

**Trafficking and prostitution of foreigners  
in the context of the E.U. countries' policy about prostitution.**

- 1) The declarations**
- 2) The laws**
- 3) The factual policies**
- 4) The foreigners**
- 5) The victims of trafficking**

*The question that this paper is going to explore is: "How are the positions of the foreign (willing) prostitute and of the trafficked woman connected with the States' consideration of prostitution?"*

*During the Nineties the presence of foreign women in prostitution has increased in all the E. U. states, and this change has been paralleled by many changes in the laws concerning prostitution, introducing new concepts, like "neo-regulationism", not based on a moral condemnation and legal discrimination of the prostitute, and a "neo-prohibitionism", through the criminalization of the client. In spite of all these changes, the position of a foreign prostitute has not changed, sometimes it has worsened. At the best she can be protected (in a few countries) as a victim of trafficking, but the lack of a legal possibility of exchanging sex for money blurs the categories of the "trafficked woman".*

If we colour a map of the European Union showing the policies about prostitution and trafficking, it is not going to be a simple act, because there are three different levels that we must consider: 1) the declarations of the states, 2) the laws, 3) the practice of dealing with prostitution.

What we will discover is that at each level the prevalent colour changes very much: the E. U. is nearly all abolitionist by declaration, with few countries adopting public regulation of prostitution and none prohibiting the exchange of sex and money. If we look at the laws, instead, we will see a much more varied picture with very different models, and it will be clear that some abolitionist countries really have adopted prohibitionist provisions, while others leave to prostitution more room than expected. At the policy level, more pragmatic approaches emerge, frequently at the local level, and - given the extension of the phenomenon, perhaps not surprisingly - a formal or informal regulation approach will prevail in the relative majority of the states.

## 1) The declarations

The great majority of the E. U. countries is abolitionist, while less than a third is regulationist or neo-regulationist. Let me briefly explain these labels. *Regulationism* views prostitution as a necessary evil to be limited and managed, also by monitoring prostitutes and preventing those with venereal disease from continuing to work. *Neo-regulationism* has chosen to regulate prostitution without morally condemning the prostitute in its legislative texts. *Abolitionism* seeks instead to remove legal regulations, seeing them as a manifestation of male oppression, which historically they have been. The abolitionist stance remains somewhat ambiguous, being based on a moral refusal of prostitution, which is seen as degrading women. The abolitionists favour liberalising the *act* of prostitution whilst criminalising ‘pimping’ and the international trade in women. Where this approach has been applied in practice, it has also led to the criminalisation of the ‘aiding and abetting’ of prostitution (even without purpose of gain) and its organisation behind closed doors, in sheltered locations.

Austria	Never
Belgium	1948
Denmark	1901
France	1946
Germany	1927
Greece	Never
Finland	1907 prohibition then registration
Ireland	1885
Italy	1958
Netherlands	1911
Portugal	1963 (prohibition until 1983)
Spain	1956
Sweden	1918
United Kingdom	1885

The diffusion of abolitionism in the E. U. countries: timing of the closure of brothels

Ten countries have either signed the 1949 United Nations Convention for the Suppression of Trafficking in Women and the Exploitation of Prostitution (Belgium, Finland, France, Italy, Portugal, Spain) or adopted laws similar to those suggested by this convention, with the closing

down of brothels and the criminalization of aiding and abetting (Denmark, Ireland, Sweden and the United Kingdom<sup>1</sup>).

The Northern European countries were the first to abolish brothels: Great Britain (which at the time included Ireland) in 1885, followed by Denmark, Holland and Sweden, thirty or more years before France, the first Southern European country. The laws adopted by these states have been strict: all sheltered forms of prostitution are prohibited, unless exercised by an isolated individual, and 'loitering with intent to solicit' remained on the statute books in many.

After the Second World War, the Catholic Southern European countries followed the abolitionist principles of the 1949 United Nations Convention for the Suppression of Trafficking in Women and the Exploitation of Prostitution, where prostitution is described as a danger to the welfare of the family and the community. The Preamble of the 1949 Convention makes it also clear that the will of the woman who prostitutes herself is not given any consideration. Free-choice prostitution is considered non-existent. A short explanation of my use of the concept "choice" is due: I am adopting a pragmatic approach instead of a philosophical or sociological one, and I make recourse to the definition of "choice" in the language of jurists, where it can be applied to an activity that the person engages in without being forced by violence, threat or deceit sanctioned by law, and assuming that the subject is capable and not underage. Economic violence or the pressure due to addiction to drugs cannot be imputed to a particular subject, and are not facts sanctioned by law.<sup>2</sup> This is the restricted meaning I use of the concept of free-choice.

France, Belgium, Italy and Spain dismantled systems for the regulation of prostitution and implemented a strict form of abolitionism. This effectively excluded the possibility that prostitution could be organised without coercion or exploitation, and consequently *all* organised forms of prostitution were subject to legal repression. It prohibited all sheltered prostitution making an exception only for women operating in an individual capacity in their own house or apartment.

In 1995, with the new Penal Code, however Spain adopted a more liberal version of abolitionism<sup>3</sup>. Provided that there is no exploitation, the new penal code do not restrict or criminalise activities related to prostitution, providing an important precedent in the legal history of the ten abolitionist countries. The fact that Spanish law no longer pursues those who organise or facilitate prostitution means that all forms of organised, sheltered prostitution are legal.

---

<sup>1</sup> Some countries that have not signed the Convention did so due to the lack of consideration of the consent of the woman to prostitution in criminalizing acts related to it.

<sup>2</sup> Although in Sweden persons addicted to illegal drugs are forced to undergo treatment, thereby rendering them legally unable to self-determination in that area.

<sup>3</sup> Nevertheless, the use of this terminology raises some difficulties, as abolitionist associations (which are mainly based in France) do not recognise the Spanish model as a genuine form of abolitionism, but oppose it fiercely.

Abolitionism is openly rejected only by four countries: on one hand Austria and Greece, that have regulations discriminating the prostitute (licences and compulsory health checks), on the other the Netherlands and Germany, that have adopted a neo-regulationist approach that does not want to stigmatize the prostitute, also by considering legally valid the direct exchange between sexual services and money, otherwise prohibited by the civil code as being an act *contra bona mores*. Here public policy is not characterised anymore by a moral condemnation of prostitution in written law.

## 2) The laws

The legal map will show a very scattered picture, with the prevalence of abolitionist countries disappearing.

Three abolitionist countries have legal provision so strict that they configure a quasi-prohibition: Ireland and Great Britain allow only the prostitution of one woman indoors, without giving her possibility to advertise, and Denmark has the same provision for prostitution happening indoors, aggravated by the impossibility of renting out a room (made equal to pimping) plus local police rules forbidding loitering in the streets, for example in Copenhagen. In 1999 Denmark decriminalised prostitution as a primary source of income, to allow the giving of social assistance and subsidies to active prostitutes, but stopped short of recognising it as a legitimate occupation.

Sweden has really left the abolitionist field by adopting a form of prohibitionism with the criminalization of the act of offering money in exchange for sex. As before, the prostitute is not subject to prosecution, but the act of prostitution is now prohibited due to the sanctions faced by the client, that is whoever offers money in exchange for an occasional<sup>4</sup> sexual act. This makes prostitution impossible by law.<sup>5</sup>

Spain has decriminalized aiding and abetting even with purpose of gain, directing the force of the law against exploitation only and leaving prostitutes completely free to engage in contracts for the organization of prostitution.

Finland decriminalized prostitution by abolishing the rules introduced decades ago that put her at strict police surveillance.

Belgium stays (perhaps) in the abolitionist field, but with local rules that regulate prostitution, and the tolerance of organizers that do not gain excessively at the expense of the prostitute, limiting the crime of exploitation to this case.

To give a graphic picture of the different laws adopted, we will locate the countries in a classification based on the moral consideration of the prostitute combined with the legal possibility

---

<sup>4</sup> By this specification, the kind of prostitution of a kept woman, or a wife, is excluded.

<sup>5</sup> Though the crime is very difficult to prove without collaboration by the prostitute, which is obtained only when she had some conflict with the client. This policy requires intense police surveillance.

for exercising prostitution. The three "classical" policies (prohibition, regulation, abolitionism) occupy each one quadrant, where the last is dedicated to the criminalization of the client, a policy not implemented (or even thought of) until recently, given the historically privileged status of the male client over the prostituted woman.

This basic classification plays a prominent role in contemporary research, although the terms used have changed over time in order to take account of changing attitudes towards sexuality. These changes have led to debates about whether prostitution should simply be considered as an occupation, a proposition that would have been unthinkable during the nineteenth century, when these three categories first emerged. Before the "sexual revolution", prostitution was seen as an offence to public decency, whereas this is clearly no longer a foregone conclusion. Indeed, the Bottalico sentence (passed by the Magistrate's Court in Bari, Southern Italy, on 28 November 1986) observed that: "nowadays, it is no longer the case that prostitution is widely seen as contrary to public morality and decency".

		Moral condemnation of the prostitute	
		Yes	no
Legal possibility for exercising prostitution	yes	Regulationism	abolitionism
	no	Prohibitionism	client criminalisation

And this classification does not exhaust the range of policies operating and struggled for in more recent years, when the effects of the "sexual revolution" have pointed toward a reduction of the moral blame and revulsion for prostitution itself. These "classical" models of policy share a view of prostitution as morally wrong, while new policies have emerged which consider it with neutrality: a depenalization of aiding and abetting and of the other clauses that socially isolate the prostitute (forbidden, for example, to have a lover that she gives money to), while the moral condemnation of prostitution has been dropped<sup>6</sup> by a new breed of regulationism, called neo-regulationism and exemplified by the Dutch legislation of 2000 which recognises prostitution as work for the first time in contemporary European history (this was never the case with former regulations).

---

<sup>6</sup> In the formulation of Dutch law only, not in political discourses around the new law, where prostitution is still seen as an undesirable phenomenon.

## Written law and jurisprudence

		<i>Moral condemnation of prostitution</i>			
		<i>yes</i>		<i>no</i>	
		Moral condemnation of the prostitute			
		yes	no		
Legal possibility for exercising prostitution	yes	<b>regulationism</b>  Austria Greece	<b>abolitionism</b>  France Italy Portugal  (Belgium*)	<b>neo-regulationism</b>  Germany Netherlands  <b>depenalization</b>  Finland Spain*	
	no	<b>semi-prohibitionism**</b>  Denmark Great Britain Ireland	<b>client criminalisation</b>  Sweden		

\* organization in clubs is legal, not excessive gains, that are considered illegal exploitation

\*\* prostitution is legal only if exercised by only one woman in an apartment, without publicity

### 3) The factual policies

What is actually done about prostitution tells a very different story still: the approaches in some countries with strict abolitionist or prohibitionist laws are more pragmatic. This phenomenon is too big to be successfully stopped by the strictest laws, so the results are that indoor prostitution is generally tolerated, and so are the announcements to advertise its locations to clients (also because they can employ code words). Police corruption is another well known effect of the various abolitionist prohibitions. The nuisance to residents in streets (and sometimes buildings) where prostitution takes place, leads to a more intense effort to apply the laws in the streets, not with the aim of protecting prostitutes from exploiters, but rather to protect residents from this nuisance. The conflict between prostitutes and residents, always won by the latter, voids the law provisions consenting prostitution, especially in the (self-declared) abolitionist countries where there is virtually no legal possibility to exercise indoors. On the other hand, in these countries, there are in fact very few interventions of the police against prostitution indoors.

If we consider, in search of a prevalent model, what is concretely done about prostitution in the different countries, the picture shows a prevalence of a cluster of countries (one third) that govern prostitution indoors with either tolerance and depenalization, while cracking down on street prostitution with recourse to every possible clause on public order, or to rules about foreigners (that in many countries make up a big proportion of street prostitutes). This is not classifiable under our scheme, since it mostly responds to another logic: the appeasance of the residents in the street prostitution areas, safeguarding their interests against those of prostitutes (and clients) and the maintenance of public order.

This group comprises Belgium, Denmark, Finland, Great Britain and Spain, but even France and Italy present aspects of this policy, even though their laws against prostitution indoors are frequently enacted, and not practically abandoned as in the other countries.

But let's briefly consider the countries one by one, starting with those abolitionist by declaration and really semi-prohibitionist by law. Denmark and some important cities in the U. K. tolerate prostitution indoors when there is consent of the person offering sexual services. The system of fines to "common prostitutes" in the United Kingdom is perceived as a sort of taxation of the women, that are not stopped by this measure, but on the contrary are forced to work more to pay the fines. Even the Irish semi-prohibitionism is enacted only under complaints of the residents of the areas. The police operations against street prostitution with the reason of disturbing the order in abolitionist countries like Italy, France and Spain, usually targeting foreigners without documents, are very similar to the abovementioned situation of semi-prohibitionist countries.

Policies of tolerance both for indoor and outdoor prostitution have been in use in the Netherlands, regardless of the law since perhaps its very first approval in 1911, and also in Spain, from the death of Franco until 1995, when in the new Penal Code a sheer depenalisation of all the activities undertaken by choice has been adopted. Also in Belgium prostitution is locally regulated and tolerated indoors, while on the streets police raids are frequent.

Considering the group of countries with positive rules regulation prostitution, we see that the attempt to control prostitution via rules, licences, compulsory health checks does not show substantial results in terms of respect of these laws. The existence of compulsory health examinations in Austria, Germany (apart from some major cities) and Greece does not seem to distinguish these countries substantially from the others, as the proportion of women who actually undergo examinations is very small and the large number of clandestine prostitutes renders these laws relatively ineffective. The new rules in the Netherlands are already showing the notorious problems of business going underground, proliferation of (uncontrollable) escort services, and so on. But, what is perhaps not much surprising, is that the Dutch model of prostitution as work does not apply to foreigners from outside the E. U. let's now go deeper into this question.

## Practice

		<i>Moral condemnation of prostitution</i>			
		<i>yes</i>		<i>no</i>	
		Moral condemnation of the prostitute			
		yes	no		
Legal possibility for exercising prostitution	yes	<b>regulationism</b>  Austria Greece	<b>abolitionism</b>  France Italy Portugal	<b>neo- regulationism</b>  Germany Netherlands	
	no	<b>semi- prohibitionism*</b>  Ireland	<b>client criminalisation</b>  Sweden		

\* Only one woman in an apartment

### tolerance and depenalization indoor with contrast in the streets

Belgium  
Denmark  
Finland  
Great Britain  
Spain

#### 4) The foreigners

The fall of the Berlin Wall, the increased opportunities for international mobility that constitute a part of the globalisation, the widening of differences in income and wealth among countries on a global level (another aspect of the globalisation) have led to an increase of prostitution of foreign women in all the E. U. States (although in very different proportions).

This phenomenon has been accompanied by a general alarm of, particularly, the residents of the prostitution areas and, generally, the citizens, spurred by press campaigns stressing the "trafficking" phenomenon and divulging the saddest stories. But first thing we have to know, before jumping to the trafficking part, is that there is no legal way to exchange sex and money for a foreigner coming from outside the Union (except in some Austrian provinces), while E. U. citizens engaging in prostitution in a country other than theirs cannot be expelled.<sup>7</sup>

We can shortly describe the situation for immigrants: work permits are not issued for purposes of prostitution in any of the E. U. countries, apart from Austria. People entitled to stay in an E. U. country to work are generally allowed to engage in prostitution in Southern countries, but expelled in the North if they are caught soliciting (see next table). People with other kind of permits and undocumented people are generally expelled, while tolerated only in some countries (this is rapidly changing: see the example of France) or in some situations, as the "tippelzonen" of the Netherlands. But where foreigners manage to sell sex for money, it is usually for a lack of resources in one of the rings of the chain of repression: the surveillance, the identification, the arrest, the deportation. This chain has become effective in Southern European countries only with the building of the concentration centers according to the Schengen agreement: the tolerance of undocumented migrant prostitution has then come to an end.

The policy models that we have considered are based on different views of prostitution: as a resource for the people who engage in it (abolitionism and depenalization), as a social evil (prohibitionism, old-style regulations), as a damage inflicted to the woman (criminalization of the client), and as work (neo-regulations).

From the principles applied to nationals, it descends that the countries that follow both the "resource" and the "work" models should allow prostitution of foreigners at these conditions: if prostitution is a job, there should be a way of immigrating in the country with this purpose, on an equal foot with the general provisions regarding immigration, while if prostitution is considered a simple resource, there are not going to be any permits to exercise it, but it should be an *extra legem* activity, with tolerance of people legally entitled to stay in the country to practice it. But in reality

---

<sup>7</sup> European Communities Court of Justice, sentence 18.5.1982 n. 681J0115 on free movement of workers, case of two French women, Adoui and Cornuaille, suspected of prostitution in Belgium (also quoted as Joined cases 115 and 116/81 [1982] E.C.R. 1665).

the "social evil" approach prevails: neo-regulationist countries do not give work permits for this reason, while abolitionist countries expel tourists (and sometimes even foreigners with permits to stay) caught in prostitution, since they are judged to be working, thereby violating the conditions of the tourist permit. The work permits are sometimes revoked since the work done is not the same for which the permit was obtained.

The Netherlands have only apparently rendered prostitution an acceptable activity: it is still not possible for a foreigner to apply for a residence permit if she/he is going to support herself with prostitution, and she/he cannot work legally in licenced brothels: the famous 2001 sentence of the Luxembourg European Court<sup>8</sup> declaring prostitution an "economic activity" has been voided by excessive requirements to the citizens of the Associated countries who want to apply for a permit to work independently in prostitution: they are treated as small entrepreneurs, and must submit a business plan and dispose over a starting capital. In fact the new Dutch law has really meant a clamping down on prostitution rather than a proper legalization, if we take into consideration the fact that more than the half of the workers in this trade are foreigners

Germany does not allow immigration for the purpose of prostitution, either. The relevant legal reference is to § 10 of the law regulating the conditions of immigrants from outside the E. U. (AuslG, law on foreigners 2000), which provides for the expulsion of those who prostitute themselves without a work permit. Prostitution in this aspect is simply equated with other occupations, and the rules to engage in it (health checks, respect of the forbidden zone) apply to foreigners with a work permit, too, with an harsh sanction: all the foreigners caught in prostitution not following the rules are guilty of practicing an immoral trade (*Gewerbsunzucht*) and are expelled. The new German law legalizing prostitution has not affected this provision. Most of the foreigners in prostitution in Germany have a tourist permit for 3 months. Estimates say that three quarters of the 6.000 prostitutes in Berlin have it, so that they are exposed to repatriation if caught working.

In Austria, too, the law on immigration (1993) stipulates that those who break prostitution regulations may be expelled.

It is peculiar that the only possibility of legal entry for prostitution is given by an old regulationist country: Austria. Only some Austrian provinces in fact accept the immigration of women who declare openly that they want to work as prostitutes in a certain (licensed) club. They must apply at the Austrian embassy in their country (prevalently the Czeck and the Slowac Republics and Hungary) and will obtain a work permit which is valid only for prostitution, valid from 3 to 12 months and extendable. A tolerance policy is pursued by some regions in Austria, where even the

---

<sup>8</sup> European Communities Court of justice C-268/99, 20.11.2001.

official registration of foreign women with a tourist permit is allowed (as in Wien, for a maximum of 6 months, or in Graz), and the brothel owners are not persecuted if they keep foreigners without permit on their premises: authorities fear that the business will be taken over by criminals if the houses now existing are closed down. Registration of foreigners with a work permit is allowed by a ministerial circulaire.

So much for the (neo)-regulationist countries. As in Austria, Germany and the Netherlands, also in France, Great Britain, Italy and Spain, foreigners in possession of a work permit can legally engage in prostitution, although immigrants (from outside the E. U.) who prostitute themselves without a work permit face extradition, even if they are in possession of a residence permit of a different kind. As they have a livelihood, these women cannot be considered 'tourists' or 'students', and by virtue of their income they are in open violation of the laws regulating access to the labour market.

But in some cities in Italy even the work permit is taken away by the police, for mismatching of the declared and practiced activity, for reasons of defending the public order, and sometimes, straightforwardly, for "prostitution", though there are legal cases pending against this.

In Ireland, non-E.U. citizens convicted of prostitution are expelled from the country. In both Sweden and Denmark<sup>9</sup>, the law makes it clear that immigrants from outside the E. U. cannot engage in prostitution (nor indulge in other illegal activities such as gambling and begging), the penalty being expulsion from the country. The regulations in force in these two countries are quite similar: those suspected of supporting themselves in 'immoral' ways are deported. Nevertheless, immigrants cannot be expelled if they have been in the country for at least three months and possess a visa or residence permit. If they do not possess the required documentation, immigrants can be deported at any time. It is also possible to initiate proceedings to revoke the visa given to a person found to prostitute themselves, provided they are in possession of this visa for less than two years. A similar procedure was adopted in the case of E.U. citizens prior to Sweden's accession in 1995.

In Finland there is not only the expulsion of prostitutes; the law on foreigners of May 2000 says: "an alien may be refused entry if he may be assumed to obtain income through dishonest means or to sell sexual services". The result in the daily life of foreign prostitutes was denounced by the harm reduction organization Pro-Tukipiste: "They do not report violence to the police anymore, because they are afraid that the only consequence will be to be sent back home".

---

<sup>9</sup> Danish reform of 1999 did not declare prostitution a legal activity, one may think expressly for this purpose of keeping out foreigners.

## The legality of prostitution for non-EU immigrants with valid work permits

Aus	Bel	Den	Fin	Fra	Ger	Gre	Ire	Ita	Neth	Por	Spa	Swe	UK
Yes		No	No	Yes	Yes	No	No	Yes	Yes		Yes	No	Yes

If we look at the people with temporary permits, we see that in Austria, and certainly in many other countries, usually visa for artists or dancers are used to enter the country legally. Sometimes there are organizations that provide these visa, putting the women in touch with the clubs where they can work. Many countries tried to stop the immigration of people who prostitute themselves by introducing visa for particular countries, as it happened in 1989 in Germany for Thai people. Austria in 1998 has abolished visa for "go-go girls", and in Finland since 1999 police could refuse entry to a person suspected of wanting to engage in prostitution or to earn in a dishonest way, by using police records, before changing the law about foreigners.

But more barriers (compulsory visa, possession of certain amounts of money, restrictions to artist visas, police hunting undocumented foreigners) mean higher prices to pay to "traffickers", or providers of illegal services, the travel will be more difficult, there are going to be more people injured in the process, and those who will cross the borders undocumented will live in permanent fear, whatever her occupation will be. The report of Radhika Coomaraswamy, special rapporteur at the U. N. on trafficking of human beings (february 2000) underlines how a policy stopping immigration will have as principal consequence under this aspect that women will fall more rapidly in the hands of criminal organizations, and their debt will increase.

### 5) The victims of trafficking

Until recently the foreign victim faced repatriation, if she/he couldn't obtain asylum or a permit to stay for humanitarian grounds. A norm (suggested also by the E. U. Commission in 1997) is in force since 1988 in the Netherlands, then from 1994 in Belgium, in the period 1996-1998 in Italy, in Austria and in Germany, that grants a temporary residence permit to victims of trafficking to allow them to testify against pimps or traffickers. In Spain a statement and confrontation with the accused is considered sufficient without appearing in court, so there seem to be no need for special permissions.

If they accept to testify, victims are granted a permit for justice only for the duration of the process in the Netherlands, Austria and Germany. In the Netherlands the permit can become definitive for humanitarian reasons. In Germany the "toleration" permit to the victims can be given at the discretion of the authorities, and it can become permanent, too. In Great Britain there is the same

possibility of humanitarian stay with a norm not regarding explicitly prostitution or trafficking. In Italy asylum has been granted to transsexuals from South America.

Belgium and Italy are different in granting more rights to the victims. In Belgium victims can stay in the country if they testify and the trafficker ends up appearing in court. In Italy there is no obligation to denounce the criminals, but this is in fact automatic since these crimes are very serious, and so the authorities will open an investigation as soon as they have some information about what happened. But the victims can stay in the country with a "social protection permit" regardless of what happens in court. They are kept in refuges and they must complete a "program of social assistance and integration", learning Italian, some craft, other subjects.

In 1999, the first year where the rules to implement Art. 18 of the law on immigration of 1998 concerning the protection permit were approved, 242 permits for protection have been granted, 800 in year 2000, and other 800 in the first 4 months of 2001. In 2000 there have been 1500 denunciations for exploitation and trafficking by protected victims, out of 3500 notices of these crimes gathered by the police.

Italian legislation is unique in repairing a tort, but a second aim of this provision is a sort of moral reformation: the victim must not come back to prostitution. The prohibition to exchange sex for money is not explicit, but since most of the Ngo's accredited to the programs of social assistance and integration that the victim must follow are Catholic, they consider prostitution as a violation of the conditions of the participation in the compulsory program. Victims are entrusted to Ngo's also because the waiting time to obtain the permit, and with it the possibility of legally working, are quite long (some months).

Also the 1949 Convention implicitly states that there is not such a thing as a willing prostitute. Foreigners that exercise prostitution are all trafficked, and should always be considered as victims and repatriated, as it is assumed that they didn't want to leave their country in the first place (though the protection, reeducation and reinsertion of victims are also mentioned). The Convention has an extremist clause that requests prosecution of traffickers for the purpose of prostitution even with the consent of the trafficked woman, but this has not been enforced in any of the countries under examination.

Now there is a new international legal instrument about trafficking: the "Protocol to prevent, suppress and punish trafficking in persons, especially women and children", supplementing the U. N. Convention Against Transnational Organized Crime of 2000, shortly named "The Palermo Convention". Trafficking is more strictly defined in relation to the intent of exploitation, as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means 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 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" (Art. 3, subparagraph a). This definition relies again on the question of what is to be considered exploitation in prostitution: all forms of organizing? Or only excessive gains and coercion?

The question of the consent has been explicitly addressed in the same Art. 3, stating in subparagraph b) that "the consent of the victim of trafficking in persons to the intended exploitation set forth in subparagraph a) of this article shall be irrelevant where any of the means set forth in subparagraph a) have been used", among which there is a vague "abuse of a position of vulnerability", that could void the consent of the "trafficked person", as Belgian practice shows: the wording of this kind of abuse is the same in Belgian law, and the lack of a legal title to stay in the country is considered a proof of this situation.

The required protection of the victim in this new Convention has to do only with their privacy, while more protecting norms are formulated only in an unbinding way: "each state shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking

So far the Palermo Convention has been signed only by France and Spain, but in many other countries governments' law proposals are citing it, as currently in Denmark in the proposal of harshening the penalties for trafficking, and giving the victims 15 days of "delayed departure" to think about testifying, before their "prepared return".

Given the extent of migration due to the inequalities, the poverty and the possibility of working (legally or illegally) in the sex market, it is unlikely that the states will grant the victims of trafficking permits to stay in the country following the suggestions of the Palermo protocol, even though they have proven effective in fighting against traffickers, as the Italian case shows.

*This paper is based on my research for a PhD thesis in Sociology with the title "Policy about prostitution in E. U. member states in the Nineties", focusing on ten countries (Belgium, Greece and Portugal were excluded, as Luxembourg was and is), and on the research for a forthcoming book about prostitution: "Donne di mondo", published by Il Mulino. I apologize for the lack of bibliographical references, that are available on request: daniela.danna@soc.unitn.it. My writings are also available (in Italian). I also apologize for my non-native English.*