

On legalised prostitution in The Netherlands

1. Introduction

In April 2007 I sent a surprised email to my friends: an open day had been organised in the red light district of Amsterdam (the *Wallen*) in order to improve its reputation. Everyone could visit the brothels and watch a peepshow for free in order to experience the atmosphere in these legal brothels.. The highlight of the day was the unveiling of a statue to honour prostitution. It is the figure of a woman in a window frame, in a self-confident, proud posture, hands on her hips, chin in the air¹.

Not even a month earlier, the newspapers reported something quite different; a study had been published on prostitution in Rotterdam². It found that more than half of the prostituted women in Rotterdam 'worked illegally'. 'Working illegally' meant that the women had been either forced into prostitution; were illegal (no residence status); were minors or worked in 'illegal sex establishments'³.

If so, if in Rotterdam at least *half* of the women in prostitution *weren't* free and safe, then how could they place a statue for them in Amsterdam in the same month? I needed to understand this. Since then I started following the prostitution debate.



2. The Dutch legislation on prostitution

What: On the first of October 2000 the ban on brothels of 1911 was lifted; also the ban on pimping was lifted: the relevant articles have been removed from the Dutch Penal Code. Therewith The Netherlands became the first country in the world that legalised prostitution, that allowed brothels, that recognised sex as work; decriminalised pimps and brothel owners.

How: Through regulation; creating a licensing / permit system; by educating women about their 'employment status'; imposing taxes and police checks on brothels. The executive role and administrative responsibility were assigned to municipalities.

Why: Because of the belief in a distinction between forced and voluntary prostitution; the distinction between prostitution and trafficking; belief in a *pragmatic* approach (as opposed to an idealistic or *moral* approach to prostitution) – pragmatic, i.e. based on the belief that prostitution is *inevitable*, that it always was and always will be. And so it's better to try make it as pleasant as possible; improve the employment status and working conditions of women; empower them..

¹ Het Parool (31 maart 2007). *Het is weer Open Wallendag*. Also see: NRC Next (2 april 2007). *Een werkkamer op de Wallen*.

² Goderie, M. & H. Boutellier (2006). *Prostitutie in Rotterdam*. Utrecht: Verwey-Jonker Instituut.

³ Ibid. Also see: NOS (1 maart 2007). *Illegale prostitutie Rotterdam enorm*. And: AD De Dordtenaar (2 maart 2007). *Ruim helpt seksbranche illegaal – onderzoeksinstituut licht prostitutie door*.

In other words, the goals were:

- state control; by separating prostitution and 'criminal side effects';
- improve working conditions for the women.

The six main goals of the law have been formulated as following⁴:

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).*

3. Research, evaluations and monitoring of the prostitution sector

Since the legalisation in 2000 there have been a number of studies on the impact of the lifting of the ban on brothels. Most well-known of these studies are the evaluations carried out by or for the Scientific Research and Documentation Centre of the Ministry of Justice (WODC) esp. the two by Annelies Daalder: 2002; 2007 (see below).

DSP-Groep 2006⁵

The study of DSP in 2006 is one the three separate studies which together make up the 2007 evaluation. DPS looked into local authority policies on prostitution through questionnaires among the municipalities. The response rate was 84%. The most important findings are the following:

- Approximately two thirds of the municipalities (68%) have developed a formal policy on prostitution.
(> Compare to the baseline study ('Nulmeting') on prostitution in The Netherlands in 1999⁶: then prostitution took place in one third of all municipalities).
- Local authority prostitution policy is mainly focussed on sex establishments with a fixed location; there usually are no licensing systems for escort companies i.e. for prostitution that doesn't have a fixed location.
- Inspection by local authorities consists predominantly of checking licence requirements.
- An estimated one third of all fixed location sex establishments with a licence have received a sanction in the last five years, mostly in the form of a warning. In 20% of the cases the business was closed down (temporarily) or the licence was revoked.
- The most important reason for receiving a sanction is the presence of prostitutes without a valid residence and/or work permit.
- The number of *licensed* sex establishments in the Netherlands is estimated to have decreased by 17% to about 1,270 establishments between 2000 and 2006.
- A minority of the authorities with a prostitution policy include prevention and/or social care into their policies. Half of the participating authorities with a prostitution policy give

⁴ Daalder, A. L. (2007). *Prostitution in The Netherlands since the lifting of the brothel ban* (English version). The Hague: WODC / Boom Juridische Uitgevers. (p.39).

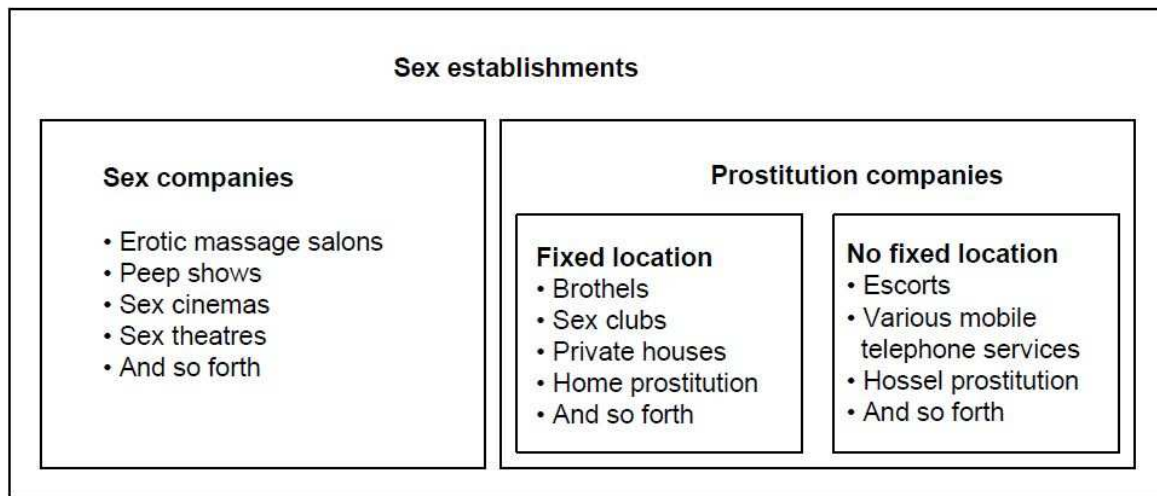
⁵ DSP-Groep (2006). *Evaluatie opheffing bordeelverbod. Gemeentelijk beleid; English summary and conclusions*. Amsterdam: WODC / DSP Groep.

⁶ Mr. A. de Graaf Stichting (2000). *Prostitutie in Nederland in 1999. De nulmeting, een jaar voor de invoering van de wet die de opheffing van het algemene bordeelverbod regelt*. Amsterdam: Project De Profeit Studie, Mr. A. de Graaf Stichting, i.o.v. WODC.

consideration to combating human trafficking (49%). A small minority (6%), often the large municipalities, offer a withdrawal program (*uitstapprogramma*) to prostitutes.

- Stimulating compliance by making the results of inspections public (naming and shaming) is rarely used by local authorities: only five authorities make results public.
- Infringements that are easier to detect, such as prostitution of minors and prostitution without work permits, are tackled more than the difficult infringements such as forced prostitution and trafficking.

Below is a schematic of the categorisation that has been developed for the study to define different types businesses. Note that: *only brothels have been legalised in 2000*. All other ‘sex establishments’ remain illegal to date. *i.e.: unless stated otherwise in local bylaws, only brothels receive permits and enforcement measures such as police checks etc.*



Daalder 2007

The evaluation⁷ of 2007 checks the existing situation in prostitution against the six goals formulated by the government (see above). As for the control and regulation of prostitution - the first goal-, the researchers had to admit that a large part, probably the majority of the sex industry, escapes government control for it takes place in couples clubs, sauna’s, massage parlours and in escort.

On combating the exploitation of involuntary prostitution, the researchers state ‘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’, for it is hard to establish coercion by third persons.

Minors (the third goal) have ‘scarcely’ been encountered in the licensed sector of the industry; this sector receives regular police checks.

The fourth goal, and one of the most important reasons for the legalisation, was the protection of the (legal) position of prostitutes. On this goal the research states: ‘there has been no significant improvement’, ‘the prostitutes’ emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased’; options for leaving the industry were in high demand, while only 6% of municipalities offer assistance⁸.

⁷ Daalder, A. L. (2007). *Prostitution in The Netherlands since the lifting of the brothel ban* [English version]. The Hague: WODC / Boom Juridische Uitgevers.

⁸ Ibid. p. 14, 15.

On the fifth and also one of the main goals; the ‘disentangling of ties between prostitution and related peripheral crime’, no statements could be made (yet); the BIBOB law (‘Public Administration Probity Screening Act’) was still being developed. ‘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’⁹.

Finally, the reduction of prostitution by illegal foreign nationals, seemed somewhat successful, since most women now were from EEA (European Economic Area) countries and thus can legally work in The Netherlands. (> In their methodology the researchers did note that the majority of prostituted women in The Netherlands has not been born in the country and that a substantial part of the interviewing had thus been conducted in another language than Dutch – mostly Spanish and English¹⁰).

KLPD 2008

Only months later, in July 2008, a very different study on prostitution appears. This study is published by the KLPD, Korps Landelijke Politie Diensten, i.e. the national police force. The report is appropriately titled ‘*Schone Schijn*’¹¹; ‘keeping up appearances’, and deals with what is mainly the fifth goal behind the legalisation: human trafficking, or more specific: sex trafficking. And this report is very clear on the situation. It will be cause for the proposed changes in the Dutch prostitution policy; the new bill.

Direct cause for the police study is the Sneep-case. In this trafficking case, the Turkish-German brothers Saban and Hasan Baran together with some 30 accomplices, traffick over a hundred women to The Netherlands, Germany and Belgium. They use extremely violent methods. What is so special about the Sneep case it is one of the first (if not the first) case in which all these women are exploited with extreme force *in the legal, licensed, taxpaying and State sanctioned brothels*; in what was deemed to be a *clean, ‘schone’, business*.

The KLPD-report estimates that 50 to 90% of the women in licensed prostitution ‘work involuntarily’. Add to this the knowledge that the number of women in the Amsterdam window prostitution is estimated at about 8,000¹², and this would mean that in Amsterdam alone at least 4,000 women are being exploited and abused. ‘4,000 victims of trafficking *on yearly basis*’ it reads literally¹³.

RIEC 2010

Another study is published in 2010, although this one was only allocated a corner in the pages of the free newspapers like Spits¹⁴ and Metro. The RIEC Noord-Holland (a government body whose role is to help administrations trace and locate organised crime in order to avoid – and this is no joke – ‘the government facilitating organised crime’ and ‘avoid entanglement of legal and illegal sectors’¹⁵) had conducted a study into sex advertisements¹⁶. This research analyses 2.600 ads in newspapers and on the internet. It concludes that in only 17% of the cases the advertisements are placed by licensed

⁹ Ibid. p. 15.

¹⁰ Ibid. p. 10.

¹¹ KLPD (Korps Landelijke Politiediensten) – Dienst Nationale Recherche (juli 2008). *Schone schijn, de signalering van mensenhandel in de vergunde prostitutiesector*. Driebergen.

¹² Ibid.

¹³ Ibid. p. 14.

¹⁴ De Spits (7 oktober 2010). *Overheid heeft geen zicht op prostitutie*.

¹⁵ See: <https://www.riecnet.nl> (accessed 28 November 2011).

¹⁶ RIEC Noord Holland (19 October 2010). *Methodiek ‘Inzicht in prostitutiebranche’*. <http://www.hetccv.nl/instrumenten/prostitutiebeleid/noordholland> (Accessed 12 Sept. 2011).

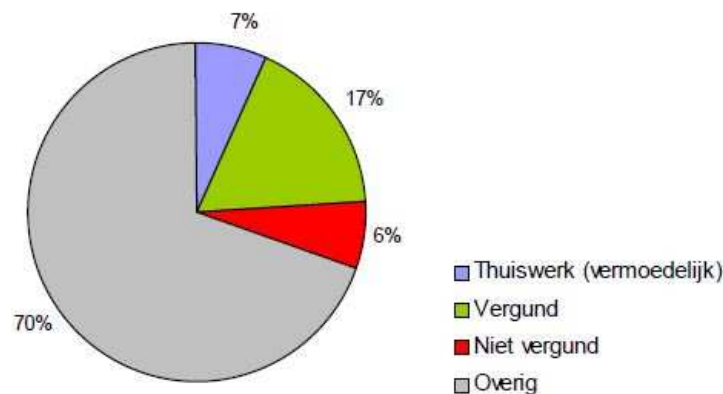
brothels, in other words: in 83% of the cases it involved prostitution in the illegal sector where there is absolutely no government control (see graph below)¹⁷. This research, like previous studies, proves once more that there has been a shift from the licensed brothels to the illegal and police-check-free sector.

Resultaten

Het onderzoek heeft opgeleverd:

- 2601 advertenties
- 705 unieke advertenties
- 286 unieke adverteerders

Het analyseren van de advertenties heeft geleid tot de volgende verdeling:



Municipality of Amsterdam; Ministry of Security and Justice; WODC 2011

Last spring – in May 2011 - several reports were published presenting the outcomes of the Emergo project. This project has been running since 2007 in order to map criminal activity in postal code area 1012 in Amsterdam (i.e. *De Wallen*; red light district). One of the reports published in this project was by the WODC¹⁸ and looked into police investigations into sex trafficking in the licensed brothels. It concluded that trafficking was certainly not uncommon in licensed brothels; proving once more that licensing and police checks are no guarantees to creating a ‘clean’ sector.

The overarching report of the EMERGO projectgroup¹⁹ examines, besides the sex industry, also the coffeeshops (marihuana – NOT coffee) and the cheap hotel (1-3 star) sector. Conclusion was that organised crime is strongly rooted in the Amsterdam Wallen-area. *Half of the permit-required businesses on the Wallen has one or more managers with a criminal record*²⁰. *Several criminal investigations were launched.*

Lodewijk Asscher, Alderman in Amsterdam, responded to the reports stating that the government has been ‘*laakbaar naïef*’: ‘reprehensibly naïve’ (?) when legalising prostitution in the Netherlands at a time when borders in Europe opened²¹.

¹⁷ Ibid.

¹⁸ Verhoeven, M.A., Van Gestel, B. en De Jong, D. (2011). *Mensenhandel in de Amsterdamse Raamprostitutie. Een onderzoek naar de aard en opsprong van mensenhandel*. Den Haag: Boom Juridische Uitgevers / WODC.

¹⁹ Gemeente Amsterdam, Ministerie van Veiligheid en Justitie; Projectgroep Emergo (2011). *Emergo – De gezamenlijke aanpak van de zware (georganiseerde) misdaad in het hart van Amsterdam. Achtergronden, ontwikkelingen, perspectieven*. Amsterdam: Boom Juridische Uitgevers.

²⁰ Ibid. p. 236, 237.

²¹ NRC Handelsblad (26 mei 2011). *Helpt van uitbaters op de Wallen heeft crimineel verleden*.

4. Law proposal: 'Wet regulering prostitutie en bestrijding misstanden seksbranche'

The government announced a review of the existing prostitution legislation in 2008. Grounds for the review were mainly the evaluation by the WODC in 2007 and the report on prostitution in Rotterdam in 2006²².

The main points under the new proposal are the following²³:

- All types of prostitution (i.e. not only brothels) will require permits;
- All prostitutes will be obliged to register; unregistered women are criminalised;
- Buyers of illegally working prostitutes are criminalised;
- Municipalities will have the choice for a 'zero-option'; zero brothels on their grounds (*dropped by new Min Just & following debate in parliament*).

Furthermore, Parliament, police and municipalities requested to include the following:

- Raise the minimum age in prostitution from 18 to 21 years old (*dropped following debate in parliament*);
- Create the possibility to register a suspicion of trafficking in the prostitution register (*dropped*).

[problem: conflict with the so-called 'doorlaatverbod': 'passing ban'²⁴. Trafficking is an official police priority crime: if an authority registers a suspicion, this entails a duty to investigate. This passing ban is to protect victims; a suspicion of THB means investigators can never let it pass; for they are not allowed to let the crime continue. Municipalities and police stated they expect to simply not have the capacity to deal with all suspected trafficking cases²⁵. Therefore government decided to NOT register suspicions of trafficking and a suspicion will NOT be ground to refuse a prostitution permit²⁶ (!!!!!!!)]

In practise it would be as following: the prostitute will need to visit the GGD (municipal health service) for a 'job interview' ('*intake gesprek*') with a social worker. Following this she will be registered in the national prostitute register and receive a special card ('*peespas*'). This card is her stamp of approval, she will have to show it to her 'customers', her pimp and at police checks, so that these parties can determine whether she is 'working' legally. She can only advertise on internet and in newspapers with her card number. Working or advertising without card are criminalised as economic offences (*economisch delict*). Same applies for the customer; he is committing an economic offence when 'purchasing her services'. Customers are required to make a call to a national government phone number to check her card number before purchase..

²² Brief (16 mei 2008) van Min. Just., BZ & SZW aan de Voorzitter van de Tweede Kamer der Staten-Generaal inz. Wijziging Wetboek van Strafrecht (opheffing algemeen bordeelverbod). KST. 25 437. Nr. 56.

²³ Ibid. and: Wetsvoorstel. Wet regulering prostitutie en bestrijding misstanden seksbranche. KST. 32 221, nr. 2.; Memoire van Toelichting. KST. 32 211, nr. 3.; Naderrapport. KST. 32 211, nr. 4; Gewijzigd Voorstel van Wet (29 maart 2011). KST. 32 211 A.

²⁴ Verhoeven, M. A, Van Gestel, B. & De Jong, D. (2011). *Mensenhandel in de Amsterdamse raamprostitutie. Een onderzoek naar de opsporing van Mensenhandel*. Amsterdam: WODC / Boom Juridische Uitgevers.

²⁵ During consultation period for new law the municipalities of Amsterdam and Rotterdam, as well as the Raad van Hoofddemissarissen van de Politie; College van Procureurs-Generaal; and the National Rapporteur stated this in their reactions (see: <http://ikregeer.nl/documenten/blg-40621> (accessed 28 Nov. 2011)).

²⁶ Memoire van Toelichting. KST. 32 211 Nr. 3. (p. 16). And: Raad van State (11 September 2009). Advies Wet Regulering Prostitutie en Bestrijding Misstanden Seksbranche. W04.09.0150/I. Compare: Wetsvoorstel KST. 32 211. And: Gewijzigd Voorstel van Wet. KST. 32 211 A.

5. State of affairs

The bill has been adopted by Parliament. The registration of prostitutes is controversial. The current Minister of Justice (Ivo Opstelten) deems a 'zero-option' for municipalities in conflict with the spirit of the proposal and is of the opinion that municipalities have to allow brothels.

Two parts of the proposal have not passed the debate in Parliament: the regulations were intended to apply to all 'sex establishments'. However, there now is one exception: 'home prostitution' will not be subject to regulation or need be part of the registration system. This leaves a large loophole in the law for pimps who do not want permits, do not want to register the women and do not want police checks.

The other part that will not be included in the law are the pimps themselves. There is not a single rule applicable to their conduct or dealings. They do not need to register, do not need permits; for this administrative burden has already been transferred onto the women.

Currently, the bill is pending discussion in the Senate. It is not clear when exactly discussion will take place in plenary session (committee meetings have been concluded). It is doubtful whether the law will pass the Senate. The governing coalition only hold very narrow majority in the Senate and the liberal parties already announced they oppose the law because of the prostitute register which they deem a privacy violation.

6. Future

What does the future look like? If the bill is adopted, the women will receive permit-cards and men will have to dial phone numbers to check those.

Trafficking will not stop, for even a suspicion of human trafficking cannot be grounds to refuse women permission to enter prostitution. The full administrative burden will be with the women; pimps do not even have to apply for a permit. If The Netherlands wasn't already the ultimate traffickers Walhalla, it will become so now.

So does this solve any problems? No, I do not think so. What it does signal however, is recognition by the State that something is wrong with the current system.

7. Conclusion; why the new law doesn't solve anything

The new law is an amendment to the existing legislation: it is a municipal framework law titled '*wet bestrijding misstanden in de seksbranche*': 'law to fight the wrongs in the sex industry', which will guarantee more uniform municipal legislation. The new legislation is still based on the same goals and assumptions underlying the current one, which has been proved ineffective.

These goals were based on a twofold understanding. *First*, there was the assumption that one could separate voluntary prostitution from forced prostitution by imposing a system of regulations and create State control on prostitution. 'Disentanglement' of these two types of prostitution, however, is impossible for violence is an integrate part of prostitution; prostitution is hardly ever chosen for.

Prostitution and violence, prostitution and exploitation, prostitution and trafficking cannot be '*disentangled*'. If there is *one* single outcome that is common to *all* research in The Netherlands in the past ten years, then it is this. One *cannot* create a 'clean' sector: prostitution *is* not clean. According to the national police 50-90% of the women are in prostitution involuntarily. Why then

make policies that facilitate and sanction this? Why then allow hundreds of women to be abused every day again?

The second reason to legalise, was the notion that the social position of women would be improved by it. Recognise sex as work. Labour right, employment conditions. But let's be real: the vast majority of the prostitutes never entered the social welfare system. Rights for sex workers, the right to sex work: prostitution is not a right. A right is it to be free from prostitution. The only legal position that improved with legalisation, was that of the pimp, that of the trafficker, that of the buyer, who doesn't have to be ashamed to visit a brothel anymore.

This policy was a *pragmatic* approach: not a *moral* position. Because 'prostitution always existed and always will be. So we better facilitate it, have a grip on it and hope for the best'. This Dutch 'pragmatic' stance is, in my opinion, a defeatist and little progressive attitude.

Progressive would be to be brave, and to dare say that this can no longer be allowed, this is no way to treat women. Progressive would be to say, we women do not want this, we women demand, demand this abuse to stop. Progressive would be to strive for prevention of prostitution. Prevention, changing attitudes, strive for a different type of society. Progressive would be to say: guys, this is not okay, this cannot be. The party is over. We ban the buying of women. We stop prostitution. And we take down that damn statue. For ten years since legalisation, it is time to acknowledge the situation for what it really is.