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## EUROPEAN POLICY BRIEF

# Prostitution as a Human Right: an Oxymoron

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**Prostitution is an extremely contentious topic, for political forces as well as civil society. The recent position adopted by Amnesty International in favour of a full decriminalization of this activity is an opportunity to launch a critical debate on this issue, at the global and European levels.**

**Because of its close connections with human trafficking and migration, prostitution is indeed an inherently trans-national phenomenon requiring solutions beyond the strictly national level. This policy brief summarizes the main arguments of the debate and outlines a few alternative propositions.**

## PROSTITUTION: A HUMAN RIGHT?

Amnesty International recently adopted a position in favour of the total decriminalization of prostitution. This decision and the debates that preceded it triggered a great deal of critical reaction across the world, from feminist circles to Hollywood stars – Meryl Streep and Kate

Winslet were among those voicing their opposition. Many organisations for women's rights have also expressed their concern about Amnesty's new position. According to Equality Now, for instance, Amnesty's position shows that *'it has ignored the clear links between prostitution and sex trafficking that it says it opposes, as well as the incompatibility of the commercial sex trade with gender equality, human rights and international law. It has ignored survivors of the commercial sex trade who repeatedly called on the organisation to rethink its position based on their experiences and to adopt a policy that seeks to curb, rather than facilitate, the commercial sex trade.'*<sup>2</sup>

## DIVERSITY OF LEGISLATION IN THE EU

Prostitution is, in fact, a European issue: not only does it concern all EU Member States, but it is also related to human trafficking and illegal immigration, which go far beyond national borders. Nonetheless, it is still dealt with at the national level. And national legislation differs hugely from one country to another.<sup>3</sup> Some countries criminalise the clients (Sweden, Norway or the United Kingdom); in other states, prostitution is legal but regulated (Germany, Holland, Spain). In other countries, such as Belgium, prostitutes can choose to be self-employed, and brothels are tolerated in some cities – a large 'Eros Centre' opened in Antwerp in 2001. Other countries tolerate prostitution without having legalised it. In Italy,

Poland, Portugal and Finland individual prostitution is legal but pimping is not, and nor are brothels or soliciting. France falls into this group, but a legislative proposal – still under examination by the senate – aims to change that situation by criminalising both pimps and clients. Finally, some Member States like Lithuania and Romania (and, outside the EU, Russia) prohibit prostitution outright (in this case, not only clients and pimps but prostitutes too are criminalised).

This huge diversity in approaches to prostitution is extremely problematic. On 26 February 2014, the European Parliament adopted a report proposed by the Committee on Women's Rights and Gender Equality recommending following the 'Nordic Model', in which selling sex is legalised but purchasing it is criminalised. This non-binding resolution stated that EU countries should reduce the demand for prostitution by punishing clients. It emphasised that prostitution violates human dignity and human rights, whether it is forced or voluntary, and asked Member States to find exit strategies and alternative sources of income for women who want to stop taking part in prostitution. This resolution refers to Commission data showing that 62% of the victims of trafficking are trafficked for purposes of sexual exploitation and that 96% of the victims are women and girls.<sup>4</sup>

Mary Honeyball, the British MEP who was the rapporteur at the time, replied to the frequent objection that, since social policy falls outside of EU law, prostitution should be dealt with only by national legislations: *'social policy is a matter for Member States. However, there are elements of prostitution which are quite clearly cross-border. Trafficking is one of them, for example, which is why the EU has introduced a Directive against trafficking. There are also really quite striking examples in some of the borders between EU countries. For instance, the border between Sweden and Denmark, where in Sweden the Nordic Model is used whereas in Denmark prostitution is legal, and there's a lot of traffic across the borders.'*<sup>5</sup>

Since the adoption of this non-binding resolution, not much has been done to combat prostitution within Member States, and even less in terms of harmonisation at the EU level. Even

worse, the recent position adopted by Amnesty International – a historic reference in the fight against human rights violation – has not generated any substantial reactions at the EU level. This might reveal the deep divisions pervading most political families on the issue of prostitution. And indeed, this topic cannot be easily understood via the traditional left–right cleavage. For instance, the left is deeply divided on this issue. One of the reasons why an initiative report proposed by the Committee on Women's Rights (FEMM) on 'equality between men and women in the EU' did not gather a majority in the Parliament on 11 March 2014 was because of the abstention of a majority of Green MEPs, who disagreed with the section on prostitution. The report stressed that prostitution constituted a form of violence, an obstacle to gender equality and a means for organised crime to thrive, and it invited Member States to recognise prostitution as a form of violence against women rather than as a job, even when it is 'voluntary'.<sup>6</sup> On the other hand, in the subsequent Parliamentary report on the 'EU Strategy for equality between women and men', the formulation is much less clear or forceful.<sup>7</sup>

Nonetheless, prostitution is not compatible with individual freedom. It might be useful here to review some of the arguments for abolishing prostitution by criminalising clients and pimps rather than prostitutes themselves as well as by tackling the deep causes for prostitution.

## AN INEVITABLE AND NATURAL REALITY?

A very old and common argument put forward by the advocates for legalisation – following a naturalist and essentialist approach that is once more fashionable in so many fields – is that it is not a coincidence that sex work is known as 'the oldest profession' in the world. According to them, it responds to the sexual needs of men. This argument is consistent with a recurring naturalist approach to sexuality, according to which, if men have a predatory, demanding and irrepressible sexuality, women are more akin to passive prey, and give more importance to other things in their emotional life, such as love, friendship or family life.

This essentialist vision has been contradicted by numerous recent studies on the subject, which tend to show, on the contrary, that men and women are not as different as we often purport when it comes to questions of desire and sexual pleasure.<sup>8</sup> This naturalist justification is also, in many ways, contradictory to other traditional classical stances on the different ‘nature’ of men and women: for many naturalists, women are different from men when it comes to sexuality, not only because they have lower libidos, but also because they are said to be less capable of dissociating sex from feelings. ‘Women cannot sleep with random men’ as easily as men can sleep with random women: this is still something we hear a lot. Apart from the fact that, in practice, it is less and less true, this is clearly an additional argument to abolish prostitution rather than to defend it: if women find it harder to have sex without feelings, then this profession should surely not exist? Unless, for those putting forward such an argument, prostitutes are not ‘real women’?

Finally, essentialist discourses on gender roles and attitudes are problematic in the sense that they oppose individual freedom: if nature decides how people think and behave, then how can they ever be free to build their own conception of good? Of course, current obstacles to freedom are numerous in our societies. But naturalist postulates prevent even the most basic step against dominations by imprisoning individuals in a priori categories and expectations.

Let us now examine in more detail why prostitution is a source of vulnerability and oppression as well as an obstacle to effective freedom.

## POVERTY AND EXPLOITATION

First of all, prostitution both derives from and reinforces poverty, violence and exploitation. The majority of prostitutes come from deprived backgrounds. Furthermore, this activity exposes them to an increased likelihood of violence, exploitation of all sorts and precariousness. It is therefore a pure illusion to pretend that prostitutes freely ‘choose’ their job. In most cases, this choice is nonexistent or extremely

relative since it is weighed against activities which are all more degrading than one another. If prostitution is chosen by more privileged women who prefer the career of ‘escort girl’ to others, this concerns only a tiny minority of women. The economic crisis, the rise of unemployment and poverty in many countries has increased prostitution.<sup>9</sup> Furthermore, the exploitation and poverty surrounding prostitution are reinforced by its link with illegal migration and human trafficking.

## FICTITIOUS FREEDOM AND GENDER STEREOTYPES

The supposed freedom attributed to prostitutes is also seriously compromised by the symbolic justifications of prostitution that are shared and internalised by most individuals in our society. In other words, the still-widespread objectification of women both allows and justifies such practices: women can contemplate becoming prostitutes because they are still imbued with a view of themselves as being largely objects submitting to the needs and ends of others, while men can easily purchase the sexual services of women by making the same assumptions about them. This instrumental or ‘functional’ view of women as objects is blatant in the case of prostitution or sexual violence, but it is also one of the symbolic justifications for other forms of ‘objectification’ outside the sexual realm. Thus, gender stereotypes concerning empathy, motherhood, appearance or softness and the related expectations internalised by women all convey the postulate in which being ‘feminine’ equates giving, putting your own needs asides and granting primacy to others’ feelings, goals, interests or needs.<sup>10</sup> This internalised position makes it difficult for women to conceive of themselves as subjects with their own conceptions of the good life. This is not only a problem from a moral point of view – in a Kantian perspective, it is problematic to see oneself or others merely as objects rather than as ends in themselves – but also from a more pragmatic angle: if women have difficulties in perceiving themselves (and in being perceived by others) as subjects, how can they imagine a position of individual freedom? And therefore, how can they take actions – both individually and collectively – to build the

conditions for individual freedom (for themselves and potentially for other dominated people as well)? In that sense, prostitution reveals much broader social norms and gender stereotypes.

## PHYSICAL AND PSYCHOLOGICAL HARM

Besides, regardless of the level of effective choice entailed by this act, prostitution leads to substantial psychological and physical harm for the persons concerned. As many studies attest, years of prostitution not only entail numerous physical risks for the 'sex workers' (STDs, rapes, physical violence), but also affect deeply their self-esteem and self-confidence, their ability to build healthy relationships, to handle their money adequately or to build future plans and life projects.<sup>11</sup> This seems contradictory to the idea that, as long as it is regulated, prostitution can be a fulfilling choice. How could it be if it harms the persons concerned? The physical and psychological harm endured by prostitutes is, in the end, antagonistic to freedom. Being free supposes a healthy mind and body.

Consequently, no matter how good the intentions might be on the part of some supporters of legalised prostitution, it has to be said out loud: prostitutes cannot be free, whether their work is legal or illegal.

## A BROADER STRUGGLE

Progressives should aim to abolish prostitution because it is structurally antagonistic to individual freedom. On the legal front, some activists demand that prostitution be seen as a breach of Article 1 of the Universal Declaration of Human Rights, and should therefore be forbidden worldwide. They argue that being purchased and used for sex contradicts some

fundamental human rights, namely, the rights to bodily integrity, equality, dignity, health, security, and freedom from violence and torture. Crucial international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), consider sex trafficking a form of sex discrimination and a human rights violation.<sup>12</sup>

Going even further, some militants propose a 'Convention against sexual exploitation' in the United Nations framework in order to render all forms of sexual exploitation, including prostitution, a violation of human rights. The normative impulse here is to 'contest the power men exert through their sexual control and domination of women.' It would also necessitate protection for migrant women. Famous personalities, such as former US President Jimmy Carter, support such a convention.<sup>13</sup> In order to achieve more effective results, European activists should carry out this fight first and foremost at the European level.

Of course, abolishing prostitution is a long-term goal and one that requires much more than merely legal actions. Thus, it also requires a deeper struggle against gender stereotypes – both by critically highlighting the way they justify some injustices and by elaborating alternative, more freedom-friendly, visions of the 'feminine' and the 'masculine'. More specifically, our societies need to stop objectifying women in all spheres – not just sexuality. And women themselves should start seeing themselves more as subjects, and get involved, both individually and collectively, in creating the conditions of effective freedom.

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## Endnotes

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<sup>2</sup> “Equality now deeply concerned by Amnesty International’s call for full decriminalization of sex trade” , <http://www.equalitynow.org>

<sup>3</sup> ‘L’Europe, entre prostitution organisée et sanction des clients’. 10 June 2001. *La Libre Belgique*.

<sup>4</sup> ‘Punish the clients, not the prostitutes’, <http://www.europarl.europa.eu/news/en/news-room/content/20140221IPR36644/html/Punish-the-client-not-the-prostitute>

<sup>5</sup> ‘Should prostitution be legalised across Europe?’, *Debating Europe*, <http://www.debatingeurope.eu/2015/03/05/prostitution-legalised-europe/#.VdLnULLtHw>

<sup>6</sup> ‘Le Parlement européen a rejeté à une courte majorité le rapport 2012 sur l’égalité entre les hommes et les femmes’, <http://www.europaforum.public.lu/fr/actualites/2014/03/pe-egalite/index.html>, 12 March 2014.

<sup>7</sup> It ‘calls on the Commission and the Member States to explore the reasons why women resort to prostitution and ways to discourage demand; underlines the importance of programmes for exiting from prostitution’ and equates only ‘forced prostitution’ with violence against women: Report on the EU Strategy for equality between women and men post-2015 (2014/2152(INI), *Committee on Women’s Rights and Gender Equality*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0163+0+DOC+XML+V0//EN> 15 May 2015.

<sup>8</sup> Brooke Magnanti, *The Sex Myth: Why Everything We are Told is Wrong*. 2012. London: Weidenfeld & Nicholson.

<sup>9</sup> For the UK, see for instance: ‘Prostitution and Poverty in the UK’, <http://leftfootforward.org/2013/08/prostitution-and-poverty-in-the-uk/>, 20 August 2013.

<sup>10</sup> For a detailed analysis of these gender stereotypes see: Sophie Heine, *Genre ou liberté. Vers une féminité repensée*. 2015. Academia.

<sup>11</sup> Peter de Marneffe, *Liberalism and Prostitution*. 2009. Oxford: Oxford University Press.

<sup>12</sup> Global sex trafficking: fact sheet, <http://www.equalitynow.org/node/1010>

<sup>13</sup> Kathleen Barry, ‘After Amnesty, what’s next? A call to global action’, <http://www.feministcurrent.com/2015/08/13/after-amnesty-whats-next-a-call-to-global-action/>, 13 August 2015



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