

Sex work policy and the working circumstances of sex workers



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Content warning

This document
contains mentions of
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Executive summary

The purpose of this research is to find out how sex work decriminalisation policy could benefit working circumstances for sex workers in the European Union. Since criminalisation and legalisation policy types have failed to protect sex workers from violence, abuse, exploitation and oppression, it was deemed necessary to explore how decriminalisation policy could contribute to better working circumstances for EU sex workers. The research question is: *How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy?*

In order to answer the research question, existing literature is reviewed and complemented by 4 case studies and two expert interviews. The research lead to the conclusion that while criminalisation and legalisation policy is intended to eradicate or decrease the sex industry after the stigmatic beliefs that sex work is inherently exploitative and the conflation of sex work with human trafficking, the two policy types reinforce and enable exploitation, abuse, violence and oppression, therefore they work counter-productive. Decriminalisation can offer several improvements for sex workers' working circumstances, namely access to labour rights and police protection. However, all of the three policy types examined fail to protect marginalised sex workers, specifically migrant sex workers, LGBT+ populations and people of colour. Worldwide, migrant sex workers are banned from working legally due to border laws. The EU wrongly conflates sex work and human trafficking against the advice of several human rights organisations such as Amnesty International and the United Nations, which leads to ineffective policy. Authorities and institutions disregard the expertise knowledge of sex worker organisations, while they could offer valuable advice when making policy.

The findings of the research bring about several recommendations for the EU and its member states. Firstly, states should implement policy decriminalising sex work. In this way, sex work is treated as work and sex workers are granted labour rights and police protection. As migrant workers remain excluded from labour rights under decriminalisation policy through border laws, governments should put in effort to fight the root causes of migration: poverty, inequality and expensive, illegal migration channels. Other marginalised groups should receive support from the government and law enforcement, rather than over-policing them. Moreover, governments and the EU must fund efficient exit programs for sex workers who wish to leave the industry. Such programs must be created with the expertise knowledge of sex worker organisations, as should sex work and anti-human trafficking policy. Finally, sex

work and human trafficking must not be conflated and the two policy areas should be treated as two different policy areas.

Abbreviations and definitions

ASBO	Anti-Social Behaviour Order
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
EU	European Union
GAATW	Global Alliance Against Traffic in Women
ILO	International Labour Organisation
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRSE	International Committee of the Rights of Sex Workers in Europe
LGBT+	Lesbian, Gay, Bi, Transgender other who do not conform to the cisgender, hetero norm.
LSI	La Strada International
NSWP	Global Network of Sex Work Projects
NZPC	New Zealand Prostitute Collective
PCA	Proceeds of Crime Act
PRA	Prostitution Reform Act
UDHR	Universal Declaration of Human Rights
UN	United Nations

Sex worker - According to a research posted by the World Health Organisation sex workers are "women, men and transgendered people who receive money or goods in exchange for sexual services and who consciously define those activities as income generating even if they do not consider sex work as their occupation." (Overs, 2002) One might add that sex workers can be people along the entire gender spectrum, besides men, women and transgendered people. In its international policy regarding the human rights of sex workers Amnesty states that it uses the term sex work "only in regard to consensual exchanges between adults." (Amnesty International, 2016) In this piece, 'sex worker' refers to prostitutes.

Manager - Used interchangeably with 'third party'. Refers to any third party (the first party being the sex worker and the second party being the client). A manager can for example be a brothel keeper.

Sex trafficking - Human trafficking with the purpose of selling a person into sex work.

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Introduction

Even though sex work has existed worldwide for as long as capitalism does, the sex industry remains a controversial topic. Different policy approaches have been applied, yet no policy model has ever seemed to address the perceived issues around the sex industry. The sex industry is subject to negative stigma engrained in societies, leading to sentiments predominating over substantive arguments. It is thought that sex work is inherently exploitative, and that all sex workers are victims of human trafficking.

The issue at hand is that sex workers face violence from clients, predators and law enforcement. While sex worker activists continuously address the problems they face while naming the solutions they need, they are rarely taken seriously. Sex work laws that come from criminalisation and legalisation sex work policy violate human rights. Besides being punished for doing sex work in order to provide for themselves and families, there is a lack of effective support for sex workers in the form of social work or programs to help them exit the industry if they wish to.

Sex workers' voices are rarely heard in the debate around sex work, which keeps aforementioned misconceptions alive. In fact, the most common motivation to do sex work is economic: to make money in order to survive. While it may not be the dream job for all sex workers, it gives people access to primary necessities such as food and shelter. Besides, there are many sex workers who indicate that they enjoy their work. Sex worker activists address the issues they face: no access to labour rights, and danger and violence because of the often criminalised nature of their work.

Some EU member states have implemented a version of criminalisation policy, others have a legalisation policy model in place. Although legalisation policy sounds like it makes sex work legal, its many regulations make working legally difficult and do not ensure labour rights or safe working circumstances. No EU country has implemented a decriminalisation model that treats sex work as work. New Zealand and New South Wales, Australia are the only places that have decriminalised sex work. New Zealand was the first state in the world to come to this policy in collaboration with a sex worker organisation.

The absence of decriminalisation policy in the EU in combination with the failure of criminalisation and legalisation policy have lead to the research question: **How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy?**

In order to answer this question, a review of existing literature has been complemented with case studies to compare criminalisation, legalisation and decriminalisation policy and its effects on working circumstances for sex workers. Four sub questions were created to be able to come to a conclusion:

- *What are the current working conditions under the criminalisation policy? (Case study: Sweden and The UK)*
- *What are the current working conditions under the legalisation policy? (Case study: The Netherlands)*
- *What are the current working conditions under the decriminalisation policy? (Case study: New Zealand)*
- *How does sex work policy fit in with EU wide work and Human Rights legislation?*

Literature review

In this chapter, the existing literature on sex work policy will be reviewed. The literature will be divided in three parts, being criminalisation policy, legalisation policy and decriminalisation policy. The literature on these three policy types will be reviewed in order to find out how they might affect sex workers' working circumstances. In chapter 5, the literature will be combined with the results of chapter 4 in an analysis, which will lead to answering the research question in chapter 6, the concluding chapter.

Criminalisation policy

Criminalisation - *"To make something illegal"*. (Longman Dictionary of Contemporary English, n.d.) *"The action of making an activity into a criminal offence by making it illegal."* (English Oxford Living Dictionaries, n.d.) *There are three types of criminalisation sex work policy:*

- The Nordic model - *The Nordic model was created and firstly adopted in Sweden, decriminalising the selling of sex, but criminalising the buying of sex.* (Dodillet, n.d.) *After Sweden, several other countries have followed implementing the Nordic model.*
- Partial Criminalisation - *A way of regulating sex work as is done in the UK and France, where "the buying and selling of sex are legal, but surrounding activities like brothel-keeping or soliciting on the street are banned."* (Mac, 2016)
- Full criminalisation - *A policy criminalising everyone involved in sex work: buyer, seller and third parties.* (Mac, 2016)

According to the Global Network of Sex Work Projects: "Where criminalisation excludes sex work from national labour laws, sex workers have no option but to accept what are often exploitative working conditions." (NSWP, 2017, p. 1)

Among criminalisation policy there is the Nordic model. Created in Sweden, the Nordic model is a policy model that allows sex workers to work, but criminalises the client of the sex worker. The intention of the Nordic model is to punish the buyer instead of the seller, however the model poses significant issues for sex workers. As Wendy Lyon stated "The criminalisation of only one party to a transaction might intuitively be expected to benefit the other party." But because of the imbalance of needs the seller cannot take advantage of the criminalised status of the buyer. (Lyon, n.d.) Sex workers need to work to make money, more

than the clients needs to buy sex. Therefore, sex workers are more likely to succumb to the demands of the client, e.g. sex without condoms, lower prices and specific services they might otherwise not perform. Under the Nordic model, a decreased number of clients in Sweden has amplified competition among sex workers, leading to lower prices. (Mac & Smith, 2018) A study conducted by The Swedish National Board of Health and Welfare found that since criminalisation of buyers, meeting places have become more desolate for clients' fear of being caught by authorities. (Socialstyrelsen, 2008)

The Nordic model decriminalises sex workers by law. In practice, sex workers are still penalised under the Nordic model, disproportionately so for black women and migrants. Countries that have decriminalised sex work on the national level may allow for municipal laws. For example, street workers can be arrested or fined through municipal laws against soliciting. (Mac & Smith, 2018) According to Amnesty International, the Norwegian police target black sex workers over white and East-European sex workers when it comes to arrests and evictions. (Amnesty International, 2016) Indoor sex workers are often evicted from their homes because the police pressure landlords by threatening to prosecute them for facilitating sex work, making the sex workers homeless. Upon eviction, sex workers lose their deposit and the rent they might have paid in advance. Consequently, the evicted persons end up in a dire financial situation, deepening their need to do sex work. (Mac & Smith, 2018) In a report about prostitution law in Norway, Amnesty found that the Norwegian police had specific operations to evict sex workers under the name 'Operation Homeless'. Almost all evicted sex workers questioned were given less than a day to collect their belongings, and they were all black women. (Amnesty International, 2016) Another measure used to target the most marginalised type of sex worker is deportation. Migrant sex workers are routinely deported and detained while waiting to be deported. The police even use sex workers' reports about violent clients to deport the sex worker. (Amnesty International, 2016)

The most dominant model of sex work policy is that of full criminalisation: both the selling and buying of sex is criminalised. The full criminalisation policy model is used in many countries, among which China, Russia, the USA (excluding the state of Nevada), South Africa and Kenya. Sex workers under this system can be arrested, fined, prosecuted, imprisoned and deported. In the USA sex working women have been arrested for defending themselves against violent clients. (Mac & Smith, 2018) By serving jail time sex workers can lose the right to public housing and losing custody of children. (Mac & Smith, 2018; Curtis, Garlington & Schottenfeld, 2013) Some sex workers in Louisiana have even been placed on a sex offenders registry for 15 years for doing (consensual) sex work. (McTighe & Haywood, 2017)

Being on such a registry has grave consequences: "you are excluded from housing, from Social Security, from most jobs, and from your community. You can be barred from domestic violence shelters. You often cannot live or socialise unsupervised with children, even your own children. Your driver's license - which you need to produce during a traffic stop, or to buy alcohol, or to deposit money in your local bank - reads 'sex offender' in huge orange letters." (Mac & Smith, 2018, p.122) Sex workers who have been wrongly judged to be traffickers are also put on the sex offenders registry. (Law, 2017) Another consequence of criminalisation policy is that sex workers refrain from carrying and therefore using condoms, because they can be used as evidence for prostitution and thus lead to arrest. (Open Society Foundations, 2012; Human Rights Watch, 2012)

Sex workers use the Internet to advertise, make appointments, screen clients, and for 'bad date' lists to warn other sex workers of violent or abusive clients. With the SESTA (Stop Enabling Sex Traffickers Act) and FOSTA (Fight Online Sex Trafficking Act) enacted in the USA since April 2018, sex worker websites are being censored and taken down. This affects both sex workers in the USA and workers all over the rest of the world who also used these websites. SESTA and FOSTA are meant to battle exploitation, but they work counterproductively. The acts give managers more power, because without being able to find clients on websites autonomously sex workers need the managers to find clients. If they do not have a manager, they are forced to the streets where there is less room for negotiations with clients, they are forced to accept clients they would otherwise refuse and to perform services they otherwise would not (such as sex without a condom). As a consequence of having fewer clients to choose from, workers cannot be selective about whom to accept as a client, leading to lower prices. (NSWP, 2014) "It could seem paradoxical that these laws, which ostensibly aim to fight exploitation, instead make exploitation easier and more prevalent. But ultimately it is not a paradox: reducing sex workers' ability to connect with clients always increases scarcity and makes workers more vulnerable." (Mac & Smith, 2018, p. 124)

In the podcast Reply All #119 researcher Scott Cunningham is invited to talk about his research findings on prostitution regarding SESTA and FOSTA. Cunningham explains that the website Craigslist had an Erotic Services page in different cities. He found that when the Erotic Services webpage on Craigslist.com was launched in a city, the overall murder rate of women in that city decreased by 17%. Cunningham also expressed his concern for the safety of sex workers under FOSTA and SESTA as he explains that the disappearing of sex worker websites forces sex workers to work on the streets and pushes workers to work for a third party instead of working autonomously because they now have to rely on third parties to find

clients. (Gimlet, n.d.) Sex worker Katie, a correspondent for the Reply All podcast has said that within a month of SESTA and FOSTA passing she knows of 13 sex workers who have gone missing, two that have been found dead, two that have been sexually assaulted at gunpoint and one that took her own life. (Gimlet, n.d.) Sex workers Zuzanna Gabrielli and Cleo Constantine have also reported that they personally know sex workers who have gone missing or died since SESTA and FOSTA, as have Smith and Mac. (SINGE Network, 2019; Mac & Smith, 2018) Gabrielli and Constantine have stated that they believe sex traffickers will not be stopped by disappearing websites because of FOSTA and SESTA, but that they will merely move to the dark web where they are harder to find. (SINGE Network, 2019)

Criminalisation gives the police power to harass and abuse sex workers. Police officers abuse their power by for example having sex with sex workers with the promise of not pressing charges (and still doing so after having had sex) or rape them during an arrest, before sending them to jail. (Torres & Paz, 2012) In the USA, police officers go on undercover operations as a client looking to use a sex worker's services. During these undercover operations police officers "routinely" have sex with workers before making the arrest. (Mac & Smith, 2018, p. 125) In South-Africa the police are known to spray pepper spray on sex worker's genitals and use violence against male and transgender sex workers. (Arnott & Crago, 2009)

New York City has special human trafficking intervention courts meant to help sex workers get social services to help them exit sex work. In order to be tried in such a court, the worker has to be arrested. The services offered through such courts (such as yoga and art therapy) often do not match a worker's needs and they risk re-arrest through not attending the services. The arrested workers often end up having to wait on the services for days or weeks in jail, as most of them do not have the money to bail themselves out. (Mac & Smith, 2018) Additionally, the courts are visited by deportation officers and used to deport migrant workers. (Grant, 2018)

Amnesty International's policy on state obligations to respect, protect, and fulfil the human rights of sex workers states that crimes against sex workers often go "unreported, under-investigated and unpunished" "due to stigma and the criminalized nature of sex work". (Amnesty International, 2016)

Legalisation policy

Legalisation - *"The act of making something legal that was previously against the law."*

(Longman Dictionary of Contemporary English, n.d.) *However, it is important to note that legalisation policy does not mean workers get to do their work freely. Legalisation often goes hand in hand with regulatory measures.* (Mac, 2016)

As Juno Mac, sex worker and activist, mentions in her Ted Talk on sex work and laws, legalisation is used with the argument "Prostitution would be fine if we made it legal and regulated it." but she elaborates by saying "it's not a great model for human rights" as regulation creates rules that are "expensive and difficult to comply with", especially for marginalised groups and "It creates a two-tiered system: legal and illegal work. We sometimes call it 'backdoor criminalisation'." (Mac, 2016)

In *Revolting Prostitutes: Fighting the Power*, sex workers Molly Smith and Juno Mac note that "Paradoxically, to legalise sex work is not necessarily to make the work legal. Rather, it creates a two-tiered system where some is legal and much is not." (Mac & Smith, 2018, p. 179) In relation to this it is noted that legalisation tends to empower not the sex worker, but "the worst profiteers" as often the only way to work legally under a legalised system is to work for a manager, "whereas working independently, either on your own or with friends, is fully or partially criminalised." As a result, workers are forced into working for managers, giving the managers more power over workers. (Mac & Smith, 2018, pp. 180-181)

Mac and Smith (2018) illustrate how the motivation behind legalisation policy is that prostitution cannot be eradicated, therefore the next best thing is to regulate it. The regulations are not created to benefit sex workers, but to "eliminate selectively, through criminal law, what they perceive to be the most pernicious aspects of prostitution". (p. 178) Legalisation policy manifests in different ways across the world, however, it always seems to disadvantage the most vulnerable, marginalised groups of sex workers. In many countries where sex work is legalised (and therefore regulated), there is a great difference in policy on the local level. For example, in Austria sex work policy is arranged at the regional level, and in The Netherlands municipalities decide the specifics of sex work policy. (Wagenaar, Altink, & Amesberger, 2013, pp. 45-49) This means that sex workers may not be able to work legally in the area where they live, forcing them to work illegally. There are more ways in which vulnerable groups of sex workers are excluded by regulations. In Turkey, trans women are not allowed to work in state-regulated brothels. (Delgado, 2016) In The Netherlands the rent for brothel rooms is too high for sex workers close to the poverty line. (Felicia Anna, n.d.)

Many countries, among which Germany, Australia, Austria and Senegal, demand sex workers to be registered as a sex worker to the government. (Mac & Smith, 2018; Wagenaar, Altink, & Amesberger, 2013; Open Society Foundations, 2012) Many sex workers are not willing to be registered as it poses a safety hazard for them not to be anonymous, and therefore are excluded from working legally. In Greece, married women are not allowed to work in brothels regulated by the state. (NSWP, 2017) In Senegal, sex workers have to provide a health certificate to be allowed to work, so workers with a HIV infection cannot work legally. (Tucker, 2012) Undocumented migrants are not allowed to work in any place that has a legalisation policy. (Mac & Smith, 2018, p.179)

Another regulation that is often imposed under legalisation policy is mandatory health checks, regarding STI's. Mandatory health checks tend to work counter-productive when workers can be publicly shamed, fined or banned from working when it is concluded that they have an infection. When sex workers are punished for carrying an STI infection they will avoid health checks. (Mac & Smith, 2018, p.183)

Due to regulations, the sex workers who are excluded from working legally are subject to the same consequences of sex workers under a fully criminalised policy. They have to work in secrecy, making them more vulnerable to predators. When in need of help, they do not feel safe to contact the police, as by doing so they risk arrest. (Mac & Smith, 2018, pp.180-181)

Decriminalisation policy

Decriminalisation - *"To state officially that something is not illegal anymore."* (Longman Dictionary of Contemporary English, n.d.) *"The repeal or amendment (undoing) of statutes which made certain acts criminal, so that those acts no longer are crimes of subject to prosecution."* (TheFreeDictionary.com, n.d.) *Decriminalisation is often confused with policies like legalisation and partial criminalisation.* (NSWP, 2014; Mac & Smith, 2018)

Many sex worker unions and international human rights organisations, including Amnesty International and the International Labour Organisation (ILO), advocate for the decriminalisation of sex work. The NSWP (Global Network of Sex Work Projects) claims in its policy brief that sex work should be accepted and viewed as work, hence it should be decriminalised: "Sex workers should be afforded the civil and labour rights and social protections that are the entitlement of all workers, regardless of occupation". (NSWP, 2017) The policy brief explains that several international human rights treaties that have been

ratified by many countries, imply that everybody should have the same working rights, such as free choice of employment, a fair wage and good working conditions.

The UDHR (Universal Declaration of Human Rights) sets forth that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." (United Nations, 1948) The ICESCR (International Covenant on Economic, Social and Cultural Rights) makes these provisions legally binding as it requires states to "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right" and to ensure "safe and healthy working conditions" and a fair wage. (United Nations Committee on Economic, Social and Cultural Rights, 1966) Another important note from the NSWP policy brief is that the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) compels states to counteract to the "exploitation of prostitution of women". (United Nations Commission on the Status of Women, 1981) The CEDAW calls for acting upon exploitation specifically, instead of assuming sex work is exploitative by default and banning sex work in its entirety. (NSWP, 2017)

The ILO is a UN body that sets labour standards, develops policies and devises programs promoting decent work for everybody. (ILO, n.d.) As part of their Fundamental Principles and Rights at Work, all forms of compulsory labour and discrimination in respect of employment and occupation should be eliminated. The ILO's Decent Work Agenda states that work is deemed decent when it is productive and delivers a fair income, among other conditions. Unacceptable Forms of Work are defined as "work arrangements that deny the fundamental principles and rights at work" and "put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty". (NSWP, 2017) Decriminalisation would be the measure with the single biggest effect on reducing new HIV infections - "averting 33%-46% of HIV infections in the next decade" (Shannon, et al., 2014) as it empowers sex workers to insist on condom use and it decreases the threshold to access health services. (NSWP, 2017) With Recommendation 200 the ILO articulates that workers should be "free from HIV-related stigma and discrimination" rights to occupational health and safety and to access to HIV testing, prevention, treatment, care and support. The ILO has made clear that they regard sex work as work. Therefore, all of the standards that have been set out in the Decent Work Agenda, Unacceptable Forms of Work and Recommendation 200 apply to sex workers and the sex work sector. (NSWP, 2017)

According to Abel, Fitzgerald and Brunton "people enter the sex work industry primarily for economic reasons", and the incentive to do sex work remains the same when policy changes from criminalisation to decriminalisation. (Abel, Fitzgerald, & Brunton, 2009) Davis and Schaffer found that the criminalisation of sex work does not decrease the number of people active in the sex industry but instead forces sex workers to work on the illegal circuit, making them more vulnerable to violence. Consequently, the fear of being caught and arrested outweighs health and safety concerns. (Davis & Schaffer, 1994)

Methodology

This research aims to answer the main question: How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy? Decriminalisation, legalisation and criminalisation sex work were studied and compared by examining case studies of countries where any of the three policy types are applied. Four countries were the main focus of these case studies: New Zealand for decriminalisation, The Netherlands for legalisation and Sweden and the United Kingdom for criminalisation. Other countries such as The United States of America, Kenya and Norway have been briefly studied in the literature review.

The main approach was qualitative research: "an approach for exploring and understanding the meaning individuals or a group describe to a social or human problem". (Creswell, 2014, p. 32) The qualitative research approach is appropriate for this topic because there are several clear social groups with their own perspectives on the social and societal issue of sex work policy. As opposed to quantitative research, qualitative research allowed for the researcher to explore in-depth the different perspectives and issues around sex work policy. Although qualitative research methods were used, the research contains quantitative data found in some of the research documents studied. Additional quantitative measures such as surveys were not included in the research because the quantitative information needed for this research is sufficiently present in the existing literature. Different types of secondary data were studied through desk research: academic articles, books, official policy documents, official law documents and news articles were used. According to Sinha, sex worker researcher, "It is critical that researchers engage with historically marginalized and oppressed groups in a manner that ensures minimal exploitation and maximum benefits for participants, as well as the inclusion of their voices." (Sinha, 2016) Since this research is about the effects of sex work policy on working conditions for sex workers, it was deemed necessary to study material provided directly by sex workers. Books, podcasts, articles and other data written and produced by sex workers and sex worker organisations were used in order to grasp the perspective of sex workers on sex work policy.

Two in-depth interviews were taken to complement desk research. This type of data collection allowed for the student to ask focused questions that were prepared in relevance to the research topic and the interviewees. Two interviewees were chosen, one with experience in the sex industry and the other with relevant research experience on the sex

industry, as to capture two different perspectives on the research topic. The first interviewee is Hella Dee, sex worker since eight years and sex worker rights activist since four years. Her experience in the sex work industry alongside her sex work activism make her an expert on the area of sex work policy. The second interviewee is Annelies Daalder, president of the WDOC (Wetenschappelijk Onderzoek- en Documentatiecentrum), an institute that is part of the Dutch Ministry of Justice and Security that specialises in policy research. Daalder has done research to sex work in The Netherlands and she has supervised research on the societal position of sex workers in The Netherlands. The latter was studied for this research. Semi-structured interviews were done, meaning the interviewer could ask follow-up questions based on the prepared main questions in order to elaborate on the answers given by the interviewees. This type of interviewing was chosen because it gives the opportunity to let the interview flow naturally and it provides space for the interviewee to offer her expertise. (Creswell, 2014, p. 190) The interviews were taken in person. The interview questions were focused on policy, not on the personal experiences of Hella Dee, as enough experiences were covered through the secondary data. Hella Dee was asked to do the interview mainly for her expertise on sex worker policy and laws, not for her personal and private experiences as a sex worker.

Research ethics were carefully considered for this report. Sex work is a sensitive subject, many sex workers experience violence and injustice through their work, hence it was necessary for the researcher to carefully consider the manner of research and writing about the topic, in respect of the workers. "The principle of informed consent requires that the research participants be made fully aware of the risks, benefits and participation procedure involved in the research prior to beginning data collection." (Sinha, 2016) The interviewees have signed an informed consent form indicating the specifics on the interview conduction and the use of the interview outcomes. The sex worker interviewed chose to remain anonymous for safety reasons. Her official name is not mentioned anywhere in the report and on the informed consent form, nor is it known to the researcher.

Results

This chapter of the research presents the results, guided by the sub questions: What are the current working conditions under the criminalisation policy?; What are the current working conditions under the legalisation policy?; What are the current working conditions under the decriminalisation policy?; How does sex work policy fit in with EU wide work and Human Rights legislation? The first part of the chapter shall explore the working circumstances of sex workers under criminalisation policy, by presenting case studies on Sweden (Nordic model) and the United Kingdom (partial criminalisation). Secondly, sex workers' working circumstances under legalisation policy will be examined by a case study on The Netherlands. The third part studies New Zealand to learn about sex workers' working circumstances under decriminalisation policy. Finally, the chapter offers a look at the European Union's attitude regarding sex work and human rights.

Working conditions under criminalisation policy

Case study Sweden: The Nordic model

In 1999 Sweden passed a law criminalising only the buyer of sexual services. Similar laws have since been passed in other countries, such as Norway, Ireland and Canada. (Mac & Smith, 2018) The Swedish debate about prostitution law at that time, portrayed sex work as being derogatory to women and as something that no one could every do voluntarily. It was said that sex work and human trafficking could not be viewed as two separate issues. According to Karin Pilsäter, member of the Swedish Liberal Party, all prostitutes are victims of some kind, driven to do sex work because of drug or alcohol abuse. Pilsäter also stated that the majority of women who work as prostitutes have been victims of sexual abuse during their childhood. (Dodillet, n.d.) According to sex workers there is not always a direct relation between alcohol or drug addiction and sexual abuse during the childhood. Mac and Smith do not deny that this is the case for some sex workers, but say that this is not the rule. For sex workers who are addicted or have been sexually abused, criminalisation is not the solution to their problems. (Mac & Smith, 2018)

During the debate that led to the Swedish model, also known as the Nordic model, it became clear that the majority of politicians wanted to abolish prostitution in its entirety. Women's movements such as the FBF (Frederika Bremerförbundet) protested against criminalising the sellers of sexual services and stressed that it would be unfair to punish women for selling sex

because they were convinced that women who sell sex are victims by default. (Dodillet, n.d.) Finally, a law criminalising only the buyer of sexual services was passed. The general Swedish view on prostitution prior to passing this law had a view of sex workers as victims that need to be saved. Prostitution was understood as men buying women's bodies for money, relating to the idea that prostitutes embody their occupation. (Dodillet, n.d.) Sex workers are spoken about as having no agency over their own body when seeing clients, and as if their work affects their lives permanently even after having provided a service to a client. Sex workers are viewed as if they cannot separate their personality and feelings from their professional lives. (Dodillet, n.d.) Regarding the neo-abolitionist view that sex workers are by definition victims coerced into doing sex work, and men being in the position to buy women's bodies through sex work, the ICRSE (International Committee of the Rights of Sex Workers in Europe) states: "This perspective is problematic because first of all, it constructs all sex workers as powerless victims and refuses to acknowledge their agency in making decisions about their lives and work. Secondly, it further victimises sex workers and misrepresents the diverse realities of their lives by failing to recognise them as workers. And thirdly, by deeming all sex work 'sexual exploitation' and refusing to regard it as work, neo-abolitionists are complicit in the concealment of the many forms of labour exploitation sex work can be, and *[to which sex workers]* in various settings in fact are subjected to. Sex workers cannot be protected from exploitative and unjust working conditions for as long as their work is not recognised as work and they are not granted access to labour rights that empower them as workers." (ICRSE, 2016)

The Swedish model is also known as the Nordic model or the End Demand model. The intention of the Nordic model is to end the buyer demand for sexual services, and with that the power imbalance that is harmful to sex workers. In reality the Nordic model does the opposite of what was intended, it gives the buyers more power over the seller making it a "buyers market". One informant in a research by the Norwegian Ministry of Justice and the police says that since buyer criminalisation "The Swedish street prostitutes experience a tougher time. They are more frequently exposed to dangerous clients, while the serious clients are afraid of being arrested." and "They *[sex workers]* have less time to assess the client as the deal takes place very hurriedly due to fear on the part of the client. They (the prostitutes) are exposed to violence and sexually transmitted diseases. If the client demands unprotected sex, many of the prostitutes cannot afford to say no." The same report further mentions that working as a sex worker has become harder and more dangerous, especially for homeless workers who are forced to work on the street. (The Norwegian Ministry of Justice and Police Affairs, 2004) Working indoor has become more dangerous, too. The police

watch the house of a sex worker to catch the client, therefore, sex workers are forced to go to the clients house, away from their own trusted environment where she might have a friend in the next room for protection in case a client turn abusive. Moreover, going to a client's house, the worker does not know what to expect, there may be other, unexpected people present in the house. (Mac & Smith, 2018)

The Nordic model is a radical feminist policy aimed at eradicating prostitution by ending demand. Swedish authorities admit that criminalisation of the buyer makes working circumstances harder for sex workers, but justify that by saying it should not be attractive to work as a prostitute. However, insufficient aid is available for helping sex workers get out of the industry. (Mac & Smith, 2018) Both proponents and opponents of the sex purchase ban policy agree that criminalisation of clients should come with programs to assist sex workers in finding a different way of income. (Farley, 2017; Mac & Smith, 2018) Amnesty International calls for "effective frameworks and services that allow people to leave sex work if and when they choose" in their policy on state obligations to respect, protect and fulfil the human rights of sex workers. (Amnesty International, 2016) Such programs exist insufficiently in places where the Nordic model is in position. The programs that do exist are often ineffective and judgmental. (Heiberg, 2011) Sex worker activists around the world have set up their own programs to give sex workers more or better options, without judgment. Setting up state funded programs is very expensive because leaving the sex work industry successfully takes time and is an intricate process that is subject to very specific needs that are often the reason for ending up in the sex industry in the first place. (Mac & Smith, 2018)

Case study The United Kingdom: Partial criminalisation

British prostitution laws make sex work unsafe in an attempt to circumscribe the practice. Partial criminalisation is a legal model where buying and selling sex is legal, but almost everything else surrounding it is criminalised. In Britain it is allowed to practice sex work indoors, under the precondition that the worker works alone. Working with two or more workers at the same location can be considered brothel keeping, even if those two workers are working together as equal partners and even if they never work at that place at the same time or cross paths. (Crown Prosecution Service, 2019) As a consequence, sex workers are forced to work alone where they are more vulnerable to violent predators.

Certain British laws around prostitution are vague and open to interpretation. For example, it is illegal to 'incite' someone else into doing sex work. But to 'incite' can mean many different

things, from asking a second worker to engage in a threesome, to supporting or advising someone about engaging in sex work, to calling back a job applicant. (Mac & Smith, 2018) In one case, two prostitutes wanted to escape their exploitative manager and set up in a flat together with a third sex worker friend. The police raided the flat, confiscated the money they found there and arrested the three women. During the trial both the judge and the prosecutor agreed, "the flat was being run as an informal co-operative". Still, two of the women (the third had fled to Poland) were convicted for brothel keeping and deported to Romania. (Mac & Smith, 2018, p. 105) The British police are allowed to seize cash money and other assets found during raids that they suspect was earned illegally under the PCA (Proceeds of Crime Act). Only if the suspect can prove in court that the money was earned legally she or he can get it back, which is very difficult to prove in a cash-based industry like sex work. The police can keep 50% of the money taken, which gives them a clear motivation to raid the workplaces of sex workers. The PCA was intended to motivate the police to go after criminal gangs, however, it is much more appealing for police to go after prostitutes as they are significantly less dangerous than gangs. (Mac & Smith, 2018) One sex worker lost thirteen thousand pounds in a police raid, which she had earned over a lifetime of work. The money was never returned to her, even after having been found not guilty. (Mullin, 2016) Despite brothel keeping laws, sex workers prefer working together, as working alone makes them more vulnerable to violent and abusive clients. However, if sex workers work together they risk being arrested by the police. Contrarily, by working for a manager the sex worker is not criminalised, but the manager is. As a result, the brothel keeping law actually makes it more appealing to work for a manager, which is the opposite of its intent. By working for a manager, sex workers risk all kinds of abuse, such as being forced to work long hours and accepting certain clients, being forced to provide certain sexual services and verbal abuse because the manager can threaten to sack them. In these cases, sex workers do not have anywhere to turn to for help because their employment is illegal. By going to the police about abuse by either a manager or a client they risk the whole brothel being raided, closed down and all their colleagues and themselves losing employment. Thus, sex workers are forced to choose bad conditions over losing their income. (Mac & Smith, 2018)

Outdoor sex working is not legal in Britain at all, although it pertains to exist there. There is only one place in the whole of Britain where clients and workers are allowed to meet: a managed area in Holbeck, Leeds. However, it is not allowed to actually provide sexual services in that area, thus workers are driven to remote areas where they can work secretly but are still at risk of being arrested and are more vulnerable to predators. Imprisonment for

soliciting was prohibited in England and Wales in 1982, yet sex workers often end up in prison for soliciting regardless. (Mac & Smith, 2018)

The British police can arrest sex workers for working on the streets under punitive approaches known as ASBO's (Anti-Social Behaviour Order). ASBO's have been abolished, but similar measures exist that are commonly referred to ASBO's. When charged with an ASBO, the perpetrator can be criminalised if they breach the ASBO (for example by going places there are not allowed to go anymore as per the ASBO). ASBO's often ban sex workers from specific areas, which are often the areas where they live, where their children live, where they shop for groceries and where they work. This makes it almost impossible not to breach an ASBO and end up in prison. A mandatory rehabilitation period was introduced in 2013 for people who had served short sentences, leading sex workers to be sent back to prison if they breach their 'post-release supervision' conditions. Thus, even if imprisonment for street-based sex work is prohibited, there are several structures in place that do send street workers to prison and keep them there. (Mac & Smith, 2018) Aside from ASBO's, police officers can hand out a prostitution caution (for which there is no right of appeal as with ordinary cautions) that may appear on a person's record when applying for a job with enhanced disclosure. (Mac & Smith, 2018)

Street workers are also at risk of being arrested by the immigration police or being deprioritised for social housing. A prison sentence as a result of a breach of ASBO or piled up fines may lead to women losing custody over their children, becoming homeless when released or losing other jobs they had. In order to survive, they resort to street based sex work again, where they are at increased risk of experiencing violence due to avoiding the police. (Mac & Smith, 2018)

Working conditions under legalisation policy

Case study The Netherlands

The Netherlands is perceived as having a very liberal and progressive sex work policy. However, the country's legalisation policy leaves sex workers restricted in multiple ways, consequently making sex work unsafe. Research by Stichting SOA Aids Nederland (in cooperation with PROUD, the Dutch sex workers union and subsidized by the Ministry of Justice) to violence against sex workers in the Netherlands shows that violence is experienced in four different forms: physical violence, sexual violence, social emotional violence, and financial economic violence. This research has used both quantitative and

qualitative methods: a questionnaire answered by 229 sex workers and in depth interviews and focus groups with 19 sex workers from all over the Netherlands and from different genders and ethnicities. Although 90% of the respondents said they are happy with their work the majority of the time, the research has found many safety hazards present for sex workers in The Netherlands. The results show that 97% of the sex workers in the research have experienced some type of violence in the 12 months before the research was published. 93% of the sex workers questioned indicated they had experienced social emotional violence, making it the main form of violence. 78 % of the sex workers questioned stated they had experienced a form of sexual violence, 60% had experienced physical violence and 53% had experienced financial economical violence. (Stichting SOA Aids Nederland, 2018) The findings of this research paper have been paraphrased from Dutch into English. It was specifically stated that financial, economic and social emotional abuse and injustice should be referred to as violence instead of abuse. (Stichting SOA Aids Nederland, 2018)

According to Daalder, in cases of sex workers having trouble with issues such as mortgages, housing, bank accounts and insurance, this is not always (just) because of being a sex worker. The problems that sex workers experience in these cases often have to do with other factors, such as being self employed or being a non-EU migrant without a working permit. It is therefore difficult to determine whether the issues come from discriminations based on being a sex worker, or elsewhere. Hence, it is difficult to provide a solution for this problem. Daalder mentions that part of the problem is the limited access to the correct information. Daalder states that social workers are often mal-informed, which leads to sex workers being mal-informed on their rights. (A. Daalder, personal communication, May 2, 2019)

A number of factors were found to have a correlation with the risk of violence that sex workers face. Some factors increase the risk of violence for sex workers while others seem to provide protective circumstances. Factors that increase the risk of violence are substance abuse (both by client and worker); not being in possession of a (legal) working permit; not being able to speak Dutch or not being born in The Netherlands; being a transsexual man. Coming out as a sex worker can increase the risk of violence when coming out to friends, family and neighbours, while coming out to adult children and intimate partners can offer protective circumstances. The type of working location can increase the risk of violence but it can offer protective circumstances as well. An increased risk of violence was found for working from a massage parlour, hotel room or apartment, whereas protective circumstances were found for working from a window brothel, private house or *tippelzone* (designated areas for soliciting on the street). Another factor that has been found to offer

protective circumstances was using a condom. Finally, younger sex workers face a higher risk of violence than older workers, especially when it comes to social emotional violence. (Stichting SOA Aids Nederland, 2018)

Most often, the perpetrator for all of the identified types of violence is a client. Clients sexually abuse sex workers by using, or threatening with, physical violence to coerce them into doing sexual acts that have not been consented to in advance. Financial economic violence happens when clients refuse to pay, or steal money from the sex worker or when sex workers are refused by banks or cannot get insurance because of their work. The most common type of violence is social emotional violence, which happens when sex workers are asked invasive, personal questions, are bullied and humiliated, their privacy is invaded or they are stalked. Social emotional violence is often committed by social workers that ask invasive questions and act judgmental, instead of listening to what sex workers say they need. (Stichting SOA Aids Nederland, 2018)

In The Netherlands there has been a lot of attention to human trafficking in the sex industry. As a result, sex workers who came in touch with the police were asked invasive and personal questions leading to sex workers feeling uncomfortable with the police and rather avoiding them than asking for help in dangerous, abusive situations. (Stichting SOA Aids Nederland, 2018) Sex workers have indicated that they tend to not report violence and abuse because the police are more often judgmental than empathetic, and they do not pursue these offenses seriously. Additionally, they fear losing their anonymity, which would put them at an even greater risk of violence. (Stichting SOA Aids Nederland, 2018) "[H]uman trafficking and sex work are often conflated in the public debate. But it has to be obvious that human trafficking is exploitation and sex work is work. Human trafficking should absolutely be eradicated, but that is not related to the improvement of circumstances for sex workers. Currently, the measures taken are focused on eradicating human trafficking but at the same time make it more difficult for sex workers to claim their rights with a manager or authorities. The conflation of human trafficking and sex work emanate from politics, but the government also does that. The government should give the right example and clearly separate the two." (A. Daalder, personal communication, May 2, 2019)

The issues found by SOA Aids Nederland in the sex work industry are largely caused by negative stigma around sex work. According to Daalder, who has been doing research to sex workers in The Netherlands for 20 years, stigma is engrained in people and it makes them overlook arguments. In the debate about sex work, the different parties have an

"ideologically driven opinion" and they are lead by certain sentiments, for example "You wouldn't want your daughter to be a sex worker, would you?" (A. Daalder, personal communication, May 2, 2019)

Dutch policy and law on sex work play a substantial part in facilitating violence against sex workers. One example of a measure that enables violence against and exploitative circumstances for sex workers is that in most cases, you need to have a permit in order to work legally. Such permits are difficult and expensive to acquire. In an interview with VICE, Yvette Luhrs (spokesperson for PROUD) said that permits can cost up to 4000 euros in certain municipalities and that some municipalities do not give out permits at all. (Lotens, 2017)

The number of permitted workplaces is decreasing: in 2004 there were approximately 1270, in 2014 this number had decreased to 833. (van Wijk, van Ham, Hardeman, & Bremmers, 2014) The exact number of currently permitted workplaces is not known. For male sex workers there is only one permitted workplace and for transgender sex workers there are either no spots or very limited spots available in brothels with a permit. (Stichting SOA Aids Nederland, 2018) The municipalities of The Netherlands decide the criteria and prices for obtaining a permit. "When it became allowed to operate a brothel with a permit, many municipalities have given permits to the brothels that already existed. With that they have taken an approach to let brothels die out, meaning that when a brothel closed for some reason, they would not give out new permits, because they do not want sex work in their municipality. " (A. Daalder, personal communication, May 2, 2019) As a consequence, sex workers who applied for a permit to work autonomously or with colleagues instead of for a manager were not granted permits. (A. Daalder, personal communication, May 2, 2019) The disappearance of permitted workplaces is driving sex workers to work illegally, making it a big risk to go to the police in case of violence and abuse as they risk be punished for doing illegal work.

According to Hella Dee, sex worker and activist, it is difficult to find a permitted workplace, especially for marginalised sex workers. "For example, brothels want to hire no more than one black sex worker. The number of permitted workplaces has halved over the last few years, and the ones that have remained with a permit are those who have been in business for the past twenty to thirty years. These are not the most progressive of people and they are not quick to hire sex workers from marginalised groups, such as transgender workers." (Hella Dee, personal communication, April 15, 2019)

Clients are aware that illegal workers do not feel safe to go to the police in case of harassment, hence they feel more empowered to abuse sex workers. If sex workers do manage to find a permitted workplace they become dependent on the manager because it would be very difficult to find another workplace. Sex workers are pressured into long working hours, accepting clients they would otherwise refuse and other maltreatment by managers. (Stichting SOA Aids Nederland, 2018) Hella Dee confirms the struggle of scarcity of workplaces: "As a sex worker, it is difficult to find a permitted workplace because they are scarce, so the threshold to address abuse is very high for me. Under a decriminalised system it would be much easier to find another workplace, and it would also be much easier to work self-employed." The risk of addressing abuse in the workplace is the risk of the whole business being shut down, making her colleagues lose their workplace, too. (Hella Dee, personal communication, April 15, 2019)

In The Netherlands it is very difficult to register as a freelancer (which is relatively easy for every other type of work). One reason for this is that sex work policy is largely decided on the municipal level. Therefore, the criteria to work legally are different everywhere. Many municipalities do not want a sex work industry in their city, so they are very strict or do not allow it at all. "For example, in some municipalities sex workers can work from their home without a permit (and without conforming to the criteria of being a business), but they are not allowed to advertise. In other municipalities you are allowed to advertise in order to be able to find clients, but no more than twice a month otherwise it is considered a business. The rules are different everywhere, and that is very confusing for sex workers, social workers and law enforcement." (A. Daalder, personal communication, May 2, 2019)

Sex workers are forced to choose "opting in", a system designed for situations where the employer and employee agree to a lasting work relation but where the employer has no authority over the employee. (Sekswerkerfgoed, 2014) In reality the employer/manager does have authority over the sex worker due to the previously mentioned scarcity of legal workplaces. Many brothel keepers choose to work with the opting in system because for them it is more beneficial because the sex worker is not an employee in the fiscal sense. Therefore, the brothel keeper does not have to pay insurances and premiums that salaried employees have a right to. (Sekswerkerfgoed, 2014) Thus, although sex workers must oblige to the rules of the brothel keeper, they are self-employed in the eyes of the tax authorities and therefore they do not build a pension and do not have a right to paid sick- and vacation days or unemployment benefits. Moreover, the risk of not finding clients is entirely for the

sex worker, not for the manager. (Stichting SOA Aids Nederland, 2018) Opting-in was said to have advantages for the sex worker, too, namely by taking away the burden of keeping an administration, a set 20% of untaxed profits per transaction and a better position for sex workers by means of several conditions that the manager must oblige to. However, it is unclear how and if these conditions are checked by the authorities. (Sekswerkerfgoed, 2014)

The future of Dutch sex work policy is hard to predict. For years, law makers and have been trying to create a new law which would create a more uniform policy, but the law never passes due to amendments that have to be made and the parliament changing in the mean time. The future of sex work policy is largely dependent on politics. Daalder says that Dutch political parties are hard to predict when it comes to sex work policy, except for the Christian parties that are clearly advocating for the Nordic model. (A. Daalder, personal communication, May 2, 2019) According to Hella Dee, the biggest threat for Dutch sex workers is politics shifting to the right. Even if the leftist parties show little support for sex workers, "we have always seen that when things like migration policy become stricter, so does sex work policy. The hope lies with social movements that slowly become more aware of sex work issues and stand up for the rights of sex workers." (Hella Dee, personal communication, April 15, 2019)

Working conditions under decriminalisation policy

Case study New Zealand

New Zealand was the first country in the world to decriminalise sex work with the PRA of 2003. Apart from New Zealand, the Australian state New South Wales has also decriminalised sex work. The PRA was created in collaboration with the NZPC (New Zealand Prostitute Collective), a sex workers union subsidised by the state. (Abel, Fitzgerald, & Brunton, 2009) The purpose of the PRA is to "decriminalise prostitution (...) and to create a framework that safeguards the human rights of sex workers (...)". (New Zealand Ministry of Justice , 2017) The PRA is inherently different in its approach towards sex work policy from other policies regarding sex work because it was created in collaboration with sex workers. Hella Dee stresses the importance of including sex workers and sex worker organisations in the policy-making process: "Sex work is their area of expertise, they know all the issues they face and they even know all of the answers to those issues. A lot of the solutions are already successfully being executed by sex worker organisations. What is needed, is support and acknowledgment for sex worker organisations from policy makers and governments." (Hella

Dee, personal communication, April 15, 2019) Daalder expresses being in favour of including sex workers and their organisations in the policy-making process, too: "In my opinion, if you really want to reach a good policy, you must include sex workers in the policy-making process (...)" (A. Daalder, personal communication, May 2, 2019)

Many thought that the PRA would lead to an increase in the number of sex workers active in New Zealand. However, a study funded by the Health Council of New Zealand and the Ministry of Justice of New Zealand has pointed out that the number of sex workers has not significantly increased nor decreased since the passing of the PRA. (Abel, Fitzgerald, & Brunton, 2009)

Working circumstances have ameliorated for sex workers since the PRA. Sex workers have a better relation to the police, have become less dependent on managers and can work in safer spaces. Sex workers are allowed to work in managed brothels, which some prefer as it means less administrative burden for them. Managers are held accountable to workers by labour law. Sex workers also have the option to work in a place where others (e.g. colleagues, friends) are present at the same time, without risking arrest or fines for brothel keeping. (Mac & Smith, 2018) Since the PRA, more workers are working from shared flats and less for managers. (Abel, Fitzgerald, & Brunton, 2009) There are no penalties for street based sex work, so workers can work in visibility, which is safer, without being scared of the police. "The purchase and facilitation of sexual services remain subject to the same reasonable laws on coercion, exploitation, bullying, assault and rape that apply in other contexts." (Mac & Smith, 2018, p. 193) A review of the PRA funded by the Health Research Council of New Zealand and the New Zealand Ministry of Justice shows that ninety per cent of street workers interviewed felt the PRA meant they had employment rights, ninety per cent of interviewees felt they had occupational health and safety rights and ninety-six per cent felt they had legal rights. (Abel, Fitzgerald & Brunton, 2007) Sex workers feel more able to refuse clients and are more likely to have refused clients in the managed sector since the PRA. (Abel, 2010)

Although New Zealand's PRA meant a considerable improvement in working conditions for sex workers, it leaves marginalised groups of sex workers unprotected. The NZPC has stated that "New Zealand does not have a pure decriminalisation model, but is a mix of decriminalisation and legalisation." (NSWP, 2014) Some of the dangers that sex workers have to deal with are maintained by criminalisation of certain aspects of sex work. Through border laws, migrant sex workers still have to work illegally, where they are more

susceptible to predators. "Māori, trans, youth and homeless populations are still over-policed and under-protected." (Mac & Smith, 2018, pp. 191-192)

EU sex work policy and HR legislation

The EU has its own frame around labour law, which consists of working conditions and informing and consulting workers. The EU has set out minimum requirements for these areas, but the national governments are free to lay out higher minimum standards for their working citizens. EU labour law should provide a clear framework of rights and obligations in the workplace; protect the health of the workforce; and promote sustainable economic growth. (European Commission, n.d.)

The European Union does not have a specific law regarding prostitution policy when it comes to sex work. It is up to the individual Member States to decide how they organise sex work policy and laws. However, Directive 2011/36/EU "on preventing and combating trafficking in human beings and protecting its victims" Article 18.4 states "In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider to establish as a criminal offence the use of services which are the object of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2." Article 2 lays out the offences concerning trafficking in human beings, among which sexual exploitation. (European Parliament, the Council, 2011)

It is evident that when it comes to EU sex work policy, the focus is almost always shifted to human trafficking, thereby treating sex work and human trafficking as one and the same. According to the GAATW (Global Alliance Against Traffic in Women) and LSI (La Strada International) conflating these two is harmful because it has ineffective counter-trafficking policies and disadvantageous prostitution policies as a consequence. (LSI NGO Platform, GAATW, 2016) Even though human trafficking is an issue in the sex work industry, just as it is in other work sectors, Amnesty International's policy on state obligations to respect, protect, and fulfil the human rights of sex workers sets forth that states must "refocus laws away from catch-all offences that criminalize most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety and that oppose all acts of exploitation and trafficking in commercial sex (including of children)". Policy makers may have the intention to combat human trafficking by criminalising sex work, but by doing this they are harming the sex workers who are in the sex work trade voluntarily and have been

able to make a living thanks to sex work. (Amnesty International, 2016) Additionally, Yvette Luhrs made the remark that taking away the rights of those coerced into sex work is not going to help them. (Lotens, 2017) Amnesty International urges countries to treat sex work and human trafficking separately in order to come to an impactful policy. (Amnesty International, 2016) The two anti-trafficking organisations GAATW and LSI gave input on a European Commission report on trafficking trends. They criticised the fact that the EU does not sufficiently recognise that human trafficking happens in other sectors than the sex industry. They found that the EU must make sure measures against trafficking are actually implemented and implemented in a way that they will have an impact. They clarify that the prevention of human trafficking should be in the root causes which are poverty, unequal gender relations and traditional social structures in the country of origin; safe and regular migration channels; the demand for exploitative cheap labour, strict immigrations and increased repressive policies towards undocumented persons. (LSI NGO Platform, GAATW, 2016)

Article 3a of the Palermo Protocol of 2000 (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime) ratified by the EU with the Decision 2006/618/EC and Decision 2006/619/EU (EUR-Lex, 2016) specifies a definition of trafficking in persons:

"'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;" and adds with Article 3 b: "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;" (Office of the United Nations High Commissioner of Human Rights, 2000)

Thus, if a person is 'recruited', 'transported' or 'transferred' into sex work, but consents to doing sex work, the consent is to be overlooked. Firstly, recruitment, transportation and

transferring can be interpreted in many ways. As Mac and Smith explain, sex trafficking is wrongly portrayed as abductions of children and women with the means to coerce them into sex work. Although this does happen, the large majority of sex trafficking happens when migrants enter another country with the 'help' of a people smuggler, because they want to move to a different country. They then owe a large debt to the smuggler, who is in a position of power to demand more money halfway during the trip across the border. Many migrants end up in sex work because they do not have the documents to work other jobs and because it is a way to make more money in less time than for example, waiting tables at a restaurant. (Mac & Smith, 2018) Two other sex workers, Constantine and Gabrielli, confirm this in their podcast Business or Pleasure Episode 003. (SINGE Network, 2019) As a result, people who have paid a large sum of money to cross a border are deported back to where they came from. Even if they indicate they want and choose to do sex work, this is ignored.

Although the EU does have an official definition of what is considered human trafficking in regard to sex work, there is no clear definition of what is exploitative sex work. The ICRSE has identified the most common exploitative working circumstances for sex workers, namely: job insecurity, absent benefits and protections, vanishing earnings and hazardous working conditions. (ICRSE, 2016) All of these exploitative working conditions are an effect of not treating sex work as work. Job insecurity exists because of a scarcity of legal work places; absent benefits and protections because sex work is legally not considered a job; the vanishing of earnings happen because law enforcement confiscate the income of sex workers as 'proceeds of crime' or because workers have to pay a third party; and hazardous working conditions exist because workers have to work on the illegal circuit and do not have access to the same labour rights as workers in other sectors.

Furthermore, Directive 2012/29/EU "requires Member States to establish minimum standards on the rights, support and protection of victims of trafficking if they cooperate with the authorities to identify criminal networks." (Schulze, Novo Canto, Mason, & Skalin, 2014) This means victims of trafficking only get support and protection under the precondition that they give information to authorities about perceived exploiters. However, in the situations of people smuggling becoming sex trafficking, there is no case of coercion into sex work by a third party even though it is considered that way by the authorities and the law. Therefore, a sex worker who is considered trafficked, may not want to cooperate in identifying for example, the boss of her brothel as this could lead to the closing down of the brothel and her colleagues losing their jobs, aside from criminalising a brothel keeper who never coerced a worker.

Considering the Directives it seems that the European Union is invested in battling human trafficking and with that sex trafficking. The GAATW reports that many organisations lead by sex workers including GAATW itself are working to fight sex trafficking and exploitation with their own programs and strategies. These organisations "(...) respond to women's needs by providing person-centred, holistic, and non-judgemental support. All of them run a place which serves as a low-threshold drop-in centre, a safe and discreet free space where women can come, establish friendships, and access a range of services, from language classes to support groups, counselling, legal advice, and health services. All organisations also provide information about prices, advertising, safety, allowed locations for sex work, immigration issues, and where to turn for help in case of violence and abuse." (GAATW, 2017) According to research conducted by the GAATW, organisations also monitor sex worker websites, and intervene when they suspect cases of human trafficking by for example contacting the police, negotiating with a brothel keeper or chasing the pimp away. There is no single solution to trafficking, thus organisations create a strategy to help the trafficked person based on their specific, individual case. Additionally, these sex worker organisations actively help sex workers exit the industry by offering language courses, other skills courses, helping them navigate social security and employment options. GAATW also reports that "sex worker rights organisations or anti-trafficking organisations with a strong pro-sex worker rights position were rejected from the EU Civil Society Platform against trafficking in human beings." (GAATW, 2017)

Hella Dee is sceptic of whether the EU could mean much for sex workers policy-wise. "The EU is a big, cumbersome machine so I wonder how much a uniform EU-sex work policy would change for sex workers. Additionally, the public debate about sex work is vastly different in each country, so I think there is more to be achieved on the area of national policy." (Hella Dee, personal communication, April 15, 2019) Daalder agrees that member states will want to keep their own policy models, but has also said that EU anti-trafficking measures could be improved by creating a more uniform specific anti-trafficking policy, aside from sex work policy. (A. Daalder, personal communication, May 2, 2019)

Discussion

This research was done to find out how a policy model that decriminalises sex work could improve working conditions for sex workers. In this chapter, the results of the study (discussed in the previous chapter) will be analysed and linked with the reviewed literature in order to move on to the conclusions and answer the main question of the research. To reflect on the different types of sex work policy, case studies were done on three different policy types: criminalisation, legalisation and decriminalisation.

Criminalisation

The literature shows that criminalisation pushes workers into illegality, making the work unsafe. When sex workers are arrested for working, they face consequences such as being banned from public housing and loss of custody over children. In the US, sex workers can even be put on a sex offenders registry. (Mac & Smith, 2018) Additionally, criminalisation leads to unsafe sex as carrying condoms can be seen as evidence for working and therefore leads to arrest. (Open Society Foundations, 2012; Human Rights Watch, 2012) Decriminalisation of sex work is said to be the best method to reduce new HIV infections. (Shannon, et al., 2014) The US FOSTA and SESTA laws intended to battle sex trafficking have lead to the disappearing of sex workers advertising websites that were used all over the world. Sex workers are forced to work on the street, which is more dangerous and they need managers to find clients, making them more vulnerable to exploitation. (Gimlet, n.d.; SINGE Network, 2019; Mac & Smith, 2018) Criminalisation also leads to the police abusing their power to abuse sex workers or disproportionately target them. (Torres & Paz, 2012; Mac & Smith, 2018; Arnott & Crago, 2009) Migrant sex workers are often deported against their will due to false claims or wrong interpretations of being trafficked.

The Nordic model

Two case studies were done to study the effect of criminalisation policy on the working conditions of sex workers. The first case study was on Sweden, which created and first implemented the Nordic model: a model that criminalises only the client, and not the sex worker. It became apparent that the Nordic model is based on morals and sentiments, rather than facts. The way sex workers were described showed a lot of negative stigma. In the debate leading up to the creation and implementation of the Nordic model, sex workers were described as victims who are forced to sell their body and end up in the sex industry after

having been victim of sexual abuse in their childhood, or due to addiction to drugs or alcohol. Sex workers were also described as being passive during work transactions, not having agency over their bodies and as if their professional and personal lives could not be separated. (Dodillet, n.d.) The Nordic model was intended to save sex workers from exploitation by ending the demand for sex work. Swedish authorities find that the harsh working circumstances arising from the Nordic model are justified because they say it should not be attractive to do sex work. (Mac & Smith, 2018) However, it appears there is insufficient and ineffective aid in place for sex workers who want to exit the sex industry. (Heiberg, 2011)

The literature shows that when sex work is in any way criminalised, sex workers have no labour rights. The lack of labour rights makes sex workers vulnerable to abuse, exploitation and violence, which conversely, is what criminalisation policy is supposedly trying to prevent. (NSWP, 2017) Indeed, the effects of criminalisation have been the opposite of what was intended in Sweden. In Sweden, the Nordic model has lead to sex workers being exposed to dangerous clients. Clients have been scared away because it is a criminal offense to buy sex. As a result, sex workers do not have many clients to choose from, and they have to settle for dangerous clients and accept requests they would otherwise refuse, such as sex without a condom or having sex in desolated areas. Additionally, the scarcity of clients has lead to lower prices. Even though sex workers are technically decriminalised by law under the Nordic model, sex workers can be targeted by the policy through municipal laws. Marginalised sex workers, like people of colour and migrant workers are disproportionately targeted by the police. (Mac & Smith, 2018)

Partial criminalisation

Another variation of criminalisation policy is partial criminalisation. Partial criminalisation policy means that sex work is mostly criminalised, but it is legal under specific circumstances when living up to specific criteria. In the UK, the second case study of this research, only indoor working is allowed when working alone due to brothel keeping laws. (Crown Prosecution Service, 2019) Working alone makes sex workers an easy target for predators. Many sex workers in the UK are arrested due to brothel keeping laws for working together from a shared flat. The PCA, intended to stimulate the police to bust criminal gangs, makes it extra appealing for the police to go after sex workers, because it allows them to keep money they find on the crime scene. Brothel keeping laws work counter productive as it makes

working for a manager more appealing, because it means the sex worker is not criminalised but the manager is. (Mac & Smith, 2018)

Other UK laws surrounding sex work are vague and open to interpretation, for example, advising a friend about sex work can be considered inciting another person to do sex work, which is illegal. (Mac & Smith, 2018) Even though sex workers in the UK cannot be punished with a prison sentence, they can end up in prison due to ASBO's (e.g. for soliciting) and breaching it, which is often virtually impossible not to. The prison sentence can lead to lesser access to social housing and losing custody of children. (Mac & Smith, 2018) Street work is not allowed at all and sex workers can be fined for it, which creates a vicious circle, as sex workers need to work to be able to pay the fine. Additionally, a special prostitution caution can be given by the police, which shows up on a persons record when applying for jobs with enhanced disclosure. (Mac & Smith, 2018) Criminalisation of sex work always leads to sex workers avoiding the police. Predators are aware of this, which makes sex workers extra vulnerable to violence and abuse.

Legalisation

Legalisation policy is used when governments accept that sex work cannot be eradicated, but find that the sex industry should be regulated in order to eliminate the perceived worst aspects of it. This creates a system where sex work is technically legal, but a lot is illegal through regulations. The rules are expensive and difficult to live up to, especially for marginalised groups. Due to the specific regulations, many sex workers end up working illegally. (Mac & Smith, 2018; Mac, 2016) Sex workers around the world in legalised countries are excluded from legal work for different reasons: being married, being transgender, being HIV positive or not being able to pay the brothel's rent sum. (NSWP, 2017; Delgado, 2016; Tucker, 2012; Felicia Anna, n.d.)

The case study on The Netherlands shows that sex workers have limited options to work legally due to regulations. In The Netherlands, the municipalities decide on the sex work policy for their city. It is mentioned in the literature that just like criminalisation, legalisation leads to workers being forced to work for managers or brothel keepers, and becoming dependant on them. (Mac & Smith, 2018) In the majority of municipalities it is the most achievable to work legally for a business that has a permit, such as a brothel. New permits are barely given out and working without a permit is possible, but each municipality has its own set of specific rules for that. (A. Daalder, personal communication, May 2, 2019). Local

policy often varies under a legalisation policy. (Wagenaar, Altink, & Amesberger, 2013, pp. 45-49) The different rules in different areas can be confusing for sex workers, social workers and law enforcement. According to Daalder, the Dutch government could ameliorate circumstances for sex workers by providing clear and correct information. (A. Daalder, personal communication, May 2, 2019)

Managers let sex workers work 'opting in', a regulation that makes the sex worker self-employed in the fiscal sense, but an employee in practical. The managers do not have to pay any insurances or premiums, but the sex worker does not receive any insurance, paid vacation days, sick days, or build pension. As permitted workplaces are scarce, the sex worker must abide by the rules of the manager to work legally, even if they are exploitative. (Sekswerkergfoed, 2014; Stichting SOA Aids Nederland, 2018) Hella Dee notes that the threshold to address abuse at the workplace is high due to the scarcity of legal workplaces. Hella Dee also said that it is especially difficult for marginalised groups to find a permitted workplace, because the managers holding the permits have often been in the business for over twenty years and they are not progressive. (Hella Dee, personal communication, April 15, 2019)

Under legalisation policy, sex workers are often required to be registered as a sex worker to the government, which is a risk in losing anonymity. Many sex workers are not willing to take this risk and end up working illegally. (Mac & Smith, 2018; Wagenaar, Altink & Amesberger, 2013; Open Society Foundations, 2012) Undocumented migrants cannot work legally under any legalised system. (Mac & Smith, 2018) Mandatory health checks imposed as a regulation measure often lead to punishment and not being able to work, so they are avoided. (Mac & Smith, 2018) All those who are excluded from working legally face the same consequences as sex workers under a criminalised system.

A research about violence to sex workers in The Netherlands identified four different types of violence: physical violence, sexual violence, financial economic violence and social emotional violence. (Stichting SOA Aids Nederland, 2018) Most of the violence experienced has roots in negative stigma and is enabled by policy, regulations and the government.

Decriminalisation

International human rights organisations and sex worker organisations advocate for the decriminalisation of sex work. Decriminalisation of sex work means treating sex work as

work, which gives sex workers labour rights and social protections like all other workers and creates an environment where sex workers can claim their right to just working conditions. (NSWP, 2017)

New Zealand first decriminalised sex work with the PRA, a law that was created in collaboration with sex worker organisation NZPC. Hella Dee and Daalder stress the importance of including sex workers in the policy making process, as they are the experts on the matter. (Hella Dee, personal communication, April 15, 2019; A. Daalder, personal communication, May 2, 2019) Many feared that decriminalising prostitution would cause the sex industry to grow. This has not happened in New Zealand, nor has criminalisation ever been known to cause a decrease of the sex industry, it has only pushed workers into illegality. (Davis & Schaffer, 1994) The main incentive to do sex work is economic, it is because of the need for money. The motivation to do sex work does not change when policy changes. (Abel, Fitzgerald, & Brunton, 2009)

The PRA of New Zealand

Working circumstances have ameliorated for sex workers since the PRA. As a result of decriminalisation, sex workers have a better relation to the police: they no longer have to avoid them and they can ask the police for help in case of violence and abuse, and work safely in visibility without risking arrest. Sex workers have become less dependent on managers, as they can legally work autonomously or with colleagues and managers are held accountable through labour law. (Mac & Smith, 2018) Sex workers are working less for managers since the PRA, and more from shared flats. (Abel, Fitzgerald, & Brunton, 2009)

Marginalised groups remain unprotected and even criminalised in New Zealand. Migrant sex workers cannot work legally because of border laws. (NSWP, 2014) Māori, transgender, youth and homeless sex workers are still targeted by the police and under-protected. (Mac & Smith, 2018)

The EU on sex work and Human Rights

The EU has minimum standards on working conditions through labour law. (European Commission, n.d.) However, the EU does not treat sex work as work. Sex work is constantly conflated with human trafficking and exploitation. Even though there is no EU wide policy on sex work, Directive 2011/36/EU Article 18.4 suggests that the member states should criminalise clients who use the services of a trafficked or exploited sex worker. (European

Parliament, the Council, 2011) But clients could not distinguish when a sex worker is exploited or trafficked when sex work is treated as inherently exploitative.

Human rights organisations have pointed out that sex work and human trafficking are not the same and they should be treated as two different policy areas in order to come to an effective policy. Several treaties and policy briefs indicate that sex workers deserve the same labour rights as all other workers and that sex work should be treated as work. The same is said by sex worker organisations and anti-trafficking organisations. (Amnesty International, 2016; LSI NGO Platform, GAATW, 2016; NSWP, 2017; United Nations Commission on the Status of Women, 1981)

The Palermo Protocol, ratified by the EU, specifies that when a trafficked person consents to doing sex work, this consent not considered valid. (Office of the United Nations High Commissioner of Human Rights, 2000) A person can be considered trafficked, even when they have voluntarily migrated and then chosen to do sex work. People who have paid a smuggler to migrate often choose to sex work to pay off debt to the smuggler. (Mac & Smith, 2018) GAATW and LSI state that human trafficking should be prevented by addressing its root causes: poverty, unequal gender relations and traditional social structures in the country of origin; unsafe and irregular migration channels; the demand for exploitative cheap labour, strict immigrations and increased repressive policies towards undocumented persons. (LSI NGO Platform, GAATW, 2016) Smuggled persons who have migrated in search of a better life are not helped by taking away their income or being deported, which can be consequences of being considered trafficked, even when the smuggled person indicates she consents to do sex work.

The EU has an official definition of sex trafficking, however it does not have a definition of exploitative sex work. The ICRSE identified exploitative working conditions for sex workers as: job insecurity, absent benefits and protections, vanishing earnings and hazardous working conditions. (ICRSE, 2016) These exploitative conditions are the result of lacking policy: the absence of labour rights and working illegally, thus avoiding the police and being more vulnerable to predators.

Directive 2012/29/EU sets forth that victims of trafficking should receive support and protection under the condition that the victim helps identify criminal networks. (Schulze, Novo Canto, Mason, & Skalin, 2014) If for some reason a victim does not want to identify criminal networks (which might just be a manager the sex worker willingly worked for),

member states are not obliged to give them support and protection. Additionally, the EU refuses to work with several anti-trafficking sex worker organisations that have set up successful solutions and programs to help trafficking victims exit sex work. (GAATW, 2017)

Daalder and Hella Dee do not see the EU achieve much for sex workers rights, as it is a policy area that differs in tone and relevance in each member state. (Hella Dee, personal communication, April 15, 2019); A. Daalder, personal communication, May 2, 2019) However, Daalder agrees that the EU could achieve more on the area of anti-trafficking.

Ultimately, criminalisation policy reinforces dangerous and exploitative working conditions for sex workers because of the absence of labour rights and the police being an enemy instead of offering protection. Although it is intended to make sex work legal and regulate it, legalisation policy excludes many sex workers (mostly of marginalised groups) from working legally. The regulations imposed are often vague, open to interpretation, and differ locally, creating confusion among sex workers, social workers, authorities and law enforcement. Those who are excluded from working legally under legalisation face many of the same negative effects as sex workers under criminalisation policy. While criminalisation and legalisation aim to eradicate and decrease the sex industry, there are insufficient and ineffective exit programs in place. Decriminalisation protects sex workers through labour rights and ensures a better relation between the police and sex workers. Yet, migrant and marginalised sex workers are not protected under decriminalisation policy. The EU ignores the advice of human rights organisations and sex worker organisations by conflating sex work with human trafficking. Additionally, the EU does not recognise the expertise of sex worker organisations.

Conclusion

This dissertation was carried out in order to determine how policy that decriminalises sex work could improve working circumstances for sex workers in the EU. The literature review has shown that different policy types have been assessed in terms of how they affect the circumstances of sex workers. The case studies show concrete examples of how certain policies and laws turn out differently in practice, from how they were intended. Decriminalisation policy is uncommon, and it does not prevail in the EU at all, as opposed to criminalisation and legalisation. Criminalisation and legalisation have failed to truly improve quality of work and life for sex workers, thus it is interesting to research how decriminalisation policy could be of value. The research question *"How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy?"* have lead to a number of conclusions, which will be explained in this chapter.

Criminalisation policy comes from negative stigma around sex work. Sex work is widely perceived to be exploitative by default and it is conflated with sex trafficking. As a result of stigma, policymakers and lawmakers aim to eradicate sex work entirely by criminalising the practice. The literature shows that the different types of criminalisation policy, including the Nordic model, partial criminalisation and full criminalisation, leads to unsafe working circumstances for sex workers. Firstly, sex workers do not have access to labour rights when sex work is criminalised. Therefore, it is impossible to claim rights as a sex worker, which leads to exploitative and abusive workplace situations. Secondly, sex workers are easy preys to violent and abusive predators when they must hide from the police as a result of risking arrest. Additionally, criminalised sex workers cannot turn to the police for help or protection in cases of violence, sexual abuse, clients refusing payment, and other forms of abuse. Besides not being able to get help from the police, many cases of power abuse by the police against sex workers have been reported. The police are known to rape, extort and be violent with sex workers under criminalised systems. Marginalised groups such as transgender persons, people of colour and LGBT+ are disproportionately targeted by the police under criminalisation.

Criminalisation has never managed to eradicate sex work, nor has it been proved to decrease the size of the sex industry. In fact, when sex work becomes criminalised, it merely pushes sex workers into illegality. As a reaction to the failure of eradicating sex work, policy makers

decided they should legalise and regulate the sex industry to keep it within acceptable boundaries. However, legalisation policy has unintended effects: sex work is only legal under certain circumstances and sex workers have few options to work legally. Marginalised groups are easily excluded from working legally, and thus end up working on the illegal circuit. By working illegally, sex workers face the same issues of violence, abuse and exploitation as sex workers under criminalisation do. Legalisation policy creates rules that are expensive and difficult to follow. In addition, the rules are often times differ locally, creating confusion among sex workers, institutions and law enforcement. Even if a sex worker can work legally, they do not have access to labour rights and are excluded from certain services, e.g. getting a bank account, house, or insurance, although this can be a result of other factors such as being a migrant or being self employed. Although legalisation policy is aimed at fighting exploitation, it has the effect of pushing sex workers to work for managers, where they are more vulnerable to exploitation and abusive working circumstances. Due to the limited options of working legally, sex workers do not feel empowered to address abusive or exploitative working conditions.

International Human Rights organisations such as Amnesty International, the UN and the ILO advocate for the decriminalisation of sex work. Many fear that the sex industry might grow when it is decriminalised, however this has not been the case in New Zealand since the passing of the PRA. Working circumstances have ameliorated thanks to the PRA, as sex workers can work safely because there is no need to hide from the police. Additionally, sex workers can call the police for help and protection in case of violence or abuse. Because of the PRA sex workers can claim their labour rights and hold managers accountable. The PRA does not decriminalise all sex workers. Migrant sex workers remain criminalised through border laws and marginalised groups are under-protected and over-policed.

Sex work is wrongly conflated with human trafficking. This leads to policies and laws that affect sex workers negatively, while working counter-productive in the battle against human trafficking. Banning sex work or the buying of sex work because of the false idea that it is always exploitative, takes away the labour rights of sex workers, which makes them vulnerable to exploitation. The EU goes against the advice of human rights organisations and sex worker organisations by conflating sex work with human trafficking. In order to successfully battle human trafficking, specific policy against human trafficking should be created. Sex worker organisations have created efficient solutions and programs to help victims of trafficking and to help sex workers exit the sex industry if they want to. While they hold the expertise, sex worker organisations are not taken seriously by authorities. Likewise,

the EU has refuted cooperation with sex worker organisations on multiple occasions. Exit programs by states and governments are insufficiently funded and ineffective in countries that view sex workers as victims.

Fundamentally, criminalisation and legalisation policy work counter productively in that they do not eradicate or decrease the sex industry. In practice, criminalisation and legalisation enable exploitation and the need for sex work to survive, while the thought behind it is that sex work is inherently exploitative. The motivation to do sex work is economic and persists because of issues such as poverty, inequality, people smuggling due to strict border laws. Finally, the negative stigma and conflation of sex work and human trafficking lead to ineffective and counter productive sex work policy and anti-trafficking policy.

Recommendations

After the conclusions of this research in the previous chapter, this chapter offers several recommendations for governments and the EU to ensure better working conditions for sex workers.

Treating sex work as work, hence giving sex workers access to labour rights ensures better working conditions for sex workers. When protected under labour law, sex workers can claim their rights in case of exploitative labour conditions. Additionally, by decriminalising sex work, sex workers can be protected by the police and demand aid in cases of violence and abuse. Therefore, sex work should be decriminalised by governments.

However, decriminalisation policy does not protect all sex workers, because undocumented migrant sex workers cannot work legally and are therefore subject to the same effects of criminalised sex workers. The answer to better working circumstances does not lie in sex work policy, but rather in the need to migrate due to limited opportunities in the country of origin and inequality issues such as poverty. As for the majority of global issues, the root causes of inequality must be addressed in order to create better working circumstances for migrant sex workers. Strict border laws lead to people smuggling, the debt of people smuggling leads to the need to do sex work. Thus, states should allow migrants to cross borders freely and safely, and they should let migrants do sex work legally.

Marginalised groups such as LGBT+ communities, people of colour and youth sex workers are not sufficiently protected and disproportionately targeted by the police. Rather, they should receive help and support by governments in addressing the root causes that lead them to do sex work, such as poverty, homelessness and discrimination.

Although negative stigma around sex work leads people to believe that all sex workers are exploited victims, many sex workers freely choose to do sex work. Sufficient and effective exit programs and aid should be made available to those who want to exit the industry. Such programs and aid should at least consist of skills courses to help participants gain skills for a different career path. Additionally, sex workers who want to exit the industry should receive personal help based on their individual needs. Governments should cooperate with sex worker organisations and use their expertise for this.

Finally, sex work must not be conflated with human trafficking by governments and the EU. To come to effective policy the two should be treated as different policy areas, while consulting sex worker organisations for their expertise on both areas.

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Appendices

Appendix I. Student ethics form

Student Ethics Form

European Studies
Student Ethics Form

Your name: Myrthe Nijhuis

Supervisor: Paul Nixon

Instructions/checklist

Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- a. ☒ Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- b. ☒ Complete sections 1 and, if you are using human subjects, section 2, of this form, and sign it.
- c. ☒ Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.
- d. ☒ Append this signed form as an appendix to your dissertation.

Section 1. Project Outline (to be completed by student)

(i) **Title of Project:** How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy?

(ii) **Aims of project:** The aim of the research is to find out how decriminalisation policy could improve working conditions for sex workers in the EU by comparing the three main types of sex work policy (criminalisation, legalisation and decriminalisation) by studying existing literature, doing case studies and two in-depth interviews with experts.

(iii) **Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer 'NO' to this question.)**

YES

If no: you should now sign the statement below and return the form to your supervisor. You have completed this form.

This project is not designed to include research with human subjects. I understand that I do not have ethical clearance to interview people (formally or informally) about the topic of my research, to carry out internet research (e.g. on chat rooms or discussion boards) or in any other way to use people as subjects in my research.

Student's signature _____ date _____

If yes: you should complete the rest of this form.

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

The participants will have a face-to-face semi-structured interview with the researcher at their preferred meeting place.

(ii) What sort of people will the participants be and how will they be recruited?

The interviewees will be experts on the matter (a sex worker and a sex work researcher). They will be asked to participate in the interview by e-mail or social networks such as Twitter.

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires[]; Pictures[]; Sounds []; Words[x]; Other[].

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

If requested, the participants can stay anonymous and sign the informed consent form under a false name of their choice. Any personal addresses, phone numbers, e-mail addresses are stored safely and will never be shared with third parties unless consented to.

Student's signature: Myrthe date: 14-5-2019

Supervisor's signature (if satisfied with the proposed procedures): _____ date: _____

Paul R. 14/5/19

Appendix II A. Hella Dee informed consent form

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Appendix 6.4 – Informed Consent Form

Informed Consent Form

- 1) Project Title *How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy.*
- 2) Project Description (1 paragraph) *Fourth-year dissertation for European studies at HHS about sex work policy, including case studies.*

If you agree to take part in this study, please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher and relevant university assessors. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: Hella Dee Date: 15-04-'19

Appendix II B. Hella Dee interview transcript

Interview with Hella Dee, active as a sex worker since eight years, she does different kinds of sex work, mostly for permitted private clubs. She became an activist since she realised that sex workers have limited rights and options. She has played a part in the creation of sex worker organisation PROUD from 2015 to 2018.

1. What measures could be taken to ameliorate the societal and legal position of sex workers?

The societal and legal position of sex workers would ameliorate if sex work is fully decriminalised. Currently, sex work is legal in The Netherlands if you work at a workplace with a permit, but even then you do not have access to labour rights or to the legal system as a sex worker. If I would want to take steps about abuse at my place of work, the whole place could be shut down as a consequence, and my 14 colleagues would lose their workplace, too. As a sex worker, it is difficult to find a permitted workplace because they are scarce, so the threshold to address abuse is very high for me. Under a decriminalised system it would be much easier to find another workplace, and it would also be much easier to work self-employed. It is also interesting that not many people know that Dutch municipalities do not have to criminalise sex work. It was decided that Dutch municipalities decide about their own local sex work policy, but it was never said that they have to criminalise any aspect of it, yet the majority of them have to some extent criminalised sex work.

2. Do you think it would be good if the EU created a uniform sex work policy?

It would be great if the EU decriminalised sex work, but we should wonder how much there is to gain on an EU-level regarding sex work policy. The EU is a big, cumbersome machine so I wonder how much a uniform EU-sex work policy would change for sex workers. Additionally, the public debate about sex work is vastly different in each country, so I think there is more to be achieved on the area of national policy.

3. In your opinion, should national governments and the European Union cooperate with sex workers when creating policy, and what benefits do you see from that?

Yes, it is important to include sex workers in the policy-making process. There are many sex worker organisations and unions that have been created by sex workers and are lead by sex workers. Sex work is their area of expertise, they know all the issues they face and they even know all of the answers to those issues. A lot of the solutions are already

successfully being executed by sex worker organisations. What is needed, is support and acknowledgment for sex worker organisations from policy makers and governments.

4. Prostitution policy remains a topic of discussion in The Netherlands. How do you think the policy will develop in the next few years?

In a way I am hopeful because what we need most is social movements that support sex workers rights and stand up for sex workers. This is starting to happen more in The Netherlands, however, the developments is very slow and we are not nearly close to where we need to be. On the other hand, we see that the political debate is currently very focused on stricter migration laws. We have always observed how when politics shift to the right and things like migration laws become stricter, sex work policy becomes stricter as well. Moreover, the Christian party ChristenUnie has a very clear goal to criminalise sex work further. With a petition advocating for the Nordic model by the initiative Exxpose, the ChristenUnie gains support for their agenda. Additionally, many of the criminalising measures CU leader Gert-Jan Segers suggests, are already applied in practice.

5. What are the biggest threats for sex workers in The Netherlands under the current policy?

It is very hard to find a permitted workplace as a sex worker, especially for the most marginalised groups. For example, brothels want to hire no more than one black sex worker. The number of permitted workplaces has halved over the last few years, and the ones that have remained with a permit are those who have been in business for the past twenty to thirty years. These are not the most progressive of people and they are not quick to hire sex workers from marginalised groups, such as transgender workers.

6. What are the biggest threats for sex workers in The Netherlands in regards to policy development?

The biggest threat is the shifting to the right of politics. There is little support for sex workers on the left, too, but as I said before, we have always seen that when things such as migration policy become stricter, so does sex work policy. The hope lies with social movements that slowly become more aware of sex work issues and stand up for the rights of sex workers.

Appendix III A. Annelies Daalder informed consent form

Informed Consent Form

Informed Consent Form

- 1) Research Project Title: How could decriminalisation policy improve working conditions for sex workers in the EU as opposed to legalisation and criminalisation policy?
- 2) Project Description: For my study programme European Studies at the Hague University of Applied Sciences I have to write a dissertation. I chose to write about sex work policy, comparing decriminalisation, legalisation and criminalisation policy. The research contains literature research, two in-depth interviews and case studies on The Netherlands, Sweden, The United Kingdom and New-Zealand.

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____

Date: _____

2-5-2019

Appendix II B. Annelies Daalder interview transcript

Interview with Annelies Daalder, president of the WODC (Wetenschappelijk Onderoeks- en Documentatiecentrum), an institute for conducting research. She has done research to sex workers both for the WODC and autonomously since 1999.

1. According to a research that you have supervised about the legal and societal position of sex workers, sex workers experience the consequences of negative stigma on sex work. Could policy have an effect on stigma around sex work and what type of policy might decrease that stigma and how?

Stigma is engrained in people and all parties have an ideologically driven opinion. Arguments are often overlooked by sentiments such as "You wouldn't want your daughter to be a sex worker, would you?". Sex work is a taboo and that taboo will not simply disappear by certain policies or laws. Stigma definitely will not disappear or may not even decrease just by a change of policy, but if everything stays the way it is now it is a certainty that stigma will not decrease. In The Netherlands there is a debate between people advocating for the Nordic model on one side, and people advocating for the New Zealand model on the other side. Studies do show that since sex workers have the same rights as all other workers with the decriminalisation of sex work in New Zealand, the general public opinion on sex work has changed and that sex workers have gained from this positively in a number of ways. Whereas, with the Nordic model there is more criminalisation, and that certainly does not do any good for the stigmatised image of sex workers.

2. What measures could be taken to ameliorate the societal and legal position of sex workers?

You often hear that sex workers have a bad position in society and that they have issues with things like mortgages, insurance and bank accounts. That why during the research about the legal and societal position of sex workers, we looked for concrete cases of this. We found that this topic is very complicated because in most cases there are other factors that make these things difficult for sex workers, such as being a migrant or being self-employed. So it is hard to tell if the problems they face arise from being a sex worker or because they are for example self-employed. Therefore, it is also difficult to find a solution for this issue. However, it is striking that it is very difficult for sex workers to get access to the right information, which could be a big area of improvement for the government. Sex workers come to social workers for information, who end up giving incorrect information because they are mal-informed, too. Additionally, human

trafficking and sex work are often conflated in the public debate. But it has to be obvious that human trafficking is exploitation and sex work is work. Human trafficking should absolutely be eradicated, but that is not related to the improvement of circumstances for sex workers. Currently, the measures taken are focused on eradicating human trafficking but at the same time make it more difficult for sex workers to claim their rights with a manager or authorities. The conflation of human trafficking and sex work emanate from politics, but the government also does that. The government should give the right example and clearly separate the two.

3. Sex work policy remains a topic of discussion in The Netherlands. How do you think the policy will develop in the next few years?

It is hard to say. Recently, 40.000 autographs were raised among Dutch citizens for implementation of the Nordic model, putting the subject on the agenda of the Dutch parliament. The creation of policy depends strongly on politics. The Christian parties are clearly pro-Nordic model, but the liberal parties have been struggling with the topic. On one hand there are party members of leftist parties who find that it is a freedom of choice to do sex work and that people should be able to choose to do so, and on the other hand there are those who want to support women's rights and have the opinion that sex work is exploitative by definition. It is hard to predict sex work policy, because in my last 20 years of doing research on sex work I have seen that the political opinions fluctuate a lot. It often depends on one party member taking a clear stance who is then followed by the rest of the party. The only predictable political parties are the Christian parties.

4. In your opinion, should national governments and the European Union cooperate with sex workers when creating policy, and what benefits do you see from that?

Yes, I am absolutely in favour of policy makers working together with sex workers. That is what they did in New Zealand for the creation of the PRA. Sex workers are the ones who know best what issues they face and how a certain measure or policy will turn out in practice. If sex workers are not included that is a very bad scenario. I think sex workers are being included increasingly often in The Netherlands, for example in municipal sex work policy-making. However, in some countries sex workers are not taken seriously at all, especially in southern European countries. The northern European countries have an end demand model in place, with the aim that sex workers would cease to exist, so that makes it hard to include sex workers in policy-making, as sex workers are pushed into illegality. In my opinion, if you really want to reach a good policy, you

must include sex workers in the policy-making process, more so if you want to make special rules for sex workers that do not apply to other professions. It surprises me that there is not more collaboration with sex worker organisations. We have PROUD in The Netherlands, which is a fairly small organisation. We used to have De Rode Draad, but they were not taken seriously at all.

5. Do you think it could be good if The Netherlands had a uniform sex work policy, as opposed to the current system where municipalities decide on the local sex work policy?

I do think that it would make matters simpler, because now it is unclear for sex workers what they are allowed to do and what is not allowed. For example, in some municipalities sex workers can work from their home without a permit (and without conforming to the criteria of being a business), but they are not allowed to advertise. In other municipalities you are allowed to advertise for being able to find clients, but no more than twice a month otherwise it is considered a business. The rules are different everywhere, and that is very confusing for sex workers, social workers and law enforcement. Therefore, I think it would help if there were a uniform policy for The Netherlands. For years we have been trying to pass a law creating more uniformity, however it does not pass because it keeps needing adjustments or changes, and in the mean time the parliament has changed several times, leading to the law not passing again.

6. Do you think it would be good if the EU created a uniform sex work policy?

Theoretically you could say that that is useful, however I do not think this will ever happen. If you see that it is virtually impossible in The Netherlands, you know that it is impossible on a European level. It could help to lift certain excesses, but Sweden will keep the Nordic model and other countries will keep their preferred policy model. And I wonder what it would be useful for. Of course, there are many sex workers who work across borders. For the battling of human trafficking it would be good to have a uniform approach in some policy areas, but I do not know if it would benefit sex workers rights.

7. A lot of permitted working places have disappeared in The Netherlands over the past years, do you have any idea why?

I have not done research on this in the past years, but I have before. When it became allowed to operate a brothel with a permit, many municipalities have given permits to the brothels that already existed. With that they have taken an approach to let brothels

die out, meaning that when a brothel closed for some reason, they would not give out new permits, because they do not want sex work in their municipality. Therefore, many sex workers who no longer wanted to work for a brothel and become self-employed, or sex workers who wanted to team up with colleagues could not get a permit. Additionally, the brothels with permits were checked often by law enforcement. The illegal non-permitted brothels were not checked and this created a situation of unfair competition. More over, self-employed sex work (e.g. from home or as an escort) has increased because of general economic developments.

8. How much illegal sex work is there in The Netherlands?

That has proved too hard to research. You cannot really make an estimation of it. There is a large group of illegal workers, but people often forget that there is a difference between working without a permit and working illegally. For example, it is possible to work illegally as a non-EU migrant without a working permit in a permitted brothel.