 Introduction

On 1 October 2000, after decades of public debate, the amendment of the law that effected the lifting of the general brothel ban came into effect. This amendment not only excited interest in the Netherlands, but also in other countries. In many countries, the question how society should deal with prostitution, prostitutes, owners of sex businesses, and the clients of prostitutes, has been the subject of prolonged discussion. These discussions encompass a great variety of subjects, such as public order and safety, public health, ethics and morality, violence against women, trafficking in human beings, and organised crime. Recently, several countries have made changes in their policy on prostitution, yet the course chosen in the Netherlands is quite unique. Examples of (partial) legalisations comparable to that of the Dutch are few. Queensland in Australia is one of a handful of regions where, since 2002, the exploitation of prostitution is legally permitted in small brothels, under strict conditions.

At the heart of the Dutch amendment of the law is the determination that those forms of the exploitation of prostitution are no longer prohibited, which involve prostitutes of age who are doing the work voluntarily. Simultaneously, however, it is the legislator's intention to forcefully crack down on unacceptable forms of the exploitation of prostitution (in particular on several forms of trafficking in human beings).

## 1.1 The reason for this research

In 2001-2002, a first evaluation of the amendment of the law was carried out by means of six sub-studies, conducted by several institutes under the direction of the Research and Documentation Centre (WODC). The Centre presented an outline of the results in its overall report (Daalder, 2002). In reality, it seemed that this first evaluation had come about prematurely, since in a great many municipalities the issuing of licences had not yet been completed. For the most part, the organisations involved had not yet done anything at all regarding surveillance and enforcement. Thus, the changes that were intended by the amendment of the law had, in part, not yet been implemented (Daalder, 2002).

Even so, some conclusions could be drawn. It was clear that there was great support for the amendment of the law and the objectives behind it, among prostitutes and sex business owners as well as among government agencies, commercial service providers, and citizens.

With regard to policy, the conclusion was that there wasn't a lot of policy specifically targeting prostitution, and that not many specific activities were being set up. The activities that specifically targeted prostitution set up by several government agencies, such as the Labour Inspectorate, the Tax Administration, but also local governments, were extremely limited.

The status quo policy implemented in many municipalities hindered a possible innovation of the prostitution sector. Because the possibilities for the establishment of new businesses were so few, innovation (and with it, a possible improvement of the prostitutes' position) was also limited. The report indicated that, in this respect, municipalities might play a stimulating role by changing their policy. In this way, they might even achieve the objectives of the amendment of the law sooner than by maintaining the status quo. According to a number of agencies and people involved, the local government could play a more active role on several points, like, for instance, on the point of education.

There turned out to be much confusion about the labour relations between sex business owners and prostitutes, in particular about the requirements needed for these relations to be able to speak of self-employment. In the view of the owners and prostitutes themselves, prostitutes were self-employed, even while some elements of an employer-employee relationship seemed to be there. The confusion seemed to be exemplary for the lack of clarity that generally existed about the normative interpretation of labour law when applied to prostitution.

During the first evaluation, it was established that, on a national level, neither the implementation of the law, nor its enforcement had proceeded in a simultaneous or uniform manner. This had led to great differences between regions and municipalities. The lack of uniformity had caused punishable forms of the exploitation of prostitution (coerced prostitution, prostitution by underage prostitutes and by prostitutes who do not possess the legal residence permit required for employment) to move on to other locations. The importance of a national minimum level of enforcement was formulated as a necessary condition to counteract such relocation effects, and to attain the goals of the amendment of the law. For this purpose, special attention for the role of the police was called for. A large part of police capacity was used for inspections in the regulated sector, leaving them with no capacity to play a major monitoring and investigative role with regard to punishable forms of prostitution outside the licensed businesses. In addition, a discrepancy was observed between the level of the organisation of prostitution and the level of enforcement. Where observation and enforcement took place on a local level, some forms of prostitution, like the escort business, had a national or even an international radius.

With regard to a second evaluation, the advice was to wait a few years, because the processes that were meant to result in the developments intended by the amendment of the law, such as the improvement of the prostitutes' position, are complex and need time. Partly for this reason, the Minister of Justice promised Parliament that he would once again commission an evaluation study a few years after the amendment of the law had

come into force. The Research and Documentation Centre (WODC) was asked to direct this evaluation. Commissioned and supervised by the WODC, the DSP Group, Regioplan Beleidsonderzoek, and Intraval carried out three sub-studies. In this report, the results of the sub-studies are summarised and combined with relevant data from other research and reports.

## 1.2 Objectives

The aim of this study is to provide information about the state of affairs in the Dutch prostitution sector in 2006 in the context of the evaluation of the lifting of the brothel ban, in order to enable the development of flanking policy, if necessary.

The problems in and surrounding the prostitution sector are complex and wide in range. The responsibility for the prime objectives of the amendment of the law fell under six departments. In view of the complexity of the field of prostitution, it was necessary to limit the study's scope. On the basis of the results of the first evaluation, among other factors, three main subjects were selected for examination in three sub-studies (see also section 1.4). These main subjects are the non-legal exploitation of prostitution; municipal policy; and the position of prostitutes, in particular of those working in the licensed businesses. Since it was necessary to limit the study's scope, several aspects viewed to be of relatively lesser importance compared to the main subjects (such as the sector's image), were excluded from the study.

As far as possible and relevant, we will compare results of the sub-studies with the results of research from 2002, the fieldwork of which was carried out in 2001. In this way, developments since 2001 will be mapped out, if possible, and we will describe whether and in what sense it is plausible that these developments have been influenced by the amendment of the law.

This study does not contain a classic effect measurement. There are several reasons for this.

First, there is no correct zero measurement: a study in which all relevant factors have been measured prior to the amendment of the law. Second, the amendment has not been implemented in a controlled and well-defined context. The prostitution sector has always been typified by its changeability, dynamic, and fleetingness. Third, before its introduction, the amendment of the law was anticipated at some locations and by some actors. As a consequence, when the actual amendment took effect, in part it meant the legalisation of an existing (tolerated) situation. Fourth, the prostitution sector is influenced to a major extent by external factors.

These are, for instance, technological developments and the advent of cybersex; changes within our sexual morals brought on by television and the Internet; developments with respect to migration, within immigration policy and immigration control; and the extension of the EU. Fifth, there is no control group. And finally, it is a mistake to assume that an amendment of the law will lead to an immediate attainment of the goals intended by it. After all, the prostitution sector represents an age-old activity, with its wear of customs and conventions that will not change from one day to the next. Such changes do not only require an amendment of the law, but also a cultural turn.

And so this study's problem definition is: what is the state of affairs in the Dutch prostitution sector in light of the objectives behind the evaluation of the lifting of the brothel ban, and what important developments have evolved since 2001? To what extent is it plausible to understand these developments as the result of the lifting of the general ban on brothels?

The most important questions dealt with in the sub-studies, and to be answered in this report are:

- What is the current situation of the prostitution sector in the Netherlands with regard to municipal policy, enforcement, and compliance?
- What is the current social position of prostitutes in the Netherlands?
- What is the nature and scale of involuntary prostitution, prostitution by minors, and prostitution by women who do not have a valid work permit?
- Which developments have taken place in the prostitution sector during the past years and to what extent is it plausible that changes have (in part) been caused by the lifting of the ban on brothels?

### 1.3 A definition of concepts

Although the terms 'prostitution' and 'prostitute'<sup>1</sup> are used in society very frequently and there seems to be little confusion about the meaning of these concepts, giving an exact definition of prostitution is far from simple. Most scientific literature ignores this issue of definition,<sup>2</sup> notwithstanding the fact that several scientists have pointed out the influence exerted by the definition in use on the results of research on prostitution

1 In the Dutch version of this report, we used the female term 'prostitutee' to refer to a prostitute. This does not mean that male prostitutes were excluded from the study. However, women constitute the great majority of prostitutes by far. In order to add to the readability of the Dutch report, we referred to both groups with the same term, 'prostituees'. The study paid no special attention to gay prostitution or prostitution by boys.

2 A search in Web of Science yielded only one article that discusses the issue of definition. Sakuraba, T., Matsui, Y., Fukutomi, M. et al (2001). Background factors of amateur prostitution ("ejnokousai") in Japanese high-school girls. *Japanese Journal of Educational Psychology*, 49: 167-174.

(Petterssoneva Tiby, 2003; Silbert, 1982). When the definition of the concept of prostitution does receive attention, it is most often defined as ‘the exchange of money for sex’ (O’Neill, 1997), or as ‘buying and selling sexual services for cash payment’ (Hoigard & Finstad, as quoted in Jordan, 2005).

When confronted with the necessity to define the concept of prostitution, legislators or policy makers sometimes add elements. To the Swedish legal description, for instance, the non-structural nature of the relation has been added; the prostitute’s client is described as ‘the person who, for payment, obtains a casual sexual relationship (Ministry of Justice and the police, 2004). However, in general, the definitions do not describe what exactly is to be understood as ‘sex’ or ‘sexual services’. Furthermore, the question is whether one can only speak of prostitution when the payment for sexual services is in cash. Thus, in some cases, the exchange of sexual services for drugs, for example, is understood as prostitution. Yet this makes it difficult to draw a clear line.

In this evaluation, our definitions will be in keeping as much as possible with the definitions used in legislation and policy. In the model bye-law formulated by the Association of Dutch Municipalities (VNG), which has been adopted by most municipalities unaltered or with only slight alterations, prostitution is defined as making oneself available for the performance of sexual acts with another person for remuneration. This definition will also be used in this evaluation. In this context, it is important to differentiate between a prostitute and a sex worker. A sex worker performs sexual acts for remuneration as well, but might also do this *for* another person, instead of *with* another person. In this report, we will use the term sex worker as an overall term, indicating both prostitutes and sex workers who generally have no physical contact with their clients. In practice, these concepts are regularly used indiscriminately. The risk of confusion is added to even more because the customers of both prostitutes and those sex workers who have no physical contact with their clients are all called *prostitute’s* clients.

In this evaluation, a sex establishment is understood to be a publicly accessible private space where, on a commercial basis, sexual acts are performed, sexual services are on offer, or productions of an erotic or pornographic nature are shown (Flight et al, 2006). Sex establishments are distinguished into sex businesses and prostitution businesses. Usually, in a prostitution business, sexual acts are performed with clients.

A term relevant for this evaluation, which is often misinterpreted in daily practice, is the term ‘trafficking in human beings’. Since the most recent amendment of the law, in 2004,<sup>3</sup> the section of the law pertaining to

3 See chapter 2 for more information on this section of the law.

trafficking in human beings is no longer limited to exploitation within the sex industry, but includes other forms of exploitation as well. In this report, the term 'trafficking in human beings' will refer to exploitation within the sex industry and, in most cases, only to exploitation within prostitution. For the exact paraphrasing of what is understood to be trafficking in human beings, we refer to the text of the section of the law in appendix 2. Contrary to what is often assumed, it is important to note that relocation is not a necessary precondition for trafficking in human beings. One can speak of trafficking in human beings when, among other things, someone induces another person by force, violence, or other act, or by the threat of violence or other act, to make her- or himself available to perform sexual services with or for a third person for remuneration. If a person younger than eighteen is involved, the law is even stricter. Already, one can speak of trafficking in human beings when someone recruits, transports, moves, accommodates or shelters a minor for the purpose of exploiting that person. A person who induces another to make her- or himself available for the performance of sexual acts with or for a third person, or who undertakes any activity regarding someone younger than eighteen, when he knows or should reasonably suspect that activity to cause this person to make her- or himself available for the performance of sexual acts for remuneration, is guilty of trafficking in human beings as well.

The exploitation of prostitution might be non-legal in a number of ways. A sex establishment is non-legal when the municipality concerned has a licence system that applies to that particular form of sex establishment and the establishment involved has not been issued with such a licence. Thus, it is possible that an escort service, operating without a licence and based in a municipality that has a licence system for escort services, constitutes a non-legal operation, while the same escort service is legal when it is operating without a licence and is based in a municipality where no such licence system exists. When a business does have a licence, but does not meet one or more of the licence requirements, its operation might also be qualified as being non-legal. These requirements for a licence differ from one municipality to another. It is punishable for all sex establishments, however, regardless of the municipality where they are established to: induce persons to prostitution involuntarily and to keep them there against their will; to induce minors to prostitution or to keep them there; to recruit persons abroad for prostitution, and to set prostitutes to work who do not possess the legal residence permit required for employment.

#### **1.4 Research methods**

The prostitution sector is a pre-eminent circuit for rumours to go around. This makes a factual assessment of the situation difficult. Rumours

circulate and are, after countless repetitions, proclaimed the truth. No or hardly any registrations are available, and for this reason researchers turn to informants and observations. In order to arrive at an account of the actual situation that is as reliable as possible, for this evaluation different sources were used, and the data coming from these sources were compared whenever possible. Within prostitution businesses, for example, both the owners and the prostitutes were interviewed, and the answers of the respondents were compared to one another, as well as to observations made by the researchers. We will further elaborate on these different sources in the sections 1.4.1 until 1.4.3, in which we will briefly describe the methods used in the sub-studies.

In the context of this evaluation, three sub-studies have been carried out. These sub-studies were conducted in commission and under the direction of the Research and Documentation Centre (WODC), by the institutions introduced in section 1.1. In this report, we will mainly make use of the results of these three sub-studies. In a single case, we will use literal text taken from the three research reports. Yet, this report presents an overall analysis, and it will thus be limited to a number of outlines. In addition, we will make use of relevant information from other research and reports. In the following, we will briefly go into the different sub-studies, the research methods used in them, and the scope of their research. For more detailed information about the sub-studies and their results we refer to the separate research reports. These reports in Dutch as well as summaries in English can be read and downloaded on the website of the Research and Documentation Centre.<sup>4</sup>

In order to give as complete a national picture as possible, as many regions as possible were represented in the different sub-studies. Among the in-depth studies, however, the study on Rotterdam is an important exception. The reason for this is that at the time of the nationwide study, another study into illegal prostitution, commissioned by the municipality of Rotterdam, had already started. Because of the importance of Rotterdam for the prostitution sector, we would have liked to include this city in our research as an in-depth region. But doing field research in that local sector with two research teams simultaneously would have caused too great an impact on the field. Unfortunately, it turned out that we could not use the data produced by the Rotterdam study, because that research had not yet been published at the time of our evaluation, and the municipality was unwilling to put data at our disposal prematurely. We did include Rotterdam in our evaluation, however, by means of the survey among municipalities, as well as by means of the study on the licensed sector,

4 [www.wodc.nl](http://www.wodc.nl).

in the context of which Rotterdam prostitutes and business owners were interviewed, primarily in clubs, private houses, and the escort branch.

In 2005, the Red Thread Foundation was granted a project subsidy by the Ministry of Social Affairs and Employment for disseminating information among prostitutes about their labour rights. The Foundation's goal is to look after the prostitutes' interests. For this specific project, Red Thread staff members visited a large number of prostitution businesses, in the course of which they also acquired knowledge about the position of the prostitutes working there. This information has been laid down in a report by Altink and Bokelman (2006). Since this is information which has not been acquired with a view to research, and since it has not been gathered in a scientific and verifiable manner, we will use this information in the present report with some reticence. Yet, whenever this information can provide added value, for instance by offering possible explanations for facts established during the evaluation, we will refer to the report in question.

#### *1.4.1 The research among municipalities*

The DSP Group carried out a study on municipal prostitution policy, and the regulation and enforcement of that policy. The research consists of a quantitative part and a qualitative part. For the quantitative part, in the spring of 2006, a survey was conducted among all the Dutch municipalities. In total, 385 municipalities (84%) filled in the questionnaire. Municipalities that had not completed the questionnaire were asked a number of questions over the telephone. The response was so high that the researchers view the results as being to a great extent representative for all Dutch municipalities. A qualitative study was carried out in six municipalities in order to gain more in-depth knowledge. For this study, Amsterdam, The Hague, Hulst, Leeuwarden, Nieuwegein and Tilburg were chosen on the basis of a number of criteria (such as regional spreading, degree of urbanisation, the nature and scale of local prostitution, and prostitution policy). In these municipalities, a total of 67 in-depth interviews were held with municipal officials, municipal services, prostitutes, sex business owners, members of the police force, and other people involved. The interviews focused on policy, enforcement, and compliance.

More can be read about this sub-study and its results in *Evaluatie opheffing bordeelverbod: gemeentelijk beleid*, by Sander Flight, Paul Hulshof, Paul van Soomeren, & Peter Soorsma, DSP Group, 2006. This sub-study provides the foundation for chapter 4 of the present report. Whenever we refer to the study among municipalities, this is the sub-study concerned.



#### *1.4.2 The research among prostitutes and business owners in the licensed sector*

Regioplan Beleidsonderzoek carried out a study on the social position of prostitutes in the licensed sector. This study was limited to the commercially organised prostitution and focused in particular on window prostitution, clubs, private houses, escort agencies, and massage parlours. The study was carried out in 20 municipalities spread throughout the country. Businesses were selected on the basis of data from the municipal licence systems, supplemented by information from the Internet. Most of the prostitutes were found through the businesses. In addition, some of them were recruited for the study by means of reply cards disseminated by social workers and the police. In areas with window prostitution, the interviewers walked past the windows to ask the prostitutes for their cooperation. Face-to-face interviews were conducted with 354 prostitutes and 49 sex business owners in total. The majority of the prostitutes (60%) were not born in the Netherlands. Latin-American women comprise the largest group of foreign women. Most of them are working in the window prostitution.

As the researchers themselves indicated, it is difficult to draw conclusions about the representativeness of the sample for all prostitutes and sex business owners within the regulated sector, because there is no knowledge about the population as a whole. In the end, most of the respondents were recruited in establishments where the owner himself had given the researchers permission to enter. Possible sources of a bias in the results are:

- owners who refuse permission to enter the business, which might cause an overrepresentation of prostitutes working in businesses where all goes relatively well;
- the selection of prostitutes is done by the owner, an undesirable situation of which the researchers did not observe any signs. In general, the prostitutes interviewed were those present in keeping with the usual rota;
- influence exerted on the prostitutes by the owner. With an eye to this possibility, the interviews were conducted as much as possible out of eye- and earshot of the owners. Furthermore, the answers given by prostitutes and owners turned out to diverge with regard to several aspects in the cases where both prostitutes and the owner of the same business were interviewed. All things considered, the researches concluded that the risk of such influencing was very small, and that even if influence could be exerted in some cases, it had little effect;
- the non-response of individual prostitutes. The response of prostitutes working in businesses was high. Refusals seemed to be primarily motivated by fear of recognition or a confrontation with the authorities.

The interviews were conducted orally and face-to-face, with the aid of structured questionnaires. A substantial part of the interviews with prostitutes was conducted in another language (mostly English and Spanish). More can be read about this sub-study in *Evaluatie opheffing bordeelverbod, de sociale positie van prostituees*, by Helga Dekker, Ruud Tap, & Ger Homburg, Regioplan Beleidsonderzoek, 2006. This sub-study provides the foundation for chapter 5 of this present report. Whenever we refer to the study on the licensed sector or to the study on the social position of prostitutes, this is the sub-study concerned.

### **1.4.3 The research on non-legal prostitution**

Interval carried out a study on the nature and scale of various forms of non-legal prostitution. One of the forms of non-legal prostitution is the exploitation of prostitution without a municipal licence, where local policy does require it. Another form occurs when a prostitute is working without possessing the legal residence permit required for employment. Furthermore, the study focused on the commercial exploitation of prostitution by minors, as well as on exploitation of people in the sense of 'taking advantage of'.

The emphasis in this sub-study lies on more covert forms of prostitution. Owing to its subject matter, this sub-study presented the most problems when it came to drawing quantifiable conclusions and applying these conclusions more generally to prostitution in the Netherlands as a whole. In a general section, the researchers assembled global information about the various aforementioned forms of prostitution by means of desk research, interviews with 29 key informants, and an analysis of available registration data on trafficking in human beings. The core of the study consisted of an in-depth study in four regions into illegality and exploitation in the prostitution sector. In Amsterdam, Eindhoven, Groningen, and North and Central Limburg, registration data were gathered, key informants, owners, prostitutes, and clients were interviewed, and observations were carried out. For this sub-study, a total of approximately 190 persons were interviewed. Besides, for each region, the supply of prostitution services was mapped out with the aid of municipal data and via (local) newspapers and the Internet.

More can be read about this sub-study and its results in *Verboden bordelen. Evaluatie opheffing bordeelverbod: Niet-legale prostitutie*, by S. Biesma, R. van der Stoep, H. Naayer, & B. Bieleman, Intraval, 2006. This sub-study provides the basis for chapter 6 of the present report. Whenever we refer to the study on non-legal prostitution, this is the sub-study concerned.

### 1.5 Reading guidelines

In this report, the objectives of the amendment of the law serve as our guideline. We will first sketch the prostitution sector in chapter 2. In chapter 3, we will consider the matter of legislation and national policy. Chapter 4 focuses on the control and regulation of the commercial exploitation of prostitution, an important objective of the amendment of the law. This chapter encompasses municipal policy, the issuing of licences and, most importantly, the subjects of enforcement and compliance. In chapter 5, we will deal with the objective of the protection of the prostitutes' position. We will dwell extensively on the labour relations within the prostitution sector, but also on working conditions and mobility. The subject of chapter 6 is the punishable forms of the exploitation of prostitution. Running a non-licensed operation, illegal labour, minority, and exploitation are the main issues. Where relevant, the chapters are concluded with a section about known new developments since the amendment of the law. Finally, in chapter 7, we will line up the main conclusions.



## 2 The prostitution sector

Although this chapter has its bearings on all sex establishments, in the context of this evaluation its focus is on the prostitution sector. In chapter 1, we specified when a sex establishment meets the definition of a prostitution business.

### 2.1 Supply

There is great variety in the kinds of sex establishments and in the manifestations of prostitution. Widespread sub-sectors within prostitution are window prostitution; prostitution in clubs/brothels and private houses (and to a lesser extent in massage parlours and couples clubs); home prostitution; escort prostitution and streetwalking. In the context of the evaluation, the most important distinctions are those between licensed and non-licensed sub-sectors, and between location-bound and non-location-bound sub-sectors.

Examples of licensed and location-bound prostitution are prostitution in clubs/brothels and window prostitution. With window prostitution, clients are recruited from behind a window; for the benefit of recruitment, the prostitute is visible from the public road. The sexual services are provided in the same room where recruitment takes place. Clubs or brothels are publicly accessible, enclosed spaces, where sexual services are provided in a private sphere. Clubs have a bar (and a liquor licence, if all is well) and a number of rooms. Usually, in a club, several prostitutes are present simultaneously. Clients can pick a prostitute in the room with the bar. In a private house, more prostitutes are present at the same time as well. Clients are received in a separate reception room, where the prostitutes present themselves one after the other, enabling the client to make a choice.

Although the so-called home prostitution is location-bound, a substantial part of the Dutch municipalities does neither have a policy regarding home prostitution, nor a licence obligation for these prostitutes. Thus, home prostitution is one of the less-regulated and most invisible forms of prostitution.

The most important form of non-location-bound prostitution can be summarised under the denominator 'escort'. Specific to escort is that the client makes contact over the telephone or through the Internet with an intermediary or the prostitute herself, with the client choosing the meetingplace. In a study from 2002, an increase in escort activities was found (Goderie et al, 2002), which had started in anticipation of the amendment of the law (Klerks et al, 2000). The character of the escort business has changed. Although the escort market used to have a somewhat chic aura,

by now it has been extended with a broad bottom layer. A study on escort services in Amsterdam, published in 2000, distinguished four types of businesses within the heterosexual escort market. Type 1 agencies are the top businesses, where the earnings per hour are high, where almost no illegal foreign nationals are employed, and hardly any tax is paid. Type 4 is at the other end of the scale. This type represents the bottom side of the escort market, where a large part of the prostitutes is working for low prices, without the necessary work permit, and where no one ever pays tax (Klerks et al, 2000). The researchers estimated that, in Amsterdam, 20% of the escort prostitutes were working in type 4 businesses. Furthermore, 35% was working in the lower middleclass (type 3), where the earnings are a little better than at the bottom side, where many of the prostitutes are illegal foreign nationals as well, and tax is rarely paid. In this study, the researchers counted an estimated 100 providers of escort services in Amsterdam (both heterosexual and homosexual agencies taken together). These providers could be traced back, however, to a considerably lower number of owners and operators, who controlled the mediation of escort services (Klerks et al, 2000).

Over the years, the manifestations of escort prostitution have become more varied and the boundary of what is to be understood as escort has become vague. Where escort in its classic form was understood as prostitution that came about by means of telephonic contact between a client and an intermediary, by now it has become more of a container concept. That concept now also includes prostitution based on (direct) appointments made through sex lines, sms, or the Internet. Clients and prostitutes can then meet each other on different kinds of locations.

Streetwalking is tolerated or formally permitted only in a very limited number of municipalities, in the form of the allocation of a zone for streetwalking and the set-up of so-called 'afwerkplekken' (open-air locations where it is legal for prostitutes to have sex with their clients). The recruitment of clients takes place on the public road; the prostitutes wait in the street for clients driving by in their cars. They might provide their sexual services at different locations, such as the car (possibly parked at an 'afwerkplek'), or in a hotel room. Streetwalkers form a separate group within the prostitution sector, because a large part of the prostitutes is addicted to hard drugs. In 2001, there still were seven municipalities with an officially allocated streetwalking zone, where streetwalking was permitted (Smallegenbroek & Smits, 2001). Meanwhile, the streetwalking zones of Amsterdam, Rotterdam, and The Hague have been closed down in 2003, 2005, and 2006, respectively, while one new streetwalking zone has been opened. At the moment, there are streetwalking zones in Groningen, Utrecht, Arnhem, Eindhoven, and Heerlen. Since the streetwalking zone in Amsterdam was closed down, streetwalking has concentrated

almost completely in the inner city and parts of the Bijlmermeer (South-east Amsterdam). Nowhere in the city can locations be found with distinct concentrations of streetwalkers (Korf et al, 2005). In September 2005, after the shutdown of the streetwalking zone at the Keileweg in Rotterdam, a policy of fines for prostitute's clients was introduced. Clients who try to pick up a prostitute anywhere in Rotterdam run the risk of getting fined to a maximum of 2250 euros.

According to the municipalities themselves, sex establishments have been established in 41% of those municipalities that responded to the survey conducted during the sub-study among municipalities. On the basis of this information and information about the municipalities that did not participate in the study, the researchers estimated that 35% of the Dutch municipalities have sex establishments within their municipal boundaries (to the best of the municipalities' knowledge). The larger the municipality is, the greater the chance that it has a sex establishment within its boundaries. By their own account, the municipalities have a good idea of the number of sex establishments that are active locally; 95% indicated that the precise number is known to them. Yet, their insight into the non-licensed businesses is not so good. Half the municipalities claimed to know the number of non-licensed businesses within their boundaries. A quarter indicated that even giving an estimate would be difficult to do. It is much harder for municipalities to have a good idea of the number of prostitutes within their boundaries than it is to have an idea of the number of businesses. Only a quarter of the municipalities supposed they know the number of prostitutes working in their municipality; the overwhelming majority of these are small municipalities that have indicated that no prostitution takes place within their boundaries, thus bringing the number of prostitutes to exactly zero.

Table 1 shows the number of licensed sex establishments for the municipalities that responded to the survey, as well as an estimate of the number of sex establishments in the Netherlands, divided by sub-sector. The researchers arrive at an estimate of approximately 1270 licensed sex establishments throughout the Netherlands.

**Table 1** The number of licensed sex establishments\* and an estimate for the whole of the Netherlands (n= 260)

	Number in response	Estimated Dutch total**
Window brothel	507	ca 580
Sex club***	235	ca 260
Private house	117	ca 130
Escort agency	81	ca 90
Erotic massage parlour	54	ca 60
Sex cinema	51	ca 60
Couples club	19	ca 20
Other sex establishments	63	ca 70
Total	1,127	ca 1,270

\* No estimate is given for home prostitution, because the municipalities have no insight at all into its occurrence.

\*\* In order to make an estimate for the whole of the Netherlands, the number of establishments in the medium-sized municipalities were multiplied by a factor 71/57 (population/sample), and the large municipalities with a factor 21/19. Since the small municipalities that did not fill in the questionnaire turned out to have practically no prostitution at all, there answers have not been raised.

\*\*\* The sex club category also includes the sex theatres. In the questionnaire for the municipalities, the clubs and theatres were inadvertently added up. However, the number of Dutch sex theatres is expected to be much smaller than the number of sex clubs. For this reason, the researchers labelled the combined category as 'sex clubs'.

Source: Flight and co, 2006.

Less concrete information is available on the non-licensed businesses. As indicated earlier, the municipalities' insight into non-licensed businesses is not so good, making it impossible to give an estimate of their number. However, both the study among municipalities and the study on non-legal prostitution have made it clear that the non-licensed sex trade most often involves escort services and home prostitution. Many municipalities require no licence for these forms of prostitution. The number of non-licensed businesses in the other sub-sectors seems to be small.

It is unknown what the total population of prostitutes exactly looks like, since a part of it is quite invisible. Moreover, prostitution is always characterised by a certain amount of fleetingness. On the basis of the municipalities' data, it is impossible to make an estimate of the number of prostitutes.

In a study carried out in 2000, researchers tried to estimate how many prostitutes were working on Dutch soil. They arrived at an estimate for several prostitution sub-sectors, but too many data were lacking for an



estimate encompassing the total sector (Visser et al, 2000). Earlier, Van Mens and Van der Helm (1999) estimated the number of prostitutes in the Netherlands at an approximate 25.000, of whom they estimated 50 to 60% to be of Dutch origin. Apart from this percentage, most women seemed to originate from Eastern Europe and Latin America (Vanwesenbeeck et al, 2002).

In the sub-study on the social position of prostitutes, 354 prostitutes were interviewed. The prostitutes were spread both throughout the country and throughout sub-sectors. Just like in other research among prostitutes, it is impossible to make an assessment of the sample's representativeness, because no data are available on the population. Nevertheless, due to the wide spreading among municipalities and sub-sectors, the background data on the prostitutes do provide an indication about the backgrounds of the prostitutes in the Dutch licensed sector. Of the prostitutes interviewed, 60% was born outside the Netherlands. Among the foreign-born prostitutes, the largest group originated from Latin America. East European prostitutes account for 9% of the respondents. In the sub-study on non-legal prostitution, the composition of the population of prostitutes turned out to differ slightly per in-depth region. Foreign prostitutes form the majority, and everywhere, many of the working women originate from Eastern and Central Europe. In addition, in Amsterdam, comparatively many of the active women come from Latin-American countries. In Groningen, too, many of the women speak Spanish, but do not originate from Spain, even though a part of this group possesses a Spanish passport.

Most of the women (44%) interviewed during the sub-study on the social position of prostitutes are aged between 20 and 29; in the escort, however, a large group among the prostitutes (29%) is aged 18 or 19. Taking into account that the first mentioned age category consists of ten years and the second age category of only two, the group aged 18 and 19 is comparatively large. The women working for the escort agencies are clearly the youngest; more than four out of five women is younger than 29. Comparatively the most women who are older work in the clubs; a quarter of the women working there are aged 40 or older.

## 2.2 Demand

Research on the demand side of prostitution is very rare. Brooks-Gordon and Gelsthorpe (2003) wrote an article on the social and legal status of the customers for sexual services through the ages. Their article makes clear that research into the role and needs of the clients practically does not exist. There are, however, articles on the ways in which clients of prostitutes are seen. Brooks-Gordon and Gelsthorpe show that, in earlier ages,

prostitute's clients were accepted and even encouraged. But as from the 1960s, several developments tainted the image of clients. As a result, they were criminalised in England, under an ever more severe legislation. A similar pattern can be seen in other countries.

At the same time, just about nothing is known about the motives of clients. In the Netherlands, SOAIDS<sup>5</sup> recently conducted a survey among prostitutes' customers<sup>6</sup> on the website [www.prostitutie.nl](http://www.prostitutie.nl) (Asante & Schaapman, 2005). More than half of the men who took part were in a relationship. A part of the men indicated that their visits to prostitutes were motivated by the fact that their partner did not meet their needs. Having a partner did not seem to be of influence on the visits to prostitutes. The respondents to the survey had often begun having contact with prostitutes at a young age, continuing with it after the start of a relationship. SOAIDS distinguishes three types of prostitute's clients. The 'businesslike client' is the type of customer who just wants sex, and who does not fuss about issues like payment and the use of condoms. The 'adventurer' has a more troublesome attitude towards prostitutes, his (many) sexual contacts, and the use of condoms. Finally, the 'romantic client' is looking for intimacy. He would like to forget that he is paying for sex and he is rather demanding, while he himself is convinced that he is a nice customer (Asante & Schaapman, 2005). Asante and Schaapman are critical of this division; they consider the profiles to be too simple. They think, among other things, that the type of the 'adventurer' provides a cover for men suffering from a sex addiction. In their view, by typifying someone with a sex addiction as an adventurer and someone in search of intimacy as a romantic, the problems caused or kept up by certain types of clients are being ignored. Sex addiction, in particular, has grave consequences, for the prostitute's client and the prostitute as well as for society as a whole.

On the demand side the clientele does not solely consist of Dutch nationals either, just like it is on the supply side of prostitution. In tourist areas, such as the Red Light District in Amsterdam, part of the clientele are tourists. In the border regions, various migrations by prostitute's clients can be observed. The province of Groningen has a large concentration of clubs near the German border, the clients of which are for the most part German. In North and Central Limburg, by contrast, Dutch clients seem to have started moving over to Germany. This migration is connected to the large and varied offering of prostitutes and sexual services, provided especially in German sauna clubs.

5 SOAIDS is an expert centre for HIV/AIDS and other so-called STDs (sexually transmitted diseases).

6 At the time this report was written, the results of that survey were no longer available on this particular site. Due to this, the information about the survey's outcome has been derived from Asante and Schaapman, 2005.

In recent years, there has been an enormous increase of the exchange of information between prostitute's clients about sex establishments and prostitutes by means of the Internet. *Hookers.nl* and *ijsberenforum.nl* are relatively new sites, which clients use in large numbers to exchange experiences and information. In all sub-studies, information sources of different kinds indicated that, during the past years, the demand for prostitution contacts has decreased. We will examine this development more closely in the next section.

### 2.3 Developments

During the past years, there has been an increase in prostitution contacts in establishments where in general, at least officially, no prostitution takes place, such as couples clubs and saunas. Both kinds of establishments might be either licensed or non-licensed businesses. The occurrence of these sorts of prostitution contacts are difficult to establish officially. Traditionally, couples clubs only admitted couples. Now, in particular in Groningen province and in North and Central Limburg, there are couples clubs where overt prostitution takes place: men come to the clubs alone and make contact with prostitutes inside. According to the researchers, the operators of the clubs are usually not involved in the prostitution that takes place in their establishment. Inspection for prostitution is difficult, since both prostitutes and clients are inside the couples club passing themselves off as visitors.

A second form of establishments where prostitution seems to have expanded substantially, are *sex saunas* and *erotic sauna clubs*. This development was started in Germany, where big relax centres were established in which prostitution was made possible. Similar to the couples clubs, in the sauna clubs both the prostitutes and the prostitute's clients enter as paying visitors,<sup>7</sup> and reach a mutual agreement about sexual services and payment. Usually, the establishment's operator is not involved or responsible and, thus, cannot be held responsible for the (possibly illegal) prostitutes (unless he has knowledge of an indictable offence like trafficking in human beings). In the sauna clubs, paid sex is the main reason for their existence, in contrast to most of the couples clubs, where it often is no more than an occasional side effect. In Germany, near the Dutch border, there is a number of large clubs where Dutch prostitute's clients are part of the clientele. In recent years, two sauna clubs were established on the Dutch side of the border, in Limburg. According to customers, however, these are smaller than the German sauna clubs are. Dutch clients are attracted to the German clubs because of the relaxed atmosphere, the

<sup>7</sup> At both the couples clubs and the sauna clubs, women mostly pay a reduced price of admission.

large offering of prostitutes, and the conditions under which the prostitutes are willing to work. An example of these conditions is that both clients and club employees report that prostitutes in de German sauna clubs engage in several sexual acts without using a condom. Apart from that, clients suspect that a part of the prostitutes in these clubs might be working there illegally or against their will.

The advent of the couples clubs and erotic sauna clubs cannot be directly related to the lifting of the brothel ban. It is likely that, in part, this advent is caused by a shift on the demand side of prostitution, where some of the clients have developed a need for the luxury and relaxation offered by such clubs. Yet apart from this, clients report that the large and varied offering of (mostly foreign) prostitutes and the conditions under which they are willing to do their job, are also contributing to the attraction. A category of prostitutes is working in these clubs, who, because of the stricter inspections and enforcement, cannot or do not want to work in licensed clubs or brothels in the Netherlands. In this sense, it is obvious that the stricter enforcement of these last years has worked as a stimulus for the increase in popularity of these clubs.

Webcam sex is a relatively new phenomenon, which seems to increasingly develop into serious competition for prostitution. Webcam sex consists of sexual acts carried out by individuals, which can be watched on the Internet by a paying third person. In general, webcam sex falls outside prostitution, but it does rank as sex work. The connections between people who occupy themselves with webcam sex and those who occupy themselves with prostitution seem to grow. The development of webcam sex is not a typically Dutch phenomenon. It is more likely to be caused by the increased possibilities of the Internet than by the lifting of the brothel ban.

A comparison between the results of the sub-study among municipalities and the results of a study by SGBO, published in 2001, shows that the absolute number of municipalities that indicate they have no sex establishments within their borders has remained stable. There is, however, a relative decrease in the number of municipalities where sex establishments are established, because meanwhile the number of existing Dutch municipalities itself has been reduced by municipal redivisions. A rough comparison of the numbers of sex establishments between 2000 and 2006 leads to the conclusion that the number of licensed sex establishments as reported by the municipalities has decreased with approximately a sixth. This conclusion corresponds to the experiences of both sex business owners and prostitutes; the report published by the Red Thread indicates a decline as well (Altink & Bokelman, 2006). The sub-study into illegality shows, too, that the number of businesses has declined in the in-depth regions. Businesses have gone bankrupt, while hardly any new ones have been set up.

Within the prostitution sector itself, several explanations are mentioned, such as the economic downswing, the introduction of the Euro, the growth of mobile telephony and the Internet, and the increase in the number of escort services, sex lines, and home prostitution. Prostitutes' clients report that they themselves, as well as other customers they are acquainted with, have been forced by the economic situation to make less frequent use of the services of prostitutes than before.<sup>8</sup> In addition to this, it turns out that the prostitution sector contends with a lack of innovation. This deficiency also surfaces in the report of *The Red Thread* (Altink & Bokelman, 2006). While the clients' wishes and desires have changed over time (part of the clients have developed a need for more of the possibilities for relaxation available in saunas, for instance), the sex establishments have largely stayed the same, causing supply and demand to be no longer attuned. Another reason for the decline of the number of prostitution contacts (chiefly mentioned by prostitutes), is that it has become easier to get sex for free. In their news coverage, the media have called this the eroticisation of nightlife; the growth of voluntary, unpaid sexual activity now constitutes 'competition' for paid sexual services. Finally, the prostitutes also mentioned the deterrent effect of camera surveillance in prostitution areas as a possible explanation. It is safe to say that a combination of all of these factors has caused the decline of both demand and supply. Even if the lifting of the brothel ban actually has contributed to this development, this contribution has only been marginal.

In the study on prostitutes in the licensed sector, the prostitutes were asked whether they had gotten more or less colleagues in the business where they worked during the year prior to the study. More than a third of the respondents gave no reply; in the escort business, even three-third of the respondents did not know the answer to this question. One of the reasons for this is the high level of circulation among prostitutes. In the cases where prostitutes did get more or less colleagues, the prostitutes mainly attributed this to the economic situation and the new legislation. As a result of the economic regression, both (potential) prostitutes and (potential) clients had to contend with financial problems. On the one hand, this has led to the arrival of new colleagues, because these problems motivated a new group of women to offer their services on the prostitution market. Yet, as we mentioned earlier, the decline in purchasing power has caused a decrease in the number of clients and a smaller amount of money spent per customer, on the other hand. Most of the prostitutes thought that the number of clients had gone down in the year previous to the interview. Furthermore, some women undersell their services because they are pressed for money, causing others to lose clients

<sup>8</sup> At the time of the study, some business operators saw a gradually growing number of clients due to the improving economy.

to this competition. The earnings of prostitutes have been reduced, and some of them have left the sex trade as a result.

According to prostitutes in the licensed sector, beside the economic situation, the new legislation is another reason behind both the increase and the decline of the number of their colleagues. On the one hand, it is assumed that legalisation entices foreign women to come to the Netherlands, causing an increase. On the other hand, the prostitutes say that the regular inspections by the police deter the women who are working illegally, causing a decline in that category of colleagues. Regulation and the inspections by the Tax Administration, which are accompanied by a lack of anonymity and high rents, have led to a decreasing number of (Dutch) women willing to work as prostitutes. The women who are working in the licensed sector and who refuse to pay tax either leave the prostitution, or start working from their home or in the escort branch. In addition, according to the prostitutes, stricter regulation has resulted in the shutdown of windows and houses, causing a higher concentration of women on a smaller number of locations. In this way, women working in Nijmegen and Eindhoven have witnessed an increase of colleagues after the shutdown of windows in Arnhem.

A development that has been of influence on the supply of prostitutes was the change in policy regarding streetwalking zones. Streetwalking has decreased as a result of the shutdown of streetwalking zones in Amsterdam, Rotterdam, and The Hague. In Amsterdam, research was carried out to find out whether prostitutes who had formerly worked in the streetwalking zones had moved on to other locations within the municipal borders, in order to continue their streetwalking illegally. Yet, no indications for such relocations were found (Korf et al, 2005). In fact, the changes in policy regarding the streetwalking zones are not connected to the lifting of the brothel ban.

An example of the remarkable migrations that have taken place within the prostitution market is the one towards the sauna clubs in Germany (see the above). In addition, since the successful, strict enforcement in the escort sector in Eindhoven, an ever-growing offering of escort services seems to come from the surrounding region and Belgium. It is known that one agency, now located in Belgium, was formerly established in Eindhoven. One of the causes of these migrations is the stepping up of enforcement in some regions.

As a matter of fact, in a European context, the development of a quality mark for sex establishments is being considered. At this moment, the University of Tilburg, among others, is carrying out an exploratory study on the possibilities of such a quality mark.

## 3 Legislation and policy

In this chapter, we will briefly turn our attention to the relevant legislation and the considerations on which it is founded. We will also examine national policy. Since the centre of gravity of Dutch prostitution policy is located in the municipalities, the examination will be limited. To conclude this chapter, we will pay some attention to the international context.

### 3.1 Legislation

On 1 October 2000, the lifting of the general ban on brothels came into effect. For this purpose, the Cabinet had laid a proposed amendment of the Penal Code before Parliament in July 1997. The enactment was passed by the Senate in October 1999. With this amendment of the law, legislation has in fact been adapted to an actually existing practice, in which the ban on brothels was not enforced, or hardly at all. With regard to the non-punishable forms of the exploitation of prostitution, the amendment effected the legalisation of a situation of toleration that had existed for years. At the same time, the amendment of the law was seen as a way to improve on the action taken against trafficking in human beings.

The legislation has associated the amendment of the law of 1 October 2000 with six main goals:

- 1 the control and regulation of the exploitation of voluntary prostitution, among other things by means of the introduction of a municipal licence policy;
- 2 the improvement of the combat against the exploitation of coerced prostitution;
- 3 the protection of minors from sexual abuse;
- 4 the protection of the position of prostitutes;
- 5 to disentangle the ties between prostitution and criminal peripheral phenomena;
- 6 to reduce the scale of prostitution by illegal foreign nationals (persons not in possession of the legal residence permit required for employment).

The new section 250a of the Penal Code made all forms of exploitation within prostitution punishable by law. In October 2002, a partial revision of the decency legislation came into force. A number of relevant sections of the law were amended, particularly with a view to a more effective protection of minors. By means of the formulation of section 248c of the Penal Code and the amendment of sections 248a and 250a of the Penal Code, to profit from forms of sexual service that, strictly speaking, do not fall under prostitution, has been made punishable by law. Thus, section 248c of the Penal Code now makes it punishable to be a spectator at live sex shows in which minors perform. In that case, no sexual contact

between sex worker and client is involved. In section 250a of the Penal Code, the words 'with a third party' were replaced by 'with or for a third party'. In this way, the law also includes as a punishable act (commercial) sexual exploitation without direct involvement in performed sexual acts. In January 2005, section 250a of the Penal Code was replaced by the new, extended section 273a<sup>9</sup> (as of 1 September 2006 renumbered as section 273f), which includes all forms of trafficking in human beings. This means that now, in this section, beside exploitation in the sex industry, exploitation in other labour and service sectors has been made punishable too, as well as certain activities aimed at the removal of human organs (National Rapporteur on Trafficking in Human Beings, 2005). Furthermore, the section in the Dutch Penal Code dealing with coerced prostitution, among other things, was relocated from the decency title to the title concerning the offences against personal freedom.

With the amendment of the law that came into effect in 2000, the general ban on brothels and the ban on pimping were lifted; the relevant sections were removed from the Dutch Penal Code. At the same time, a more severe penalisation of undesirable forms of prostitution and the sexual abuse of minors was introduced. The greater severity of the new legislation came to the fore in a number of ways:

- For the exploitation of involuntary prostitution and the employment of minors in the sex industry, the penalties were raised to a maximum of six years imprisonment, or a maximum of eight or ten years imprisonment in case of (a combination of) aggravating circumstances (the current section 273f of the Penal Code, formerly section 250a). As described earlier, in 2002, the scope of this section was legally extended,<sup>10</sup> from the exploitation of prostitution involving persons against their will or as minors, to this kind of exploitation in all forms of sexual service (like, for instance, striptease, pole dancing, and sexual activities aimed at the production of pornography). This stipulation made all forms of exploitation of coerced sexual service, as well as the exploitation of minors in sexual service, and profiting from these circumstances punishable under (the current) section 273f of the Penal Code.
- Clients who make use of the services of prostitutes aged sixteen and seventeen were made punishable (section 248b of the Penal Code). The clients of younger prostitutes (younger than sixteen) were punishable already.
- The requirement for complaint in case of sex with a prostitute aged between twelve and sixteen was abolished. This means that for prosecution to take place, it is no longer required that the minor or a legal

<sup>9</sup> For the integral text of section 273f of the Penal Code, see Appendix 2.

<sup>10</sup> Act on the Partial Amendment of the Decency Legislation (Staatsblad van het Koninkrijk der Nederlanden (Dutch Bulletin of Acts, Orders and Decrees) (2002), no 388). The amendment came into effect on 1 October 2002.



representative first indicates that an intervention is wanted. For that matter, during the partial amendment of the decency legislation in 2002, the requirement for complaint was abolished entirely in case of intercourse with a minor younger than sixteen. Instead, the Public Prosecutor is now obliged to give the minor the opportunity to be heard (section 245 of the Penal Code).

- Nowadays, section 273f of the Penal Code mentions ‘force’, ‘violence’, or ‘other act’. The term ‘other act’ has been added, next to the already existing ‘misuse of authority arising from relations’<sup>11</sup> and ‘deception’ (see Kool, 2004). Bringing about voluntary prostitution has also been made punishable if this involved the crossing of a national border, since the section does not permit the ‘recruitment’ and ‘transport’ of a person in that context.

In order to enable municipalities to apply either the local bye-law or the municipal license policy on different kinds of sex businesses (like, for example, escort agencies), section 151 of the Local Government Legislation was extended with section 151a. Besides, the Decision Information Judicial Documentation was altered. This enables municipalities to look into the antecedents of sex business owners. In addition, the Foreigners Circular’s old B-17 procedure was replaced by the B-9 regulation.<sup>12</sup> The goal of this regulation is to provide facilities for detecting and prosecuting people suspected of trafficking in human beings, and to provide shelter and protection to the victims of this criminal offence. On the basis of this regulation, permission can be given to victims (and to a limited extent to witnesses/informants) of trafficking in human beings to stay in the Netherlands for the duration of the detection, prosecution, and trial of the person suspected of this offence.

### 3.2 Suppositions behind the amendment of the law

One of the considerations behind the amendment of the law is that, by making a distinction between punishable and non-punishable forms of the exploitation of prostitution, it will be possible to reorganise the prostitution sector and purge it of criminal peripheral phenomena, and to combat the exploitation of people in the prostitution (in the form of involuntary prostitution or prostitution by minors) more forcefully.

Behind the amendment of the law are implicit suppositions. Since the amendment of the law, for the non-punishable forms of prostitution,

<sup>11</sup> With the introduction of section 273a, de term ‘relations’ was replaced by the term ‘state of affairs’.

<sup>12</sup> In 2005, this regulation was adapted to the broader definition of trafficking in human beings as it was formulated in the new section 273a (now 273f) of the Penal Code.

commercial exploitation has become subject to a licence obligation in most municipalities.<sup>13</sup> The licence obligation has enabled the local government to make demands on sex establishments on all sorts of terrains, such as safety, hygiene, transparent management, and so on. Next, various authorities can check whether these demands are being met. One of the legislator's suppositions is that (strict) monitoring and enforcement, among other things, will be conducive to the observance of the rules. The legislator expects that, eventually, this will result in a reorganised and more transparent sector. This will improve the position of the prostitutes in several respects, and will also lead to a wider acceptance of the prostitute in society. Another expectation is that a reorganisation of the sector will lead to a disentanglement of prostitution and criminal peripheral phenomena.

For the punishable forms of the exploitation of prostitution (coerced prostitution, prostitution by minors, and prostitution by prostitutes who do not possess the legal residence permit required for employment), penalisation has become more severe (see 3.1.1). Implicitly, the legislator presumes that more severe penalties will help the fight against these forms of prostitution. One of the suppositions behind the amendment of the law is that, through a partial regulation of the sector, the enforcement and detection capacity for combating trafficking in human beings can be deployed more effectively. This will make the combat against trafficking in human beings more successful; the assumption being that a larger capacity for enforcement and detection will generate an increased chance of arrest. Finally, the legislator presumes that the combination of a potentially increased chance of arrest and heavier punishment might result in a decrease of this form of crime. Most of these suppositions are implicit.

### **3.3 Policy**

In the current situation, the municipalities are most important in determining the form of prostitution policy, because the administrative responsibility has been devolved primarily to the local government. Municipalities can pursue their own prostitution policy, aimed at controlling and regulating the prostitution sector. In chapter 4, we will go into municipal policy in more detail.

A judicial basis has been created for the design of the regulation, and the national government encourages municipalities to contribute to prostitution policy, even if there is no prostitution within their municipal

13 The licence obligation only applies to the commercial exploitation of prostitution; individual prostitutes are not obliged to have a licence.

boundaries. However, the municipalities are not obliged to pursue a specific prostitution policy. To support the municipalities, the Association of Dutch Municipalities (VNG) has drawn up a model bye-law, which can be adopted by municipalities to give form to their local policy. On the basis of sections 149 and 151(a) of the Local Government Act, the municipalities can impose regulations with regard to the legal forms of the commercial exploitation of prostitution by means of a bye-law. This involves an adaptation of the General Local Bye-Law (in Dutch: APV), which has been included in the model bye-law.

#### *The Action Plan*

In the first evaluation of the lifting of the brothel ban and during the subsequent debates between the Cabinet and Parliament, some concrete bottlenecks with regard to prostitution emerged. In the past years, departments, non-departmental public bodies, and non-governmental organisations collaborated in a number of working groups on potential ways to solve these bottlenecks. In July 2004, on behalf of the Cabinet, the Minister of Justice sent a 'Action Plan for Regulation & Protection of the Prostitution Sector' to Parliament. For every bottleneck, the Plan outlines possible routes to its solution, as well as the measures that have been or are being taken. Attention has been paid to, among other things, the improvement of administrative enforcement (the hidden and non-location-bound sub-sectors within prostitution included); establishment policy; labour relations and options for getting out; health; self-regulation, the sector's image, detection and prosecution; lover boys, and education.

#### *The National Action Plan Trafficking in Human Beings*

In December 2004, in response to the recommendations from the third report of the National Rapporteur on Trafficking in Human Beings, the Cabinet formulated a National Action Plan against Trafficking in Human Beings. With this plan, the Cabinet wanted to provide insight into the measures taken to further build up the combat against trafficking in human beings. The action plan discussed legislation and regulation, prevention, the victims of trafficking in human beings, the detection and prosecution of trafficking in human beings, and research and registration. The plan announced the amendment of the law which was to replace the old section 250a of the Penal Code with the new section 273a (now 273f) of the Penal Code. In addition, a number of measures were adopted from the aforementioned Action Plan for Regulation & Protection of the Prostitution Sector.

For this law amendment, the explicit choice was made to devolve the design of policy to the local level, in order to be able to differentiate and get attuned to local wishes as well as possible. Some within the municipalities and within the prostitution sector as well, have expressed the

need for national enabling legislation, which should allow for local differences while at the same time limiting the amount of difference.

### **3.4 The international context**

Although social and political discussions about the way in which society should deal with prostitution are taking place in many countries, from an international perspective the Dutch view on prostitution is quite unique. In the Netherlands, both prostitution itself and, – under certain conditions -, its commercial exploitation are legal. Especially on the commercial exploitation of prostitution, most countries have an entirely different view. A single exception can be found in Queensland, Australia. In December 1999, Australian Parliament passed the Prostitution Act, which came into effect in July 2000. Under this Act, the exploitation of prostitution in small brothels is permitted to a limited degree, under strict conditions (Crime and Misconduct Commission, 2004).

The discussion about prostitution is fed by several different views on prostitution and its normative context. In general, these views can be summarised as being prohibitionist, abolitionist, pro-regulation, or pro-labour (see, for example, Jordan, 2005; Hennum, 1999; Farley et al, 1998; Haveman, 1996).

The approach in favour of prohibition or abolition generally considers (the exploitation of) prostitution to be a form of violence and/or slavery, which must either be combated (abolitionist stance) or prohibited (the prohibitionist stance). Religious and moral considerations can play a role as well. In countries where the view in favour of prohibition is the starting point of prostitution policy, the prostitute, the prostitute's client, and the owner of the establishment where prostitution might take place are usually all criminalised. The view of abolitionists also leads to a certain degree of criminalization. An example of this can be found in Sweden. The idea behind Swedish policy is that prostitution is a form of violence, committed by men against women. According to the Swedish authorities, voluntary prostitution does not exist. The Swedes consider prostitution to be a serious social problem that inflicts damage both to individuals and to society. Proceeding from this view, as of 1 January 1999, the Swedish legislation was amended in such a way that the purchase of sexual services has become punishable by law. As a consequence, Sweden is the only country in the world where the clients of prostitutes are punishable, while the prostitutes themselves are not. The legislator hopes that the new law will deter clients, which in turn will cause a decrease in prostitution. In addition, the law is expected to generate new norms that will instil the ideas of the equivalence of men and women, and of the social unacceptability of

the purchase of sexual activities (Ministry of Justice and the police, 2004; Hennem, 1999). Yet, the enforcement of the new prostitution act turns out to be extremely difficult, while it also generates negative side effects for the prostitutes (Ministry of Justice and the police, 2004).

The pro-labour view considers prostitution to be labour. According to this stance, there are individuals who decide to work as a provider of sexual services for economic reasons. In this view, prostitutes are rationally acting individuals, not victims (as long as they have been able to make their choice in freedom). In the Netherlands, during the 20<sup>th</sup> century, a shift has occurred from a pro-regulation stance to a stance which is more or less pro-labour. In an international context, the Dutch already had a reasonably liberal prostitution policy, since prostitution was not punishable, and the commercial exploitation of prostitution was more or less tolerated. However, by means of the current legislation, the commercial exploitation of prostitution has been legalised as well (provided that this involves prostitutes who are of age, and who carry out their work voluntarily and legally). Thus, the shift that has occurred in the Netherlands flatly opposes the development of ideas in Sweden during the same period. Other countries are observing the effects of both shifts with great interest. At the request of the Norwegian government, a study has been carried out to compare the Dutch and Swedish models to one another (Ministry of Justice and the police, 2004). The purpose of the study was to sustain the debate in Norway about the direction to be taken by their prostitution policy. At the time of this study the provisional outcome of the Norwegian debate was that the current policy, mainly focused on regulation, will not be changed.



## 4 Controlling and regulating the exploitation of prostitution<sup>14</sup>

As we mentioned earlier, the administrative responsibility for the control and regulation of the legal exploitation of prostitution has been primarily devolved to the local government. Municipalities have the option to pursue a prostitution policy attuned to the local circumstances, aimed at controlling and regulating the prostitution sector. A judicial basis has been created for it, and both the amendment of the law and flanking policy aim for an active contribution to prostitution policy by the municipalities, even if there is no prostitution within their boundaries. However, municipalities are not obliged to pursue a specific prostitution policy.

To support the municipalities, the Association of Dutch Municipalities has drawn up a model bye-law; after the amendment of the law, a Help-desk Prostitution has temporarily been active.

### 4.1 Municipal policy

The sub-study among municipalities shows that the majority of municipalities who participated in the study has formally developed policy with regard to the prostitution sector, and has laid down this policy in a memorandum. In most cases, this policy had already been developed before October 2000. Almost 40% of the municipalities stated that they have attuned their policy regionally. Most of the municipalities pursue a policy regarding the regulation of the number of sex establishments. Approximately half of the municipalities taking part in the sub-study pursue a maximum policy for sex establishments. The rest often opts for a regional maximum policy, or for maintaining the status quo. More than 10% of the municipalities pursue a zero policy. In principle, a formal zero policy is not allowed, because it would be contrary to the basic right to free choice of employment. Moreover, by court order municipalities are not allowed to make a moral assessment on this matter, because the legislator has already done so. Therefore, a factual zero policy is not a formal zero policy; it actually is a policy containing such conditions for licences to be issued to a sex establishment that, in practice, the establishment of this sex business turns out to be impossible. Besides the often pursued maximum policy, municipalities use other instruments to discourage prostitution. Examples of these instruments are an establishment policy coupled to a zoning plan, or high dues.

Approximately half the municipalities have no policy regarding escort agencies. Another half of the municipalities pursues no policy regarding home prostitution. A third of the municipalities has no policy with regard to streetwalking. Only 2% of the municipalities tolerates streetwalking, or

<sup>14</sup> For this chapter the sub-study among municipalities (Flight et al, 2006) provides an important basis.

possesses a formal streetwalking zone; in two-thirds of the municipalities streetwalking is neither permitted nor tolerated.

A large majority of the municipalities where a prostitution policy is pursued, is using both a licence system and a policy on establishment. Only a minority of these municipalities pays special attention to prevention, repression, and assistance. According to their own statements, a large majority among the municipalities with a policy on prostitution pays attention to the health and working conditions of the prostitutes. However, hardly any attention is being paid to possibilities for sex workers of leaving the sex trade; this is the case in only 6% of the municipalities with a policy on prostitution.

#### **4.2 The issuing of licences**

On the basis of sections 149 and 151a of the Local Government Act, municipalities can impose regulations regarding legal forms of the exploitation of prostitution by means of a bye-law. This involves an adaptation of the General Bye-Law. Apart from a few exceptions, all municipalities have laid down regulations in the General Bye-Law regarding prostitution and prostitution businesses. This was already the case during the first evaluation in 2001. For this, almost all municipalities had made use of the model bye-law, adopting either an adapted or the original version. Altered General Bye-Laws in particular apply to sex clubs and the like. The owner and manager of the business are responsible for everything that goes on in their establishment. For this reason, among others, one of them is obliged to be present at all times. Either the owner or the manager must see to it that no punishable forms of prostitution or other criminal offences take place in the business. This means that the owner or manager is responsible for the occurrence of coerced prostitution, prostitution by minors, and prostitution by prostitutes who do not have the legal residence permit required for employment. Only in slightly less than half of the municipalities with an adapted General Bye-Law do these regulations apply to home prostitution. Besides the General Bye-Law, the municipalities also use zoning plans to regulate the establishment of sex businesses. The sector regularly finds these zoning plans to be galling. The expansion and innovation of existing businesses are impeded by strict zoning schemes.

During the first evaluation, it turned out that a large number of municipalities had not yet completed the process of issuing licences. (Smal-lenbroek & Smits, 2001). In 2006, the arrears had been cleared away. In section 2.1, the number of licensed businesses per sub-sector has already been presented. Most municipalities actually issue licences for no more than a year; these licences must be renewed time and again. Every year,



approximately 12% of the applications for a licence is turned down. According to the municipalities, the issuing of a licence takes three months on average, but this issuing time varies considerably, from seven weeks to more than half a year. There also is great variety in the dues to be paid. In addition, the number of licences needed for establishing a sex business is different for every municipality. Often, exploitation licences and use licences are needed, but most municipalities also require a liquor and catering licence. Sex business owners are often amazed and complain about the differences between municipalities with regard to the issuing of licences, the conditions required, and the costs.

One of the conclusions of the first evaluation (Daalder, 2002) was that there were hardly any possibilities for new businesses to establish themselves, because the general policy is one of maintaining the status quo. This hindered the potential renewal of the prostitution sector. According to the municipal data, in 2006, there actually were limited opportunities for new sex establishments in the Netherlands. At the moment, roughly 250 licences are available for different kinds of new businesses. Thus, 64 licences, divided among 39 municipalities, are available for sex clubs, and 51 licences, divided among 27 municipalities, are available for a private house. It is almost impossible, however, to establish a new business for window prostitution, with only one municipality with an open licence on offer. Most of the licences are available in the Gelderland, North Brabant, and North Holland provinces. The owners of sex businesses seem to have little insight in the licences that are available according to the municipalities. They indicate that the municipalities still hold on to maximum quota that make it very difficult to establish a business in a legal manner; in this way, municipalities increase the chance that owners will resort to the exploitation of non-licensed businesses. Informants see a solution in municipalities or regions making a periodical assessment of the supply and demand. Apart from this, innovation within existing businesses is not always easy, either. Sometimes owners who want to carry out alterations in their establishment do not succeed in arranging the necessary documents.

The most important reason for municipalities to refuse licence applications is that an establishment would contravene a planning regulation. Other reasons for refusal are that an applicant falls short of behavioural demands, the protection of the living and social climate, and the interest of public order.

When assessing a licence application, municipalities have the possibility to carry out an investigation on the basis of the Public Administration Probity Screening Act (hereafter to be called the BIBOB Act). The BIBOB Act stipulates that government bodies can refuse to issue a decision (or can revoke it), when there is serious danger that it might also be used to commit criminal offences, or to profit financially from such offences.

This Act also created a BIBOB Agency, which on request offers advice about the extent of an existing danger (TK 26 883, no 1-2, pp 3 and 5, (1999-2000)). Since it came into effect, in June 2003, the BIBOB Act applies, among other things, to the sex services sector. An evaluation of the Act shows that, of all the requests for advice submitted to the BIBOB Agency between 1 June 2003 and 1 August 2006, 40 related to the sex services sector (Doornbos et al, 2007).

Within the prostitution sector, owners appreciate the idea behind the BIBOB procedure, but at the same time they also see disadvantages: that it stimulates the use of straw men; that too little is known about the veracity of the data used in the procedure; and that the current method of application results in an increase of their administrative expenses.

Only a few concrete cases are known, in which licences for sex establishments were refused or suspended with reference to the BIBOB Act. Earlier, the municipality of The Hague has revoked the licences of one particular family while referring to this Act. In this case, the Council of State put the municipality in the right. Recently, however, licences finally were issued after talks between the municipality and the family concerned. In Eindhoven, the region of Groningen, and in North and Central Limburg, the BIBOB procedure, insofar as it was applied, has had no or hardly any consequences for the issuing of licences.

In 2006, Amsterdam started using the BIBOB procedure to check the licence applications for the prostitution sector. As a result, at the time of this study, the municipality of Amsterdam has decided on the basis of the BIBOB Act to revoke a large number of licences from a limited number of owners of window brothels. These entrepreneurs, however, do not throw in the towel without a struggle, and appeal procedures are looming ahead.

### **4.3 Surveillance, enforcement and compliance**

During the first evaluation in 2002, it was established that the decentralisation of prostitution policy caused the introduction of both the law and its enforcement to work out unevenly and irregularly throughout the country. This generated great differences between regions, and even between municipalities within one and the same police region. At the time of the first evaluation, active administrative enforcement scarcely took place, because most of the municipalities were still in the phase of issuing licences; the step towards active inspection and enforcement was still to be taken. With regard to the enforcement concerning criminal offences, such as prostitution by foreign women who do not possess the legal residence permit required for employment, clear differences could be established between regions and municipalities. The consequences of this lack of an even implementation were, among other things, a state of suspense among those working in the sector, and the relocation of pun-

ishable forms of the exploitation of prostitution to municipalities where inspections were less frequent or less strict and the policy was more or less one of toleration. On these locations, the researchers came across prostitutes who did not have a valid work permit even in the highly visible forms of prostitution, such as the windows and clubs. They concluded that a national minimum level of enforcement is a necessary condition to counteract the effects of relocation and to achieve the goals of the amendment of the law. This concern about local differences in enforcement was expressed in the Action Plan for Regulation & Protection of the Prostitution Sector as well. In the meantime, almost all municipalities seem to have attained a minimum level of enforcement, although local differences still certainly exist.

Enforcement is an important instrument to encourage people to abide by the rules. Yet, beside enforcement, compliance can also be encouraged by stimulating spontaneous observance, for instance by means of education or a simplification of the rules. For the analysis of the extent of enforcement and compliance, we make use of the Eleven-Times Table to serve as a steppingstone to structure the findings.<sup>15</sup>

#### *4.3.1 Factors benefiting spontaneous compliance*

##### *Knowledge and clear rules*

For them to comply with the rules, it is important that owners and prostitutes know and understand the rules. For that purpose, in a large majority of the municipalities where sex businesses are established, information has been given to the sex business owners about the effects of the amendment of the law, and the rights and obligations ensuing from it. By the municipalities' own account, the prostitutes received information in a third of the municipalities. A majority of the municipalities is of the opinion that the sector knows the rules well or reasonably well. The clarity of the rules leaves much to be desired in the view of a fifth of the municipalities.

In all the sub-studies, the interviewed establishment owners thought that the content of the rules (and the costs of licences) differed widely between municipalities, and that the rules could be formulated more clearly. Much obscurity also exists about the rules of the Tax Administration, among prostitutes as well as among owners (for this, see also 5.1). Owners indicated that they need a univocal policy and sound information. It would benefit observance when rules were to be formulated more clearly and explained in a lucid way.

<sup>15</sup> The Eleven-Times Table is an analytic model developed by Dr D. Ruimschotel LL M, in collaboration with and commissioned by the Ministry of Justice. The Eleven-Times Table contains eleven factors considered to be decisive for compliance with the regulations. These eleven factors are split up into spontaneous factors for compliance and enforcement factors.

*The pros and cons of compliance or transgression*

Compliance with the rules is stimulated when the costs of observance are relatively low, while the benefits are relatively high. It does not help observance to make it difficult for owners to fulfil the licence requirements. Many owners of licensed businesses indicate that they incur a lot of administrative expenses in order to meet with the rules. In many municipalities, moreover, dues are extremely high. In addition to this, there are demands with regard to hygiene regulations and building- and fire safety that owners consider to be unreasonable. However, the regulations and dues differ widely between municipalities; there are municipalities where owners are very positive about both the regulation and their treatment by the municipality. In general, the owners think that licensed businesses have a much harder time in administrative and financial respects than businesses operating in the illegal circuit. From the perspective of administrative expenses and financial opportunities, it seems to be much more appealing to own an illegal sex establishment than a legal business. That is not conducive to compliance. The same holds for prostitutes: from the angle of the administrative expenses and finances, it is more lucrative to work in the non-licensed sector. Beside the advantages of not paying tax and evading inspections, they can control their own work more effectively if they are working from home. For that matter, the advantages for the prostitutes of evading inspection are relative, since this might involve inspections for trafficking in human beings and working conditions, which might serve the prostitutes' interests. An additional important factor for the provision of sexual services is anonymity, much desired by both prostitutes and clients. For prostitutes, a significant disadvantage of compliance with the rules is that their anonymity is more at risk.

Yet, observance of the rules is also seen as beneficial for the image of the sex establishment concerned. Sex establishments that properly abide by the rules might attract more clients than other businesses, because part of the clientele likes to go to a 'respectable' establishment with a good image. A small number of municipalities try to stir owners into observance of the norms, for instance by organising a consultation between owners and local residents. Observance of the rules can result in an increased acceptance and less complaints by local residents. In this way, owners might experience the advantages of their compliance (as well as the disadvantages in case of a transgression of the rules) more directly. The sub-study among municipalities showed, however, that most of the municipalities do not, or barely, focus on stimulating spontaneous observance.

*The acceptance of policy*

It generally benefits compliance to the rules when the people to whom the rules apply can agree with the starting points of the policy, and judge the regulations as being fairly reasonable. The owners in the licensed sector

consider the amendment of the law to be something positive. Of the businesses owners in that sector, 84% supports the amendment of the law, against 37% of the prostitutes. However, this large number of supporters among the owners does not mean that the content of the policy and the rules are considered to be reasonable. Owners complain about whole books full of rules, which are by no means seen as being always reasonable or sensible. An example of this is the condition required by municipalities that a manager should always be present on the premises. The result of this condition is that the manager who used to be standing outside the front door, effectively keeping track of everything that went on, by now stays inside, on a spot where he cannot keep much of an eye on anything. In addition, owners and prostitutes are confronted with rules that get across as being contradictory. This applies in particular to the regulations of the municipality as opposed to those of the Tax Administration. The municipalities often impose rules, for instance on opening hours or measures in the interest of public health, which, when observed, lead the Tax Administration to conclude that an employer-employee relationship exists here. This would mean that, as a consequence of the licence requirements drawn up by the municipalities, it is impossible for prostitutes to work in clubs as a self-employed person.

Within the prostitution sector, there is much resistance against the payment of income tax and premiums. The evasion of paying premiums and tax is an important motive for both prostitutes and owners to commit or exploit prostitution outside the licensed sector. For that matter, the payment of tax is evaded in the licensed sector as well, yet according to people in the sector, this is easier to accomplish in the non-licensed sector

#### *Abiding by the norms*

The extent to which the target group is inclined to conform to the authority of the government can be of influence on the degree to which it will comply with regulations. In view of Dutch history, during which the exploitation of prostitution has been illegal for ages, and in view of the fact that a large part of the current owners has already been working as a business owner in that illegal sector, it seems plausible that owners are less inclined to conform to government authority than most other Dutch people. The way owners look upon non-departmental public bodies like the Tax Administration shows little respect or appreciation for this organisation. In the prostitution sector, an appeal to abide by the norms is not a stimulus for compliance.

#### *The chances of informal control*

The observance of regulations might benefit from a situation where violators are considered to run a great risk of getting sanctioned by their environment. Yet, in the prostitution sector, in view of the nature of the sexual

services provided, the prevalent atmosphere is one of natural discretion. Even though people get to see a lot of what others do, confidentiality and discretion are a necessity for the continuation of the sector.

#### ***4.3.2 Factors benefiting enforcement***

##### *The chances of informal reporting*

Compliance with the rules can be stimulated if the perceived chances that an informally observed violation gets reported to the authorities are high. In this context, it is important whether the environment of the target group is quickly inclined to report observed transgressions to the authorities. As we described in 4.3.1, the prevalent culture within the prostitution sector is one of discretion and distrust of the authorities. This culture does not tend to promote the chances of informal reporting. However, there certainly are individuals working in the sector who are intent on exposing abuses. The campaign 'Appearances are deceptive', set up by Report Crime Anonymously ('M') anticipated on this. The goal of this campaign was to lower the threshold for reporting observed abuses to a government service. The large amount of (often useful) tip-offs reported to M (78 during the first half of 2006) proves that it is possible to obtain information from within the sector itself. The assumption is that part of the reporting has been done by clients.

##### *The chances of getting inspected*

It can benefit the observance of the regulations when those to whom they apply estimate that the risk of getting inspected for violations is high. The study among municipalities shows that inspections were being carried out in all responding municipalities where licensed sex establishments are active. Most municipalities, however, had not fixed the number of times that licensed sex establishments should be inspected. According to the municipalities, in actual practice, for the most part the inspections take place once a year, but some interviewed owners indicated that they were inspected more often. This higher frequency of inspections was also established in the in-depth regions studied during the research on non-legal prostitution. In almost all the municipalities where licences were issued, the police are involved in these inspections, and services like the Municipal Health Service, the fire department, and building inspection authorities are frequently involved as well. Seldom involved are the Labour Inspectorate (in only 8% of the municipalities) and the social investigation service. Although the Labour Inspectorate has both a national coordinator and a national project leader for the prostitution sector, it does not set up active inspection projects; the Inspectorate only carries out inspections in response to complaints and accidents. Nor does the Labour Inspectorate make use of its competence to carry out inspections or impose fines of its own accord on the basis of the Act on

Labour by Foreigners.<sup>16</sup> Frequently, instead of the Labour Inspectorate, the police take over inspections in the context of the Act on Labour by Foreigners as a part of their own inspections of businesses.

In more than half of the municipalities, the police only have a criminal task. This means that the police carry out inspections for criminal offences, such as the presence of prostitutes who are underage, or prostitutes who do not possess the legal residence permit required for employment. In the rest of the municipalities, next to its criminal task, the police also have a delegated administrative-judicial task. In those cases, the police not only inspect for criminal offences, but also investigate whether businesses fulfil the requirements set by the municipality for obtaining particular licences. On the basis of the existing figures, it is virtually impossible to estimate what percentage of non-licensed businesses is dealt with. However, a survey among municipalities does show that, in recent years, some dozens of non-licensed, location-bound prostitution businesses have been closed.

Yet, within the sector itself, the inspections by the Tax Administration are the ones most talked about. These inspections are feared most; in addition, there are more complaints about an unpleasant treatment by employees of the Tax Administration than by employees of other services, like the police. In part, these complaints can be attributed to unaccustomedness of Tax Administration employees to dealing with the prostitution sector, where police employees often already have years of experience. Furthermore, prostitutes consider the questions asked by employees of the Tax Administration to be impertinent. The Tax Administration, on the other hand, is of the opinion that these persistent questions are necessary in order to establish whether or not there is an employer-employee relationship.

#### *The chances of detection*

Little is known about the chances of detection. These seem to differ widely for each kind of violation, because there is great variety in the difficulty for the inspectors of establishing that this or that particular violation has indeed been committed. Some preconditions required for a licence are easy to check, but to actually observe exploitation of people or coercion is extremely difficult. Municipalities make little use of means to make owners more aware of the possibility that violations will be noticed and punished. Only five municipalities, for example, publish the results of their inspections.

<sup>16</sup> The Act on Labour by Foreigners.

*Selectivity*

Selectivity is to be understood as the (heightened) perceived chance of inspection and detection in case of a committed violation, by means of the selection of businesses, persons, acts, or areas to be inspected. According to a part of the interviewed proprietors, businesses where a violation has been detected and businesses with a bad reputation are subjected to a period of more intensive inspection, with a lesser regard for the operational management of these establishments (such as minimising the disturbance during an inspection). In this respect, selectivity is most certainly applied. However, in the owners' view, this only holds for the licensed businesses.

Business owners are unanimous in their opinion on the manner in which non-licensed businesses and the non-licensed sector (in particular the escort agencies operating through sex lines) are treated. Among these owners, the prevalent idea is that licensed businesses are confronted with severe inspections, while the non-licensed establishments are left alone. This generates unfair competition, and undermines the owners' willingness to abide by the rules. A number of owners indicated, though, to be ready to share their knowledge about abuses with the police, helping them to carry out more well aimed inspections in the future. Since the exposure of abuses committed by competitors is also in the business owners' interest, this is a source of information that might be used more in the future.

The survey among municipalities shows that in half the cases the municipality determines which sex establishments are to be inspected. Businesses are usually checked in the context of regular inspections. In a third of the cases, the immediate cause of an inspection are complaints of people living in the neighbourhood. According to the municipalities, the inspections are generally announced in advance; the inspectors appear unannounced only in a quarter of the cases. Whether the announced inspections produce other results than the unannounced ones is unknown.

*The chances and the severity of a sanction*

Since the amendment of the law came into effect, a sanction has been imposed on 346 licensed sex establishments. Assuming that the circulation of businesses has been small, this number of sanctions means that approximately a third of the existing sex establishments has at some point been confronted with a sanction. In the great majority of cases (78%), this involved a warning, but also more severe sanctions were imposed, such as a (temporary) shutdown of the establishment or the suspension of a licence. In approximately half the cases, a combination of criminal and administrative sanctions is involved. Most feared by owners is the possibility that their establishment might be shut down.



Special attention is required for the non-location-bound businesses. The North Brabant police have developed an approach for the inspection of escort agencies, in which police officers order a prostitute from an escort service, who must identify herself on arrival. The officers keep to a number of rules, to avoid the allegation afterwards that it is a case of provocation. Thus, for example, the telephone conversation with the escort agency is recorded, and the officer only asks for an escort, not for a foreign woman or an underage girl. By now, this so-called hotel procedure is being used in several regions. In October 2005, a covenant came into effect between the members of the Dutch Newspaper Press and the Minister of Justice, as a result of which sex business owners, among others, are requested to include unique business phone numbers in their erotic advertisements. The primary goal of the agreement in the covenant is to support the administrative supervision of mobile forms of prostitution.

#### 4.4 Developments

In 2001, the majority of the municipalities turned out to already pursue a prostitution policy. Since then, the number of municipalities with a prostitution policy has remained stable. The motivation of municipalities without a prostitution policy had stayed the same as well: these are primarily municipalities that say not to need such a policy, because no prostitution takes place within their boundaries. In 2006, as in 2001, municipal policy makers still had a preference for the local maximum policy. In 2006, there still were a number of municipalities that indicated that they pursued a formal zero policy. Compared to 2001, however, municipalities seemed to opt more often for a positive inclusion of prostitution in their zoning plans.

As we described in section 4.2, in 2006 there were possibilities to establish new sex establishments, contrary to the situation in 2001, because there was room in several municipalities to apply for licences, in some cases within fixed quota.<sup>17</sup> This suggests that there might be room for innovation and renewal. Yet, in practice, nothing much seems to come of this, neither within the businesses, nor through the establishment of new businesses.

Meanwhile, almost all municipalities seem to have attained a minimum level of enforcement. So-called free zones, like there were in 2001, no longer exist, but local differences still remain.

<sup>17</sup> This despite the fact that a maximum policy is pursued at the great majority of the locations.

The quantitative data on sanctions are not available per year, making it impossible to indicate whether the number of sanctions is decreasing or increasing. However, in the study among municipalities, one conclusion the researchers drew on the basis of in-depth interviews with enforcers and proprietors is that a decrease is highly probable. Many violations were established during inspections carried out directly after the amendment of the law, while at this moment, this rarely happens any more. In the sub-study on non-legal prostitution, during inspections in the in-depth regions, the researchers also found that in recent years the number of violations has decreased quite steeply. In this respect, the stepping up of the enforcement is clearly paying off.

With regard to regulation and enforcement, the municipalities focused at first on the regulation of location-bound prostitution businesses. These businesses are the most easy to monitor. On many locations, it is primarily the non-licensed businesses and non-location-bound businesses, such as the escort agencies, which have stayed hidden from view, as well as establishments in the more or less grey circuit, where it is not immediately clear whether or not sexual services are being provided (as in the case of erotic massage parlours). The complaints issued from within the licensed sector about unfair competition by non-licensed businesses does not seem to be entirely unfounded. More and more municipalities have come to understand that regulation and enforcement should not be limited to location-bound prostitution businesses and the licensed part of the sector. The escort branch, in particular, is at the centre of attention now. A number of municipalities expects the national government to take action (for instance with the introduction of a national escort law), because escort businesses are not location-bound, and tackling them is beyond the strength of the local level. Several municipalities have a licence system for escort businesses just the same. In this regard, the municipality of Eindhoven is front-runner. From the region surrounding Amsterdam, a lot of criticism has been levelled at the municipality of Amsterdam, because of its lack of a licence system for escort agencies operating within its boundaries, but at the time of this study, the municipality was working on the design of a policy regarding the escort.

In the sub-study on non-legal prostitution, the researchers found that strict enforcement in the in-depth regions does not seem to have resulted in a shift towards non-licensed prostitution within the area. At least, no concrete indications to that effect were found. Relocation to municipalities where the regulation or enforcement is less strict, however, actually does seem to take place. Thus, such shifts are caused by regional differences. Some informants in Eindhoven have gingerly suggested a so-called 'waterbed effect', caused by the strict regulation and enforcement there. Thanks to this strict approach, Eindhoven's escort branch seems to be

safeguarded against punishable forms of prostitution, yet ever more escort agencies are observed to send prostitutes to the Eindhoven region from Belgium and Limburg. An opposite movement can be observed in Amsterdam. Because the municipality of Amsterdam does not (yet) pursue a formal policy regarding the escort branch, it is there that all the escort agencies are established that are also active in the surrounding municipalities. In the region of Groningen, the municipality of Groningen seems to have gotten its regulation and enforcement straight, but relatively many clubs and private houses are established in the so-called Ommelanden (the surrounding lands). There, enforcement appears to be less strict. During the (sparsely executed) inspections, relatively many violations are found.



## 5 Protecting the prostitutes' position<sup>18</sup>

One of the goals of the lifting of the general ban on brothels is the protection of the prostitutes' position. Yet, what is meant by the words 'the protection of their position' is, in fact, rather vague. In general, the starting point used for policy is that the amendment of the law should result in an improvement of the prostitutes' position. While before the amendment of the law prostitutes were working in an illegal (albeit conditionally tolerated) sector (although their work in itself was not illegal), after the amendment of the law they are working in a sector where, theoretically, inspections take place to check whether business owners, – and prostitutes as well –, observe the legislation and regulation which applies to all citizens and businesses. The expectation is that, eventually, this will result in a reorganised and more transparent sector, which will entail an improved protection of the position of prostitutes. Below, we will briefly describe the findings of the various sub-studies regarding the position of prostitutes in the regulated sector. The position of prostitutes in the non-regulated sector will be discussed in chapter 6.

### 5.1 Labour relations

Zuidema, Aerts, and Boonstra (2007), researchers at the Hugo Sinzheimer Institute of the University of Amsterdam, conducted a study on the effects of the lifting of the general ban on brothels with regard to private law. The study focuses on the relation between labour law and the actual conditions in the prostitution sector. The researchers' intention is to provide clarity about the position of prostitutes from the point of view of labour law. Zuidema, Aerts, and Boonstra (2007) argue that a business owner in the prostitution sector is not a normal employer, in view of the nature of the work, the stigma on the sector, and the sector's being tied up with the illegal circuit. In addition, they indicate that, on average, prostitutes have a weaker social and legal status than the average Dutch employee does. This status generates a heightened risk of exploitation and abuse of power by the employer. It is clear that the business owners hold a solid position of power in relation to the women doing the work. Especially in the case of foreign women, this position of power is stronger still, because the work can be characterised as being *highly personalised*. (18) This means that the work is done in seclusion, which provides more opportunities for an abuse of power.

One finding during the first evaluation was that there is a great lack of clarity about the right form for the labour relations within the prostitution sector (Daalder, 2002). There is confusion about the concept of the

18 *A global alliance against forced labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva: ILO (2005), p 50, taken from Zuidema and Boonstra, 2006.

prostitute's 'self-employment', and about the way in which this concept should be interpreted. The Action Plan for Regulation & Protection of the Prostitution Sector also pays attention to the vague form of labour relationships. This plan indicates that in a large part of the businesses investigated in the context of 'Enforcement at the right level', the relation between the business owner and the prostitutes working in the business contains such elements of exercised authority, that it is justified to speak of employment when applying the relevant legislation and regulations. Because of the consequences (mainly with regard to finances and labour law) the business owners, and usually the prostitutes as well, make it appear as if it is a matter of self-employment (Action Plan for Regulation & Protection of the Prostitution Sector, 2004).

### *5.1.1 Jurisprudence*

Regularly, business owners argue that it is impossible to have employment relations in the prostitution sector, because this would mean an erosion of the basic right of physical integrity. However, already in 1998, the court in The Hague has determined that the nature of prostitution work is not inconsistent with paid employment (Zuidema et al, 2007).

In the meantime, several court cases have taken place in which decisions were pronounced upon the judicial qualification of the labour relation between a business proprietor and a prostitute, and upon the question whether the qualification 'employer-employee relations' used by the Employee Insurance Implementing Body (UWV) and/or the Tax Administration is justified. In most of the cases, according to the administrative judge, the actual circumstances were an indication of labour that had been carried out pursuant to an employment contract. In cases where notice was given of an appeal, the Central Appeal Council confirmed the verdict of the judges, establishing that the labour relation(s) between a sex business owner and one or more prostitutes working in the business should be considered a employment contract in the sense of section 7:610 of the Civil Code, and should not be considered a labour relation between a self-employed prostitute and a lodging-house keeper.

A jurisprudence analysis of the court cases mentioned above is included in the study by Zuidema et al (2007). The proceedings were instituted by business owners against the Employee Insurance Implementing Body and/or the Tax Administration. The business owners denied that the objective characteristics needed for the presumption of an employment contract had been met. In nine of the twelve cases, the judge ruled that the existence of a private employment contract had been established in accordance with section 7:610 of the Civil Code. In the other three judicial sentences, the judge considered the appeal by the business proprietors

to be valid. The grounds stated in the judgments chiefly concerned a too scanty furnishing of proof, which infringed on the norm of carefulness.

Several elements can be distilled from this jurisprudence, which prove to be important to the judge. Zuidema et al (2007) discuss four criteria: the employer-employee relation, pay, the personal execution of labour, and the factor 'during a certain time'.<sup>19</sup>

#### *Employer-employee relationship*

With regard to the employer-employee relation, the determining factor is whether an authorisation exists to give instructions and lay down rules about the manner in which the work must be done. In the case of prostitution, though, anyone's authority to give instructions is by definition limited; prostitutes should always have the possibility to refuse clients and/or sexual acts due to section 11 of the Constitution. As is evident from the court cases, elements that can contribute to the judgment that an employer-employee relation is present, are: an agreement on working hours and workdays; the manner of settling the rent; the business owner's influence on the price of sexual services; interviews of admission with new prostitutes; the nature and scope of agreements and of house rules (if these cannot be purely regarded as measures to keep order, but are more far-reaching, they seem to be indications of an employer-employee relation); the recruitment of clients and the advertising method (if the recruiting is done by the business owner, this is seen as an indication of an employer-employee relation); who deals with complaints; and who provides meals, drinks, condoms, and massage oil. The more instructions are given by the business owner, and the greater his say in all kinds of matters, the sooner the existence of an employer-employee relation will be established.

#### *Pay*

Several constructions for payment are cause for judges to determine that pay exists. This has happened in the case of a construction, in which the business owner collected the payments of clients, to pay out part of it to the prostitutes according to the prices fixed by the proprietor for the various sexual services. Even when the client pays the prostitute directly, whereupon she hands over a previously fixed amount to the business owner (whether or not by means of a fixed percentage), the court has ruled that this is pay. According to the Central Court of Appeal, privately reached agreements about supplementary payments for extra services are also to be viewed as pay. In the opinion of the Court, the freedom to provide certain services is not an obstacle in the way of an employment contract.

<sup>19</sup> The researchers comment that the formulation 'during a certain time' only has meaning in the context of social security law, not in that of civil law.

*The personal execution of agreed labour*

In the various court cases, the judges' ruling is that there is an obligation to execute work personally, since it has not been made plausible that prostitutes have let someone else stand in for them, or even have the possibility to do so. When a prostitute can choose her replacement from a limited group of people only, appointed by the client, this is seen as an indication for exercised authority, and for the existence of an employment contract instead of the prostitute's self-employment.

*Labour done for a certain period of time*

Labour done during a limited period of time is a fourth element that might denote an employment contract. An example of this is to agree to the obligation to work on certain days, on the basis of a weekly roster. Even when the prostitute can plan her own work activities and working hours, this might be an indication for a construction of salaried employment.

**5.1.2 *The actual practice***

In 2006, the confusion within the sector still was persistent. All sub-studies showed that the discussion about the question whether or not employer-employee relations existed between prostitutes and business owners in the licensed sector is an important subject. Business owners still use the argument, by now superseded by jurisprudence, that it is impossible for employer-employee relations to exist in the prostitution sector, because this would mean an erosion of the basic right of physical integrity. Other arguments mentioned by business owners to support their view that salaried employment is no option in this branch are that it will result in many prostitutes reporting ill; that prostitutes are unable to even do this kind of work for one week per month; that personnel cannot be replaced through employment offices; and that the prostitutes themselves do not want salaried employment. Sure enough, the physical nature of the work makes it difficult or even impossible to work during menstruation, pregnancy, and illness. In current practice, the risk of being unable to work and not having an income as a result, is fully shifted on to the prostitutes. This was also found by Zuidema et al (2007). In their view, the application of court decisions will lead to the conclusion that, in the future, this risk should in large part be paid for by the employer. According to them, the business owners' duty to take care of the prostitutes' labour conditions diverges only on a few points from what is customary in other enterprises. The researchers suggest that it might be possible to enforce the norms through the municipalities' licence system. Business owners and prostitutes indicate almost unanimously that salaried employment constructions are very rare.

By their own account, approximately 95% of the prostitutes in the licensed sector should be regarded as a self-employed person. The following,



however, will show that within the practice in which prostitutes are doing their work, there often actually is an employer-employee relation instead of the prostitute's self-employment. Yet the business owners almost always duck out of their obligation to continue payment of wages in case of sickness and other labour law obligations, such as the regulations to be applied when an employment contract is ended.

Of the 354 interviewed prostitutes in the licensed sector, only 10 said they worked for pay. It is notable that, in spite of the broad agreement among prostitutes and business proprietors about the alleged self-employment, they do differ when it comes to their perception of the actual situation. Thus, a business owner described his use of zero-hour contracts. Yet, the prostitutes working in that particular establishment had never seen such a contract, and paid the proprietor a fixed amount of money per client. It is important for self-employed prostitutes to receive receipts, among other things for rent, to give to the Tax Administration. However, here again, a difference can be discerned in the answers of business owners on the one hand, and prostitutes on the other. Where almost half the operators claim to provide receipts for rented facilities to the prostitutes, 60% of the prostitutes who indicate that they rent rooms claim not to get a receipt.

More than three-quarter of the prostitutes alleges to have entered into an oral agreement with the business owner. This involves an agreement on working hours, the rent, prices, and payment. The business owners also indicate that there are different methods to reach an agreement. Most often, this happens orally; by their own account, 30% of the business owners has commissioned contracts to be drawn up. The interviewers have actually seen a part of the agreements for themselves, as part of the house rules hanging in visible places on the walls of prostitution businesses. With regard to payment and working hours, often nothing is put down in writing; these agreements are made orally. However, the business owners expect the prostitutes to stick to these agreements; otherwise, the prostitutes are sometimes barred from the establishment.

The agreements between business owners and prostitutes involve aspects that, according to the jurisprudence, are of influence on the decision whether or not to call a given situation an employer-employee relation. Even though in the case of window prostitution, for instance, a great majority of prostitutes indicates to determine her working hours herself, this holds for only 38% of the prostitutes working in clubs, and for 41% of the women working in massage parlours.

A business owner exerting influence on the prices is seen by the judges as an indication for an employer-employee relation. For the majority of the women, the business (in part) determines the prices. In most cases a recommended price is given, enabling the prostitute herself to negotiate

the final price in her room. In this context, there is a great difference between the sub-sectors: a majority of the women in the window prostitution is entirely free to determine their price, while only a small minority enjoys this freedom in the other sub-sectors. On various locations, the interviewers have seen price lists hanging on the wall or lying about.

Approximately half the prostitutes state that they rent a room to provide their services in, at their own risk, and by the time unit. Window prostitutes, especially, describe their work situation as one of self-employment, with them renting rooms by (part of) the day or the week. Of the prostitutes in the escort branch, more than three-quarter works with a percentage- or payment scheme: the prostitute hands over a percentage of her earnings or a fixed amount per client to the business owner. In most cases, payment is done first by the client to the prostitute, whereupon the prostitute pays the business owner for the rented room. Still, over a third of the prostitutes gets paid by the business; the client pays the business owner. This happens mainly in the escort branch and in clubs. A newly emerging form of payment, chiefly used in massage parlours and private houses, is that the client pays both: the business owner for the room, and the prostitute for her services.

A majority of the interviewed prostitutes (more than 60%) indicates not to pay tax over the income earned by their prostitution work. In the escort business, this involves even three-quarter of the respondents. The main argument for tax evasion is that prostitutes think they already earn very little. Related to this, some consider their work not to be a steady profession, or think they cannot work enough hours. For some prostitutes, tax evasion is a matter of principle; they think that paying tax does not agree with working in the prostitution sector. In this context, the quotation 'this involves my body; I will not pay tax over it' is telling. Finally, there is another important reason why prostitutes refuse to pay tax. Different prostitutes and business owners state that a large part of the prostitutes receives social security; they do not want their extra income to become known to the Social Services or the Employee Insurance Implementing Body.

A part of the prostitutes has no objection to a certain amount of power inequality, and/or is not informed about the extent to which the business owner can assert his authority; the great majority does not think of themselves as an employee, but as someone self-employed. Usually, prostitutes do not fancy the idea of salaried employment at all, because they presume they will then have to give up what attracted them to self-employment in the first place: freedom, independence, temporariness and flexibility, and earning a lot of money. These motives might apply as well to people working in other sectors. But for prostitutes, there is another reason still: much more than in other sectors, prostitutes value the opportunity to do

their work anonymously. In part, this is connected to their wish to keep their extra income hidden from issuing authorities. Yet, anonymity is also important, because the women want to keep their work a secret for their family and acquaintances, for fear of their incomprehension. For many of the women, their anonymity is a matter of extreme importance, on account of which they are extra reticent when asked to give their private address, for instance for registering at the Chamber of Commerce.

Being a self-employed entrepreneur can be set up in its pure form, or by reaching an agreement about assignments with a business owner. Zuidema et al (2007) conclude, however, that an agreement about assignments between a self-employed prostitute and a business owner cannot be made to fit the labour relations in the prostitution sector due to practical obstacles. The actual working method always results in which authority is exercised. For this reason, the researchers conclude that there is one choice only: between pure self-employment and an employment contract. Pure self-employment does not involve an agreement about assignments between the prostitute and the business owner; the prostitute merely rents a room and pays the rent for it. With this form, the business owner does not interfere at all with either the earnings of the prostitute, or with the nature of the services provided to the client. As soon as the business owner starts to dictate rules concerning the content of the work, he exerts authority; then, his relation with the prostitute will have to take the form of an employment contract.

Prostitutes in the licensed sector were asked which one of six aspects of their work they considered to be the most important. The highest score was for 'anonymity', followed by 'having no administrative bother' and 'pay little tax'. Less important were 'continued payment in the event of sickness', 'days off', and 'a regular income/salary'. That these last three are considered to be less important is consistent with the women's preference to work as a self-employed person. The importance of not having a lot of administrative bother, however, does in fact contrast with the wish to work as a self-employed person. After all, someone who is self-employed generally has to keep up with more administration than an employee. However, the majority of the women who see themselves as being self-employed does not keep up with any administration at all.

On the other hand, prostitutes do mention disadvantages of their work as a prostitute, which are mainly connected with being self-employed: obstacles when they apply for a mortgage or a loan, due to the lack of a fixed income, and the fact that they are not entitled to any social service benefits, a pension, Disablement Insurance, and so on. Prostitutes are inclined to attribute such disadvantages to their profession, instead of to their legal status.

## 5.2 Working conditions

Since the ban on brothels was lifted, business owners are obliged to comply with general regulations regarding the working conditions and safety of employees. In addition, the municipalities often have drawn up supplementary requirements for licences to be issued. In section 4.3.2, we mentioned that the Labour Inspectorate does not take much action in the prostitution sector. This is also shown by research carried out in the licensed sector: only a few business owners state that their establishment has been visited by the Labour Inspectorate at one time or another. Based on their own observations, the interviewers from the sub-study on the licensed sector have made a classification of the businesses they visited. They awarded most of the establishments an average three stars: they were reasonably maintained, clean, and had few peculiarities. But there also were ups (very luxurious clubs) and downs (for instance, shabby, oppressive and neglected private houses, which have also been described in the report by the Red Thread). The interviewers observed only a few abuses with regard to working conditions, but they also established that working conditions differ widely. There are indications, though, that prostitutes turn their backs to businesses where working conditions are bad, while clients seem to pass over the shabby establishments as well.

## 5.3 Mobility

There is much mobility within the prostitution sector. This has various causes. Of old, prostitution has always been a sector where a lot of relocating took place. In the study, some prostitutes indicated that a 'newcomer' always earns more; that is why it is important to regularly change your workplace. According to business owners, there is a to-and-fro of prostitutes and a rapid succession of businesses. By their own account, business owners see very few prostitutes who work in one and the same establishment for more than a year.

Of the interviewed prostitutes working in the licensed sector, more than 60% has been working as a prostitute for less than five years. Of the women working in the escort branch, even 36% has been working as a prostitute for less than a year. More than two thirds of the prostitutes has at one time changed her workplace. Even in the escort business, where the prostitutes are relatively young and have not been working in prostitution for long, the average number of workplaces so far is an estimated 2,6.

The most important motive for changing a work location is money; the prostitutes think they can make more money elsewhere.<sup>20</sup> Other motives

20 This information emerged during the sub-study on non-legal prostitution.

are, among other things, a bad atmosphere at the previous workplace, or disagreement about the way the business was managed. In a few cases, the location is important; sometimes prostitutes want to work closer to home, while some, on the contrary, want to work further away, which enables them to better protect their anonymity.

Several women indicated to have changed their workplace because they were forced to do so by their pimp. One example is a prostitute who was moved to another location every time her pimp thought she did not make enough money. These moves not only took her from one region to another, but also from one country to another (Germany, Belgium, the Netherlands), and from one sub-sector to another (the escort branch, window prostitution, a sex club). For this reason, this type of relocation is seen as one of the indications for trafficking in human beings by the National Rapporteur on Trafficking in Human Beings and the police (Van der Leun & Vervoorn, 2004). However, there are also prostitutes who indicated quite the opposite: they changed their work location to escape from their pimp (by moving to another part of the country and reporting to the police there).

This makes it very difficult to designate the occurrence of changing work locations as a univocal indicator of a negative phenomenon, such as, for instance, trafficking in human beings. When changing a work location is the result of, for example, dissatisfaction with the old workplace, or the desire to earn more somewhere else, this change could very well point to a large amount of autonomy of the prostitute.

#### **5.4 The possibilities of getting out**

One of the bottlenecks described by the Action Plan for Regulation & Protection of the Prostitution Sector is that getting out of the prostitution is rendered more difficult by the lack of social services. In part, this is a result of the general opinion among business owners that they do not relate to the prostitute as her employer and, therefore, have no obligations as an employer. A condition for an entitlement to continued payment in case of illness, unemployment benefit, or disablement benefit, is that the person involved was or is exercising an employment. Thus, this obstacle is closely connected to the problematic labour relations within the prostitution sector. The same applies, for that matter, for an entitlement to social security payment. The Action Plan for Regulation & Protection of the Prostitution Sector states that it is important for prostitutes to become more aware of the importance of a clarification of their labour status, and a sound registration of both the work they have done and the income acquired through it, because this determines their future entitlement to social security. This also applies when they are self-employed. The sub-study among prostitutes in the licensed sector shows, however, that many prostitutes value not having any administrative fuss. Most prostitutes do not (yet) seem to recognise the importance of either the clarification of

their labour position, or the registration of the work they have done and the income they have earned.

The Action Plan also observed that prostitutes who either want or are forced to get out of the prostitution business (for instance, for health reasons), are in practice confronted with obstacles. They are habituated to the lifestyle and contacts, for example, or there are debts, housing problems, or problems with an addiction. Furthermore, a role might be played by the lack of useful qualifications for the job market and the existence of the so-called 'hole in the CV' – due to a lack of social acceptance. This applies especially to women who have been working as prostitutes for a longer period of time. In 2004, during the discussion on the Justice Budget, the Van der Staaij resolution was passed, in which Parliament urged the government 'to encourage the removal of the obstacles which prostitutes encounter in practice when they want to break off with prostitution, among other things by stimulating or facilitating exit programmes'.<sup>21</sup> In 2004, to act upon this, the government sent a brochure to all municipalities, which provided insight into the problems with which prostitutes are confronted when they want to get out of the prostitution business, and information about initiatives and projects aimed at facilitating their exit from the sector. Municipalities might use this information for the development of their own policy. Seen in this light, it is remarkable that the survey among municipalities shows that only 6% of the municipalities indicate they pay attention to the possibilities for prostitutes of leaving the prostitution sector.<sup>22</sup>

#### *Reasons for getting out*

In the study among prostitutes in the licensed sector, the prostitutes were asked whether they had ever stopped working in the prostitution sector. Of these women, 44% had stopped at one time or another. These women were asked for their reasons to leave the prostitution. For an interpretation of the data we should keep in mind that these are women who, after getting out of the prostitution, at one time or another have returned to working as a prostitute once more. We do not have data on women who stopped and never started again. For a fifth of the women who stopped at times, a reason was that they did not feel like doing it any more, and/or they had saved enough money. Getting into a relationship was the main reason for another fifth of the women to stop. They did not want their partner to know about their work; or their partner did not want them to do the work; or the partner provided enough financial security. Almost a fifth stopped at one time because they had found other employment. More negative reasons for getting out were psychological symptoms,

21 Parliamentary Documents II, 2002-2003, 28 600 VI, no 66.

22 This was one of a number of previously coded response categories that could be ticked off.

such as depressions, or the inability to cope with the work (9%), and health problems (5%). For 12% of the women, pregnancy was the reason for stopping.

In the end, all the women who stopped working as a prostitute returned to it at a later date, often due to the same considerations that motivated them the first time they started working in the sector: financial ones. Women earned less in their new jobs (in cleaning, for instance), ran up debts, or lost their partner and thus their financial support.

The majority of the prostitutes themselves, for that matter, expects to have left the prostitution in five years. Popular sectors to switch to are the catering industry and care.

### **5.5 Developments**

The results of the study on the licensed sector can be compared only in a limited way to the findings of the 2002 study on the position of prostitutes (the fieldwork of which took place in 2001, Vanwesenbeeck et al, 2002), because the samples were composed differently. More foreign respondents were represented in the 2006 study, as well as more youngsters and relatively more prostitutes from the window- and escort sub-sectors. In order to correct for the potential bias, caused by the different ratio between sub-sectors, the data have been compared after being split up as much as possible according to sub-sector. One observation is that the extent of autonomy of the window prostitutes has not changed between 2001 and 2006. In other sub-sectors, several aspects of autonomy have remained the same (like the refusal of clients, determining the prices and deciding the course of action with clients), but on a number of different aspects, a decline in the extent of autonomy was observed, mainly in clubs and the escort agencies (on subjects like determining the working hours, breaks, and days off).

The extent of the emotional well-being has declined between 2001 and 2006 with regard to all measured aspects. This matches the finding that the extent of distress has become higher, and the use of sedatives has increased. In addition, prostitutes were less content about their income than they were in 2001.





## 6 Punishable forms of exploiting prostitution<sup>23</sup>

Some of the objectives associated with the amendments of the law are concerned with punishable forms of the exploitation of prostitution (involuntary prostitution, prostitution by minors, and prostitution by persons who do not possess the legal residence permit required for employment). This chapter focuses on these objectives.

### 6.1 Non-licensed exploitation

When a municipality pursues a licence policy for the prostitution sector, a municipal licence is needed to exploit a sex establishment. The exploitation of a sex establishment without the needed licence is punishable by law. The study on non-legal prostitution shows that sex establishments are being exploited in several municipalities without a licence, although this licence is required.<sup>24</sup> The majority of the sex establishments in the in-depth regions turned out to have an exploitation licence. Based on the observations and on concrete information given by informants, the relative number of non-licensed businesses among the window brothels, clubs, and private houses seems to be very small. Non-licensed businesses were found most often in the escort branch and in home prostitution. In the literature and through informants, the researchers picked up indications of non-licensed prostitution at various locations, such as bars, hotels, and tea- and coffee houses. Yet, these indications were not always concrete, and during the fieldwork such locations were not always found. It is also unknown to what extent the prostitution based at these locations is an organised phenomenon. It is the researchers' impression that although non-licensed exploitation of prostitution occurs, a part of the circulating rumours about it is not based on facts. When the researchers took a close look at the in-depth regions, the province of Groningen turned out to have hardly any clubs or private houses that worked without a licence. However, a few escort agencies are active without a licence, while there actually is a licence obligation for the escort in Groningen. Such a licence obligation for escort agencies does not exist in Amsterdam. Here, non-licensed massage parlours were found (although we should remark here that in several of these parlours no sexual contact takes place of any kind; not being a sex establishment, these parlours are, therefore, exempt from the licence obligation). Of old, bar prostitution took place in Amsterdam. This form still exists, although to a limited degree. A relatively new form of prostitution in Amsterdam that was called to the attention of the researchers is the so-called 'erotic café'. In this café, the prostitute's clients pay for admission, a price in which a couple of drinks are included.

23 The sub-study on non-legal prostitution (Biesma et al, 2006) provides an important basis for this chapter.

24 The existence of non-licensed businesses is mentioned in the sub-study among municipalities as well.

Few indications for the existence of non-licensed sex businesses were found in Eindhoven. The indications that did come to the surface, related to home prostitution and escort prostitution (this last information was given by a prostitute who had been arrested by the police during an inspection of escort agencies). In North and Central Limburg, too, there seems to be hardly any non-licensed exploitation of prostitution. The police and the municipalities have acted in an enforcing manner whenever prostitution was being exploited in businesses without a licence, such as sex cinemas. Business proprietors in this region reported that no non-licensed exploitation exists, because there is too great a risk of getting caught.

Non-licensed prostitution also occurs in the form of prostitution in hotels and motels, on camp grounds, and in holiday parks. In this case, the prostitutes involved are not the ones ordered through an escort agency by hotel guests (who can actually be hired through a licensed business), but prostitutes who rent a room and receive their clients there. It seems that these prostitutes recruit their clients either through dating sites on the Internet, in the hotel itself, or in nearby bars. According to informants, prostitutes prefer hotels located on arterial roads, and motels with rooms that are directly accessible from the outside. Often, the hotel employees are aware of these activities. In addition to this hotel- and motel prostitution, some cases are known of prostitutes who are doing their job in campers on parking places, or in bungalows or trailers in holiday parks. All in all, the researchers observed that the exploitation of a non-licensed sex business in a municipality where a licence obligation exists only occurs to a limited degree. They also concluded, based on extensive fieldwork, that the legal prostitution sector is much more sizeable than the so-called illegal circuit.

The researchers of the sub-study on non-legal prostitution observed that the Internet is an important place for finding non-licensed prostitution. It is difficult, however, to find out to what extent the 'personal ads' on dating sites, in particular, refer to existing licensed escort agencies, or to what extent non-licensed businesses or just individuals are involved. In practice, the supply on the Internet chiefly consists of (licensed and non-licensed) escorts and prostitutes working from home. Next to business advertisements, many escort agencies (both licensed and non-licensed) make use of dating sites.

## **6.2 Illegal labour**

A prostitute is working non-legally when she originates from a country outside the European Economic Area (EEA) and does not possess the legal residence permit required for employment, or when she is working

from home without a licence in a municipality that requires a licence for homework. A prostitute is also working non-legally, when she is operating outside the public areas designated and licensed for it (for instance: streetwalking outside the streetwalking zones). We mentioned in section 2.1 that the majority of the interviewed prostitutes taking part in the sub-study on the social position of prostitutes is of foreign origin, which is a clear indication that a substantial part of the prostitutes working in the licensed sector is of non-Dutch origin. This does not necessarily mean that these women are working non-legally. They might come from countries within the EEA, or be married to a Dutch citizen or a citizen from a country within the EEA, which makes their working as a prostitute legal. In the sub-study on non-legal prostitution, the researchers tried to gather information about the origin of the prostitutes active in each in-depth region.

In Amsterdam, the composition of the total group of prostitutes changed over the years. Yet a constant factor is that the majority of the women come from countries other than the Netherlands. In recent years, the share of prostitutes from the European Union, Central and Eastern Europe, and South America has increased slightly. Because since 2000, the possibilities to work legally in the Netherlands have been steadily expanded for the inhabitants of newly joined member states of the European Union, it has become especially difficult to pronounce upon the extent to which women were working either legally or illegally. There were rumours about East European women who recruited clients on various locations, while sometimes being escorted by a minibus with men. At the time of the fieldwork for this study, in 2006, such minibuses were no longer seen during observations.

Asian women are working in the Amsterdam prostitution, too, primarily in massage parlours. Women originating from non-EEA countries can only work here legally when they are married to a partner from an EEA country. Thus, it does not seem plausible that all of these women are working legally. According to police data, in 2005 49 prostitutes were arrested in the Central District of town (which includes the Red Light District), because they were at work in the licensed sector without the possession of a valid residence permit. Taking into account the large number of licensed prostitution businesses in that area, the researchers viewed this as being a relatively small number. In Eindhoven, the number of Latin-American women has decreased since the amendment of the law, while the number of East European women has increased. In the window prostitution, the clubs, and private houses, illegal labour seems to have almost been banished as the result of frequent inspections. Only incidentally, a prostitute is found without the necessary documents. Prostitutes without the required documents are mainly working for non-licensed (illegal) escort agencies. Clients are recruited through dating sites. Although the police are carrying out inspections, enforcement is not

yet complete. At the time of this evaluation, it was virtually impossible to paint a reliable picture of the extent of illegality in the circuit operating through dating sites.

In Groningen province, the largest group of prostitutes consists of women from Eastern Europe. In the city of Groningen, the number of Spanish-speaking women with Spanish passports, who originate from non-EEA-countries, seems to have increased. Here, on average 12 to 15 rounds of inspections are carried out every month. The number of women encountered during these inspections who do not possess the legal residence permit required for employment, has declined in recent years to eight cases in the whole of 2005. In the rest of Groningen province, inspections are carried out less systematically, and no data are gathered. Now and then, however, illegally working prostitutes are found in sex establishments; when this happens, most often several illegally working women are present simultaneously. Business owners report, though, that the number of prostitutes who want to start working for a sex establishment without possessing the right documents is declining.

Many women from Eastern and Central Europe are also working in clubs in North and Central Limburg. During inspections, enforcing authorities regularly found prostitutes without a valid residence permit needed for legal employment in the first years after the amendment of the law. However, in recent years, this has happened less frequently. Both the police and business owners report that proprietors keep a close eye on whether prostitutes possess the required documents. Just like in Groningen, owners of licensed businesses report a decrease of the number of prostitutes who apply for work without having the right documents. Business owners suspect that these prostitutes set to work in sauna clubs in Germany, the non-licensed escort business, or in home prostitution.

In chapter 5, we discussed the issue of the self-employment of prostitutes versus their salaried employment. While prostitutes and business owners consider prostitutes to be self-employed, the Tax Administration often observes elements of exercised authority, which defines prostitutes as employees instead of self-employed entrepreneur. This issue is relevant for some foreign women, since as of 1 May 2004, people originating from new member states of the EU have gotten more opportunities to work legally as so-called self-employed persons without personnel (in Dutch: *zzp'ers*).

### **6.3 Minority**

To recruit minors for prostitution and to keep them in this situation falls under trafficking in human beings and is punishable by law.

Minors are only very incidentally found in licensed prostitution businesses (in Amsterdam, two seventeen year olds were discovered over a time period of three year). Yet, there are indications about girls who become active as prostitutes from the moment they reach the age of eighteen. For this reason, a chain approach regarding youth prostitution was set up both in Eindhoven and Groningen. The aim is to timely detect and deal with the abuse of girls and boys through schools, social work, and the police. In Amsterdam, a chain approach with a special focus on minors is used for the victims of so-called lover boys.

The researchers did not get any indications about a large presence of minors in the non-licensed sector. It should be mentioned, however, that it is difficult to get clarity about the prevalence of minority in the non-licensed prostitution. One of the reasons for this is that it is often hard to estimate the age of young prostitutes, leaving even social workers in the dark about the scale of the problem of underage prostitution. In a study carried out by several organisation on the trafficking of minors in the Netherlands (Van den Borne & Kloosterboer, 2005), cases were gathered of victims of this kind of trafficking in human beings from 2003, 2004, and 2005. The study contained 169 cases of minors who had ended up in prostitution. More than a quarter of these victims was born in the Netherlands. Of more than a fifth the country of origin is unknown. Next to the underage prostitutes from the Netherlands, the largest group came from Morocco (14%), and well over a fifth came from other African countries. Although this study shows quite clearly that there actually are minors working in the Dutch prostitution sector, the concrete scale of it is unknown (Van den Borne and Kloosterboer, 2005). For that matter, of the 78 reportings received by Report Crime Anonymously ('M') during the first half of 2006, 11 reportings related to underage prostitutes.

The researchers of the sub-study on non-legal prostitution did not encounter any underage prostitutes during their observations. According to informants, prostitution by minors (mainly boys) takes place through informal networks and at gay meeting spots. The researchers picked up rumours about Unaccompanied Minor Migrants who had ended up in prostitution, but they did not encounter any such minors themselves. The most relevant study on Unaccompanied Minor Migrants and prostitution is the one by Bronsveld, published in 2004. Bronsveld concluded that although there are Unaccompanied Minor Migrants who end up as prostitutes, this does not seem to happen on a large scale. The researchers of the sub-study also come to the conclusion that there are hardly any minors present in the licensed sector, and that there are no indications that their presence in the non-licensed part of the sector is much larger.

Indications for prostitution by minors in the recent past can be deduced from the starting age of prostitutes who now have come of age. The sub-study on the position of prostitutes shows, that 5% of the interviewed prostitutes working in the licensed sector once started out when they were younger than eighteen. At the moment, young starters are primarily working in the escort branch. More than half of the prostitutes who are working as escorts started out when they were younger than twenty. More than 10% was even younger than eighteen.

#### **6.4 Exploitation of people**

In addition to the recruitment of minors for prostitution, exploitation of people falls under trafficking in human beings as well. As a consequence, it has been made punishable by section 273f of the Penal Code. One can speak of trafficking in human beings when, among other things, someone causes another person by force, violence or another act, or by the threat of violence or another act, to make themselves available for the performance of sexual services with or for a third person. Of all the punishable forms of the exploitation of prostitution, the question whether or not a prostitute is forced to do the work is the most difficult to establish and detect (and, as a part of this, to investigate). Municipalities, enforcing authorities, and business owners alike indicate that it is often difficult to prove coercion and to tackle it. It is more complicated to check whether or not exploitation is occurring, than to check whether or not prostitutes possess the right documents and are of age. The handing over of earnings to pimps or 'bad' owners, for instance, is both hard to prove and hard to influence by means of policy. A complicating factor is that prostitutes might have to deal with both business owners and their pimps. With the issuing of licences, the focus is on the business owner. Yet, this might be a well-intentioned (and sometimes unaware) proprietor who complies with all the rules, while the prostitute is forced to work by a pimp. On paper, a sex establishment might be a nice business, while in the meantime victims of trafficking in human beings have been set to work there. Some business owners report that they exclude prostitutes with 'bad' boyfriends, but this does not at all apply to all proprietors. For that matter, the pimps have plenty of opportunity to check on the prostitutes without the business owner's knowledge, especially in the windows- and escort prostitution.

The National Rapporteur on Trafficking in Human Beings has discerned a number of signs that might indicate exploitation. The police make use of the same kind of signs, and the campaign "Appearances are deceptive" of the tip line Report Crime Anonymously uses several of these signs, too, which we will briefly explain below. The researchers have divided the signals into four categories: documents, finances, working conditions,

and the remainder. We already briefly mentioned in chapter 5 that some of the signals that might be an indication of trafficking in human beings allow for more than one interpretation; they might also be an indication of the opposite, pointing to the autonomy of the prostitutes concerned. The researchers encountered several of the possible signs during their observations and interviews in one or more of the in-depth regions, but not often, and several other signs did not surface at all. The lack of one's own place to live and sleeping at the workplace are relatively common, just like marriage to a Dutch citizen or an inhabitant of the EU, and the inability to speak one of the languages spoken in the Netherlands. The researchers observed, however, that municipalities differ in their policy of either permitting or prohibiting people to spend the night at their workplace; they found this phenomenon to be less useful as a sign of exploitation on locations where it was permitted. Frequently changing workplaces also often occurs, but as we argued before, the question is whether this should always be understood as a sign of exploitation. Signs like bearing the marks of physical abuse seem to occur far less frequently. During their fieldwork, the researchers picked up other kinds of signs that seem to indicate, on the contrary, a certain extent of self-determination. Thus, some Polish prostitutes stated to alternate a few weeks of work in the Netherlands with a few weeks at home; for this, they organise their own transport, and they are the ones who decide when to come or go.

During their fieldwork, the researchers observed that the great majority of window prostitutes works with a so-called boyfriend or pimp. Among them are a number of pimps to which the prostitutes involuntarily hand over their earnings. In Eindhoven, most of the recently detected cases of trafficking in human beings are related to so-called lover boys. The process of humiliation and sexual abuse had often already taken place before the girl involved turned eighteen. Lover boys want to continuously keep an eye on their victim (or let someone else do it for them), and for this reason they often set her up behind a window, in the escort business, or at home. Problems with pimps occur relatively frequently among East European, African, and Asian prostitutes, but also among Dutch prostitutes. In the region of Groningen, once every three or four weeks, clubs get a visit from men who offer the business owner one or more prostitutes. Business owners respond to these offers less and less often.

Some business owners are of the opinion that it is often they who can actually pick up on the signs of coercion; they consider the initiative of Report Crime Anonymously ('M'), where they can report such signs, to be extremely valuable. During the first half of 2006, M received 78 reportings about coerced prostitution.

The fourth report of the National Rapporteur on Trafficking in Human Beings (NRM, 2005) contains, among other things, data about victims of trafficking in human beings that have been reported to the Foundation against the Trafficking in Women (STV) in 2003. For the sub-study on non-legal prostitution, the researchers acquired the data of the STV for 2004 and 2005. In 2004, 403 victims were reported to the STV; in 2005, there were 393 reportings. The police keep up with a registration of possible victims of trafficking in human beings as well: this system for keeping track of victims is called Information Node Police System (IKP-S). In 2003, 153 victims were entered in IKP-S. The most important country of origin is Bulgaria, followed by, respectively, Romania, the Netherlands, and Nigeria (NRM, 2005). The sub-study's report contains an analysis of the further itemisations of both the STV data and the police data in the in-depth regions. In part, the victims were working in the licensed sector. Whether this is an indication that a large part of the victims of trafficking in women is working in the licensed businesses, or whether these victims have a bigger chance of being discovered in the licensed businesses than in the non-licensed ones because the inspections in the licensed sector are more strict by comparison, cannot be deduced from the available data.

In the study on prostitutes in the licensed sector, 8% of the interviewed prostitutes indicated to have started prostituting themselves under some form of coercion. A part of these women has started out under duress, but continued voluntarily later on, or voluntarily returned to prostitution after an absence. Often, making (more) money is a reason to set to work as a prostitute. This might involve (extra) money for the payment of debts or for fun things, but it might also be seen as the only way to keep one's head above water. Of the interviewed prostitutes, 17% stated as their reason for starting that they were pressed for money, or that they were in debt. In half of all the cases, the prostitute was introduced to prostitution by friends or acquaintances.

## **6.5 Developments**

In the survey among municipalities, on being asked, a large majority of the municipalities stated to not have received any indication about negative effects of the lifting of the brothel ban. The negative indications that were received, mostly related to escort businesses working without a licence, or to prostitutes working without valid documents. By far the most municipalities (87%) stated not to have received any indications about relocation effects whatsoever.

A few informants in the study on non-legal prostitution observed a relocation to smaller municipalities and the countryside of prostitution by



prostitutes without the required permit. There often is less strict enforcement, which is caused, among other things, by a limited administrative capacity and expertise with regard to content. Next to this, prostitutes have in part switched to the circuit of sex lines and the Internet. It seems, furthermore, that another part has departed, either to their country of origin, or to other countries within the EU, like Spain and Italy.

In all the sub-sectors of all the in-depth regions, an increase has been observed of prostitutes who come from East European countries falling under the EEA, and who, thus, in general are prostituting themselves legally. In part they seem to have replaced the prostitutes from Russia, Romania, Bulgaria, and Latin-American countries, who generally did not possess the required documents. The number of women who apply at clubs without having the necessary permit has decreased. The offering to clubs of foreign prostitutes by intermediaries has also declined. Furthermore, the number of violations discovered during inspections has gone down, in particular the violation of working without having the necessary documents. Both business owners and prostitutes indicate that the consequences of the law amendment are greatest for women who do not possess the legal residence permit required for employment. All in all, the conclusion seems justified that the number of foreign prostitutes who work without possessing such a permit has decreased. The increased inspections and enforcement constitute one of the reasons for this decrease.

Involuntariness is often very hard to detect for anybody else. Because of this, it is virtually impossible to pronounce on possible developments in the number of prostitutes working under some kind of duress. In this context, it is worrisome that there seems to be no decrease in the number of prostitutes with pimps. Moreover, an increase can be observed in the high prices for renting rooms and facilities. This last development might bring about exploitation. However, the awareness among business owners and prostitutes about the prevention of involuntariness and exploitation seems to have grown.

In recent years, a clear increase can be observed of the supply of paid sexual services through the Internet. In part, this seems to be the result of the autonomous development of the Internet. However, the Internet provides opportunities to prostitutes who cannot or do not want to set to work in the licensed circuit. This might be a part of what stimulated this increase. The offering on the Internet consists primarily of (licensed and non-licensed) escort services, prostitutes working from home, and prostitutes working from hotels.



## 7 Conclusions

A conclusion of the first evaluation was that the decentralisation of prostitution policy caused the introduction of both the law and its enforcement to work out unevenly and irregularly throughout the country. This generated great differences between regions, and even between municipalities within one and the same police region. As a result of this lack of uniformity, relocations were observed of punishable forms of the exploitation of prostitution, to municipalities with less or a less strict enforcement. It was thought important that the municipalities would complete the issuing of licences as soon as possible, and would start with inspections and enforcement. A national minimum level of enforcement was viewed as a necessary condition for discouraging relocation effects and for attaining the goals of the amendment of the law.

In 2006, this situation has improved. The issuing of licences has been completed practically everywhere, and to a greater or lesser extent inspections are being carried out everywhere as well. Thus, based on the research, we can say that there are hardly any so-called free zones left. A conclusion of the sub-study on non-legal prostitution was that the strict enforcement carried out in the in-depth regions does not seem to have resulted in a shift to non-licensed prostitution within the area. At least, no concrete indications of this have been found. Relocations between regions or municipalities occur less frequently than at the time of the first evaluation, although relocations actually were observed to municipalities with a less strict regulation or enforcement. Such changes are caused by regional differences. The escort branch, especially, still has the choice to establish its businesses in municipalities which do not require a licence for escort services. In this manner, Amsterdam attracts escort agencies from the whole of the surrounding region, because it does not (yet) have a licence system for the escort branch. In the province of Groningen, there is a divergence between the extent of enforcement implemented in the city of Groningen and that of the surrounding lands (the Ommelanden). In the border regions, relocations were observed to neighbouring countries, for example of escort agencies to Belgium.

Another focal point of the first evaluation was the role of the police. Because in most municipalities the police were primarily occupied (in the context of administrative monitoring) with carrying out inspections in the licensed sector, it lacked the capacity to play a big controlling and detecting role with regard to the punishable forms of exploitation in the non-licensed sector. It was recommended to consider whether a part of the inspection tasks could be taken over by other government agencies, giving the police more room to concentrate on the judicial enforcement outside the licensed sector. This situation does not seem to have changed much. The police still are the most important supervising party within the licensed sector; it carries out inspections that might also be carried

out by, for instance, the Labour Inspectorate. People within the prostitution sector are of the opinion that licensed businesses are inspected more often than non-licensed businesses. This is an undesirable situation that undermines the readiness of business owners of licensed establishments to comply with the rules, and complicates the combat against trafficking in human beings. The fight against trafficking in human beings is complex and labour-intensive, and requires creativity.

A notable aspect of this amendment of the law is that, on the one hand, a legalisation has taken place (of the exploitation of voluntary prostitution by persons of age in possession of the required documents), but that, on the other hand, a sharpening up of the penalisation of unwanted forms of prostitution has taken place. By far the most attention has been focused on the legalisation, nationally as well as internationally. Yet, it is not so much the legalisation, but the stricter enforcement for punishable forms of prostitution, which has had the most effect. Beside this, the sector makes a lot of noise about the stricter inspections by the Tax Administration, although these have nothing to do with the amendment of the law (the prostitution sector was already obliged to pay tax before the amendment). This is, in fact, a paradoxical situation: while the former prohibition of the exploitation has changed into a legalisation, prostitutes and sex business owners now feel that the regulations have become stricter, whereas in practice it is a matter of a stricter enforcement, which has replaced the former policy of tolerance. Internationally, the Netherlands is viewed by some countries as a country where there are no limits with regard to prostitution and where trafficking in human beings is facilitated. However, it is likely trafficking in human beings has become more difficult, because the enforcement of the regulations has increased in comparison to the former situation, when all exploitation of prostitution was prohibited.

Below, we will make some concluding remarks for every main goal of the amendment of the law.

*1 The containment and regulation of the exploitation of voluntary prostitution, among other things by the introduction of a municipal licensing policy*

The issuing of licences has been completed and the municipalities have the location-bound prostitution businesses reasonably well under control. Although location-bound prostitution establishments without a licence (when it is required at that location) do exist, their numbers are few. The situation is more complex with regard to the non-location-bound businesses. During the first evaluation, researchers already arrived at the conclusion that it is not sufficient for the attainment of regulation to deal with non-location-bound forms of the exploitation of prostitution by means of

an exclusively locally-aimed approach. That conclusion still holds for this present evaluation. Dealing locally with the escort branch, for instance, can be successful, like it is in Eindhoven. But it is very easy for businesses to move on to another municipality or region where no licence is required, or where enforcement is less strict.

In addition, there also are sub-sectors that are hard to control, like couples clubs, sauna clubs, and massage parlours. The couples clubs and sauna clubs have in common that, often, no prostitution occurs there officially. Both prostitutes and prostitute's clients enter the club as paying visitors, and officially, the business owner has no involvement at all with whatever the visitors agree to and do with each other. There is no ground for enforcing authorities, for example, to check the documents of prostitutes who entered a sauna as visitors. Couples clubs and saunas can apply for a licence, though, in which case they fall under the regular licence system.

Both the supply and demand of prostitution seems to have decreased in recent years. The question is, however, to what extent this is the result of the lifting of the brothel ban and the stricter enforcement that goes with it. It is more plausible that the decline in demand has been caused by other factors, such as the economic deterioration and the growth of the Internet (for example webcam sex). Other possible causes mentioned in the study are a lack of innovation within the prostitution sector, as a result of which supply and demand are less well attuned; the eroticisation of nightlife, resulting in an increase of voluntary unpaid sexual activities; and the deterrent effect on clients of camera surveillance in prostitution areas. Finally, the drop in demand can have been partially caused by a decreased diversity of the supply. This decreased diversity is related to the increased enforcement in the prostitution sector, which has made it more difficult for foreign women who do not possess the legal residence permit required for employment to work in the prostitution business.

## *2 The improvement of the combat against the exploitation of involuntary prostitution*

Involuntariness is often very hard to detect for anybody else. For business owners, prostitute's clients, enforcing authorities, and social workers alike, it is not easy to establish that a prostitute is not doing the work of her own free will. Because of this, it is virtually impossible to pronounce on possible developments in the number of prostitutes working under some degree of coercion. Every year, the Foundation against the Trafficking in Women receives hundreds of reportings about victims of the trafficking in women (who in part are working in the licensed sector). Due to the lack of sound information, however, it is impossible to pronounce upon the development in recent years with regard to the scale of involuntary prostitution.

Indications of involuntary prostitution were found during the fieldwork for the sub-study on non-legal prostitution, albeit in small numbers. In practice, the researchers did observe a number of the signs of exploitation of people discerned by the National Rapporteur on Trafficking in Human Beings, but only to a limited extent. Of the interviewed prostitutes working in the licensed sector, 8% reports to have started prostituting themselves under some form of coercion.

A complicating factor of the combat against the exploitation of involuntary prostitution is that policy, the issuing of licences, and enforcement alike are all targeting the business owners. Even though it is possible that business owners use coercion, it is mainly used by pimps operating in the background shadows, of whom the business owners need not be aware. Pimps still are a common phenomenon. Prostitutes with pimps are primarily working behind the windows, as escorts, and from home. In those sub-sectors, it is the easiest for pimps to keep an eye on prostitutes, or to commission someone else to do it for them. In the context of the combat against the exploitation of involuntary prostitution, it is worrisome that there seems to be no decrease in the number of prostitutes with pimps. However, the awareness among business owners and prostitutes about the prevention of involuntariness and exploitation seems to have grown.

With a view to the problematic character of detecting and dealing with involuntariness, there is a great need for instruments that can help this process. In this context, the campaign “Appearances are deceptive” of Report Crime Anonymously has turned out to be a useful and welcome addition.

### *3 The protection of minors from sexual abuse*

The researchers of the sub-study on non-legal prostitution concluded that there seems to be hardly any prostitution by minors in the licensed sector, and that there are no indications of a great presence of minors within the non-licensed part of the sector either. During inspections of licensed prostitution businesses, inspectors encounter underage prostitutes only very incidentally. Yet it is not easy to get any clarity about the occurrence of prostitution by minors, since it is often difficult to estimate the age of young prostitutes. For this reason, even social workers have little insight into the scale of underage prostitution. During their observations, the researchers who carried out the sub-study on non-legal prostitution did not encounter underage prostitutes themselves.

However, there are signs of girls who become active as prostitutes from the moment they turn eighteen. For this reason, a chain approach for youth prostitution has been set up in both Eindhoven and Groningen. Amsterdam utilises a chain approach for victims of so-called lover boys, which focuses especially on minors.

The sub-study on the position of prostitutes shows that 5% of the interviewed prostitutes working in the licensed sector once started out when they were younger than eighteen. At the moment, young starters are primarily working in the escort branch. More than half of the prostitutes who are working as escorts started out when they were younger than twenty. More than 10% was even younger than eighteen. Of the 78 reports received by Report Crime Anonymously, 11 related to underage prostitution.

The available data do not enable us to pronounce upon a possible development over the years of the number of minors who will be working as prostitutes.

#### 4 *The protection of the position of prostitutes*

The goal 'to protect the position of prostitutes' implicitly contained the supposition that the amendment of the law would result in an improved position of prostitutes. In recent years, however, the labour relations in the licensed sector have barely changed. Within the sector, there still is confusion about the form of labour relations. With the Tax Administration, prostitutes and business owners maintain that the prostitutes are self-employed, yet at the same time, a large-scale involvement of business owners takes place with the work activities of the prostitutes. This takes on such a form, that one can actually speak of employer-employee relations. The legal position of prostitutes is bad. Within current practice, in spite of the existence of employer-employee relations, the risks of an inability to work are completely shifted on to the prostitutes. Improvements cannot be expected to come about all by themselves on the initiative of the sector. Perhaps the coupling of minimum requirements regarding labour relations to licence policy provides a way to stimulate the sector.

With regard to working conditions, few real abuses have been observed, yet the conditions under which the prostitutes do their work differ widely. In part, prostitutes react to this by leaving an establishment for another when conditions are bad. However, the well-being of prostitutes is lower in all measured aspects than it was in 2001, and the use of sedatives has increased.

In the context of the protection of the position of prostitutes, it is important that prostitutes have sufficient opportunities to get out whenever they want to or have to stop working in the prostitution. The 'Action Plan for Regulation & Protection of the Prostitution Sector', among other things, observes that in practice, prostitutes encounter obstructions when they want to leave the prostitution sector. In this context, and in the light of the Van der Staaij resolution, passed in Parliament in 2004, in which

Parliament urged the government, among other things, to stimulate or facilitate exit programmes, it is remarkable that only 6% of the municipalities indicates, when asked, that attention is being given to the possibilities for prostitutes to get out of the prostitution.

5 *Disentangling the ties between prostitution and criminal peripheral phenomena*

In this evaluation, criminal peripheral phenomena have only been touched upon indirectly. For the disentanglement of prostitution and criminal peripheral phenomena, it is important to supplement the issuing of licences with a sound verification procedure. In this regard, the BIBOB Act can play an important role. Based on this Act, government bodies can refuse to issue a licence (or can revoke it), when there is serious danger that it might also be used to commit criminal offences, or to profit financially from such offences. Most municipalities have not yet made use of the Act, but its use in the context of the sexual services sector is actually growing. In 2006, Amsterdam started using the BIBOB procedure to check the licence applications for the prostitution sector. As a result, at the time of this study, the municipality of Amsterdam has decided on the basis of the BIBOB Act to revoke a large number of licences from a limited number of owners of window brothels. We will have to await the outcome of the appeal procedure before the possible success of the use of the BIBOB procedure can be assessed.

6 *Reducing the scale of prostitution by illegal foreign nationals (persons who do not possess the valid residence permit needed for legal employment)*

In all the sub-sectors in all the studied in-depth regions, an increase has been observed of prostitutes from East European countries that fall under the EEA. In part, they seem to have replaced the prostitutes from Russia, Romania, Bulgaria, and Latin-American countries, who generally did not possess the required documents. The number of women who apply at clubs without having the necessary permit has decreased. The offering to clubs of foreign prostitutes by intermediaries has also declined. Furthermore, the number of violations discovered during inspections has gone down, in particular the violation of working without possession of the necessary documents. Both business owners and prostitutes indicate that the consequences of the law amendment are greatest for women who do not possess the valid residence permit required for employment. All in all, the conclusion seems justified that the number of foreign prostitutes who work without possessing such a permit has decreased. The increased inspections and enforcement have contributed to this decrease.

Finally, the Internet is an important place for finding non-legal prostitution. Yet it is difficult to deduce to what extent the 'personal ads' on



dating sites, in particular, refer to existing licensed escort agencies, or to what extent non-licensed businesses or just individuals are involved. In practice, the offering on the Internet chiefly consists of (licensed and non-licensed) escorts and prostitutes working from home. By means of an extensive study on information available on the Internet, more information can be gathered about non-legal prostitution. However, to bring order to all those data, to clear away doubles, and to check the data with reality is labour-intensive work. That will require a separate study.



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## **Appendix 1**

### **The reading committee**

Ms. S. Biesma	Intraval
Ms. H. Dekker	Regioplan Beleidsonderzoek
S. Flight	DSP Group
Ms. A. van de Heuvel- Scheepens	Ministry of the Interior and Kingdom Relations
Ms. S. Hulscher	Ministry of Justice
T. Janusch	Ministry of Social Affairs and Employment
Ms. J. van der Leun	Leiden University
Ms. R. Posthuma	Ministry of the Interior and Kingdom Relations
Ms. M. Smit	Bureau of the National Rapporteur on Trafficking in Human Beings





## **Appendix 2**

### **Article 273f of the Dutch criminal code**

(non-official, English translation of 1 January 2005)

1. Any person who:

1° by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;

2° recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;

3° recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;

4° forces or induces another person by the means referred to under 1° to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under 1° which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;

5° induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;

6° wilfully profits from the exploitation of another person;

7° wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under 1°;

8° wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;

9° forces or induces another person by the means referred to under 1° to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:
  - 1° offences as described in the first paragraph if they are committed by two or more persons acting in concert;
  - 2° offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under 2°, shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine\*, or either of these penalties.
5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine\*, or either of these penalties.
6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.
7. Article 251 is applicable mutatis mutandis.

\* A fifth category fine is a fine of maximum € 67,000.

## WODC reports

In order to inform as many of those interested as possible about the research results of the WODC, a limited number of copies of the study reports are dispersed for free among officials, study groups, and institutes outside the Ministry of Justice. This is done on the basis of a mailing list, which is drawn up depending on the subject of the report concerned. The reports in the series 'Onderzoek en Beleid' (O&B - 'Research and Policy') are published by Boom Juridische uitgevers; for those not entitled to a free report, they can be ordered at Boom Distributiecentrum, postbus 400, 7940 AK Meppel, tel 0522-23 75 55, through e-mail: [bdc@bdc.boom.nl](mailto:bdc@bdc.boom.nl). A complete list of WODC reports can be found on the WODC site ([www.wodc.nl](http://www.wodc.nl)). Here, one can also find extensive summaries of all the reports published after 1997. The complete texts of the reports (published after 1999) will be made available retroactively on the WODC site. A list of the titles of the reports published from 2002 to 2005 follows below.

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