

This submission is intended for the attention of the Minister for Justice and Equality with a view to inform the Minister's decision in relation to the future of prostitution regulation in Ireland. The submission was prepared by Dr Monica O'Connor, researcher and policy analyst. It focuses on the first country that implemented an approach to prostitution regulation that focuses on demand reduction, which later became known as the Nordic approach as it was implemented in other countries. Presently, Sweden Norway and Iceland operate such a model of regulation, while places like France, Canada, Northern Ireland and various parts of the United States have an advanced legislation process on its implementation.

The Swedish Approach

The Law

In 1998, Sweden became the first country in the world to introduce a prohibition on the purchase of sexual services. The prohibition was part of a comprehensive piece of legislation addressing violence against women, which included extensive improvements to laws and policies on sexual violence, rape, sexual harassment, female genital mutilation and a new offence "gross violation of a woman's integrity" which increased the penalties for repeated physical, sexual or psychological male domestic violence (Swedish Government Offices (SOU), 1998). Offences criminalised under the Swedish Penal Code (Section 11, 1998 Act) comprise the purchase of any form of sexual services, whether they are purchased on the streets, in brothels in massage parlours, from escort services or in other similar circumstances Those selling sex (women or men) do not risk any legal repercussions as they are considered to be exploited by the procurers and the buyers.

Intention and concepts informing the law

Declarative and normative law: The law in Sweden is not seen as merely punitive but declarative and normative sending out a clear statement that prostitution is harmful not only to the individual prostituted woman or child, but also to society at large and contrary to Sweden's goal of achieving equality between women and men and contrary to the dignity and human rights of people. It seeks to give young men and women the message that buying a person for sexual gratification is not normal, acceptable or harmless behaviour. According to Margareta Winberg (2002), the Swedish Deputy Prime Minister at the time the law was enacted: "States that call themselves democratic" have no role in legalising "men's sexual exploitation of women".

Consent: The Swedish law is not repressive of sexuality but progressive, in that it distinguishes between adult consensual sex and prostitution. The law is not defining adult consensual sex as an offence; it is defining the buying of a person for the purpose of sexual gratification as an offence. The 'consent' of the person is obtained within the context, of on the one hand, a person who agrees to unwanted sexual acts, which otherwise they would *not voluntarily* allow with that person, and on the other hand a person with money who can demand the sexual acts of their choice. This is the commercialisation of sex as a product to

be bought; it is not two equal individuals engaging in a mutual sexual experience. The Swedish approach removes consent as the defining factor in whether sexual exploitation and harm exist as it considers these to be *inherent* to the prostitution exchange, regardless of the degree of consent. The attempt to portray those supporting the Swedish approach as denying the rights of people to engage in free, adult consensual sex is a distortion of the law's intention.

Coercion and choice: The Swedish approach recognises the coercive *context* in which women enter prostitution which has been demonstrated by an extensive international body of research and evidence indicating severe poverty, child sexual abuse, early home leaving and homelessness in the early lives of girls and women who enter prostitution. Therefore, the Swedish approach recognises this coercive context *prior* to entry and the circumscribed circumstances which pertain to all women and girls 'choice' in entering thus it does not criminalise the seller. Secondly, in relation to other offences such as coercion, assault, violence and rape of people in prostitution by buyers or pimps, these are already offences in criminal law and should always be investigated and prosecuted as a serious crime; similarly in terms of pimping and procuring these are already illegal. Therefore the Swedish law criminalising buyers is adding an additional offence of buying to the existing array of offences available to the police in order to prevent sexual exploitation and reduce demand.

Deterrence and criminalisation: The law in Sweden was intended as deterrent for men, and in particular young men, in relation to the purchasing of a person for sex. Figures relating to the criminalisation of the buyers in police reports indicate that almost 90% admit to the offence and the vast majority are dealt with by fines, which are calculated as 50 days of fines proportional to the offenders' income. No person has been imprisoned under the legislation. Buyers are informed that the law is a deterrent and that a first offence is dealt with by fine. However, the consequences of further offences are also outlined in relation to going to court and the possibility of being involved in what are still considered more serious offences, such as the buying of trafficked girls and women.

The evaluation of the Swedish approach

In 2008 the Swedish government established a high-level Inquiry to investigate how the law had worked in practice and what effect it has had on the incidence of prostitution and human trafficking over the past decade. The report of the Inquiry is extremely positive and concludes that the law has been an important instrument in preventing and combating prostitution and human trafficking for sexual purposes. They concluded that:

- Street prostitution in Sweden has halved since the introduction of the ban
- In comparable countries, Norway and Denmark, the number of people in street prostitution has increased dramatically in the same period, three times higher than in Sweden
- There is no evidence that prostitution has gone underground.
- Indoor prostitution including massage parlours, sex clubs and hotels has not increased
- Internet prostitution has increased in all three countries over the past decade but is much more extensive in neighbouring countries.
- There is no indication that criminalisation has increased the risk of violence or worsened the conditions of those people exploited through prostitution
- Trafficking is considered to be of a substantially smaller in scale than in comparable countries. The National Criminal Police believe the law has acted as a barrier to human traffickers and procurers establishing themselves in Sweden.

- There has been a marked change in attitude to the purchase of sexual services that coincides with making it a criminal offence to buy sex. There is now strong support for the ban on purchasing sexual services in Sweden (70%-80%)
- The ban has proved to be an effective deterrent to sex purchasers with a decrease in buying from 13.6% in 1996 to 7.9% in 2008;

The Inquiry recognises that criminalisation has to be part of an overall strategy and stresses the necessity of continued and sustained social work and resources for police and law enforcement. They recommend the establishment of a national centre to co-ordinate prevent and combat prostitution and human trafficking for sexual purposes.

Police enforcement

The law has the full support of the police in Sweden for tackling organized crime and the growth of the sex trade. In 2011, Jonas Tolle Chief Inspector with the Stockholm police with responsibility for combating trafficking, prostitution estimates that in the last few years between 200 to 400 women and girls have been annually trafficked into Sweden for prostitution while in Finland the number is 15,000 to 17,000. In relation to prostitution he estimates that there are between 105 and 130 women – both on the internet and on the street active in prostitution in Stockholm today. In Oslo it is 5000. Some of the early criticisms of the enforcement of the law highlighted the police focus on street prostitution and that the major part of the industry had simply gone underground. However, these observations need to be placed in a wider context as from the 1990's on the arrival of web based technology and mobile phones resulted in a major shift indoors and to "escort" agencies within all European countries. Recent reports from the Special Rapporteur on Trafficking in Sweden (Wahlberg, 2009; 2010) recognise this shift, and indicate that current policing measures prioritise surveillance operations on apartments, and telephone tapping to investigate the indoor market.

Anti-trafficking measure

In Sweden trafficking for sexual exploitation and prostitution are regarded as intrinsically linked, with all people exploited in prostitution regarded as victims of an offence, albeit of different levels of gravity. The reports of the Swedish National Rapporteur cover crimes related to both and police enforcement policy is to prosecute pimps, traffickers and buyers within a range of offences including trafficking, aggravated procuring, pimping, procuring, attempted/aided procuring and buying (Wahlberg, 2011). In the 2011 report for example, there were twenty seven convicted offenders which included three for sex trafficking, five for trafficking for other purposes, one for assisting trafficking, four for aggravated procurement, and fourteen for procurement (p. 2011). In an important amendment to the legislation in 2010, the government revised its anti-trafficking law to clarify that evidence of a victim's *initial* consent does not override evidence of subsequent coercion in the context of trafficking prosecutions, which is of major significance to how victims of trafficking are defined and identified. It is worth noting that the Swedish law was not primarily introduced as an anti-trafficking measure, but the police and the High Level Inquiry consider that Sweden has become a more difficult country for traffickers to operate in than in other similar states (SOU, 2010).

Comparative figures

Current estimates are that Sweden (pop. 9 million) has 600 women in prostitution, compared to Denmark (pop. 5.6 million) which has over 5,500 women visible in prostitution (Waltman, 2011). In the Netherlands (pop. 16.5 million) where the commercial exploitation of prostitution is fully legalised since 2000, it is estimated that 25,000 people are involved in 0 prostitutes are involved in the legal sector with legal brothels numbering 1,300-1,700, and an unknown number of illegal and non-location bound premises i.e. 'escort' agencies, (Daalder, 2007). In Stockholm (pop. 1.3 million) it is estimated that there are about 150-200 people engaged in prostitution compared to Amsterdam with a population of 750,000, where it is now believed between 8000 and 11,000 people are located in brothels. A recent paper commissioned by the International Labour Organisation indicates that Germany, which introduced a more liberal prostitution law in 2002, is estimated to have 150,000 people working as prostitutes which means that the number of

prostitutes in Germany is more than 60 times that of Sweden, while having a population of 82 million, less than 10 times larger (Danailova-Trainor & Belser, 2006).

In terms of human trafficking victims, a recent expert paper has demonstrated that regardless of the prostitution regime and the commitment to anti-trafficking measures, it is the *scale* and the *demand* of the sex industry that is the defining factor in the number of trafficked women supplied to the market (Seo-Young, Dreyer & Neumayer, 2012). The authors have demonstrated a direct corollary between the level of trafficking in a destination country and the size of the sex industry, which they acknowledge inevitably experiences major expansion within a legalised regime. It is estimated that between 10% and 24% of girls and women in prostitution will fit the definition of trafficking within the UN Palermo protocol. This clearly has major implications for legalised regimes and their attempts to reduce the numbers of women trafficked for sexual exploitation. Therefore, tolerating the growth of the sex industry to grow as in Ireland, and legalising or regulating as in the Netherlands, directly contributes to the increasing numbers of people being recruited and trafficked for sexual exploitation.

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