

Dutch Policy on Prostitution

Questions and Answers 2005

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This on-line publication answers some of the most frequently asked questions about the Dutch government's policy on prostitution.

What is the official policy on prostitution? Why are brothels allowed? And what are the regulations governing them?

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1 Is prostitution legal in the Netherlands?

Prostitution as such has never been illegal in the Netherlands, provided it was voluntary. Brothels, however, were illegal until 1 October 2000, when articles 250bis and 432 were removed from the Criminal Code and the ban on brothels and pimping lifted. It is now legal to run a business where men or women over the age of consent are voluntarily employed as prostitutes. The person running the business must satisfy certain conditions and obtain a licence from the local authorities. Sex clubs, brothels and escort services may therefore operate as legal businesses. The Netherlands is one of the first countries in the world to recognise voluntary adult prostitution as a normal occupation.

2 What are the implications of article 273a of the Criminal Code?

Article 273a makes it an offence to exploit another person for the purpose of prostitution and outlaws other forms of sexual exploitation. It also prohibits:

- forced or compulsory labour or services
- slavery
- practices comparable with slavery or servitude
- trafficking in organs.

3 What penalties are imposed?

Anyone who

- forces another person to engage in prostitution
- induces a minor to engage in prostitution
- recruits, takes away or abducts a person to engage in prostitution in another country (pursuant to the 1933 International Convention for the Suppression of the Traffic in Women of Full Age)
- profits from prostitution involving a minor or forced prostitution
- forces another person to surrender the proceeds of prostitution

is liable to a custodial sentence of up to six years and/or a fine.

In the event of aggravating circumstances (the victim is under the age of sixteen or if two persons committed the offence acting in concert) the sentence may be raised to a maximum of eight or ten years. If the offence involves serious physical injury or danger to life, the penalty may be raised to a maximum of 12 years and to a maximum of 15 years for loss of life.

4 What does the policy involve?

Although the ban on brothels was lifted in 2000, no legislation governing prostitution was introduced. It has been left to local authorities to formulate and implement policies tailored to

the circumstances prevailing in their area. Hence, the local authorities lay down the rules for brothels operating within their jurisdiction. They are also responsible for issuing licences. Brothels must be licensed and must therefore satisfy the conditions. The Association of Netherlands Municipalities has published guidelines for the regulation of brothels, sex shops and streetwalkers.

Policy on the establishment of brothels enables local authorities to exert influence on their location, ensuring that they do not disturb or intrude on the life of a neighbourhood. Their location must conform to zoning and urban renewal plans and to local by-laws on the living and working environment.

Regulations on premises specify the minimum size of working areas and govern safety, fire precautions and hygiene. For instance, every working area must be equipped with a panic button, and hot and cold running water. Condoms must be provided.

Regulations on the operation of brothels govern the position and status of prostitutes, protecting their physical and mental integrity and prohibiting forced prostitution, the employment of minors or people without a valid residence permit. They also include measures to prevent excessive nuisance in neighbourhoods where brothels are located.

5 Why was the ban on brothels lifted?

Brothels were banned in the Netherlands in 1911 to protect prostitutes from exploitation. However, the ban has not been enforced for the past 50 years. Action was only taken against brothels and sex clubs if they engaged in criminal activities or disturbed public order.

To end abuses in the sex industry, the Netherlands decided to change the law to reflect everyday reality. It is now legal to employ prostitutes who are over the age of consent, and do the work voluntarily, but stricter measures have been introduced under criminal law to prevent exploitation. The legalisation of brothels enables the government to exercise more control over the sex industry and counter abuses. The police conduct frequent controls of brothels and are thus in a position to pick up signs of human trafficking. This approach is in the interests of prostitutes themselves, and it facilitates action against sexual violence and abuse and human trafficking.

The new legislation aims to:

- control and regulate the employment of prostitutes through a municipal licensing system
- protect the position of prostitutes
- protect people from being coerced into prostitution
- protect minors against sexual abuse
- reduce prostitution by foreign nationals residing illegally in the Netherlands
- sever the links between prostitution and crime.

6 How do prostitutes benefit?

The legalisation of brothels has several advantages for prostitutes. It means that local authorities can publish by-laws governing safety, hygiene and working conditions in brothels. Brothels may be forbidden to force prostitutes to consume alcoholic drinks with clients, or

engage in unsafe sex or certain sexual acts. They may also be compelled to allow health services or interest groups unrestricted access to their premises.

Prostitution is now considered a legitimate occupation. So prostitutes now have the same rights and obligations as other professionals. The owners of brothels operated in a grey area for many years, in that the legislation against it was not enforced. As a result, the working relationship between prostitutes and their employers differs from that in other sectors. It is up to the parties themselves to define their positions, since this is an area where the government exercises little influence. Most brothel owners are unwilling to enter into employment contracts. The rationale is that they provide support services to self-employed prostitutes, and are therefore not obliged to pay income tax or social insurance contributions. The authorities can, however, verify the nature of the working relationship and take action against anyone operating under false pretences.

The rights of prostitutes are more explicit, as the industry now has to comply with labour laws. It has the same obligations as any other sector, relating to tax and social insurance contributions. The government publishes booklets for prostitutes and their employers, containing information on social insurance and related matters. They examine the comparative advantages of employment and self-employment, and their respective rights and obligations.

A study was conducted two years after the ban on brothels had been lifted, but it was too soon to draw any conclusions about its impact. Rehabilitating a sector that had been operating illegally for almost a century requires more than new laws or new policy. Prostitutes and their employers need to be sufficiently informed about their rights and obligations, and the social position and status of prostitutes must be improved. The outcome of the study will be useful in this process.

7 How do inspections work?

Monitoring brothels to ensure that they satisfy the conditions for a licence is an administrative matter. It is up to the local authorities to decide who is responsible for doing so. In practice, it is usually the police. Local enforcement policy is coordinated by the mayor, the public prosecutor and the chief of police. Agreements reached between them may be set down in enforcement instructions.

Brothels that fail to observe the regulations are liable to administrative sanctions such as a penalty payment, withdrawal of their licence and closure. They can also be prosecuted for the offences covered by article 273a of the Criminal Code in the event of prohibited forms of prostitution or sexual services (see 2).

8 Can local authorities refuse to allow brothels?

Local authorities formulate their own policies on the establishment and location of brothels and can therefore decide whether they may be established and, if so, where they may be located. They may also refuse to allow certain forms of prostitution, such as window soliciting. They may for example withdraw a licence or refuse to grant one if:

- the owner of a brothel is unable to produce a police clearance certificate issued by the local authorities
- the intended location conflicts with zoning plans
- the brothel employs a minor or an illegal resident or any person under coercion
- it is in the interest of public order
- it makes the area less desirable to live or work in.

Permission to run a brothel may not be refused on moral or ethical grounds.

9 Are the police allowed to keep a register of prostitutes?

No. This would contravene the various laws protecting personal privacy. However, the police may keep a temporary register for a specific law enforcement purpose, for example to investigate human trafficking. They are obliged to report this to the Data Protection Board.

10 What is the policy on health care?

The local authorities are responsible for ensuring that prostitutes have easy access to health care, with readily available services and no sanctions, but health and working conditions are primarily the responsibility of the prostitutes themselves and their employers. The local authorities' job is to ensure that employers fulfil their obligations. For instance, they can set conditions for granting licences and take steps to ensure that those conditions are met.

Employers' responsibilities include pursuing a safe sex policy, giving their workers the opportunity to benefit from information activities, and encouraging them to have regular medical checkups for sexually transmissible diseases. General practitioners and specialists have been given special guidelines on STD screening among prostitutes.

Medical checkups are not compulsory. Obligatory checkups reinforce the idea that prostitutes transmit infections. Moreover, clients use medical checkups as an excuse to ask for unsafe sex. As a rule, prostitutes are asked to have medical checkups four times a year. The majority consider them useful precautions and are willing to comply. Clinics in the cities offer free and anonymous checkups. Safe sex and good information are of paramount importance in protecting prostitutes and their clients against transmissible diseases.

11 What forms does prostitution take?

There are different kinds of prostitution. The majority of prostitutes work in sex clubs or red-light windows; others find clients in hotels or bars or through escort services. Many local authorities prohibit streetwalking to prevent nuisance and safeguard public order. Some have designated official zones where streetwalkers may solicit at specified times. Each zone has a car park where prostitutes and clients can make contact. There is also a lounge where prostitutes can shower and rest. They can obtain coffee and condoms and speak to a counsellor if they wish. The introduction of these zones has significantly increased the safety of streetwalkers and reduced or even eradicated nuisance in residential areas. Window soliciting occurs in most large towns and cities.

According to a survey conducted in 2000, prostitutes were engaged as follows:

Form	Percentage
Window soliciting	20
Streetwalkers	5
Brothels and sex clubs	45
Escort services	15
Service at home	5
Other*	10
Total	100

* Hotels, bars, massage parlours etc.

These figures have changed since the introduction of the new legislation. A fresh survey will be conducted in 2005.

12 How many prostitutes are there in the Netherlands and what countries do they come from?

There are estimated to be 25,000 prostitutes in the country, with 12,500 working at any one time at a total of 6,000 locations. Many were migrants. In the 1970s the majority of foreign prostitutes were from Thailand and the Philippines, in the 1980s from Latin America and the Caribbean. After the fall of the Berlin Wall in the late 1980s, many came from Central and Eastern Europe. In 1999 no more than one third were Dutch nationals, the remainder representing 44 nationalities. The majority were from the Dominican Republic, Colombia, the Czech Republic, Romania and Poland. No figures were available on illegal residents.

At the time, an estimated five percent of prostitutes were male and five percent transsexual, the majority being migrants. Ten percent of all prostitutes were drug addicts, the majority Dutch nationals or former Dutch nationals.

No recent estimates are available of the number of prostitutes in the Netherlands. Their numbers are assumed to have declined over the past few years, as a result of frequent inspections of licensed brothels by the police and tax authorities.

13 How does the new legislation affect labour relations?

The lifting of the ban on brothels means that private law, which includes labour law, applies to relations between prostitutes and their employers. The most important points are that individuals can decide whether they wish to engage in prostitution and, if so, how, and that they themselves can also choose to terminate the business relationship.

The Working Conditions Act and most other legislation that applies to the business sector in general applies to prostitution as well. The Labour Inspectorate has published a booklet containing information on legislation governing safety, health and welfare. The booklet is intended for prostitutes and their employers, and for safety, health and welfare services.

14 How does the new legislation affect prostitutes' rights to social security?

Prostitutes who work for an employer and are obliged to stop working for reasons beyond their control are eligible for unemployment benefit. Like any other unemployed person, they must be available for work and take any jobs that are generally considered acceptable. Obviously no-one can be obliged to take a job in the sex industry, nor do employment offices offer such jobs.

Prostitutes who choose to stop working, whether for an employer or as a self-employed professional, are not eligible for unemployment benefit, because they have become unemployed voluntarily. Instead, they are entitled to social assistance. They may register as jobseekers.

Prostitutes who are not self-employed but work for an employer are eligible for invalidity benefit. They are entitled to benefits only if they are no longer able to do their own or any other generally acceptable work.

These rules apply to employees in all sectors.

15 What arrangements are made for the collection of tax and social insurance contributions?

Prostitutes and their employers are required to pay tax. The tax department applies a target group approach which is uniform throughout the country. Both parties are responsible for paying tax, depending on the nature of their working relationship. Employers are obliged to contribute towards employee insurance schemes.

16 How does the policy help to combat human trafficking?

An important spin-off of the policy is that it prevents human trafficking, which is characterised by exploitation, coercion and violence. The lifting of the ban on brothels makes prostitution a legitimate occupation and gives prostitutes the same rights and protection as other professionals. The labour laws offer the most effective protection against exploitation, violence and coercion. The policy is based on the conviction that strengthening the position of women is the best way to combat sexual violence. Moreover, abuses are easier to detect when prostitutes operate publicly and legally rather than in a clandestine subculture.

The introduction of a municipal licensing system enables the police and other law enforcement agencies to conduct inspections of brothels, subject to the mayor's consent. Through regular inspections to ensure that brothels conform to the licensing conditions, the police are in a position to pick up signs of human trafficking. They obtain invaluable information that can be used immediately to trace and prosecute offenders in both the regulated and unregulated sectors.

A special phone line has been opened so that members of the public can anonymously report suspicious activities.

Article 273a of the Criminal Code, which prohibits exploitation of prostitutes as a form of human trafficking is strictly enforced. The law enforcement authorities in the Netherlands give priority to combating the traffic in persons, the exploitation of prostitutes, and the employment of minors in prostitution.

The Netherlands supports projects both at home and abroad aimed at preventing human trafficking. It is also tackling the problem in partnership with other members of the European Union. The European Union conducts information campaigns in countries in which victims are recruited, and in 2003 it set up an experts group on the subject. Europol supports operational and research projects in the member states, and conducts studies to improve policing methods.

In 2000 the Netherlands commissioned an independent national rapporteur – one of the few positions of its kind in the European Union – to publish an annual report on human trafficking and make recommendations to the Dutch government.

17 Which foreign nationals are allowed to engage in prostitution?

Nationals of countries outside the European Union and the European Economic Area who do not have a valid residence permit are not allowed to work in the Netherlands. By the same token, they are not allowed to engage in prostitution. This group includes visitors who are in the Netherlands on a tourist visa or who do not require a visa for a stay not exceeding three months.

Nationals of countries that have signed an association agreement with the European Union, such as Bulgaria and Romania, may establish themselves as self-employed workers, providing they satisfy the conditions for doing so (private capital, business plan, commercial skills) and possess a residence permit that allows them to work for themselves. They may not work for an employer.

Nationals of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Norway, Portugal, Spain, Sweden and the United Kingdom may work as prostitutes in the Netherlands, either for themselves or for an employer. Transitional arrangements will apply to nationals of the countries that joined the European Union in May 2004. Under these arrangements, nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia will not be permitted to work for an employer in the Netherlands until at least 1 May 2006.

Strict measures are taken against prostitutes operating in the Netherlands without a valid residence permit and to unmask anyone working under false pretences. Any person who is in the Netherlands illegally is asked to leave or may be deported under the provisions of the Aliens Act.

18 Is help available for victims of human trafficking?

Anyone who is in the Netherlands illegally and is a victim of human trafficking is entitled to assistance from the government. Anyone who files a complaint of trafficking is granted a temporary residence permit pending the outcome of legal proceedings. In some cases they may be eligible for a permanent residence permit on humanitarian grounds. At present, a

residence permit of this kind does not entitle the holder to work, but this is expected to change in the near future.

They are given three months to decide whether they wish to file a complaint. They are allowed to stay in the Netherlands legally during this period and may use all public facilities and services, such as counselling, medical care, and financial and legal services.

19 What interest groups exist to assist prostitutes?

Many agencies and organisations are working to improve conditions for prostitutes. The following are some examples.

A. de Graaf Foundation, established in 1961, specialises in issues relating to prostitution. It advises on policy, encourages debate, conducts research and carries out projects on assignment. It also manages an information and documentation centre.

Stichting Aids Fonds–Soa Aids Nederland coordinates information campaigns on AIDS and sexually transmissible diseases. These campaigns target specific categories of prostitutes, such as foreign nationals, drug users and transsexuals.

De Rode Draad campaigns for prostitutes' rights and recognition of prostitution as a profession. It collaborates with the Trade Union Confederation FNV.

The *Dutch Foundation against Trafficking in Women (STV)* assists the victims of trafficking.