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**HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL
EXPLOITATION IN THE EUROPEAN UNION: EVALUATING
THE PREVENTION METHODS THROUGH LEGISLATION**

Bachelor's thesis

Programme: HAJB08/17 Law, Specialization: European Union and International Law

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Tallinn 2021

I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

The document length is 10 080 words from the introduction to the end of conclusion.

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ABSTRACT

The aim of this thesis is to evaluate the most effective measures to fight human trafficking for the purpose of sexual exploitation in the European Union, and in particular, to examine prevention methods through the legislation on prostitution.

This thesis provides an overview on human trafficking and sexual exploitation in the EU. It outlines the legislative framework on human trafficking, and presents the relevant legal instruments used throughout the Member States. The current legislative measures are being evaluated and different alternatives are assessed in order to find sufficient means to prevent the phenomenon. The research has shown that prostitution laws and freedom of movement have a serious impact on trafficking flows within the EU. This thesis aims to suggest alternative and more effective measures and to provide stronger legislative framework to fight human trafficking for the purpose of sexual exploitation in the EU.

Qualitative method is the methodology used in this thesis. European Union legislation, international conventions and national legislations are the primary sources. Secondary sources consist of different articles written by legal scholars. Other sources, such as official reports from the European Commission, Europol and United Nations are also used.

Keywords: human trafficking, sexual exploitation, prostitution, the anti-trafficking directive

INTRODUCTION

Human trafficking is a worldwide problem which needs more attention. It can be said that human trafficking is widely practiced all over the world, including the European Union (EU), and near all of the Member States are somehow involved in it. Human trafficking in which the victims are subjected to sexual exploitation remains the most prevalent form of trafficking, and the EU is seen as a major region of destination for victims at international level.¹ During the last decades, various measures have been taken in order to combat the practice of human trafficking, with factors facilitating this being examined and discussed in the EU. In 2011, Directive 2011/36/EU, the Anti-trafficking Directive was established to fight human trafficking and in particular to improve the protection of victims.² This is the most prevalent legislative instrument in the EU, but its effectiveness has been argued over the years. Furthermore, as sexual exploitation continues to be the most common result of human trafficking, prostitution legislation and its effects on human trafficking within the Member States are taken into consideration. An EU-wide legislation on prostitution has been in discussion, but so far, legislations on the matter are very polarized between the countries.³ These are all issues that are connected, however, focused on slightly different objectives.

This thesis aims to discover the most effective measures to combat human trafficking for the purpose of sexual exploitation inside the EU, and specifically focusing on the prevention methods through the regulation of prostitution. Legislation on prostitution is being compared and the consequences are being assessed between dissenting Member States. The effectiveness of the Anti-trafficking Directive is evaluated, and the more advanced methods of prevention to fight trafficking in human beings are presented. The aim of the thesis is to give an overview of the current situation on the aforementioned issues in the EU, and thus, to research what are the factors

¹ European Commission. *Trafficking explained*. Retrieved from: <https://ec.europa.eu/anti-trafficking/citizens-corner/trafficking-explaineden>, 5 February 2021.

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1–11.

³ Kingston, S., Thomas, T. (2019). No model in practice: a ‘Nordic model’ to respond prostitution?. *Crime, Law and Social Change*, 71, 426.

leading to the practice of human trafficking for the purpose of sexual exploitation. In addition, it aims to provide recommendations as to what legislation can be applied in order to prevent its existence in the future.

Qualitative method is used as a methodology in this thesis. The research is primarily based on the European Union legislation, international conventions and national legislations of the Member States. As secondary sources, articles written by legal scholars are used here. The articles consist of relevant analyzes and questions on this topic, or criticism that is comprehensively substantiated. Other relevant sources and reports are applied in addition to these.

The first chapter will explain what human trafficking is with the focus on sexual exploitation and discuss why it is still actively practiced within the EU. The most common countries of traffickers and victims are evaluated, and impacts of free movement and migration are assessed. The second chapter covers the legislative framework on human trafficking in the EU, and the most prevalent legal instruments on combating human trafficking are introduced. Prostitution legislation and its effects on human trafficking within the Member States are also examined, and a comparison is made through relevant case studies. The third and last chapter will analyze and assess possible prevention methods through law enforcement, and provide suggestions in order to fight human trafficking inside the EU. Various alternatives and perspectives are being evaluated with an objective to find a solution to abolish human trafficking for the purpose of sexual exploitation in the Member States.

The hypothesis of this thesis is that there are not strong enough measures to prevent human trafficking for sexual purposes in the EU through the Anti-trafficking Directive, and there is a lack of legislation on the matter of prostitution within the Member States. This thesis aims to review and suggest different options to prevent human trafficking for the purpose of sexual exploitation with stronger legislative measures.

Issues around human trafficking have been in discussion for a long time, and different measures have been taken and considered in order to prevent this phenomenon in the future. Human trafficking is always a crime and a violation of human rights, and the question is, what are the possible prevention methods that could be done by the relevant authorities, and is the current EU legislative framework strong enough to combat human trafficking for the purpose of sexual exploitation.

1. HUMAN TRAFFICKING IN THE EU

1.1. Understanding human trafficking

Trafficking in human beings is a criminal activity that is still widespread due to the insufficient measures taken by different operators.⁴ Normally victims end up being a part of human trafficking when they seek for better living conditions, higher salaries and more possibilities in terms of employment from the countries where they are trafficked to.⁵ Within the EU, most of the victims of human trafficking are subjected to sexual abuse, such as forced prostitution.⁶ Other forms of trafficking are for instance, forced labor, begging, criminal activities, forced marriages, organ removals or selling of children. However, the latter list comprises a much smaller proportion of human trafficking in Europe.⁷ To obtain an overall understanding of what human trafficking is, the EU law defines it in Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims as “the recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, 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.”⁸ The definition given in this Directive is very similar to one in the United Nations Protocol on Trafficking in Persons.⁹ Unfortunately, it has become a very common approach that by human

⁴ Hernandez, D., Rudolph, A. (2015). Modern day slavery: What drives human trafficking in Europe?. *European Journal of Political Economy*, 38, 120.

⁵ *Ibid.*, 121.

⁶ Huges, D. M. (2014). Trafficking in Human Beings in the European Union: Gender, Sexual Exploitation, and Digital Communication Technologies. *Information Technology, Communication Technologies, Criminology and Criminal Justice*, 4 (4), 1.

⁷ *Ibid.*

⁸ Directive 2011/36/EU, *supra nota 2*, art 2, p 1.

⁹ United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, art 3(a).

trafficking, the aim is to put these people in situations where their work is exploited in circumstances containing serious violations of human rights against the victims.¹⁰

Trafficking in human beings violates severely the law and human rights, and it is closely linked to slavery.¹¹ The concept of modern-day slavery is also recognized in the context of human trafficking, as the victims can be considered as slaves of the perpetrators.¹² According to Maggie Lee in her book “Human trafficking”, slavery in a context of human trafficking can be described more as a temporary ownership, debt bondage, forced labour and exploitative contractual arrangements in the global economy instead of an old form of slavery where slaves were legally owned by someone.¹³ Exploring this idea it can be derived that, the relationship between the perpetrator and a victim can be reasonably short. Furthermore, prostitution is closely linked to human trafficking, and the concept of young girls and women being trafficked for commercial exploitation continues to be the most common form of human trafficking in the EU.¹⁴ This, therefore, demonstrates that forced prostitution is widely practiced within the Member States. However, this can be seen as problematic since some of the Member States practice legalized and/or regulated prostitution, and thus, the distinction between legal prostitution and prostitution as a result of human trafficking can be difficult to recognize.

As human trafficking is also known as modern-day slavery, it is easy to understand that human rights of the victim are always violated. In every form of sexual exploitation, forced prostitution, sexual slavery or other forms of sexual abuse, victims are set into conditions that limits their fundamental rights. International human rights conventions, such as the Universal Declaration of Human Rights (UDHR)¹⁵ and the European Convention on Human Rights (ECHR)¹⁶ are seriously violated by the practice of human trafficking. Human rights are being violated in the various stages of the trafficking process. Some of the rights are being violated by the actual perform of human trafficking, which are for instance, the prohibition of slavery, forced labor, or sexual exploitation, and these rights themselves are violations of basic human rights, but are also prohibited under

¹⁰ Salt, J. (2002). Trafficking and Human Smuggling: A European Perspective. *International Migration*, 38 (3), 34.

¹¹ Huges (2014), *supra nota*, 6, 1.

¹² Parreñas *et al.* (2012). What is human trafficking? A review essay. *Journal of Women in Culture and Society*, 37 (4), 1016.

¹³ Lee, M. (2007). *Human Trafficking*. (1st ed.) London, UK: Routledge, 3.

¹⁴ Huges (2014), *supra nota*, 6, 3.

¹⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

¹⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

international human rights law.¹⁷ On the contrary, some human rights violations are relevant following the act of human trafficking, for example the right to a fair trial, as it can be difficult to obtain as a victim.¹⁸

Organized crime plays a major role in the context of human trafficking. Large groups of criminals are the main actors in the trafficking circles, and they operate with an aim of gaining high profits by using coercion or deceiving the victims inside and to the EU.¹⁹ However, the amount of perpetrators varies from case to case. In some cases, large structured criminal groups are involved, where sometimes they can be individual actors. The perpetrators make the greatest profits during the exploitation or sale of victims, normally with forced prostitution, which takes place through physical coercion, fraud or deception at some point in the trafficking process.²⁰

It is also important to understand the distinction between human smuggling and human trafficking. Even though these two concepts are often linked together and sometimes overlap, they are two different acts and determined by legal definitions. According to Europol, illegal migrant smuggling is a crime that violates national and international border-related laws. On the other hand, human trafficking is a crime against the person since it violates their fundamental human rights.²¹ Another difference is that where the people have been smuggled illegally across the borders, and have reached the destination country, they are free from the smugglers and free of their own will. However, trafficked people are normally bonded to the smugglers or traffickers, meaning that they are threatened or deception is used in order to exploit them forward, which traps them in the human trafficking circle.²²

1.2 Human trafficking for the purpose of sexual exploitation

As seen above, a major part of victims of human trafficking are subjected to sexual exploitation both in the world and in the EU. The United Nations covers sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes,

¹⁷ *Human rights and trafficking in persons*. United Nations Human Rights Office of the High Commissioner. Retrieved from: <https://www.ohchr.org/EN/Issues/Trafficking/TiP/Pages/Index.aspx>, 12 February 2021.

¹⁸ *Ibid.*

¹⁹ Lee (2007), *supra nota*, 13, 5.

²⁰ Hernandez, Rudolph (2015), *supra nota* 4, 120.

²¹ Europol. (2016). *Situation report on trafficking human beings in the EU*. Retrieved from: <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu>, 22 February 2021.

²² *Ibid.*

including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”²³ The concept of sexual exploitation is often related to forced prostitution, but it is important to note that selling sexual services is legal in most of the Member States, and therefore recognized as a form of employment.²⁴ This clarifies the distinction between forced prostitution by traffickers and the people with an intent to work in the sex industry. According to a report on the progress made in the fight against trafficking in human beings (2020) by the European Commission, 60% of victims are trafficked for the purpose of sexual exploitation and more than half of them are EU citizens. Women and girls form the largest group of victims in trafficking and the proportion of women being sexually exploited is over 90%.²⁵

Sex trafficking seriously impacts the victims and places them at risk of dangerous health effects. Mental, physical and sexual abuse is very commonly performed by the traffickers and clients, and therefore, victims often see the use of drugs as a way to manage with their terrible conditions.²⁶ In order to reach potential victims for sexual exploitation, deception is a form which is often used as a means of gaining the trust of the victim. Fake relationships, also known as the “lover boy” method, is a good example of these means, where the traffickers manipulate their victims by the emotional relationship in order to gain their trust.²⁷ Various criminal activities, such as property crimes, begging and selling drugs are often faced by victims of sexual exploitation.²⁸ Furthermore, according to Europol’s Situation Report on Trafficking in human beings in the EU (2016), there is a high demand for sexual services in all Member States, which can also be seen as an opportunity for traffickers to fill the gap in high demand through forced prostitution.²⁹

²³ UN Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse. 12 December 2019.

²⁴ Jakobsson, N., Kotsadam, A. (2013). The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation. *European Journal of Law and Economics*, 35, 104.

²⁵ Report from the Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

²⁶ Zimmerman *et al.* (2003). The health risks and consequences of trafficking in women and adolescents. *Findings from a European study*. Retrieved from: <https://www.icmec.org/wp-content/uploads/2015/10/Health-Risks-and-Consequences-of-Traffic-in-Europe-Zimmerman-2003.pdf>, 27 February 2021.

²⁷ Europol (2016), *supra nota*, 21.

²⁸ *Ibid.*

²⁹ *Ibid.*

1.3 Countries where trafficking is the most prevalent

As migration inside and to the EU has increased during the past few decades, issues with human trafficking have come alongside.³⁰ The fact that people seek for more stable countries to live in, the EU can be seen as a desirable region due to the wealthy countries and the freedom of movement. Trafficking in human beings does not always mean illegal crossing of borders, and it also takes place inside the Member States.³¹ Even though it can be said that almost all the countries in the world have to combat human trafficking, there is a clear distribution within Europe. As mentioned before, the EU is a significant playground for traffickers at international level, where the victims are widely exploited to and within the Member States.³² There are no specific countries or areas where the victims of human trafficking are located, and they come from all over the world. Popular routes for people being smuggled or trafficked into Europe go through the Mediterranean countries, the Balkans, Eastern Europe and Turkey.³³ However, most of the victims are trafficked inside the EU, which means that they come from a Member State to another, and therefore it can be considered that the freedom of movement is facilitating human trafficking. In a situation where people are trafficked inside the borders of one Member State, is considered as internal trafficking since the outside borders have not been crossed.³⁴

High amount of the victims reported for sexual exploitation are EU nationals from Central and Eastern European countries, and victim recruitment often starts from the country of origin. Austria is considered to be a transit country for Central and Eastern European victims.³⁵ The victims are predominantly located in Southern and Western Europe, such as Belgium, Germany, Greece, Italy and the Netherlands, and these particular countries normally attract those people who aim to be smuggled into the EU.³⁶ The second biggest group of human trafficking takes its place in Austria, Denmark, France, Spain and Switzerland.³⁷ Since the above mentioned destination countries form the largest and most successful area in Europe, many of them have sizeable sex markets and great population of immigrants, which therefore makes the entry of trafficking victims easier into these

³⁰ Hernandez, Rudolph (2015), *supra nota* 4, 120.

³¹ *Ibid.*

³² European Commission, *supra nota* 1.

³³ Shelley, L. (2014) Human Smuggling and Trafficking into Europe: A Comparative Perspective. Migration Policy Institute, Washington DC. Retrieved from: <https://www.refworld.org/pdfid/52f3438d4.pdf>, 25 February 2021.

³⁴ Huges (2014), *supra nota* 6, 3.

³⁵ Europol (2016), *supra nota* 21.

³⁶ Shelley (2014), *supra nota* 33.

³⁷ *Ibid.*

countries.³⁸ Furthermore, in some of these countries prostitution is legal and regulated, which can create confusion on the identification between legalized prostitution and prostitution which is a result of human trafficking.³⁹ It has also been discussed that the Member States where prostitution has been decriminalized are more attractive to the perpetrators because the demand for the purchase of sexual services is more certain.⁴⁰

As large criminal groups are significant players in the practice of human trafficking, the groups also perform outside the EU and only deliver the victims inside the borders of the EU through illegal routes.⁴¹ For instance, it has been noted that number of trafficked people have increased through and from Russia and Ukraine during the last decade. Although, a lot of victims are still trafficked within the Member States, or to other countries, either inside or outside the EU.⁴² It can be noted that the biggest groups of perpetrators within the EU come from Eastern European countries. According to Europol's report, in 2014, 69% of potential traffickers were EU nationals from Bulgaria, Hungary, Romania and Slovakia. The perpetrators outside the EU often come from China and Nigeria due to their ability to produce high-quality fake documents, and thus, those criminal groups are important actors in human trafficking in Europe.⁴³

1.4 The impact of free movement and migration

The whole idea of human trafficking is based on the international movement of people, as people seek for better living conditions in wealthier countries. However, it is actively happening inside the borders of the EU without a need of external trafficking. Since the EU has abolished all borders within the Member States, and therefore enabled the free movement of persons, goods and services inside the EU, visas or any travel permits have not been required from people travelling.⁴⁴ These are fundamental freedoms of EU law, and they belong to every citizen of the EU.⁴⁵ Free movement of persons allows the EU citizens to move and reside freely within the borders of the Member States, and the right is regulated in Article 21 of the Treaty on the Functioning of the EU (TFEU)

³⁸ *Ibid.*

³⁹ Prostitution in Europe between regulation and prohibition Comparing legal situations and effects. Retrieved from: <https://beobachtungsstelle-gesellschaftspolitik.de/f/52b9df1667.pdf>, 27 February 2021.

⁴⁰ Jakobsson, Kotsadam (2013), *supra nota* 24, 102.

⁴¹ European Commission, *supra nota* 1.

⁴² *Ibid.*

⁴³ Europol (2016), *supra nota* 21.

⁴⁴ Craig, P., Burca, G. (2015). EU Law: Text, Cases, and Materials. (6th ed.) New York, USA: Oxford University Press, 744.

⁴⁵ *Ibid.*

which is subject to specific conditions and limitations set in the Treaties and by the measures adopted to give them effect.⁴⁶ Nonetheless, the right to move freely can also have a negative side in terms of human trafficking. These circumstances have facilitated the traffickers in exploiting, moving and recruiting victims inside the EU since there are no existing borders between the countries.⁴⁷

Furthermore, it has been argued already in early 2000s that since the Schengen Agreement, human traffickers have benefited from it by violating the internal borders of the EU, where the whole agreement was established to abolish border controls between the countries.⁴⁸ The Schengen Agreement stands behind the idea of an area without internal borders and guarantees the free movement of people. The Schengen area consists of 26 European countries, mostly EU Member States, but also Iceland, Lichtenstein, Norway and Switzerland are part of it.⁴⁹ Often people can enter into Schengen countries without additional security checks due to the passive ID card checks on the borders, which has enabled easier access between the EU countries, and therefore, facilitated easier movement of victims within the Member States.⁵⁰ Europol has stated in the Serious and Organised Crime Threat Assessment in 2013, that “the increased observation of intra-EU trafficking confirms that all EU Member States are markets for sexual exploitation. EU nationals are easily trafficked in the EU due to the freedom of movement realised by the Schengen Acquis and the combined low risk of identification and detection.”⁵¹

Migration is often connected with human trafficking as the number of migrants and active movement of people inside the EU have increased, issues with trafficking have come alongside them. The whole idea of migration is normally a plan of better possibilities of employment, housing and other welfare benefits in the countries where people migrate to.⁵² In many cases, women are offered different forms of employment, such as waitressing or au pairing in the

⁴⁶ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L. 326/47-326/390, art 21, p 1.

⁴⁷ Smartt, U. (2003). Human Trafficking: Simply a European Problem?. *European Journal of Crime, Criminal Law and Criminal Justice*, 11 (2), 164-177, 164.

⁴⁸ *Ibid.*

⁴⁹ European Commission, Migration and Home Affairs. *Schengen Area*. Retrieved from: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en, 9 March 2021.

⁵⁰ Smartt (2003), *supra nota* 47, 165.

⁵¹ *The EU Serious and Organised Crime Threat Assessment*. (2013). Europol. Retrieved from: <https://www.europol.europa.eu/activities-services/main-reports/eu-serious-and-organised-crime-threat-assessment-socta-2013>, 10 February 2021.

⁵² Goodey, J. (2003). Migration, crime and victimhood: Responses to sex trafficking in the EU. *Punishment and Society*, 5 (4), 420.

prosperous EU countries, and normally these women come from poorer countries with less opportunities and therefore these offered jobs can seem desirable. However, a significant percent of these women ends up being part of trafficking circles and working in forced prostitution under the terms of the perpetrators.⁵³

The difference between migrant smuggling and human trafficking is important to note since not all migrants are trafficking victims. However, these concepts are linked to each other and can sometimes overlap. The experiences of various illegal and regular immigrants consist of fraud, coercion and abuse or exploitation of vulnerability which are all typical forms of human trafficking.⁵⁴ Often migrated or smuggled people have given their consent to be transferred in order to obtain better living conditions in the destination country. Nonetheless, sometimes it can become apparent at a later stage of transferring and people will become victims of human trafficking through debt bondage, threats or violence.⁵⁵

⁵³ *Ibid.*

⁵⁴ Askola, H. (2007). Violence against Women, Trafficking, and Migration in the European Union. *European Law Journal*, 13 (2), 206-207.

⁵⁵ *Ibid.*

2. LEGISLATIVE FRAMEWORK

2.1. EU policy on human trafficking

Where human trafficking is a major problem in the EU, serious measures have been and need to be taken by the relevant actors. As discussed before, most of the victims are trafficked inside the EU, and move within the Member States. Thus, combating human trafficking particularly at the EU-level is extremely necessary. The EU has been fighting against human trafficking already since the 1990s, and various initiatives and measures have been taken over the times.⁵⁶ Human trafficking is explicitly prohibited by the Charter of Fundamental Rights of the European Union in Article 5, and the EU has established a framework in order to prevent this phenomenon in the future. According to “Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive” by Alice Bosma and Conny Rijken, there are two main instruments for combating human trafficking in the EU. These are Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and the EU Strategy towards the Eradication of Trafficking in Human beings (2012-2016).⁵⁷

Even though prostitution is closely connected with human trafficking, the EU has remained at the background on this matter. The EU has disagreed and claimed that prostitution policy falls outside of its competence, and the responsibility lies solely with the Member States.⁵⁸ In the matter of prostitution, approaches and legislations are strongly divided between the countries. It has also been stated that it is more understandable for the EU to have a policy on human trafficking since

⁵⁶ European Commission. *EU Actions Explained*. Retrieved from: https://ec.europa.eu/anti-trafficking/citizens-corner-eu-actions-explained/eu-actions-explained_en, 15 February 2021.

⁵⁷ Bosma, A., Rijken, C. (2016). Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive. *New Journal of European Criminal Law*, 7(3), 316.

⁵⁸ Allwood, G. (2018). Agenda setting, agenda blocking and policy silence: Why is there no EU policy on prostitution?. *Women's Studies International Forum*, 69, 126.

it concerns all of the Member States and is a transnational occurrence, than having a consistent policy on prostitution as it is rather an issue for the Member States to decide.⁵⁹

2.1.1 The Anti-trafficking Directive and the EU Strategy

In 2009, the European Commission adopted two proposals. The proposals are based on the idea of prosecution, protection and prevention. The first proposal focuses on fighting human trafficking by enacting stricter national legislations and penalties. The other proposal is aimed to fight the sexual abuse and sexual exploitation of children, and in particular punishing traffickers acting on online platforms.⁶⁰

Following this, the EU established Directive 2011/36/EU which presents a legal framework for human trafficking and is therefore binding to all Member States. This Anti-trafficking Directive lays down minimum rules for the definition of offenses and penalties concerning to human trafficking. It provides measures to strengthen the prevention of trafficking in human beings and the protection of its victims.⁶¹ Sexual exploitation in particular amongst the other forms of exploitation are recognized by the directive.⁶² Nevertheless, the Directive does not cover prostitutes or sex workers, and therefore prostitution as a form of employment can be considered to be open for interpretation and analysis.⁶³ The Anti-trafficking Directive focuses on the main points of prosecution, protection and prevention. It sets more severe criminal laws in order to enable easier prosecution, meaning an EU-wide definition of the crime, non-prosecution or non-application of penalties to the victim, and the possibility of prosecuting EU citizens for crimes committed in other countries.⁶⁴ Also, measures to reduce demand for trafficking, promote training for victims and officials involved in human trafficking and assisting and protecting victims in an early stage.⁶⁵ However, prosecution and protection are considered more broadly than prevention

⁵⁹ Outshoorn, J. (2018). European Union and prostitution policy. In J. Økland, H. Wagenaar (Eds.), *Assessing prostitution policies in Europe*. London: Routledge.

⁶⁰ European Commission. *The EU Commission cracks down on modern slavery and child sexual abuse*. (2009). Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_472, 20 February 2021.

⁶¹ Directive 2011/36/EU, *supra nota* 2.

⁶² *Ibid*, art 2, p 3.

⁶³ Allwood (2018), *supra nota* 58, 129.

⁶⁴ Directive 2011/36/EU, *supra nota* 2.

⁶⁵ *Ibid*.

since it is only covered in one article. As the Directive focuses on support and assistance of victims, a human rights-based approach in human trafficking can be recognized.⁶⁶

Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, is a complementary directive to the anti-trafficking directive above.⁶⁷ It covers the idea, that a victim of trafficking who does not have EU citizenship or resides in the EU without permission must be given so called “reflection period”. During this time, the victim may decide to cooperate with the authorities in criminal proceedings.⁶⁸ This can be seen as another human rights-based instrument, as help and support are offered for victims of third countries involved in human trafficking.

The Anti-trafficking Directive was established to combat human trafficking within the EU and it was aimed to reduce or eventually abolish human trafficking completely. However, it has been noted that the Directive is still problematic, as it has not achieved all the objectives set, which is likely due to the content or implementation of its provisions.⁶⁹ The prevention of the crime of trafficking is presented in Article 18, which provides prevention measures, in particular, reducing demand, raising public awareness and reducing the risk of people of becoming victims of trafficking, and which all Member States are required to adopt.⁷⁰ Additionally, the same article states that the Member States should deliberate measures on services where exploitation is possible, provided that the user is aware that the person offering the services may be a victim of human trafficking.⁷¹ Furthermore, the Directive imposes “appropriate measures” to combat human trafficking rather than determining particular actions that should be taken by the Member States. Therefore, the effectiveness of the current prevention methods set in the Directive have been evaluated.⁷²

⁶⁶ Bosma, Rijken (2016), *supra nota* 57, 317.

⁶⁷ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004, 19–23.

⁶⁸ *Ibid.*

⁶⁹ Symeonidou-Kastanidou, E. (2016). Directive 2011/36/EU on Combating Trafficking in Human Beings: Fundamental Choices and Problems of Implementation. *New Journal of European Criminal Law*, 7 (4), 467.

⁷⁰ Directive 2011/36/EU, *supra nota* 2, art 18.

⁷¹ Symeonidou-Kastanidou (2016), *supra nota* 69, 470.

⁷² *Ibid.*, 480.

The EU Strategy on human trafficking was introduced in 2012, after the Anti-trafficking Directive. It establishes a policy framework, and its target is to illustrate how the European Commission supports the Member States in taking primary responsibility for combating trafficking in human beings.⁷³ The Strategy's recommended practices are not legally binding, but are suggestions on how to combat human trafficking within the EU.⁷⁴ In addition, this Strategy presents five priorities which shall be in the center when fighting human trafficking in the Member States.⁷⁵ These are the following:

1. "Identifying, protecting and assisting victims of trafficking;
2. Prevention of trafficking in human beings;
3. Increased prosecution of traffickers;
4. Enhanced coordination and cooperation among key actors and policy coherence;
5. Increased knowledge of and effective response to emerging concerns related to all forms of THB."⁷⁶

It can be noted that the priorities of the EU Strategy are closely similar with the main points proposed in the Anti-trafficking Directive. However, the emphasis on early stage of identification of the victims, cooperation and increase of knowledge are relevant additions to the Directive.⁷⁷ These are good additions in order to improve the position of the victims, but the prevention methods still remain scarce as in the Directive, and the focus of the priorities stays with the victims.

2.1.2 International legislative framework

As human trafficking is a worldwide concern, international documents have been established in order to fight this phenomenon. In the EU level, two most prevalent conventions can be recognized. The United Nations has presented different anti-trafficking documents and measures

⁷³ European Commission. (2012). *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. Retrieved from: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf, 2 March 2021.

⁷⁴ Bosma, Rijken (2016), *supra nota* 57, 317.

⁷⁵ European Commission (2012), *supra nota* 73.

⁷⁶ *Ibid.*

⁷⁷ Bosma, Rijken (2016), *supra nota* 57, 317.

over the years, but the most prevalent is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UN Protocol) in 2000.⁷⁸ It is also the first legally binding instrument defining human trafficking globally. The UN Protocol has determined the first international definition of human trafficking, which is intimately followed by the EU in the Anti-trafficking Directive.⁷⁹ The approach of this protocol differs from the Anti-trafficking Directive, since this targets more on prosecution and punishment rather than the protection of victims, and therefore human rights are not in the center of this document.⁸⁰

Another significant international instrument in fighting human trafficking affecting the EU is the Council of Europe Convention on Actions against Trafficking in Human Beings (2005).⁸¹ The EU's Anti-trafficking Directive has largely influenced from this Convention, since both documents focus on human rights and on protection of victims. The Directive reviews many provisions of the Convention through small improvements. However, the latter is not signed or ratified by the EU as whole where the UN Protocol is.⁸²

2.2 Prostitution legislation in the EU

Prostitution refers to providing sexual services in an exchange of money, and is widely practiced within the EU, either legally or illegally.⁸³ As prostitution is seriously linked to human trafficking, and girls and women being trafficked for commercial exploitation continues to be the largest form of trafficking within the EU, legislation on the matter should be considered. However, it is important to note that prostitution is not always a result of human trafficking. In some of the Member States prostitution is legal and regulated, where some countries fully prohibit the act.⁸⁴ These varying laws have an impact on human trafficking and sometimes the distinction between prostitution as a consequence of human trafficking and selling sex as a form of an employment is hard to differentiate. There is no coherent legislation on prostitution at the EU level and the

⁷⁸ Efrat, A. (2016). Global Efforts against Human Trafficking: The Misguided Conflation of Sex, Labor, and Organ Trafficking. *International Studies Perspectives*, 17 (1), 35.

⁷⁹ *Ibid.*, 36.

⁸⁰ Gaspari, L. (2019). The International and European legal framework on human trafficking: an overall view. *Deportate, esuli, profughe: Rivista Telematica Di Studi Sulla Memoria Femminile*, 40, 52.

⁸¹ Council of Europe Convention on Action against Trafficking in Human Beings. 16 May 2005.

⁸² *Ibid.*

⁸³ Europol (2016), *supra nota* 21.

⁸⁴ Allwood (2018), *supra nota* 58, 127.

Member States strictly disagree on this matter, therefore countries maintain differing laws on prostitution.⁸⁵ Different approaches towards prostitution can be recognized, and prostitution laws are very polarized within the Member States. According to “The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation” by Niklas Jakobsson and Andreas Kotsadam, abolitionism, prohibitionism and regulation are the most relevant approaches regarding prostitution legislations.⁸⁶ Abolitionism supports the criminalization of third parties and prohibitionism literally prohibits prostitution and sets the prostitute as liable to penalties too. Regulation means that prostitution is legal when it is regulated by the state.⁸⁷

In order to assess the effectiveness of the different legislation stances with regards to human trafficking, below is a comparison of two Member States which hold contrasting legislations on the matter. However, at the turn of the last century, both states have established a legal definition of human trafficking where forced prostitution is classified as trafficking in human beings.⁸⁸

2.2.1 Case study of Swedish legislation

Swedish legislation on prostitution has received attention all over the world and in the EU. In 1999, Sweden presented a prohibition on the purchase of sex in order to reduce the demand and decrease human trafficking for sexual purposes.⁸⁹ This means that selling sex remains legal, but buying sexual services is a criminal offence.⁹⁰ In addition, Sweden defines all prostitution to be forced on women, and therefore is not recognized as a form of employment.⁹¹ The Swedish legislative model on prostitution is recognized as neo-abolitionism, and the approach is followed by few countries, such as Norway and Iceland, and therefore it is known as a ‘Nordic model’ too.⁹² Since the reformed legislation, the Swedish government has stated that human trafficking for sexual

⁸⁵ *Ibid.*

⁸⁶ Jakobsson, Kotsadam (2013), *supra nota* 24, 90.

⁸⁷ *Ibid.*

⁸⁸ Zeegers, N., Althoff, M. (2015). Regulating human trafficking by prostitution policy? An assessment of the Dutch and Swedish prostitution legislation and its effects on women’s self-determination. *European Journal of Comparative Law and Governance*, 2 (4), 355.

⁸⁹ Skilbrei, M, L., Holmström, C. (2021). Linking Prostitution and Human Trafficking Policies: The Nordic Experience. In: H. Nelen, D. Siegel. (Eds.), *Studies of Organized Crime* (67-80), 67. Cham: Springer Nature.

⁹⁰ Brottsbalk 1962:700, chapter 6, section 11.

⁹¹ Zeegers, Althoff (2015), *supra nota* 88, 359.

⁹² Jakobsson, Kotsadam (2013), *supra nota* 24, 88.

purposes has reduced due to stricter laws on prostitution.⁹³ As human trafficking revolves around the profits of traffickers, it has been considered that the change in Swedish legislation has also reduced the demand for buying sex, and therefore the market has not been seen profitable in the point of view of traffickers.⁹⁴ Additionally, it has been studied that differing legislations on prostitution are taken into account by the traffickers, and therefore countries with more rigid laws may not attract the perpetrators.⁹⁵

The Swedish model has been in discussion in the EU for years. For instance, in 2014, a report on sexual exploitation and gender equality was submitted by the European Parliament's Committee on Women's Rights and Gender Equality, stating that following the Swedish model seems to be the most effective method of combating human trafficking in women for sexual exploitation.⁹⁶ An EU-level policy on prostitution has been considered, despite the fact that the EU has stated that policies and laws on prostitution do not fall within their competence and are therefore the responsibility of the states themselves.⁹⁷ Currently, this model has been applied by a few other Member States, for example, France and the Republic of Ireland have made the purchase of sex a criminal offence.⁹⁸

However, there are two sides in this matter, whether banning the purchase of sex is an effective measure to abolish human trafficking for sexual purposes or not. It has been argued that this can violate those women's rights who choose to sell sex of their own will and where it is a form of employment.⁹⁹ Furthermore, different studies have shown that legislations following the Swedish model have set sex workers even more vulnerable to exploitation instead of decreasing exploitation and violence towards them. This refers in particular to those who sell sexual services on the streets, and because buying is illegal, conversations with customers remain short and therefore the potential risks are difficult to evaluate.¹⁰⁰ An example to this is given in New Zealand, where prostitution is legalized, and thus provides stronger protection for the prostitutes. More specifically, negotiations between the clients and those selling sex are more detailed and therefore ensure safer sex practices. In the case of exploitation, prostitutes can take the matter to a human

⁹³ Friesendorf, C. (2007). Pathologies of security governance: Efforts against human trafficking in Europe. *Security Dialogue*, 38(3), 397.

⁹⁴ Jakobsson, Kotsadam (2013), *supra nota* 24, 99.

⁹⁵ *Ibid.*, 101.

⁹⁶ Kingston, Thomas (2019), *supra nota* 3, 426.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, 427.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, 429.

rights court or through other legal processes as they have a legal status in the country. Also, according to a survey made in New Zealand, only 4% of the prostitutes were forced to work, which means that the amount of human trafficking for sexual exploitation remains reasonably low.¹⁰¹

In addition, it has been discussed that the data collected concerning the flows of human trafficking for sexual purposes in Sweden, is not accurate and cannot be fully relied on since the quality of data on international human trafficking is always inaccurate.¹⁰² According to Jakobsson and Kotsadam, research on the number of victims on human trafficking should be based on anonymous online surveys rather than face-to-face interviews.¹⁰³

2.2.2 Case study of Dutch legislation

Where in Sweden and the Member States following that model, the purchase of sex is illegal, these countries therefore maintain the most stringent laws on prostitution in the EU. There is another side of everything, and as stated above, prostitution laws are polarized within the Member States. The Netherlands, as an example, practice fully legalized and regulated prostitution.¹⁰⁴ The intention of this approach taken by the Netherlands is to reduce the prevalence of human trafficking for prostitution.¹⁰⁵ Since the legislation is basically the opposite to Sweden, so is the definition of prostitution. The Netherlands recognizes also voluntary prostitution, and is not always forced or a result of human trafficking. Forced prostitution is therefore determined and punishable in the Dutch Criminal Code.¹⁰⁶ The legislation was established in order to provide protection to the prostitutes, and thus, develop the identification and punishment of the perpetrators.¹⁰⁷ Also, higher sanctions are imposed on traffickers, and a policy of granting temporary residence permits to victims of trafficking from abroad in order to improve the chances of catching the traffickers has been applied.¹⁰⁸ Selling sex has always been legal, but pimping and brothels were prohibited until 2000 where the reform legitimized these too on the condition that they obtain a license from the

¹⁰¹ *Ibid.*

¹⁰² Jakobsson, Kotsadam (2103), *supra nota* 24, 102.

¹⁰³ *Ibid.*

¹⁰⁴ Hedlin, S. (2017). Can prostitution law reform curb sex trafficking: Theory and evidence on scale, substitution and replacement effects. *University of Michigan Journal of Law Reform*, 50 (2), 333.

¹⁰⁵ *Ibid.*, 334.

¹⁰⁶ Nederlandse Criminele Code, 3 March 1881, art 273(f).

¹⁰⁷ Outshoorn, J. (2004). Voluntary and forced prostitution: The 'realistic approach' of the Netherlands. In: J. Outshoorn (Ed.), *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*, 185-204. New York: Cambridge University Press.

¹⁰⁸ Zeegers, Althoff (2015), *supra nota* 88, 359.

municipality authorities.¹⁰⁹ A license may not be issued if it is considered that illegal forms of prostitution are applied or it is not safe for employees.¹¹⁰ However, the licensing can be seen problematic in cases where the prostitutes are in contact with pimps and not with the business owners maintaining the license. Therefore, a risk of exploitation and coercion can happen through the pimps without the licensed owners knowing about it.¹¹¹ The good side here is that persons without legal documents wanting to work in a licensed area of prostitution market can be seen as impossible, since the license is required for sex establishments and mandatory identification of sex workers. Thus, illegal migrants from outside the EU cannot work in the licensed prostitution markets, which should be considered reducing the amount of illegal prostitution.¹¹²

Brothel owners in particular have effectively refrained from human trafficking with the legalization of prostitution. However, serious exploitation by the pimps continues to exist which seems to be ignored by the Dutch legislators.¹¹³ It is also argued that the legislation has not really affected human trafficking since it is still practiced under the legalized prostitution sector, and brothels are even used as places for sexual services for the victims of trafficking.¹¹⁴ Furthermore, in order to identify human trafficking, more effort from local authorities, such as the police, is needed as they do not always reach the responsibility.¹¹⁵

According to a report from the Dutch reporter on trafficking in human beings and sexual violence in 2017, over 4000 people are trafficked for sexual exploitation in the Netherlands, and young Dutch women and girls being the largest group of victims in trafficking. A national reporter Corinne Dettmeijer stated that “Human trafficking is not in decline. We now know that the number of victims is around 6,250 a year and this means an increasing number of cases are under the radar.”¹¹⁶ Therefore, it can be noted that legalizing prostitution has not brought the numbers of victims down, but rather going into the opposite direction.

¹⁰⁹ *Ibid.*, 360.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, 368.

¹¹² Wagenaar *et al.* (2013). *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*. Retrieved from: http://www.ikf.ac.at/pdf/prostitution_policy_report.pdf, 10 March 2021.

¹¹³ Huisman, W., Kleemans, E. R. (2014). The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands. *Crime, Law and Social Change*, 61 (2), 219.

¹¹⁴ *Ibid.*, 227.

¹¹⁵ *Ibid.*

¹¹⁶ DutchNews.nl. (2017). *Some 6,000 people a year in the Netherlands are victims of trafficking*. Retrieved from: <https://www.dutchnews.nl/news/2017/10/some-6000-people-a-year-in-the-netherlands-are-victims-of-trafficking/>, 29 March 2021.

3. ANALYZING THE LAW ENFORCEMENT AND PREVENTION METHODS

Like examined above, human trafficking for the purpose of sexual exploitation continues to be a serious issue within the EU Member States, and the effects of the Anti-trafficking Directive are clearly not strong enough. Human trafficking is not a new phenomenon in the EU, and debates around the topic have been going on for decades. Different alternatives have been discussed, relevant instruments have been established and various measures have been taken in order to prevent human trafficking. However, there is still a lack of legislation in both the matter of human trafficking for sexual purposes and for prostitution laws, which seem to have an impact on trafficking flows within the EU.

3.1 Issues of the Anti-trafficking Directive and with the EU strategy

Since the Anti-trafficking Directive was established in 2011, effects on human trafficking have been actively followed in the EU. As noted above, the Directive focuses on victims support and protection, and thus, human rights are at the center of this instrument, which is appropriate as the safety of the victims is of great importance. Nonetheless, prevention methods remain scarce and have not received enough attention from the EU legislators, as the issue is only covered in one article. Since the Directive does not provide or require particular actions to combat human trafficking by the Member States, for the prevention methods to be truly effective and human trafficking to be abolished, the EU must lay down more comprehensive and detailed compulsory methods to reduce the demand that promotes all forms of exploitation concerning human trafficking within the Member States.¹¹⁷ The EU should identify more concrete ways to combat human trafficking, for instance, through public awareness in learning about the main reasons why trafficking is still practiced.¹¹⁸ The methods should be mandatory means of prevention that are

¹¹⁷ Symeonidou-Kastanidou (2016), *supra nota* 69, 480.

¹¹⁸ *Ibid.*, 482.

applied by all the Member States, rather than transparent guidelines as currently defined in the Directive.

As Article 18 of the Anti-trafficking Directive presents, the Member States shall consider measures in services where exploitation is possible. In the context of human trafficking for sexual exploitation, prostitution laws are strongly considered to be linked to this issue. Therefore, the EU should provide a more comprehensive and consistent legislation concerning sexual exploitation in order to protect the victims by enabling easier prosecution of perpetrators. In a lot of cases, recognizing the victims of human trafficking of sexual services is very difficult, and due to the differing legislations on the matter of prostitution and different status of the prostitutes, the victims can often go unnoticed.

Furthermore, as sex workers or prostitutes are not covered by the Anti-trafficking Directive and the practice is not recognized as a form of employment, it can be seen as problematic since it seems to prohibit sexual services completely.¹¹⁹ As it has been examined, prostitution as a form of employment is recognized in some of the Member States, and there are individuals who aim to provide sexual services in exchange of money. Thus, this should be another reform in the Directive, where prostitutes can obtain a legal status and to be treated as regular employees, and therefore to protect the prostitutes since the act is regulated and more defined. Forced prostitution, however, shall remain illegal and punishable.

The five priorities provided by the EU Strategy are mostly focused on the victims support and assistance as in the Anti-trafficking Directive. A few additions to the Directive can be seen relevant, but the prevention methods have not been sufficiently addressed here either. As the EU Strategy can only provide recommendations and is not binding for the Member States, legal provisions set in the Directive are therefore more relevant in order to obtain efficient legislative prevention measures.

¹¹⁹ Allwood (2018), *supra nota* 58, 129.

3.2 Issues of free movement and migration

As previously discussed, free movement within the EU can be seen as a facilitating factor in terms of human trafficking. The abolished borders, scarce border controls and travelling without mandatory ID checks have all made the exploiting, moving and recruiting of victims easier. Freedom of movement is a prerogative of an EU citizen and it allows wider possibilities in terms of employment within the Member States. Therefore, these rights shall not be limited or taken away from anyone maintaining them. However, already after the Schengen Agreement, negative effects related to human trafficking have been discovered, in particular, how the perpetrators have benefited from it. Since the border controls were abolished, security checks have reduced and remain as scarce, it has facilitated the easy movement of victims within the Member States. As the problem has been ongoing for years, stronger measures should be taken by the relevant authorities. Europol has stated in 2013, that all EU Member States are being markets for sexual exploitation since the freedom of movement allows easier trafficking of the victims.¹²⁰

Migration is also linked to human trafficking. The issue arises when immigrants end up being trafficked by the perpetrators. As noted above, normally migration occurs due to better living conditions of the destination country. In some cases, illegal migrant smuggling takes its place as there are individuals outside of the EU who do not have permission to reside in the Member States.¹²¹ These are perfect circumstances for the perpetrators to take an advantage of the people wanting to migrate to the EU, since it can be said that these victims are then at the mercy of the perpetrators.

As a result, stricter border controls, in particular, between the countries where trafficking is the most prevalent, should be considered throughout the EU. This would enable easier identification of the potential victims and the perpetrators. Since most of the trafficking victims for sexual exploitation come from Central and Eastern European countries, security and ID checks should be done more often on the borders of these specific Member States. This could therefore act as another factor in reducing trafficking in human beings, and thus, being another preventive measure, which would facilitate abolishing human trafficking within the EU.

¹²⁰ *Supra nota* 51. (Europol 2013).

¹²¹ Goodey (2003), *supra nota* 52, 415.

3.3 Issues with varying prostitution laws

Prostitution has always been connected to human trafficking, since forced prostitution is a very common form for the trafficked victims. So far, there is no coherent legislation on prostitution in the EU but the matter should be considered by the legislators as it has a serious impact on human trafficking.

According to statistics, human trafficking is the highest in the countries with legalized prostitution.¹²² However, an important observation is that the data concerning trafficking flows is not strictly correct and all cases are impossible to trace. Therefore, where the Swedish government has stated that human trafficking numbers have gone down after the ban of purchasing sexual services, cannot be considered as accurate. There are always cases which remain outside of the knowledge of the authorities, and as discussed before, human trafficking is still actively practiced within the EU and all of the Member States are affected by it. Furthermore, according to the Dutch report in 2017, number of trafficking victims is increasing rather than going down after the legalization of prostitution. As Europol has stated, there is still a high demand for sexual services in the Member States, and therefore it can be said that by criminalizing the act would rather increase the amount of forced prostitution than decrease the practice. Consequently, even though the number of trafficking victims is increasing in the Netherlands, illegalizing prostitution would not have a substantial impact in flows of human trafficking, as purchasing sexual services is very common inside the country. Another significant finding concerns the fact that some of the Member States prohibit prostitution and the purchase of sex has been made illegal in order to reduce human trafficking. However, there are a lot of buyers in these countries who travel to the Member States, such as the Netherlands and Germany, where buying sexual services is not criminalized.¹²³

Legislated prostitution in the Netherlands has demonstrated a good example of benefits of the conditions of prostitutes. Since prostitution has been legalized, it is also recognized as a form of employment, meaning that the prostitutes are secured by the governmental benefits and are regular tax payers of the country. As the example of New Zealand shows that once prostitution is legalized, it allows better protection for the prostitutes and the act can be properly regulated. Where the prostitutes can obtain a legal status in the country, it also enables easier prosecution of the

¹²² Jakobsson, Kotsadam (2013), *supra nota* 24, 102.

¹²³ Chapuis, A. (2017). Touring the immoral. Affective geographies of visitors to the Amsterdam Red-Light district. *Urban Studies*, 54 (3), 617.

perpetrators since cases containing abuse or exploitation can be taken to the court or to other relevant authorities.¹²⁴ Also, this example demonstrates that the amount of prostitution as a result of human trafficking is low since only 4% of the sex workers were forced to work in the industry.¹²⁵

The Swedish case study discovered that as the purchase of sex is illegal, the conversations between the prostitute and the client remain short due to the fear of getting caught, and thus, potential risks of violence or exploitation by the buyers are harder to identify. However, where the purchase of sex is legalized as it is in the Netherlands, negotiations can be longer between the parties and risks are easier to recognize at an earlier stage, and therefore cases of violence or exploitation can be potentially avoided. In addition, where the purchasing is legal and buyers are not punished for the act, their status is then legally covered. More specifically, if the buyer comes aware of potential cases of human trafficking or suspects the seller being a trafficking victim, it enables the buyers to take these cases forward to the police or to other authorities without a fear of getting punished.

As in the Netherlands, a license is required of a prostitute in order to work in the industry, this can be seen as a positive factor in terms of human trafficking. If the license was required and mandatory all over the EU, legal sellers would be easier to identify as they would be able to present a license to certify their status. As the case study showed, a license is also only given to the EU-citizens who maintain a legal permission to reside and work in the Member States. This, as an EU law, would reduce and potentially abolish the illegal migrants working as prostitutes since they could not obtain the license as they are not citizens of the EU and do not maintain a work permission. Therefore, this would enable easier recognition of the victims of human trafficking since prostitutes selling sexual services legally are required to maintain the license. In contrast to those without a license, might be considered victims of forced prostitution and the cases can be taken to the police, and therefore increasing the possibility of catching the perpetrators. However, issues have been recognized between the pimps and prostitutes, as the pimps do not own a legal license for the practice. This often leads into another problem where the brothel owners do not become aware of the cases of exploitation by the pimps. Even though the brothel owners act according to the legal rules and under the relevant legislation, the pimps are staying outside of this area and work under the brothel owner's status, and therefore remain hidden. The issue concerning the pimps seems not to be taken into consideration by the Dutch legislators, and it will need more attention when considered from an EU perspective to make the law as effective as possible.

¹²⁴ Kingston, Thomas (2019), *supra nota* 3, 429.

¹²⁵ *Ibid.*

As previously examined, demand for sexual services is not decreasing in the EU but rather going to the opposite direction. A coherent legislation on prostitution in the EU, following the Dutch model for instance, would allow easier identification of human trafficking in this particular area due to the aforementioned factors. Effective protection of victims requires actions from all of the Member States, and consistent rules and laws on this issue better enable prosecution of the perpetrators.

CONCLUSION

The purpose of this thesis was to examine the most effective measures to fight human trafficking for the purpose of sexual exploitation in the European Union, and in particular, to focus on the prevention methods through the regulation of prostitution. The thesis has provided an overview of the present situation of human trafficking for sexual purposes in the EU, and focused on the shortcomings of the current legislative framework of the EU. The aim of the thesis was to research and propose different alternatives to this issue that could be done through the law enforcement authorities.

The hypothesis of this thesis was that there are not strong enough measures to combat human trafficking for the purpose of sexual exploitation in the EU through the Anti-trafficking Directive, and that there is a lack of legislation on prostitution within the Member States. The thesis demonstrated that this is a serious issue which is largely recognized in the EU since various measures have been taken, and debates around the topic have been ongoing for decades. Human trafficking for sexual purposes does not only violate the fundamental human rights of the victims but is also criminal activity which is actively practiced by the perpetrators. As the issues on human trafficking are recognized within the Member States and outside the EU, different legal instruments have been presented in order to fight the phenomenon.

This thesis aimed to provide alternatives and possible solutions for this issue, to research what are the main factors leading to the practice of human trafficking for the purpose of sexual exploitation and to assess possible preventive legislative measures. The research showed that possible prevention methods have been in discussion over the times, the effectiveness of the current legislative framework in the EU is not strong enough and that a lack of legislation on prostitution is a remaining issue within the Member States. Prostitution laws are assessed between contrasting Member States and an EU wide legislation on prostitution is suggested. A coherent EU legislation would enable easier prosecution of perpetrators, and transparent laws in all Member States would enable easier regulation by the law enforcement authorities.

According to the data collected, issues with the freedom of movement, migration and varying prostitution laws are the most impactful in terms of combating human trafficking for the purpose of sexual exploitation in the EU. Free movement and migration are both linked to human trafficking and they can be considered as facilitating factors. The freedom of movement has allowed easier exploiting, moving and recruiting of victims inside the Member States, and it has been an ongoing issue already since the Schengen Agreement. Migration has become even less complicated due to the freedom of movement, and has enabled the perpetrators to benefit from illegal migration by taking advantage of the migrants coming from outside the EU. For this reason, stricter border controls should be considered by the EU legislators between the countries where human trafficking is the most prevalent.

The issue of human trafficking for the purpose of sexual exploitation connects closely with prostitution, and therefore legislation on this matter should also be reviewed. The suggested solution is the EU to have a coherent legislation on prostitution, which would enable easier identification of potential cases of human trafficking. According to the research and statistics found, the EU should consider adopting the Dutch model on prostitution since legalizing prostitution is a more effective measure than criminalizing the practice, as the aim is to abolish human trafficking entirely. Also, the demand for sexual services is not decreasing in the EU but is rather going to the opposite direction. However, there are flaws in prostitution laws within the Member States, including the Dutch legislation on prostitution, and the legal framework will need more improvements in order to be as effective as possible, in particular, when considering from an EU perspective.

The debates on the topic will in all probability continue in the future, and different measures will be taken by the EU and the Member States in combating human trafficking, especially, for the purpose of sexual exploitation. A single effective instrument might be difficult to establish since the issue of human trafficking has been ongoing for decades, and to date not effective enough measures have been implemented. Since the EU is considered as the main destination for the victims of human trafficking for the purpose of sexual exploitation, it will require stronger legislative measures from the law makers but cooperation between the Member States is even more required. All things considered, in order to obtain a more comprehensive understanding on this issue, further research and more relevant data will be needed.

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