

# Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain?

Rio State University | Law Faculty

Rio de Janeiro | 6 November 2013

Prof. Dr. Gert Vermeulen

t. +32 9 264 69 43

f. +32 9 264 84 94

Gert.Vermeulen@UGent.be

# Research background

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

## long-standing IRCP research line

- global, integrated analysis/evaluation/shaping
- of (criminal) beleid
- from multidisciplinary perspective
  - migration and (armoured) administrative law
  - penal law & repression
  - labour/social law & human rights (including children's rights)
  - criminal organisation | corporate liability (multi-nationals & sub-contracting)
- all much influenced by EU context (both in legal and policy terms)

## evolution

- thematically (broadened)
  - THB > prostitution > migration (both within/to the EU)
  - THB > labour exploitation > labour migration (both within/to the EU)
- in time: genesis (1993) until now

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)

# Research & advice | Building blocks

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

## international

- AIDP
- EU quality labels sex/travel/labour/... markets (2006 – EC) ([annex 1](#))
- advice (Belgian Presidency) OSCE “Trafficking Alliance” (2006)
- Slovenian EU Presidency 2008/Eurojust (high-level conference)

## national

- official evaluation THB policy (2006 – King Baudouin Foundation)
- analysis 10y THB victim database (2006/7 – Centre for Equal Opportunities)
- book ‘law of paid sex’ (Vermeulen, Betaalseksrecht, 2007, 700 p.)
- field contacts (prostitutes, high-threshold client groups (handicapped, elderly), escort industry, ...)
- PhD Brazilian THB for sexual exploitation (sex work migration) to Iberian countries
- PhD criminalization of ‘knowing users’ of services of a victim of THB
  - in the sexual sphere ([annex 2](#))
  - in the labour sphere ([annex 3](#))

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)

# 'Knowing use' of services offered by THB victims

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

towards criminalization?

cf CoE 2005 Convention & new 2011 EU THB directive

- not compelling | member states invited to consider criminalization as a means to tackle the demand side (much underresearched, especially in sexual sphere)
- for which forms of exploitation | sex or labour as well? other?

country level (examples)

- essentially limited to sexual sphere
- not yet criminalized in Belgium
- sexual sphere: interesting examples to study (see annex 2)
  - UK (strict liability)
  - The Netherlands (new bill pending)
- labour sphere: only examples: indirect user accountability through several liability or participation (see annex 3)

core question: how to operationalize?

possible answer: through quality labels & due diligence from user perspective

- client orientation towards certified sexual service providers
- In order for them to avoid prosecution for knowing use (guilty knowledge)

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)

# THB & migration policy

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

- often: mere consensual smuggling labelled as THB
- confusion of debates
- THB instrumentalized for combating smuggling (which indeed victimizes people) and, hence, illegal migration
- mere political rhetoric and discourse
- whilst combating smuggling & illegal migration is essentially counterproductive
- solution likely being in the creation of more legal migration possibilities
  - if need be: to act against problematic aging in the (EU labour market
  - + information campaigns in the countries of origin
  - sexual sphere: also regulate legal migration 3rd country nationals!
    - EU: Jany judgement ECJ (2001): independent prostitution = economic activity
  - labour sphere: EU-realities of intra-migration (posting directive, ...) and prevalence different working/living standards

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)



Institute for  
International Research on Criminal Policy  
Ghent University

Prof. Dr. Gert Vermeulen  
+32 9 264 69 43  
Gert.Vermeulen@UGent.be

# Prevention of labour exploitation in the supply chain

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

## challenges

- multinational enterprises – accountability for supply chain actors?
- sub-contracting also shielding responsibility of main contractor

## current 'solutions'

- in various sectoral spheres (wood, diamonds, ...): social corporate responsibility – codes of conduct – self-regulation & compliance monitoring
- rare for labour/THB/slavery prevention: e.g. California Act
- moreover: doubtful whether mere self-regulation will suffice

## therefore: triple approach suggested

- minor violations of labour/social security law: a matter of social law only (often strict liability-based and administrative sanctioning; subsidiarity of criminal law)
- international – at least EU – minimum criminalization of 'participation' in THB or serious labour exploitation in case of negligence to duly check labour conditions at subcontractor or supply chain actor levels (dolus eventualis, due diligence)
- state-induced self-regulation of multinationals and (big) main contractors
  - due diligence promotion and compliance monitoring & reporting

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)

# THB & prostitution policy

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

- exploitation consensual prostitution mostly punishable
  - heritage NY Convention 1950
- whilst THB (UN Palermo protocol 2000, CoE 2005 Convention, EU directive 2011 ...)
  - require coercion, force, abuse, absence of reasonable choice
  - unfortunately only minimum requirement (e.g. Belgium)
- often: prevailing political stand(point) is to look upon prostitution as intrinsically exploitative ('new' feminism?)
- whereas 'new' criminalization of THB was capable of introducing a separation of the markets in the sex industry
  - mala fide (coercion, lack of free choice) = THB = to be tackled
  - bona fide (consensual) = legalization or self-regulation
    - caveat: side conditions need to be fulfilled (unlike in NL)

# Prevention THB & nuisance in prostitution sector

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

## development of a *bona fide* prostitution market

- reduction vulnerability for THB (through improval legal position prostitute and enhanced repressive focus on cases of genuine exploitation and THB)
- reduction nuisance (through compliance with municipal preconditions)

## legalizing *bona fide* exploitation prostitution

- theoretically logical
- politically difficult
- + requires signing off NY 1950 Convention
- 'relative' success legalization prostitution in The Netherlands in 2000
  - 3 lessons

## (self)regulation as an interesting alternative

- through quality labels (ISO 69) (infra)

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)



# (Self)regulation *bona fide* prostitution market

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

## market separation in illegal markets?

- examples: drugs, child labour, road traffic, ...

## government regulation or private sector self-regulation

- government regulation
  - ambiguous, discretionary, limited or no legal certainty (A'dam)
- private sector self-regulation
  - example: window prostitution rental prices 'protocol' Antwerp
  - through quality standards (ISO 69) which all stakeholders view as adequate, meaningful and sufficient to exclude the risk of THB, labour exploitation in the sex industry or sexual exploitation of children
  - tangible standards (infra)

# ISO 69 (1)

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

informed consent

only by adults

- de-problemizing 16+ prostitution tough issue
- even if defensible from emancipatory children's rights perspective

only all-in rental prices without unreasonable profit margin

clean and safe workplace

relevant insurances in place

right to adequately safe sex

reimbursement periodic medical control by GP of choice  
(including relating to HIV or other STIs)

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)



Institute for  
International Research on Criminal Policy  
Ghent University

Prof. Dr. Gert Vermeulen  
+32 9 264 69 43  
Gert.Vermeulen@UGent.be

# ISO 69 (2)

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

proper security measures in place

no excessive working days or hours, nor underpayment

entitlement to vacation

autonomous decision making to either or not work during  
menstruation or pregnancy

in case of SDD: entitlement to refuse certain clients or acts  
(protection against being sacked)

at least: functionally blanc record for manager or owner of a  
brothel, window, escort agency or the like

active openness for controls by the authorities

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)



Institute for  
International Research on Criminal Policy  
Ghent University

Prof. Dr. Gert Vermeulen  
+32 9 264 69 43  
Gert.Vermeulen@UGent.be

# Legalization or self-regulation via quality standards

6 November 2013 | Rio State University | Criminalization of 'knowing' users of THB victim services & Self-regulation to prevent problematic prostitution or labour exploitation in the supply chain

requires support of all relevant authorities, including prosecution services

- preparedness non-prosecution sex work by irregular migrant sex workers

transparency and controllability norms

publicity mechanism

- in order for clients to make a deliberate ('knowing') choice
  - thus avoiding prosecution for 'knowingly' using services offered by THB victim
  - economic incentive voor bona fide sexual service providers
- consequently: market advantage *bona fide* market players
- effect: reduction exploitation & THB

relative advantage self-regulation over legalization: allows working with irregular migrants

theoretical evaluation: relatively positive

practical feasibility

- sector-wise: good, even if mere self-regulation (at least for escort)
- authority-wise: legalization OK | self-regulation: institutionalized acceptance required (A'pen)
- client-wise: non-invasive control mechanism due (NL)

research

publications

consultancy

conferences

[www.ircp.org](http://www.ircp.org)



Institute for  
International Research on Criminal Policy  
Ghent University

Prof. Dr. Gert Vermeulen  
+32 9 264 69 43  
Gert.Vermeulen@UGent.be

**www.ircp.org**

## **Contact**

Prof. Dr. Gert Vermeulen

t. +32 9 264 69 43

f. +32 9 264 84 94

Gert.Vermeulen@UGent.be

 <http://www.linkedin.com/pub/gert-vermeulen/68/0/42b>

## **IRCP**

Ghent University

Universiteitstraat 4

B – 9000 Ghent