

Dear Madam or Sir,

On November 27, 2014, the *Christen Unie* and the *Staatkundig Gereformeerde Partij*¹ submitted a resolution in the Dutch Lower House to allocate funds for research into “a scientific comparison of the differences in prostitution policy of countries in North-Western Europe and the effects of these policies on the extent of trafficking in those countries.” (resolution no. 34000-VI-53). The resolution has been approved by a majority of the Lower House.

The signatories of this letter express their concern about this resolution and the research suggested therein. Our concerns are twofold. First, the resolution is based on factual errors. Second, it contains a proposal for research that will encounter such insurmountable methodological problems that it will result in flawed and useless results. We believe therefore that the allocation of funds for the proposed research project is ideologically driven and a waste of tax payers money. We will explain our position below.

Existing Research.

The rationale for the resolution suggests that comparative research into the relationship between prostitution policy and trafficking has not been done before. This is wrong. A number of studies that aimed to establish a relationship between the policy regime with regard to prostitution, in particular its legalization, and the extent of trafficking has been published recently. The most well known are the studies by Cho et. a. (2013) and Jakobsson & Kotsadam (2013). Both of studies suggest a positive correlation between the legalization of prostitution and the extent of forced prostitution/trafficking. Both studies have attracted serious criticism of the community of prostitution researchers. We discuss this criticism below where we discuss the methodological problems of this type of research.

In addition a lot of research has been done into the accuracy and reliability of data on trafficking and forced prostitution. Weitzer (2007, 2014a, 2014b), Vance (2011) and O’Connel Davidson (2006) all demonstrate that the numbers that figure in official reports of, for example, the FBI, the US Congress and the UK Home Office are extremely unreliable. The reports show large annual differences in their estimates (sometimes by a factor 10), the definition of key concepts is unclear and the source of the data cannot be verified.

Finally, there has been research into the motives and experiences of migrant sex workers in North-Western Europe. We have in mind the study of Wagenaar, Amesberger and Altink (2013) who compared prostitution policies in Austria and the Netherlands.

(http://kks.verdus.nl/upload/documents/P31_prostitution_policy_report.pdf)

We also point out the Mai’s study of male migrant sex workers in London. These studies have in common that they are based on extensive interviews with a

¹ The *Christen Unie* (Christian Union) and the *Staatkundig Gereformeerde Partij* (Christian Reformed Constitutional Party) are small Christian fundamentalist political parties in Dutch parliament, with 5 respectively 3 seats out of a total of 150 seats.

representative sample of migrant sex workers. The results of these studies show that the sex workers perceive themselves primarily as migrants, that sex work is often only one of the ways with which they try to obtain an income in the destination country, that the large majority states that they don't feel forced in their profession, that the few that say that they have been in a situation of coercion extracted themselves from it with the help of friends, and that they are part of a larger network of friends, family and acquaintances, most of them with a migrant background, who support each other in getting by. These studies clearly show that the personal experiences of migrant sex workers in North-Western Europe have little in common with the image of forced prostitution and trafficking in the media and politics.

Methodological Problems.

To conclusively establish a (causal) relationship between a policy regime on the one hand (independent variable) and the extent of trafficking and forced prostitution on the other (dependent variable), an international comparative, so called "most different systems design" (MDSD) is required (Landman, 2003). In such a design a series of countries with a diversity of approaches to prostitution policy is compared on the variable "forced prostitution". The logic of the MDSD is that in comparing very different cases, all of which have in common the same *dependent variable* (extent of trafficking), any other circumstance that is present in all or most of the cases can be regarded as the *independent variable*. In this case that would be the legalization of prostitution. A slightly more relaxed version of the MDSD is simply to correlate regime type with the extent of trafficking. For two reasons a large sample of countries is a necessary condition.

First, a large number of countries is required to (statistically) neutralize variables other than the policy regime; variables that could influence changes in trafficking. Second, a large sample is necessary to attain statistically robust results. One has to think of a sample of at least 80 countries. (The study of Cho et. al. uses a sample of 150 countries.) The Dutch resolution would restrict the study to the countries of North-Western Europe. As this includes not more than about a dozen countries, the above comparative design is not feasible. The best that can be done in the circumstances is a comparative case study design. That is a useful design in itself (Wagenaar et. al., 2013), but it does not allow any conclusions about the relationship between policy regime and extent of trafficking. We will return to this point.

But even if the researcher succeeds in putting together such a sufficiently large sample, the study will encounter a number of insurmountable problems. The first one is the operationalization of the dependent (extent of trafficking and forced prostitution) and independent variable (policy regime). The second is the collection of precise and reliable data on trafficking and forced prostitution.

The variable 'policy regime' is difficult to define. One of the largest problems is the loose relationship between national and local policy. For example, in Germany prostitution is legalized at the federal level but not a single 'Land' has ever implemented the law. In Austria prostitution is also legalized at the federal

level, but the 'Länder' have so much autonomy that at that level implementation varies from de facto criminalization to de facto legalisation. In the UK policy differs between cities; similar to Sweden where the implementation of client criminalisation is more strict in Stockholm than in Malmö. In the Netherlands the policy of legalization took a decidedly repressive turn, with the result that current local policy does not resemble national policy very well any more. In other words, it is impossible to arrive at a valid characterisation of a country's prostitution policy by focusing on the national level.

The same applies to the variable "trafficking or forced prostitution". The report by Wagenaar et. al. contains an extensive analysis of the confusion around these concepts and suggests not to use them any longer and to replace them with the multi-dimensional and easy to operationalize concepts of economic and sexual exploitation. One of the added benefits of the concepts of 'economic and sexual exploitation' is that it is not restricted to prostitution, that it situates exploitation in where it takes place, namely the work situation, and that it suggest that exploitation in prostitution is part of a wider problem of exploitation of vulnerable workers in the current labour market (Wagenaar et. al, 2013). In practice the usual concepts 'trafficking' and 'forced prostitution' have widely different meanings and tend to be used in an inflationary way. 'Forced prostitution' is regularly used, for example, when people enter into prostitution for economic reasons and/or because of a lack of other, more desirable jobs.

A similar problem is encountered with the definition of the concept of 'trafficking'. We must not only take into consideration the legal definition of the concept (law in the books) but also how the law is applied in practice (law in action). Most countries (more or less) follow the international/EU definition of trafficking, but its interpretation varies considerably. In many countries 'trafficking' is interpreted narrowly as bringing someone into prostitution against her or his volition.² The Netherlands on the other hand uses a very wide definition of trafficking that includes every form of deception, coercion, or violence, regarding both the methods of recruitment as the work conditions, and irrespective of the fact that someone has worked in prostitution before, was aware that she or he was going to work in prostitution, or expresses that she or he choses to remain working in prostitution. Also, in some countries, the Netherlands included, every (cross border) form of mediation of prostitution is considered 'trafficking', independent of the fact that there are circumstances of deception, coercion of violence. Thus, the concepts of 'trafficking' and 'forced prostitution' only partly overlap.

Moreover, the prohibition of trafficking must be considered in the context of other prohibitions concerning prostitution. The broad Dutch concept of trafficking, in combination with the absence of a separate legal clause that prohibits pimping, has the effect that cases that are classified as 'trafficking' in

² In Rumania, for example, the same activities are classified as trafficking respectively pimping depending on the fact if the victim is seen as an 'innocent' woman or a sex worker. In the first instance the victim has right to shelter and protection; in the second she is considered a co-perpetrator and can be prosecuted and convicted. And, in contrast to the Netherlands, coercive work conditions are not part of the definition of trafficking.

the Netherlands are classified and prosecuted as ‘pimping’ or ‘exploitation of prostitution’ in other countries. In these countries district attorneys tend to prosecute the easier to prove ‘pimping’ rather than the difficult to establish ‘trafficking’. All these considerations make a meaningful comparison of numbers about the number of cases or victims of trafficking essentially impossible.

The second methodological problem concerns data collection. In practice the required data on trafficking and forced prostitution are simply not available. Even in a well-organised country such as Austria, reliable national data on prostitution and forced prostitution did not exist, as the responsible official readily admitted (Wagenaar et. al, 2013). But even if data are available, it is unclear how they must be interpreted. Does an increase in the number of trafficking cases, for example, really represent an increase in criminal behaviour, increased law enforcement, a change in the definition used, or all of the above?

The upshot is that it is unclear what it is that is compared in an international comparative study. This was the major criticism that was levelled at the Cho et al. study. It turned out that the alleged positive statistical association between legalization of prostitution and trafficking was compromised by serious problems with the operationalization of the key variables and the reliability and comparability of the data. The relationship was an artefact of the research design. The conclusions were built on quicksand.

A third problem is that a well-designed study not only looks at the intended effects of prostitution policy on trafficking/forced prostitution, but also at unintended consequences³, such as impact of the policy on access of sex workers to health and social services (Florin, 2012), on public health (prevalence of STDs and HIV among sex workers), on the level of violence against sex workers⁴, on the possibility to leave the profession when desired, or on sex workers’ human and civil rights.

Finally, the Dutch parliamentary resolution fails to specify any explanation for the alleged relationship between legalization and trafficking/forced prostitution. Without such a hypothesis the suggested research is not much more than a fishing expedition.

Based on these methodological arguments we conclude that a research project designed according to the required Most Different Systems Design is simply not feasible. The idea of such a project may be rhetorically attractive, but in practice it will not be viable. More seriously, bad research can have real-world pernicious effects. The Cho et. al. study for example was embraced by politicians and prohibition activists in a number of countries as the definitive ‘scientific’ proof of the alleged damaging impact of the legalization of prostitution. In addition, spurious claims and ‘results’ detract both attention and funding from worthwhile

³ See, for the negative unintended consequences of the Swedish Sex Purchase Law, Dodillet and Östergren in Wagenaar et. al., 2013.

⁴ In many countries, for example, the police is a major source of violence against sex workers (coerced sex, extortion, and physical abuse). See *Research for Sex Work* (2009), SWAN (2010) en Sex-Workers Forum of Vienna (2010)

causes. Untold millions have been spent on anti-trafficking projects. However, in comparison to the alleged number of victims worldwide, only a small number of victims have been identified and supported, and even fewer traffickers prosecuted and convicted.

Is there an alternative? It is always possible to do a so-called “mixed methods” study in a smaller number of countries. In such a design the researcher combines quantitative and qualitative methods. To establish a trend it is recommended to follow a longitudinal design; that is, to follow the implementation of a policy for a number of years and register its effects on the target group. Such designs suffer though from the “too few cases, too many variables” problem (Goggin, 1986). If one is able to establish a relationship between a policy intervention and some effects on prostitution markets or sex workers, it is impossible to ascribe it with any confidence to the independent variable. For example, an increase in trafficking after legalisation has been introduced may be the result of more intense police investigations, a lower threshold for filing a complaint, improved access to health and social services, increases in immigration, etc.

Conclusion.

Based on the above arguments we conclude that the research that is proposed in the resolution of the Dutch Lower House is not feasible. It seems to be informed by a hostile attitude towards prostitution and towards the legalization of the prostitution industry in the Netherlands. This is in line with a more general conservative and moralistic trend in Europe, in which, under the banner of the fight against trafficking, national governments are urged to criminalise prostitution, including clients. Not only does this ignore policy advice and reports from UN AIDS (2014), the ILO (2014) and the Special Rapporteur on Health (2010)⁵, it also ignores the voice of sex workers (ICRSE, 2014) and the documented damaging effects of criminalization on the safety, health, work conditions, autonomy, and civil rights of sex workers (Juosmanen 2011; Dodillet c.s. 2011; Thing c.s. 2011; Jordan 2012).

We are very worried about this trend.

The signatories of this letter argue for an honest, open and respectful debate in Europe about the most optimal policies regarding prostitution; a debate that is evidence-based and in which the voice of sex workers plays a serious role.

The call for new research in the Dutch parliamentary resolution obscures the fact that a lot of good and useful research on prostitution policy has been done already. In New Zealand, for example, a combination of decriminalization with a distinct role of the national sex worker organization NZPC in the formulation, design, implementation and evaluation of public policy, has resulted in a system

⁵ See also, The Lancet, Series on HIV and Sex Work launched at International Aids Conference 2014 in Melbourne, available at <http://www.thelancet.com/series/HIV-and-sex-workers>.

in which both the rights of the sex worker as public order have improved (Abel et. al., 2013).

The examples of good policy are available. It is the responsibility of elected officials to study and learn from these, and apply them in their own national context, instead of following the dead-end street of an unviable and wasteful research project that every self-respecting researcher would do best to avoid.

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