

**EUROPEAN GENDER EQUALITY UNDER AND
AFTER STATE SOCIALISM:
LEGAL TREATMENT OF PROSTITUTION IN THE
CZECH REPUBLIC**

**BARBARA HAVELKOVÁ
EXETER COLLEGE**

MST.

TRINITY TERM 2009

Abstract

BARBARA HAVELKOVÁ, EXETER COLLEGE

MST. DEGREE, TRINITY TERM 2009

The thesis looks at the legal responses to prostitution in Czechoslovakia and the Czech Republic under State Socialism and in Transition, and the understanding of gender equality therein.

It argues that both, the legal regimes and the understandings of prostitution, varied between these periods. Under State Socialism, professional prostitutes were criminally liable under provisions on parasitism. In Transition, the ‘boom’ of prostitution after 1989 lead to the adoption of containment provisions, the violation of which results in fines for prostitutes.

While being repressive toward prostitute as a work-shirker, the Socialist State, inspired by Marxist ideology, had aspirations to eliminate prostitution, which it saw as exploitation of women. Policy influencing actors in Transition, on the other hand, have become resigned to its existence. Prostitution has been seen as pathological but inevitable. As prostitutes have been mostly considered agents making free choice, they have been treated as legitimate objects of containment, state regulation and control.

Gender equality, it is argued, was insufficiently considered during both periods. Because feminists (the sex-work and the sexual domination positions) fundamentally disagree about the best legislative regime, the thesis chose to work with the standard of ‘well-being of the prostitute’. At least, this requires for prostitutes not to be treated worse

than procurers or clients, for example with regards to administrative, health or criminal obligations and liability. The thesis argues that State Socialism as well as Transition failed this minimal test – both regimes are marked by an absence of feminist analysis of the phenomenon of prostitution and a legal conceptualization of it as a gender equality issue.

Number of words in the thesis: 29,680

Acknowledgements

I would like to thank Petra Kutálková, Lenka Myslíková, Jana Poláková and Dagmar Císařová for helping me understand the realities of prostitution and trafficking in the Czech Republic. I am also very grateful to Blanka Hančilová, Bettina Lange and Hana Havelková for their insightful comments on my drafts. This thesis would not have been finished without Simon Ford's last-minute proof-reading and Kubo Mačák's last minute technical help.

Last but not least my gratitude goes to my supervisor, Sandra Fredman, for constant support, subtle guidance and inspiring feedback; and above all for either nudges or comfort at the right moments throughout the year.

Table of Contents

ABSTRACT	II
ACKNOWLEDGEMENTS	IV
TABLE OF CONTENTS	V
TABLE OF ABBREVIATIONS AND SHORT TERMS.....	VII
TABLE OF CASES	VIII
TABLE OF STATUTES	IX
INTRODUCTION	1
CHAPTER 1 APPROACHES TO PROSTITUTION.....	4
1.1 REGULATORY REGIMES	4
1.2 FEMINIST APPROACHES	11
1.2.1 <i>The sex-work position</i>	12
1.2.2 <i>The sexual-domination position</i>	14
1.2.3 <i>Intra-position differences and critique</i>	16
1.2.4 <i>Inter-position differences and critique</i>	18
CHAPTER 2 IDEOLOGIES	22
2.1 MARXISM.....	23
2.1.1 <i>Practice in socialist states</i>	26
2.1.2 <i>Marxism and Feminism</i>	27
2.2 NEO-LIBERALISM AND CONSERVATISM	29
CHAPTER 3 INTERNATIONAL, REGIONAL AND EUROPEAN LAW	31
3.1 THEMES OF INTERNATIONAL ANTI-TRAFFICKING LAW	33
3.1.1 <i>Sexual or other forms of exploitation</i>	33
3.1.2 <i>Gender specificity or gender neutrality</i>	33
3.1.3 <i>Definition</i>	35
3.1.4 <i>Voluntary or involuntary prostitution</i>	37
3.1.5 <i>Cross-border or domestic</i>	40
3.1.6 <i>Law-and-order or a human rights approach to trafficking?</i>	41
3.2 INTERNATIONAL LAW IN NATIONAL LAW	46
3.3 CZECHOSLOVAKIA AND CZECH REPUBLIC'S INTERNATIONAL OBLIGATIONS	47
CHAPTER 4 THE REALITY OF PROSTITUTION IN CZECHOSLOVAKIA AND THE CZECH REPUBLIC	50
4.1 STATE SOCIALIST PERIOD (1948-1989).....	50
4.2 TRANSITION PERIOD (1989 TO TODAY).....	51
CHAPTER 5 PROSTITUTION UNDER STATE SOCIALISM.....	59
5.1. LEGAL DEVELOPMENT IN THE PRE-SOCIALIST PERIOD.....	59
5.2 LEGAL DEVELOPMENT UNDER STATE SOCIALISM	61
5.2.1 <i>Offences against morality and socialist morality</i>	61
5.2.2 <i>Health</i>	64
5.2.3 <i>Other regulation</i>	65
5.2.4 <i>Procurement and trafficking</i>	66
5.3 UNDERSTANDING PROSTITUTION UNDER STATE SOCIALISM - REPORTS AND DEBATES.....	66
5.3.1 <i>The nature of prostitution</i>	67
5.3.2 <i>Legislative responses and their goals</i>	71
5.3.3 <i>Prostitution as gender equality?</i>	74

5.3.4	<i>Influences by ideology and international law</i>	74
CHAPTER 6	PROSTITUTION IN THE TRANSITION PERIOD	76
6.1	LEGAL DEVELOPMENT.....	76
6.1.1	<i>An end to repressive attitudes to prostitutes under criminal law?</i>	76
6.1.2	<i>Defining prostitution and its status</i>	78
6.1.3	<i>Containing prostitution – municipal zoning</i>	79
6.1.4	<i>Defining exploitation – procurement and trafficking</i>	82
6.1.5	<i>Victims of trafficking</i>	84
6.2	PROPOSALS FOR CHANGE	87
6.2.1	<i>Criminalization of prostitutes</i>	87
6.2.2	<i>Regulation of prostitution</i>	88
6.2.3	<i>Publicizing the transactions</i>	94
6.3	UNDERSTANDING PROSTITUTION IN TRANSITION	95
6.3.1	<i>What is prostitution?</i>	95
6.3.2	<i>Is the prostitute a victim or a villain?</i>	97
6.3.3	<i>Repressive or permissive approach?</i>	100
6.3.4	<i>Legislative goals</i>	102
6.3.5	<i>Feminist analysis?</i>	102
6.3.6	<i>A legal argument for gender equality?</i>	103
6.3.7	<i>External influences vs. indigenous development</i>	106
	CONCLUSIONS	108
	BIBLIOGRAPHY	110

Table of abbreviations and short terms

1922 Act	Act No. 241/1922 Coll. Act on Fight against Venereal Diseases
1949 Convention	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271, 282.
1950 CC	Act No 86/1950 Coll. Criminal Code
1961 CC	Act No 140/1961 Coll. Criminal Code
2002 Framework Decision	Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings, 2002 O.J. (L 203) 1.
2004 Directive	Council 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, 2004 O.J. (L 261) 19
2005 European Convention	Council of Europe Convention on Action against Trafficking in Human Beings, May 3, 2005, C.E.T.S. 197.
2009 CC	Act No 40/2009 Coll. Criminal Code
CCC	Czech Constitutional Court
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14.
Coll.	Czech Collection of Statutes
Coll. IT	Czech Collection of International Treaties
CSO	Czech Statistical Office
ČSSD	Czech Social Democratic Party
EC	European Communities
ECHR	European Convention of Human Rights
ECJ	Court of Justice of the European Communities
ECtHR	European Court of Human Rights
EU	European Union
GCzR	Government of the Czech Republic
ILO	International Labour Organization
KDU-ČSL	Czech Christian Democratic Party
KSČM	Czech-Moravian Communist Party
MI	Ministry of Interior
ODS	Civic Democratic Party
Palermo Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001).
STD	Sexually Transmitted Disease
UN	United Nations
UNHCHR	United Nations' Office of the High Commissioner for Human Rights
VAW	Violence against Women

Table of Cases

Constitutional Court of the Czech Republic

CCC Decision of 8 March 2007; Ref. No. Pl. ÚS 69/04; published as No. 161/2007 Coll.	80-81, 96, 98
CCC Decision of 13 March 2007; Ref. No. Pl. ÚS 10/06; published as No. 163/2007 Coll.	81, 99
CCC Decision of 21 September 2004; Ref. No. Pl. ÚS 50/03; published as No. 567/2004 Coll.	80
CCC Decision of 24th November 1998; Ref. No. Pl. ÚS 38/97; published as No. 293/1998 Coll.	80

Court of Justice of the European Communities

Jointed Cases 115 and 116/81 <i>Adoui and Cornuaille v. Belgian State</i> [1982] ECR 01665	39
Case C-268/99 <i>Aldona Malgorzata Jany and Others and Staatssecretaris van Justitie</i> [2001] ECR I-08615	39, 90

European Court of Human Rights

Case <i>Tremblay vs. France</i> App. No. 37194/02 (Sept. 11 2007) (Eur. Ct. H.R.)	40, 82
---	--------

Table of Statutes

Czech Republic

1803 Codex of municipal crimes capital and severe (Kniha práv nad přečiněními hrdelními a těžkými řádu městského)	59
Act No. 117/1852 Imperial Code (o zločinech, přečinech a přestupcích)	59-60, 65
Act No. 241/1922 Coll. (o potírání pohlavních nemocí)	59-60, 65
Act No. 158/1949 Coll. (o boji proti pohlavním nemocem)	65
Act No. 86/1950 Coll. (trestní zákon)	63, 65-66
Act No. 88/1950 Coll. (trestní zákon správní)	62-63
Act No. 40/1955 Coll.	65
Act No. 63/1956 Coll.	61, 66
Act No. 38/1961 Coll. (o místních lidových soudech)	62
Act No. 60/1961 Coll. (o úkolech národních výborů při zajišťování socialistického pořádku)	62-63, 76
Act No. 140/1961 Coll. (trestní zákon)	62-63, 65, 77, 82-84
Act No. 141/1961 Coll. (trestní řád)	85
Act No. 58/1965 Coll. (Zákon kterým se upravuje postih provinění a přestupků osob opětovně se dopouštějících výtržnictví, násilností a příživnictví)	62, 64
Act No. 20/1966 Coll. (o péči o zdraví lidu)	65
Act No. 150/1969 (o přečinech)	62
Act No. 175/1990 Coll.	76-77
Act No. 200/1990 Coll. (o přestupcích)	76, 81
Act No. 367/1990 Coll.	79
Act No. 455/1990 Coll., (živnostenský zákon)	78, 96
Act No. 513/1991 Coll. (obchodní zákoník)	78
Act No. 553/1991 Coll. (o obecní policii)	95
Act No. 302/1992 Coll.	79
Act No. 2/1993 Coll., Charter of Fundamental Rights and Basic Freedoms	80
Act No. 290/1993 Coll.	83
Act No. 279/1995 Coll.	79
Act No. 286/1996 Coll.	78
Act No. 326/1999 Coll. (o pobytu cizinců)	85
Act No. 128/2000 Coll. (obecní zřízení)	80
Act No. 134/2002 Coll.	82
Act No. 537/2004 Coll.	83-84

Act No. 161/2006 Coll.	85
Ordinance of the City of Dubí No 2/2007	81
Order of the Capital City of Prague No. 20/2007	81
Guidelines of the First Deputy Minister of the Interior No. 5 of 26 October 2007 on the functioning of the Programme to Support and Protect Victims of Trafficking in Human Beings and on responsible institutions.	86
Instruction of the Minister of the Interior No. 64 of 26 October 2007 establishing an Interdisciplinary Working Group within the National Coordination Mechanism to support and protect victims of trafficking in human beings	86
Act No. 40/2009 Coll. (trestní zákoník)	65, 77, 83-84

European Union

Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1	45
Council Decision 2001/87/EC of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea, OJ L 30, 1.2.2001, p. 44–44	35
Council Directive 2002/90/EC Defining the Facilitation of Unauthorized Entry, Transit and Residence, 2002 O.J. (L 328) 17	42
Council Directive 2004/80/EC Relating to Compensation to Crime Victims, 2004 O.J. (L 261) 15	45
Council 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, 2004 O.J. (L 261) 19	45
Council Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, 2001 O.J. (L 82)	45
Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings, 2002 O.J. (L 203) 1	32
Council Framework Decision 2002/946/JHA on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence, 2002 O.J. (L 328) 1	42
Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 2003 O.J. (C 137)	45
Council Resolution on Initiatives to Combat Trafficking in Human Beings, in Particular Women, 2003 O.J. (C 260) 3	45

International

International Agreement for the Suppression of the “White Slave Traffic,” May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83	31
International Convention for the Suppression of the White Slave Traffic of 1910, LNTS No. 8a	31
International Convention to Combat the Traffic in Women and Children on 1921, LNTS 9.415	31
Forced Labor Convention, 1930 (C29), June 28, 1930, 39 U.N.T.S. 55, ILO CR 155	39
International Convention for the Suppression of the Traffic in Women of Full Age of 1933, LNTS 150.431	31
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271, 282	31
Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 222	40
Abolition of Forced Labor Convention, 1957 (C105), June 25, 1957, 320 U.N.T.S. 291	39
Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14	32
Committee on the Elimination of Discrimination Against Women, Gen. Recommendation No. 19, U.N. Doc. A/47/38 (Jan. 29, 1992)	34
Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. p. 313 GAOR, 48th Sess., Supp. 49 at 271, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).	34
Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF 183/9 (1998)	32
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001)	31
Council of Europe Convention on Action against Trafficking in Human Beings, May 3, 2005, C.E.T.S. 197	32
UN Office of the High Commissioner for Human Rights 'Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002. E/2002/68/Add.1. Online. UNHCR Refworld' (2002) http://www.unhcr.org/refworld/docid/3f1fc60f4.html (13 May 2009)	44

Introduction

The following thesis examines whether and how gender equality has been understood and translated into legal responses to adult prostitution in a post-communist Central European country. Using the example of the Czech Republic,¹ and its historical predecessor Czechoslovakia,² it looks at two periods, State Socialism (1948-1989) and Transition (1989-today), and the continuities and discontinuities between them.

Prostitution is used as a case study for an examination of the local legal understanding of gender equality, as it is a gendered phenomenon in reality and raises questions about the application of the legal principle of gender equality. Moreover, the issue of prostitution does not prompt a straightforward ideological response, arising logically from a prevailing political belief system, nor from feminist legal scholarship.

I thus begin by setting out the contrasting theoretical positions taken by Western feminists on prostitution in Chapter 1. Both positions (sex-work and sexual domination) are given equal attention and I do not choose between them. This is because I am examining a legal system (post-Communist, Central European), for which no specific indigenous feminist theory has yet been developed. By setting out a detailed analysis of the contrasting theoretical positions, I hope to both provide a means for a critical assessment of Czech legal institutions in the light of Western feminist critique, as well as to prepare the ground for a possible later critical assessment of Western feminism in the light of concrete findings about legal treatment of gender equality (in prostitution) in a Central European country.

¹ 1993-today.

² 1918-1992.

In order to determine to what extent the legal development has been independent and indigenous, it is important to discuss influences on it. Ideology and international obligations are both important contexts in which the national responses to prostitution are created. The understanding of prostitution in Marxism, relevant for the State Socialist period, and in neo-liberalism and resurgent conservatism, in the Transition period, will be presented in Chapter 2. International law,³ applicable to the Czech Republic, is then introduced in Chapter 3. As in the presentation of feminist debates in Chapter 1, and for the same reason, the discussion of the international framework is both intensive and extensive. In contrast to much existing literature which comments from a (sex-work or sexual domination) position, here all relevant themes and issues are presented.

Chapters 4, 5 and 6 apply this theoretical framework to the Czech material. These chapters answer the following three questions: (i) whether prostitution and trafficking existed or exists, and in what form and scale; (ii) what has been the legal response to it; and (iii) what has been the understanding of prostitution among actors influencing policy decisions and what have been their possible proposals for legal change.

Chapter 4 answers the first question and presents the realities of prostitution in Czechoslovakia and the Czech Republic. Given the fact that neither comprehensive data nor analysis exist for either period, Chapter 4 seeks to remedy this gap. It draws together the existing fragmentary material to present as precise a picture of the development as possible.

Chapters 5 and 6 answer the second and third questions for the period of State Socialism and Transition respectively. In both chapters, I first analyse the development of

³ International law, regional law and EC/EU law are discussed.

the black-letter law addressing prostitution and trafficking (5.2 and 6.1). I examine whether the prostitute was an object of containment, regulation, control or (criminal) repression; what was the legal treatment of the facilitation of prostitution (especially the definitions of crimes of procurement and trafficking); and whether clients were addressed by the law. Subsequently, I look at the understanding of prostitution among actors influencing policy decisions using contemporary documentary materials, in particular expert or ministerial reports, explanatory memoranda to legislative proposals, parliamentary debates and academic literature (5.3; 6.2 and 6.3). In particular, I examine (i) the various conceptions concerning the nature of prostitution and prostitute, especially the presence of a gender analysis of the phenomenon of prostitution or a lack thereof; and (ii) the legislative goals and justifications behind policy proposals, especially in terms of adherence to the legal principle of gender equality.

Chapter 1 Approaches to prostitution

The term prostitution is in everyday parlance understood as ‘commercial sex’⁴ or ‘the exchange of sex or sexual services for money or other material benefits’.⁵ The definition is however not undisputed. In academic writing, it is dependent on one’s theoretical position (the two irreconcilable feminist positions are presented below in 1.2). In legal texts, where present at all,⁶ the definition is dependent on the regulatory regime taken by the national jurisdiction (see 1.1).

1.1 Regulatory regimes

Prostitution is an institution that most states try to control. Joyce Outshoorn distinguishes between four goals of state intervention: to maintain law and order, preserve morals, prevent the spread of sexually transmitted diseases (STDs), and protect women from exploitation.⁷

The literature distinguishes between several regulatory approaches to prostitution. The terms used to describe these approaches or regimes are prohibitionism, criminalisation, abolitionism, decriminalisation, regulation, legalisation, and

⁴ L Shrage, 'Should Feminists Oppose Prostitution' (1989) 99 (2) *Ethics* 347, 348.

⁵ J Outshoorn, 'Introduction: prostitution, women and politics' in J Outshoorn (ed) *The Politics of prostitution: women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004), 3.

⁶ A comparative study of 17 European countries revealed that only two of them, Austria and the UK, had a legal definition. B Hančilová and C Massey, *Evaluation of EU Member States' legislation and the situation concerning trafficking in human beings for the purpose of sexual exploitation* (International Centre for Migration Policy Development; Unpublished manuscript on file with the author 2009), 107.

⁷ Outshoorn (2004), 7.

deregulation.⁸ Upon closer examination, these terms are not very helpful, since they do not use a single reference framework – their categorizing criteria vary.

In order to classify regulatory regimes, or to create a map or a spectrum, I believe it is imperative to consider, at least, the three following issues: (i) the regime's overall attitude to prostitution - whether it aims to eliminate prostitution or is permissive of it; (ii) the treatment of the actors involved in prostitution – the prostitute, the client, the procurer; and (iii) what legislative goals does it primarily pursue.

To begin with the first issue, namely repressiveness or permissiveness toward prostitution, on the one side of the spectrum, one finds regimes which aim at the elimination of prostitution. First, this can be done by prohibition of prostitution in its entirety - by criminalizing both the buying and selling of sex and related activities. Such a regime (often referred to as prohibitionist or criminalization) can be found in the US,⁹ and in Europe in Romania.¹⁰

A second approach to the elimination of prostitution does not target the prostitute's behaviour, but focuses on stifling demand, by criminalising the buyers and procurers of sex. Often referred to as abolitionist or neo-abolitionist,¹¹ it is exemplified

⁸ Ibid; M Wijers, 'Women, Labor and Migration: The Position of Trafficked Women and Strategies for support' in K Kempadoo and J Doezema (eds) *Global sex workers: rights, resistance, and redefinition* (Routledge, New York 1998).

⁹ This is true for the entirety of the United States with the exception of parts of Nevada. See CA MacKinnon, *Sex equality* (2nd edn, Foundation Press; Thomson/West, New York [St. Paul, Minn.] 2007), 1236; RJ Weitzer, 'The Politics of Prostitution in America' in RJ Weitzer (ed) *Sex for sale: prostitution, pornography, and the sex industry* (Routledge, New York 2000).

¹⁰ Hančilová and Massey, 104.

¹¹ Abolitionism has its origins the 19th century. The 'old abolitionism', mainly characterized by opposition to regulation regimes which normalize prostitution, was an inspiration for many national regulatory regimes in the first half of 20th century as well as to the international instruments of that period (see Chapter 3.1) Today's abolitionism, also referred to as 'neo-abolitionism', keeps the anti-legalization position and adds an emphasis on fighting demand.

today by the 'Swedish model'. In Sweden, prostitution itself is neither legal nor illegal.

However, it is the use of sexual services which is punishable. Since 1999,

[a] person who [...] obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual services to a fine or imprisonment for at most six months.¹²

In addition, procurement - 'promot[ing] or improperly financially exploit[ing] a person's engagement in casual sexual relations' - is punishable with up to four year imprisonment,¹³ and trafficking is punishable with up to ten.¹⁴ This policy is accompanied by programmes for 'reintegration' into society or a range of social provisions for prostitutes (shelter, training, etc.).¹⁵ Estimates of numbers of prostitutes in Sweden are very low, about 0.29 prostitutes per 1000 inhabitants.¹⁶

In the middle of the spectrum are those states in which the buying and selling of sex is decriminalized. The regimes then range greatly in their further response to prostitution. A highly controlling regulation approach was common in the 19th century,¹⁷ which policed prostitutes through registers (making non-registration punishable),

¹² Originally adopted by the Law of Sweden on the Prohibition of the Purchase of Sexual Services of 1999, it is not part of the Swedish Criminal Code (Chap.6, Sec.11).

¹³ Ibid.(Chap.6, Sec.12).

¹⁴ Ibid.(Chap.4, Sec.1a).

¹⁵ For more on the 'Swedish model' see MacKinnon (2007),1235–1236; Y Svanström, 'Criminalizing the john - a Swedish gender model?' in Outshoorn (2004); Norwegian Ministry of Justice and the Police, 'Purchasing Sexual Services in Sweden and the Netherlands. Legal Regulation and Experiences.' (2004) http://www.regjeringen.no/upload/kilde/jd/rap/2004/0034/ddd/pdfv/232216-purchasing_sexual_services_in_sweden_and_the_netherlands.pdf (28 August 2009); J Bindel and L Kelly, 'A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden' (2003) <http://www.glasgow.gov.uk/NR/rdonlyres/C19E010B-1A4F-4918-97BD-F96AF7D7F150/0/mainreport.pdf> (28 August 2009); G Ekberg, 'The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings'¹⁰ (10) Violence Against Women 1187.

¹⁶ Report by the Czech Parliamentary Institute cited by Deputy Karas (KDU-ČSL) speaking on 29 March 2005; http://www.psp.cz/sqw/tisky.sqw?F=H&PT=U&dx=1&o=4&na=prostitute&T=&ZA=&f_N=on&f_I=on&f_U=on&f_S=on&f_Z=on&f_P=on&f_R=on&f_V=on&f_O=on&ra=20.

¹⁷ See AJB Parent-Duchâtelet, *De la prostitution dans la ville de Paris* (Paris 1836).

obligatory regular health checks, the strict zoning of street prostitution, and the regulation of brothels. As we will see, this was the approach also in the Austro-Hungarian Empire (Chapter 5.1), and is today the approach of some Länder in Austria and in Germany.¹⁸ In the following, this approach will be referred to as ‘decriminalization with regulation’. Today, a ‘decriminalization with containment’ is a more common approach, which to different extent limits some prostitution-related activities such as soliciting in public places, kerb-crawling, procurement, and brothel-keeping or other forms of facilitation. Under a ‘decriminalization with containment’ regime, prostitution operates in a legal grey zone. In Europe, this model is prevalent.¹⁹

At the other side of the spectrum are permissive regimes which are acceptant of the existence of prostitution. Represented by the ‘legalization’ approach in the Netherlands, and often referred to as the ‘Dutch model’,²⁰ prostitution is considered work or service under a legalization regime. The Netherlands has lifted a ban on brothels in 2000. Municipalities are since entitled to license brothels and regulate other aspects of the sex industry (for example to set time and place restrictions and to regulate advertising). While criminal sanctions for trafficking are maintained, and the prosecution of the exploitation of involuntary prostitution emphasized,²¹ the status of voluntary prostitutes is

¹⁸ Lower Austria and Vienna. See B Sauer, ‘Discourses on prostitution in Austria’ in Outshoorn (2004).

¹⁹ Hančilová and Massey, 104.

²⁰ MacKinnon (2007), 1235-1236.

²¹ Netherlands Ministry of Foreign Affairs, ‘Dutch Policy on Prostitution. Questions and Answers 2004’ (2004) <http://www.mfa.nl/contents/pages/743/prost.pdf> (28 August 2009). For more on the ‘Dutch model’ see H Beukema, ‘Legalisation of prostitution in the Netherlands. A trial to decriminalise prostitution and to improve the economical, physical and emotional situation of prostitutes’ (2004) 9 *Femina Borealis* 145; AL Daalder, ‘Lifting the ban on brothels. Prostitution in 2000-2001 (English summary)’ (2004) <http://www.wodc.nl/onderzoeksdatabase/01.035g-lifting-the-ban-on-brothels.aspx> (28 August 2009); Norwegian Ministry of Justice and the Police (2004); Y Ertürk, *Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum. Mission to the Netherlands (A/HRC/4/34/Add.4)* (2007).

normalized. They can either be employed by brothel-keepers or be self-employed, and are liable for tax and social security contributions. Importantly, however, a failure to legalize their activities does not lead to criminal liability for prostitutes, nor are they obliged to undergo health checks.²² The approach is thus tolerant of both registered and unregistered prostitution. The numbers of prostitutes are high under such regime - estimates speak about 3.13 prostitutes per 1000 inhabitants in the Netherlands.²³

A second issue is the treatment of actors involved with prostitution: the prostitute or victim of trafficking; the client; and the procurer or trafficker. It is important to consider this separately from the first issue, which concerns the overall aim of the legislative response to prostitution. This is because there is no straightforward correlation between the overall aim of the regime and the way in which especially the prostitute herself is treated. A regime aiming to eliminate prostitution can be at the same time very permissive of the prostitute's behaviour. In the Swedish model, the prostitute herself is protected, while the activities of the other actors are prohibited. On the other hand, an approach permissive of prostitution itself might none the less impose regulatory restrictions on the prostitute – the Dutch model's time, place and manner restrictions on the practice, solicitation or advertisement of prostitution²⁴ are an example, as well as requirements of registration or regular health checks existing in other 'decriminalization with regulation' systems.²⁵

²² Netherlands Ministry of Foreign Affairs (2004).

²³ Report cited by Deputy Karas, see Fn.16.

²⁴ C Meyer, 'Decriminalizing Prostitution: Liberation of Dehumanization?' (1993) 1 Cardozo Women's Law Journal 105, 106.

²⁵ G Scambler and A Scambler (eds) *Rethinking prostitution: purchasing sex in the 1990s* (Routledge, London ; New York 1997), 186.

So far as the client is concerned, there is again no straightforward correlation. In principle, a repressive regime should prohibit the activities of the client (the solicitation as well as the use of the prostitute), but in practice regimes repressive of both prostitution and the prostitute may not necessarily be as strict with regards to the client. Typically, soliciting would be punishable for the prostitute only.²⁶ In a permissive regime on the other hand, there would generally be no negative repercussions for the buying of sex.

The treatment of a third party facilitating prostitution (a procurer or a brothel-keeper) is usually in congruence with the overall character of the regime: a prohibitionist regime punishes procurement, often using a broad definition of it, whereas a permissive regime would treat procurement (usually brothel-keeping) as a legitimate business and limit any criminalization to (often narrowly worded) provisions against trafficking.

Third, it is important to differentiate between legislative goals. We have seen that a repressive regime is characteristically not reconciled to the existence of prostitution, and wants to suppress and eventually eliminate it, whereas a permissive regime is accepting of the existence of prostitution and facilitates its existence. This could be *prima facie* interpreted as meaning that repressive regimes are motivated by traditional morality, whereas permissive regimes are value-free, being only concerned with the legislative goals of law and order, health or fiscal considerations. However, the reality is more complex. A regime repressive of prostitution may be primarily motivated by preventing harm and the well-being of prostitute ('Swedish model'). On the other hand, a more permissive regime might incorporate rules that are concerned with morality (especially

²⁶ For UK, see N Adams, 'Prostitute women, justice and the law' (1993) 4 (3) A Cultural Review 295.

regarding children). Aside from moral considerations, different law and order, fiscal and health goals can be present under every regime.

A historical caveat should also be made – in 19th and first half of 20th century, most regimes had strong emphasis on public order and morality (including both prohibitionist and ‘decriminalization with regulation’ regimes) or health (especially ‘old abolitionist’²⁷ regimes). The regimes influenced by feminist discussions of late 20th century have a very prominent ‘well-being of the prostitute’ concern, regardless of their attitude to prostitution (‘new abolitionist’ or legalization approaches).

The following table offers an approximate typology of the regulatory regimes (the asterisks identify points of dispute between the two feminist positions as discussed in 1.2 below).

Type of regime	Attitude toward prostitution	Legislative goal	Typical types of measures	Country (examples)
Prohibitionist	Negative	Morality Law and order	Criminalization of procurer, client, prostitute	USA, Romania
Abolitionist	Negative	Well-being of prostitutes Arguably morality*	Criminalization of procurer and client	Sweden, partially Finland
Decriminalization with regulation	‘Inevitable yet pathological’	Morality Law and order Health	Obligatory health checks Registers of prostitutes Fines for non-regulation Policing of outdoor and indoor prostitution	Austro-Hungarian Empire; Austria Germany
Decriminalization with containment	‘Inevitable yet pathological’ or neutral	Law and order Health Arguably morality	Usually criminalization of procurer Zoning Possibly health regulation	Belgium, Denmark, France, Italy, Poland, Spain, UK
Legalization	Neutral to positive	Arguably well-being of prostitute* Law and order Health Fiscal Arguably morality*	Prostitute treated as worker or provider of services Some regulation of the advertisement, solicitation and exercise of prostitution for procurer, client and prostitute	Netherlands

²⁷ See Fn. 11.

A final remark needs to be made about the functioning of all legal regimes addressing prostitution in practice - large discrepancies can exist between statutory provisions and their enforcement, and even where the legal treatment of client and prostitute is equal, an enforcement bias can exist against the prostitute. It has been noted that in some systems (such as France and Canada)²⁸ where prostitution is decriminalized, prostitutes are nonetheless targeted and harassed in policing. Similarly, in a regime repressive of prostitution which criminalizes both buying and selling of sex, such as the US, prostitutes are often targeted but clients are not.²⁹

1.2 Feminist approaches

The question of prostitution has been difficult for feminists. As Laurie Shrage puts it:

On the one hand, many feminists want to abolish discriminatory criminal statutes that are mostly used to harass and penalize prostitutes and rarely to punish johns and pimps – laws which, for the most part, render prostitutes more vulnerable to exploitation by their male associates. On the other hand, most feminists find the prostitute's work morally and politically objectionable. In their view, women who provide sexual services for a fee submit to sexual domination by men, and suffer degradation by being treated as sexual commodities.³⁰

The two things which feminists do agree on are that the act of prostitution itself should never be criminal³¹ and that exploiting women by using coercion, deceit, abuse or

²⁸ LA Jeffrey, 'Prostitution as public nuisance: prostitution policy in Canada' in Outshoorn (2004); AG Mazur, 'Prostitute movements face elite apathy and gender-biased universalism in France' in Outshoorn (2004).

²⁹ D McBride Stetson, 'The invisible issue: prostitution and trafficking of women and girls in the United States' in Outshoorn (2004).

³⁰ Shrage, 347 and the references therein.

³¹ Scambler and Scambler, 186; See also An International Committee for Prostitutes' Rights February 1985, 'World Charter for Prostitutes' Rights' (1993) (37) Social Text 183.

violence to bring and/or keep them in prostitution always should be (see discussion in 3.1 below).

They have, however, diametrically opposed answers to the question of whether a person can choose prostitution as a profession. Here, two distinct understandings can be identified.³² The first position conceptualizes prostitution as sex work (and speaks about sex workers, clients and procurers), while the second sees it as sexual domination and the essence of women's oppression (and speaks about prostitutes, johns and pimps). These positions further disagree on the following: (i) why people choose to prostitute (agency or coercion), (ii) what is being sold (services or self), (iii) whether domination is a problem (none, economic or sexual), (iv) whether a distinction should be drawn between voluntary and forced prostitution, (v) whose word to take for granted (sex-workers speaking for themselves or the experience of the most marginalized extracted by qualitative research), and (vi) which regulatory regime to choose (regulation or abolition).

1.2.1 The sex-work position

The sex-work position³³ emphasises autonomy, agency, choice and self-determination of prostitutes. It argues that, like any other worker, the prostitute sells alienable labour power.³⁴ Than-Dam Troung³⁵ conceptualizes prostitution as 'sexual labour', which should be considered 'similar to other forms of labour that humankind performs to

³² For an overview see for example J Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women' (2005) 12 (1) Social Politics 141.

³³ See for example F Delacoste and P Alexander, *Sex work: writings by women in the sex industry* (Virago, London 1987); W Chapkis, *Live sex acts: women performing erotic labor* (Routledge, New York 1997); S Bell, *Reading, writing, and rewriting the prostitute body* (Indiana University Press, Bloomington 1994); TD Troung, *Sex, Money and Morality: The Political Economy of Prostitution and Tourism in South East Asia* (Zed Books, London 1990); K Kempadoo and J Doezema, *Global sex workers: rights, resistance, and redefinition* (Routledge, New York 1998).

³⁴ J O'Connell Davidson, 'The Rights and Wrongs of Prostitution' (2002) 17 (2) Hypatia 84, 86.

³⁵ Troung.

sustain itself”.³⁶ External pressures to enter prostitution such as poverty are admitted but not considered a reason to dispute prostitute’s choice.

According to most sex-work proponents, there is no inherent problem in the nature of sex work, but only in the conditions in which it exists today. It is the laws which criminalize sex-workers and repress their migration that need changing, not prostitution itself.

Many organizations of prostitutes³⁷ are among the proponents of the sex-work position. It also finds support among many feminists, and has been identified as the predominant position in current academic writing.³⁸ It resonates with a liberal or neo-liberal emphasis on personal choice and agency as well as with the analysis of sex work as work by socialist feminists, which places prostitutes within the context of the international labour movement.³⁹

The sex-work position developed the distinction between forced or involuntary prostitution (trafficking) and voluntary or consensual prostitution (sex work). The former, because women have no choice to enter prostitution, needs to be fought. The latter, as an expression of women’s agency should be decriminalized and normalized.

In terms of regulatory regimes, the sex work position typically calls for decriminalization accompanied by legalization of voluntary prostitution. Accordingly, sex work should be treated as any other work and sex migration as any other migration -

³⁶ Kempadoo summarizes Troung’s arguments in Kempadoo and Doezema, 4.

³⁷ For a discussion see V Jeness, *Making It Work: The Prostitutes' Rights Movement in Perspective* (Aldine De Gruyter, New York 1993).

³⁸ S Jeffreys, 'Prostitution, trafficking and feminism: An update on the debate' (In print) Women's Studies International Forum.

³⁹ For a discussion of the feminist positions see DK Weisberg, *Applications of feminist legal theory to women's lives: sex, violence, work, and reproduction* (Women in the political economy, Temple University Press, Philadelphia 1996).

equal human and labour rights as well as protection for all sex workers and working visas for migrant sex workers should be guaranteed.⁴⁰ It is thus also referred to as the ‘pro-rights’ approach,⁴¹ and the ‘Dutch model’ is seen as an example of good practice.

1.2.2 The sexual-domination position

The sexual-domination approach argues that prostitution is a form of violence against women. It contests the claims of choice, consent and voluntariness, citing prostitution survivors’ description of it as ‘the choice made by those who have no choice’.⁴² Kathleen Barry argues that prostitution is a form of female sexual slavery.⁴³

In contrast to the sex-work approach, which concerns itself with conditions of labour, the sexual-domination claims that the nature of the activity is the problem; that it is inherently harmful. Unlike the sex-work proponents, sexual-domination theorists argue that what is being sold is the person herself and not just her services. To the question of ‘what is wrong with prostitution?’, Carole Pateman answers that for the client to buy mastery of an objectified female body, the prostitute must sell *herself* in a very different and much more real sense than that which is required by any other occupation.⁴⁴ This is inherently damaging to the prostitute.⁴⁵ Sexual-domination proponents do not dispute the

⁴⁰ Kempadoo and Doezema.

⁴¹ Outshoorn (2005).

⁴² Vanwesenbeeck’s and Wisterich’s work cited in M Farley, ‘Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly’ (2006) 18 Yale JL & Feminism 109, 110.

⁴³ K Barry, *Female sexual slavery* (New York University Press, New York 1984), 40.

⁴⁴ C Pateman, *The sexual contract* (Polity, Cambridge [Cambridgeshire] 1988), 207.

⁴⁵ See also D Leidholdt, ‘Prostitution: A Violation of Women’s Human Rights’ (1993) 1 Cardozo Women’s Law Journal 133, 135; and CA MacKinnon, ‘Prostitution and Civil Rights’ (1993) 13 Michigan Journal of Gender and Law 1.

fact that prostitution is often a result and an indicator of economic inequality, but they see sexual domination as a more fundamental basis and explanation of prostitution.⁴⁶

The sexual-domination position is proposed by radical feminists⁴⁷ who use a deconstructivist approach to social science, in particular in-depth interviews and biographical narratives, as evidence to support their claims. Citing extensive research conducted in different countries, Melissa Farley lists things ‘we must not know in order to keep the business of sexual exploitation running smoothly’.⁴⁸ She points out that the overwhelming majority of women in prostitution report repeated instances of verbal abuse, physical assault, and rape by both procurers and buyers. Cross-culturally, the levels of posttraumatic stress disorder among prostitutes are higher than those of Vietnam Veterans,⁴⁹ and a Canadian statistic shows that a prostitute is forty times more likely to be a murder victim than the general populace.⁵⁰

Because a lack of choice and harm are seen as intrinsic to prostitution, prostitution is not seen as conceptually separate from trafficking - the distinction between involuntary and voluntary prostitution is contested. As a result, international anti-trafficking instruments are given the broadest possible meaning.

The preferred legislative response of this approach is the curbing of demand,⁵¹ through the criminalization of procurers and buyers, accompanied by a support system

⁴⁶ Barry (1984), 9-10.

⁴⁷ Andrea Dworkin, Catharine MacKinnon, Janice Raymond, Gail Dines, Renate Klein, Kathleen Barry, among others.

⁴⁸ Farley, 122.

⁴⁹ MacKinnon (2007), 1259.

⁵⁰ Farley, 115.

⁵¹ See for example MacKinnon (1993); Barry (1984); K Barry, *The prostitution of sexuality* (New York University Press, New York 1995); Farley.

for women to escape prostitution⁵² – i.e. the ‘Swedish model’. The proponents of the sexual-domination approach also argue for the availability of civil remedies.⁵³

1.2.3 Intra-position differences and critique

It is further possible to differentiate several arguments within these positions. I will do so by distinguishing between principled and pragmatic arguments.

I argue that there are three different types of principled argument in the sex work position, as well as a strong pragmatic sub-position. The first principled argument addresses sex and sexuality. Some sex-work proponents, such as Gayle Rubin and Pat Califia,⁵⁴ often referred to as ‘sex radicals’,⁵⁵ stress positive aspects of prostitution. They celebrate consensual sexual practices that can be read as subverting the binaries of normal/abnormal, healthy/unhealthy, pleasurable/dangerous sex. Prostitution becomes a legitimate feature of ‘erotic diversity’.⁵⁶ Any repressive approach is blamed for ‘society’s negative attitudes to ALL women’s sexuality’.⁵⁷ It is further argued that prostitution has a valuable social function in ‘facilitat[ing] the gratification of erotic needs that would otherwise go unmet’.⁵⁸

⁵² A Dworkin, *Letters from a war zone: writings 1976-1987* (Secker & Warburg, London 1988), 147.

⁵³ A civil claim for coercion into prostitution exists in the state of Florida. Florida’s Section 796.09(1), cited in MacKinnon (2007), 1322-1327.

⁵⁴ See for example P Califia-Rice, ‘Macho sluts: erotic fiction’ (1988) 1st U.S. Alyson Publications; P Califia, *Public sex: the culture of radical sex* (1st edn, Cleis Press, Pittsburgh, Pa. 1994); G Rubin, ‘Thinking sex: Notes for a radical theory of the politics of sexuality.’ in R Parker and P Aggleton (eds) *Culture, society and sexuality: A reader* (UCL, London 1999).

⁵⁵ O’Connell Davidson, 95.

⁵⁶ Ibid, 88-98.

⁵⁷ Helen Vicqua, Scarlet Alliance internal communication, May 19th 1995, cited in A Murray, ‘Debt-Bondage and Trafficking. Don’t Believe the Hype’ in K Kempadoo and J Doezema (eds) *Global sex workers: rights, resistance, and redefinition* (Routledge, New York 1998), 61.

⁵⁸ O’Connell Davidson, 89.

There is, however, an intra-sex-work criticism of the 'sex radicals'. O'Connell Davidson challenges the notion of 'transcendental human *need* for prostitution' and stresses the need to recognize the social construction of desires. Secondly, she criticizes the fiction of a sovereign sexual subject:

[...] sex radicals [...] imagine] that by exchanging money for commodified sex, the individual is liberated from her or his fixed relationship to the sexual community, recognized as a sexual subject and set completely free.⁵⁹

This, she argues, is difficult under a system of patriarchy.

A second principled argument concerns the nature of work. For Chapkis, sex work is normal 'emotional labour' like child care, massage work, psychotherapy, acting or other service work.⁶⁰ Similarly, Troung's compares sex work to any other mental or manual labour, 'all of which involve specific parts of the body and particular types of energy and skill'.⁶¹ On the basis of its normalcy, prostitution should be treated exactly like any other work. This is a common sub-position among sex-work proponents.

A third argument stresses agency,⁶² asserting that respecting choice is the basis of women's empowerment. As many sex-worker organizations claim that prostitution is their work of choice, these sex-work proponents insist on enabling this choice by the legal order. Moreover, recognition of agency is seen as a precondition for any attack on patriarchal structures bottom-up. This understanding is also very strong in all sex-work writing.

⁵⁹ Ibid, 89

⁶⁰ Chapkis, 76.

⁶¹ Kempadoo summarizes Troung's arguments in Kempadoo and Doezema, 4.

⁶² For example O'Connell Davidson represents this position.

A pragmatic argument, by itself more often formulated in politics than in feminist academia, but usually accompanying all three principled positions, can then be discerned. It arises from the recognition that prostitution is a phenomenon which can not be eradicated. Bringing it from the black⁶³ or grey⁶⁴ zones into legality would enable guarantees of more and equal rights for sex workers. A permissive approach is thus supported, with decriminalization and equal treatment on the labour market for sex workers and easy entry (visa) regime for migrant sex workers.

Within the sexual domination position, the arguments of principle are dominant and relatively unified - there is an agreement that patriarchy is at the root of the subordination that is prostitution. A pragmatic position does not exist independently and it is also of different quality. The policy postulates of sexual domination proponents try to attain an ideal – they hope for eradication of prostitution through measures curbing demand and/or for elimination of subordination of women under patriarchy. The principled goals are crucial to a point where a permissive policy becomes unacceptable, not even temporarily, as it would create a culture accepting of prostitution.

1.2.4 Inter-position differences and critique

Let us now look at points of dispute remaining between the positions. Two contentious issues of principle are salient for any legal response to prostitution: the understanding of prostitute's agency and the question whether to treat prostitution as a homogenous or a heterogeneous phenomenon.

The sex-work position stresses the agency of prostitutes; its proponents seek to empower women by giving them space and respect to do whatever they decide to do.

⁶³ Criminal.

⁶⁴ Unregulated.

They ask: how can anyone know better than them? By contrast, the sexual domination proponents argue that even while respecting women and their agency, it is naïve to believe that under the current conditions of patriarchy (as well as capitalism) women really do have free, real and adequate choices. Although a deeper examination of this debate⁶⁵ is beyond the scope of this thesis, it is nonetheless important to bear in mind that one's understanding of the agency of prostitute results in classifying her as either 'the villain' or 'the victim',⁶⁶ and is crucial for the choice of legislative responses.

A connected matter is whether prostitution can be treated as a single issue. The sex-work camp levies criticism at the sexual domination position's lack of differentiation. First, especially third wave feminists⁶⁷ stress the difference between the First and the Third World and criticise Western cultural imperialism for dominating the prostitution discourse, resulting in a lack of historical and geo-political contextualization.⁶⁸ Second, sex work proponents argue that even within a national system, the diversity in sex-workers' lives and experiences must be recognized. They are not always victims or objects.⁶⁹ An example is sometimes given of a rich university student who sells sex for luxuries. It is argued that there is a choice and possibly sexual enjoyment, and that these women need to be taken into account when designing a legal solution. The sexual domination proponents dismiss this 'happy hooker' argument with three

⁶⁵ Different aspects of free will, choice and its limits were extensively treated in philosophy and the social sciences, for example by Jürgen Habermas, Max Weber, Ralph Dahrendorf, Anthony Giddens, or Pierre Bourdieu or Marta Nussbaum.

⁶⁶ Waters somewhat hyperbolically speaks of these two extremes. E Waters, 'Victim of villain: prostitution in post-revolutionary Russia' in LH Edmondson (ed) *Women and society in Russia and the Soviet Union* (Cambridge University Press, New York 1992).

⁶⁷ For example Kempadoo and Doezema.

⁶⁸ Ibid, 13.

⁶⁹ See for example O'Connell Davidson, 91-92.

counterarguments. First, reference to the above mentioned limited choice is made. Second, the unchanged context and social meaning are pointed out, which victimize a prostitute whether she accepts it or not.⁷⁰ Third, it is argued that this creamy layer in prostitution does harm through ‘false advertising’⁷¹ – it creates an impression about the realities of prostitution which is not true for the majority of women involved.

It is obvious from the above mentioned postulates, that the two feminist positions will be highly critical of each other’s preferred legal response to prostitution. As very little is available in terms of comprehensive evaluations of the impact of the Dutch and Swedish regulatory regimes on the prostitutes, many of these criticisms can neither be conclusively confirmed nor disapproved. It is nonetheless valuable to highlight the biggest worries expressed about these legislative regimes.

Sex-work proponents point out that the proposal for suppression of demand (‘Swedish model’) is blinded to the realities by its naïve idealism. The well-being of women in or about to enter prostitution should be tantamount, and not an abstract goal of abolition. Carlin Meyer argues that advocates of suppression of prostitution

[...] conflate signification and cause: they see in prostitution the symbol, the epitome, the most visible expression of gender victimization and oppression, and believe that because it is the most visibly blatant expression, suppression will effectively reduce female degradation and abuse.⁷²

An asserted result of the Swedish model is that the actual situation of prostitutes is not improved – they still can not normally operate in the open and claim equal rights. It is further argued that the fear of criminalization in clients leads to two further negative

⁷⁰ Shrage, 358.

⁷¹ I thank Michelle Madden Dempsey for this insight.

⁷² Meyer.

effects: the negotiation time for transactions shortens, which makes it more difficult for the prostitute to assess whether the client is dangerous;⁷³ and clients, who are sometimes the only possible link between a victim of trafficking and the police, lose any incentive for reporting this abuse.⁷⁴

Sexual domination proponents on the other hand are critical of legal regimes treating prostitution as sex work. They argue that legalization leads to social normalization of prostitution. This in turn creates a 'prostitution culture' in which demand for both legal and illegal prostitution increases.⁷⁵ They argue that legalization does not go hand in hand with equal treatment, normalization and destigmatization – for example preference for indoors prostitution or for zoning still push prostitutes from public domain and carry stigma; health checks, when obligatory, secure STD-free service to clients rather than protection to the prostitute. Legal control of prostitution thus targets its

[...]outward appearance rather than the conditions in which women find themselves. On the whole, governments are far more anxious about public order and public health than about abuse and violence.⁷⁶

⁷³ For discussion see Norwegian Ministry of Justice and the Police (2004).

⁷⁴ From interviews conducted by Hančilová. Hančilová and Massey

⁷⁵ For the example in Australia see M Sullivan, 'What Happens When Prostitution Becomes Work? An Update on Legalisation of Prostitution in Australia' (2005) Coalition Against Trafficking in Women <http://action.web.ca/home/catw/attach/Sullivan_proof_01.pdf> (2nd March 2009).

⁷⁶ Wijers and Lap-Chew cited in Farley, 137.

Chapter 2 Ideologies

The following chapter sets a stage for the analysis of influences, correlations or correspondences between ideologies and law in different political contexts. It needs to be emphasised from the onset that the differences between the two periods – State Socialism and Transition – are very deep. Under State Socialism, Marxism was the official ideology in both political and scientific terms. Politically, it was the ideology of the ruling Communist Party which directly affected the creation of laws – Procházka gives ample examples of the

[...] direct transmission of decisions of the organs of the [Communist] party into the exercise of substantive competence of state institutions, including the parliament.⁷⁷

Marxist ideology also directly affected legal theory as jurists based their reasoning on the unimpeachable ‘holy books of Marxism’ and orthodox legal quotations⁷⁸ in order to protect themselves.

In the democratic, pluralistic and free society of the Transition period, such direct influences or theoretical monopolies do not exist. For this reason, whereas chapter 2.1 pays great attention to the canon of Marxist ideology, chapter 2.2, instead of searching for an equivalent neoliberal or conservative orthodoxy, discusses the possible paths in which the development of law in Transition might have been influenced by these political theories.

⁷⁷ R Procházka, 'Všetkým telám rovnako (And equality for all...)' in M Bobek, P Molek and V Šimíček (eds) *Komunistické právo v Československu Kapitoly z dějin bezpráví (Communist Law in Czechoslovakia Chapters from the History of Unlawfulness)* (Mezinárodní politologický ústav Masarykovy univerzity, Brno 2009), 96.

⁷⁸ Z Kühn, 'Ideologie aplikace práva v době reálného socialismu. (Ideology of the application of law under real existing socialism)' in Bobek, Molek and Šimíček (2009), 62.

2.1 Marxism

The classics of Marxism⁷⁹ analysed prostitution as a corollary of the monogamous marriage under capitalism. The function of the bourgeois marriage was to

[...] produce children of undisputed paternity; such paternity [was] demanded because these children [were] later to come into their father's property as his natural heirs.⁸⁰

While women were required to observe sexual exclusivity to ensure paternity, men could and did make use of prostitution or adultery without any social consequences.⁸¹

The Marxist critique saw prostitution as an economic as well as a moral problem.

Lenin said of prostitutes:

They are, unfortunately, doubly sacrificed by bourgeois society. First, by its accursed property system, and, second, by its accursed moral hypocrisy.⁸²

First, Marxists saw prostitution as exploitation of the female worker - a class oppression caused by capitalism. It was their working class status that pushed women into selling their sexuality. Some working women needed to resort to prostitution because their wages were too low; other working women, especially 'servant girls', without entering prostitution per se, were 'easy prey to seduction by their masters'⁸³ and objects of what would today be understood as sexual harassment.

⁷⁹ Here, I refer in particular to Karl Marx, Friedrich Engels August Bebel, and V.I. Lenin.

⁸⁰ F Engels, 'The origin of the family, private property, and the state' (2000) http://www.marxists.org/archive/marx/works/download/Engels_The_Origin_of_the_Family_Private_Property_and_the_Stat.pdf (25th July 2009), 40.

⁸¹ For a more thorough exposé of Marxist discussion, see J Quigley, 'The Dilemma of Prostitution Law Reform: Lessons from the Soviet Russian Experiment' (1991-1992) 29 Am Crim L Rev 1197, 1199 – 1204.

⁸² VI Lenin, *The emancipation of women; from the writings of V. I. Lenin* (International Publishers, New York, 1969), Appendix: Clara Zetkin: Lenin on the Woman Question.

⁸³ A Bebel and D De Leon, *Woman under socialism* (Labor News Co., New York 1904), 160.

Second, Marxists pointed out the moral hypocrisy of a society which required a man to first acquire a wife for income and heirs, and then encouraged him to acquire sex and affection outside of marriage. It is important to realize that the critique of prostitution went hand in hand with an attack on bourgeois marriage. August Bebel,⁸⁴ likened marriage to ‘a business transaction’⁸⁵, motivated not by ‘real love and natural, moral impulses’, but by ‘naked, obscene egotism’.⁸⁶ However while ‘men find[ing] no satisfaction in wedlock’⁸⁷ could seek the satisfaction in prostitution – their sexual demands catered for by working women, their wives were forbidden to do so. Marxism criticised this double standard for men on one hand, and the women on the other – be it as wives, house servants or prostitutes. Marxists even went as far as to liken this ‘marriage of convenience’ to the ‘crassest prostitution’.⁸⁸

While this scrutiny of marriage and prostitution is very insightful, it arguably did not leave the constraints of class analysis. The bourgeois man was the predator and capitalism subjected women of his rank to exploitation in marriage and working women to exploitation in prostitution.

Before turning to the analysis of the proposed solutions, it is important to say a few words about the Marxist understanding of sexuality. In other areas (especially concerning the family), Marxism has been accused of identifying women with nature,

⁸⁴ Importantly, Bebel’s *Woman under Socialism* had particular impact on the thinking in the Czech Republic. Gustav Bareš, the author of its first translation into Czech in 1962, recalls in his introduction to the book how widely read the book was among socialists and communists in the first half of the 20th century. H Scott, *Does socialism liberate women? Experiences from Eastern Europe* (Beacon Press, Boston, 1974), 57.

⁸⁵ Bebel and De Leon, 92.

⁸⁶ Ibid, 96.

⁸⁷ Ibid, 146.

⁸⁸ Engels, 45.

seeing women as more biologically determined than men,⁸⁹ and having an essentialist understanding of gender roles in consequence. It is thus worth noting that especially Bebel saw both sexes as equal in their sexuality, and thought that both should be treated as such as regards the ‘gratification of the identical natural impulse’.⁹⁰ Possibly in connection with this analysis, the Marxist account of prostitution is constructivist – it sees it as tied to particular historical forces, rather than to (men’s or women’s) inherent, essential biology or nature.⁹¹

In terms of solutions to prostitution, Marxists were particularly critical of the 19th century state regulatory policies facilitating prostitution. Bebel argued that the zoning of prostitution protected the private property of house owners, and that health checks protected clients.⁹² Police and medical control ‘demoralize[d] and degrade[d] women’.⁹³ What then, was the solution, offered by the Marxists? Seeing prostitution partly as a class problem and partly as a problem of bourgeois morality, they believed it would vanish with the overhaul of the capitalist system:

For the rest, it is self-evident that the abolition of the present system of production must bring with it the abolition of free love springing from that system, i.e., of prostitution both public and private.⁹⁴

⁸⁹ CA MacKinnon, *Toward a feminist theory of the state* (Harvard University Press, Cambridge, Mass ; London 1989); AM Jaggar, *Feminist politics and human nature* (Philosophy and society, Rowman & Allanheld, Totowa, N.J. 1983), 69.

⁹⁰ Bebel and De Leon, 146.

⁹¹ See also Shrage, 354.

⁹² Bebel and De Leon, 149.

⁹³ Ibid, 152.

⁹⁴ K Marx, F Engels and S Moore, *Manifesto of the Communist Party* (2nd edn, William Reeves, London 1888).

2.1.1 Practice in socialist states

As Czechoslovakia's policies in the 1950's succeeded three decades of regulatory experience in Russia and the USSR, it is useful to discuss this development as a first practical example of application of Marxist ideology. Elizabeth Waters points out that while stemming from analysis of orthodox Marxist writers, the approaches to prostitution in Russia and the USSR were not homogenous among different groups (especially between Bolsheviks and Stalinists) and varied over time.⁹⁵ Waters summarizes:

During the Civil war [1917-1923], the contrast between idleness and industry [was] central to the presentation of prostitution [...] Focus was on the prostitute as the work-shirker [...]

In the early NEP period [New Economic Policy: 1921-1928], the prostitute was counted among the downtrodden and the exploited; by the era of the first five-year plan [1928-1933; the rise of Stalin] she was more frequently placed with the wreckers of industrialization, a conscious and culpable opponent of socialist construction.⁹⁶

From this we see that the prostitute was in turns seen as a victim (in accordance with the traditional Marxist understanding) and a villain. It is worth noting that the approaches were changing with the numbers of jobs available in the economy. When there was enough work or even labour mobilization, such as during the Civil War and the first five-year plan, the numbers of prostitutes dropped,⁹⁷ and those who remained in prostitution were blamed for being work-shy. When employment dropped, such as during the NEP period when a free-market plan to stimulate the Russian economy was adopted, many women again entered prostitution,⁹⁸ but were again seen as victims of the system, and instead of repressive policies, talk of tackling the causes and providing women with

⁹⁵ Waters.

⁹⁶ Ibid, 161.

⁹⁷ Quigley, 1205ff.

⁹⁸ Recounted by Kollontai; A Kollontai, 'Sestry (Sisters)' (1923) (3-4) *Komunistka* 23.

opportunities resurged.⁹⁹ The policies were thus not formulated in moralistic terms - while the prostitute was in turn seen as a victim and a villain, this was in the context of work – there does not seem to have been a condemnation of prostitution on the basis of sexual deviance.

Being a client of a prostitute was sometimes seen as a bourgeois anachronism, and it was suggested that the issue should be addressed by tackling demand. Cases have been noted in which the names of male clients were publicized,¹⁰⁰ as well as the temporary practice of expelling those guilty from the Communist Party.¹⁰¹

2.1.2 Marxism and Feminism

The Marxist analysis of prostitution has much in common with both feminist positions. It may look *prima facie* closer to the sex-work position, as it identifies prostitution with work. However, other aspects make it seem closer to the sexual-domination stance, especially in terms of solutions - it is abolitionist in wanting to eliminate the phenomenon and in being against any state regulation, registration, health checks or taxation.

The similarity is, however, more apparent than real, mainly because the Marxists saw prostitution as a problem of patriarchy and the gender order in a very limited sense – the analysis of it as a consequence and symptom of capitalism and the class order was primary. Feminists, both radical¹⁰² and socialist,¹⁰³ argue against seeing prostitution as just another form of oppression of the working class by the bourgeois. The major feminist

⁹⁹ Waters, 173.

¹⁰⁰ In the 1920's names were urged to be placed on board in places of work, and were sometimes published in local newspapers. Quigley, 1214.

¹⁰¹ Ibid, 1214.

¹⁰² See esp. MacKinnon (1989).

¹⁰³ See for example Jaggar.

challenge to classic Marxism is against its claim that class oppression is the crucial problem in the 'woman question' and that the abolition of private property is a sufficient solution for the social ills afflicting women. As Catharine MacKinnon, a radical feminist, puts it:

[...] a theory that exempts a favoured male group [working men] from the problem of male dominance necessarily evades confronting male power over women as a distinctive form of power, interrelated with the class structure but neither derivative from nor a side effect of it.¹⁰⁴

Similarly, Alison Jaggar, a socialist feminist, argues that the 'woman question' is inadequately answered by analysis of class only, as

[...] women share common experiences of oppression which, though they may be mediated by class, race and ethnicity, nevertheless cut across class lines. All women are liable to rape, to physical abuse from men in the home, and to sexual objectification and sexual harassment [...].¹⁰⁵

Whereas radical feminism sees Marxism and feminism as basically irreconcilable as each identifies a different axis of inequality in society (Marxism class and feminism sex),¹⁰⁶ socialist feminism combines both perspectives. Christine Overall famously stated that '[s]ex work is an inherently unequal practice defined by the intersection of capitalism and patriarchy'.¹⁰⁷ It thus complements the unexplored Marxist intuition that there is something wrong with prostitution by arguing that it is 'inherently gendered':

Prostitution is North American culture's archetypal sexual interaction, within which sex, money, and power are interwoven: the willing, economically dependent, always available, sexually seductive and irresistible woman serves the needs of the virile, strong, aggressive male with an irrepressible sex drive who can buy the means for satisfying his desires. [...] Prostitution is an inherently gendered practice in which

¹⁰⁴ MacKinnon (1989), 34.

¹⁰⁵ Jaggar, 77.

¹⁰⁶ MacKinnon (1989).

¹⁰⁷ C Overall, 'What's Wrong with Prostitution? Evaluating Sex Work'17 (4) Signs 705, 724.

women are constructed as the sexual servants of men, and the buying of sexual service is defined as a benefit for men.¹⁰⁸

It should be noted that the input supplied by Western feminist critique of Marxism and by socialist feminism could not be ‘imported’ into State Socialist Czechoslovakia due to its almost complete intellectual isolation, and the restrictions on the spreading of foreign intellectual production.¹⁰⁹ The extent to which the classic Marxist-Leninist debate influenced legal actors and legal regulation of prostitution in Czechoslovakia will be discussed below in Chapter 5.3.

2.2 Neo-liberalism and conservatism

A person who has lived in the Czech Republic during Transition feels two strong influences on the discourse concerning gender and equality: that of free market neoliberalism and moral conservatism,¹¹⁰ which often go together.¹¹¹ As suggested above, market neo-liberalism and moral conservatism are much more diffuse in their interaction with the development of law and policy than Marxist ideology was under State Socialism. Today, there is no ideological canon that one could name, no unified ‘orthodoxy’; the neo-liberal or conservative equivalent of Marx, Engels, Bebel, or Lenin cannot be made out.

¹⁰⁸ Ibid, 722.

¹⁰⁹ The exception was the ‘thawing’ of 1960’s (see Chapter 5.3).

¹¹⁰ The “New Right” Thatcher government in the UK and the Reagan administration in the US combined neoliberal economic policies, inspired by Friedrich Hayek and Milton Friedman, with social conservatism. For discussion and further reading see D King and S Wood, ‘The Political Economy of Neoliberalism: Britain and the United States in the 1980’s’ in H Kitschelt (ed) *Continuity and change in contemporary capitalism* (Cambridge University Press, Cambridge 1999). A definitive neoliberal economic policy prescription on the international level can be found in the 1989 ‘Washington consensus’.

¹¹¹ In the Czech Republic, the presence of either or both is sometimes noted by public intellectuals, such as the philosopher Václav Bělohradský or the sociologist Jan Keller.

There are two possible paths that could be followed in order to determine whether one could speak about influence of neo-liberalism or conservatism: the more legal path of the international, regional and EC/EU law instruments, and the more political one appearing in the Czech documentary materials examined below in Chapter 5.3, 6.2 and 6.3. With the former, one encounters the same problem at a different level: how to establish the influence of a way of thinking on individual instruments. As such an examination is beyond the scope of this thesis, the external influence of international law on the Czech development will be addressed separately from the debate about ideology. On the other hand, (economically) liberal and (morally) conservative discourses and understandings will be shown and analyzed in the indigenous Czech material. An attempt to link these to a neo-liberal or conservative ideological canon will, however, not be made. The fundamental dissimilarity between the periods and the ideologies warrants such an approach.

Chapter 3 International, regional and European law

While international law has given attention to trafficking in human beings for over a century, prostitution as such has rarely been directly addressed. I argue that the international law on trafficking can however influence certain aspects of the national legal responses to prostitution, especially when drawing legal boundaries between voluntary and involuntary prostitution. I thus consider it an important framework for the analysis of the development of Czech law.

In terms of trafficking, four conventions adopted before World War II (WWII)¹¹² were consolidated in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹¹³ This instrument, adopted by the UN General Assembly, became the most important post-WWII anti-trafficking instrument.

In the year 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted in the framework of UN's fight against transnational organized crime ('Palermo Protocol')¹¹⁴ – a first instrument to define trafficking. Further, instruments of international criminal law (Statute of the

¹¹² International Agreement for the Suppression of the "White Slave Traffic," May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83.; International Convention for the Suppression of the White Slave Traffic of 1910, LNTS No. 8a; International Convention to Combat the Traffic in Women and Children on 1921, LNTS 9.415; International Convention for the Suppression of the Traffic in Women of Full Age of 1933, LNTS 150.431. For discussion see MOP Dunbar, 'Past, Present, and Future of International Trafficking in Women for Prostitution' (2000) 8 Buffalo Women's Law Journal 103.

¹¹³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271, 282.

¹¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001).

International Criminal Court¹¹⁵); international women's rights law (Convention on Elimination of All Forms of Discrimination against Women - CEDAW¹¹⁶); regional human rights law (in particular the 2005 European Convention on Action against Trafficking in Human Beings);¹¹⁷ and EU law (especially the Council Framework Decision on Combating Trafficking in Human Beings of 2002¹¹⁸) also addressed the issue.

Due to the partly historical character of this thesis, it is important to discuss how the understanding of prostitution and trafficking changed during the one century of anti-trafficking law. The original pre-WWII concern with international 'white slave traffic' in women and children¹¹⁹ for the purposes of prostitution has been now transformed into fight against the coercion and exploitation of people (of either sex), where neither movement nor transnational character are required. Six themes can be discerned which mark out the ways in which this development has occurred, each of which will be dealt with below. These are: (i) whether the target is solely prostitution or whether other forms of exploitation are encompassed; (ii) whether the provisions are gender specific or neutral; (iii) the definition of trafficking and other key terms; (iv) whether the instruments are confined to involuntary prostitution or also cover voluntary prostitution; (v) whether they focus on cross-border movements or include movements within a national territory;

¹¹⁵ In 1998, the Rome Statute of the International Criminal Court recognized trafficking as enslavement and made it punishable as a crime against humanity. Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF 183/9 (1998), Art.7.

¹¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14.

¹¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings, May 3, 2005, C.E.T.S. 197.

¹¹⁸ Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings, 2002 O.J. (L 203) 1.

¹¹⁹ 1904 and 1910 women and girls; since 1921 women and children.

and (vi) whether the emphasis is on fighting crime or human rights (especially rights of victims).

3.1 Themes of international anti-trafficking law

3.1.1 Sexual or other forms of exploitation

The pre-WWII conventions as well as the 1949 Convention concentrated on ‘white slave traffic’ in women and children – they addressed only traffic for the purpose of ‘immoral life’¹²⁰, i.e. sexual exploitation. The 2000 Palermo Protocol brought all forms of exploitation, such as prostitution, slavery, forced labour, servitude, or the removal of organs, under the umbrella of fighting transnational crime. This development has been followed in Council of Europe’s and in the European Union’s measures. As this development is closely linked to a progressive gender neutralization of the international framework, its impact is discussed in 3.1.2 below.

3.1.2 Gender specificity or gender neutrality

The pre-WWII international conventions initially addressed women and girls, and later children. In the 1949 Convention, gender neutral terminology was introduced for adults. Although the concern for particularly vulnerable groups defined by age and gender was still expressed in the Preamble, the substance of the Convention referred to the victims of trafficking as persons rather than women. The international instruments have been adopting a gender-neutral approach even since (especially the 2000 Palermo Protocol), as have the Council of Europe and the European Union instruments.

By contrast, CEDAW,¹²¹ in 1979, still obliged its signatories to ‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and

¹²⁰ 1904 Convention.

¹²¹ CEDAW.

exploitation of prostitution of women'.¹²² Trafficking and exploitation of prostitution was conceptualized as gender-based violence and hence discrimination against women.

Similarly, CEDAW General Recommendation No. 19 on Violence against Women¹²³ emphasises concern for female victims, and stresses preventive and punitive measures as well as rehabilitation.¹²⁴ The soft-law 1993 UN Declaration on the Elimination of Violence against Women¹²⁵ conceptualizes trafficking in women and forced prostitution as violence against women.

Is the gender neutralization of the international anti-trafficking instruments or the gender specificity of CEDAW preferable? I submit that both tendencies have an important rationale. Broadening the scope of protection from trafficking of women for prostitution to trafficking in human beings for any exploitation is a positive step. It highlights the similarities of these phenomena as far as the context of transnational crime, illegal trade, human migration, and forced labour are concerned. On the other hand, gender neutrality should not mean gender blindness. There is still a segment of transnational crime and migration that is gendered, and is part of a continuum of gender inequality in society, violence against women, pornography and prostitution specifically. To put it bluntly, there are aspects of the experience of involuntary prostitution which are not exclusive to women – being coerced, being moved (in some cases across international borders), and being exploited. There are, however, gender specific parts of this experience – women and girls in their countries of origin are particularly vulnerable, and

¹²² Ibid, Art.6.

¹²³ Committee on the Elimination of Discrimination Against Women, Gen. Recommendation No. 19, U.N. Doc. A/47/38 (Jan.29, 1992).

¹²⁴ Ibid, para.14, 15, 16, 24(g) and (h).

¹²⁵ Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. p. 313 GAOR, 48th Sess., Supp. 49 at 271, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

the means of coercion and the form the exploitation takes are gendered. Both aspects thus need to be awarded attention in the relevant international (and national) instruments.

3.1.3 Definition

There is no internationally agreed definition of prostitution, and until 2000, nor was there one for trafficking. Today, the internationally accepted, standard definition of trafficking is that contained in the Palermo Protocol:

‘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.¹²⁶

The European Convention¹²⁷ incorporated this definition. The EC signed the Palermo Protocol in 2000,¹²⁸ and as a result the definition of trafficking contained in the 2002 Framework Decision¹²⁹ also substantially copies the definition provided therein.

The Palermo Protocol definition of trafficking is very broad. As we have already noted, it does include all forms of exploitation. The five named actions - recruitment, transportation, transfer, harbouring or receipt - cover all possible activities of traffickers. The list of means by which a person is induced into trafficking is also extensive. It covers both the traditional elements of force, coercion and abduction, as well as non-violent

¹²⁶ Palermo Protocol, Art.3(a).

¹²⁷ 2005 Convention.

¹²⁸ Council Decision 2001/87/EC of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea, OJ L 30, 1.2.2001, p. 44–44.

¹²⁹ 2002 Framework Decision.

forms, such as fraud, deception or abuse of power. Importantly, it covers not only situations where the trafficker coerces himself, but also situations where coercion is an external condition not directly created by the trafficker. Such is the case with abuse of a position of vulnerability and coercion of the victim by another (such as buying the victim off her relatives). Importantly, following the 1933 Convention as well as the 1949 Convention, the Palermo Protocol deems the consent of the victim irrelevant.¹³⁰

We have said that the Palermo Protocol definition of trafficking is widely accepted, but is there consensus on its interpretation? The definition has been criticized as fuzzy and inconclusive, allowing for different understandings of coercion and choice.

Askola comments that

[...] the crucial word 'exploitation' is not defined, which, along with the use of other rather woolly terms such as 'abuse of a position of vulnerability', leave the debate on coercion and choice open.¹³¹

The adherence to either sex-work or sexual-domination position is thus still of uttermost significance. The sex-work proponents, as well as some institutional commentators,¹³² persist with the distinction between voluntary and involuntary prostitution. They stress that the Palermo Protocol covers only involuntary prostitution and says nothing about how voluntary prostitution should be addressed by states. Sexual domination feminists, on the other hand, adopt a broad definition of the terms coercion, vulnerability and exploitation. On the basis of their conceptualization of all prostitution

¹³⁰ Palermo Protocol, Art.3(b).

¹³¹ H Askola, 'Violence against Women, Trafficking, and Migration in the European Union' (2007) 13 (2) European Law Journal 204, citing P Twomey, 'Europe's other Market. Trafficking in People.' (2000) 2 European Journal of Migration and Law 1.

¹³² European Commission, 'Report of the Experts Group on Trafficking in Human Beings' (2004) http://www.coatnet.org/aspe_shared/form/download.asp?nr=98294&form_typ=115&acid=D2F9588DC8A14EA9B41941D3E7ADD6D2101B8&ag_id=3807 (28 August 2009).

as exploitation, they then argue that the definition should be applied to procurers and to clients.

This definitional indeterminacy can be seen as a weakness, but it is also the definition's strength, because it makes the Palermo Protocol acceptable to both countries with a legalization approach, which interpret it restrictively to apply to trafficking/involuntary prostitution only (such as the Netherlands), as well as to countries with an abolitionist approach, which can interpret it extensively and understand exploitation to cover procurement and the buying of sex (such as Sweden). Nevertheless, for analytical clarity in discussing the international law framework, I consider it useful to draw a distinction between involuntary prostitution which involves an element of coercion (the sex-work understanding of Palermo), and voluntary prostitution.

3.1.4 Voluntary or involuntary prostitution

In international law generally, I discern three ways of addressing the involuntary vs. voluntary conundrum. The first group of documents focus on trafficking and therefore by their nature address only coercive acts, the aim being to prohibit acts of coercion for purposes of exploitation. Voluntary prostitution is simply not mentioned or addressed. It is for this reason that the controversy arises between sex-work proponents, who deduce that voluntary prostitution is permitted, and proponents of the sexual domination approach, whose basic premise is that there is no such thing as voluntary prostitution. The Palermo Protocol is a clear example of this.

Second, there are international instruments which treat the phenomenon of prostitution without defining trafficking/involuntariness, and in being negative toward prostitution in its entirety disallow permissive regimes. An example is the 'old

abolitionist' 1949 Convention, still in effect today for approximately 80 countries.¹³³ It condemns exploitation of voluntary prostitution by requiring signatories to criminalize the actions of third parties involved in prostitution activities, in particular procurers and brothel keepers.¹³⁴ It also reproves state control over prostitutes.¹³⁵ These provisions are still seen today as requiring an approach aiming at the elimination of prostitution, so many European countries that have legalized or regulated prostitution, such as the Netherlands, Germany and Austria, have never signed it. The Czech Republic repeatedly considered withdrawing from it, in order to adopt an Act on the Regulation of Prostitution, as we will see in Chapter 6.2.

Third, there are documents which draw a distinction between involuntary and voluntary prostitution, while leaning toward a permissive treatment of voluntary prostitution. The ILO thus makes this distinction, addressing involuntary prostitution in its forced-labour instruments,¹³⁶ and adopting a sex-work perspective to voluntary prostitution. The latter is mostly found in soft-law or report-like documents, for example in the 1998 ILO Report on the sex sector in Southeast Asia, which advocates for the 'recognition' of prostitution. It suggests that states institute labour rights and benefits for

¹³³ As of 8 September 2009, 81 states were parties to it. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-11-a&chapter=7&lang=en.

¹³⁴ 1949 Convention, Art.1 and 2.

¹³⁵ Ibid, Art.6.

¹³⁶ See for example Forced Labour Convention, 1930 (C29), June 28, 1930, 39 U.N.T.S. 55, ILO CR 155; and Abolition of Forced Labour Convention, 1957 (C105), June 25, 1957, 320 U.N.T.S. 291. For a discussion see Dunbar, 113-114; A Lansink, 'Human rights focus on trafficked women: An international law and feminist perspective' (2008) <<http://www.agenda.org.za>>.

sex workers and ‘extend the taxation net to cover many of the lucrative activities connected with [prostitution]’.¹³⁷

The European Union also seems to accept the existence of two separate issues. On the one hand, it addresses involuntary prostitution through criminal (mostly EU law) tools to combat trafficking in people. On the other, it considers prostitution an economic activity and the voluntary migration of prostitutes an issue of free movement of sex-workers or providers of sexual services (under EC law).

The latter issue was discussed in two recent cases before the European Court of Justice (ECJ). Both of these considered the question whether the cross-border movement of prostitutes was to be considered a fundamental freedom of movement in the EU’s internal market. In *Adoui and Cornuaille*,¹³⁸ the ECJ ruled that migration for the purposes of practicing prostitution fell under the free movement of persons and it was not a reason for expulsion on the basis of public policy.¹³⁹ More recently, in *Malgorzata Jany*,¹⁴⁰ it analyzed prostitution as an economic activity falling under the right of establishment,¹⁴¹ adopting a pragmatic sex-work position.

In Strasbourg, the European Court of Human Rights (ECtHR) was asked whether the obligation of prostitutes to pay national taxes or social security contributions can be a violation of human rights. The applicant in *Tremblay vs. France*¹⁴² claimed that France

¹³⁷ LL Lim, *The Sex sector: the economic and social bases of prostitution in Southeast Asia* (International Labour Office, Geneva 1998), p. 212-3.

¹³⁸ Jointed Cases 115 and 116/81 *Adoui and Cornuaille v. Belgian State* [1982] ECR 01665.

¹³⁹ *Ibid*, operative part 1.

¹⁴⁰ *Case C-268/99 Aldona Malgorzata Jany and Others and Staatssecretaris van Justitie* [2001] ECR I-08615.

¹⁴¹ *Ibid*, para.48-49.

¹⁴² *Case Tremblay vs. France* App.No. 37194/02 (Sept. 11 2007) (ECtHR).

effectively coerced her into prostitution, which constituted inhuman or degrading treatment,¹⁴³ and/or slavery, servitude or forced or compulsory labour.¹⁴⁴ The Court recognized the difficulty for Ms. Tremblay, since she owed the French administration a substantial amount of money, but concluded that she was not forced to continue to prostitute herself.¹⁴⁵ Consequently, France was not in violation of the ECHR. Implicitly, the decision accepted the state's financial interests in voluntary prostitution.

A dissenting opinion finding a violation was submitted by the (female) Swedish judge Fura-Sandström, who stated that, in reality, the French system effectively forced Ms. Tremblay to prostitute herself. The split between a minority (dissenting) Swedish sexual domination understanding of prostitution and a sex-work perspective adopted by the majority of the Court is worth noting.

3.1.5 Cross-border or domestic

We have seen that the Palermo Protocol definition no longer contains a requirement of crossing of international borders. However, being a part of UN Convention against Transnational Organized Crime, it applies to trafficking only where it is 'transnational in nature and involve[s] an organized criminal group'.¹⁴⁶ This in effect means that it would apply mainly to situations s where victims are trafficked across borders.

By contrast, as early as 1979, CEDAW had addressed the well-being of women, victims of trafficking, in both international and purely national situations. The EU's 2002 Framework Decision was the first instrument (applicable to the Czech Republic) that did

¹⁴³ Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S 222, Art.3.

¹⁴⁴ Ibid, Art.4.

¹⁴⁵ *Tremblay*, para.33.

¹⁴⁶ Palermo Protocol, Art.4.

not require any cross-border element for its application. Three years later in 2005, this approach was adopted also in the Council of Europe's Convention.

This development is of high importance, because the historical, but in reality unsubstantiated, demarcation between (international) trafficking and (internal) involuntary prostitution disappeared. From the perspective of international law applicable in the Czech Republic, there is no longer a distinction between a foreigner moved into the Czech Republic for prostitution or a Czech national coerced into prostitution in her hometown. This has repercussions for the redefinition of trafficking and procurement in national criminal law, and an expansion of the protection of coerced but 'stationery' prostitutes. The significance of this will be discussed for Czech law in 6.1.4 below.

3.1.6 Law-and-order or a human rights approach to trafficking?

Another aspect of the evolution of international law is the level of attention paid to fighting crime and stopping unwanted migration – the law and order issues or 'criminal law approach'¹⁴⁷ – on the one hand, and to guaranteeing rights for victims of trafficking – the human rights' issues – on the other.¹⁴⁸

Historically, the international anti-trafficking instruments were concerned with 'punitive strategies aimed at suppressing organized crime, illegal migration and human smuggling'.¹⁴⁹ The 1949 Convention required states to punish the actions of third parties involved in prostitution activities,¹⁵⁰ while the Palermo Protocol required states to

¹⁴⁷ A Amiel, 'Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation' (2006) 12 Buffalo Human Rights Law Review 5.

¹⁴⁸ On this distinction see Ibid.

¹⁴⁹ Ibid, 5.

¹⁵⁰ 1949 Convention, Art.1 and 2.

criminalize trafficking in their national legal systems.¹⁵¹ Similarly, EU's 2002 Framework Decision contains provisions on effective, proportionate, and dissuasive penalties for traffickers, along with a list of aggravating circumstances, such as endangering the life of the victim,¹⁵² on the liability of legal persons,¹⁵³ and on jurisdiction and extradition.¹⁵⁴

Paradoxically, the crime-fighting approach to traffickers has in these instruments been accompanied by migration controlling measures. Not only the Palermo Protocol¹⁵⁵ but also the EC/EU instruments, such as the 2002 Council Framework Decision on Unauthorized Entry, Transit and Residence,¹⁵⁶ have been characterized by an emphasis on tighter border controls. While the criminalization of traffickers has generally been seen as a necessary, even though insufficient, step from the perspective of victims of trafficking, the law-and-order approach to migration has been heavily criticized as harming the victims. Tighter border controls make it harder for both economic migrants and refugee women to cross borders. This 'illegalization of migration',¹⁵⁷ generates 'more demand for assisted migration services',¹⁵⁸ and makes migrants particularly vulnerable to smugglers or traffickers. It should be added that the demarcation between smuggling and trafficking, in practice, is blurred. Economic migrants, who intend to pay part of the

¹⁵¹ Palermo Protocol, Art.5(1).

¹⁵² 2002 Framework Decision, Art.3.

¹⁵³ Ibid, Art.4 and 5.

¹⁵⁴ Ibid, Art.6.

¹⁵⁵ Palermo Protocol, Art.11,12,13.

¹⁵⁶ Council Framework Decision 2002/946/JHA on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence, 2002 O.J. (L 328) 1; and Council Directive 2002/90/EC Defining the Facilitation of Unauthorized Entry, Transit and Residence, 2002 O.J. (L 328) 17.

¹⁵⁷ Askola, 213.

¹⁵⁸ Ibid, 207.

smuggling fee upon arrival in the country of destination, often become indebted labourers. Women who pay to be smuggled for work can end up trafficked and exploited in prostitution in a country different from the promised country of destination. The ‘abuse of power’ or ‘fraud’ parts of the Palermo Protocol or 2002 Framework Decision definitions should be interpreted to cover these scenarios; proving and subsuming thus might prove difficult in practice however.

In the last decade, an emphasis on victim’s rights, described as the three P’s: prevention, protection, and prosecution of perpetrators;¹⁵⁹ and the three R’s: rescue, rehabilitation and reintegration;¹⁶⁰ has been coming to the fore. The Palermo Protocol contained provisions regarding status, protection and assistance for victims, but these were formulated as mere policy suggestions.¹⁶¹ Soft-law instruments, notably the 2002 UNHCHR Recommended Principles and Guidelines,¹⁶² stressed the primacy of the human rights of victims of trafficking. However, it was not until 2005, and then only in the regional European Convention, that a binding instrument mandated specific protection of the human rights of trafficked victims.¹⁶³ The Convention obliges its signatories to properly identify victims of trafficking,¹⁶⁴ and enjoins a removal of a potential victim from a state’s territory until the identification process is completed.¹⁶⁵ It

¹⁵⁹ A Sembacher, 'The Council of Europe Convention on Action against Trafficking in Human Beings' (2006) 14 *Tulane Journal of International and Comparative Law* 435.

¹⁶⁰ Lim, 213.

¹⁶¹ Palermo Protocol, Art.6 and 7.

¹⁶² UN Office of the High Commissioner for Human Rights, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002. E/2002/68/Add.1. Online. UNHCR Refworld' (2002) <http://www.unhcr.org/refworld/docid/3f1fc60f4.html> (13 May 2009).

¹⁶³ 2005 Convention.

¹⁶⁴ Ibid, Art.10.

¹⁶⁵ Ibid, Art.10(2)

demands protection for victims' private life,¹⁶⁶ and requires state parties to adopt legislative or other measures to aid victims in their physical, psychological and social rehabilitation,¹⁶⁷ including a proviso that this assistance can not be made conditional on the victim's willingness to act as a witness.¹⁶⁸ It mandates a 'recovery and reflection period' of at least 30 days, during which the victim can 'recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities'.¹⁶⁹ It requires a renewable residence permit to be issued to the victim also in situations where 'their stay is necessary owing to their personal situation'.¹⁷⁰ State parties must further ensure that 'compensation and legal redress' are accessible to victims,¹⁷¹ and the states of origin are required to facilitate 'repatriation and return of victims'.¹⁷² Gender equality is to be observed and promoted in all measures.¹⁷³

Victims have been receiving similar attention under the EC/EU law framework, even though not reaching the high level guaranteed by the 2005 Convention. The 2004 Directive¹⁷⁴ guaranteed 6-months residence permits 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, but only in situations where they cooperate with the

¹⁶⁶ Ibid, Art.11.

¹⁶⁷ Ibid, Art.12.

¹⁶⁸ Ibid, Art.12(6).

¹⁶⁹ Ibid, Art.13.

¹⁷⁰ Ibid, Art.14.

¹⁷¹ Ibid, Art.15.

¹⁷² Ibid, Art.16.

¹⁷³ Ibid, Art.17.

¹⁷⁴ Council 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, 2004 O.J. (L 261) 19.

competent authorities.¹⁷⁵ The 2004 Directive also guaranteed a reflection period to decide on cooperation with the authorities. Further, general EC/EU legal acts addressing the standing of victims in criminal proceedings,¹⁷⁶ and the compensation of victims of cross-border crime¹⁷⁷ are applicable to situations of trafficking. Trafficking is also a violation of the Charter of Fundamental Rights of the EU,¹⁷⁸ and its prevention the focus of various soft law instruments.¹⁷⁹

Notwithstanding these developments, the EC/EU framework has still been criticized as being insufficiently victims-centred, and the individual measures as being instrumental. For example, referring to the residence permits guaranteed by the 2004 Directive,¹⁸⁰ Askola argues:

[I]t is [...] not a measure aimed at the protection of trafficking victims, but at squeezing out any relevant information that could be used against the ‘real criminals’, that is, those who assist and organize irregular migration. After that even the ‘useful’ victims are discarded.¹⁸¹

To conclude the discussion of the human rights approach, it is necessary to stress that neither the situation in countries of origin particularly the rampant gender inequality, nor the demand for prostitution in destination countries, is given appropriate attention. In terms of the latter, only the 2005 Convention addressed the demand-side, in suggesting

¹⁷⁵ Ibid.

¹⁷⁶ Council Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, 2001 O.J. (L 82).

¹⁷⁷ Council Directive 2004/80/EC Relating to Compensation to Crime Victims, 2004 O.J. (L 261) 15.

¹⁷⁸ Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1, Art.5.3.

¹⁷⁹ For example the Council Resolution on Initiatives to Combat Trafficking in Human Beings, in Particular Women, 2003 O.J. (C 260) 3; and Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 2003 O.J. (C 137). For discussion see Amiel.

¹⁸⁰ 2004 Directive on Residence Permits.

¹⁸¹ Askola, 212.

that states consider making it a criminal offense for clients to knowingly use the services of a victim of trafficking.¹⁸²

Finally, I submit that a parallel can be seen between the international law's emphasis on law-and-order and public security, and the prominence of public order concerns in many national regimes. Both of these emphases are repressive and reactive.¹⁸³ International law primarily addresses migration and crime, and only slowly turns toward various aspects of victim protection. Prevention at origin and measures addressing demand are embryonic. Domestically, containment of prostitution (through zoning and brothels) and fighting connected criminal activities are still primary. Only slowly does prevention of entry into prostitution by vulnerable groups and protection of prostitutes/victims of trafficking come into place. A robust human rights approach is necessary in both, international and domestic situations. At the same time, there remains an unresolved controversy as to what the human rights approach precisely requires. Sex-work proponents argue for recognition and equal treatment of migrants and prostitutes, while sexual domination proponents argue that women should be freed from trafficking and prostitution.

3.2 International law in national law

A final comment should be made about the necessary caution regarding international instruments. Firstly, the signing and ratification of signed treaties is a concern. The 1949 Convention was only signed and ratified by 81 states,¹⁸⁴ and many European countries never joined. The Council of Europe's Convention has – as of May 2009 – been ratified

¹⁸² 2005 Convention, Art.19.

¹⁸³ Askola, 213.

¹⁸⁴ See Fn.133.

by only 20 states in Europe and signed by further 20. The Czech Republic has done neither.¹⁸⁵

Secondly, the possibility of reservations to treaties weakens their effect. CEDAW is famously one of the most reserved treaties.¹⁸⁶ Article 6, addressing trafficking and prostitution, has not been subject to specific reservations, but is covered by the general reservations of some countries.¹⁸⁷

Thirdly, poor control and enforcement mechanisms plague the relevant instruments. For example the Council of Europe's Convention, unlike the ECHR, is not subject to the jurisdiction of the ECtHR. In terms of formally available enforcement mechanisms, this criticism does not apply to EC law (and only partially applies to EU instruments). Even here, however, implementation in national law has been variable in quality.¹⁸⁸

3.3 Czechoslovakia and Czech Republic's international obligations

The impact of the international law as a context for national law is one the subjects to be examined, in the context of the Czech development, below. It is therefore useful to briefly present the actual international obligations that the country has taken upon itself.

The newly formed Czechoslovakia's commitment to accede¹⁸⁹ to the 1910 Convention¹⁹⁰ was part of the post-WWI order, as stated expressly in Art. 20 of the Saint-Germain-en-

¹⁸⁵ List of signatories at http://www.coe.int/t/dg2/trafficking/campaign/flags-sos_EN.asp.

¹⁸⁶ See H Charlesworth and CM Chinkin, *The boundaries of international law: a feminist analysis* (Melland Schill studies in international law, Manchester University Press; Juris, Manchester; New York 2000).

¹⁸⁷ Such as Saudi Arabia and Pakistan; for a full list see Declarations, reservations, objections and notifications of withdrawal of reservations relating to CEDAW (CEDAW/SP/2006/2); <http://daccessdds.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>.

¹⁸⁸ Hančilová and Massey.

¹⁸⁹ No 160/1922 Coll.

¹⁹⁰ 1910 Convention.

Laye Treaty.¹⁹¹ Czechoslovakia subsequently ratified the 1921 Convention,¹⁹² the 1933 Convention,¹⁹³ as well as the 1949 Convention.¹⁹⁴ The last has remained in effect until today. State Socialist Czechoslovakia was also very quick to sign and ratify CEDAW,¹⁹⁵ which came into effect for Czechoslovakia in March 1982. The Czech Republic then signed the Optional Protocol in 1999, which came into force in the Czech Republic in May 2001.¹⁹⁶

In December 2000, the Czech Republic signed the UN Convention against Transnational Organized Crime,¹⁹⁷ and the Palermo Protocol in December 2002.¹⁹⁸ Neither has been ratified. Notwithstanding its membership of the Council of Europe (since 1991 as Czechoslovakia and since 1993 as the Czech Republic), the 2005 European Convention has been neither signed nor ratified.¹⁹⁹ The reason given²⁰⁰ for these abstentions is the lack of appropriate criminal and administrative rules on the liability of legal entities in the Czech legal system.²⁰¹

¹⁹¹ Treaty of Saint-Germain-en-Laye from 10 September 1919; No 508/1921 Coll.

¹⁹² 1921 Convention; No 123/1924 Coll.

¹⁹³ 1933 Convention; No 32/1936 Coll.

¹⁹⁴ Notified as NE1/1950; unpublished in the Coll.

¹⁹⁵ No 62/1987 Coll.

¹⁹⁶ No 57/2001 Coll.IT.

¹⁹⁷ List of signatories available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.

¹⁹⁸ List of signatories available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

¹⁹⁹ List of signatories available at http://www.coe.int/t/dg2/trafficking/campaign/flags-sos_EN.asp.

²⁰⁰ From letter from Veronika Stromšíková, Head of Department of Human Rights of the Ministry of Foreign Affairs, addressed to La Strada, 14 May 2007; on file with the author.

²⁰¹ The 2009 CC does not address the issue; the debate continues on the creation of a new system of administrative liability.

As a matter of international (or regional) law, the Czech Republic is not bound by any definition of trafficking, by any instrument applicable to purely national situations, nor is it impacted by a more victim-centred human rights approach. This lack is remedied by its membership in the EC/EU, as of May 2004.

Chapter 4 The reality of prostitution in Czechoslovakia and the Czech Republic

4.1 State Socialist period (1948-1989)

Very little data is available on prostitution under State Socialism.²⁰² A 1968 report by the State Population Commission states that as of March 1966, the police had evidence of exercise of prostitution by 4,744 women in Czechoslovakia and further 4,000 to 5,000 women were estimated to also earn money through prostitution. Czechoslovakia had approximately fourteen million inhabitants in the 1960's,²⁰³ so this suggests a proportion of roughly 0.7 prostitutes to 1,000 inhabitants.

This lack of contemporary material has not been remedied by post-1989 reflections – no historical research or analysis of the subject is available. The NGO and governmental reports comment in broad terms on the overall tendencies. Today's reflection of prostitution under State Socialism is thus that it existed, albeit on a much smaller scale than post-1989, and that it was repressed and mostly ignored by the officialdom. A Ministry of Interior ('MI') Report from 2000 states that, 'before 1990 prostitution in the Czech Republic was latent; part of shadow economy.'²⁰⁴

The problem of trafficking is seen as having been largely irrelevant to a country with closed borders. La Strada, an NGO concerned with trafficking, comments that

²⁰² A research in the Czech Republic's National Library and an inquiry at the responsible Ministry of Interior revealed no available data.

²⁰³ According to the 1961, Czechoslovakia had 13.745.577 inhabitants. Census results available at http://www.czso.cz/sldb/sldb.nsf/i/seznam_tabulek_pramenne_dilo_1961.

²⁰⁴ Ministry of Interior, 'Rozbor problémů souvisejících s prostitucí a vymezení podmínek jejich systémového řešení (An Analysis of Problems Connected to Prostitution and Specification of the Conditions of their Solution)' (1999) <http://aplikace.mvcr.cz/archiv2008/prevence/priority/prostitute/verze7.html> (20th May 2009), 2.

overall, '[...] trafficking in human beings was not a problem relevant to the so-called Soviet block during the Communist era [...].'²⁰⁵ Similarly, Trávníčková states that traffic in women became a real criminal activity only after 1990 - before 1991, it never appeared in practice of the criminal courts.²⁰⁶

4.2 Transition period (1989 to today)

Most authors state that after 1989, the offer of 'sexual services' soared.²⁰⁷ This increase, however, is unfortunately nowhere documented or supported by concrete numbers. A boom could be attributed to several factors, related either to the surfacing of an internationally open capitalist economy and a free labour market in particular, and/or to legal change. The emergence of a free capitalist labour market meant that on one hand workers were no longer obliged to be formally employed, and on the other that many lost their jobs in this process. The rise in unemployment hit women more than men.²⁰⁸ At the same time, the opening of borders and the huge economic disparity between the Czech Republic and Western European countries, especially neighbouring Austria and Germany, meant that a new demand arose and the sex industry became extremely profitable both for 'independent' prostitutes and for traffickers. On the legal side, the abolition of the repressive provisions, especially against parasitism, in 1990 facilitated entry of women into prostitution (see 6.1.1).

²⁰⁵ La Strada, 'Trafficking in Human Beings in Central Europe' (2005) http://www.strada.cz/download/files/publikace/trafficking_CE.pdf (28th May 2009), 27.

²⁰⁶ I Trávníčková, 'Trafficking in Women: the Czech Republic Perspective' (2004) Institute for Criminology and Social Prevention <http://www.ok.cz/iksp/docs/305.pdf> (5 September 2009).

²⁰⁷ Poláková speaks about a 'boom of prostitution'; J Poláková, *Pracovní podmínky žen, které poskytují placené sexuální služby v České republice (Labour Conditions of Women Offering Sexual Services in the Czech Republic)* (Charles University 2008).

²⁰⁸ The available CSO data from the 1990's indicate that at least one and half times more women were unemployed at any given time than men. Czech Statistical Office, 'Unemployment rate based on age groups (1995-2000)' (2002) http://czso.cz/csu/2002edicniplan.nsf/publ/1413-02-casove_rady (25th July 2009).

The accounts given of the development of the prostitution scene between 1989 and 2009 usually mention a boom at the beginning of 1990's, especially of outdoor²⁰⁹ prostitution and some indoor²¹⁰ prostitution. More recently, a move toward less outdoor and more indoor prostitution has been noted,²¹¹ as well as better organization and centralization into 'mega sex clubs'.²¹² A 'cultivation'²¹³ of the demand as well as its decline in the new millennium are also mentioned and identified as possible reasons for the move indoors. As we will see in Chapter 6.1.3 below, increasingly restrictive municipal zoning rules might be a contributor to the decrease in street prostitution. Regionally, prostitution has been and is prominent especially in the north-west and south-west regions bordering with Germany and Austria, and in the capital city, Prague.²¹⁴

In terms of migration and trafficking, the Czech Republic began as a country of origin and transit in the early 1990's, but is becoming more and more a country of transit and destination over time.²¹⁵ A most recent development, connected to the financial crisis, is a decline in demand. Although not enough time has passed to allow for a

²⁰⁹ Outdoor prostitution refers to street, road and highway prostitution.

²¹⁰ Indoor prostitution refers to prostitution done in sex clubs (often dissimulating as 'massage parlours', night clubs, cabarets, etc.), hotels, and private flats or by means of escort services.

²¹¹ Government of the Czech Republic, 'Usnesení k Národní strategii boje proti obchodování s lidmi pro období let 2008-2011 (Decision on the National Strategy to Combat trafficking in persons for the period 2008-2011)' (2008) http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf (20th May 2009), 9; Ministry of Interior, '2008 Status Report on Trafficking in Human Beings' (2009) <http://www.mvcr.cz/mvcren/article/czech-republic.aspx> (1st August 2009), 12.

²¹² Poláková.,

²¹³ GCzR (2008), 9.

²¹⁴ Ibid, 8.

²¹⁵ M Hynková and A Souralová, 'Sex as an industry' in P Pavlík (ed) *Shadow Report on Equal Treatment and Equal Opportunities for Women and Men* (Open Society Fund, Prague 2006); La Strada (2005), 28.

reflection of this phenomenon in academic literature, the New York Times estimated the drop in revenues at 15 – 20 % in Central Europe in the last quarter of 2008.²¹⁶

Only a small number of facts and figures are available on prostitution in the Czech Republic. The existing material does not capture development continuously across the two decades of the Transition period; and generally does not distinguish between trafficking and voluntary prostitution. In 1993, the MI estimated the numbers of prostitutes to be at 630 in the small border town of Dubí and at 10,000 – 20,000 in Prague.²¹⁷ In 1999, the MI assessed the number at between 15,000 and 25,000, of which 6,000 were working in sex clubs and 4,000 – 5,000 in street prostitution.²¹⁸ Were the higher estimate correct, this would mean a proportion of about 2.5 prostitutes per 1000 inhabitants.²¹⁹

It is difficult to assess who the ‘typical’ prostitutes or clients are as most surveys available are non-representative. An NGO Rozkoš bez rizika (R-R), a harm-reduction oriented health organization, offers some idea, on the basis of small-scale sample of their clients. The average age of R-R prostitutes was 27 years in 2006.²²⁰ In terms of education, prostitutes in sex clubs were most likely to have graduated from high school, while street prostitutes usually had not finished primary school. In terms of drug use,

²¹⁶ D Bilefsky, 'Financial Crisis Tames Demand for World's Oldest Service' (8th December 2008) <http://www.nytimes.com/2008/12/09/world/europe/09czechsex.html> (2009).

²¹⁷ Ministry of Interior, *Rozbor situace v oblasti potírání pohlavních nemocí a boje proti prostituci, kuplířství a obchodování se ženami a dětmi (Analysis of the situation of fight against venereal diseases and prostitution, procurement and traffic in women and children)* (Ministry of Interior, Prague 1993), 6-7.

²¹⁸ MI (1999), 4-6.

²¹⁹ The Czech Republic had slightly over 10 million inhabitants in the year 2000.

²²⁰ Rozkoš bez rizika, 'Annual Report' (2006) http://www.rozkosbezrizika.cz/02_download/10_RR_ZPRAVA_2006.pdf (20 June 2009), 9.

under 10 % overall admitted using; this number rises to 28 % in street prostitution.²²¹ In terms of STDs, only 1 in 1735 tested prostitutes in 2007 were HIV positive,²²² 21 out of 924 tested positive to other STDs (Hepatitis B or C, and syphilis).²²³ In terms of nationality, the majority of women working in prostitution, possibly as many as 90%,²²⁴ appear to be of Czech nationality,²²⁵ a figure confirmed by the MI data.²²⁶ In addition, women from Slovakia are highly represented,²²⁷ as well as women from the former Soviet Union (especially Ukraine, Russia and Moldova) and Bulgaria. The latter two groups are also believed to be the main victims of trafficking.²²⁸

I submit that three particularly vulnerable groups of adult prostitutes can be identified from the available data and analyses: Roma women, self supporting mothers, and young women and men who leave institutional care. Both NGO and government assessments stress higher numbers of Roma women in prostitution relative to the population.²²⁹ They are more often engaged in street prostitution than in sex clubs.²³⁰

²²¹ Ibid, 9.

²²² Rozkoš bez rizika, 'Annual Report' (2007) http://www.rozkosbezrizika.cz/02_download/12_RR_REPORT_2007.pdf (20 June 2009), 13.

²²³ Ibid, 26.

²²⁴ H Malinová, 'Sex a prostituce (Sex and Prostitution)' (2008) http://www.rozkosbezrizika.cz/01_htm/021_ZAKON.htm (20 June 2009).

²²⁵ Poláková's random sample in Prague sex clubs consisted of 2/3 of Czech women and 1/3 of foreigners, mainly from Slovakia and the former USSR. Poláková, 59.

²²⁶ MI (1999).

²²⁷ Poláková; MI (1999).

²²⁸ GCzR (2008), 9; La Strada (2005), 28.

²²⁹ MI (2004), 4; Poláková, 41; according to La Strada, Roma women constituted 90 % of street prostitutes in Southern Bohemia. La Strada, 'Obchod s lidmi v České republice - situační analýza šesti regionů (Trafficking in the Czech Republic - an analysis of the situation in six regions)' (2004) http://www.kraj-lbc.cz/public/social/obchod_s_lidmi_analyza_regiony_2004_49d51df883.rtf (20 June 2009), 8.

²³⁰ Poláková, 41.

Reports from Slovakia²³¹ indicate Roma women's particular vulnerability to trafficking, but data is unavailable for the Czech Republic. Self supporting mothers are another group not uncommon in prostitution.²³² R-R states that about 40 % of their clients in Prague sex clubs are self supporting mothers.²³³ Both of these groups fall on the intersection of multiple axes of disadvantage – Roma women of gender and ethnicity, self supporting mothers of gender and motherhood – making them particularly vulnerable to higher unemployment and resulting poverty, which in turn drive them into prostitution.

Their vulnerability was exacerbated by the emergence of the free capitalist labour market in the 1990's. Under State Socialism, work was given to everyone by 'socialist organizations' (the only lawful employers). Transition brought private employers, who could select their employees on the basis of merit. A decades-long absence of discussion about what merit is has meant that its perception has been marked by unreflective racial or gender prejudice.²³⁴ The new private employers were, I would argue, more likely to exercise employment decisions based on preconceptions of what constitutes merit and efficiency, which negatively affected mothers and Roma women who are typical targets of prejudice about skill, efficiency, loyalty, etc. Similarly, cutbacks in social security

²³¹ La Strada (2005), 73-79.

²³² La Strada mentions single mothers as a vulnerable group (among others: migrants, Roma, single mothers, youngsters leaving institutional care, children from problematic familiar backgrounds, drug addicts) without overall citing numbers. La Strada, (2004), 7.

²³³ Rozkoš bez rizika, (2006).

²³⁴ For a discussion of discrimination cases which illustrate this see B Havelková, 'Challenges to the effective implementation of EC gender equality law in the Czech Republic – an early analysis' in K Arioli and others (eds) *Wandel der Geschlechterverhältnisse durch Recht?* (DIKE, Zürich 2008); B Havelková, 'The legal notion of gender equality in the Czech Republic' (2010 Forthcoming) Women's Studies International Forum. A discussion of discrimination in employment will be dealt with in-depth in my DPhil thesis.

provisions during Transition have feminized poverty,²³⁵ hitting self supporting mothers in particular. It is also worth noting that border regions with Germany and Austria, where many Roma women have been engaged in street prostitution, are former Sudetenländer.²³⁶ These regions have been both economically depressed during the period of Transition and have high proportions of Roma (who were re-settled there after WWII²³⁷). The Roma often live in relatively segregated urban enclaves. No research is available on the interactions and intersection of race and gender in this situation. It is, however, possible to suggest two things. First, because of the acknowledged lesser political power of these communities, the municipal zoning policies for prostitution might target these racially segregated, marginalized communities.²³⁸ Second, even if this zoning does not directly produce more pressure on the women there to prostitute, it might create a situation in which buyers of prostitution start treating women (and Roma women more so) as prostitutes.²³⁹

A slightly different case is the group of young people leaving institutional care (especially children's homes²⁴⁰), and children who run away from home.²⁴¹ About 80 %

²³⁵ See for example E Fultz and S Steinhilber, 'Social security reform and gender equality: Recent experience in central Europe' (2004) 143 (3) *International Labour Review* 249.

²³⁶ Regions in Bohemia, Moravia and Silesia, which historically had German populations. These were, as perceived collaborators with Nazi Germany during WWII expelled in and after 1945.

²³⁷ For discussion see M Havelka, 'Tschechische Republik - Migrationen, Vertreibungen, Interventionen in die Sozialstruktur' in A Sterbling (ed) *Migrationsprozesse* (Krämer, Hamburg 2006).

²³⁸ I thank Catharine MacKinnon for this insight.

²³⁹ A similarly tendency has been documented by testimonies of women in pornography in CA MacKinnon and A Dworkin, *In harm's way: the pornography civil rights hearings* (Harvard University Press, Cambridge, Mass. London 1997).

²⁴⁰ The system of school-like facilities for institutional education is administered by the Ministry of Education, Youth and Sport. For details see <http://www.msmt.cz/socialni-programy/system-skolskych-zarizeni-pro-vykon-ustavni-vychovy>.

²⁴¹ This is noted for example in MI (1999).

of young male prostitutes in Prague are said to come from children's homes.²⁴²

Intersection with ethnicity is important here as well – a recent study showed that among girls leaving institutional care, Roma girls are 3.6 times more likely to enter prostitution than non-Roma girls.²⁴³ Even if young people leaving institutional care are for the most part not an obvious target of discrimination (in employment), as they do not show any identifiable discrimination characteristic, they are vulnerable in other ways. Mainly, they lack any social network - a support in the background. After leaving institutional care at the age of 18, these young men and women are not provided for. This situation can also be seen as, in part, a specific heritage of State Socialism, which emphasized institutional care over family care in cases of orphans, abandoned children or children removed from problematic families. Still today, the Czech Republic has more children in children's homes per number of inhabitants than any other EU country.²⁴⁴

So far as clients are concerned, R-R's study conducted in Prague in 2007 found that the 'typical' client is around 35 years old, and married.²⁴⁵ In 35 % cases, he is either Czech or Slovak. A trend in the increase of domestic demand has been noted by NGOs.²⁴⁶ These findings about 'normalcy' of clients are congruent with foreign research

²⁴² According to Laszlo Sumegh, a coordinator at the NGO Project Opportunity. EP Martin and N Brabenec, 'Rent boys: Sex workers living on society's edge' (2004) <http://www.radio.cz/en/article/59997/limit> (25th July 2009).

²⁴³ P Burčíková and others, *Cool je... vědět víc. (It is cool... to know more. Institutional care and risks of commercial sexual exploitation)* (La Strada, Prague 2008).

²⁴⁴ UNICEF, *Social Monitor 2004. The MONEE Project CEE/CIS/Baltics* (UNICEF Innocenti Research Centre, Florence 2004).

²⁴⁵ H Malinová, 'Kdo chodí za holkama (Who goes to the girls)' (2008) http://www.rozkosbezrizika.cz/01_hm/620_DOWNLOAD.htm#PREZENTACE (20 June 2009).

²⁴⁶ Ibid.

which identifies clients as ‘regular citizens who have professional jobs and are in relationships’.²⁴⁷

As we will see, voluntary prostitution operates in a legal grey zone – it is neither illegal, nor legal. Prostitutes are considered to be neither employees nor self-employed for the purposes of the law. Nevertheless, Poláková’s research in Prague sex clubs shows that many prostitutes have some formalized relationship with the sex club. Almost half of her interviewees had either an employment or other form of contract, for positions as dancers, masseuses or models; the majority were health insured.²⁴⁸ It seems that indoor prostitutes in Prague are a segment of the ‘market’ willing to formalize their status in the eyes of law.

As far victims of trafficking are concerned, the MI published its first comprehensive Report on Trafficking in Human Beings in 2008.²⁴⁹ It gathers information on strategic documents, criminal prosecutions (a total of 22 convictions in 2008²⁵⁰), NGO activism, and the legislative framework. It is in this respect a positive step, it, however, lacks estimates of the number of people trafficked from, through and into the Czech Republic. Another problem in terms of information is its tendency not to distinguish between different purposes of trafficking (for sexual exploitation or forced labour) or the sex of the victims.²⁵¹ It thus remains difficult to assess the real numbers and situation of the victims of trafficking in the Czech Republic.

²⁴⁷ T Sanders, *Paying for Pleasure: Men who buy sex* (Willan Publishing., Cullompton 2008).

²⁴⁸ Poláková, 63-64.

²⁴⁹ MI (2008) .

²⁵⁰ Ibid, 17.

²⁵¹ GCzR (2008), La Strada (2005), 28.

Chapter 5 Prostitution under State Socialism

Before examining the development of the legal framework and debates on prostitution under State Socialism, a brief description of the previous period and the inherited legal framework is called for.

5.1. Legal development in the pre-Socialist period

The treatment of prostitution in the Austro-Hungarian Empire in the 19th century took the form of a ‘decriminalization with regulation’ approach.²⁵² Fornication and harlotry were criminal only when causing public offence, when prostitute was seducing the youth or when prostitute was aware of being infected with a disease. Prostitutes were subject to registration and regular health checks. The regulation of prostitution was mostly left to municipalities.²⁵³ This regulation approach, of strict policing and control, had many opponents at the turn of the century, notably the Marxist theorists (see 2.1 above).

The new Czechoslovak Republic, founded in 1918, diverged from the previous regulation regime in 1922; Lenderová notes that first President Masaryk was a staunch abolitionist.²⁵⁴ The Act on the Fight against Venereal Diseases of 1922²⁵⁵ became the most important act to address prostitution in the 20th century and is, in part,²⁵⁶ still in force today. As an ‘old abolitionist’²⁵⁷ piece of legislation, it refused surveillance, control

²⁵² Sec.245,254 of 1803 Codex of municipal crimes capital and severe; Sec.509 of Act No 117/1852 Imperial Code. See also M Lenderová, *Chytila patrola, aneb, Prostituce za Rakouska i republiky* (Karolinum, Praha 2002), 35-37.

²⁵³ Lenderová, 8 and 35-37.

²⁵⁴ Ibid, 43.

²⁵⁵ Act No 241/1922 Coll.

²⁵⁶ Prohibition of brothels.

²⁵⁷ The debates in the House of Deputies of the National Assembly (No. 3726 of 1922) identified the proposal as abolitionist. Available at http://www.psp.cz/eknih/1920ns/ps/tisky/T3726_00.htm.

or prosecution of prostitutes, but it still did address public health and some aspects of public morality.

The fight against STDs was at the forefront. The obligation to undergo health checks in cases of suspicion of venereal disease was, however, not limited to prostitutes, but was directed at everyone.²⁵⁸ Morality was a concern in three situations. First, soliciting and the exercise of harlotry were punishable when causing public offence.²⁵⁹ Second, the youth were protected - the exercise of harlotry which caused offense to the youth was punishable.²⁶⁰ Third, gay sex, termed 'fornication against nature', which spanned sexual intercourse with animals and persons of the same sex, was also criminal.²⁶¹ Overall, the relatively tolerant treatment of the prostitute is conspicuous - only the above mentioned qualified offences were punishable through incarceration of not over 6 months. The Act also foresaw the establishment of 'reform houses', offering shelter and opportunities for reform to prostitutes who wanted to exit the 'trade'.²⁶²

Procurement continued to be punishable throughout this period,²⁶³ and trafficking was covered by provisions criminalizing slavery and abduction.²⁶⁴ Unsurprisingly, clients were not subject to any specific regulation.

The pre-Socialist approach understood itself as abolitionist;²⁶⁵ from today's perspective it is best termed 'old abolitionist'.²⁶⁶ Not reconciled to prostitution, it rejected

²⁵⁸ Sec.2 241/1922.

²⁵⁹ Ibid , Sec.20(1) and 21.

²⁶⁰ Ibid, Sec.20(2) and 21.

²⁶¹ Originally was criminal under Sec.129(1)(a),(b) 117/1852.

²⁶² Sec.15 241/1922.

²⁶³ Sec.132,512 and 515 117/1852.

²⁶⁴ Sec.95 and 96 *ibid*; slavery was gender neutral, the crime of abduction could have been committed on a woman only.

the previous controlling regulation approach, and while containing some aspects of prostitution, it was not repressive of prostitutes themselves (with the notable exception of discrimination of gays, conditioned by the historical context).

5.2 Legal development under State Socialism

The Socialist State officially continued the ‘old abolitionist’ approach of the previous era, but in reality increased the repressive elements. It never criminalized prostitution as such, but increased its control over prostitutes, through criminal law, the law of administrative offences and health law. The term prostitution itself rarely appeared in legal texts and remained undefined throughout the State Socialist period.

5.2.1 Offences against morality and socialist morality

Similar to the development in the USSR (see 2.1.1 above), parasitism was a crime in the Czech law. It was a very specifically State Socialist crime against ‘socialist morality’, under which work-shirkers were prosecuted. It was absent in the original 1950 Criminal Code (‘CC’), possibly because the problem of work-avoidance was not foreseen, and prostitution was believed to have been eradicated with the change of the economic order (see discussion in 5.3). A provision criminalizing those who ‘make a living unfairly and avoid honest work’ was, however, inserted in 1956.²⁶⁷ The exact wording of the provision changed often during the period and mostly omitted²⁶⁸ mentioning prostitution (for reasons of international obligations under the 1949 Convention²⁶⁹). The provision,

²⁶⁵ See Fn.257.

²⁶⁶ See Fn.11.

²⁶⁷ Act No 63/1956 Coll.

²⁶⁸ The term appeared only during a brief period between 1961 and 1963.

²⁶⁹ I thank Dagmar Císařová for this insight.

however, clearly aimed at fighting prostitution, as is apparent from the 1956 explanatory memorandum²⁷⁰ and secondary literature.²⁷¹

The two constitutive elements of the offense - work-avoidance, later 'systematic work avoidance',²⁷² and 'making an unfair living' - were always required. This meant that only professional prostitutes (who did not work and fully lived off prostitution) were punishable criminally. Later in the State Socialist period, the criminal provision was supplemented by provisions regulating offences of work avoidance²⁷³ and 'against socialist co-existence'.²⁷⁴ In 1969, parasitism was also defined in the law of administrative offences,²⁷⁵ under which even living partially off income from prostitution was punishable.

In the provisions on parasitism, we see a hitherto unmentioned goal of legislation, specific to Marxist ideology and State Socialism – the protection of socialist morality's imperative to participate in honest labour. It is safe to say that prostitution was primarily seen as problematic because of its work-shirking aspects under State Socialism, but the actual act of selling sex was itself not legally addressed. Other previously mentioned moral aspects of prostitution – (i) public offensiveness, (ii) gay prostitution and (iii) the moral well-being of youth - continued to be targeted as well.

²⁷⁰ GCzR, 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1950 Criminal Code' (1956) http://www.psp.cz/eknih/1954ns/tisky/t0094_03.htm (1st July 2009).

²⁷¹ J Nezkusil and D Císařová, 'K aktuálním otázkám příživnictví (Current questions of parasitism)' (1958) *Socialistická zákonnost* 217; M Vlček, 'K problematice postihu prostituce v Československém trestním zákoně (On the punishment of prostitution under Czechoslovak Criminal Code)' (1975) *Právník* 923; M Vlček, 'Příživnictví jako právní a sociologická kategorie (Parasitism and a legal and sociological category)' (1983) *Právník* 753.

²⁷² Act No 140/1961 Coll.

²⁷³ Especially Sec.72 Act No 88/1950 Coll.; Sec.19(c) Act No 38/1961 Coll.; Act No 58/1965 Coll.

²⁷⁴ Sec.19 Act No 60/1961 Coll.; Sec.19 Act No 38/1961 Coll.

²⁷⁵ Sec.10 Act No 150/1969.

The 1950 Code of Administrative Offences created a general provision on ‘offences against morality’²⁷⁶ aiming at procurers and prostitutes alike.²⁷⁷ In certain cases, involvement in prostitution in a public space could have constituted the crime of disorderly conduct.²⁷⁸ This can be seen as a continuation of previous policy again publicly offensive behaviours.

‘Sexual intercourse between persons of the same sex’ continued to be criminalized under the 1950 CC.²⁷⁹ Aggravated offences of soliciting for paid gay sex (‘who offers to have sexual intercourse with a person of the same sex for payment’)²⁸⁰ and engaging in homosexual intercourse for money²⁸¹ carried maximum sentences of three and five years imprisonment respectively. The 1961 CC decriminalized gay sex as such, but kept different ages of consent for heterosexual intercourse (15 years²⁸²) and homosexual intercourse (18 years²⁸³). It also continued to criminalize engaging in homosexual sex for payment, both for the person paying and receiving, clearly targeting prostitutes and the clients. This provision carried a maximum sentence of five years.

Finally, the moral development of the youth continued to be protected. Interestingly ‘exercise of harlotry offensive to the youth’ had disappeared from criminal

²⁷⁶ Sec.134 88/1950. This offence was eliminated in 1961 by 60/1961.

²⁷⁷ GCzR, ‘Explanatory Memorandum to the Governmental Proposal of the Criminal Code (1950)’ (1948) http://www.psp.cz/cgi-bin/win/eknih/1948ns/tisky/t0471_08.htm (1st July 2009).

²⁷⁸ Sec.188b Act No. 86/1950 Coll. and Sec.202 140/1961.

²⁷⁹ Sec.241 86/1950.

²⁸⁰ Sec.241(3) *ibid.*

²⁸¹ Sec.241(2)(b) *ibid.*

²⁸² Sec.242 140/1961.

²⁸³ Sec.244(1) *ibid.*

law under the State Socialist period in 1950, but was treated as an administrative offence.²⁸⁴

A comment needs to be made about the specifics of administrative punishments. The division between crimes or administrative offences was often not drawn with precision, and was in permanent flux during the State Socialist era.²⁸⁵ During certain periods, local ‘people’s committees’ – lay, elected local governmental bodies –; or local ‘people’s courts’ – lay, elected courts – had jurisdiction to determine guilt and punishment for misdemeanours, as well as for lesser crimes which carried prison sentences or alternative punishments. This meant that prostitutes could have been harassed by a variety of different procedures, and sentenced by their fellow citizens. Punishment for all these misdemeanours increased for repeat offenders,²⁸⁶ which targeted ‘professionals’,²⁸⁷ presumably known to members of the local authorities. In terms of enforcement, statistics are, to the author’s knowledge, unavailable.

5.2.2 Health

The state oversight over the spreading of venereal diseases was increased by a new Act on Fight against Venereal Diseases of 1949.²⁸⁸ Where doctors were originally required to inform about infection only upon ministerial request and anonymously, they were now bound to do so in all cases to the local authorities.²⁸⁹ These ‘local people’s committees’

²⁸⁴ Offensive exercise of harlotry which causes offense to the youth was a crime under the 1922 Act but became a misdemeanour in 1950.

²⁸⁵ T Gřivna, 'Trestní právo hmotné (Substantive Criminal Law)' in Bobek, Molek and Šimíček (2009), 555.

²⁸⁶ Sec.1 58/1965.

²⁸⁷ J Prokopec, 'Současná problematika prostituce v ČSSR (Contemporary issues of prostitution in Czechoslovakia)' (1968) (1) Zprávy Státní populační komise 35.

²⁸⁸ Act No 158/1949 Coll.

²⁸⁹ Sec.4(b) *ibid.*

could then ask the patient to divulge the origin of the infection.²⁹⁰ Furthermore, the Ministry could order obligatory diagnostic tests to be done on a population group or region.²⁹¹

Concerns for health were also expressed in criminal law. Endangering with venereal disease was punishable specifically,²⁹² as well as being punishable under general criminal provisions concerning harm to a person.²⁹³ The provisions have, however, never been explicitly linked to prostitution. This intensified oversight and control was, actually, common to all health issues under State Socialism, and can be seen as part of the commitment of the Socialist State to guaranteeing socio-economic rights.

5.2.3 Other regulation

No zoning or regulatory provisions (such as registers) existed under State Socialism. Prostitution was seen as a fringe phenomenon, which did not require regulation; besides, any regulation would have run contrary to the official doctrine that prostitution was dying out in a classless society (see discussion in 5.3).

On the local level, municipal or regional self-government, which is in most countries responsible for zoning regulations, was gradually eliminated in the Socialist State.²⁹⁴ Local bodies were not independent, but administrative underlings of the state. I submit that in practice, however, the abovementioned controlling and disciplining competences of the local people's committees and people's courts practically played the

²⁹⁰ Sec.5(1) *ibid.*

²⁹¹ Sec.6 *ibid.* . Partially abolished by Act No 20/1966 Coll.

²⁹² 241/1922; Sec.224-225 86/1950; Sec.226 140/1961; Sec.155 Act No 40/2009 Coll.

²⁹³ Sec.152-157 117/1852, as last amended.

²⁹⁴ J Vedral, 'Správní právo (Administrative Law)' in Bobek, Molek and Šimíček (2009), 622.

role that municipal zoning plays in other countries, and has played during Transition in the Czech Republic (see 6.1.3 below).

5.2.4 Procurement and trafficking

Having discussed the position of prostitutes, let us now look at (criminal) provisions aiming at pimps and traffickers. Procurement, historically a criminal offence, was left out of the 1950 CC, but was reinserted in 1956.²⁹⁵ The criminal act consisted in ‘engaging, inducing, or seducing another to prostitution’ or the ‘living off earnings’ thereof. This definition changed only minimally during the State Socialist period.

Trafficking was a crime with a narrow scope during the State Socialist period: it was limited to women trafficked across international borders and for the purposes of sexual exploitation only. The provision criminalizing ‘traffic in women’ in the 1950 CC²⁹⁶ consisted in ‘enticing, hiring or transporting a woman abroad with the intent for her to be used for sexual intercourse with another’. The 1961 CC contained a comparable provision. As mentioned previously (4.1), the provision on trafficking was practically dormant under State Socialism, as no prosecutions were made. Clients of prostitutes remained, with the exception of persons paying for homosexual sex, completely ignored by the legal framework under State Socialism.

5.3 Understanding prostitution under State Socialism - reports and debates

In the following, the broader context of the development of legal responses to prostitution will be analyzed. By examining non-legal materials from the State Socialist period, I will

²⁹⁵ As Sec.243(a) 86/1950 as amended by Act No 63/1956 Coll.

²⁹⁶ Sec.243 86/1950.

attempt to identify how policy-makers and legal actors (i) understood the nature of prostitution and its causes; and (ii) how they purported to respond to the phenomenon.

The materials used are expert reports, secondary literature, explanatory memoranda and parliamentary debates. It should be said from the onset that the material is scarce, not very candid and rarely analytical – it mostly discusses either politically neutral legal technicalities of the provisions on parasitism (especially the legal academic writings),²⁹⁷ or constitutes ideological proclamations (parliamentary debates and explanatory memoranda). The sources that defy this pattern are the periodic Reports of the State Population Committee, published under the auspices of the Ministry of Labour and Social Affairs. In these Reports, two articles were published on prostitution in 1967 and 1968. They were exceptional in their open and frank analysis and policy considerations; an attitude allowed by the thawing of the political situation in 1960's Czechoslovakia.²⁹⁸ The first text was written in 1967 by Jaroslav Bartůněk, a member of a local medical board in Prague; the second in 1968 by Jiří Prokopec, then head of the State Population Committee (as a paper presented to the Health Committee of the National Assembly). These reports are given particular attention.

5.3.1 The nature of prostitution

Let us now look at the discussion surrounding the nature of prostitution. The preliminary question to be answered here is whether the Marxist predictions about the end of prostitution in a classless post-capitalist society were fulfilled. As we have seen (2.1), Marxist theory considered prostitution to be a specifically capitalist ill that would

²⁹⁷ Nezkusil and Císařová; Vlček (1975); Vlček (1983).

²⁹⁸ A period of cautious and gradual liberalization and reform of both the economy and the political situation started in early 1960's and ended in August 1968 with the invasion of the Soviet, Polish, Bulgarian and Hungarian armies.

disappear in a socialist society. This attitude is exemplified by a definition of prostitution provided in the Czechoslovak Handy Thesaurus:

Prostitution is a social phenomenon peculiar especially to capitalism, where immiseration and exploitation of the proletariat and of women especially reaches such levels that some women are compelled to make their livelihood by offering sexual intercourse for money, to ensure their bare existence. Socialism eliminates prostitution together with its social causes.²⁹⁹

Already in 1956 however, when inserting provisions on procurement and parasitism into criminal law, this *de facto* optimism about societal development bringing about the end of prostitution was abandoned. It was replaced with legislative optimism about the possibility of changing behaviour through law. The explanatory memorandum to the 1956 amendment of the 1950 CC clarified:

[...] such actions [such as prostitution], resulting from relics of the past, are a heritage of crude societal moral and custom and they need to be fought against [by criminal law].³⁰⁰

It is worth noting that alongside parasitism, speculation, sabotage and pilferage of socialist property were the new criminal provision added, all aiming at the

re-education [...] through] suppression or elimination of capitalist anachronisms in the popular consciousness.³⁰¹

An admission that socialism does not stop prostitution is apparent in 1967, in Bartůněk's report:

In the first half of this [20th] century, the socialist believed that prostitution is a consequence of the antagonism between social classes, a fruit of social inequality of men and women, a corollary of social misery and unemployment. It was believed that by eliminating class antagonisms, by

²⁹⁹ V Procházka and et.al., *Příruční slovník naučný* (Nakladatelství Československé akademie věd, Praha 1966), 732.

³⁰⁰ GCzR, 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1950 Criminal Code'.

³⁰¹ Deputy Šebík speaking to the National Assembly on 19 December 1956, record available at <http://www.psp.cz/eknih/1954ns/stenprot/015schuz/s015010.htm>.

establishing social equality between men and women, with the equal chances of employment for women, the sources of prostitution would dry up [...].³⁰²

When it was admitted that prostitution existed also under State Socialism, old understandings of its causes had to be abandoned and new explanations had to be sought for its existence. The reasons considered in the 1967 and 1968 Reports were (i) economic necessity, (ii) consumption, (iii) the loosening of moral scruples (sexualisation), and (iv) inequality between the sexes.

The possible explanation of economic necessity was dismissed:

It would be laughable to claim that our contemporary prostitutes seek livelihood of providing sexual intercourse for money in most part to sustain their bare existence.³⁰³

It would have been politically impossible for the authors to admit the existence penury in Socialist Czechoslovakia. However, it can be accepted that this statement is true – the state's employment policy and social security net was such as to disallow starvation or absolute penury.³⁰⁴

The alternative explanation was consumption. Prokopec described 'the social causes' of prostitution as 'a craving for entertainment, beautiful clothes and affluence [which] brings young women to prostitution.'³⁰⁵ Prostitutes were thus seen as not having to work for sustenance, but as craving luxury.

³⁰² J Bartůněk, 'Poznámky k otázce prostituce (Notes on prostitution)' (1967) (6) Zprávy Státní populační komise 28, 28.

³⁰³ Prokopec, 36.

³⁰⁴ The access to employment (or access to good employment) was denied for example to political opponents of the regime, the dissent. It was however not done based on sex.

³⁰⁵ Prokopec, 36.

Another discussed cause was the ‘loosening of moral scruples’, promiscuity and increasing sexualisation. The ‘lack of good moral education’³⁰⁶ is seen as one of the causes of prostitution, and ‘persons without strong moral scruples’³⁰⁷ are seen as more likely to succumb to consumerism and to the desire to finance it by prostitution. At the same time, it is important to note that a moral condemnation of the sexual behaviour of the prostitute was absent from the Reports. The experts of the State Population Committee were particularly careful to distinguish between sexual freedom and prostitution. Seemingly in an attempt to show that young women who lead liberated sexual lives are not ‘whores’. Bartůněk writes:

Young people around the world see the issue of the so called free sexual behaviour differently than their fathers and mothers. The desire for sexual freedom is not a rag nor defiance [...] It is an answer to accelerated physical maturity [...] to surviving societal hypocrisy [...] It would be a harmful simplification if these questions [of promiscuity and sexual freedom] were identified with prostitution and moreover only the prostitution of women. It wouldn’t be more than insults and pejorative labelling.³⁰⁸

Similarly, Prokopec argues:

The fact that today’s young generation lives a freer sexual life than the previous generations, does not [...], in and of itself, mean higher inclination to prostitution.³⁰⁹

Finally, it is also striking to find among the causes of prostitution implicitly also inequality between the sexes. When speaking about the changes that occurred after 1948, Bartůněk mentions that many a former prostitute joined the ‘honestly earning workers’ and that equality between men and women was legally guaranteed. He continues:

³⁰⁶ Ibid, 36.

³⁰⁷ Ibid, 36.

³⁰⁸ Bartůněk, 30.

³⁰⁹ Prokopec, 36.

It appeared that even the other half of the culprits of this social illness [prostitution] changed; the more important half: men. That prostitution as a manifestation of crassness and lack of respect of men to women lost its main source which fed it under capitalism.³¹⁰

He goes on to implicitly admit that the hope that a change of economic order would change gender order has not been fulfilled. The comment as to the cause of prostitution being men creating demand and the underlying disrespect of men towards women in society is also surprisingly astute. Unfortunately, a deeper analysis was not developed, and the text does not give us answers about the understanding of the relationship between class and gender in prostitution under State Socialism.

5.3.2 Legislative responses and their goals

What do the policy proposals on prostitution and their goals tell us about the understanding of prostitution? I identified above (5.2.1) the ending of antisocial behaviour toward honest work as the most prominent goal of legislative intervention (through criminalization of parasitism). Martin Vlček, a legal scholar who has published on prostitution from 1970's through 1990's, wrote:

The societal danger of prostitution under socialism consist undoubtedly in prostitution's serious corruption of the society's protected interested in adherence to socialist morality, especially as concerns the way in which means of subsistence are acquired.³¹¹

We have seen that, as in the pre-Socialist period, other legislative concerns included health and aspects of morality limited to behaviour causing public offense, offense to the youth and gay prostitution.

Overall, can we classify the State Socialist regime as repressive or permissive towards prostitution or prostitutes? I submit that a distinction has to be made between

³¹⁰ Bartůněk, 28.

³¹¹ Vlček (1975), 924.

Marxist theory and the aspirations of the Socialist State on one hand, and the reality of the legal regime on the other. The former is exemplified by the policy proposals contained in Prokopec's and Bartůněk's reports. Their position was anti-regulation, anti-repression and pro-prevention. In discussing regulation, Bartůněk was sceptical:

If the calls for yellow books [personal registration cards for prostitutes³¹²] were accepted, the return of these persons to society would be hindered.³¹³

About criminal prosecution, he emphasises:

Prostitution is not a permanent, life-time phenomenon. [...] It is imperative to be careful when regulating and controlling this group, which is a social category called prostitution. Even individuals with graver guilt we allow (after they served their sentences) back to our society with full rights.³¹⁴

Both authors considered social prevention³¹⁵ to be the only right way forward. Prokopec highlighted several connected issues to be addressed: (i) children leaving institutional care, (ii) the criminal underground that benefits from prostitution ('taxi drivers, waiters, receptionists, janitors, procurers, etc.'³¹⁶), (iii) lack of qualification among women, and (iv) lack of re-socialising efforts in prisons for incarcerated prostitutes. In order to tackle these, he proposed, for example, special boarding-houses for girls from state institutions and run-away girls, which would offer shelter and more in order to save young girls from entering prostitution. Prokopec also stressed that prostitutes needed to be offered a helping hand to re-enter honest work and that education and requalification had to be pursued.³¹⁷

³¹² Prostitutes' identification documents under tsarist Russia. See Quigley, 1208.

³¹³ Bartůněk, 30.

³¹⁴ Ibid, 30.

³¹⁵ Prokopec, 38-40.

³¹⁶ Ibid, 39.

³¹⁷ Ibid, 39-40.

These policy proposals were never realized. One possible reason is the radically changed political circumstances after the 1968 invasion (the so-called ‘normalization’³¹⁸), which closed the waters over the topic. Aside from non-realization of the proposed preventive measures, the in-depth sociological survey into prostitution, announced in 1968, never happened and neither did the suggested exchange of experts with foreign (even capitalist) countries.³¹⁹ It can, however, also be argued that these proposals, extremely valuable and compelling, never had a chance of being realized in an authoritarian state with an overall repressive attitude to undesirable phenomena (be it political dissent, the ‘under the counter’ market, youth delinquency, alcoholism, etc.).

There was, however, goodwill in the State Socialist aspirations. Based on the ‘orthodox’ Marxist position (discussed in 2.1), the Soviet Russian³²⁰ as well as Czechoslovak debates emphasised that their fight was against prostitution, not prostitutes. It tended to see the prostitute as the victim and not as the villain. And, even though the economic narrative was maintained, prostitution as gender inequality was addressed. Yet, although the expert discussion hoped to eliminate the causes of prostitution out of concern for the wellbeing of prostitutes, the reality was repressive of both prostitution and the prostitutes. Prostitutes were seen as work-shirkers and parasites (the ‘prostitutes for consumption’ explanation of motivation prominent among writers justifying the legislative framework³²¹). The practice saw them rather as villains.

³¹⁸ ‘Normalization’ describes the period from 1969 to 1989 when reforms and reformers were suppressed, and the regime used repression and control to maintain a conservative wing of the Communist Party in power.

³¹⁹ M Vlček, ‘Poznámky k diskusi o legalizaci prostituce (Notes on the discussion to legalize prostitution)’ (1990) *Právník* 755, 755.

³²⁰ Quigley, 1210; see also Waters, 171.

³²¹ See for example Nezkusil and Císařová.

5.3.3 Prostitution as gender equality?

A similar disparity between the Reports on one hand and the legislative reality and the rest of intellectual production on the other can be noted as regards the understanding of prostitution as an issue of gender equality. Prokopec's and Bartůněk's reports appear to admit the existence and impact of patriarchy in a socialist society – that notwithstanding their legal equality, inequality of sexes existed even in a socialist society. The understanding does not go as far as to conceptualize prostitution as abuse of gender power and gender violence, however.

Other writing on prostitution, including the secondary literature on the equality of sexes (termed the 'woman question'³²²), does not address this at all. The 'woman question' was mostly seen as only comprising family, education and employment, and representation in public decision-making. Gender-based violence, such as domestic abuse, sexual harassment, prostitution or pornography, was almost never mentioned and certainly not conceptualized as a gender equality issue.

5.3.4 Influences by ideology and international law

I have shown that Marxist ideology influenced policy considerations in the Socialist State. Was international law also of import? I argue that socialist Czechoslovakia either ignored international obligations or paid lip-service to them, and, as a result, they did not influence the legal development to any considerable extent. First, the provisions on parasitism (and the underlying obligation to work) were in breach of various ILO

³²² S Radvanová, *Žena a právo (Woman and Law)* (1. vyd. edn, Populární právnická knihovna, Orbis, Praha 1971); M Šolcová, *Postavení ženy v socialistické společnosti (The Position of Women in a Socialist Society)* (Horizont, Praha 1984); J Bauerová and E Bártová, *Proměny ženy v rodině, práci a ve veřejném životě (Transformations of women in the family, work and public life)* (Nakladatelství svoboda, Praha 1987); J Bauerová, *Postavení ženy v rodině, práci a ve veřejném životě socialistické společnosti (The Position of Woman in Family, Work and the Public Life of a Socialist Society)* (Ústřední výbor českého svazu žen, Praha 1988).

instruments prohibiting forced labour.³²³ Notwithstanding repeated reminders, Czechoslovakia, however, never repealed the general obligation to work nor eliminated the offence of parasitism.³²⁴ Second, the criminal punishment of prostitute for parasitism was in breach with the abolitionist 1949 Convention, to which Czechoslovakia was a party. In order to pretend compliance, care was taken for prostitution not to be explicitly mentioned (see 5.2.1 above). This however did not change the fact that prostitutes were the legislative and enforcement target.

³²³ See Fn.136.

³²⁴ V Adamus, 'Příživnictví - minulost a současnost (Parasitism - past and present)' (1992) (3) Správní právo 30.

Chapter 6 Prostitution in the Transition period

The changed economic and political situation after 1989 resulted in three principal discontinuities with the past. First, the repressive criminal and administrative provisions were repealed. Second, reflecting the changing context of prostitution, a series of completely new debates emerged. Some of those were translated into law: addressing trafficking was imperative due not only to the open borders, but also to the developments in international law, and zoning by municipalities materialized as a reaction to a dramatic increase in (especially street) prostitution. These legal developments are discussed below in 6.1. Some debates remained at the proposal stage: a decision on how to treat prostitution in law has not yet been taken. Prostitution operates in a legal grey zone, and the possible legal responses, which have been debated, range from criminalization (6.2.1) or shaming (6.2.3) to proposals for regulation of prostitution (6.2.2). Third, the emerging ideological pluralism changed the tone and content of debates on prostitution among policy-influencing actors (6.3).

6.1 Legal development

6.1.1 An end to repressive attitudes to prostitutes under criminal law?

In terms of criminal law and the law of administrative offences, many repressive or discriminatory provisions were eliminated as early as 1990. The provision criminalizing parasitism was abolished,³²⁵ as well as the above mentioned misdemeanours, such as the offence against socialist co-existence.³²⁶ This was a vital moment of liberalization of prostitution during Transition. The direct discrimination against homosexuals in criminal

³²⁵ Act No. 175/1990 Coll..

³²⁶ Act No. 200/1990 Coll. repealing Act No. 60/1961.

law was also abolished – the provision on sexual intercourse between persons of the same sex being repealed in its entirety.³²⁷ In continuity with the past, the provision criminalizing disorderly conduct remains³²⁸ and can still be applied to prostitutes.

Repressive proposals in the parliament have, however, never truly disappeared, and in law, criminal sanctions connected to prostitution made a comeback recently. The government-proposed 2009 Criminal Code (which will enter into force on 1st January 2010) introduces the offence of ‘prostitution endangering the moral development of children’, in Sec. 190. It criminalizes ‘practicing prostitution’³²⁹ and ‘organizing, guarding or catering prostitution in the vicinity of a school or a similar establishment or a place assigned to stay or visit of children’.³³⁰ A definition of what constitutes prostitution is not given. The provision criminalizes the prostitute³³¹ and the pimp,³³² while completely ignoring the client.

The explanatory memorandum to the governmental proposal on the 2009 CC mentions Sec. 184b of the German Criminal Code as the model for the provision on ‘prostitution endangering the moral development of children’. Aside from the fact that the relevant provision on *Jugendgefährdende Prostitution*³³³ has since 2003 been renumbered to 184f, the Czech provision does not respect its model in two important aspects. First, in the German offence, the ‘moral endangering of the youth’ is an explicit

³²⁷ 175/1990

³²⁸ Sec.202 140/1961; Sec.358 40/2009.

³²⁹ Sec.190(1) 40/2009.

³³⁰ Sec.190(2) *ibid.*

³³¹ Sec.190(1) *ibid.*

³³² Sec.190(2) *ibid.*

³³³ Sec.184f Jugendgefährdende Prostitution; Strafgesetzbuch (StGB) (BGBl. I S. 3322) FNA 450-2. Zuletzt geändert durch Art.1 42. ÄndG vom 29. 6. 2009 (BGBl. I S. 1658).

constitutive element of the offence; it has to happen both in terms of action and intent. The Czech provision does not require it, and consequently has a substantially wider scope. Thus, whereas in Germany, one would need to find intent to endanger youth in the actions of a prostitute, in the Czech Republic the closeness to a school is sufficient.³³⁴ Second, the maximum sentence in German law is half the Czech one; and the alternative of a fine is available.

6.1.2. Defining prostitution and its status

With the emergence of a free capitalist market, a completely new debate arose: that of the legal treatment of voluntary prostitution. The situation today, 20 years after the Velvet Revolution, is still best described as a ‘grey zone’. Prostitution remains almost unmentioned by the law. The only provision speaking about it is Sec. 3(3)(p) of the Act on Trades³³⁵ as amended in 1995. It states that ‘the offering or provision of services aiming directly at satisfying sexual needs’ is not a trade.³³⁶ Arguably, this could imply that prostitution is another ‘entrepreneurial activity’ according to the Commercial Code;³³⁷ or it could be construed as other (non-entrepreneurial) self-employed activity.³³⁸ Any such gainful activity would be liable to taxation. The potentially applicable rubric of the Act on Income Taxes is that of ‘independent professions’,³³⁹ otherwise applicable to doctors, attorneys, artists, and similar free professions. Thus, a prostitute could legalize

³³⁴ This could be remedied by interpreting the name of the provision ‘endangering the moral development of children’ into the definition. This step might however not be obvious for lower courts.

³³⁵ Act No. 286/1996 Coll., amending Act No. 455/1990 Coll.

³³⁶ Sec.3(3)(p) 455/1990.

³³⁷ Sec.2 Act No 513/1991 Coll.

³³⁸ I Pelikánová, *Komentář k zák.č. 513/1991 (Commentary to Art.2(2)(c) Commercial Code)* (ASPI Electronic, 2003).

³³⁹ Sec.7(2)(b)

her status and income under the current legal framework. According to the tax authorities, however, there is no experience with income from prostitution being declared and taxed.³⁴⁰ As we have seen in Chapter 4.2, those who want to legalize their income more commonly simulate another activity (dancing, massage, modelling), and formalize it as such.

To summarize, prostitution is not criminal or illegal, nor is it explicitly legal or regulated. In a situation where the central government has not taken a stand, municipalities have stepped in.

6.1.3. Containing prostitution – municipal zoning

With a boom of prostitution after 1989, municipalities in regions where prostitution has flourished started independently issuing ordinances limiting the exercise of prostitution in public spaces.³⁴¹ This was based on a general provision,³⁴² which evolved during the 1990's to specifically allow for regulating the exercise of prostitution under the umbrella of 'local issues of public order'.³⁴³ As of 1995, the municipal ordinances could designate that:

[...] activities which could disrupt public order in a municipality, can only be exercised in places and at times specified by [a municipal] ordinance, or forbid them altogether in specific public spaces.³⁴⁴

That prostitution was a target might not be obvious from the wording of the law, but was again explicit in the explanatory memorandum:

³⁴⁰ Consultation with Ing. Stehlíková, Head of the Natural Person's Income Tax Department of the Financial Directorate of the City of Prague, 5 October 2009.

³⁴¹ The Northern Bohemian town of Dubí issued a first ordinance in July 1992. See R Bláha, *Trestněprávní aspekty prostituce v České republice (Criminal aspects of prostitution in the Czech Republic)* (LexisNexis, Prague 2008), 197.

³⁴² Sec.14(1)o), 16 Act No. 367/1990 Coll..

³⁴³ Act No. 302/1992 Coll. amending 367/1990.

³⁴⁴ Sec.17 of the 367/1990., as amended by Act No. 279/1995 Coll.

The aim is to enable municipalities to confront [...]the negative effects of the exercise of prostitution as local conditions might require.³⁴⁵

The new Act on Municipalities, adopted in 2000, basically copied the provision of the 1995 Amendment.³⁴⁶

The extent to and the way in which municipalities could restrict the exercise of disruptive activities within their territories has been a matter of dispute. Cases have been brought several times before the Czech Constitution Court (CCC) by the state³⁴⁷ as a problem of delimitation of competences between the state authority and local self-government. It is of interest that this delimitation problem is itself a heritage of State Socialism – the noted elimination of local self-government meant that municipal and regional self-government had to be constructed anew during Transition.

For a long time, the CCC considered municipal ordinances, which were insufficiently specific as to the ‘places and times’ or forbade disruptive activities entirely, in breach of the Act on Municipalities.³⁴⁸ A change came on 8 March 2007, when the CCC considered a complete ban on the ‘offering of sexual services’ in an ordinance of the city Ústí nad Labem.³⁴⁹ The CCC weighed the constitutional rights of prostitutes (their right to enterprise and property rights³⁵⁰) against the interest of the municipality in

³⁴⁵ GCzR, ‘Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1990 Act on Municipalities’ (1995) <http://www.psp.cz/eknih/1993ps/tisky/t165100.htm> (1st July 2009).

³⁴⁶ Sec.10(b) Act No. 128/2000 Coll.

³⁴⁷ MI is mostly responsible for oversight over the division of competences between the state and self-government.

³⁴⁸ CCC Decision of 24th November 1998; Ref. No. Pl. ÚS 38/97; published as No. 293/1998 Coll.; CCC Decision of 21 September 2004; Ref. No. Pl.ÚS 50/03; published as No. 567/2004 Coll.

³⁴⁹ CCC Decision of 8 March 2007; Ref. No. Pl. ÚS 69/04; published as No. 161/2007 Coll.

³⁵⁰ Art.26(1) Act No 2/1993 Coll., Charter of Fundamental Rights and Basic Freedoms; this argument was brought by the MI, see CCC Pl. ÚS 69/04, para.16.

protecting *bonos mores* and public order. It came to the conclusion that the latter outweighed the former:

The exercise of this activity [‘offering sexual services’] endangers good morals and very significantly endangers the moral education of children and youth. [...] Prostitution thus touches ethical values, which a community of citizens that a municipality represents, is entitled to protect. No other activity enumerated in the Art. 3 of the challenged municipal ordinance [such as beggary, free running of dogs, music productions, or carnivals] reaches, in the opinion of the Court, a similar extreme level of inroad into the affairs of public order; not even beggary. These endangered protected goods need to be measured against the interference with the rights of persons providing sexual services. The protection of exercise of this activity before the eyes of the public can not hold up in a conflict with the protection of the moral development of children and youth.³⁵¹

This view was confirmed in a decision about a municipal ordinance of the city of Pilsen.³⁵² The result of these rulings was that many municipalities, such as Prague³⁵³ or the western Bohemian municipality of Dubí,³⁵⁴ adopted total bans on (street) prostitution.

A breach of an obligation under a municipal ordinance was and is an administrative offence, punishable by a fine of up to 30,000 CZK (approximately 1,000 GBP).³⁵⁵ According to the available information, prostitutes are indeed sanctioned, and the fines are levied where possible. Often, however, the prostitutes are unable to pay. Cheb, a Western-Bohemian town, claims to ‘be owed’ 1,380,000 CZK (50,000 GBP) by prostitutes;³⁵⁶ Pilsen reports a million CZK (35,000 GBP) since the last ordinance came

³⁵¹ CCC Pl. ÚS 69/04.

³⁵² CCC Decision of 13 March 2007; Ref. No. Pl.ÚS 10/06; published as No. 163/2007 Coll.

³⁵³ Order of the Capital City of Prague No.20/2007.

³⁵⁴ Ordinance of the City of Dubí No.2/2007.

³⁵⁵ Sec.46(2) Act No. 200/1990 Coll.

³⁵⁶ P Przeczek, 'Cheb přitvrdí v boji s prostitutkami (Cheb to toughen toward prostitutes)' (31 July 2009) http://chebsky.denik.cz/zpravy_region/cheb_prostitute20090730.html (20 September 2009).

into force three years ago.³⁵⁷ Individual prostitutes are said to owe as much as 50,000 CZK (1,800 GBP) in Pilsen, two and a half times the average monthly earnings in the region.³⁵⁸ A situation, similar to the discussed *Tremblay* case,³⁵⁹ thus arises in which prostitutes are indebted to the public authority. Many involuntary prostitutes may be in this situation due to the noted inability of law enforcement to identify victims of trafficking.³⁶⁰ However even for voluntary prostitutes, unpaid administrative fines and the ensuing problems with the authorities arguably impede a return to a life outside of prostitution.

6.1.4 Defining exploitation – procurement and trafficking

Aside from the abolition of the repressive provisions on parasitism and the end of discrimination against gays, the most important developments in criminal law concerned the broadening of the definition of the crime of trafficking. Although this expansion concerned in part acts previously uncovered by criminal law, the definition of trafficking also took over acts originally considered procurement.

First, the development of the definition of trafficking followed that of international law (see above 3.1). In 2002, the provision on ‘traffic in women’ was gender-neutralized to ‘trafficking of human beings for the purposes of sexual intercourse’.³⁶¹ In 2004, this provision was eliminated and a new provision on ‘trafficking

³⁵⁷ J Skála, 'Prostitutky v Plzni dluží téměř milion (Prostitutes in Pilsen owe almost a million)' (26 June 2009) <http://tn.nova.cz/zpravy/regionalni/plzensky-region/prostitutky-v-plzni-dluzi-temer-milion.html> (20 September 2009).

³⁵⁸ CSO data available at http://www.plzen.czso.cz/xp/redakce.nsf/i/prumerne_mzdy_v_cr_a_krajich_v_1_pololeti_roku_2009.

³⁵⁹ *Tremblay*.

³⁶⁰ P Burčáková *The Way Forward?* (La Strada, Prague 2008), 20.

³⁶¹ Sec.246 140/1961as amended by Act No 134/2002 Coll.

of human beings' inserted.³⁶² It was no longer limited to 'use for sexual intercourse', but covered other forms of exploitation (such as forced labour). It also no longer required a trans-border element. The 2009 CC adopts an identical provision.³⁶³ This expansion was externally driven – both 2004³⁶⁴ and 2009³⁶⁵ explanatory memoranda clearly point to EU membership obligations as the impetus for change.

A second development involved a narrowing of the definition of *acti rei* of procurement for the benefit of the provision on trafficking. During Transition, amendments to the 1961 CC started to differentiate between the levels of seriousness of procurement and their corresponding sentences. The basic offence of 'engaging, inducing, or seducing another to prostitution' or the 'living off earnings' thereof was complemented by aggravated offences. They foresaw higher sentences based not only on consequences for the victim (grievous bodily harm or death)³⁶⁶ and the *modus operandi* (procurement committed as part of an organized group or where considerable profit is made³⁶⁷), but also on the age of the victim (under 15 or 18),³⁶⁸ and the use of force.³⁶⁹

The latter two elements - the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation³⁷⁰ as well as the coercion of an adult into

³⁶² Sec.232a 140/1961 as amended by Act No. 537/2004 Coll.

³⁶³ Sec.168 40/2009.

³⁶⁴ GCzR, 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1961 Criminal Code' (2003) <http://www.psp.cz/sqw/text/tiskt.sqw?o=4&ct=514&ct1=0> (1st July 2009).

³⁶⁵ GCzR, 'Explanatory Memorandum to the Governmental Proposal of a Criminal Code' (2008) <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=410&CT1=0> (1st July 2009).

³⁶⁶ Sec.189(3),(4) 40/2009.

³⁶⁷ Sec.204(3)(a),(b) 140/1961, Sec.189(2)(a),(b) 40/2009.

³⁶⁸ Act No. 290/1993 Coll. created an aggravated offence against a victim under 18 years Sec.204(3)(c) 140/196 and under 15 years Sec.204(4) 140/1961.

³⁶⁹ Inserted in 1993 Sec.204 (2) 140/1961.

³⁷⁰ Art.3(c)(d) of Palermo Protocol.

exploitation³⁷¹ - clearly fall under the Palermo Protocol definition of trafficking. This was reflected by the 2004 ‘Euro-amendment’ to the 1961 CC.³⁷² It eliminated the aggravated offence of procurement of a person under 18 years of age, and moved it under trafficking.³⁷³ Similarly, the ‘use of force, threat of force or the threat of other serious harm, or abuse of oppressive circumstance or dependence of other’, originally an aggravated offence of procurement, became part of the crime of trafficking.³⁷⁴

The line between procurement and trafficking nevertheless remains blurred in enforcement reality. This might be partly caused by the frequent changes in the legal definitions or the overlap in constituent elements of the offences, as MI states.³⁷⁵ ‘Examples of successful police operations’ against traffickers described by the MI in 2008 often ended up in procurement prosecutions.³⁷⁶ The rates for both crimes have been relatively low, however. Between 2000 and 2008, on average 20 cases of trafficking were investigated and prosecuted annually, while there were on average 109 cases of procurement.³⁷⁷ The possible reason for low prosecution rates given by Trávníčková are evidentiary difficulties, in particular with respect to witness testimonies.³⁷⁸

6.1.5 Victims of trafficking

This brings us to the question of position of the victims of trafficking, in particular the rights of foreign victims to remain on the Czech territory and their position before the

³⁷¹ Art.3(a)(b) *ibid.*

³⁷² 537/2004.

³⁷³ Sec.232a(1) 140/1961 after 2004.

³⁷⁴ Sec.232a *ibid* and Sec.168(2) 40/2009.

³⁷⁵ MI (1999).

³⁷⁶ MI (2008), 20-24.

³⁷⁷ *Ibid*, 16-17.

³⁷⁸ Trávníčková, 88.

courts. As far as short term residence is concerned, the Czech Republic introduced a new type of permit in 2006,³⁷⁹ in order to implement the requirements of the 2004 Directive.³⁸⁰ A reflection period of thirty days is provided for the victim to decide whether to cooperate with the authorities. This period is, however, not mirrored in the relevant provisions of Code of Criminal Procedure,³⁸¹ creating information and evidentiary obligations the victim should be fulfilling while reflecting on cooperation in prosecution.³⁸²

In terms of long-term residence permits, the law foresees ‘protection permits’ for ‘probable victims’ on the condition that they cooperate in criminal prosecution and sever ties with traffickers. Burčíková, writing for *La Strada*, argues that this transposition of the 2004 Directive³⁸³ is too narrow, especially in terms of limiting the ‘competent authorities’ to criminal enforcement agencies, in understanding ‘cooperation’ only in the context of prosecution, and in linking the duration of the residence to this prosecution, which means that stages preceding (investigation) and following it (claim for compensation, especially in civil proceedings) would not be covered.³⁸⁴

Another sore point is the position of the victim in criminal proceedings. The institute of concealed witness is used rarely, and victims are often repeatedly confronted with their traffickers.³⁸⁵ Furthermore, in terms of obtaining financial compensation for harm caused in trafficking, the beneficiary needs to be identified in the court order

³⁷⁹ Sec.42e(3) of Act No 326/1999 Coll. as amended by Act No 161/2006 Coll.

³⁸⁰ Sec.6 2004 Directive on Residence Permits.

³⁸¹ Act No 141/1961 Coll.

³⁸² Burčíková (2008), 7.

³⁸³ Sec.42e(1)a) 326/1999.

³⁸⁴ Burčíková (2008), 18-20.

³⁸⁵ *Ibid*, 21.

(whether criminal, civil or execution), making it impossible for concealed witnesses to receive compensation. For compensation of immaterial harm, the victims are often referred to civil courts by the criminal magistrates,³⁸⁶ where the obligation to pay court fees in advance is a major discouraging factor. These shortcomings are not particular to victims of trafficking, but can be said to be a general obstacle in obtaining justice for gender-based violence in the Czech Republic.

A specific problem for victims of trafficking is the lack of immunity from prosecution for crimes that occurred in connection with trafficking, for example falsification of (travel) documents, fraud, or credit fraud.³⁸⁷ The *de facto* control a trafficker exercises over his victim does not exclude criminal liability – a specific provision would be needed to guarantee this protection. The criminal record resulting from this lack of immunity makes foreign victims of trafficking ineligible for future permanent residence.

Alongside this legal framework, a ‘Programme of the MI on Support and Protection of Victims of Trafficking in Human Beings’³⁸⁸ exists. Based on executive MI internal acts,³⁸⁹ it comprises instructions and guidelines for the state administration to respond to the needs of victims of trafficking in cooperation with NGOs. The Programme offers more protection for victims than the legal framework does – it enables the granting of a 60 (instead of 30) day reflection period and includes an option to

³⁸⁶ Decisions are on file with the author. Their identification is impossible due to confidentiality.

³⁸⁷ Burčíková (2008), 25-27.

³⁸⁸ See a description in MI (2008), 30.

³⁸⁹ Instruction of the Minister of the Interior No. 64 of 26 October 2007 establishing an Interdisciplinary Working Group within the National Coordination Mechanism to support and protect victims of trafficking in human beings; Guidelines of the First Deputy Minister of the Interior No. 5 of 26 October 2007 on the functioning of the Programme to Support and Protect Victims of Trafficking in Human Beings and on responsible institutions..

provide care for those victims who are not able to cooperate with law enforcement authorities (for example because of their low intellect, a high degree of psychological distress, and so forth).³⁹⁰

Even though currently more flexible and generous, the administrative discretion involved in the Programme's mechanisms as well as a lack of legal basis for many steps taken toward the victims of trafficking (and therefore the absence of judicial oversight) is worrying.

6.2 Proposals for change

6.2.1 Criminalization of prostitutes

Especially throughout the 1990's, proposals to take repressive criminal steps against prostitutes were on the table. In 1995, a group of Deputies concerned with the spread of STDs, proposed that 'persons suspected of prostitution' be required to 'submit to a dermato-venerological examination upon order by the Police or their physician'.³⁹¹ The bill was eventually retracted,³⁹² but shows that the perception of prostitute as a legitimate object of drastic surveillance and control remained prominent in at least part of the political spectrum.³⁹³

Other MPs attempted to criminalize prostitution in 2008. This unsuccessful prohibitionist proposal³⁹⁴ propounded the criminalization of both the prostitute and the client. With the prostitute, however, mere soliciting was sufficient ('who offers

³⁹⁰ MI (2008), 30.

³⁹¹ Amending Sec. 226(2) of the 1961 Criminal Code.

³⁹² For the history of the bill see <http://www.psp.cz/eknih/1993ps/tisky/t201100.htm>.

³⁹³ Proposed by Deputy Jaroš (ODS).

³⁹⁴ Brought by Deputies Maršíček and Šojdrová, both of the Communist Party (KSČM).

prostitution’); while for the client only the ‘receipt of sexual gratification against payment’ was to be criminal.³⁹⁵

It should also be mentioned that even the legalization debates are not free of repressive elements and criminal sanctions. Both proposals for the legalization of prostitution discussed below (6.2.2) suggested criminalization of prostitutes, who refuse to (or can not) legalize their status through registration.

6.2.2 Regulation of prostitution

The continued grey zone status of prostitution is generally seen as unsatisfactory, and has repeatedly been addressed by proposals to regulate prostitution. The 1990’s saw several such initiatives. The Cabinet promised to prepare a legislative draft of an Act on the Regulation of Prostitution in its first ever Report on the Security Situation (addressing the fight against serious crime) in 1993.³⁹⁶ In 1994, however, the Cabinet turned down a draft by the Ministry of Justice to that end.³⁹⁷ It decided that the partial solutions offered by municipalities and police law were sufficient.

The issue was revisited in 1999, when the MI drafted a content proposal of an Act on Regulating Prostitution. The government approved the content,³⁹⁸ and requested a draft to be presented.³⁹⁹ A proposal for withdrawing from the 1949 Convention was also to be drafted, as the content of the bill ran contrary to its requirements,⁴⁰⁰ especially

³⁹⁵ Proposed Sec.187. The proposal was discussed on 31st October 2008; see <http://www.psp.cz/eknih/2006ps/stenprot/039schuz/s039206.htm>.

³⁹⁶ GCzR, 'Zpráva vlády o bezpečnostní situaci v České republice v roce 1993 (Governmental Report on the Security Situation in the Czech Republic in 1993)' (1993) http://www.psp.cz/eknih/1993ps/tisky/t0959_02.htm (20th July 2009);

³⁹⁷ In its meeting on 16 November 1994.

³⁹⁸ By Resolution No.387 of 28 April 2004.

³⁹⁹ Hynková and Souralová, 103.

⁴⁰⁰ The government presented a proposal to withdraw in 2004 already. See Print No.798 of 2004.

concerning the ban on brothels and the registration of prostitutes, as well as the obligation to criminalize procurement contained therein.

As a result, three bills were presented to the Parliament in 2005: on the Regulation of Prostitution,⁴⁰¹ on Amendments to other Acts,⁴⁰² and on the Withdrawal from the 1949 Convention.⁴⁰³ The proposed Act on Regulation of Prostitution ('PARP') drafted by the MI designed a system, under which prostitutes would be independent entrepreneurs who provide services on the basis of a licence. It aimed at limiting outdoor prostitution through strict zoning and made indoor club prostitution legal only in licensed establishments. It defined prostitution as:

[T]he provision of remunerated services directly aiming at satisfaction of sexual needs, if a physical contact occurs between the person providing these services and the person using these services.⁴⁰⁴

The proposal contained relatively restrictive conditions for eligibility. Only Czech citizens or citizens of countries subject to 'national treatment'⁴⁰⁵ were allowed to become prostitutes legally. The fact that foreigners were allowed at all was due to EU membership obligations (the explanatory memorandum points the judgment in *Jany*⁴⁰⁶), and basically limited to citizens of other EU countries. The prohibition on foreigners from entering the legal 'market' was motivated by 'an effort to lower the numbers of

⁴⁰¹ GCzR, 'Governmental PARP (Print No.1073 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1073&CT1=0> (1st July 2009).

⁴⁰² GCzR, 'Governmental Proposal of an Act Amending some Acts in Relation to the Adoption of the Act on the Regulation of Prostitution (Print No. 1074 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1074&CT1=0> (1st July 2009).

⁴⁰³ GCzR, 'Governmental Proposal for a Resolution to Withdraw from the 1949 Convention (Print No. 1081 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1081&CT1=0> (1st July 2009).

⁴⁰⁴ Sec. 1(2) of the PARP; available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1073&CT1=0>.

⁴⁰⁵ Sec. 3(2)(b).

⁴⁰⁶ *Jany*.

prostitutes on our territory'.⁴⁰⁷ The result would have been the exclusion of the most vulnerable immigrant women from legalizing their status under the scheme. Non-registration would mean liability not only under immigration law, but criminal law as well. An analogous problem would have arisen for persons under 18 years of age, who, while ineligible for licences,⁴⁰⁸ would be nonetheless administratively and criminally liable for the exercise of prostitution without a license. Other eligibility criteria included legal capacity, no previous conviction of selected crimes, health insurance and adequate health condition.⁴⁰⁹

Health was given particular attention by the drafters. A health certificate was a prerequisite for a licence,⁴¹⁰ and a monthly health check was then obligatory for a licensed prostitute.⁴¹¹ This was much more often than is necessary given the incubation periods of most diseases – the WHO recommends a three month period for health checks for HIV.⁴¹²

The obligation to undergo health checks was just one instance of the high number of obligations on the prostitutes. Their licenses were to be renewed once a year;⁴¹³ the prostitutes as self-employed persons were supposed to have accounting documentation,

⁴⁰⁷ Explanatory Memorandum to Sec. 3(2)(b); GCzR, 'Explanatory Memorandum to PARP' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1073&CT1=0> (1st July 2009)

⁴⁰⁸ Sec.3(2)a).

⁴⁰⁹ Sec.3(2).

⁴¹⁰ Sec.2(1) and Sec.9.

⁴¹¹ Sec.9(2).

⁴¹² H Malinová, 'Připomínky organizace R-R k Návrhu zákona o regulaci prostituce Zastupitelstva hlavního města Prahy (Suggestions of R-R to the Prague's PARP)' (2008) www.rozkosbezrizika.cz/.../35_zakon_regulace_prostitute_pripominky_rr.doc (25th July 2009).

⁴¹³ Sec.7(1).

pay income taxes, social security contributions and possess health insurance.⁴¹⁴ These obligations are exacting on small businesses, let alone on street prostitutes a high proportion of whom have not finished their primary education and may suffer from literacy problems.⁴¹⁵ It could be expected that these obligations would make prostitutes even more dependent and subjected to the control by procurers and brothel keepers. Moreover, all of these monetary burdens, especially the obligatory minimum payments for the self-employed, would mean that prostitution might not be profitable when done on a part-time or temporary basis. Arguably, the state's policy would thus push prostitutes into serving more clients.

High levels of control over the prostitute are an omnipresent characteristic of the law, be it by the brothel-keeper (the 'operator of the establishment'), the municipalities, or the state. The brothel-keeper is seen as 'responsible for [the quality of] the services',⁴¹⁶ is meant to keep a registry of prostitutes and be a first point of contact for the police. This is problematic – the procurer (previously understood as a criminally liable exploiter of prostitutes) suddenly becomes a responsible administrator to whom the state delegates tasks. Another element of control is that the licenses to prostitutes would be issued by the local municipality where the prostitute is resident,⁴¹⁷ and records would be kept for 10 years in a register.⁴¹⁸ Many prostitutes work part-time or temporarily; many in municipalities different from their home. These provisions take away their chance to

⁴¹⁴ See GCzR, 'Explanatory Memorandum to PARP'.

⁴¹⁵ R-R states that approx. 7 % of prostitutes to be half-illiterate and 0,5 % entirely illiterate. Malinová, (Suggestions 2008).

⁴¹⁶ GCzR, 'Explanatory Memorandum to PARP' to Sec. 16.

⁴¹⁷ Sec.3(1).

⁴¹⁸ Sec.17(4).

avoid the stigma of prostitution in their community. Furthermore, the prostitutes would be required to always carry an ID card (confirming their license) and show it to the controlling authorities, their clients and the brothel-keepers.⁴¹⁹

The proposal also created a default rule that prostitution is illegal in public spaces, unless a municipal ordinance states otherwise. First, this pushes prostitution into brothels. Second, such a rule would most probably result in street prostitution being pushed away from residential areas into industrial zones or outside of municipal territories altogether – a policy that has been reported to cause high risks to street prostitutes as these areas are unsafe, particularly at night.⁴²⁰

The breach of any of these legal obligations by the prostitute would constitute an administrative offence punishable by up to 50,000 CZK (approx. 1,800 GBP). That is more than most well-earning sex-club prostitutes would earn per month, let alone street prostitutes.⁴²¹ Repeated exercise of prostitution without license would be a crime, punishable by up to one year imprisonment or a fine.⁴²² A maximum fine for a client, on the other hand, was to be less than a third of the amount (15,000 CZK), and for a limited number of offences, which did not include having sex with an unlicensed (potentially trafficked) prostitute.

⁴¹⁹ Sec.13(a).

⁴²⁰ In Australia, the risks of zoning prostitution into industrial areas are openly debated. Andrew Miles, the Sex Industry Liaison Officer of the City of South Sydney, pointed out in a 2003 interview that ‘people don’t go there, people don’t work there during the night time, people don’t live there’ which gives “a big green light to freaks and hoons to come and abuse’. Available at <http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s749702.htm>.

⁴²¹ The price for sex is said to range from 300 CZK (10 GBP) for ‘complete service’ by a outdoor drug-addict to over 3000 CZK (100 GBP) hourly rate for an indoor prostitute. Poláková, 43-48.

⁴²² Sec. 178b to be inserted into the 1961 Criminal Code by the amending Act; GCzR, ‘Governmental PARP’.

The MI drafted governmental proposal was retracted following a rejection to withdraw from the 1949 Convention by the House of Deputies in October 2005.⁴²³ In January 2008, the Capital City of Prague presented a draft⁴²⁴ based on this proposal. It made some minor alterations to the original MI draft, including the change in the city of registration. Prostitutes were to request licences in the ‘place of work’ and not permanent residence,⁴²⁵ which would have been a positive step in terms of decreasing the possible stigma. The City opened the draft for comments, and by August 2008 presented a new version of the proposal.⁴²⁶ This PARP has been approved by the City Council, but needs to be passed by the legislative City Assembly before being presented to the Chamber of Deputies of the Czech Parliament.

This new PARP is an improvement in several aspects: it does allow foreigners to legally provide prostitution,⁴²⁷ it requires health checks only once every three months,⁴²⁸ and takes away some administrative obligations from prostitutes and places them with municipalities.⁴²⁹ It also targets clients to a higher degree – when forbidding solicitation and provision of prostitution; it mentions the ‘use of prostitution’⁴³⁰ as well.

⁴²³ Resolution No.1939 of 20 October 2005; <http://www.psp.cz/sqw/historie.sqw?o=4&T=1081>.

⁴²⁴ Capital City of Prague, 'PARP (January 2008)' (2008) http://www.rozkosbezrizika.cz/01_hm/021_ZAKON.htm (20th July 2009).

⁴²⁵ This is also noted with praise by R-R. Malinová, (Suggestions 2008).

⁴²⁶ Capital City of Prague, 'PARP (August 2008)' (2008) http://kultura.prahamesto.cz/parent4400/77454_Praha-pokrocila-pri-priprave-zakona-o-regulaci-prostitute (20th July 2009).

⁴²⁷ Ibid, Sec.3.

⁴²⁸ Ibid, Sec.9(2).

⁴²⁹ Ibid, Sec.15.

⁴³⁰ Ibid, Sec.1(4).

There are also, however, changes for the worse – the ID cards for prostitutes should now contain the name and surname,⁴³¹ which was previously not the case. Another novelty is the obligation of the operator of the establishment to keep a record of prostitutes (including their names and surnames) for 5 years from the date of registration in the establishment.⁴³² Both provisions increase levels of exposure and risk to the prostitutes.

6.2.3 Publicizing the transactions

Recently a new approach has been suggested by some municipalities to tackle street prostitution – the filming or photographing of soliciting. The city of Dubí was first to propose a system of cameras in 2007. The cameras were meant to record faces of clients and license plates of their cars and then make them public online.⁴³³ Seen as a form of prosecutorial ‘blacklist’, any publication of clients online was identified as a breach of the right to privacy by the Head of the Czech Office for Protection of Personal Data.⁴³⁴

Another option which was explored was the mailing of pictures of solicitation to the homes of clients by municipal police, following their personal identification in police registers based on car license plates. This practice has been deemed unlawful by the MI⁴³⁵ in cases where the behaviour in question does not constitute an offence. When the

⁴³¹ Ibid, Sec.8(2).

⁴³² Ibid, Sec.14(1)d.

⁴³³ Z Mihalco, 'Dubí zveřejní zákazníky nevěstinců na internetu (Dubí to publicize brothel clients on the internet)' (9 September 2007) <http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=460372> (27 September 2009).

⁴³⁴ Czech Press Agency, 'Úřad nesouhlasí s monitorováním zákazníků prostitutek (The Agency is against monitoring clients of prostitutes)' (24 September 2008) http://zpravy.idnes.cz/urad-nesouhlasi-s-monitorovanim-zakazniku-prostitutek-p2v-/domaci.asp?c=A080924_164035_domaci_lpo (28 September 2009).

⁴³⁵ A Janoušek and O Černý, 'O kamery otočené na klienty prostitutek se zajímá vnitro (Ministry of Interior takes interest in the filming of prostitution clients)' (8 August 2008) <http://zpravy.idnes.cz/o-kamery->

behaviour is legal, the Municipal Police do not have a legal basis to record and identify people.⁴³⁶ It is worth noting that the reporting on the subject as well the positions taken by the authorities are concerned with the threat to the (privacy) rights of the client and not the prostitutes.

6.3 Understanding prostitution in Transition

6.3.1 What is prostitution?

In both government reports as well as in academic writing during Transition in the Czech Republic, prostitution has invariably been identified as the ‘oldest profession’:⁴³⁷

Prostitution has accompanied human kind in the entire course of its history. In one form or another, it was present in every society.⁴³⁸
Prostitution is eternal; it existed, exists and will always exist.⁴³⁹

This acceptance of inevitability of prostitution is never accompanied by further analysis, let alone a gender analysis of the phenomenon. Its inevitability does not lead to an acceptance or tolerance of the phenomenon. For example, in the constitutional ruling on the Ústí nad Labem ordinance, one of the main reasons for the CCC to distinguish between prostitution and other publically disruptive activities was that its visibility could lead to its being considered normal by children:

Even the exercise of prostitution itself, which is visible to children and youth, can evoke the feeling of something ‘normal’, acceptable.

otocene-na-klienty-prostitutek-se-zajima-vnitro-pzs-/domaci.asp?c=A080808_111451_domaci_itu (28 September 2009).

⁴³⁶ Sec.11a and 24b Act No 553/1991 Coll.

⁴³⁷ J Chmelík, *Mravnost, pornografie a mravnostní kriminalita (Morality, pornography and vice crime)* (Portál, Praha 2003), 55.

⁴³⁸ This text appears verbatim in GCzR (Report 1993), 3; MI (1999), 1; Bláha, 10. Other formulation to that end can be found in Lenderová, 5; M Mitlöhner, *Erotika a paragrafy (Erotics and law)* (Grada, Praha 1999), 87.

⁴³⁹ Bláha, 180.

[...Prostitution] thus touches ethical values which a community of citizens [...] is entitled to protect [by a ban].⁴⁴⁰

Prostitution is habitually referred to as a 'social pathology', for example in the explanatory memorandum to the 1995 Act on Municipal Order:

Prostitution is a social pathology which can not however, as historical experience shows, be entirely eradicated.⁴⁴¹

In parliamentary debates concerning the proposal to withdraw from the 1949 Convention,⁴⁴² prostitution was likened to drugs.⁴⁴³ What is pathological about prostitution, and how the use of drugs might be different from the 'use' of a prostitute, was not discussed.

Interestingly, the pathology is not identified with the demand side and most material is sympathetic to the client. Both, the governmental and Prague's, PARPs define prostitution as 'the provision of remunerated services directly aiming at satisfaction of sexual needs',⁴⁴⁴ and so does the Act on Trades.⁴⁴⁵ The use of the concept of 'sexual needs' in a legal document is striking. Such language not only legalizes, but also legitimizes the demand for prostitution. Buying sexual services is seen almost as a matter of personal freedom that should have come hand in hand with the societal freedom achieved by the 1989 Velvet Revolution. Bláha writes:

After the November revolution [1989], one of the first demands of our citizens was the reopening of brothels. The Czech citizen was demanding

⁴⁴⁰ CCC Pl. ÚS 69/04, para 54.

⁴⁴¹ GCzR, 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1990 Act on Municipalities'; see also GCzR, 'Explanatory Memorandum to PARP'.

⁴⁴² See Fn.403.

⁴⁴³ Deputy Janeček speaking on 29 March 2005;
http://www.psp.cz/sqw/tisky.sqw?F=H&PT=U&dx=1&o=4&na=prostitute&T=&ZA=&f_N=on&f_I=on&f_U=on&f_S=on&f_Z=on&f_P=on&f_R=on&f_V=on&f_O=on&ra=20.

⁴⁴⁴ Sec. 1(2) PARP.

⁴⁴⁵ Sec.3(3)(p) 455/1990, as amended.

that paid sex be accessible to him, not just to foreigners providing strong currencies.⁴⁴⁶

If the demand side is mainly considered ‘normal’, is it the supply side that is seen as pathological?

6.3.2 Is the prostitute a victim or a villain?

I would argue that there is a great deal of confusion about the figure of the prostitute.

There are disconnects between understanding agency and coercion, classifying prostitution as voluntary or involuntary, and the appropriate legal response.

It is safe to say that the prostitute is mainly seen as an agent making a free choice.⁴⁴⁷ Unlike during the period of State Socialism, when external conditions, such as lack of education, qualification or appropriate family support (5.3.2), were seen as pushing women into prostitution, in the Transition period, the prostitute is seen as unconstrained by external pressures. Lenderová thus denounces the abolitionists’ ‘false premise [...] that prostitution is an expression of moral and economic poverty’.⁴⁴⁸

The combination of perceived agency of the prostitute and the understanding prostitution as pathological makes the prostitute a legitimate object of control, regulation and punishment. Short of being seen as the villain, the prostitute is seen as responsible for her choice and its consequences – be they resulting from the conditions of the work (health issues, not being paid by clients, etc.) or from the law (such as indebtedness to municipalities resulting from fines under current the legal regime, or the numerous health and administrative obligations under PARPs). Prostitutes are thus the primary targets of

⁴⁴⁶ Bláha, 22.

⁴⁴⁷ Lenderová; Bláha.

⁴⁴⁸ Lenderová, 42.

measures in municipal ordinances (see 6.1.3), in both PARPs (6.2.2), as well as in the prohibitionist criminalization proposals (6.2.1).

The recognition of agency thus leads to the opposite effect in the legislative reality than it does in the feminist sex-work narrative. In it, the policy response to women's choice and agency is to institute equal rights for the prostitute, facilitate her exercise of these rights, and normalize and destigmatize prostitution. In the Czech context, the mention of rights of prostitutes (as workers or service providers) in their occupation is rare. We have seen how the CCC weighed 'the rights of persons providing sexual services' against the protection of moral education of children and youth.⁴⁴⁹ However, it did not elaborate on the content of these occupational rights, and dismissed them out of hand deciding that interests of the community prevailed.

Sometimes, however, the prostitute is seen as a 'victim' – a vulnerable subject. For example, the Christian Democratic Deputies, when debating the withdrawal from the 1949 Convention,⁴⁵⁰ spoke about 'enslaved girls',⁴⁵¹ or 'the abuse of human misfortune'.⁴⁵² Interestingly, when the possibility of 'victimhood' is admitted, the distinction between free autonomous prostitute and a victim does not necessarily mirror the distinction between voluntary and involuntary prostitution. In most material, including the PARPs and their explanatory memoranda, as well as in the municipal zoning rules enforcement practice (see 6.1.3 above), the division between voluntary and involuntary prostitution is not made.

⁴⁴⁹ CCC Pl. ÚS 69/04, para.54.

⁴⁵⁰ See Fn.403.

⁴⁵¹ Deputy Karas (KDU-ČSL) speaking on 29 March 2005; http://www.psp.cz/sqw/tisky.sqw?F=H&PT=U&dx=1&o=4&na=prostituce&T=&ZA=&f_N=on&f_I=on&f_U=on&f_S=on&f_Z=on&f_P=on&f_R=on&f_V=on&f_O=on&ra=20.

⁴⁵² Deputy Janeček (KDU-ČSL), *ibid.*

This blurring is not a result of conceptualizing all prostitutes as coerced, as the sexual domination feminists would argue, but rather the opposite. As long as a person offers sexual services, she is a legitimate target of a (repressive) response by the authorities. An example of this attitude can be found in CCC's ruling on the Pilsen ordinance. Uniquely, the decision mentioned prostitutes' right to human dignity, but subsequently uses it as an argument for the legitimacy of banning prostitution from all public areas:

[...]It can be added that the fact can not be ignored, that the municipality protects this way [by prohibiting the exercise of prostitution] the unalienable right to human dignity [...] of the providers of sexual services.⁴⁵³

Another example can be found in the governmental PARP. According to its explanatory memorandum, the ineligibility of prostitutes from 'Near and Far East' for licences was justified by them posing 'high security risks' as they were 'completely under the influence of organized crime'.⁴⁵⁴ Instead of being concerned with their protection, the government treated all foreign prostitutes as a problem, precluded them from obtaining a license, and made them liable to administrative and criminal fines when unlicensed. I submit that this regulation and restriction of the subject whose human rights are admitted to be in danger is tantamount to punishing the victim for being a victim.

The feminist analysis and proposals set out in Chapter 1.2 suggested the following connections between how the prostitute is seen and how the law and policy proposals treat her. Seeing prostitute as an agent making free choice leads to her conceptualization as voluntary prostitute, which should result in legal guarantees of equal work rights (sex

⁴⁵³ CCC Pl.ÚS 10/06, para.8.

⁴⁵⁴ GCzR, 'Explanatory Memorandum to PARP', comment to Sec.3.

work position). Seeing her as a victim leads to her being conceptualized as an involuntary prostitute which should result in her protection (whereby the understanding of ‘victim’ and ‘involuntary’ varies between sex work and sexual domination feminists). This thought process is not represented in any of the studied Czech material. Instead, whether the prostitute is a ‘victim’ or an agent making free choices, she ends up contained (under current legal regime), regulated and controlled (under PARPs) or criminalized (under criminalization proposals). This is, as I discuss below, due to the fact that a truly permissive policy is not represented among the proposals, and the legislative goal of ‘well-being of prostitute’ is absent.

6.3.3 Repressive or permissive approach?

Several positions can be identified among the policy-influencing actors in the Czech Republic. First, minority opinions emerge advocating for prohibition of prostitution, without any greater consistency or continuity (6.2.1).

Second, an anti-regulation and anti-legalization position can be identified, which has not, however, formulated any proposals of its own. This position is represented in the Parliament by members of the Christian Democratic and Communist Parties.⁴⁵⁵ They opposed and destroyed the governmental PARP, but are unclear on whether they support the status quo or other courses of action. The current Civic Democratic government (2006-2009) falls among the undecided and it has yet to formulate a clear policy on prostitution (the PARP was prepared by the previous Social Democratic government in the period from 1998 to 2006).

⁴⁵⁵ Based on analysis of parliamentary debates to governmental PARP and connected legislation.

Third and most prevalent, is the pro-regulation position. Regulation has the support of the mayors, expressed in a Declaration of towns and municipalities in 2000,⁴⁵⁶ of most academics writing on prostitution,⁴⁵⁷ and is the only existing policy that has ever been brought to the point of a bill proposed by the government. Lenderová writes:

Prostitution will not be eradicated by the expected general prosperity. [...] Objectively speaking, regulation is the easier option by any standard.⁴⁵⁸

Similarly, the explanatory memorandum to the governmental PARP stated:

The most effective solution to the problem of prostitution is its regulation, which has been demonstrated by experience from other countries [Austria, the Netherlands, Hungary are selectively mentioned].⁴⁵⁹

It is important to note that these proposals do not mention legalization as normalization and destigmatization, but as more ‘easy’ and ‘effective’ means of containment. I argue that a Western-style permissive legalization proposal is actually not on the table, nor is the existing Czech legal framework accepting and permissive. The governmental and Prague’s PARPs’ acceptance of prostitution is skin-deep. It proposes to take a segment of the prostitution scene and regulate it through licences for prostitutes, legalization of brothels, health checks, registers, or the default zoning rule on outdoor prostitution. At the same time, it would introduce harsher sanctions on everyone unlicensed, thereby repressing prostitutes in the grey and black zones, problematically not providing protective provisions for the latter (victims of trafficking). As a result, it resembles the historical Austro-Hungarian Empire regulation regime more than the modern Dutch approach which incorporates a sex-work perspective.

⁴⁵⁶ A Declaration by 25 mayors of cities ‘afflicted’ by prostitution addressed to the central government. Bláha, 25.

⁴⁵⁷ Lenderová, Bláha.

⁴⁵⁸ Lenderová, 61.

⁴⁵⁹ GCzR, ‘Governmental PARP’, 14.

6.3.4 Legislative goals

I have already suggested that approaches to the prostitute in the Czech Republic are marked by a lack of a legislative goal ensuring the ‘well-being of prostitute’. What are, then, the goals pursued by the existing legislation and policy proposals? The explanatory memorandum to the 1995 Act on Municipal Order offers a good overview:

Prostitution [...] can not [...] be entirely eradicated. It can, however, be regulated in a way as to eliminate the disruption of public order, the endangering of education of children and youth, and any offence to public moral sensibility.⁴⁶⁰

Aside from the three legislative goals mentioned - public order, children’s moral education and public moral sensibility -, the other material suggests a further three main considerations: health (prominent throughout the early 1990’s,⁴⁶¹ but slowly subsiding), the ‘image of town’,⁴⁶² and the fiscal (tax evasion is mentioned,⁴⁶³ but explicit calls for prostitution to be taxed are rare).

6.3.5 Feminist analysis?

It has been argued that feminist perspective is prominently lacking from these debates. The reaction to the feminist perspective is different with regards to the sex work and sexual domination positions. Given the prevailing pro-regulation position of many policy-makers and academics, one would expect the sex work position to be popular. It is, however, mainly unknown or ignored (the NGOs are a notable exception – both La Strada and R-R are sex work proponents; their contributions are, however, outside the scope of this analysis).

⁴⁶⁰ GCzR, ‘Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1990 Act on Municipalities’.

⁴⁶¹ Vlček (1990); MI (1993); criminal law proposals discussed in 6.2.1.

⁴⁶² Mayor of Dubí expressed that concern when advocating cameras. Mihalco.

⁴⁶³ MI (1999).

While the sex-work position is ignored, feminism is mostly identified with the sexual domination position and abolitionism, which is spurned. Milena Lenderová, a university professor specializing in women's history, criticizes in a recent historical monograph abolitionism as naïve and built on 'utopist principles'.⁴⁶⁴

Generally, all women-centred or gender analysis is dismissed without much understanding. Lenderová writes:

Prostitution is no means to oppress women, nor is it expression of male chauvinism, at least not in Europe. One argument suffices – eloquent more than others: today, university students and well-off married women alike dedicate themselves to prostitution. Are they all doing it for economic necessity? And what about male prostitutes? Are they too victims of male chauvinism?⁴⁶⁵

The lack of feminist perspective has two consequences. First, it results in a very limited understanding of what happens in prostitution, who is a prostitute, a client or a procurer and why. Patriarchy, the gender order, or gender inequality are all terms foreign to the policy-influencing actors. Second, and consequently, when prostitution is not understood as a problem of inequality in reality, any legal response to it is incapable of incorporating legal gender equality considerations.

6.3.6 A legal argument for gender equality?

I believe it is worth briefly sketching what the application of the legal principle of equality could mean to Czech legal responses to prostitution. It can be argued that any disparate treatment to the disadvantage to prostitutes, - a predominantly female group -, as compared to clients - a predominantly male group -, constitutes indirect

⁴⁶⁴ Lenderová, 43.

⁴⁶⁵ Ibid, 61.

discrimination.⁴⁶⁶ I argue that examples of such indirect discrimination of women, through the existing as well as the proposed legislation, abound in the Czech Republic. For example in the governmental PARP, these are: obligatory health checks for prostitutes and not clients; more offences punishable and fines higher for the prostitute; or criminal punishment for repeated prostitution without licence for the prostitute, but none for repeated use of prostitutes without license by the client.

Let us now analyse the application of the equality principle on the example of the one-sided prostitute's obligation to undergo health checks. The goal of the measure is to prevent the spread of STDs, and for reasons of enforcement practicality, the only registered and hence controllable side of the transaction is obligated (prostitute). From feminist perspective, this is problematic, because the rule is basically a consumer protection measure, but unlike in standard consumer protection, the 'consumer' here is the de facto stronger party and the 'provider of the service' the weaker one. Moreover, experience from other countries shows that compulsory health checks make the client feel safer to practice unprotected sex,⁴⁶⁷ and can pose a serious danger to the health of prostitutes thus defeating the purpose of the measure.⁴⁶⁸

On the example of obligatory health checks for prostitutes, it is possible to discuss the three types of possible provisions. We have just seen (i) an asymmetric rule for the benefit of the client, which I argue is objectionable from the perspective of substantive

⁴⁶⁶ I'm using the ECJ's understanding of the principle of equality (and leaving aside the question of its applicability to national legal regimes on prostitution). Arguing with the Czech Constitutional equality principle would be more appropriate, however, a doctrine of indirect discrimination is not available. See B Havelková, 'Burden of proof and positive action in decisions of the Czech and the Slovak Constitutional Courts-milestones or mill-stones for implementation of EC equality law?' 32 *European Law Review* 686.

⁴⁶⁷ N Lopez-Jones, 'Legalising brothels' 1 *The New Law Journal* 594, 594. See also Malinová (Suggestions 2008).

⁴⁶⁸ Farley, 138-139.

equality,⁴⁶⁹ as it disadvantages the already vulnerable side of the transaction.

Alternatively, (ii) a symmetric approach, where both parties are subject to the same treatment, is an option. This is currently the case in the Czech Republic, as well as under the ‘Dutch model’, where no health checks are required of anyone. Such symmetric equal treatment is in harmony with requirements of formal equality, but one might argue that (iii) measures actively protecting the weaker party (prostitute) are called for. Such asymmetric treatment to the benefit of the prostitute, aiming to achieve substantive equality, could for example take the form of obligatory use of condoms by clients with a liability for non-compliance.

With respect to the two feminist positions, they would both reject option (i). One could surmise that while the sex-work position would prefer option (ii), some proponents might support option (iii). Sexual domination feminists would only accept option (iii); possibly furthering the argument to say that because of the inherent gender inequality of prostitution, the gender equality’s imperative is for asymmetric treatment that bans using prostitutes whether with condoms or not.

Where does the Czech understanding fit into this? In the governmental PARP, the understanding of what gender equality requires is extremely limited. When commenting on compliance with international obligations, CEDAW in particular, the drafters state, that the proposal complies because:

[...]the proposed Act does not differentiate between men and women in access to the exercise of prostitution (it applies to persons of both sexes).⁴⁷⁰

⁴⁶⁹ For definition see S Fredman, *Discrimination law* (Clarendon, Oxford 2002); see also discussion of ‘Andrews approach’ in MacKinnon (2007), 25.

⁴⁷⁰ GCzR, ‘Explanatory Memorandum to PARP’.

It shows a formalistic understanding of the requirement of equality, namely that of gender neutrality in the letter of law. Only if the act were to explicitly and directly discriminate on the basis of sex, would it have been considered in breach of the principle of equality.

6.3.7 External influences vs. indigenous development

Having shown the contours of the indigenous debate, let us now look at the influence of foreign and international law on the Czech development. Two situations can be distinguished. First, where concrete implementation of measures is required (especially by the EU), the Czech legal development copies the international trend. This has been exemplified by the changing definition of trafficking in criminal law but also by the increasing attention paid to the human rights of the victims of trafficking.

Second, in terms of non-binding instruments or comparative law, their use is very selective, instrumental and not always correctly depicting the content or the importance of the foreign or international law in question. For example both Bláha⁴⁷¹ and Chmelík⁴⁷² support their calls for regulation by citing the ‘ILO 1998 Press Release’ (without precisely identifying the source⁴⁷³) as the representative position of the international community. Similarly, the reference to the German Criminal Code in support of the insertion of the provision on ‘prostitution endangering the moral development of children’ was outdated and lacking in relevant detail. Finally, the governmental PARP’s claimed to draw inspiration from the regulatory regimes of Austria, the Netherlands and

⁴⁷¹ Bláha, 180.

⁴⁷² Chmelík, 68.

⁴⁷³ I believe Lim’s report is meant.

Hungary.⁴⁷⁴ While that is probably true, the reference is meaningless in its generality, especially given the important differences between the three systems.⁴⁷⁵

⁴⁷⁴ Government of the Czech Republic, 'Explanatory Memorandum to PARP'.

⁴⁷⁵ See Hančilová and Massey.

Conclusions

The thesis looked at legal responses to prostitution in Czechoslovakia and the Czech Republic under State Socialism and in Transition, and the understanding of gender equality therein.

It argued that legal responses and understandings of prostitution varied between these periods. In terms of legislative regime, under State Socialism, professional prostitutes were liable under criminal provisions on parasitism. Other measures addressed health, public morality, moral well-being of youth and gay prostitution. In other respects, prostitution was ignored by the law. During Transition, health, public morality and the moral well-being of youth continued to be a concern, while the provision on parasitism as well discrimination of gays was abolished. The ‘boom’ of prostitution after 1989 resulted in adoption of containment provisions, whereby prostitutes were liable for fines in cases of violation.

In terms of the understanding of prostitution, while being repressive toward prostitute as a work-shirker, the Socialist State, inspired by Marxist ideology, had aspirations to eliminate prostitution, which it saw as exploitation of women. In Transition, these aspirations have been dismissed by most actors influencing policy as ‘utopist’ and unrealistic. Prostitution has been seen as pathological but inevitable. Prostitutes have mostly been considered agents making free choice, and as such have been treated as legitimate objects of containment, regulation and control.

I argued that both periods had a different primary external influence on the development of law and policy debates. The Marxist understanding of class and gender inequality was reflected in the law and policy considerations of the Socialist State. In

Transition, international law (especially EC/EU) triggered changes to the definition of trafficking and procurement in criminal law.

With regards to the indigenous development, both periods are markedly devoid of a modern feminist analysis of the phenomenon of prostitution and a legal conceptualization of it as a gender equality issue. While under State Socialism this can be explained by the limited (mainly class-based, economic) Marxist analysis of inequality and its ideological monopoly, it is troubling that democratization and ideological pluralism has not made Czech actors influencing policy more receptive to feminist theory and gender analysis. An approach truly addressing the needs of prostitutes has yet to develop in the Czech Republic.

Bibliography

N Adams, 'Prostitute women, justice and the law' (1993) 4 (3) *A Cultural Review* 295

V Adamus, 'Příživnictví - minulost a současnost (Parasitism - past and present)' (1992) (3) *Správní právo* 30

A Amiel, 'Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation' (2006) 12 *Buffalo Human Rights Law Review* 5

H Askola, 'Violence against Women, Trafficking, and Migration in the European Union' (2007) 13 (2) *European Law Journal* 204

K Barry, *Female sexual slavery* (New York University Press, New York 1984)

K Barry, *The prostitution of sexuality* (New York University Press, New York 1995)

J Bartůněk, 'Poznámky k otázce prostituce (Notes on prostitution)' (1967) (6) *Zprávy Státní populační komise* 28

J Bauerová, *Postavení ženy v rodině, práci a ve veřejném životě socialistické společnosti (The Position of Woman in Family, Work and the Public Life of a Socialist Society)* (Ústřední výbor českého svazu žen, Praha 1988)

J Bauerová and E Bártová, *Proměny ženy v rodině, práci a ve veřejném životě (Transformations of women in the family, work and public life)* (Nakladatelství svoboda, Praha 1987)

A Bebel and D De Leon, *Woman under socialism* (Labor News Co., New York 1904)

S Bell, *Reading, writing, and rewriting the prostitute body* (Indiana University Press, Bloomington 1994)

H Beukema, 'Legalisation of prostitution in the Netherlands. A trial to decriminalise prostitution and to improve the economical, physical and emotional situation of prostitutes' (2004) 9 *Femina Borealis* 145

D Bilefsky 'Financial Crisis Taxes Demand for World's Oldest Service' (8th December 2008) <http://www.nytimes.com/2008/12/09/world/europe/09czechsex.html> (2009)

J Bindel and L Kelly 'A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden' (2003) <http://www.glasgow.gov.uk/NR/rdonlyres/C19E010B-1A4F-4918-97BD-F96AF7D7F150/0/mainreport.pdf> (28 August 2009)

R Bláha, *Trestněprávní aspekty prostituce v České republice (Criminal aspects of prostitution in the Czech Republic)* (LexisNexis, Prague 2008)

P Burčíková *The Way Forward?* (La Strada, Prague 2008)

- P Burčíková and others, *Cool je... vědět víc. (It is cool... to know more. Institutional care and risks of commercial sexual exploitation)* (La Strada, Prague 2008)
- P Califia-Rice 'Macho sluts: erotic fiction' (1988) 1st U.S. Alyson Publications
- P Califia, *Public sex: the culture of radical sex* (1st edn, Cleis Press, Pittsburgh, Pa. 1994)
- Capital City of Prague 'Proposal of an Act on the Regulation of Prostitution (August 2008)' (2008) http://kultura.praha-mesto.cz/parent4400/77454_Praha-pokrocila-pri-priprave-zakona-o-regulaci-prostitute (20th July 2009)
- Capital City of Prague 'Proposal of an Act on the Regulation of Prostitution (January 2008)' (2008) http://www.rozkosbezrizika.cz/01_hm/021_ZAKON.htm (20th July 2009)
- W Chapkis, *Live sex acts : women performing erotic labor* (Routledge, New York 1997)
- H Charlesworth and CM Chinkin, *The boundaries of international law: a feminist analysis* (Melland Schill studies in international law, Manchester University Press; Juris, Manchester; New York 2000)
- J Chmelík, *Mravnost, pornografie a mravnostní kriminalita (Morality, pornography and vice crime)* (Portál, Praha 2003)
- Czech Press Agency 'Úřad nesouhlasí s monitorováním zákazníků prostitutek (The Agency is against monitoring clients of prostitutes)' (24 September 2008) http://zpravy.idnes.cz/urad-nesouhlasi-s-monitorovanim-zakazniku-prostitutek-p2v-/domaci.asp?c=A080924_164035_domaci_lpo (28 September 2009)
- Czech Statistical Office 'Unemployment rate based on age groups (1995-2000)' (2002) http://czso.cz/csu/2002edicniplan.nsf/publ/1413-02-casove_rady (25th July 2009)
- AL Daalder 'Lifting the ban on brothels. Prostitution in 2000-2001 (English summary)' (2004) <http://www.wodc.nl/onderzoeksdatabase/01.035g-lifting-the-ban-on-brothels.aspx> (28 August 2009)
- F Delacoste and P Alexander, *Sex work: writings by women in the sex industry* (Virago, London 1987)
- MOP Dunbar, 'Past, Present, and Future of International Trafficking in Women for Prostitution' (2000) 8 Buffalo Women's Law Journal 103
- A Dworkin, *Letters from a war zone: writings 1976-1987* (Secker & Warburg, London 1988)
- G Ekberg, 'The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings' 10 (10) Violence Against Women 1187
- F Engels 'The origin of the family, private property, and the state' (2000) http://www.marxists.org/archive/marx/works/download/Engels_The_Origin_of_the_Family_Private_Property_and_the_Stat.pdf (25th July 2009)

Y Ertürk, *Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum. Mission to the Netherlands (A/HRC/4/34/Add.4)* (2007)

European Commission 'Report of the Experts Group on Trafficking in Human Beings' (2004)
http://www.coatnet.org/aspe_shared/form/download.asp?nr=98294&form_typ=115&acid=D2F9588DC8A14EA9B41941D3E7ADD6D2101B8&ag_id=3807 (28 August 2009)

M Farley, 'Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly' (2006) 18 Yale JL & Feminism 109

S Fredman, *Discrimination law* (Clarendon, Oxford 2002)

E Fultz and S Steinhilber, 'Social security reform and gender equality: Recent experience in central Europe' (2004) 143 (3) International Labour Review 249

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of the Criminal Code (1950)' (1948) http://www.psp.cz/cgi-bin/win/eknih/1948ns/tisky/t0471_08.htm (1st July 2009)

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1950 Criminal Code' (1956) http://www.psp.cz/eknih/1954ns/tisky/t0094_03.htm (1st July 2009)

Government of the Czech Republic 'Zpráva vlády o bezpečnostní situaci v České republice v roce 1993 (Governmental Report on the Security Situation in the Czech Republic in 1993)' (1993) http://www.psp.cz/eknih/1993ps/tisky/t0959_02.htm (20th July 2009)

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1990 Act on Municipalities' (1995) <http://www.psp.cz/eknih/1993ps/tisky/t165100.htm> (1st July 2009)

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of an Act Amending the 1961 Criminal Code' (2003) <http://www.psp.cz/sqw/text/tiskt.sqw?o=4&ct=514&ct1=0> (1st July 2009)

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of an Act on the Regulation of Prostitution' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1073&CT1=0> (1st July 2009)

Government of the Czech Republic 'Governmental Proposal for a Resolution to Withdraw from the 1949 Convention (Print No. 1081 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1081&CT1=0> (1st July 2009)

Government of the Czech Republic 'Governmental Proposal of an Act Amending some Acts in Relation to the Adoption of the Act on the Regulation of Prostitution (Print No. 1074 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1074&CT1=0> (1st July 2009)

Government of the Czech Republic 'Governmental Proposal of an Act on the Regulation of Prostitution (Print No. 1073 of 2005)' (2005) <http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1073&CT1=0> (1st July 2009)

Government of the Czech Republic 'Explanatory Memorandum to the Governmental Proposal of a Criminal Code' (2008)
<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=410&CT1=0> (1st July 2009)

Government of the Czech Republic 'Usnesení k Národní strategii boje proti obchodování s lidmi pro období let 2008-2011 (Decision on the National Strategy to Combat trafficking in persons for the period 2008-2011)' (2008)
http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf (20th May 2009)

T Gřivna, 'Trestní právo hmotné (Substantive Criminal Law)' in M Bobek, P Molek and V Šimíček (eds) *Komunistické právo v Československu Kapitoly z dějin bezpráví (Communist Law in Czechoslovakia Chapters from the History of Unlawfulness)* (Mezinárodní politologický ústav Masarykovy univerzity, Brno 2009)

B Hančilová and C Massey, *Evaluation of EU Member States' legislation and the situation concerning trafficking in human beings for the purpose of sexual exploitation* (International Centre for Migration Policy Development; Unpublished manuscript on file with the author 2009)

M Havelka, 'Tschechische Republik - Migrationen, Vertreibungen, Interventionen in die Sozialstruktur' in A Sterbling (ed) *Migrationsprozesse* (Krämer, Hamburg 2006)

B Havelková, 'Burden of proof and positive action in decisions of the Czech and the Slovak Constitutional Courts-milestones or mill-stones for implementation of EC equality law?' 32 *European Law Review* 686

B Havelková, 'Challenges to the effective implementation of EC gender equality law in the Czech Republic – an early analysis' in K Arioli and others (eds) *Wandel der Geschlechterverhältnisse durch Recht?* (DIKE, Zürich 2008)

B Havelková, 'The legal notion of gender equality in the Czech Republic' (2010 Forthcoming) *Women's Studies International Forum*

M Hynková and A Souralová, 'Sex as an industry' in P Pavlík (ed) *Shadow Report on Equal Treatment and Equal Opportunities for Women and Men* (Open Society Fund, Prague 2006)

An International Committee for Prostitutes' Rights February 1985, 'World Charter for Prostitutes' Rights' (1993) (37) *Social Text* 183

AM Jaggar, *Feminist politics and human nature* (Philosophy and society, Rowman & Allanheld, Totowa, N.J. 1983)

A Janoušek and O Černý 'O kamery otočené na klienty prostitutek se zajímá vnitro (Ministry of Interior takes interest in the filming of prostitution clients)' (8 August 2008) http://zpravy.idnes.cz/o-kamery-otocene-na-klienty-prostitutek-se-zajima-vnitro-pzs-/domaci.asp?c=A080808_111451_domaci_itu (28 September 2009)

LA Jeffrey, 'Prostitution as public nuisance: prostitution policy in Canada' in J Outshoorn (ed) *The Politics of prostitution: women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004)

S Jeffreys, 'Prostitution, trafficking and feminism: An update on the debate' (In print) Women's Studies International Forum

V Jeness, *Making It Work: The Prostitutes' Rights Movement in Perspective* (Aldine De Gruyter, New York 1993)

Jointed Cases 115 and 116/81 *Adoui and Cornuaille v. Belgian State* [1982] ECR 01665,

K Kempadoo and J Doezema, *Global sex workers : rights, resistance, and redefinition* (Routledge, New York 1998)

D King and S Wood, 'The Political Economy of Neoliberalism: Britain and the United States in the 1980's' in H Kitschelt (ed) *Continuity and change in contemporary capitalism* (Cambridge University Press, Cambridge 1999)

A Kollontai, 'Sestry (Sisters)' (1923) (3-4) *Komunistka* 23

Z Kühn, 'Ideologie aplikace práva v době reálného socialismu. (Ideology of the application of law under real existing socialism)' in M Bobek, P Molek and V Šimíček (eds) *Komunistické právo v Československu Kapitoly z dějin bezpráví (Communist Law in Czechoslovakia Chapters from the History of Unlawfulness)* (Mezinárodní politologický ústav Masarykovy univerzity, Brno 2009)

La Strada 'Obchod s lidmi v České republice - situační analýza šesti regionů (Trafficking in the Czech Republic - an analysis of the situation in six regions)' (2004) http://www.kraj-lbc.cz/public/social/obchod_s_lidmi_analyza_regiony_2004_49d51df883.rtf (20 June 2009)

La Strada 'Trafficking in Human Beings in Central Europe' (2005) http://www.strada.cz/download/files/publikace/trafficking_CE.pdf (28th May 2009)

A Lansink 'Human rights focus on trafficked women: An international law and feminist perspective' (2008) <<http://www.agenda.org.za>>

D Leidholdt, 'Prostitution: A Violation of Women's Human Rights' (1993) 1 *Cardozo Women's Law Journal* 133

M Lenderová, *Chytila patrola, aneb, Prostituce za Rakouska i republiky* (Karolinum, Praha 2002)

VI Lenin, *The emancipation of women; from the writings of V. I. Lenin* (International Publishers, New York, 1969)

LL Lim, *The Sex sector: the economic and social bases of prostitution in Southeast Asia* (International Labour Office, Geneva 1998)

N Lopez-Jones, 'Legalising brothels' 1 *The New Law Journal* 594

CA MacKinnon, *Toward a feminist theory of the state* (Harvard University Press, Cambridge, Mass ; London 1989)

CA MacKinnon, 'Prostitution and Civil Rights' (1993) 13 *Michigan Journal of Gender and Law* 1

CA MacKinnon, *Sex equality* (2nd edn, Foundation Press; Thomson/West, New York [St. Paul, Minn.] 2007)

CA MacKinnon and A Dworkin, *In harm's way : the pornography civil rights hearings* (Harvard University Press, Cambridge, Mass. London 1997)

H Malinová 'Kdo chodí za holkama (Who goes to the girls)' (2008)
http://www.rozkosbezrizika.cz/01_hm/620_DOWNLOAD.htm#PREZENTACE (20 June 2009)

H Malinová 'Připomínky organizace R-R k Návrhu zákona o regulaci prostituce Zastupitelstva hlavního města Prahy (Suggestions of R-R to the Proposal of an Act on Regulation of Prostitution by the Municipal Assembly of the Capital City of Prague)' (2008) www.rozkosbezrizika.cz/.../35_zakon_regulace_prostituce_pripominky_rr.doc (25th July 2009)

H Malinová 'Sex a prostituce (Sex and Prostitution)' (2008)
http://www.rozkosbezrizika.cz/01_hm/021_ZAKON.htm (20 June 2009)

EP Martin and N Brabenec 'Rent boys: Sex workers living on society's edge' (2004) <http://www.radio.cz/en/article/59997/limit> (25th July 2009)

K Marx, F Engels and S Moore, *Manifesto of the Communist Party* (2nd edn, William Reeves, London 1888)

AG Mazur, 'Prostitute movements face elite apathy and gender-biased universalism in France' in J Outshoorn (ed) *The Politics of prostitution : women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004)

D McBride Stetson, 'The invisible issue: prostitution and trafficking of women and girls in the United States' in J Outshoorn (ed) *The Politics of prostitution : women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004)

C Meyer, 'Decriminalizing Prostitution: Liberation of Dehumanization?' (1993) 1 Cardozo Women's Law Journal 105

Z Mihalco 'Dubí zveřejní zákazníci nevěstinců na internetu (Dubi to publicize brothel clients on the internet)' (9 September 2007)
<http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=460372> (27 September 2009)

Ministry of Interior 'Rozbor problémů souvisejících s prostitucí a vymezení podmínek jejich systémového řešení (An Analysis of Problems Connected to Prostitution and Specification of the Conditions of their Solution)' (2000)
<http://aplikace.mvcr.cz/archiv2008/prevence/priority/prostituce/verze7.html> (20th May 2009)

Ministry of Interior, *Rozbor situace v oblasti potírání pohlavních nemocí a boje proti prostituci, kuplířství a obchodování se ženami a dětmi (Analysis of the situation of fight against venereal diseases and prostitution, procurement and traffic in women and children)* (Ministry of Interior, Prague 1993)

Ministry of Interior 'Rozbor problémů souvisejících s prostitucí a vymezení podmínek jejich systémového řešení (An Analysis of Problems Connected to Prostitution and Specification of the Conditions of their Solution)' (1999)
<http://aplikace.mvcr.cz/archiv2008/prevence/priority/prostituce/verze7.html> (20th May 2009)

Ministry of Interior '2008 Status Report on Trafficking in Human Beings' (2009)
<http://www.mvcr.cz/mvcren/article/czech-republic.aspx> (1st August 2009)

M Mitlöhner, *Erotika a paragrafy (Erotics and law)* (Grada, Praha 1999)

A Murray, 'Debt-Bondage and Trafficking. Don't Believe the Hype' in K Kempadoo and J Doezema (eds) *Global sex workers: rights, resistance, and redefinition* (Routledge, New York 1998)

Netherlands Ministry of Foreign Affairs 'Dutch Policy on Prostitution. Questions and Answers 2004' (2004) <http://www.mfa.nl/contents/pages/743/prost.pdf> (28 August 2009)

J Nezkusil and D Císařová, 'K aktuálním otázkám příživnictví (Current questions of parasitism)' (1958) *Socialistická zákonnost* 217

Norwegian Ministry of Justice and the Police 'Purchasing Sexual Services in Sweden and the Netherlands. Legal Regulation and Experiences.' (2004)
http://www.regjeringen.no/upload/kilde/jd/rap/2004/0034/ddd/pdfv/232216-purchasing_sexual_services_in_sweden_and_the_nederlands.pdf (28 August 2009)

J O'Connell Davidson, 'The Rights and Wrongs of Prostitution' (2002) 17 (2) *Hypatia* 84

J Outshoorn, 'Introduction: prostitution, women and politics' in J Outshoorn (ed) *The Politics of prostitution : women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004)

J Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women' 12 (1) *Social Politics* 141

C Overall, 'What's Wrong with Prostitution? Evaluating Sex Work' 17 (4) *Signs* 705

AJB Parent-Duchâtelet, *De la prostitution dans la ville de Paris* (Paris 1836)

C Pateman, *The sexual contract* (Polity, Cambridge [Cambridgeshire] 1988)

I Pelikánová, *Komentář k zák.č. 513/1991 (Commentary to Art.2(2)(c) Commercial Code)* (ASPI Electronic, 2003)

J Poláková, *Pracovní podmínky žen, které poskytují placené sexuální služby v České republice (Labour Conditions of Women Offering Sexual Services in the Czech Republic)* (Charles University 2008)

R Procházka, 'Všetkým telám rovnako (And equality for all...)' in M Bobek, P Molek and V Šimíček (eds) *Komunistické právo v Československu Kapitoly z dějin*

bezpráví (Communist Law in Czechoslovakia Chapters from the History of Unlawfulness) (Mezinárodní politologický ústav Masarykovy univerzity, Brno 2009)

V Procházka and et. al., *Příruční slovník naučný* (Nakladatelství Československé akademie věd, Praha 1966)

J Prokopec, 'Současná problematika prostituce v ČSSR (Contemporary issues of prostitution in Czechoslovakia)' (1968) (1) Zprávy Státní populační komise 35

P Przeczek 'Cheb přitvrdí v boji s prostitutkami (Cheb to toughen toward prostitutes)' (31 July 2009) http://chebsky.denik.cz/zpravy_region/cheb_prostituce20090730.html (20 September 2009)

J Quigley, 'The Dilemma of Prostitution Law Reform: Lessons from the Soviet Russian Experiment' (1991-1992) 29 Am Crim L Rev 1197

S Radvanová, *Žena a právo (Woman and Law)* (1. vyd. edn, Populární právnická knihovna, Orbis, Praha 1971)

Rozkoš bez rizika 'Annual Report' (2006) http://www.rozkosbezrizika.cz/02_download/10_RR_ZPRAVA_2006.pdf (20 June 2009)

Rozkoš bez rizika 'Annual Report' (2007) http://www.rozkosbezrizika.cz/02_download/12_RR_REPORT_2007.pdf (20 June 2009)

G Rubin, 'Thinking sex: Notes for a radical theory of the politics of sexuality.' in R Parker and P Aggleton (eds) *Culture, society and sexuality: A reader* (UCL, London 1999)

T Sanders, *Paying for Pleasure: Men who buy sex* (Willan Publishing., Cullompton 2008)

B Sauer, 'Discourses on prostitution in Austria' in J Outshoorn (ed) *The Politics of prostitution : women's movements, democratic states, and the globalisation of sex commerce* (Cambridge University Press, Cambridge, UK ; New York 2004)

G Scambler and A Scambler, *Rethinking prostitution: purchasing sex in the 1990s* (Routledge, London; New York 1997)

H Scott, *Does socialism liberate women? Experiences from Eastern Europe* (Beacon Press, Boston, 1974)

A Sembacher, 'The Council of Europe Convention on Action against Trafficking in Human Beings' (2006) 14 Tulane Journal of International and Comparative Law 435

L Shrage, 'Should Feminists Oppose Prostitution' (1989) 99 (2) Ethics 347

J Skála 'Prostitutky v Plzni dluží téměř milion (Prostitutes in Pilsen owe almost a million)' (26 June 2009) <http://tn.nova.cz/zpravy/regionalni/plzensky-region/prostitutky-v-plzni-dluzi-temer-milion.html> (20 September 2009)

M Šolcová, *Postavení ženy v socialistické společnosti (The Position of Women in a Socialist Society)* (Horizont, Praha 1984)

M Sullivan 'What Happens When Prostitution Becomes Work? An Update on Legalisation of Prostitution in Australia' (2005) Coalition Against Trafficking in Women <http://action.web.ca/home/catw/attach/Sullivan_proof_01.pdf> (2nd March 2009)

Y Svanström, 'Criminalizing the john - a Swedish gender model?' in J Outshoorn (ed) *The Politics of Prostitution: Women's Movements, Democratic States, and the Globalisation of Sex Commerce* (Cambridge University Press, Cambridge 2004)

I Trávníčková 'Trafficking in Women: the Czech Republic Perspective' (2004) Institute for Criminology and Social Prevention <http://www.ok.cz/iksp/docs/305.pdf> (5 September 2009)

TD Troung, *Sex, Money and Morality: The Political Economy of Prostitution and Tourism in South East Asia* (Zed Books, London 1990)

P Twomey, 'Europe's other Market. Trafficking in People.' (2000) 2 European Journal of Migration and Law 1

UNICEF, *Social Monitor 2004. The MONEE Project CEE/CIS/Baltics* (UNICEF Innocenti Research Centre, Florence 2004)

J Vedral, 'Správní právo (Administrative Law)' in M Bobek, P Molek and V Šimíček (eds) *Komunistické právo v Československu Kapitoly z dějin bezpráví (Communist Law in Czechoslovakia Chapters from the History of Unlawfulness)* (Mezinárodní politologický ústav Masarykovy univerzity, Brno 2009)

M Vlček, 'K problematice postihu prostituce v Československém trestním zákoně (On the punishment of prostitution under Czechoslovak Criminal Code)' (1975) *Právník* 923

M Vlček, 'Příživnictví jako právní a sociologická kategorie (Parasitism and a legal and sociological category)' (1983) *Právník* 753

M Vlček, 'Poznámky k diskusi o legalizaci prostituce (Notes on the discussion to legalize prostitution)' (1990) *Právník* 755

E Waters, 'Victim of villain: prostitution in post-revolutionary Russia' in LH Edmondson (ed) *Women and society in Russia and the Soviet Union* (Cambridge University Press, New York 1992)

DK Weisberg, *Applications of feminist legal theory to women's lives : sex, violence, work, and reproduction* (Women in the political economy, Temple University Press, Philadelphia 1996)

RJ Weitzer, 'The Politics of Prostitution in America' in RJ Weitzer (ed) *Sex for sale : prostitution, pornography, and the sex industry* (Routledge, New York 2000)

M Wijers, 'Women, Labor and Migration: The Position of Trafficked Women and Strategies for support' in K Kempadoo and J Doezema (eds) *Global sex workers : rights, resistance, and redefinition* (Routledge, New York 1998)