SekswerkExpertise
PLATFORM POSITIEVERBETERING SEKSWERKERS

Improving the position of sex workers in the Netherlands: more workplaces, more freedom of choice, better protection

Introduction

Below, we list a number of concrete points on which the government can improve the position of sex workers. We limit ourselves here to three topics: working from home, opting in, and combating human trafficking and other forms of coercion, exploitation, and violence.[1]

Starting points

- **Sex work is work.** Adults who choose to work in prostitution must be able to do so in safe and free conditions, with the same rights and protection as other citizens. This is based on the right to self-determination and the right to free choice of employment.
- **Freedom of choice**. Sex workers must have the freedom to decide for themselves whether they want to work for a third party or for themselves, at home or at another location, alone or together with colleagues.
- **Equal treatment.** Sex workers must be treated in the same way as other self-employed persons. No requirements should be imposed on them other than those imposed on other self-employed persons.
- **Right to protection against violence and discrimination.** Sex workers have the right to protection against violence, coercion, human trafficking, exploitation and discrimination in any form.
- **Licences are for businesses**. The licensing system should focus on regulating and monitoring sex businesses, not on monitoring sex workers.
- **Collaborative policy.** Involve sex workers in the development, implementation and evaluation of policies that affect them. They are partners and allies in creating a safe and healthy sector and know the sector like no other, including policymakers.[2]
- **Human trafficking is a crime, sex work is work.** Separate these two policy areas and develop separate policies for them, as is done in other sectors where abuses occur.

Consequences of lifting the ban on brothels

The lifting of the ban on brothels had three objectives: to regulate the sector, to combat human trafficking and other abuses, and to improve the position of sex workers. These three objectives are interrelated. One cannot exist without the other. A great deal has been invested in the first two objectives, but not in the third. On the contrary, in recent years we have seen policy becoming increasingly repressive at the expense of the safety, health, autonomy and well-being of sex workers. Sex workers' trust in the government has declined, exacerbated by the coronavirus crisis. They feel hunted and abandoned by a government that should also protect them. Where rights are lacking, sex workers cannot seek redress, and the entire climate surrounding sex work is negative, abuse and exploitation become more likely and escape more difficult.[3]

Following the lifting of the ban on brothels, the sector has been frozen, both in terms of the number of licensed ('legal') workplaces and the way in which the sector is organised. This has led to less freedom of choice for sex workers, greater dependence on operators and a higher risk of undesirable or unsafe working conditions.

Since 2000:
- the number of licensed workplaces has decreased by almost half
- the maximum licensing policy has led to a monopoly position for operators
- sex workers have become increasingly dependent on a dwindling number of operators

[1] More information can also be found in *De Legale Facade. Sekswerkbeleid: hoe kan het anders?* (The Legal Facade: Sex Work Policy: How Can It Be Done Differently?), SoaAids Nederland & Proud (2018), brochure-legale-facade.pdf (prostitutie.nl)

[2] A good example is the action research for and by sex workers in Tilburg, 'Sex Work and Stigma', in which sex workers collaborated with the municipality, police, social workers and other stakeholders to initiate positive change for sex workers, Sex Work & Stigma in Tilburg - The CCV.

[3] Vanwesenbeeck, I., Janssen, M.-L., & Wijers, M. (2019). 'Thousands of victims of sexual exploitation': fact or frame? *Journal of Sexology*, *43*(2). Retrieved from https://www.tijdschriftvoorseksuologie.nl/artikelen/online-first/item/823-duizenden-slachtoffers-van-seksuele-uitbuiting-feit-of-frame

- it has become impossible for sex workers to work legally on an independent basis, without the intervention or interference of a third party
- virtually all licensed workplaces for street prostitution have been abolished
- innovation within the sector has been blocked. Consider, for example, the use of the internet as a means for sex workers to recruit clients and ensure their safety, and the growing group of self-employed workers who want to work without the intervention of an operator
- sex workers are increasingly seen as passive victims and objects to be controlled, rather than as adult citizens who make their own choices and whose right to self-determination and rights must be protected

Recommendations

1. **Give sex workers the freedom to organise their work as they see fit: break the one-sided dependence on operators, expand the number of licensed businesses and allow home-based work and other forms of self-employment**
2. **Give sex workers in closed prostitution the choice of whether they want to work as self-employed persons or via opting-in. Work on enforcing the opting-in conditions package.**
3. **Take all forms of violence, coercion, abuse and discrimination against sex workers seriously. Ensure that sex workers can safely go to the police without fear of negative consequences**

Explanation

1. **Give sex workers the freedom to organise their work as they see fit: break the one-sided dependence on operators, expand the number of licensed businesses and allow home-based work and other forms of self-employment.**

Concrete measures

- Allow home-based work and other independent forms of work on condition that no third party is involved, no nuisance is caused, the home/workspace has no visible features from the outside or attracts passers-by, and the address is not advertised.
- Allow collaboration with one or two colleagues at home or in another workspace, provided that the collaboration is on an equal footing and there is no form of authority relationship.
- Do not make self-employed persons subject to licensing. They should not be subject to any requirements other than those imposed on other self-employed persons, such as home hairdressers or self-employed pedicurists.
- Break down the maximum policy and the barriers between different forms of work (window, club/private house, escort, street). Encourage and facilitate sex workers' own businesses, new initiatives and new forms of organisation.

Ban on working from home

Many sex workers prefer to work with or for an operator, but there is also a growing group who do not (or no longer) want to do so. They value their autonomy and privacy or do not want to give half or more of their income to a third party.[4] However, even if all sex workers were willing to work for an operator, this would not be possible due to the shortage of licensed workplaces. Moreover, certain groups of sex workers, such as trans, male or older sex workers, cannot find work at existing companies.

Current policy makes it virtually impossible for sex workers to work legally without the intervention of an operator. Most cities prohibit home-based work and independent escorting,[5] only allow home-based work if it is not 'commercial', or require a licence that is not granted. What constitutes 'commercial' is unclear and can vary from municipality to municipality. On the one hand, it is argued that if a sex worker only works in or from their own home, they are not required to have a licence. On the other hand, the criteria mentioned are 'advertising' and 'the intention to generate (supplementary) income'.[6] This quickly applies to all sex workers. In general, sex workers, like other self-employed persons, work for a living and will have to advertise to attract customers.

[4] In closed prostitution, a 50% percentage rule is still common practice.
[5] More precisely: self-employed persons who work independently without the intervention of an operator.
[6] See: CCV - Prostitution from homes - Action perspective (hetccv.nl)

If a sex worker operates on a commercial basis, they must have a licence and meet the same requirements as an operator, such as the requirement to display the licence visibly outside the premises. Licence applications are published in the local newspaper with the name and address. If an independent sex worker nevertheless applies for a licence, it is rarely or never granted on the basis of the maximum policy or zoning plan. We are not aware of any independent home-based workers/escorts who have applied for and obtained a licence as self-employed persons. Sex workers are also unable to rent independent workspaces elsewhere, either alone or together with others.

Sex workers who do work at home or with a colleague risk fines, eviction and forced outing. In the event of violence, they cannot call on the police for help without risking losing their job, income or home. This makes them vulnerable to blackmail, coercion and other abuses, because clients and malicious individuals are of course aware of this too.

Enable working from home and other forms of self-employment
Sex workers who want to work for themselves, without an operator, must be able to do so legally and safely. In addition, many sex workers want to work with one or two colleagues for their own safety, without necessarily being tied to their own home. They should have the option of working from home with a colleague or renting a workspace elsewhere, as self-employed people in other sectors can do.

This would allow sex workers to organise their work as they see fit, break their dependence on operators and prevent the very group that values its independence from being driven underground. Conditions could be imposed to ensure that no nuisance is caused, that the home/workspace has no visible features that attract passers-by and that the address is not advertised.

Working from home and human trafficking
We know that there are concerns that allowing home working would open the door to human trafficking or the abuse of minors. However, forcing all sex workers to work for an operator is putting the cart before the horse. It drives a large group of sex workers underground and offers no guarantee that it will prevent the illegal exploitation of victims of human trafficking or minors.

One of the concerns of the police and local authorities is that allowing home-based work will result in the police losing their administrative powers of supervision and enforcement, as they will no longer be able to use the criterion of 'commercial activity' as grounds for entering the homes of sex workers without their consent. This can be resolved by replacing the criterion of 'commercial' with 'involvement or interference of a third party' as grounds for entry.

'Involvement or interference of a third party' instead of 'commercial' as a criterion for permitting independent forms of sex work
When permitting home-based work and other independent forms of work, the undefined criterion of 'commercial' can be replaced by what we consider to be a clear and unambiguous criterion, *in this case* 'involvement or interference by a third party'. As soon as there is mediation, interference or a form of authority by a third party (i.e. a form of 'exploitation'), this constitutes a sex business and therefore requires a licence and thus provides an administrative basis for intervention. In addition, the presumption of minority remains a criterion for entry. Self-employed sex workers must also register with the Chamber of Commerce, just like other self-employed persons.

This is also the system applied in New Zealand: as long as two to a maximum of four sex workers work together on an equal footing, without one exercising authority over the other, this is permitted without further regulation.

The advantage is that home workers who work independently, without the mediation or interference of a third party, no longer have any reason to fear the police or administrative checks.[7] They no longer have to make themselves as invisible as possible and can safely call on the police for help if something is wrong. That is an important gain.

[7] According to the police, checks on home workers are aimed exclusively at identifying human trafficking and not at detecting self-employed sex workers working from home. However, this is not the experience of sex workers. This is evident from reports to PROUD and from various court cases involving self-employed home workers who were fined heavily and, in one case, even banned from entering their own home for six months.

Enable innovation
Consider, for example, multi-tenant buildings where sex workers can rent a workspace for as long as they wish, with or without fellow self-employed workers; allow recruitment via the internet for window workers; facilitate sex workers who want to start their own small-scale business with a few colleagues, e.g. with subsidy schemes for start-ups.

2. Give sex workers in closed prostitution the choice of whether they want to work as self-employed persons or with opting-in. Work on enforcing the opting-in conditions package

Concrete measures
- Give sex workers themselves the choice of whether they want to work via opting-in or not.
- Actively inform sex workers about their rights under the opting-in scheme.
- Include compliance with the opting-in conditions package as a licensing condition in the APV for companies that use opting-in.
- Set up an information and reporting centre where sex workers can go, anonymously if they wish, with questions and complaints about compliance with the conditions package[1]
- Abolish fixed percentage arrangements: include in the APV and/or the conditions package that the percentage paid to the operator must be proportionate to the facilities provided (acquisition, workspace, condoms, towels, cleaning service, etc.)

What is opting-in?
Opting-in is an agreement between the tax authorities and the operator, whereby the operator collects tax from the sex worker and must comply with the so-called 'package of conditions' that guarantees the sex worker's independence. In exchange, the operator is not taxed as an employer. Sex workers cannot choose whether they want to work as self-employed persons or via opting-in, have no say in the conditions, and neither the tax authorities nor the labour inspectorate feel responsible for monitoring compliance with the conditions. This makes the conditions package a sham.[8]

Opting in is beneficial for the tax authorities (the operator collects the tax from the sex worker) and the operator (who is not held liable as an employer with all the associated costs and obligations), but offers sex workers neither the rights of a self-employed person nor those of an employee. Legally, opt-in workers fall between self-employment and employment and thus between two stools. This is evident, for example, in regulations for sick leave and maternity leave, but has become particularly poignant during the coronavirus crisis. Opting-in sex workers were not entitled to TOZO as self-employed persons (because they cannot register with the Chamber of Commerce), but operators were also not entitled to NOW for the sex workers in their businesses (because they are not employees). Many sex workers were thus forced to continue working underground in order to buy food, care for their children and pay their rent, despite the risks to their health and that of their clients.

Lack of information about rights
Many sex workers are insufficiently aware of their rights and the conditions that operators must meet if they work with opting-in. Instead of placing all responsibility for information provision on the operator, the government also has a responsibility to actively inform sex workers about their rights, including through written information material in different languages.[9] In addition, a concrete step can be taken by setting up an information and reporting centre where sex workers can go, anonymously if they wish, with questions and complaints about compliance with the conditions. This function is partly fulfilled by the Sex Work Reporting and Advice Centre (https://www.sekswerk.info/nl/meldenadviespunt; formerly the Complaints Desk), but they do not have the authority to enforce compliance, for example.

Lack of enforcement of the set of conditions
Neither the labour inspectorate nor the tax authorities feel responsible for enforcement. In our opinion, this is a

[8] Conditions include being able to determine one's own working hours and prices, refuse clients and services, no mandatory clothing, no mandatory additional work, freedom to work elsewhere, and the provision of payslips. For more information, see *Evaluation of the opt-in scheme in closed prostitution*, Platform for the Improvement of the Position of Prostitutes and Clara Wichmann Association for Women and Law, 2014. Evaluation-Opting-in-Scheme_VVR_Platform-Improvement-Position-Prostitutes.pdf (vrouwenrecht.nl)

[9] In addition, the calculation examples in the information material should not assume (as in previous information material when the scheme was introduced) that sex workers pay 50% of their earnings to the operator as standard, thereby suggesting that this is part of the package of conditions.

task for the tax authorities. Whether opting-in, salaried employment or self-employment applies must be determined on the basis of the actual circumstances, as is the case for other sectors of employment. If the operator does not comply with the conditions and the conditions for salaried employment are met (authority relationship, personal labour, payment), then salaried employment must be assumed and the operator must be taxed accordingly.

Inclusion in the APV

Include compliance with the set of conditions as a licence condition in the APV (if the operator opts in). Failure to comply with the conditions may result in a warning or fine, but more importantly, in action by the tax authorities. It is remarkable that this is not included as a standard condition in municipal licensing systems/APVs.

Measures should be used to improve the situation, not as a pretext to close down a business. If the latter is the case, no sex worker will report anything. After all, there is already a dire shortage of licensed workplaces. [10]

3. Take all forms of violence, coercion, abuse and discrimination against sex workers seriously, not just human trafficking. Ensure that sex workers can always go to the police safely without fear of negative consequences.

Concrete measures

- Ensure that sex workers can always safely report to the police if they experience coercion or violence, against themselves or colleagues, without fear of losing their workplace, home or income, or being forced to come out.
- Ensure that sex workers are treated correctly by the police.
- Make it clear that stopping sex work is not a condition for reporting human trafficking or exploitation.
- Treat sex workers as adult citizens and partners in the fight against human trafficking and other abuses. They are the first to have an interest in a safe and clean sector.
- Ensure that operators can report human trafficking and exploitation without fear of negative repercussions.
- Prevent perverse effects of measures against human trafficking, such as increased social exclusion and discrimination of sex workers and reinforcement of stigma

Lower the threshold for reporting

The threshold for reporting is high for sex workers. Research by SoaAids into violence against sex workers shows, for example, that only 1 in 5 of the sex workers interviewed who were victims of violence reported it. An important reason for this is that they want to remain anonymous. They fear that reporting will have adverse consequences. Moreover, they are afraid that the police will not take them seriously or that reporting the crime will be pointless. They indicate that clients or stalkers also know that a sex worker is unlikely to report the crime.[11]

One way to ensure that sex workers can always report incidents safely is to build in a 'firewall', i.e. to separate the reporting of incidents from any criminal proceedings and any administrative, immigration or social law consequences. This is also in line with the Istanbul Convention, the convention on combating violence against women. [12]

Guarantee of proper treatment

We have received reports that the reorganisation of the police has had a negative effect on the correct treatment of sex workers and the police's knowledge of the sector. Address this issue through information campaigns, training courses or guidelines. Train the police and the Public Prosecution Service, in collaboration with sex worker organisations, on knowledge of the sector and the correct treatment of sex workers.

Do not require sex workers to stop sex work when reporting human trafficking

We regularly hear that victims of human trafficking must stop sex work if they want to report human

[10] It can be risky for sex workers to file a complaint if they cannot be sure that it will be handled anonymously if they so wish. After all, legal workplaces are very scarce. Complaining carries the risk of losing the scarce workplace.

[11] Aidsfonds & Proud (2018), *Sex work and violence in the Netherlands*. Available at: 0058-Rapport-onderzoek-geweld_web.pdf (prostitutie.nl).

[12] See, for example, Dutch CEDAW Network (2018), *Joining forces to break the circle of violence against women,* Dutch NGO Shadow Report on the implementation of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). See: https://www.vn-vrouwenverdrag.nl/wp-content/uploads/Dutch-NGO-Shadow-report-Istanbul-Convention_15-dec-2018-DEF.pdf.

trafficking/exploitation, or that reporting it *de facto* leads to loss of work and income, because the APV prohibits operators from working with sex workers who are (or have been) victims of human trafficking on pain of losing their licence. In practice, this means that sex workers can or are often only willing to report human trafficking/exploitation when they are prepared to give up their work and income.

This is emphatically not about victims returning to the situation of exploitation, but about situations in which they do want to (continue to) work in prostitution, but under free conditions.[13] Just as victims in other labour sectors want to (continue to) work as cleaners, asparagus pickers or construction workers, but not under forced or slave-like conditions.

Needless to say, for the offence of human trafficking, it is irrelevant under criminal law whether someone previously worked in prostitution (or construction, hospitality, domestic work, etc.), knew that they were going to do so, or wants to continue to do so under free conditions.

Treat sex workers as full partners and allies
Make use of sex workers' knowledge and treat them as allies. They know best what needs to be done to combat coercion, violence and exploitation in the sector and to prevent measures from having undesirable negative side effects on the safety, health and access to facilities of sex workers. Moreover, they have more insight into and access to colleagues who may be in a coercive situation than civil servants or the police.

Do not penalise operators for reporting suspected human trafficking
Operators are obliged to report suspicions of human trafficking to the police. If they do not immediately recognise this during the intake, if signs only become apparent later, or if they do not comply with the rules on how to report it, they risk heavy fines or (temporary) closure. This happened to My Red Light in Amsterdam, which was fined 25,000 euros for reporting too late.

As a result, no operator dares to report cases anymore because of the risk of fines or closure. It is safer to simply send away the sex worker concerned if there is a suspicion or, to be on the safe side, not to rent out rooms to certain sex workers in advance, as a result of which potential victims disappear further from view and non-victims are unjustly denied a place to work. This is at odds with the objective of (early) identification of potential victims.

Reporting should be rewarded, not punished. Oblige operators to do everything in their power to prevent human trafficking, but do not punish them if it does occur. Work with operators to develop a realistic protocol that keeps both operators and potential victims 'on board'.

Prevent perverse effects of anti-trafficking measures
Many anti-trafficking measures increase the risk of coercion and violence rather than protecting against it because they:

- push sex workers into illegality, making them easy prey for malicious individuals
- increase the stigma and social exclusion of sex workers
- access to justice and the threshold for reporting to the police, e.g. for fear of being punished themselves.

The coronavirus crisis has shown the effects of forcing sex workers underground. We saw an increase in violence against sex workers by criminals and clients who took advantage of their vulnerable position, knowing that they would not dare go to the police for fear of being punished themselves.[14]

Stigma, social exclusion, lack of rights and illegality make sex workers vulnerable to human trafficking, exploitation, coercion and violence. The constant emphasis on sex work as a 'criminogenic sector' and sex workers as victims also makes people more vulnerable. As a result, sex workers cannot open a business bank account, cannot use Visa or PayPal, are denied insurance, cannot take out a mortgage on their income and often have to pay extreme rents for housing. This helps no one, not even victims of human trafficking.

[13] Research into 111 cases of sexual exploitation from 2010 shows, for example, that only 22% of the charges (and 16% of the convictions) involved deception regarding the nature of the work. In all other cases, the deception concerned the working conditions. National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2012), *Case law on human trafficking cases 2009-2010. An analysis.* The Hague: National Rapporteur, p. 57.
[14] SoaAids Netherlands (2021), *'Increasing violence against sex workers during the coronavirus pandemic*'.

Therefore, check every policy and measure to ensure that it does not have any undesirable negative effects on the safety, health and autonomy of sex workers. Do this together with sex workers.

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