

Private-public cooperation in the prostitution sector through self-regulation & certification and the focusing of law enforcement efforts on providers & users of non-certified services?

Reframing Prostitution: From Discourse to Description, from Moralisation to Normalisation? | International Colloquium | Ghent | 27 March 2014

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THB & migration policy

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- mere consensual smuggling often labelled as THB
- confusion of debates | THB debate instrumentalized for combating smuggling and thereby illegal migration
- whilst combating smuggling & illegal migration is essentially counterproductive, illegal status enhancing vulnerability and being a stand-in-the-way for rights-based (sex) work or servicing
- two possible solutions
 - legalizing prostitution + allowing legal (sex work) migration 3rd country nationals
 - EU: Jany judgement ECJ (2001): independent prostitution = economic activity
 - regulating prostitution + tolerating illegal employment in sector
 - if *bona fide* entrepreneurs + qualitative working conditions
 - state control whereof would constitute a contradiction
 - self-regulation?

THB & prostitution policy

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- 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, lack of real (alternative) choice
 - unfortunately only minimum requirement (e.g. Belgium)
- often: prevailing political stand(point) is to look upon prostitution as intrinsically exploitative and victimizing ('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, agency) = legalization or self-regulation
 - caveat: side conditions need to be fulfilled (unlike in NL)

Clients & prostitution policy

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towards criminalization of those 'knowingly' using the services of THB victims
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
 - UK (strict liability)
 - The Netherlands (new bill pending)

core question: how to operationalize 'knowing use'?

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)

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publications

consultancy

conferences

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Prevention THB & nuisance in prostitution sector

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development of a *bona fide* prostitution market

- reduction vulnerability for THB (through improved 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 (infra)

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(Self)regulation *bona fide* prostitution market

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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)

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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 STDs)

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ISO 69 (2)

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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 STD: entitlement to refuse certain clients or acts

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

active openness for controls by the authorities

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Legalization or self-regulation via quality standards

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requires support of all relevant authorities, including (responsive) 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 (no *dolus eventualis*)
 - 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)

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