

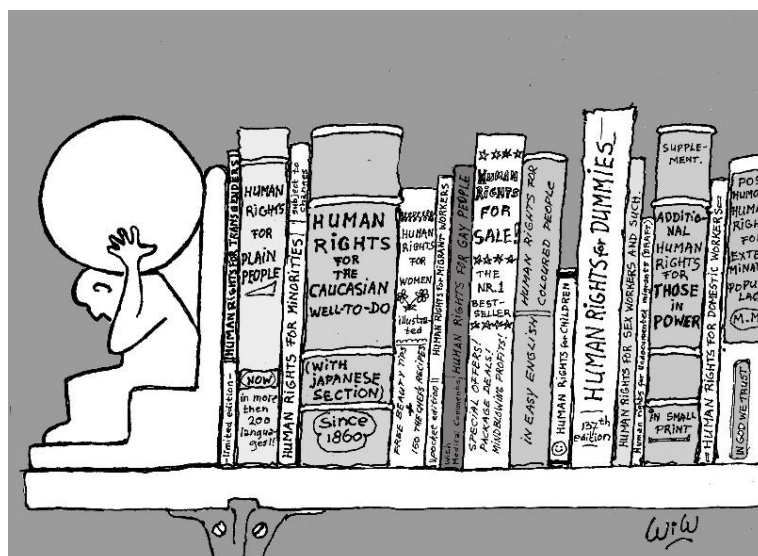
Sex Worker Rights and Human Rights: A Double-Edged Sword Rights, Resistance and Mobilisations

Marjan Wijers

A thesis submitted for the degree of Doctor of Philosophy

Department of Sociology
University of Essex

May 2024



ABSTRACT

Since the 1970s sex workers across Europe have begun to organise and demand human rights and labour rights with the slogan ‘sex workers rights are human rights’. However, fed by the dominant anti-trafficking discourse, sex workers’ human rights are under attack by an increasingly influential coalition of abolitionist organisations, radical feminists, conservative Christians and left wing liberals. Both the anti-prostitution and the sex worker rights movement draw on human rights arguments. While abolitionists claim that sex work is a violation of human dignity, sex workers invoke the right to self-determination and personal and bodily autonomy.

In this thesis I explore these tensions in the use of human rights, and show how human rights can be both a tool of empowerment and a tool of repression. Through in-depth interviews with sex worker rights activists and analysis of litigation and court cases, I explore how sex worker organisations mobilise human rights to address violence against sex workers, resist their dehumanisation as victims or deviants, build alliances, challenge repressive laws and policies, and advocate for the decriminalisation of sex work as a precondition for the protection of their human rights. Conversely, while the sex worker movement builds on an emancipatory and labour-based perspective on sex work, the abolitionist movement moves sex work back into the realm of (female) victimhood and crime, with a focus on repression and control rather than empowerment. Focusing on the cases of Germany, France and Spain, I also show how through the gateway of human dignity and female victimhood the anti-sex work movement uses human rights to create a hierarchy of ‘human-ness’ and to call for the further criminalisation of sex work while relieving states of their accountability for the protection of sex workers’ human rights. In this way, human rights are turned into a double-edged sword.

ACKNOWLEDGEMENTS

First of all, I would like to thank my supervisor, Isabel Crowhurst, for her kind guidance, support, comments and our many helpful conversations. She has been my beacon throughout this journey. I am also grateful to Anna di Ronco, the chair of my board, for her encouraging and critical comments which helped me to keep my focus. I really needed that now and then, there is so much more to say and to write. It has been a pleasure to have both of them as guides on this journey.

As importantly, I want to thank all those sex worker rights activists who were willing to share their time, their knowledge, experience, dedication and struggles with me. I have enjoyed every conversation I have had with them. I hope I've done them justice in the way I represent their voices.

There are also other people without whom this PhD would not have happened. In particular, Giulia Garofolo Geymonat and PG Maciotti, who, during the COST conferences many years ago managed to convince me that I should 'go for it'. Then, there is Sonja Dolinsek, who sent me an email about the possibility of applying for a scholarship at Essex University. Thank you Sonja. Last, but not least, Ine Vanwesenbeeck, who helped me formulate my ideas and continued to encourage me throughout this PhD. I fondly remember many dinners and inspiring conversations and would like to thank her for her encouragement, interest and advice.

For some of my 'PhD years' I lived in Wivenhoe, where I discovered the beauty of the River Colne and fell in love with rowing. Thank you WivGigs for being such an incredibly welcoming and friendly club.

Finally, I wish to thank my friends and family for their extraordinary patience while I was buried in what sometimes seemed to be a never-ending journey, and for their unwavering support.

Marjan Wijers

TABLE OF CONTENTS

Abstract	0
Acknowledgements	2
CHAPTER 1. INTRODUCTION	7
1.1 Introduction.....	7
1.2 Aims and background.....	8
1.3 Human rights and sex work: setting the scene	11
1.4 Research on the use of human rights by the sex worker rights movement.....	14
1.5 Definitions and concepts in context.....	18
1.6 Sex work is work.....	20
1.7 Structure of the thesis	20
CHAPTER 2. LITERATURE REVIEW	23
2.1 Introduction.....	23
2.2 Reframing sex workers' rights as human rights.....	23
2.3 (De)criminalisation of sex work: the global and the local	28
2.4 Sex work and human rights	37
2.4.1 Two diametrically opposed views	37
2.4.2 Radical feminism and the 'sex wars'	42
2.4.3 Sex work and trafficking	47
2.4.4 Sex work as a form of exploitative labour.....	53
2.4.5 The thin line that divides the victim from the deviant.....	54
2.5 Sex work and stigma.....	56
2.5.1 Sex workers as tainted persons.....	56
2.5.2 Stigma and power.....	59
2.5.3 The whore stigma.....	60
2.6 Sex work and dignity.....	61
2.6.1 Dignity in the legal and political discourse on sex work.....	62
2.6.2 Dignity and the regulation of female sexuality	65
2.6.3 Dignity and self-determination	67
2.6.4 Repression in the name of human dignity	69
2.7 The dark side of human rights and other critiques and limitations	71
2.8 Conclusion	74
CHAPTER 3. RESEARCH METHODOLOGY	78
3.1 Introduction.....	78

3.2 Research questions.....	80
3.3 Methodology	82
3.4 Development of the research design	85
3.5 Data collection methods and sampling strategy	87
3.5.1 Selection of case studies & additional countries.....	87
3.5.2 Methods of data collection.....	91
3.5.3 Design and dynamics of the interviews and positionality.....	100
3.5.4 Documentary data.....	104
3.5.5 Case law.....	106
3.6 Data analysis.....	107
3.7 Ethical issues.....	109
3.8 Conclusion	110
CHAPTER 4. THE MOBILISATION OF HUMAN RIGHTS BY THE SEX WORKER	
MOVEMENT	111
4.1. Introduction.....	111
4.2. Human rights mobilisation as ‘law from below’	113
4.3. The right to have rights: ‘Sex workers are also human’	116
4.4 Human rights as a set of values	120
4.4.1 Violence against sex workers and the (de)criminalisation of sex work	121
4.4.2 Human rights as a framework for advocacy.....	126
4.4.3 Building coalitions around human rights.....	128
4.5. Human rights as good governance	129
4.6 Human rights as a system of law	131
4.6.1 Submitting shadow reports to human rights treaty bodies	132
4.7. Dilemmas, limitations and tensions in using the human rights framework.....	135
4.7.1 ‘Sex work is work’, social justice, and the value and limitations of slogans.....	136
4.7.2 Migrants’ rights and the limitation of human rights	139
4.8. Human rights as a double-edged sword.....	142
4.8.1 Conflation of sex work and trafficking.....	143
4.8.2 Sex work as violence against women	148
4.8.3 Sex work as violation of human dignity.....	151
4.9 Discussion and conclusion	153
CHAPTER 5. THE PROSTITUTES PROTECTION ACT: THE CASE OF GERMANY	159
5.1 Introduction.....	159
5.2 The 2002 Prostitution Law (ProstG): recognition of sex work as work	160

5.2.1 Rise of the abolitionist movement	161
5.3 The 2017 Prostitutes Protection Act (ProstSchG).....	165
5.3.1 Paradigm shift: from labour rights to a victim & crime frame	168
5.3.2 Objections to the law	171
5.4 Sex workers' resistance to the ProstSchG	173
5.4.1 Sex workers organising against the ProstSchG.....	173
5.4.2 The disqualification of sex workers as legitimate partners in the debate	177
5.4.3 The use of affective framing by the abolitionist movement	180
5.5 The use of human rights by the sex workers movement	182
5.6 The use of human rights by the anti-prostitution lobby	187
5.7 Conclusion and discussion	193
CHAPTER 6. LITIGATING CHANGE: THE CASE OF FRANCE AND SPAIN	202
6.1 Introduction	202
6.2 Social movement legal mobilization.....	203
6.3 Criminalising clients: The case of the 2016 French law	206
6.3.1 Public and political debate around the ban on buying sexual services.....	208
6.3.2 Opposition to the law	212
6.3.3 Constitutional Council: Sex workers' health and safety as collateral damage.....	214
6.3.4 European Court of Human Rights: Declaration of admissibility.....	219
6.3.5 The process of legal mobilisation	221
6.4 The right to unionise: The case of Spain.....	228
6.4.1 OTRAS: Foundation of the first Spanish sex workers' trade union.....	229
6.4.2 Public and political debate	231
6.4.3 Audiencia Nacional: Annulment of the statutes of OTRAS	235
6.4.4 Supreme Court: Recognition of the right of sex workers to unionise	238
6.5 Discussion and conclusion	239
CHAPTER 7. CONCLUSIONS	246
7.1 Introduction	246
7.2 Limitations of the study.....	248
7.3 Overview of key findings	249
7.4 Reflections on the contribution of my study.....	260
BIBLIOGRAPHY	263
ANNEXES	289
1. Participant information sheet case studies - July 2019	290
2. Participant information sheet national & Eur sex worker org's - April 2021	292

3. Item list interviews case studies - July 2019.....	294
4. Item list Interviews national & Eur Sex worker organisations - April 2021	296

CHAPTER 1. INTRODUCTION

1.1 INTRODUCTION

In this chapter, I introduce the scope and context of my research. I begin with a description of the aims and background of the study and my research questions. The following section, 'Human rights and sex work', sets the scene for my study. In particular, I describe how my original title, 'Beyond dangerous or endangered', changed to the current title as I became increasingly aware of how human rights are mobilised not only by the sex worker movement as a tool of empowerment but also by the abolitionist anti-sex work movement¹ as a tool of repression. I then discuss the gaps my research hopes to fill and the definitions and concepts I use. This is followed by an explanation of my position on the recognition of sex work as work and a brief outline of the structure of the thesis.

From my background as a human rights lawyer and sex worker rights activist, the relatively unique contribution of my thesis is the integration of a sociological, legal, human rights and sex worker rights perspective in addressing my research questions. As well as looking at how human rights are mobilised in the public and political debate about sex work policy, I examine how these debates are reflected in the way the national courts in France and Spain dealt with the competing human rights claims of the sex worker rights and abolitionist movements. In addition, I bring my experience as part of the sex worker rights movement, which has given me an 'insider's view' of how sex worker rights organisations mobilise human rights, how they value human rights, and the limitations and dilemmas they face.

While human rights are mobilised as a tool of empowerment by the sex worker movement, I show how they are also used as a tool of repression by an increasingly influential alliance of

¹ I use the term anti-sex work movement to refer to the neo-abolitionist alliance of traditional abolitionist organisations, radical feminists, conservative and evangelical Christian organisations and left wing liberals who campaign against sex workers' rights and for the further criminalisation of sex work. 'Abolitionist' stands for the abolition of prostitution. I may also use the terms anti-prostitution movement or abolitionist movement, depending on the context, with the same meaning.

radical feminists, traditional abolitionists, conservative Christians and left wing liberals to re-establish the white middle-class monogamous model of 'good' sexuality, while dehumanising sex workers and absolving states from their responsibility to protect sex workers' human rights. In this respect, my dissertation aims to contribute to the scholarship on the mobilisation of human rights by social movements, as well as the processes of dehumanisation that are a first and necessary step in excluding specific groups from human rights protection.

My findings relate to the sex worker movement and the Europe region broadly, including Central Asia. As such they cannot be simply generalised outside Europe. However, they may contribute to an understanding in other regions of how human rights provide sex workers and other marginalised groups with a tool to fight the systemic and everyday abuses they face, but also lead to violations in their name. Similarly they may contribute to a better understanding of the role of human rights as a tool of both empowerment and repression in the wider field of sexual and reproductive rights, including the anti-trans and anti-gender movement.

1.2 AIMS AND BACKGROUND

This research explores the role of human rights in the public, political and legal debates on sex work laws and policies in Europe, as used by the sex workers' rights movement and other actors, including civil society actors, lawmakers and the courts. I look at both the ways in which the sex worker rights movement mobilises the human rights framework to advocate for human and labour rights and at the discourses that operate to exclude sex workers from human rights protections and as legitimate partners in the debate. I use the term public debate to refer to the way in which different opinions on sex work laws and policies are played out in public, particularly in the media but also, where relevant, in other forums such as websites or magazines. Political debate refers to the debates conducted by institutional political actors and held in parliament, including the involvement of civil society actors. Legal debate refers specifically to the way courts deal with the conflicting claims of the sex worker rights and

abolitionist movement.

However, human rights themselves are not undisputed as to how they have been deployed to advance political and cultural intents rather than bring about freedom for disenfranchised groups (Kapur, 2018). I am therefore also critical of the ambiguities and problems associated with the human rights framework and its relevance to the sex workers' rights movement. As a feminist, human rights lawyer, and sex worker rights activist, I support sex workers' struggles for human and labour rights. As such I prioritise sex workers' voices, perspectives and experiences.

As documented by sex workers and human rights organisations sex workers bear a high burden of human rights violations. I began this study, therefore, with the aim of exploring the causes of the sex workers' rights movement's under-utilisation of the human rights framework and how these could be addressed to improve the protection of sex workers' human rights. These aims led me to my initial research questions, which were: What is the nature and reported extent of human rights violations experienced by sex workers in Europe, both by state and non-state actors?; How do sex worker rights organisations and activists use the human rights framework to challenge human rights violations and claim human and labour rights?; What factors contribute to the denial of sex workers as legitimate social and legal actors and to their exclusion from basic human rights protections?; and what are the opportunities and risks of using the human rights framework to challenge human rights violations against sex workers?

On the one hand, these questions, needed to be narrowed down. On the other hand, while there is limited academic research on human rights abuses against sex workers, this gap is (partly) filled by sex workers organisations own documentation of the daily forms of violence, abuse and discrimination they experience (see for example ICRSE, 2015, 2016, 2018, 2020; Fuckförbundet, 2019; SWAN, 2009, 2014, 2015). There is also an extensive and growing

body of academic research on the impact of the criminalisation of sex work on the safety, health and rights of sex workers (e.g. Decker et al., 2015; Deering et al., 2014; Dodillet & Östergren, 2011; Le Bail et al., 2018; Levy & Jakobsson, 2014; Oliveira et al., 2020; Platt et al., 2018; Vanwesenbeeck, 2017; Vuolajärvi, 2019, 2021). This caused me to drop the first question about the nature and extent of human rights violations against sex workers.

In contrast, there is far less research on the mobilisation of human rights by the sex worker rights movement, including the use of human rights mechanisms such as shadow reporting and strategic litigation. The latter, and my background as a human rights lawyer, encouraged me to include in my case studies a focus on how courts deal with the conflicting human rights claims of the sex worker rights and anti-sex work movements. Similarly, there is relatively little research on the role of human rights in the public and political debate on sex work laws and policies from a sex worker and sex worker rights perspective.

However, an exploration of the ways in which the sex worker rights movement mobilises human rights and the role of sex workers in the debate on sex work laws and policies cannot be done without considering the roles of other relevant actors, particularly the abolitionist/anti-sex worker rights movement, policymakers, and the courts, as it is clear that sex workers are not the only ones to invoke human rights in the debate on sex work. This reflection developed into the broader question of the role of human rights in the public, political and legal debate on sex work laws and policies in Europe, as used by the sex workers' rights movement and other actors, including civil society actors, legislators and the courts.

In light of these considerations and how my thinking about my research evolved, the overarching question of this research is: how are human rights mobilised in the advocacy for sex workers rights? More specifically the questions underpinning this research are:

- How do sex worker rights organisations and activists mobilise human rights to advocate for civil, labour and human rights? How do they use strategic litigation and (international) human rights mechanism?
- How do sex worker rights organisations and activists view and respond to the deployment of human rights by the anti-sex work movement, legislators and courts in debates on sex work laws and policies?
- How do sex workers experience and negotiate their exclusion from fundamental human rights protections and as legitimate partners in debates about their lives and work?

My study focusses on the sex worker rights movement in the European region in the broad sense, including not only Western, Southern, Central, Eastern and Southeastern Europe, but also Central Asia. As such my findings cannot be simply generalised outside Europe.

Ultimately, I hope that my research will contribute to a more effective mobilisation of human rights to protect and realise the rights of sex workers.

In the methodology chapter, I will discuss in more detail my positionality and how this has informed my research.

1.3 HUMAN RIGHTS AND SEX WORK: SETTING THE SCENE

What was going to be the original title of my dissertation “Going beyond dangerous or endangered” was derived from the work of Gail Pheterson (1996), who argues that sex workers across the world are viewed either as the victims or the perpetrators of criminal or disease-spreading activities. In both cases, I will argue, they are not viewed as legitimate social and legal actors in the political and legal discourse and in both cases they are seen as less 'worthy' of human rights than other citizens.

Since the 1970s sex workers across the world have begun to organise and challenge these

stereotypes, claiming legitimacy and demanding labour rights and human rights with the slogan 'sex workers rights are human rights' (Pheterson, 1989; Smith & Mac, 2018). In Europe, the formally organised sex workers' movement is generally considered to have begun in 1975, when French sex workers occupied the church of Saint-Nizier in Lyon to protest police violence (Mac & Smith, 2018; Pheterson, 1989). Since then, sex workers have increasingly organised across the world to fight violence and discrimination and defend their rights. In Europe, the European Sex Workers Alliance (ESWA), originally established in 2004 as the International Committee on the Rights of Sex Workers in Europe (ICRSE), now includes 104 organisations in 33 countries in Europe and Central Asia.

Although the sex workers' movement increasingly mobilises human rights in their advocacy, human rights instruments are still underutilised in addressing human rights violations.

Reasons for this may include the stigma attached to sex work, the risks of speaking out as a sex worker, the marginalised position of sex workers, and existing stereotypes of sex workers as inferior and less deserving of protection than other women.² Other factors are the (il)legal status of sex work, a lack of social and political support, the explicit exclusion of sex workers from political spaces, a lack of access to financial and legal resources, mistrust and fear of the state, and a lack of confidence in human rights law to create radical social change. For many sex workers, the law is a means of state control and punishment rather than an instrument for the common good (Benoit et al., 2018; Bunch, 2014; ICRSE, 2015; Levy & Jakobsson, 2014; Maciotti & Geymonat, 2016).

However, this has not stopped sex workers' organisations from beginning to explore the use of human rights instruments, for example by drafting shadow reports for CEDAW, the Committee on the Elimination of All Forms of Discrimination Against Women. In addition,

² I am aware that there are many men and transgender persons working in the sex industry but I use women here to refer to the gender specificity of the sex work stigma (see chapter 2 for more on stigma).

increasing levels of legal consciousness (Silbey, 2005) have led sex workers to begin using strategic litigation³ to protest laws and policies that undermine their safety and health, a process Mccammon & Mcgrath (2015) call ‘legal mobilization’. The case studies of Germany, France and Spain, which I will discuss in Chapters 5 and 6, testify to this development.

As will be discussed in Chapter 2, the relationship between sex workers’ rights and human rights has from the outset been a contested area. The same is true of the relationship between the sex workers’ and feminist movements. While neo-abolitionists and so-called radical feminists claim that sex work is a form of violence of men against women and strive for its eradication, sex workers and their (feminist) allies (e.g. Feminists for Sex Workers, 2016) fight against the criminalisation of sex work and advocate for the recognition of sex work as work with the same labour law and human rights protections that apply to other workers and citizens.

The growing influence of neo-abolitionist discourse, particularly following the adoption of the UN Trafficking Protocol in 2000 and the ‘war on trafficking’ initiated in the US by the Bush administration-(Weitzer, 2007), has led to a notable shift in sex work policies in Europe and elsewhere towards greater repression and criminalisation, in many cases justified by the argument of combating trafficking and despite the resistance of sex workers and other stakeholders (Jahnsen & Wagenaar, 2018; Vanwesenbeeck, 2017). Through the dominant anti-trafficking discourse, sex workers’ human rights are under attack by an increasingly influential coalition of traditional abolitionists, radical feminists, conservative Christian groups and ‘left wing’ liberals who advance the view that sex work is violence against women

³ I use the term strategic litigation for cases that go beyond the individual interest to serve a broader aim in the interest of a group of people. Advocates for international development define strategic litigation as litigation with the purpose “to advance an agenda broader than one specific case, usually aimed at effecting systemic change. This can be either by setting legal precedent, or by drawing attention to the case as a method of highlighting perceived injustice”. See: <http://www.a4id.org/publications/strategic-litigation-and-its-role-in-promoting-and-protecting-human-rights/>, accessed at 6 March 2024.

and a violation of human rights and should therefore be abolished (Bernstein, 2018; Grant, 2013; Jackson et al., 2017b; Vanwesenbeeck, 2017).

As a growing body of research shows, in many countries this has made sex workers' situations even more precarious (see for example Levy, 2018; Platt et al., 2018; Vanwesenbeeck, 2017). It has also led to the revival of the traditional stereotypes of prostitutes as victims or deviants, and often both at once. Hence, the revised title of my thesis.

However, as the abolitionist movement has grown in strength, so too has the sex worker rights movement. This is reflected, for example, in the fact that a growing number of international organisations, such as Amnesty International (2016a), Human Rights Watch (2019), UNAIDS (2014), and the International Commission of Jurists (2023) are supporting sex workers' organisations in their call for the decriminalisation of consensual adult sex work as a precondition for protecting sex workers from human rights violations and abuses.

1.4 RESEARCH ON THE USE OF HUMAN RIGHTS BY THE SEX WORKER RIGHTS MOVEMENT

Although there is a relatively large body of research on sex work(ers) and sex work policies, there is much less research on how the sex workers' rights movement mobilises the human rights framework and the role of human rights in the political and legal debate on sex work. Exceptions to this include Cunningham's (2018) study on the use of the concept of 'dignity' in the political and legal discourse on sex work; Van Den Brink & Wijers (2012) analysis of the Supervisory Committee of the Women's Treaty's position on sex work and the use of shadow reporting by sex worker rights organisations; Jackson's (2016) analysis of the rights-based framework that sex workers in the US use to counter the conflation of sex work and trafficking; and Mgbako's (2020) account of the process of mainstreaming sex workers' rights as human rights and the use of human rights in the context of the African sex workers movement. Other publications provide discussions of relevant legal cases, such as the *Bedford*

case in Canada (Belak, 2018; Clamen et al., 2013; Porth, 2018) and the *Jordan* case in South Africa (KrüGer, 2004), both of which challenged the constitutionality of repressive prostitution laws, and the *Montgomery* case in New Zealand, which addressed a complaint about the sexual harassment of a sex worker by a brothel manager (Rottier, 2018). I build on their work. However, none of these studies specifically focuses on the mobilisation of human rights by the sex worker rights movement in the European context, including the use of the European Court of Human Rights (ECHR) and the EU human rights framework.⁴

The lack of research on the mobilisation of human rights by the sex worker movement may be partly due to the fact that sex workers only relatively recently began to use human rights mechanisms and collective litigation as a means of challenging repressive laws and policies and achieving social change. Another reason may be the general lack of research on human rights abuses against sex workers. When human rights violations in sex work are researched, it is almost exclusively in the context of trafficking as a human rights violation that needs to be addressed, and often with disregard or indifference to the negative human rights impacts that anti-trafficking laws and policies tend to have on the affected groups, such as sex workers and migrants. One of the effects of the increasing dominance of the trafficking discourse, commonly portrayed as 'innocent' women (i.e. non-sex workers) forced into prostitution against their will, is that human rights violations against sex workers tend to be seen as irrelevant or subordinate because of their lack of 'innocence', reinforcing the distinction between good women who deserve protection and bad women who can be abused with impunity (Doezema, 2010; Wijers, 2015).

While there is some academic literature on violence against sex workers and related human

⁴ I use Europe in the broad sense, including Central and Eastern Europe and Central Asia. This area is largely covered by the Council of Europe, with the exception of Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan. The latter four states are not a member of the Council of Europe and the attached European Court of Human Rights (ECHR), but they are covered by the Sex Workers' Rights Advocacy Network (SWAN) which I included in my interviews with the three main European sex worker rights networks.

rights abuses (Deering et al., 2014; Decker et al.; 2015; Scorgie et al., 2013), it is mostly sex worker organisations themselves and human rights organisations, such as Amnesty International, that have systematically documented human rights abuses against sex workers (Amnesty International, 2016, 2022; Open Society Foundation, 2011; SWAN, 2009, 2014, 2015; ICRSE, 2015, 2016, 2018, 2020). Their reports show that sex workers are not only vulnerable to violence from clients, family members and members of the public but often more so from the police and other state authorities. Acts of violence documented include extortion, forced sexual services, rape, verbal and physical assault, inhuman and degrading treatment, and arbitrary arrest and detention. Other common abuses experienced by sex workers include forced abortion, denial of medical care, loss of custody of their children, detention in rehabilitation centres, and restrictions on their ability to organise. As highlighted by Amnesty's director on law and policy, many of the forms of violence faced by sex workers constitute serious human rights violations, "while far too often they receive no or very little protection from the law or means of redress" (Amnesty International, 2016c).

In addition to the work cited above, there is a growing body of research on the impact of the criminalisation of sex work, including the criminalisation of clients, on the health, safety and (human) rights of sex workers (e.g. Amnesty International, 2016, 2016a, 2019, 2022; Open Society Foundation, 2011; SWAN, 2009; Decker et al., 2015; Dodillet & Östergren, 2011; Fuckförbundet, 2019; Global Commission on HIV and the Law, 2018; Le Bail et al., 2018; Levy & Jakobsson, 2014; Oliveira et al., 2020; OSF, 2011, 2013; Platt et al., 2018; Vanwesenbeeck, 2017; Vuolajärvi, 2019, 2021). There is also more general research on the development of legal rights consciousness and the use of collective litigation by social movement actors, which provides a useful tool to analyse the use of litigation by the sex workers movement (Cowan, 2004; McCammon & McGrath, 2015; Merry et al., 2010).

This research aims to contribute to this body of work. I do this in two ways. Firstly, by

looking at the approach to human rights and human rights mobilisation of the three largest European sex worker networks - the European Sex Workers Alliance (ESWA, formerly ICRSE), SWAN, the Eastern European Sex Workers Network, and TAMPEP, the European Network for the Promotion of Health and Rights among Migrant Sex Workers - and sex worker organisations in a selection of European countries. Secondly, the study will analyse three case studies focusing on Germany, France and Spain. All three countries have a strong sex worker movement but, under the influence of neo-abolitionist/radical feminist ideology, they have adopted repressive laws and policies on sex work. Germany adopted the Prostitutes Protection Act (ProstituiertenSchutzGesetz), which among others introduced mandatory registration and counselling for sex workers, France criminalised clients, and in Spain the government challenged sex workers' right to unionise. In all three countries, the human rights of sex workers are at stake and in all three countries sex workers have gone to court to challenge repressive laws and policies and to defend their human rights. In Germany, sex worker organisations unsuccessfully challenged the Prostitutes Protection Act (ProstSchG) before the German Constitutional Court and the European Court of Human Rights. In France, sex worker organisations and allies challenged the criminalisation of clients⁵ before the French Council of State, which referred the case to the Constitutional Council for a preliminary ruling on its constitutionality. The case is currently pending before the European Court of Human Rights, which has declared the case admissible. In Spain, the newly formed sex workers' union OTRAS defended the right to unionise against two abolitionist NGOs and the Public Prosecutor's Office, which filed a lawsuit against the union and demanded its dissolution. After losing at the National Audiencia, OTRAS won the case before the Supreme Court.

⁵ Loi n° 2016-444 du 13 avril 2016 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées.

1.5 DEFINITIONS AND CONCEPTS IN CONTEXT

I use the term sex work because this is the term preferred by most sex worker organisations. The term sex work was coined in 1979 by sex worker and activist Carol Leigh, because, as she writes, it “acknowledges the work we do rather than defines us by our status” (Leigh, 1997; NSWP, 2022). Explaining how she invented the term sex work in an essay that is still, or again, topical, she describes how she attended a conference in San Francisco and discovered that the workshop on prostitution included the phrase ‘Sex Use Industry’. “The words stuck out and embarrassed me”, she writes,

How could I sit amid other women as a political equal when I was being objectified like that, described only as something used, obscuring my role as actor and agent in the transaction?

So she proposed to change the name into ‘sex work industry’, “as that prioritised the work of the provider rather than the customer” (Leigh, 1997).

I use the following definition of sex work and sex workers: “Sex work is the provision of sexual services for money or goods. Sex workers are women, men, and transgender people who receive money or goods in exchange for sexual services, and who consciously define these activities as income generating, even if they do not consider sex work as their occupation” (Overs, 2002: 2).⁶ This does not mean that it is always clear who is and who is not a sex worker under state laws and regulations, nor do all people who exchange sexual services identify as sex workers.

The use of the term ‘sex work’ does not automatically imply, as Smith & Mac point out (2018), that it is good work or, as Benoit et al. state (2018), that it is a free choice of individuals. However, as Sullivan describes: “most paid work, including sex work, involves various degrees of coercion, exploitation, resistance and agency” (2010: 87, cited by Benoit

⁶ The ILO defines sex work as “the provision of sexual services for reimbursement or material gain” (Lim, 1998).

2018: 458). In some cases, the degree of coercion or exploitation may cross the line from poor working conditions to criminal or human rights violations, for example in the case of forced labour or slavery-like conditions, trafficking, extortion or rape. In some instances I also use the term prostitution with the same meaning when this seems more appropriate given the views of the authors I am discussing or the context in which the term is used.

Another important point to note at this stage is that national policies on sex work vary widely. A traditional distinction is between abolitionism (all third parties and activities related to sex work are criminalised, except for sex workers themselves), prohibitionism (all third parties and activities related to sex work are criminalised, including the sex worker), and regularisation (sex work is permitted under strictly regulated conditions) or legalisation (sex work is legal under certain conditions, sometimes overlapping with regularisation). A relatively new policy approach, which is advocated by the sex worker movement, is the full criminalisation of adult consensual sex work, which refers to the abolition of all specific laws and regulations on sex work and involves the treatment of sex work as any other form of work. This means applying general labour and other laws and regulations that apply to other forms of work to sex work. New Zealand was the first country which in 2003 fully decriminalised sex work with the passage of the Prostitution Reform Act (PRA), although migrants are prohibited from legally engaging in sex work.

In practice, however, these distinctions lead to much confusion, as definitions vary and terms are used in different and sometimes contradictory ways. Moreover, policies on prostitution are rarely consistent or coherent (J Outshoorn, 2004). For these reasons, I prefer to use the typology developed by Petra Östergren (2017). Based on an inductive methodological approach, she proposes a typology of three general prostitution policy models (or regimes): repressive, restrictive or integrative (see Chapter 3, section 5.1., for an explanation). The model's purpose is to serve as a tool for assessing, evaluating and comparing prostitution

policies, even in cases where they seem to contain contradictory or incoherent elements.

Where applicable and useful I will use Östergren's typology rather than the traditional one.

1.6 SEX WORK IS WORK

My starting point is the recognition of sex work as work. With everything that work entails, that is, a site of pleasure and satisfaction as well as a site of exploitation and abuse, and everything in between. To freely quote Smith & Mac (2018: 3-4), I am more interested in the material conditions of sex workers than in a moral debate whether sex work is good or bad, and I do not deny that the sex industry is both sexist and misogynist - like so many other industries. However, I do not draw the conclusion that sex work is a violation of human dignity or inherently violent, nor that sex workers are without agency, just as I do not draw such conclusions for other industries where exploitation occurs. Instead, I start from the premise that there is a need to address abuses and improve the conditions of sex workers. I discuss my positionality in more detail in the methodology chapter.

Through this study, I aim to contribute to the scholarship on sex work but also hope that my findings can contribute to better protection of the (human) rights of sex workers.

1.7 STRUCTURE OF THE THESIS

The next chapter provides a literature review. I begin by discussing the reframing of sex workers' rights as human rights by the sex workers' movement, the call for decriminalisation, and the divergent developments at the local and global levels. I then focus on stigma and the contested relationship between sex workers' rights and human rights. After discussing how the two diametrically opposed views of sex work as violence against women or as work both draw on human rights principles, I look more closely at the principles of dignity and self-determination. In discussing the different views, I pay attention to the relationship between sex work and trafficking, and to the debate about sex work as a form of exploitative labour.

Since human rights are not uncontested, I also pay attention to what Kapur calls the 'dark side of human rights' and other critiques on the human rights framework.

Chapter 3 discusses my research questions and methodological approach, including the research design, methods of data collection and analysis, ethical issues and the limitations of the study. It provides a background to the study and includes reflections on my own positionality as a member of the sex workers' rights movement.

Chapter 4 focuses on the mobilisation of human rights by the sex worker movement. It explores how sex worker rights organisations understand human rights, what they see as their value and limitations, how they use them in their advocacy and the dilemmas they face. The chapter also presents their experiences and analyses of how the anti-sex work movement uses human rights to silence sex workers and justify their oppression by framing sex work as violence against women and conflating sex work with trafficking, thus turning human rights into a double-edged sword.

Chapters 5 and 6 are dedicated to three case studies. Chapter 5 examines the role of human rights arguments in the public and political debate that led to the passing of the German Prostitutes Protection Law (*ProstituiertenSchutzGesetz*) in 2016. It discusses the rise of the abolitionist movement following the recognition of sex work as work by the 2002 Prostitution Act, the shift from an 'emancipatory and labour' perspective to a 'victim and crime' frame, and the abolitionist campaign for a 'new law'. It then discusses the opposition to the Prostitution Act by the sex workers' movement and other stakeholders, and the use of a (human) rights-based framework. The chapter shows how the abolitionist movement hijacked human rights to exclude sex workers as legitimate partners in the debate. Through the gateway of human dignity and female victimhood, human rights were used to dismiss the impact of the law on the human rights of sex workers as collateral damage and to re-establish the white middle-class model of 'good sexuality'.

Chapter 6 discusses the use of litigation as a means to achieving social change by the sex worker movement in France in Spain. The chapter begins with a general discussion of social movement legal mobilisation and how my participants viewed the use of litigation. I then turn to the use of litigation by sex worker organisations in France and Spain to challenge the criminalisation of sex workers' clients (France) and to defend the right to unionise (Spain). After discussing the background of each case, I examine how the respective courts dealt with the competing abolitionist and sex workers' rights claims. In Spain, sex workers won their case in the Supreme Court, the French case is currently pending before the European Court of Human Rights. In the Spanish case I pay particular attention to the public and political debate around OTRAS, the newly founded sex workers' union. In the French case, I highlight the process of legal mobilisation.

Chapter 7 provides an overview of the key findings and conclusions. In addition, it reflects on the limitations and contribution of my study.

CHAPTER 2. LITERATURE REVIEW

2.1 INTRODUCTION

This literature review chapter is based both on academic literature and on grey literature produced by sex workers' organisations. This latter body of work is extremely rich and is based on extensive empirical research but tends to be ignored in academic scholarship, even though in many respects it fills academic research gaps.

I first discuss the reframing of sex workers' rights as human rights by the sex workers' movement, the call for decriminalisation, and the diverging developments on global and local levels. I then introduce the two main (opposite) views on sex work: 'sex work as violence' versus 'sex work as work'. Significantly, both those who consider sex work a violation of human rights and those who advocate for the recognition of sex work as work, draw on human rights arguments to support their views. In discussing these views, I pay attention to the historical conflation of sex work and trafficking, the origin of radical feminism and the so-called 'sex wars', the debate about exploitation in sex work, and sex work and stigma. I pay specific attention to the contested relationship between sex worker rights and human rights and the use of dignity in the debate on sex work and the regulation of female sexuality. I particularly focus on 'de-humanising' discourses because the ways sex work and sex workers are represented in the public, political and legal debate have major effects on sex workers' access to human rights protections, powerfully captured by one of my French participants: "Are we even human beings?"

2.2 REFRAMING SEX WORKERS' RIGHTS AS HUMAN RIGHTS

Historically, sex workers across the world have been viewed as either perpetrators or victims of criminal or disease-spreading activities: dangerous – for the family, public morals, public health, or public order – and thus in need of disciplining. Or endangered and thus in need of

rescue and rehabilitation. In the first case, they are viewed as deviants who deserve punishment. In the second case, they are helpless victims without agency (Pheterson, 1996). Dangerous or endangered, in both cases sex workers are not considered legitimate social and legal actors in the political and legal discourse and in both cases they are viewed as less 'worthy' of human rights than other citizens.

Since the 1970s, sex workers across the world have begun to organise and challenge the stereotypes of deviant or victim, demanding a voice in debates about policies and laws that affect them, as captured in the slogan 'Nothing about us, without us'. In 1989, in *A Vindication of the Rights of Whores*, Gail Pheterson presented sex workers' claim for legitimacy as a radical stance:

Never have prostitutes been legitimized as spokespersons or self-determining agents, not by those who defend them against male abuse and not by those who depend on them for sexual service. It is a radical political stance to assume prostitute legitimacy (Pheterson, 1989: 3).

The sex workers' movement in Europe is generally considered to have begun in 1973 when French sex workers occupied the church of Saint-Nizier in Lyon demanding an end to police repression, incarceration and violence (ICRSE, 2016b; McNeill, 2015; Pheterson, 1989; Smith & Mac, 2018). This provoked the organisation of many national sex worker-led organisations throughout Europe, for example the English Collective of Prostitutes (ECP), the Meeting and Counselling Centre for Prostitutes Hydra in Berlin, the Comitato per I Diritti Civili delle Prostitute (CDCP) in Italy, and Aspasia in Switzerland which all still exist today (ICRSE, 2016b). The occupation of the Saint-Nizier church was followed by the First and Second Whores Congress in Amsterdam and Brussels in the 80s. Since then, sex workers have increasingly organised across the world to fight violence and discrimination, challenge oppressive laws and fight for social justice.

One of the early milestones is the 1985 *World Charter for Prostitute's Rights*, drafted during the First World Whores' Congress in Amsterdam. It is here that for the first time the sex workers' movement formally applied a human rights framework to its analysis and demands (Mgbako, 2020), as later expressed in the slogan 'Sex worker rights are human rights'. The Charter's first demand was to "[D]ecriminalise all aspects of adult prostitution resulting from individual decision". Although there were discussions about how free women were to make voluntary choices, especially poor women in poor countries, all agreed that "the right to make economic decisions in a climate free from criminalisation and social control of sexuality", be it a decision based on choice or necessity, was fundamental to human rights (Pheterson, 1989: 33-34).

A second milestone was the *Statement on Prostitution and Human Rights*, drafted a year later during the second World Whore Congress 'on Human Rights, Health and Feminism' (Pheterson, 1989: 103-108). The statement explicitly refers to the European Convention on Human Rights as the basis for its claims, placing the responsibility for human rights violations against sex workers on states rather than on sex work itself, and presenting the human rights system as the remedy for these violations, rather than further criminalising sex work and sex workers (Mgbako, 2020). As worded in the Statement:

No state in the world is held accountable by any international body for those infractions. To the contrary, denial of human rights to prostitutes is publicly justified as a protection of women, public order, health, morality and the reputation of dominant persons or nations. [...]. Prostitutes are systematically robbed of liberty, security, fair administration of justice, respect for private and family life, freedom of expression and freedom of association. [...] Prostitutes are effectively excluded from the Human Rights Convention (Pheterson, 1989: 103).

In 2005 the newly founded International Committee on the Rights of Sex Workers in Europe (ICRSE) organised the first European Conference on Sex Work, Human Rights, Labour and

Migration bringing together 120 sex workers and 80 allies from 30 European countries (ICRSE, 2007).⁷ The resulting *Declaration on the Rights of Sex Workers in Europe* (ICRSE, 2005b) outlined the rights to which all persons in Europe, including sex workers, are entitled under the human rights treaties ratified by European countries. Core themes were violence, migration and working conditions. Its introduction stresses that sex workers just ask for the rights that all human beings have:

[I]t is not a demand for special rights to be given to sex workers. Rather it is based on the principle that the act of selling sexual services does not constitute grounds for the denial of fundamental rights to which all human beings are entitled under international law (ICRSE, 2005b).

In 2013 the European Declaration was followed by the global NSWP *Consensus Document on Sex Work, Human Rights and the Law* (NSWP, 2013), based on a worldwide consultation of sex workers. It identified eight core human rights that are fundamental to all sex workers: the right to associate and organise; the right to be protected by the law; the right to be free from violence and discrimination; the right to privacy and freedom from arbitrary interference; the right to health; the right to move and migrate; and the right to work and free choice of employment. The following chapters and interviews with sex worker rights activists demonstrate the importance of these rights and the different ways in which sex workers fight for them, including organising campaigns and demonstrations, building alliances, lobbying politicians, setting up their own research, responding to consultations, holding events in the European Parliament, using strategic litigation and submitting shadow reports to international human rights bodies. In *Silent no more* Luca Stevenson and Agata Dziuban (2017: 388) describe the growing strength of the sex workers movement since the occupation of the church of St. Nizier, both at the national and regional level. They document how through legal

⁷ I was involved as one of the founders of the ICRSE and organisers of the conference. See for a discussion of my positionality Chapter 3.5.3.

empowerment, community building, cultural activism and political lobbying sex worker collectives aim to create social, legal and political change, not only in respect to sex workers' rights but also in relation to associated social and political struggles. They also note how the sex worker movement is increasingly efficient in articulating the intersection of sex workers rights with the rights of other disadvantaged and oppressed populations and in framing sex workers' demands from a labour-rights perspective.⁸

The call for decriminalisation of sex work involves not only human rights, but also labour rights. While human rights and labour rights are partly overlapping, they are also distinct. Human rights relate to the recognition of sex workers as human beings with the rights to which all human beings are entitled, such as the right to health and privacy and protection from violence. Labour rights relate to the recognition of sex work as work and include health and safety rights, the ability to work together in the same premises with another person, to communicate clearly and directly with clients, the right to refuse clients, protection from sexual harassment at work, in short, the same labour laws and protections that apply to other workplaces (Smith & Mac, 2018: 193-197).

Key to the sex workers' rights movement is the resistance against the dehumanisation of sex workers as deviant and less worthy 'others'. As worded in the 2005 *Sex Workers Manifesto*, which accompanied the 2005 *Declaration on the Rights of Sex Workers in Europe*:

The “identity” and “social role” imposed on us by society often defines us as intrinsically unworthy and a threat to moral, public and social order. Labelling us sinners, criminals or victims creates a stigma that separates us from “good” and “decent” citizens – in fact from the rest of society (ICRSE, 2005a).

As discussed by Mgbako (2020), framing sex workers' rights as human rights affirms sex workers' humanity and denounces their dehumanisation as 'deviant others'. It rejects the

⁸ See also *Nothing about us without us! Ten years of sex workers' rights activism and advocacy in Europe* (ICRSE, 2016b).

whore stigma⁹ and whorephobia¹⁰ as vehicles of the dehumanisation of sex workers, challenges the politics of female victimhood and rescue which negate sex workers' agency (embodied in the slogan "Rights, not rescue"), and carceral feminism which promotes the further criminalisation of sex work and state surveillance of sex workers as 'protection'. Instead it opposes all forms of criminalisation and other legal oppression of sex work, including clients, third parties, families and partners, and calls for the full decriminalisation of consensual adult sex work. It is this understanding of sex work that runs as a fundamental theme through the global organising of sex workers (see e.g. the report on the global celebration of International Sex Workers' Rights Day on 3 March 2024 on the website of the NSWP¹¹). It is also this understanding that is under attack by the neo-abolitionist and radical feminist anti-sex work movement and that fundamentally clashes with their view of sex work, as will be discussed below.

2.3 (DE)CRIMINALISATION OF SEX WORK: THE GLOBAL AND THE LOCAL

Since the 1970s the sex works movement has grown exponentially, both global and in Europe. The Global Network of Sex Work Projects NSWP now has more than 300 local, national or regional sex worker-led member organisations and networks worldwide. ESWA, the European Sex Workers Rights Alliance, is representing more than hundred organisations in 30 countries across Europe and Central Asia. This is a first in history, and demonstrates "sex workers' commitment and resilience in the face of adversity" (Durisin et al., 2018: xii).

One of its major achievements is that over the last fifteen years a growing number of international organisations, such as Amnesty International (2016c), Human Rights Watch

⁹ Defined as the social and legal branding of women who are suspected of being or acting like prostitutes (Pheterson, 1996).

¹⁰ Defined as the social fear and hatred of sex workers. See e.g. "*Whorephobia affects all women*", interview with Thierry Schaffhauser, <https://www.theguardian.com/commentisfree/2010/jun/23/sex-workers-whorephobia>.

¹¹ See: <https://www.nswp.org/news/nswp-members-mark-international-sex-workers-rights-day-3rd-march-2024>. Accessed 7 March 2024.

(2019), UNAIDS (2014; 2021) the UN Working Group on Discrimination against Women and Girls (Working Group on discrimination against women and girls, 2023), the High Commissioner on Human Rights (OHCHR, 2006), the Special Rapporteur on Health (Grover, 2010), the Global Alliance Against Traffic in Women (GAATW, 2016), International Planned Parenthood (IPPF, 2022), and lately the International Commission of Jurists (ICJ, 2023) and the Commission for Human Rights of the Council of Europe (Commissioner for Human Rights Council of Europe Dunja Mijatović, 2024) have been calling for the decriminalisation of the sex industry as a precondition for the protection of the human rights of sex workers. The fact that a growing number of international human rights and UN bodies have institutionalised the framing of sex workers rights as human rights and identified criminalisation as a primary cause of human rights violations against sex workers, could not have happened without the advocacy of sex worker rights organisations and testifies of a growing consensus that human rights legal protections apply to sex workers (Mgbako, 2020). A significant gain is that sex workers are increasingly being consulted by international bodies on policies that affect their work and lives. Recent examples are the UN Working Group on discrimination against women and girls and the Commissioner for Human Rights of the Council of Europe (Commissioner for Human Rights Council of Europe Dunja Mijatović, 2024), who, after consulting with sex workers and their organisations across Europe, call for an approach to sex work “that is firmly based on human rights and focuses on the effective protection of sex workers’ rights, prioritising their safety, agency and bodily autonomy over stereotypes and misconceptions”. Importantly, the advancement of the term sex work by the sex worker rights movement has influenced the national and international debate on sex work and the terminology of many international bodies, such as the WHO, UNAIDS, Human Rights Watch and Amnesty International (Mgbako, 2020), as well as that of the media, NGOs and governmental bodies in many countries.

However, at the national level policies have taken a notable shift towards more repression and criminalisation,¹² fed by an increasingly influential anti-sex work coalition of traditional and neo-abolitionists, radical feminists, evangelical and conservative Christians, and ‘left wing’ liberals. In many cases, this is justified by the argument of combating trafficking, especially following the adoption of the 2000 UN Trafficking Protocol¹³ and the ‘war-against-trafficking’ initiated by the Bush administration (Bernstein, 2018; Graham et al., 2022; Outshoorn, 2018; Phipps, 2020; Vanwesenbeeck, 2017; Wagenaar, 2018; Weitzer, 2007, 2010). According to Harkins (2020), the Bush administration made trafficking a priority largely because it supported the promotion of the evangelical Christian position that all sex work is inherently coercive and must be abolished. As he notes, this policy “was linked to the larger moral goals of reinstating traditional gender roles, the sanctity of marriage, and heterosexual norms within American society, as well as extending these arrangements around the world” (Ibid: 54).¹⁴¹⁵¹⁶

The most visible example is the wave of so-called ‘end demand’ policies, that criminalise clients of sex workers to eradicate sex work, which, it is argued, will reduce the demand for sex work and lead to its eradication (Levy, 2018; Outshoorn, 2018; Ward & Wylie, 2017).

Often, the argument is that the eradication of prostitution is the most effective way to end trafficking in the sex trade, “with either a non-interest in non-trafficked workers, or a refusal

¹² See for a discussion of the different types of sex work regimes by Petra Östergren, Chapter 3.5.1.

¹³ In full: UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also called Palermo Protocol. For a discussion of the Palermo Protocol, see Chapter 2.4.3.

¹⁴ From 2003, for example, NGOs receiving US funding had to sign an anti-prostitution pledge, which prohibited US funded NGOs from any activity that could be seen as supporting sex workers, including the distribution of condoms. This had a huge impact, particularly on NGOs in poorer countries that relied on US funding (Jackson et al., 2017; Rand & Simpsons, 2024; Weitzer, 2007a; Weitzer, 2007b). See also: <https://sexworkersproject.org/media-toolkit/downloads/06-TakingThePledge.pdf>, accessed 12 April 2024.

¹⁵ In 2012, in the US *alone*, the collective budget of thirty-six large anti-prostitution, anti-trafficking NGOs totalled 1.2 billion dollar, together with a further federal budget of 1.2 to 1.5 billion dollar annually for anti-trafficking efforts, of which the vast majority was spend on campaigning, as opposed to supporting victims. By contrast, in 2013 the collective budget for the sex worker rights movement *for the entire world* was 10 million dollar (Mac & Smith, 2018: 59). The figures are based on the 2014 Mama Cash/Red Umbrella Fund report ‘Funding for sex workers’ rights: Opportunities for foundations to fund more and better’.

¹⁶ See for the relation between Christianity and anti-human trafficking activism also Campbell & Zimmerman (2014) and Zimmerman (2011).

to believe that non-trafficked workers exist” (Adamo et al., 2021: 3). As stated by the deputy prime minister of Sweden, the first country in Europe to criminalise clients,

It is very obvious to us that there is a very clear link between prostitution and trafficking.... Without prostitution there would be no trafficking in women (quoted by Mac & Smith, 2018: 59)

In her article ‘*Sleeping with the enemy*’? O’Connell Davidson (2003a) describes how ‘end demand’ policies have led feminist abolitionists to forge alliances “with those who would more usually be viewed as ‘enemies’ of feminism and other progressive social movements, such as police chiefs calling for more extensive police powers and tougher sentencing policy, anti-immigration politicians calling for tighter border controls, and moral conservatives urging a return to ‘family values’”. Other scholars (and sex workers) also describe the influence of alliances between feminists and the Christian right, and how the abolitionist agenda dovetails with religious and conservative views on sex work. Phipps (2020: 136-139), for example, describes what unites reactionary feminists and the religious right (and the relationship between trans-exclusionary and anti-sex work feminists and their right wing connections), whereas Huschke & Schubotz (2016) and Ellison (2016) research the passage and impact of the Sex Purchase Act in Northern Ireland and the role of radical feminists and faith-based organisations as driving forces behind the law. Bernstein (2012, 2018) and Jackson et al. (2017b) document radical feminism and evangelical Christianity as drivers of US neo-abolitionism, whereas FitzGerald and McGarry (2016) interrogate the framing of prostitution in Ireland and the ‘Turn off the Red Light’ (TORL) campaign against the backdrop of entanglements between Church and State and how these have shaped sexual and reproductive freedoms. The anti-sex work ‘family values’ agenda of the Christian Right often overlaps an anti-LGBTIQ+ and (trans)gender rights agenda. The UNRISD (UN Research Institute for Social Development) working paper on the rise of the international anti-gender movement (McEwen & Narayanaswamy, 2023) is therefore also relevant in the context of sex

work. In it the authors interrogate the ways anti-gender, or “pro-family”, actors and organizations are using the frameworks and language of “development” to advance arguments and policies that restrict the rights of women and LGBTIQ+ people and seek to limit how sexual and reproductive health and rights are understood. Also of interest is the report by the European Parliamentary Forum for Sexual and Reproductive Rights on religious extremist funders against human rights for sexual & reproductive health in Europe, which tries to understand the anti-gender mobilisation in Europe through the perspective of its funding base (European Parliamentary Forum for Sexual and Reproductive Rights (EPF), 2021).

The concept of ‘end demand’ has its roots in the negotiations on the UN Trafficking Protocol between 1998 and 2000. While the alliance of human rights, sex workers and anti-trafficking organisations succeeded in getting the Protocol to distinguish between trafficking and sex work, one of the successes of the abolitionist lobby, led by the US-based radical feminist Coalition against Trafficking in Women (CATW), was the inclusion of an article that, under the heading of prevention, obliges states to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking” (Cyrus, 2015; Ditmore & Wijers, 2003; Ferčíková Konečná, 2024; Planitzer, 2020; Rand & Simpsons, 2024; Wijers, 2015, 2021).¹⁷ In combination with the ‘war against trafficking’ of the Bush administration this has led to an expansion of anti-sex work policies seeking to ‘discourage the demand for trafficking’ by eradicating sex markets. An exception is New Zealand which in 2003 decriminalised sex work and has implemented demand-side measures which explicitly prohibit pressuring a sex worker to provide services; sanctions illicit behaviour of intermediaries; and seeks to influence clients and intermediaries by ‘codes of conduct’ for

¹⁷ The same obligation has been codified in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Convention) and the 2011 EU Anti-Trafficking Directive (2011/36/EU). See for a discussion of the Protocol and anti-trafficking policies section 4.6.1.

operators within the sector (Ferčíková Konečná, 2024: 3; See also GAATW (2011), *Moving Beyond Supply and Demand*).

Sweden, which made the purchase of sexual services a criminal offence in 1999,¹⁸ was followed by Norway (2009), Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016) and the Republic of Ireland (2017). Often the policy is labelled as feminist and progressive, despite a growing body of research documenting the negative impact of criminalisation on the safety, health and rights of sex workers (e.g. Amnesty International, 2016b, 2022; Bail & Giametta, 2018; (Berry & Frazer, 2021; Decker et al., 2015; Dodillet & Östergren, 2011; Ellison et al., 2019; Fuckförbundet, 2019; Human Rights Watch, 2019a; Le Bail et al., 2018; Levy & Jakobsson, 2014; Okyere & Thesslund, 2018; Krüsi et al., 2014; The Lancet, 2015; Oliveira et al., 2020, 2023; Platt et al., 2018; UglyMugs Ireland, 2019; Vanwesenbeeck, 2017; Vuolajärvi, 2019, 2021). Although the number of countries debating the criminalisation of clients is still growing, there are also some tentative signs of a renewed debate about its usefulness and legal legitimacy. In Norway, for example, the Crown-appointed Criminal Law Council recently issued an official recommendation to re-decriminalise the purchase of sex in light of the right to sexual self-determination “as a key principle for the criminal law regulation of sexuality today” and the caution that should be exercised with regard to “criminalisation contrary to the harm principle in order to try to influence social phenomena that are considered problematic” (Norwegian Criminal Law Council, 2022: 35.3.3).¹⁹

In the ‘Swedish model’ (also called the Nordic model), the purchase of sex is criminalised as well as third parties, such as managers, drivers, and landlords, while the sale of sex is

¹⁸ See for a discussion of the history of the ban on the purchase of sexual services and the years after the legislation was passed, Swanström, 2017.

¹⁹ See also the interview of ESWA communication officer Marin Scarlett with PION manager Astrid Renland for more on what this means for sex work in Norway (Scarlett, 2023).

technically decriminalised, on the premise that all sex workers are victims who need to be ‘protected’. Underlying the official Swedish discourse is the belief that prostitution symbolises women’s oppression and is, therefore, incompatible with women’s equality (Scoular, 2010: 17). The Swedish National Rapporteur on trafficking in human beings, for example, talks about clients in terms of “to buy sex is to masturbate in a woman’s body” (Fuckförbundet, 2019: 12). Consent to selling sex is considered irrelevant in the pursuit of eradicating the sex market “for the greater good of all women” and in achieving gender equality (Rand & Simpsons, 2024: 285). However, as argued by Scoular (2010: 33) “despite the rhetoric of gender equality, the increased punitiveness towards (some) purchasers represents no more than the shifting of the ‘whore stigma’ to a new deviant group”. As noted by Ummni Khan, the criminalisation of clients constructs “the man who buys sex as a veritable deviant, a danger to women and to the society in general” (Khan, 2018: 67). As Kulick writes “In 1998 Sweden suddenly acquired hundreds of thousands of new perverts” (Kulick, 2005). Although the model is generally called ‘neo-abolitionist’ based on its comparison of the abolition of sex work with the abolition of slavery, ‘prohibitionist’ would be more appropriate as it criminalises the actual transaction of selling sex (Kulick, 2003).²⁰

In Europe the European Women’s Lobby (EWL) is campaigning for the criminalisation of clients under the slogan ‘Equality Model Now’, claiming that it had “proved to be efficient in reducing demand and cases of human trafficking as traffickers can more easily hide their criminal activities in countries where prostitution is fully legalised”.²¹ There is no evidence to support these claims, nor do evaluations of the Swedish government show any significant drop in prostitution (Kulick, 2003; Scoular, 2010a). Rather, it creates an environment of fear and marginalization for sex workers. In *Twenty years of failing sex workers*, Swedish sex

²⁰ If the seller of a service is ostensibly decriminalised, but no one can legally purchase the service or facilitate the exchange, then the transaction and the seller’s livelihood remain criminalised (Mgbako, 2020: 128).

²¹ See: <https://womenlobby.org/Equality-Model-Now?lang=en>, accessed 28 March 2024.

workers describe how the law has exacerbated stigma, exclusion and discrimination and has resulted in the incorporation of structural violence into sex workers' everyday experiences (Fuckförbundet, 2019).²² Rather than being incidental, the violence is an intentional outcome. As admitted by the head of the Sweden's Anti-trafficking Unit, the negative consequences for sex workers were a desired effect as "it shouldn't be as easy as it was before to go out and sell sex" (Mac & Smith, 2018: 149). This leads Vuolajärvi to argue that despite its feminist-humanitarian aura the Swedish model itself functions as a form of violence, as it increases the vulnerability of sex workers and puts them in harm's way:

[T]hrough creating an ideological landscape that defines sex work as a form of men's violence against women to be combated, the Swedish model legitimates policing and state violence towards migrant and sex working women and enhances their social exclusion which in turn exacerbates their already precarious lives (Vuolajärvi, 2021: 3).

Similarly Peršak (2014: 207) states that the victimisation of sex workers, when it is unwanted, can be understood as "a type of victimisation itself and the harm that arrives at prostitution as the harm caused by the anti-prostitution discourse". Hiding behind the caring language of protection and safety, she argues, is a new type of legal moralism: 'moralism in harm's clothes'.²³ By disguising moralistic arguments into harm-based ones, this new legal moralism is made appealing to a wider audience and minimises critique, even though on closer inspection such 'harm' "is either too broadly conceived or misrepresented" (Peršak, 2014:201). While questions of sexual morality between consenting adults are generally not seen as legitimate grounds for criminal prohibition,²⁴ framing the issue in terms of harm creates the appearance of moving the debate "out of the realm of legal moralism into the

²² See for an extensive discussion of the Nordic model in Sweden, Ireland and Canada, (Phipps, 2020)

²³ It is "moralism", Peršak (2014: 213) argues, because the underlying argument against prostitution is moralistic (although often hidden in the language of protection and care) and "new", because the arguments are not traditionally and straightforwardly moralistic but rather cloaked as harm-based arguments.

²⁴ See also the above-mentioned report of the Norwegian Council of Criminal Law, which makes a similar argument (Norwegian Criminal Law Council, 2022).

realm of the harm principle and lends it a veneer of legitimacy” (Ibid: 215). Moreover, Peršak notes, the rhetoric of harm is a powerful tool for silencing opponents. In addition, as pointed out by Irena Ferčíková Konečná (2024: 9), ‘End demand’ laws not only seek to outlaw the right to consent of sex workers with the rationale that the aim is to ‘protect’ women from harm, but also “seek to restrict or repress the already limited options undocumented, racialized, marginalized and discriminated against groups of people have”.²⁵

Although defended as a feminist project to advance gender equality (Sweden), combat human trafficking (Norway) or fight ‘the prostitution system’ (France), a closer look at the motives of the countries that criminalised the purchase of sex reveals an array of other, largely anti-migration driven motives (Jay Levy, 2018). In their analysis of the political debates that led to the adoption of the French sex purchase ban, Calderaro and Giametta (2019: 171), for example, argue that repressive sex work policies cannot be isolated from national concerns about public order, security and immigration control. Similarly, fears of being flooded by tens of thousands of foreign prostitutes following entry to the EU played a major role in the criminalisation of clients in Sweden, compounded by nightmarish visions of a ‘prostitution lobby’ that had managed to convince policymakers in other European countries that prostitution was a profession and that sex workers should organise to demand rights (Kulick, 2003, 2005). Levy (2018) further discusses how moral panics about the perceived threat of foreign influences on the fragile heteronormative (and white) Scandinavian nation-states unite Sweden and Norway, both of which have a long history of containment and control of marginalised and problematised communities. For example, in an interview with

²⁵ See for a broader discussion of the EU’s anti-trafficking policies, efforts to deny sex workers’ agency to consent and to define sex work as violence against women, and the advocacy of ESWA and ally organisations for a more nuanced rights-based approach: Ferčíková Konečná (2024) *Excluded but Fighting: Where Are the Voices of Sex Workers and Their Allies in EU Anti-Trafficking Policymaking?* One of the abolitionist arguments used to deny sex workers agency to consent is that “consent cannot be bought” and therefore all forms of ‘buying sex’ should be considered violence against women. See also ESWA & European Coalition on Sex Workers’ Rights and Inclusion, 2021b.

ESWA, Astrid Renland, the director of the Norwegian Sex Worker Rights Organisation, says of the Sex Purchase Act:

What triggered the political majority was moral panic, sexism, and racism due to the increased number of female migrant sex workers from Nigeria in particular coming to Norway to work. They worked on the street and were very visible to both the public and the media. The sex worker policy and the Sex Purchase Act have primarily aimed to control the migration of unwanted migrants (Scarlett, 2023).

In all cases, as argued by Kulick (2003, 2005), women and sex work function as symbols of the threatened nation.

Prohibitions on buying sex are also based on particular ideas about 'good sex'. Wagenaar and Altink (2012), for example, show how the Swedish criminalisation of clients is part of a culturally embedded understanding of 'good sexuality', in which socially sanctioned sex takes place between two adults in the context of marriage or a committed relationship. "Frisky sexualitet", good sex, is associated with self-confidence and psychological well-being and is even an official term used in government documents.

2.4 SEX WORK AND HUMAN RIGHTS

In this section, I look at the opposing views on sex work of abolitionists and sex workers, sex work and trafficking in international law, and sex work as a form of exploitative labour. In discussing the opposing views on sex work, I situate them within the so-called American 'sex wars' during the 1980s and 1990s and how these entered Europe.

2.4.1 TWO DIAMETRICALLY OPPOSED VIEWS

From the outset, the relationship between sex workers' rights and human rights has been a contested area. Underlying are two diametrically opposed views on sex work. Both rely on human rights arguments. Abolitionists claim that sex work is a violation of gender equality and human dignity, key values upon which human rights are built, and therefore a violation of

human rights. Prostitution – they refuse to use the term sex work because it is viewed as a contradiction - is constructed as the embodiment of patriarchal society, characterised by and legitimising the sexual exploitation of women by men (Barry, 1995; Vanwesenbeeck, 2018).

This view forms the ideological background to calls for the further criminalisation of sex work, particularly the criminalisation of sex workers' clients. The term 'abolitionist' means 'abolition of prostitution', referring to the historical movement to abolish slavery.²⁶ This is a somewhat skewed comparison, since the abolition of slavery was not about abolishing a particular kind of labour, but about abolishing a particular kind of power relationship (Wijers & Lap-Chew, 1999). Supporters of this view advocate the criminalisation of all parties and activities related to sex work, with the exception of the prostitute, who is seen as a passive victim (Bindel, 2017; Jeffreys, 2009; EWL, n.d.; Farley, 2004c). As discussed above, neo-prohibitionism would therefore be a better term, as they aim to eradicate sex work (and by implication sex workers).

The key argument underpinning this approach is that prostitution is an inherently violent and harmful practice to which no woman can voluntarily consent. For Barry (1995) and CATW, “the notion of a prostitute who is unharmed by her experience is an ontological impossibility: that which cannot be” (Doezema, 2001: 27):

In claiming the “injured prostitute” as the ontological and epistemological basis of feminist truth Barry forecloses the possibility of political confrontation with sex workers who claim a different experience’ (Doezema, 2001: 28)

Conditions of coercion or consent, or the will of the women involved, are irrelevant.²⁷

²⁶ A leaflet by the French abolitionist organisation *Le Nid*, for example, compares ‘prostitutes’ to slaves, who one day “with the help of “alert” and “bright” non-slaves (...) became aware of their oppression”. The abolition of prostitution is described as “a conquest for freedom, a triumph of love and life over death” (Le Nid, 1993: 25. 30).

²⁷ It remains interesting that, at a time when women's consent to sexual relations is being given increasing political and legal value (think of the 'me too' movement and rape laws), an ideology that explicitly advocates the irrelevance of women's consent does not meet with more resistance.

Prostitutes are by definition passive victims, reflected in the use of the term ‘prostituted women’. By constructing sex workers as victims, the concept of consent is weaponised to propagate further anti-sex work ideology, policies and laws under the guise of protection (Rand & Simpsons, 2024: 279). At the same time women are largely reduced to their bodies as expressed by the description of prostitution as ‘selling one’s body’ or even ‘selling oneself’ rather than selling a service (e.g. Barry, 1995; Bindel, 2017; Farley, 2004c).²⁸

Sex workers who refuse to identify as victims are disqualified as either suffering from a ‘false consciousness’, denoting their inability to recognise their oppression and exploitation,²⁹ which invalidates any claim of self-determination and autonomous agency; ‘self-destructive’, as a result of either child abuse or sex work; exceptions (‘happy hookers’) who are indifferent to the victims; or as part of the ‘pro-prostitution’ campaign or ‘pimp lobby’ (Doezema, 2010; Levy & Jakobsson, 2014; Maciotti & Geymonat, 2016; Pheterson, 1989). In other words: stupid, sick/damaged or corrupt.

The opposite view, advanced by the sex workers' rights movement, is that the criminalisation of consensual adult prostitution violates a key human rights principle, namely the principle of individual self-determination and the right to personal and bodily autonomy, defined by the European Court of Human Rights as “the ability to conduct one’s life in a manner of one’s own choosing”³⁰ and the “right to make choices about one’s own body”.³¹ It is not

²⁸ Male sex workers as well as female, transgender or gender non-binary clients are entirely overlooked in the abolitionist discourse. See for a discussion of the evolving attitudes towards clients for example Khan, 2018.

²⁹ Within critical theory and other Marxist schools the term false consciousness denotes people’s inability to recognize inequality, oppression, and exploitation in a capitalist society because of the prevalence within it of views that naturalize and legitimize the existence of social classes. See also MacKinnon who uses it to refer to the approach that treats some women’s views as unconscious conditioned reflections of their oppression (MacKinnon, 1983: 637). Ditmore points out that this patronising attitude not only suggests that some women don’t know what’s good for them, but also that some women - not sex workers, of course - can get outside the oppressive and exploitative nature of much work (Ditmore, 2011: 90).

³⁰ “... which may also include the opportunity to pursue activities perceived to be of a physical or morally harmful or dangerous nature for the individual concerned”, ECHR, 29 April 2002, *Pretty v. the United Kingdom*, appl. no. 2346/02, para 62 (ECHR, 2002).

³¹ *Ibid.*, para 61, 62 and 66.

prostitution, they argue, but conditions of coercion, abuse and deception that can make sex work a violation of human rights. Rather than sex work itself, the criminalisation and stigmatisation of sex work are seen as a key source of harm to sex workers. Instead of “one grand unifying theory” depicting all sex work as “the epitome of gender inequality” (Cunningham, 2018: 27), the diversity of motivations, conditions, and experiences of female, male, and transgender sex workers is stressed. From this perspective, the full decriminalisation of the industry and the recognition of sex work as a legitimate form of work is advocated. Contrary to passive victims, Mac & Smith state, sex workers are the original feminists: “Often seen as merely subject to others’ whims, in fact, sex workers have shaped and contributed to social movements across the world (Mac & Smith, 2018: 5)

A major critique of the abolitionist framing of sex work as violence against women is that it disregards sex workers’ agency and subjectivity. An inherent element of agency is the capacity to give or withhold consent. As pointed out by ESWA and ally organisations, consent is a central concept for sex workers: “For sex workers consent means agreed upon terms and conditions under which sexual services are provided. If these consented terms and conditions are violated, the incident should be defined as rape or sexual assault and sex workers should be able to complain and access non-judgmental support services and justice” (ESWA, 2021). By uniformly casting all sex workers as victims and denying them the ability to consent, the abolitionist discourse deprives sex workers of agency.³² They become non-persons, objects instead of subjects. They become things: “seminal spittoons” (Smith & Mac, 2018, quoting Leidholdt, 1993) or a “piece of meat” (Bindel, 2019). As argued by Ward (2019), when discussing the Irish debate on the criminalisation of clients, it produces the death of the sex worker, the person who consents to the act of selling sex. She can no longer

³² Agency can be defined as “the capacity for intentional action and presupposes the human ability to reflect upon situation that confront us and to decide on appropriate courses of action”(Rahman & Jackson, 2010: 155).

exist and with her presence trouble “the hegemonic discourse of sex work as a necessarily and inherently exploitative, violent act” (2019: 6). The abjection of the sex worker necessitates a silencing of her voice (Fitzgerald & McGarry, 2016: 306). Denying sex workers the capacity to give and withhold consent reduces them to the status of children and banishes them as sex workers from the social, political and interpersonal landscape (Ward, 2019: 8). It also, as noted by Ward, removes the obligation to consider core human rights such as equality before the law:

Translating ontological abjection into policy, parliamentarians marked out sex workers as not-adult and not equivalent to other non-sex worker citizens of the state whose equality before the law is enshrined in the Constitution (Ward, 2019: 6).

As Ward (2019: 8) states, she [the sex worker] was “beyond constitutional equality, beyond rights and trustworthiness and outside social policy or the collective good”..

Denying sex workers the capacity to consent, denies them also the capacity to refuse consent: consensual sex and rape become the same. As pointed out by Gaudy & Le Bail (2021), the actual violence committed against sex workers disappears from view:

In defining sexwork as a form of violence in itself, the authorities are not looking to combat the violence suffered in the context of sexwork, but only the practice of sexwork, with the paradoxical consequence of increasing sex workers’ exposure to violence (Gaudy & Le Bail, 2021).

Graceyswer (2020, online) formulates it like this:

One of the key reasons I have an issue with the ‘paid rape’ attitude is because it conflates genuine abuse with consensual sex work. When you blur these lines and I am genuinely raped, people will just view it as normal sex work, if they think it’s all the same.

Several authors point out how the abolitionist campaign for increasing state control and criminalisation of sex work represents a classist and racist view about on whose side the law and the authorities are. This permeates every discussion where white middle-class non-sex

working feminists advocate for the criminal justice system as solution to social and other problems. As pointed out by, for example, Vanwesenbeeck (2017), in many countries around the world, the police are sex workers' worst enemies. State oppression of sexwork and sex workers may be accompanied by many blatant human rights violations, such as assault and harassment by the police, extortion and blackmail, rape, and arbitrary arrest and detention. "For sex workers and other marginalised and criminalised groups, the police are not a symbol of protection but a real manifestation of punishment and control" (Smith & Mac, 2018: 16). To describe the interweaving of feminism with punitive political agendas, Bernstein coined the term carceral feminism: a feminism that is compatible with police batons. She uses the term to "designate a cultural and political formation in which previous generations' struggles for gender justice and sexual liberation are recast in terms of criminal justice" (Bernstein, 2018: 21. Mgabo (2020: 109, referring to Bernstein, 2007) describes carceral feminism as "a feminist approach to contemporary social issues that relies on the carceral state - police, prisons, and prosecutions - as the primary method for realizing feminist goals". Alison Phipps (2020: 53) refers to Angela Davis who in her book *Women, Race and Class* (1983) shows how carceral systems favoured by white feminists are grounded in, and perpetuate, racist and classist violence. According to Bernstein, the embracement of human rights discourses by abolitionist feminists via the reductionist tropes of 'prostitution as gender violence' and 'sexual slavery', has effectively neutralized domains of earlier political struggle around questions of labour, migration, and sexual freedom (Bernstein, 2018:10).

2.4.2 RADICAL FEMINISM AND THE 'SEX WARS'

The debate on sex work can be traced back to the so-called 'sex wars' in the United States in the 1980s and 1990s, when radical feminists clashed with 'pro-sex' feminists over the issues of pornography and prostitution - or more generally, women's sexual agency and the place of sex and sexuality in gender analysis. These tensions and divisions remain today and have

made consent and coercion integral to legal frameworks on sex work and trafficking in the sex industry (Rand & Simpsons, 2024: 280). The split centred on the nature of prostitution: is prostitution always harmful and should the goal therefore be its abolition, or could prostitution be a meaningful choice and form of work for women? (Hughes, 2008: 30). In the words of Phipps (2020: 75), “Are we concerned with sexual oppression or sexual repression?”. Melanie Heath et al. (2016:200) describe the two positions in the sex wars as “radical feminists who view existing structures of sexuality as products of male domination that are dangerous for women” versus “sex-positive feminists who embrace subversive sexualities as a means to undermine patriarchy”.

In the view of radical feminists prostitution is the “absolute embodiment of patriarchal male privilege” (Kessler, 2002: 19, cited by Scoular, 2004: 343) and the ultimate “reduction of women to sexual objects which can be bought and sold” (Jeffries, 1997: 2). Any distinction between forced and voluntary prostitution is rejected as being false (Jeffries, 1997).³³ All sex work is, by definition, sexual violence against women, in and of itself, arguing that if sexual consent must be bought it is not consent but rape (Barry, 1995; Dworkin, 1981; MacKinnon, 1989). ‘Paid rape’, as claimed by Melissa Farley (2004c, 2018). Gilead (2010: 90, quoted by Peršak, 2014: 211), for example, writes that prostitution “inescapably involves rape, for no prostitute lets her clients enter her body out of desire or love alone, which makes it a rape”, drawing on patriarchal and essentialist notions of women as only doing it for free and for love. To which Peršak (2014: 211) comments that if any sexual intercourse that is absent of love or desire would amount to rape, many a woman would be unknowingly raped, when, for example, she decides to have a one-night stand or wants to experiment with sex out of

³³ From the outset, anti-sex work feminists have been closely allied with the religious right in their campaigns against pornography and sex work, but also against transgender rights, for example in their description of trans women as “‘pornified’ representations of femininity rather than ‘real women’ (implying that sex workers are not ‘real women’ either)” (Phipps, 2020: 137).

curiosity.

As argued by Levy (2018), the focus on sex work as violence against women to justify the criminalisation of clients constitutes a form of ‘cherry picking’ from the original radical feminist discourse, which considered all heteronormative ‘penis in vagina’ sex as a form of patriarchal oppression. Alison Phipps (2020: 44) describes how radical feminists like Dworkin (1987) used the metaphor of the penis as invader, appropriating the language of anti-colonial struggles.³⁴ The view of the penis as weapon also means that for some radical feminists all heterosexual intercourse is not that different from rape (Phipps, 2020: 45). Jeffries, for example, argues that feminists who sleep with men are enemy collaborators (quoted by McNeill, 2015). This makes sex workers not only the quintessential victims of male oppression, but also ‘traitors’ who are guilty of perpetuating the oppression of women, the ‘handmaidens of patriarchy’ (Phipps, 2020: 152).

In response to the oppression/ sexual domination model, a counter movement of ‘sex-positive’ or ‘sex radical’ feminists defended porn and prostitution based on ideas of sexual liberation, stressing the positive and empowering sides of sexuality and rejecting the essentialist idea of men as inherently sexually predatory (Rahman & Jackson, 2010). Scholars like Gail Pheterson challenged the idea that sex workers “offer their body for indiscriminate sexual intercourse”. Instead she emphasised the use of consent by sex workers to maintain boundaries, e.g. by refusing certain clients or certain sexual acts (Rand & Simpsons, 2024). As Pheterson (1993, 1996) argues, for sex workers the right to ‘discriminate’, that is to select customers, is seen as an essential right. Some scholars, like Gayle Rubin, maintained that the analysis of gender and sexuality should be separated, arguing that the suppression of women also leads to the suppression of different sexualities and sexual identities. In her view (1984:

³⁴ See for a critical assessment of the second-wave radical feminism and the bourgeois, white and heterosexual nature of its submissive femininity, Phipps, 2020 (42-46).

148, 171), there is an urgent need for the development of radical perspectives on sexuality and a new descriptive and conceptual framework for thinking about sex and its politics, consisting of both theoretical and sexual pluralism. In contrast to radical feminists sex radicals were welcoming and supportive of sex workers which helped shape the movements' growth (Smith & Mac, 2018: 12).

Sex worker rights organisations challenged narratives of sex work as violence by reframing sex work as work and a 'job like any other', arguing that sex work can be empowering and should be recognised as a legitimate form of labour (Jenness, 1993). They also resisted radical feminist framing of sex work as 'sexual slavery' by differentiating between 'voluntary' and 'forced' prostitution. However, as noted by Jo Doezema (1998: 42), although it was intended to recognise a right to self-determination, in practice it created false divisions between sex workers. The 'voluntary' prostitute is then the Western sex worker, who is seen as capable of making choices whether or not to engage in sex work, while the migrant sex worker is deemed to be incapable of making the same choices: "she is passive, naive and an easy prey for traffickers". However, the most frightening, she writes, is that it reproduced the whore/madonna division within the category sex workers, dividing sex workers into guilty/voluntary and innocent/forced ones, thereby reinforcing the belief that women who transgress sexual norms deserve to be punished (Doezema, 1998: 47).

Both camps have been criticised for creating a simplified binary of sex work as either violent or empowering (Rand & Simpsons, 2024), reducing sex workers to helpless victims or 'happy hookers', which leaves little room for the different experiences of sex workers and their labour rights (Phipps, 2017: 306), and ignores "the huge variety of women who want protection from exploitation without being treated like a disease to be wiped out in order to

end the oppression of all women” (Brooks, 2012).³⁵ Since then both sex worker rights activists and scholars have sought to bridge the gap between the two extremes by pointing out that sex workers are not a homogenous group and sex work varies widely across time, place, and sectors (e.g. Weitzer, 2007a and 2012; Maciotti & Geymonat, 2016); by situating consent and coercion within the socio-economic inequalities that shape all market relations (Hardy, 2013; O’Connell Davidson, 2002); and by placing ‘unfree’ and ‘free’ (sexual) labour “on a continuum within capitalist relations of (re)production, which are gendered, racialised and legal” (Cruz, 2018: 65). In the same vein, Mac & Smith (2018: 4) stress that recognising sex work as labour does not mean there is no critique of what work means in the context of global capitalism or that sex work is not a site of sexism and misogyny, like so much other work.

However, despite a wealth of research challenging the coercion/consent binary, highlighting the diversity of sex work and sex workers and the role of larger social forces, the ‘sex war’ paradigm continues to shape laws and policies on sex work and trafficking. Phipps, e.g., argues that contemporary feminist opposition to the sex industry is shaped by the sex war’s binary opposition between radical feminist and ‘sex positive’ perspectives. This allows, she writes, opponents of the sex industry to construct sex workers rights as ‘men’s rights’ either to purchase sex or to benefit from its sale as third parties or ‘pimps’, and to position sex workers as either racialised victims or white, Western ‘happy hookers’ who do not care about women’s safety (Phipps, 2017).

Originating in the US, radical feminist ideology gained increasing influence in Europe (and other continents) through the vehicle of human trafficking. During the mid-1990s the traditional abolitionists, often Catholics from France, Southern Europe and Spain, were joined by radical feminists. The lead was taken by the (heavily subsidised) European Women's

³⁵ See for a critical discussion of the position of sex work in feminist theory e.g. Jane Scoular, 2004.

Lobby (EWL), which early on became a member of the US based Coalition Against Trafficking in Women (CATW), and played a key role in promoting neo-abolitionism in Europe (Outshoorn, 2018: 369-370; Ward & Wylie, 2017: 5).³⁶

The growing influence of the radical feminist ideology changed not only the content of the debate but also its tone. From a debate based on arguments about sex work and trafficking and the differences between the two, the debate increasingly turned into a highly polarised, ideological and antagonistic debate in the American style of "if you're not with me, you're against me".³⁷ An illustration is the debate in the Irish Parliament where the option of criminalisation of clients was presented by one of the MPs as "You are either against exploitation or you are for it" (Ward, 2017: 95). As Ward and Wylie describe "debates about prostitution and sex work are often highly emotionally charged, resistant to facts, ruled by a very explicit ideology, peopled by informants with limited knowledge, pre-eminently concerned with symbolism, and subject to abrupt changes" (Ward & Wylie, 2017:5), characteristics typical for what Wagenaar & Altink (2012b) call morality politics.

2.4.3 SEX WORK AND TRAFFICKING

The abolitionist discourse is characterised by a longstanding and persistent conflation of sex work and trafficking, dating back to the international campaigns against the 'white slave trade' in the late 19th and early 20th centuries (Vanwesenbeeck, 2017).³⁸ As described by

³⁶ See for an analysis of the campaign to set prostitution on the European agenda and the role of the EWL and CATW Outshoorn, 2018.

³⁷ I remember participating in a session of the UN Working Group on Contemporary Forms of Slavery in 1999, which was attended by both members of the alliance (of which I was part) of sex workers, the Dutch Foundation against Trafficking (STV) and GAATW, and a delegation of CATW. At one point CATW members said something pertinent untrue about the (by them abhorred) Dutch bill on the lifting of the ban on brothels. When I went up to them after the meeting to try to correct this, Janice Raymond (their US director) looked at me coldly and said, while turning her back to me, "we're not interested in facts".

³⁸ Various authors (e.g. Agustín, 2007; Bernstein, 2007, 2018; Doezema, 1999; Phipps, 2020) point out the similarities between contemporary anti-trafficking feminists and evangelical Christians to the 19th-century middle-class women, who "inspired by biblical concepts and metaphors such as sin, seduction, fall and rescue sought to rescue repentant prostitutes", which coincided with their efforts to "carve out decent female professions in the public sphere" (De Vries, 2010: 35).

Outshoorn (2018), reiterating the link between trafficking and prostitution was instrumental for the abolitionist movement, headed by the European Women's Lobby (EWL), in setting prostitution on the agenda of the EU. Jamie Chuang (quoted by Mgbako, 2020: 118), argues how anti-prostitution activists ideologically hijacked the human trafficking discourse to realise their goal of abolishing sex work and in doing so transformed the anti-trafficking movement into an anti-prostitution campaign. To this end, the concept of 'force' or 'coercion' is rhetorically broadened to include economic circumstances or family responsibilities, thus principally rejecting the very concept of benign migration for sex work (Vanwesenbeeck, 2018). One way in which sex workers resist their dismissal as victims and the expansion of the concept of coercion is to stress the importance of distinguishing between the concepts of choice and agency:

The former insinuates a fictional context in which we all have 'equal' options in life and unlimited access to resources. The latter recognises our capability to make plans, to have strategies, and to act within a limiting structure (Macioti & Geymonat, 2016: 26).

In a similar vein, Graceyswer (2020, online) writes:

It's important to make the distinction between 'I had no choice' and 'I had limited choices' [...] Consent, however, is about what happens and what I agree to. My limited choices may have led me to this decision, but it doesn't give anyone the right to mistreat me whilst I am here.

In particular migrant sex workers are constructed as 'vulnerable' and in need of 'protection', which legitimises state control and surveillance to 'identify' and 'rescue' victims. As Jahnsen and Wagenaar (2018: 8) state, "The result is forms of hyper-regulation that attempt to control each and every aspect of the sex trade". In contrast to the victimised migrant sex worker, Kapur presents the migrant woman crossing borders as a 'resistant subject':

She situates herself as a resistant subject, challenging "patriarchal" control within the family and marriage as well as a subject who exercises economic choices and social

mobility (Kapur, 2001: 880).

Julie de Lima Pérez analyses how the label of '(potential) trafficking victim' is used both as a political weapon to curb prostitution and a socially acceptable form of migration control, rather than as a form of human rights protection. In line with Kulic (2003; 2005) and others she argues how, in the case of Spain, Portugal and Brazil, increased concerns about migration and the control of sex work are reworked into a human trafficking narrative "where increased forms of control and the human rights' abuse they generate are considered acceptable as they are made under the guise of protection" (Lima de Pérez, 2014: 180). According to Peršak, referring to Penttinen (2006) the western feminist abolitionists need to create and maintain the threat of trafficking and the "vulnerable victim" in order to be able to justify themselves as protectors and saviours (Peršak, 2014; 212).

In her analysis of the contemporary anti-trafficking movement, Bernstein points out how feminist anti-trafficking activists and their evangelical Christian counter parts, in their shared commitment to "a relational, as opposed to a recreational sexual ethic", have ironically embraced a pro-familial strategy:

Rather than regarding the heterosexual nuclear family as another institution of male domination to be abolished (and itself a key incarnation of the "traffic in women"³⁹) contemporary anti-trafficking discourse situates the family as a privatized sphere of safety for women and children that the criminal justice system should be harnessed to protect (Bernstein, 2012: 246).

While both the institutionalisation of the rescue industry⁴⁰ and carceral feminism are spurred

³⁹ Here Bernstein refers to Gayle Rubin's classic essay "Traffic in Women", which argues that "the linchpin of women's oppression resides in the social convention of marriage and kinship" (Rubin 1975, quoted by Bernstein 2012: 246).

⁴⁰ The term 'rescue industry' was coined by Laura Agustín to describe an ever growing social sector dedicated to saving prostitutes, by defining them as victims (Agustín, 2007). Bernstein (2018: 5) describes the rescue industry as "a trafficking industrial complex".

by the anti-trafficking movement (Agustín, 2007; Bernstein, 2018; Jackson, 2016; Mgbako, 2020), it is important to note that, as with feminism, there are significant differences in approaches within the anti-trafficking movement. Whereas the ‘carceral’ part, as represented by the US based Coalition against Trafficking in Women (CATW), promotes the further criminalisation of sex work, the ‘rights-based’ part of the anti-trafficking movement, as represented by the Global Alliance against Traffic in Women (GAATW) and the European anti-trafficking network La Strada International (LSI), recognise sex work as work and stand in solidarity with the sex worker rights and migrant rights movements. It systematically opposes repressive anti-sex work and anti-migrant policies and the resulting harms of police raids, arrests and deportations in the name of combating trafficking (GAATW, 2007; Gerasimov, 2020; Lap Chew, 2016. See also Dottridge & GAATW, 2007). Also sex workers organisations globally and across Europe develop their own strategies of addressing trafficking, exploitation and violence, while challenging the harmful impacts of the ‘end demand’ discourse and the criminalisation of sex work in the name of combating trafficking (see e.g. ICRSE’s ‘Right not Rescue programme’, ICRSE, 2021a; ICRSE, 2020; and GAATW, 2018a).

The model for the neo-abolitionist position is the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, which declares in its preamble that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human and endanger the welfare of the individual, the family and the community". The convention links trafficking to the exploitation of prostitution by requiring states to punish all forms of procurement and exploitation for the purpose of prostitution, even with the consent of the woman involved. The prostitute herself is not to be punished, as she is considered to be a passive victim in need of protection, if necessary against her will. Although relatively few countries have ratified the

1949 Convention, the majority of states still base their prostitution policies on it (Wijers & Lap-Chew, 1999; Wijers, 2015). The current call for the criminalisation of the ‘buying of sex’ simply adds another layer to the wide range of prohibitions that already exist. In the words of French sex workers: “The switch from criminalising sex workers to criminalising clients is only a rhetorical trick” (Macioti & Geymonat, 2016: 32).

The 1949 Convention was made obsolete by the adoption of the *UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* in 2000, supplementing the United Nations Convention against Transnational Organized Crime. One of the most fiercely debated issues during the negotiations that led to its adoption was the issue of consent. Disagreements on women’s agency - that is, whether women can actually choose to work in the sex industry - permeated all other discussions. Some states, supported by the CATW-network, argued that the definition of trafficking should include wording that indicated that a person could never consent to prostitution. Other states, supported by the Human Rights Caucus, an alliance of anti-trafficking, human rights and sex worker rights organisations, argued that the key elements of trafficking were force and coercion, which made any referral to consent redundant as nobody can consent to coercion (Ditmore & Wijers, 2003; Doezema, 2010; Wijers, 2015).

The UN Trafficking Protocol makes a clear distinction between sex work and trafficking, defining the latter by the use of coercion, abuse or deceit. However, its definition of trafficking is ambiguous by the singling out of ‘the exploitation of the prostitution of others’ and ‘sexual exploitation’ from what has come to be called ‘labour exploitation’, i.e. forced labour, slavery, slavery-like practices and servitude in other industries.⁴¹ This not only

⁴¹ Art. 3 of the Trafficking Protocol defines the purpose of ‘exploitation’ to include at the 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”.

suggests that sex work cannot be labour, but also has reinforced the historical obsession with prostitution and the conflation of sex work and trafficking, more so since the terms sexual exploitation and exploitation of prostitution were left undefined in order to leave it to the discretion of individual states how to address prostitution (Wijers, 2015; 2021).

A second source of confusion remains the issue of consent, strengthened by the subparagraph in the Protocol's definition that "consent is irrelevant" when one of the listed coercive or deceptive means has been used, which was included as a result of the lobby of the CATW network. Although it is clear that the use of coercion or deception invalidates any consent, the reference to consent is misused by abolitionists to argue that all sex work is trafficking, regardless of the consent of the woman involved.

In addition, the question of whether coercion or deceit refers to both the conditions of recruitment and work, or only to the conditions of recruitment remains controversial. As Valensise (2019) argues, a person may give initial consent to sex work, but this does not mean they have consented to their working conditions and/or pay. Equally, an individual may be initially forced, tricked or coerced into sex work, but this does not exclude the possibility that they consent to the work at a later stage.⁴² If coercion is understood to relate to the way somebody entered sex work as well as the working conditions, 'forced prostitution' is the equivalent of 'forced labour in prostitution'. If coercion or deceit are defined to exclusively relate to the way a woman⁴³ came to be a sex worker, as a result of her own decision or forced by others, it excludes women who consciously made the decision to work in the sex industry, but who are subject to force and abuse in the course of their work (Wijers, 2015; 2021). As stated by Doezema (1996: 65):

The abuses she undergoes are considered to be the natural consequences of her

⁴² This is also my personal experience as staff member of the Dutch Foundation against Trafficking (STV).

⁴³ I use 'women' here, because these types of discussions are always about women.

willingness to be a prostitute. It is her own fault. Underlying is the idea that it is wrong to force an innocent women to be a prostitute, but a guilty one can be mistreated with impunity.

The latter is the most common interpretation of ‘trafficking for sexual exploitation’. A key theme of contemporary accounts of trafficking is the loss of innocence, “innocence being the initial state which needs to be narratively established in order for its subsequent loss to have dramatic impact on the reader” (Doezema, 2010: 49). Laws that criminalise trafficking usually exclude deliberate sex workers from the category of people able to be trafficked as they are considered to lack the required ‘innocence’ to be legitimate victims (Doezema, 1998; Mac & Smith, 2018).

2.4.4 SEX WORK AS A FORM OF EXPLOITATIVE LABOUR

Few sex workers will deny the abuse and exploitation that takes place in the sex industry. It is one of the major reasons why much of the campaigning and other work of sex workers' rights organisations focuses on addressing the violence and other human rights abuses that sex workers face in their work, including at the hands of the police and other state authorities (see e.g. ICRSE, 2015, 2016a, 2016b, 2018; SWAN, 2009, 2015). Nor will most sex worker rights organisations or academics deny that, like many other industries, the sex industry is sexist and misogynist or be uncritical about what work means in the context of global capitalism (Mac & Smith, 2018). However, rather than singling out sex work, they highlight the fact that multiple forms of social inequality intersect to constitute prostitution as a form of exploited labour (Vanwesenbeeck, 2018). As several sex workers and academics (categories that regularly overlap) argue, sex work is not unique in being structured by a global capitalist market and gender relations, nor is sex work the only kind of work that involves sex (English Collective of Prostitutes, 2019; Mac & Smith, 2018; Pheterson, 1996; Tinsman, 1992; Vanwesenbeeck, 2017). Singling out sex work as the 'locus par excellence' of violence against women obscures

the inequality, sexism, racism and (sexual) exploitation that characterise labour relations in many other sectors (Vanwesenbeeck, 2017).

Tinsman (1992: 241) relates the singling out of sex work specifically to the control of female sexuality by stating that “[t]hose who treat sex work as uniquely exploitative accept the anti-feminist premise that female sexuality needs guarding”. She also notes that the fact that conditions in many female-dominated sectors are extremely exploitative never leads to calls for the abolition of the entire sector, but rather to an emphasis on the need to empower workers. There is no reason, Tinsman argues, why this should be any different in the sex work sector. Moreover, she says, prohibition without changing the economic reality that makes sex work a primary source of income for women around the world means placing the cost of 'liberation' solely on the victims (Ibid: 244).

The above section discussed the conflicting views of sex work, the conflation of sex work and trafficking and how both the sex worker movement and the abolitionist movement are drawing on human rights arguments, as will be further discussed in section 2.6. In the next section I look at the thin line between sex workers as victims and as deviants.

2.4.5 THE THIN LINE THAT DIVIDES THE VICTIM FROM THE DEVIANT

Not only does the disqualification of sex workers as victims deny sex workers agency and the right to speak and be heard, but it also almost automatically gives rise to ‘blame the victim’ mechanisms. As stated by Gail Pheterson, “Women who claim self-determination as prostitutes lose victim status and ideological sympathy. In other words, a whore is viewed either as a casualty of the system or as a collaborator with the system” (Pheterson, 1996: 61). As discussed above, some radical feminists, for example, consider sex workers as ‘traitors’ (or at least accomplices of patriarchy), to be blamed for the suppression of women. An extreme example is this citation of Burchill (1987), quoted by Vanwesenbeeck (2017: 1637): “When

the sex war is won prostitutes should be shot as collaborators for their terrible betrayal of all women” (Vanwesenbeeck, 2017).

The same mechanism can be seen in the discourse on the criminalisation of clients and the revival of the old stereotypes of sex workers as either endangered or dangerous – and often both at the same time. Peršak, for example, describes how, often in the same text, clients are chastised by emphasising the victimhood of prostitutes, and prostitutes are portrayed as rather debased creatures themselves, having no feelings, not caring about her client, only about his money”. As she notes, “it is often through the language of care and protection that dehumanisation of the prostitute is brought in” (Peršak, 2014: 214). Also Levy and Jakobsson (2013) note that “constructions of sex workers as passive victims lacking agency and self-determination are, it seems, not mutually exclusive from a construction of them as an immoral and deviant nuisance” (Levy & Jakobsson, 2013: 338). This is especially visible in relation to migrant sex workers who, at the same time, are framed as victim of the international sex trade and as illegal worker who undermines the fabric of the welfare state (Outshoorn, 2012). According to Doezema the overlapping goals of eliminating prostitution of the Christian social/moral order and the abolitionist oppression/sexual domination frame have led to “a confusing ‘going together’ of the framing of the prostitute as a deviant who disrupts social order as well as a victim of men and traffickers” (Doezema, 2010). One step further, Allison Phipps (2019) describes how situating sex workers’ interests and ‘women’s interests’ as fundamentally opposed not just positions sex workers as ‘bad’ women, but in effect excludes them from womanhood.

At the same time, under the influence of the human trafficking discourse, the distinction between ‘good’ and ‘bad’ women, those deserving of protection and those who can be abused with impunity, regained power as an instrument for controlling women’s sexuality and mobility (Wijers 2015). The distinction between 'innocent' (non-sex workers) and 'guilty' (sex

workers or other sexually 'deviant' women) victims is a persistent problem attached to the trafficking framework, meaning that it is often the victim who has to prove her 'innocence'. This is not only harmful for sex workers but for all women as it *de facto* sends the message that the right of women to be protected against violence and abuse is determined by their 'innocence', that is, their sexual purity, or, in more traditional terms, their 'honour' (Pheterson, 1993, 1996; Wijers, 2015; Doezema, 1998).

Also when states formally consider sex workers as victims, the laws on prostitution can still position them first and foremost as offenders, especially when they are migrants. In many cases, sex workers are simultaneously seen as passive victims and as an unwanted, deviant nuisance (Doezema, 2010; J Levy & Jakobsson, 2014). Calderaro & Giametta (2019: 169) describe how awareness of French policymakers about the damage of the neo-abolitionist framework co-exists with the view of sex workers as victims: sex workers are at the same time constructed as victims worthy of rescue and accepted as collateral damage in that "they can be sacrificed for the greater good of attempting to create a world without prostitution". At the governmental level, they write, the damage caused to sex workers is justified by border control, national security, public order, and women's rights" (Ibid: 169).

2.5 SEX WORK AND STIGMA

Stigma is a key theme that affects all sex workers, across gender, racial, class and cultural lines, though its intensity may vary for different groups of sex workers and in different contexts (Benoit et al., 2018; Weitzer, 2018). Below I discuss the definition and effects of stigma, the importance of language in producing and reinforcing stigma, stigma and power, and the whore stigma.

2.5.1 SEX WORKERS AS TAINTED PERSONS

According to Goffman, stigma can be defined as "a social attribute or mark that separates

individuals from others based on socially given judgments. Stigmas are deeply discrediting and reduce the bearer from a complete and accepted person to a tainted, discounted one” (Benoit et al., 2018: 458, referring to Goffman, 1963). As stated in the *Sex Workers Manifesto* (ICRSE, 2005a), stigmas can have totalising properties. The effect is that “any sign of stigmatized attributes or behaviors renders such persons wholly damaged and becomes their ‘master status,’ eclipsing all other characteristics to organize interpersonal interactions” (Benoit et al., 2018: 458). According to Benoit et al (2018), the stigma of prostitution is a fundamental social determinant of social inequality for sex workers, on par with other factors such as class, gender, race, and education.

Various authors as well as sex workers themselves (Agustin, 2013; Benoit et al., 2018; Mac & Smith, 2018; J Outshoorn, 2018; Pheterson, 1996; Stardust, 2017; Vanwesenbeeck, 2017; Weitzer, 2018) have described how stigma has far-reaching consequences for those who are stigmatised. It has a negative impact on self-concept, identity formation, well-being and health as well as on social interaction and access to resources and opportunities. Stigmatised people are subjected to penalising actions from shunning to physical abuse and run a higher risk of being undervalued, socially excluded, and discriminated against. Stigma denies sex workers equal protection under the law and supports a culture of impunity for violence and aggression.

According to Vanwesenbeeck (2017: 1632), stigma is fuelled by criminalisation as it frames sex work as immoral, illicit, and unlawful, denies sex workers rights, and powers negative opinions. Jahnsen et al. (2018) argue that stigma leads to the urge to control, contain and suppress prostitution and results in the breach or loss of human rights and civil liberties. They also note that many of these human rights violations “occur as a matter of fact, as business as usual, the side effects of mundane administrative measures” (2018: 8). A characteristic mentioned by Benoit et al. is its intersection with homophobic and transphobic stigmas. They

draw attention to the intersecting or multiple stigmas related to gender, sexuality and sex work sex workers may face as gay men or trans persons (Benoit et al., 2018: 459). Stigma not only 'taints' sex workers but can also affect others with whom they interact, such as partners, family, third parties such as managers, service providers, and researchers on sex work, also known as 'courtesy stigma' or 'stigma by association' (Ibid., 2018: 458).

An important feature of the prostitution stigma is the systematic use of derogatory terms to describe sex workers (Benoit et al., 2018; Pheterson, 1989; 1996; Vanwesenbeeck, 2001). This is underlined by Weitzer (2018), who identifies the erasure of derogatory names from public and private discourse as a fundamental condition for reducing the stigma of sex work. To demonstrate the importance of this endeavour, he refers to Foucault's observation that "power relations are embedded in language, with dominant groups typically engaging in 'naming and shaming' of subordinates" (Ibid., 2018: 720).

An illustration of the use of derogatory language is the terms in which anti-prostitution activists tend to speak about sex workers, that "ironically echo traditional, religious/patriarchal moralizing against prostitutes" (Doezema, 2001: 26), often under the guise of attributing these perceptions of sex workers to clients. In their book *Revolting Prostitutes* Smith & Mac (2018: 10-12) provide a variety of examples of what they call "dehumanising" language to describe sex workers, such as "seminal spittoons", "vaginal slime" (Dworkin, 1993), "plastic blow-up sex dolls complete with orifices for penetration and ejaculation" (Leidholdt, 1993) or a piece of meat (Barry, 1995: 35; Bindel, 2019). They identify the representation of sex workers as "damaged, an animal or a piece of meat" as one of the major ways of excluding sex workers (Ibid: 33).

Vee Holt (2020) writes in an opinion article in *The Independent*: "When feminists speak about

sex work as a “single-use license to penetrate”⁴⁴ or compare sex workers to “dogs”⁴⁵ and “meat”,⁴⁶ their language upholds the same world view of sex workers as that of abusers: worthless and disposable.

2.5.2 STIGMA AND POWER

The role of power in stigma is elaborated by Link & Phelan (2001; 2014), who define stigma as “the co-occurrence of its components: labeling, stereotyping, separation, status loss, and (structural) discrimination” and argue that for stigmatisation to occur, power must be exercised (Ibid., 2001: 363). They link stigma directly to the interest of people to keep other people, as they call it, “down, in or away”, and define it as “a resource that allows them to obtain the ends they desire”. To describe this resource, they introduce the term ‘stigma power’, defined as the “capacity to keep people down, in and/or away by using stigma-related processes” (Link & Phelan, 2014: 24). Sometimes the use of stigma power is evident, but often more hidden and indirect processes are deployed. To conceptualise the latter, they draw on the concept of symbolic power from Bourdieu (1987), defined as “the capacity to impose on others a legitimized vision of the social world and the cleavages within that world” (Ibid., 2014: 25). This is relevant, they argue, for understanding stigma in three ways. First, as a form of symbolic power that represents a statement about the value and worth made by the stigmatizers about the stigmatized group. Secondly, it helps to understand processes as expressed in the idea of ‘internalised’ or ‘self’ stigma, and, finally, the concept of symbolic power provides the conceptual tools to recognise how stigma serves the interests of stigmatizers, because, as noted by Bourdieu, “power is often most effectively deployed when it is hidden or ‘misrecognized’” (Ibid., 2014: 24). Importantly, they stress the need to include

⁴⁴ Sarah Ditum (2014), *Why we shouldn't rebrand prostitution as "sex work"*, The Statesman, 1 Dec 2014.

⁴⁵ Tweet @ObjectUK (Women Not Sex Objects!), 18 May 2018, <https://twitter.com/ObjectUK/status/997416667893452800?s=20>

⁴⁶ Julie Bindel (2019). *Prostitution is not a job. The inside of a woman's body is not a workplace*, The Guardian, 30 April 2019.

the perceptions and lived experiences of stigmatised groups themselves when studying stigma. The result of failure to do so, is “a misunderstanding of the experience of the people who are stigmatized and the perpetuation of unsubstantiated assumptions” (Ibid., 2001: 365).

2.5.3 THE WHORE STIGMA

A key function of stigma is that “it reinforces conventional norms and promotes dominant interests by legitimizing established power hierarchies” (Weitzer, 2018: 718). One of the first to write about the ‘whore stigma’ was Gail Pheterson (1989; 1996), who analysed how the whore stigma and the division between ‘good’ and ‘bad’ women works as an instrument of social control, used not only against sex workers but against any woman “deemed too independent, too sexual, too assertive, improperly dressed, far from home, a country girl in the city, a city girl in the country, a woman conspicuously rich or conspicuously poor or any woman raped, robbed, beaten, deceived... or desired. Prostitutes rights are, therefore central to all women’s rights, the ultimate protest against discreditation as women” (Pheterson, 2001):

The whore [...] is the prototype of the stigmatised woman or feminized man. But not only prostitutes are labelled whores. Any woman may be designated ‘whore’ within a particular cultural setting, especially if she is a migrant, target of racist discrimination, independent worker or victim of abuse (Pheterson, 1989: 4).

According to Pheterson, the division of women into the honourable and the dishonourable is perhaps the most insidious political function of the whore stigma: not only does it isolate prostitutes from other women, “but it also renders a whole range of liberties incompatible with female legitimacy” (Pheterson, 1996: 11). In the same vein, Melissa Gira Grant (2014: 76) speaks about the whore stigma as the sanction “for breaking with, or being perceived to have broken with, what Jill Nagle calls ‘compulsory virtue’”. ESWA describes social stigma as a form of structural violence, that symbolically separates sex workers from the rest of society and allows society to protect social order by condemning those who are seen as

threatening to established power relations and institutions (ICRSE, 2015). Scoular (2004: 346) draws attention to the economic dimension, arguing that by being paid for what is considered to be private, prostitutes challenge the public/private dualism, that, as highlighted by feminists, separates 'work' from 'love' and serves to obscure the role of desire in the market and to leave women's work in the affective private world unrecognised. The confusion this creates fuels the whore stigma, “reflecting deeply felt anxieties about women trespassing the dangerous boundaries between private and public.”⁴⁷ Criminalisation then is an attempt to force back public elements of prostitution back in to the realm of private sexuality:

By denying prostitution the status of work criminalisation helps patrol the boundary between the sex/affective labour routinely assigned to and expected of women and practices deserving of the financial and status rewards of ‘work’ (Zatz, 1997: 287).

Both the division between good and bad women and between the private and public sphere are closely linked to Christian ideals of female chastity and women’s confinement to the private sphere of the family. Rather than being carriers of disease or deviants, prostitutes are symbols of sin, ‘fallen women’ who are a threat to the family, but who can also be saved and rehabilitated into a ‘normal, decent woman’s life’, someone who is spoken for but who does not speak herself (De Vries, 1997) In the Christian view, a prostitute is not only a sinner, but also a victim who can share in God's grace. “Although it is undisputed that prostitution or fornication is a sin under Christianity, God hates the sin but loves the sinner” (Yacoub, 2019)

What the works cited above show is how dominant the concept of stigma is and has been in analysing the dehumanisation, marginalisation and discrimination of sex workers.

2.6 SEX WORK AND DIGNITY

From the debate described above, a number of key concepts emerge, in particular dignity and

⁴⁷ The latter is nicely captured by the remark of the chairman of the ‘Third Committee’ (social issues) in the early days of the UN, who at the opening of a meeting declared that he would not give the floor to women “Because to me, a woman who speaks in public is a public woman” (Van den Brink & Wijers, 2012).

self-determination, victimhood, agency, consent, and stigma. They all relate to the ‘human-ness’⁴⁸ of sex workers (or lack thereof) with the corresponding entitlement to fundamental human rights protections and recognition as legitimate partners in the political and legal debate. All three concepts – dignity, victimhood and stigma – are embedded in (essentialist) ideologies on gender roles, femininity, masculinity and sexuality, including concepts of ‘true’ or ‘natural women’ versus ‘tainted’ or ‘unnatural’ women and ‘good’ sex versus ‘bad’ sex.

I discuss the concepts of dignity and self-determination at length because they tie into the ‘prostitution is violence against women and a violation of human dignity’ discourse put forward by the alliance between abolitionists, radical feminists, and evangelical and conservative Christians. Although this may seem an unusual – some call it unholy – alliance, they are united, as argued by Bernstein by their “conviction that sexuality should be kept within the confines of the romantic couple” (Bernstein, 2012: 246), an ideal “that cannot imagine a place for prostitution outside the scope of women’s exploitation” (Bernstein, 2018: 19). Penelope Saunders (2005: 355) also points to the common ideological constructions that unite modern abolitionists. As she argues, for both conservative Christians and for many feminists, “archaic and violated visions of femininity and sexuality [. . .] tap into widely held beliefs about the harms women face due to their sexual vulnerability”.

2.6.1 DIGNITY IN THE LEGAL AND POLITICAL DISCOURSE ON SEX WORK

Arguing that dignity is a key indicator of contemporary understandings of what it is to be a human being, Cunningham (2018) explores how dignity is used in legal and political discourses on sex work, and its impact on the social and cultural representation of sex workers. Building on Laclau and Mouffe’s description of the constitutive nature of discourse (1985), Cunningham analyses ‘dignity talk’ as a discursive tool to advance, uphold and

⁴⁸ I use the concept of ‘human-ness to refer to what Meyers calls ‘attributions of humanity’: “the ways in which the rights discourse ascribes variable humanity to certain categories of people” (Meyers, 2014: 1).

challenge the different normative perspectives on prostitution. In particular, he explores the connections between stigma, dignity-based discourses and dehumanisation, as it is especially the connections between dignity and dehumanisation that impact sex work.

Based on the taxonomy of dignity developed by Neomi Rao (2011), he distinguishes three main types of dignity: ‘intrinsic dignity’, ‘dignity as substantive conceptions’, and ‘dignity as recognition’ (Cunningham, 2018: 105-208). Intrinsic dignity refers to the type of dignity that exists “merely by virtue of a person’s humanity” (Rao, 2011: 187, quoted by Cunningham 2018: 110). This is the type of dignity invoked in international human rights texts. Intrinsic dignity is strongly connected to ‘negative liberty’, in the sense of respect for human autonomy and freedom from state interference. However, as noted by Cunningham, it is not only used to promote autonomy-based rights but also to enforce prohibitions of certain forms of treatment as a manner to prevent harms, e.g. the prohibition on torture, inhuman and degrading treatment. In the context of sex work, intrinsic dignity has been used to justify prohibitions through the representation of selling sex as an abusive and violent practice. Both the abolitionist and sex workers’ rights movements use discourses grounded in intrinsic dignity to highlight the harms done to sex workers, though they locate the sources of that harm radically differently.

As Cunningham notes, the use of dignity language to justify prohibitions is not a problem if there is general consensus about the activities concerned. However, it becomes problematic when there is no consensus about the morality or harm caused by the practices in question, as in the case of sex work. When dignity is used in this way, it takes the form of a substantive condition. Substantive conditions of dignity seek to uphold community norms about appropriate behaviour and morality and lead to prohibitions of behaviour. They represent a particular moral view about how individuals must behave in order to maintain dignity. In the context of prostitution, it is often used by courts to enforce particular sexual norms that reify

emotional and relational intimacy. The fact that substantive conditions can be politically enforced, often against the desire of affected individuals, makes that this form of dignity is also referred to as ‘dignity as coercion’.

‘Dignity as recognition’, in contrast, centres on the idea “that individuals are constituted by their communities” and that “their self-conception depends on their relationship to the greater social whole” (Rao 2011: 243, quoted by Cunningham 2018: 114). It recognises the importance for individuals and groups to be valued and respected by the community. Not only must one have the freedom to make one’s own decisions, but these should also be respected and validated by the community and the state. It is this type of dignity claims that are frequently made by the sex worker rights movement regarding the recognition of sex work and that are directly connected with stigma.

Cunningham (2018) identifies two principal forms of what he calls ‘dignity talk’:

‘fundamentally incompatible’ discourses and ‘dignity as workers’ discourses. The first holds that prostitution is always and inherently a violation of dignity. This discourse often rests on particular sexual norms that reify emotional and relational intimacy and is specifically concerned with the upholding of communitarian norms by enforcing constraints on behaviour at the expense of individual autonomy. The second type of discourse, put forward by the sex worker movement, holds that dignity is promoted through the social and legal recognition of commercial sex as a form of work. It is not sex work itself but the criminal laws against sex work and the attached discrimination and stigma that are identified as a threat to the dignity of sex workers. This type also helps to challenge the stigma of sex work through the representation of sex workers as more complex, autonomous subjects.

While the concept of dignity has a range of different meanings attached to it, it is especially the connection between dignity and dehumanisation that impacts sex work. As discussed by Cunningham, ‘dignity’ is used by (neo)abolitionists as a gateway into the human rights

framework by framing prostitution as inherently harmful and a violation of human dignity (2016, 2018). However, whereas framing sex workers' rights as human rights affirms sex workers' humanity and denounces their dehumanisation as 'deviant others', the framing of sex work as a violation of human dignity has the exact opposite effect. Taking dignity as a key indicator of contemporary understandings of the human, he notes that the representation of sex work as 'beneath humanity' runs the risk of constructing 'dehumanised' subject positions for people who sell sex and reinforcing existing stigma (2018: 39). A similar warning is issued by Pinker (2008: 31) when he states that the perception of "reductions in dignity may harden the perceiver's heart and loosen his inhibitions against mistreating the person". When people are degraded and humiliated, he argues, "it can set off a spiral of dehumanisation and mistreatment".

2.6.2 DIGNITY AND THE REGULATION OF FEMALE SEXUALITY

Although abolitionists re-introduced the 'dignity argument' in the prostitution debate, the appeal on dignity is all but new when it comes to debates over the regulation of female sexuality. As described by Siegel (2012), dignity similarly served as a battlefield in the fight for the decriminalisation of abortion and the recognition of same-sex marriage. In her article 'Dignity and sexuality: Claims on dignity in transnational debates over abortion and same-sex', Siegel (2012) shows how competing conceptions of dignity have shaped jurisprudence on abortion in Germany and the United States and spread to same-sex marriage debates. She distinguishes three different claims of dignity: dignity as life, dignity as liberty, and dignity as equality:

Dignity as liberty entails claims on autonomy, on privacy, and on free development of personality. By contrast, dignity as equality involves claims about status, honour, respect, and recognition. Dignity as life appeals to something prior to these forms of social relations, seeking through the regulation of birth, sex, or death to give symbolic expression to the value of human life itself (Siegel, 2012: 365).

Whereas conservative opponents condemned abortion as violating the ‘dignity of human life’ – with the ensuing duty of women to carry a pregnancy to term – feminists invoked the notion of ‘dignity as liberty and equality’ to claim the right for women to decide for themselves if and how many children they wanted. To quote Betty Friedan (1969) speaking at a Chicago conference organized to seek the repeal of abortion laws:

[T]here is no freedom, no equality, no full human dignity and personhood possible for women until we assert and demand the control over our own bodies, over our own reproductive process...The real sexual revolution is the emergence of women from passivity, from ‘thing-ness’, to full self-determination, to full dignity (quoted by Siegel, 2012: 358).

In both the US and Germany, the final compromise affirmed women’s right to abortion, but with the restriction of mandatory counselling designed to dissuade women from ending the pregnancy, based on the “governments’ interest in protecting women from making mistaken decisions in choosing abortion methods that they might later regret” (Ibid: 368). Or, as worded by the German Federal Constitutional Court, “to persuade a woman to continue the pregnancy and to counter any pressure from third parties who might be pushing her to end the pregnancy” (Ibid: 369). This construction is suspiciously similar to the mandatory counselling of sex workers that was introduced by the 2017 German Prostitutes Protection Act,⁴⁹ which is justified by similar ‘protection’ arguments of countering third party pressure and which was challenged by sex workers on similar grounds as Friedan used to demand the repeal of anti-abortion laws. As Siegel argues in an earlier article about abortion restrictions: “Like old forms of gender paternalism, the new forms of gender paternalism remedy harm to women through the control of women” (Siegel, 2008: 1694).

According to Siegel, what is at stake in the fight over abortion, is not just the protection of

⁴⁹ See for a discussion of the German Prostitutes Protection Act Chapter 5.

life, but also “the regulation of sexual expression and sex roles” within “a worldview that depicts procreation in marriage as the only sacred form of sexual expression” (Ibid: 377). The competing claims of dignity are, she argues, part of a contest over social ordering, whereby “in both the abortion rights and gay rights contexts, those who invoke dignity to contest traditional roles are endeavouring to democratise control over sexual norms and social structure” (Ibid: 377). She concludes by stating that “today, as in the 1970s, dignity’s meaning is being forged in cross-border conflict over dignity’s sex” (Ibid: 379).

In the same vein, sex workers’ struggle for rights can be seen as a contest of social ordering, in which sex workers resist dominant notions of femininity and sexuality and demand the right to decide over their own bodies and lives. Discussing the Swedish criminalisation of clients, Kulic, for example, argues that what ultimately is at stake is:

[T]he entrenchment of an official sexuality, a national sexuality, to which all Swedes should adhere, not because they will be punished if they do not (although, as we will see, they *are* punished if they do not) but because the official sexuality is good sexuality, the morally comprehensible way to be (Kulick, 2005: 206).

Similar to abortion and same-sex marriage activists, sex worker rights activists put forward their own claims on dignity. Against abolitionists' claims that sex work is a violation of human dignity, activists identify the criminalisation of sex work – and the consequent discrimination, harassment and stigma – as the key threat to sex workers’ dignity (Cunningham, 2018: 237).

2.6.3 DIGNITY AND SELF-DETERMINATION

As discussed above, both those who consider sex work a violation of human rights and those who advocate for the recognition of sex work as work use human rights language to support their point of view. Whereas the former refers to the principle of human dignity, the latter rests on the principle of individual self-determination. Both principles have deep roots in the history of human rights thinking and can be considered the basis of human rights as such. Yet,

as worded by De Blois (1998), they derive from different world views and views on the human being. Whereas the (liberal) principle of individual self-determination takes the ‘self’ of the human being as the ultimate foundation of human rights, without reference to a source external to the human being as such, the principle of human dignity “starts from the idea that the value of the human being is in the last instance derived from the status of the human being in the (metaphysical) order of the cosmos” (Ibid: 526). According to Kant, for example, dignity is built on the concept of personhood, which rests on the idea that there is something inherently special about humanity, as the ‘ultimate purpose of nature on earth’ (Kant, 1790: 317). In the human rights theory of Ronald Dworkin, on the other hand, the essence of humanity does not rest on theological underpinnings but on the idea of political equality and the right of each person to be treated as full and equal members of society. Individual rights, he argues, are "political trumps" held by individuals, that protect citizens and groups from the decisions the majority wants to make in the common interest, when those decisions would infringe their rights (Dworkin, 1977: 133). Because, as he argues, the bulk of the law is based on the majority’s view of the common good, the institution of rights is “crucial, because it represents the majority’s promise to the minorities that their dignity and equality will be respected” (Ibid: 205).

The latter leads to the recognition of the freedom of human beings to decide for themselves what is right and wrong and what they want to do with their body or not. Consequently, the only reason for interference by the State with the life and freedom of individuals is when harm is done to others, the so-called ‘harm-principle’, as developed by John Stuart Mill (1985).⁵⁰ The former refers to the idea that every human being has an intrinsic worth, simply as an innate consequence of human existence, and has its roots in (classical) natural law

⁵⁰ The harm principle, as elaborated by John Stuart Mill in his essay *On Liberty* (1859), holds that the sole end for which society may rightfully interfere with the liberty of its members against their will is to prevent harm to others. His or her ‘own good’ is not a sufficient warrant (Mill, 1985).

theories and Judaeo-Christian heritage, in which the dignity of human beings is derived from their being created in the image and likeness of God. From this perspective, law may impose measures for the benefit of the person concerned, even if the person concerned does not agree (De Blois 1998). As such, the two principles are to some extent incompatible and can lead to very different outcomes, as exemplified by the French case on the criminalisation of clients of sex workers discussed in Chapter 6.

2.6.4 REPRESSION IN THE NAME OF HUMAN DIGNITY

There are several problems with using the concept of ‘dignity’ to justify repressive measures. One of the main problems is the lack of a definition: what exactly is meant by ‘dignity’, whose rights are violated, whose dignity is at stake and why, and, most importantly, who decides whose dignity is violated or not? In line with Cunningham (2018), Haveman (2000) argues that the opacity of the concept is not such a problem when it involves behaviour about which there is a high degree of consensus, such as the prohibition on torture. It becomes problematic, however, when 'dignity' is used as an argument to justify prohibitions on behaviour about which there is no such consensus, especially when the citizens whose dignity is supposedly being violated do not feel that way themselves. As an example, Haveman cites the debate on prostitution as a violation of human dignity. However, what this 'dignity' is, he says, remains unclear, a problem that is masked by its proponents by claiming that all prostitution is forced. Faced with sex workers who claim to practice their profession in complete freedom, their only defence is to "take the concept of violence to its maximum abstraction and claim that these sex workers are brainwashed" (Ibid: 60). "Used in this way," he concludes, "human dignity is nothing more than ordinary 'bourgeois decency', whether or not it is interwoven with divine judgements. (...) "It remains the dominant middle class that determines how people should behave with each other and what poses a threat to their families and society" (Ibid: 60. Translation by MW).

It becomes even more problematic when the ‘defence of human rights’ is used as an argument to legitimise repressive measures against a specific group of citizens by the state. As Haveman points out, human rights are not so much about what citizens may do, but what society – in the form of the state – may not do: “Human rights are not about protecting society against the citizen, but about protecting the citizen against society” (Ibid: 61). The primary function of human rights is to protect citizens from an intrusive state: human rights limit the power states may exercise over their citizens. In addition to these so-called negative obligations – the obligation of states to not unjustifiably interfere with the exercise of a right – states may also have a positive obligation to actively take measures to provide the conditions for enjoying a right and to protect citizens from violations of their human rights. In some cases, protection may even justify repressive measures. If, however, as argued by Haveman (2000: 61), “the citizens whose human rights one pretends to protect through repression do not feel themselves affected in their dignity, the boundary between what the state may and may not do is crossed: violation and protection of human rights become the same”. When the defence of human rights is used to justify repression of sex workers by the state, “the concept of human rights becomes an empty shell”.

In the above section I discussed the contested relationship between sex work and human rights. I especially looked at the concepts of dignity and self-determination and how these tie into the ‘prostitution is violence against women and a violation of human dignity’ discourse put forward by the alliance between abolitionists, radical feminists, and conservative Christian groups.

In the next section I discuss the ‘dark side’ of human rights and other critiques and limitations of human rights. However, a full exploration of the critiques of human rights and how different theories of human rights construct the concept of humanity and universality is beyond the scope of this thesis.

2.7 THE DARK SIDE OF HUMAN RIGHTS AND OTHER CRITIQUES AND LIMITATIONS

At a fundamental level Kapur (2006), a postcolonial feminist legal scholar, discusses what she calls, ‘the dark side of human rights’. Starting from a postcolonial perspective, she argues how a hierarchy of humanity is produced in and through the human rights discourse, depicting human rights as a contested terrain where different visions of the world are fought out.

Arguing that the liberal subject, which lies at the heart of the human rights project, cannot survive without the existence of an ‘Other’, she examines the various ways in which a range of subjects continue to be denied inclusion in the human rights project. As an example, she describes how gender essentialism continues to inform anti-trafficking initiatives and contemporary feminist politics, with representations of women from developing countries as victims, infantile, incapable of decision making and in need of rescue. While other ‘Others’, such as the sex worker “with her contaminating agenda, and the migrant subject, intent on disrupting the social cohesion of distinctive western states” are cast as a threat, contaminant or evil to be contained and purged should it prove too threatening’ (Ibid., 2006: 680). Yet, rather than advocating the rejection of human rights, she stresses the need to address their complicity in interventions that harm more than help and to recognise that human rights are as much a site of power as any other politics of inclusion and exclusion, of who belongs and who does not.⁵¹

In a similar critical way, Costas Douzinas (2007) argues that whether one finds the essence of humanity ‘in a genetic code’ (Fukuyama, 2002) or in transcendental characteristics and the universal ethics of human species (Habermas, 2003), “the empirical person who enjoys the ‘rights of man’, [...] is and remains a ‘man all too man’ – a well-off citizen, a heterosexual,

⁵¹ See for more on the coloniality of human rights and the thinking of humanity in terms of degrees, that one can be more or less human, Maldonado Torres (Maldonado-Torres, 2017) and Shenila Khoja-Moolji (Khoja-Moolji, 2016), who examines how the discourse of human rights constitutes particular bodies as human and others as subhuman, inhuman, and bestial through articulations of vulnerability and empowerment.

white, urban male”:

In other words, the accidental surface differences of race, colour, gender, ethnicity have been consistently defined as inequalities supporting the domination of some and subjection of other, despite common underlying factor X (Douzinas, 2007: 54)

In that sense, he states, one could write the history of human rights as “the ongoing and always failing struggle to close the gap between the abstract man and the concrete citizen; to add flesh, blood and sex to the pale outline of the ‘human’” (Douzinas, 2002: 455). There is no definitive or conclusive definition of humanity, he argues: “Humanity's mastery, like God's omnipotence, includes the ability to redefine who or what counts as human [...]” (Ibid, 2002: 455). This renders the ‘human’ of human rights an “empty signifier”, but at the same time it carries an enormous symbolic capital, that turns the 'human' into “something that combatants in political, social and legal struggles want to co-opt to their cause, and [which] explains its importance for political campaigns” (Douzinas, 2002: 456). While Kapur analyses how the human rights discourse itself produces a hierarchy of humanity, Douzinas (2007: 65) criticises how human rights have been coopted and become part of the vocabulary of the ruling elite, rather than their prime end of resisting domination and oppression.

Other criticisms of human rights are that they are too narrow, that they are conflicting and can act as a mask for political decisions and that they promote the power of the state to decide whether a person is worthy of rights. Carol Smart, for example, argues that human rights are too narrow to redress structural inequalities (Smart, 1989: 140). Because human rights take abstract individuals as their basic unit, they would be ill-equipped to focus on social institutions and relations, such as gender, class or race (Frazer & Lacey, 1993: 54). Formal equality for women, for example, has not (automatically) led to improvement of their social and economic position, as argued by Elizabeth Kingdom (1991). Moreover, the acquisition of rights can give the impression that a power gap has been resolved, slowing down the process

of addressing the underlying causes (Smart, 1989: 144). Nevertheless, Smart and others (Malik, 2001; Smart, 1989; Williams, 1991; West, 2003) argue that the importance of the struggle for equal rights should not be underestimated because so many groups and individuals do not have them. Even when formal rights do not eliminate structural inequalities, using the language of rights, they argue, can also be effective in putting inequalities on the political agenda and mobilising popular support, which can be a catalyst for changing attitudes towards marginalised groups and has been a successful tool for other emancipatory movements, such as the gay rights movement..

A critique that particularly resonates with sex workers is that making claims under legal rights, rather than challenging the power or the state, promotes the state as sovereign since it is the state that has the power to grant or withhold rights (Smart, 1989) and to decide whether an individual is worthy of personhood for the purpose of rights recognition (Douzinas, 2000). In this way, Douzinas (2007: 65) argues, human rights have been transformed from a discourse of rebellion into one of state legitimacy, diplomacy and legal claims, moving the struggle for rights from the streets into the court room. However, even when rights claims fail, they can give rise to increased rights consciousness, “so that individuals and groups may imagine and act in light of rights that have not been formally recognized or enforced” (Minow, 1987: 1867). Similarly, Sally Merry argues how the rights framework can help grassroots movements by providing “a radically different frame for thinking about the relations of power and inequality in society” (Merry, 2006: 180). Moreover, as Malia Malik notes, ‘asserting minority interests in litigation can be a focal point for involving both the relevant minority and the majority as well as acting as a catalyst for a wider political movement’ (Malik, 2001: 291).

Sex workers may also be reluctant to engage with the state because of fear for further encroachment of the state in their lives. However, rights also give them a tool to renegotiate

the relationship with the state, to challenge laws and practices that encroach into their private lives, and to make their interests more difficult to ignore, as will be discussed in the next chapters.

A further critique holds that human rights are indeterminate and conflicting: rights claims can be countered by a resort to competing rights (Smart, 1989). This is particularly evident in the discussion around sex work, where the competing rights claims of the sex worker and the abolitionist movement can lead to very different outcomes, as exemplified by the Spanish and French case discussed in Chapter 6. Because decision-makers often have to make judicial or legislative decisions between conflicting rights claims, it is argued that rights become a smoke screen for political decisions (Kennedy, 2002). As argued by Tushnet, the indeterminacy of rights allows the parties claiming or denying a right to manipulate the facts surrounding the right and its potential consequences to fit their agendas and, more importantly, allows decision-makers - whether in parliament or the courts - to accept whichever account suits their prejudices (Tushnet, 1984: 1373). This is particularly relevant for sex workers, not only because of the competing rights claims of the sex worker and abolitionist movements and their divergent views of the same reality, but also because sex work policies are ‘morality politics’, which are (among others) characterised by their resistance to facts (Hendrik Wagenaar & Altink, 2012b). As Jane Scoular argues, “sex workers’ rights not only have to confront the state but also must face ‘a dominant feminist discourse that has struggled to accommodate the voices and experiences of sex workers’” (Scoular, 2015: 102).

2.8 CONCLUSION

From the literature review, three key themes arise: dignity and self-determination; victimhood, agency and consent; and the conflation of sex work and trafficking. Like stigma, these themes have in common that they all relate to the ‘humanness’ of sex workers, that is the extent to which sex workers are perceived as ‘full human beings’ with the corresponding entitlement to

human rights protections. All three themes relate to (essentialist) ideologies on gender roles, femininity, masculinity and sexuality, including concepts of what constitutes ‘true’ or ‘natural women’ versus ‘tainted’ or ‘unnatural’ women and ‘good’ sex versus ‘bad’ sex.

As discussed by among others Mbago and Pheterson (Mgbako, 2020; Pheterson, 1989, 1996), since the seventies sex workers across the world have started to use the human rights framework to claim legitimacy and advocate for their human and labour rights, expressed in the slogan ‘sex workers rights are human rights’. However, fed by the dominant anti-trafficking discourse, sex workers’ human rights are attacked by an increasingly influential coalition of traditional abolitionists, radical feminists, Christian groups and ‘left wing’ liberals who advance the view that sex work is violence against women and a violation of human dignity (e.g. Bernstein, 2018; Vanwesenbeeck, 2017; Wagenaar, 2018). What they have in common is their “commitment to an ideal of amatively coupled heterosexuality, one that cannot imagine a place for prostitution outside the scope of women’s exploitation” (Bernstein, 2018: 19).

Significantly, as the literature review shows, both those who consider sex work violence against women and a violation of human dignity and those who advocate for the recognition of sex work as work draw on human rights arguments to support their view. Whereas the abolitionist movement refers to the principle of dignity, sex worker organisations call upon the principle of self-determination and the right to make their own choices about their bodies. Both principles, dignity and self-determination, can be considered to be the basis of human rights (De Blois, 1998). Yet they can lead to very different outcomes. Whereas framing sex workers' rights as human rights affirms sex workers’ humanity and denounces their dehumanisation as ‘deviant others’ (Mgbako, 2020), the framing of sex work as a violation of human dignity has the opposite effect of dehumanising sex workers and reinforcing existing stigma (Cunningham, 2018).

The overarching theme that runs through the abolitionist framing of sex work as violence against women and a violation of dignity and the conflation of sex work and trafficking, is that of female victimhood. A key concept in abolitionist discourse is the notion that no woman can voluntarily consent to sex work. As critics of the abolitionist view argue, by uniformly representing sex workers as victims and denying them the capacity to consent, the abolitionist discourse deprives sex workers of agency. As argued by Ward, it reduces sex workers to the status of children, banishes them from the public debate, and removes the obligation for states to consider core human rights such as equality before the law: “It produces the death of the sex worker, the person who consents to the act of selling sex” (Ward, 2019: 2). They become objects instead of subjects: ‘seminal spittoons’ (Mac & Smith, 2018).

In all three representations of sex work the human rights framework itself is used to place sex workers *as sex workers* outside the human rights system as holders of rights and to reinforce particular sexual norms that reify emotional and relational intimacy or, more particularly, the white middle-class heteronormative and monogamous model of ‘good’ sexuality, while excluding and punishing those who transgress them. To describe the interweaving of feminism with punitive political agendas, Bernstein coined the term “carceral feminism”: a feminism that is compatible with police batons (Bernstein, 2012, 2018). For carceral feminists sexual violence, prostitution and trafficking are the fault of ‘bad men’, who need to be punished, while “the power relations of patriarchal capitalism, the austerity programmes that push poor women into selling sex (...) and the border regimes that make migrant women dependent on traffickers” remain outside the analysis (Phipps, 2020: 47).

A second theme running through the abolitionist campaign for increasing state control and criminalisation of sex work is the relation between class, race and trust in the state, criminal law and the police (e.g. Bernstein, 2018; Mac & Smith, 2018; Vanwesenbeeck, 2017). The

abolitionist view also represents a classist and racist view about on whose side the law and the authorities are. This permeates every discussion where white middle-class non-sex working feminists advocate for the criminal justice system as solution to social and other problems, the type of carceral feminism Elizabeth Bernstein (2018) analyses.

Thirdly, the abolitionist campaign for increasing state control and the further criminalisation of sex work cannot be separated from anti-migration policies, fears of 'being flooded' by foreign prostitutes, and the identification of women and sex work as symbols of the threatened nation (e.g. Calderaro & Giametta, 2019; Kulick, 2003; Scarlett, 2023).

Finally, starting from a postcolonial perspective, Kapur (2006) argues how a hierarchy of humanity is produced in and through the human rights discourse, what she calls 'the dark side of human rights'. While Kapur analyses how the human rights discourse itself produces a hierarchy of humanity, Douzinas (2007: 65) criticises how human rights have become part of the vocabulary of the ruling elite, transforming human rights from a discourse of rebellion into one of state legitimacy and legal claims, moving the struggle for rights from the streets to the courtroom. Other criticisms of human rights are that they are too narrow to redress structural inequalities, that they are conflicting as any claim can be countered by a competing claim and that as such they can become a smokescreen for political decisions, and that they promote the power of the state as it is the state that has the power to give or withhold rights. At the same time, several authors argue, the value of human rights as a political tool and the importance of the struggle for equal rights should not be underestimated because so many groups and individuals do not have them.

CHAPTER 3. RESEARCH METHODOLOGY

3.1 INTRODUCTION

This chapter presents my methodological approach, including the research design, methods of data collection and limitations of this study. It begins with the background to my study, the research questions and how the research was influenced by my own positionality. It then discusses my methods of data collection, sampling strategy and data analysis. It concludes with a section on ethical considerations.

This research grew out of my involvement in the anti-trafficking and sex worker rights movement since the late 1980s in various capacities, paid and unpaid, and my growing awareness of the nature and extent of human rights violations against sex workers, as well as my (critical) commitment to human rights as a lawyer and human rights advocate. As one of the pioneers of the Dutch Foundation Against Trafficking in Women (STV),⁵² I have worked on addressing exploitation and abuse of migrant women in the sex industry from the mid-1980s onwards. However, over this period I have become increasingly critical of the anti-trafficking framework. I witnessed how the concept of 'trafficking', rather than being a tool to protect people from exploitation and abuse, became a convenient and popular instrument for states to justify repressive laws and policies against (female) migrants and sex workers at the expense of their safety, health and rights (GAATW, 2007; Vanwesenbeeck, 2018; Wijers, 2015; 2021). This development was diametrically opposed to my own experience in working with victims of trafficking, which had taught me that it is precisely the lack of rights, illegality and stigma that create the conditions for abuse with impunity. This led me to become increasingly involved in the sex worker rights movement, putting into practice the principle, as one of the slogans of the

⁵² The Dutch Foundation against Trafficking in Women (in Dutch: Stichting Tegen Vrouwenhandel (STV)) was founded in 1987 and was one of the first NGOs in Europe that addressed 'trafficking in women', as at that time the definition of trafficking was limited to women and minors.

sex workers' rights movement puts it, that 'only rights can stop the wrongs'.

I am also a typical product of the Dutch history of cooperation between anti-trafficking and sex worker rights organisations, stemming from the second-wave feminist movement, in which Dutch feminists began to challenge the traditional division between 'good' women who deserved protection and 'bad' women who could be abused with impunity.⁵³ By challenging the 'whore stigma' as an instrument to control female sexuality and mobility, feminists made prostitutes' rights central to all women's rights (Pheterson, 2001). Sex workers and feminist activists together argued that the principle of self-determination should also apply to prostitution and that the right of women to control their own bodies should give them the right to sell sexual services with the same labour rights and protection from violence and abuse as any other worker. Significantly, it was the Department of Emancipation of the Ministry of Social Affairs and Employment that was tasked in the 1980s with studying and proposing legislative changes to guarantee the rights of sex workers. At the same time, trafficking in women was recognised as a form of sexual violence: if a person is forced into prostitution or is subjected to violence, exploitation, abuse or deception in the course of their work, the law should protect them (Wijers & van Doorninck, 2009).

A common feminist principle at the time, which formed the basis of Dutch policy on violence against women, was that combating violence and advancing rights were two sides of the same coin. This principle was exemplified by the longstanding joint advocacy of the sex workers' organisation the Red Thread and the Foundation against Trafficking in Women (STV) for the lifting of the ban on brothels (Wijers, 2018), in which I was actively involved. At the same time, I played an active role in the development of the Dutch policies on human trafficking and the

⁵³ See for the Dutch history of challenging the traditional division between 'good' and 'bad' women Pheterson, 1986, 2001; De Vries, 2010; Wijers, 2018. See also 'The Pink Thread, feminists support the Red Thread', at <https://sekswerkerfgoed.nl/the-pink-thread-feminists-support-the-red-thread/>, accessed 8 April 2024.

negotiations on the UN Trafficking Protocol as part of the Human Rights Caucus, an alliance of NGOs working in the field of human rights, trafficking and sex workers' rights (Ditmore & Wijers, 2003).

I was also involved in the first European sex workers conference on sex work, human rights, labour and migration in Brussels in 2005 (ICRSE, 2007) as one of the co-organisers, and one of the founders of the International Committee for the Rights of Sex Workers in Europe (ICRSE), of which I was a board member from 2005 to 2013. I am currently a board member of SekswerkExpertise, the Dutch platform for the advancement of sex workers' rights, and from 2016 to 2022 I again was a board member of ICRSE, which was renamed the European Sex Workers Alliance (ESWA) in 2021.

As will be discussed later in this chapter, this background not only influenced my research question, but also my methodological approach and approach to interviewing, and is therefore important to present at the beginning of this chapter.

3.2 RESEARCH QUESTIONS

In my research, I seek to explore the role of human rights in the public, political and legal debate on sex work laws and policies in Europe, as used by the sex worker rights movement and other actors, including civil society actors, lawmakers and the courts. In addressing this question, I explicitly take a sex worker and sex worker rights perspective, paying particular attention to the discourses and other mechanisms that exclude sex workers from human rights protections and debates about policies and laws that affect their work and lives.

The overarching question of this research is: how are human rights mobilised in the advocacy for sex worker rights? More specifically the questions underpinning this research are:

- How do sex worker rights organisations and activists mobilise human rights to advocate for civil, labour and human rights? How do they use strategic litigation

and (international) human rights mechanism?

- How do sex worker rights organisations and activists view and respond to the deployment of human rights by the anti-sex work movement, legislators and courts in debates on sex work laws and policies?
- How do sex workers experience and negotiate their exclusion from fundamental human rights protections and as legitimate partners in debates about their lives and work?

In addressing these questions, I also aim to explore what opportunities and challenges sex workers face in using the human rights framework to advance their rights, and what lessons can be learned from their experiences to more effectively mobilise human rights to realise the rights of sex workers. My findings relate to the sex worker movement and the European region broadly, including not only Western, Southern, Central, Eastern and Southeastern Europe, but also Central Asia. As such they cannot be simply generalised outside Europe.

As mentioned above, I'm primarily interested in looking at the perspectives of the sex workers' rights movement and the protection of the human rights of sex workers. This is partly due to my own positionality as researcher and activist committed to improving the human rights of sex workers, and partly because more research has already been done on the anti-prostitution movement (e.g. Bernstein, 2012; Sauer, 2019) and sex work policies and their impact in general.

A key document in my study is the *Declaration on the Rights of Sex Workers in Europe* (ICRSE, 2005b) and the accompanying *Manifesto* (ICRSE, 2005a). The Declaration lists the key rights that all individuals in Europe, including sex workers, enjoy under international human rights law, and the policies and practices that the signatories believe are the minimum necessary to ensure that these rights are respected and protected. The Manifesto examines the current inequalities and injustices in the lives of sex workers and the sex industry and sets out the signatories' vision of the changes needed to create a more just society. These two documents

were followed by the Network of Sex Work Projects' *Consensus Statement on Sex Work, Human Rights and the Law* (NSWP, 2013), which identifies eight fundamental rights for sex workers: the right to associate and organise; the right to be protected by the law; the right to be free from violence; the right to be free from discrimination; the right to privacy and freedom from arbitrary interference; the right to health; the right to move and migrate; and the right to work and free choice of employment. Taken together, they provide a good insight into what sex workers consider to be essential rights, what these rights should mean in the context of sex work, and what it would take to achieve them. These human rights are also shown as commonly threatened throughout this study and are at stake in the case studies from Germany, France and Spain. They are mentioned here to provide more context to my sampling selection.

3.3 METHODOLOGY

For my study I used a qualitative mixed methods approach consisting of semi-structured qualitative interviews, documentary analysis and case law analysis. I chose a qualitative research approach because I seek to develop an in-depth analysis of the use of human rights and the role of sex workers in the debate on sex work laws and policies. Qualitative research is best suited to this aim as it attempts to understand, describe and explain social phenomena from an inside perspective and facilitates the collection of rich descriptions, explanations, narratives as well as emotions and feelings (Gibbs, 2018). As argued by Mason (2002: 1), qualitative research enables us to explore “the understandings, experiences and imaginings of our research participants and the ways that social processes, institutions, discourses or relationships work”.

As a feminist, I take a social constructivist approach to knowledge production. I do not believe in universal truths or “disembodied scientific objectivity” (Haraway, 1988: 576), but recognise that knowledge is socially situated and constructed through interaction with others. As Haraway says, “Feminist objectivity is about limited location and situated knowledge, not

about transcendence and splitting of subject and object” (1988: 583). In other words, there is no ‘objective reality’. The world is made up of socially constructed realities and we know the world through the medium of our constructs and ideas. As a researcher, I try to uncover the process of social construction and understand how the social world is given meaning by all those who live in it, including myself.

Within qualitative approaches, feminist research methodology recognises that researchers are not neutral observers but active participants in the construction and constitution of research outcomes. This scholarship emphasises that (elements of) the researcher’s background, views and experiences all shape the research project (Cunningham, 2018, referring to Harding, 1987). These affect not only my view of knowledge production but also my approach to qualitative interviews as a method of data collection as well as my relationship with participants (see also section 5.2). I use the term participant rather than interviewee or respondent to acknowledge that as a researcher I am “part of the research process and the power relations that permeate the research encounter” (Edwards & Holland, 2013: 5, referring to Hammersly 2012). Like my participants, I bring my own ideas, concepts, experiences and identities to the interview situation, all of which play a role in the interaction with my participants (Edwards & Holland, 2013: 5). For example, I carry my own experiences – and frustrations – about the high level of fact-resistance of sex work policies as ‘morality politics’ (Hendrik Wagenaar & Altink, 2012b), and the political indifference to the impact of laws and policies on the safety, well-being and rights of sex workers. It is the interaction between my participants and myself in the interview situation that creates knowledge (Edwards & Holland, 2013: 17). Therefore, I do not see the fact that I am part of sex worker rights activism and bring my own experiences with me as a lack of detachment or ‘objectivity’, but rather as an added value that generates knowledge and insights that would not otherwise be shared in the same way.

Furthermore, I share with feminist approaches a focus on gendered inequalities and power embedded in social and political structures (Edwards & Holland, 2013), which form the core of my research topic. From an emancipatory perspective, my research is also political as I am interested in sex workers as a marginalised and discriminated against group who seek to have their voices heard “to understand the world in order to change it and achieve social justice” (Edwards & Holland, 2013: 20, quoting Lather, 1991).

My methodological approach is also inspired by grounded theory (Glaser & Strauss, 1967) in the sense that my work is data-driven and that I have been guided by my data in reframing some of my questions and focus. Iterative analysis of my data during the data collection process led me to adapt my research to new questions and insights that emerged during this process. In this way, my data 'showed me the way'. The choice of an inductive qualitative method is consistent with my view of research as an interactive and circular or iterative process in which my insights inform my fieldwork, but my fieldwork also informs my insights (see also the section on data analysis below). For example, the interviews with my German participants made it clear that I needed to look more broadly than I had intended at the process that led to the adoption of the Prostitutes Protection Act (ProstSchG) in order to gain insight into the role of human rights in the political debate and the ways in which sex workers were silenced. Similarly, the interviews showed that I needed to make my questions more open and ask for the use of rights in general, rather than limiting them to the concept of human rights. At the same time, I developed themes based on insights from my personal history, previous research, and the literature review, which shaped my analysis and could be described as a more deductive, theory-driven approach.

Finally, I analyse the role of human rights in the public, political and legal discourse on sex work in the countries addressed, and how representations of sex work and sex workers shape the debate and corresponding 'solutions' in terms of policy choices. The underlying

assumption is that the way sex work is represented in the media, policy reports, political debates, parliamentary speeches, etc. has an impact on the design of policies (Wagenaar, Amesberger & Altink, 2017: 11).

3.4 DEVELOPMENT OF THE RESEARCH DESIGN

This project started before the coronavirus pandemic and evolved as it unfolded. As a result, I had to adapt my research design in response to the travel and other restrictions imposed by Covid-19. Whereas my original design focused on three case studies, specifically Germany, France and Spain, I expanded the scope of my research to include interviews with sex worker rights activists from the three main European sex worker networks and national sex worker organisations in five European countries.

A major reason was that Covid-19 made it impossible to travel and conduct the planned face-to-face interviews with French sex worker activists. By then I had done most of my planned interviews in Germany and the most important ones in Spain, but none in France.

Unfortunately, my Spanish and French are not good enough to conduct interviews without an interpreter. This is not a problem for face-to-face interviews, where I knew I could always count on a sex worker/colleague willing to help, but it is problematic for online interviews. I, therefore, had to limit my participants in France to English-speaking sex worker rights activists. In addition, due to the pandemic, most countries banned sex workers from working, while at the same time excluding them from access to financial support that other workers were entitled to. This meant that many sex workers were struggling to survive and most sex worker organisations were busy trying to raise emergency funds for their colleagues (Fedorkó et al., 2021; Platt et al., 2020). This made it uncomfortable - and it felt inappropriate - to ask them for their time to be interviewed for my research.

To compensate for these limitations, I broadened the range of participants to include sex

worker rights activists from the three main European sex worker networks, ESWA (European Sex Workers Rights Alliance), SWAN (Sex Workers' Rights Advocacy Network) and TAMPEP (European Network for the Promotion of Rights and Health among Migrant Sex Workers), as well as national sex worker organisations in Belgium, the Netherlands, Denmark, Greece and Ireland. The added value of this expansion is that it puts my case studies into a broader perspective, allows for a greater diversity of countries and policy regimes to be covered, and provides insight into the role of the three main European sex worker networks.

Secondly, I was not able to organise face-to-face focus groups with my research participants to discuss the preliminary findings of my research. In my original research design, I had aimed to use more participatory forms of research (Chevalier & Buckles, 2013) because I believed that both the quality and the usefulness of the study would benefit if sex workers were involved not only as 'information givers' but also as co-analysers to give direction to the study. I had therefore planned to discuss the preliminary findings of the case studies in a series of focus groups with the participants and possibly with a selection of other stakeholders, such as NGOs working with/supporting sex workers and legal experts. Such discussions would have been both a form of data collection, capturing the participants' reflections and analyses, and a shared learning experience from which both the participants and I, as the researcher, could benefit. The unexpected 'interference' of Covid, however, made it impossible to organise such face-to-face focus groups. No matter how much I appreciate the opportunities provided by online communication, I do not consider online meetings to be able to equal the mutual inspiration, reflective richness and dynamics that are possible in in-person focus groups. I therefore decided to abandon the planned focus groups and the more participatory part of my study had to be rethought. In the future, however, I intend to organise one or more meetings after the completion of my thesis to discuss the

results of my research with my participants.

3.5 DATA COLLECTION METHODS AND SAMPLING STRATEGY

My data collection methods included a combination of qualitative interviews, document analysis and case law analysis, as discussed in more detail later in this chapter. In addition, an important dimension of my study is the knowledge I have accumulated in my various roles in both the trafficking and sex work fields as a service provider, policy officer, lobbyist, trainer, researcher and human rights and sex worker rights activist over the last 30 years.

As a feminist researcher, I am primarily interested in the perspective of sex workers and sex worker rights. First and foremost, I wanted to listen to their views, experiences and analyses. They are my primary source of data and make up the majority of my participants. As the topic of my dissertation concerns the debate on sex work laws and policies, listening to their experiences and valuing their expertise is not only a feminist principle but is also consistent with the principle of participation that underpins a human rights-based approach, particularly the right of people to participate in decision-making processes that affect their lives and well-being (see e.g. Global Network of Sex Work Projects (NSWP), 2021).⁵⁴

3.5.1 SELECTION OF CASE STUDIES & ADDITIONAL COUNTRIES

Initially, I wanted to address my research questions through three case studies: the introduction of mandatory registration and counselling in the 2016 Prostitutes Protection Act (ProstSchG) in Germany, the constitutional challenge to the criminalisation of clients by sex workers in France, and the contested right to form a trade union in Spain. I chose these three countries because a) all three countries have adopted repressive anti-sex work laws or policies; b) all three countries have an active sex workers' rights movement as well as a strong

⁵⁴ The right to participation in political and public life is enshrined in e.g. Article 25 of the International Covenant on Civil and Political Rights (ICCPR). A broad definition of participation is “taking part in the process of formulation, passage and implementation of public policies” (Gaventa & Valderrama, 1999).

abolitionist/anti-sex work movement; c) in all three countries, sex workers not only actively engaged in the public and political debate, but also used collective litigation to challenge repressive laws and policies; and d) in all three cases, as mentioned above, different (human) rights are at stake, including the right to life, privacy, freedom of choice of occupation, health, freedom from violence and inhuman and degrading treatment, and the right to unionise. Taken together the three selected case studies cover a significant part of the rights listed by the NSWSP as discussed in section 2 (NSWP, 2013). The choice of these three case studies made it possible to compare the public and political debate and its similarities and differences in the three countries, as well as the way in which the respective national courts have dealt with the conflicting claims of the sex worker rights and abolitionist movements. Below I outline in more detail the reasons for selecting three cases and their specific contexts and value for this study.

The adoption of the 2016 German ProstituiertenSchutzGesetz was chosen as an example of increased state control and surveillance of sex workers as described by Jahnsen & Wagenaar (2018). Among other measures, the law introduced mandatory registration of sex workers and mandatory counselling to determine whether they had entered sex work voluntarily and had the mental capacity to make a conscious decision to do so. The case is particularly interesting as the Netherlands has been discussing the introduction of a similar law since 2008.

Following similar legislation adopted in Sweden in 1999, France is one of the countries that, despite strong opposition from sex workers and other stakeholders, criminalised the clients of sex workers under the influence of so-called 'end demand' campaigns which aim at abolishing prostitution by criminalising the demand for sexual services. It is the first country where sex workers have gone to court to challenge the criminalisation of their clients. In 2018, nine associations, including the French sex workers' union STRASS and Médecins de Monde, as well as several individual sex workers, filed a complaint with the French Council of State.

After losing the case in the national court, 261 sex workers, supported by 19 community, health and feminist organisations, took the case to the European Court of Human Rights, where it is now pending. The Spanish case was chosen as an example of how 'dignity' is used to restrict sex workers' rights to organise. According to the (feminist) Spanish government, OTRAS, the newly formed union of sex workers, violated "freedom of association, human dignity and the principle of equality" by referring to sex work as work (El Diario, 2018b; GAATW, 2018b). Two women's NGOs and the Public Prosecutor's Office took legal action against OTRAS, demanding its cancellation. After 4 years of litigation, in 2021, OTRAS won its case before the Supreme Court, which ruled that OTRAS' claim to freedom of association was within the boundaries of Spanish law (Tribunal Supremo, 2021).

As mentioned above, halfway through my research (mid-2021) I expanded the scope of my study to include interviews with representatives of national sex worker organisations in five European countries. These were Belgium, Denmark, Greece, Ireland and the Netherlands, and the three main European sex worker rights networks, namely the European Sex Workers Alliance ESWA (formerly ICRSE), SWAN, the Eastern European Sex Workers Network, and TAMPEP, the European Network for the Promotion of Health and Rights among Migrant Sex Workers. Founded in 2005, ESWA/ICRSE is a sex worker-led network representing over 100 organisations in 30 countries across Europe and Central Asia. Its aim is to ensure that the voices of sex workers are heard and that their human, health and labour rights are recognised and protected. It works to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy that leads to long-term, systemic change. In 2021, it changed its name from ICRSE to ESWA and at the same time changed from a foundation to an association. I will therefore use ESWA rather than using different names for different times. The Sex Workers' Rights Advocacy Network (SWAN) was founded in 2006 and is a regional network in Central and Eastern Europe and Central Asia that advocates for

the human rights of sex workers. Its member organisations work with or are led by sex workers, and sex worker leadership is an organising principle of the network. TAMPEP, the European Network for the Promotion of Rights and Health among Migrant Sex Workers, is a network led by migrant sex workers that focuses on advocacy and networking. It aims to promote the rights and health of migrant and mobile sex workers across Europe, recognising the diversity of the migrant sex worker community as a cross-cutting basis for empowerment. It originally started as a project in 1994.

The criteria for selecting further countries in addition to my three cases were the presence of an ongoing debate on sex work policies and an active sex worker rights organisation. Other factors I took into account were geographical spread, different policy regimes, and diversity of sex worker organisations, including the representation of migrant and LGBTI workers. To classify the different sex work policies, I used the typology developed by Petra Östergren (2017). She distinguishes between three types of policies: ‘restrictive’, which aim to restrict the sex work sector in order to protect society and/or those selling sex from harm, based on an understanding of sex work as a negative social phenomenon that should be limited; ‘repressive’, which aim to eradicate the sex sector based on the moral premise that the sale and purchase of sexual services harms society and individuals; and ‘integrative’, which is based on a multifaceted understanding of commercial sex and aims to integrate the sex work sector into the social, legal and institutional framework in order to protect those selling sex from harm.

The countries I have chosen represent these three different regimes. Belgium is moving from a restrictive policy to an integrative system and has recently adopted a new law aimed at decriminalising the sector. Denmark has a restrictive policy where any third-party involvement is criminalised and sex work is seen as a social problem. Ireland has a repressive policy and criminalised clients in 2017, whilst Greece has a restrictive policy where sex work

is considered a professional activity but is heavily regulated. The Netherlands follows the opposite trend to Belgium, moving from an integrative policy to an increasingly restrictive regime in which the sex industry is legal but heavily regulated.

I had also planned to include Serbia and/or Ukraine in order to include Eastern European countries. However, the sex worker organisation in Serbia appeared to be no longer active, and contact with the Ukrainian sex worker organisation was interrupted by the Russian invasion of Ukraine. I was also unable to arrange an interview with a sex worker rights activist in Finland (which has a restrictive policy regime where sex workers are mainly seen as victims in need of social services and clients are partially criminalised), as they did not respond to my emails despite previous contacts.

3.5.2 METHODS OF DATA COLLECTION

Below I discuss in more detail the several methods I used for data collection: *in casu* qualitative interviews, document analysis, and case law analysis.⁵⁵ My methods of data collection varied slightly per chapter. I first discuss the use of qualitative interviews and then proceed to specify my methods of data collection per chapter.

Qualitative interviews: gaining access, recruitment and sampling strategy

As mentioned above, the focus of my study is on the perspective of sex workers and sex worker rights. Therefore, the majority of my participants were sex workers, whilst others were working for a counselling organisation, researcher-activist, lawyer, or policy officer. I later refer to them collectively as sex worker activists and allies. All participants were experts in their fields, which justifies the qualification of the interviews as expert interviews.⁵⁶ Expert

⁵⁵ If the original language of an interview or document, e.g. a court ruling, press release or newspaper article, is German, French, Spanish or Dutch, I am fully responsible for the translation.

⁵⁶ See for the importance of community-based expertise in sex work research e.g. Ferris et al., 2021 and Lebovitch & Ferris, 2018.

interviews can be described as qualitative interviews based on a topical guide, focusing on the expert's knowledge, which is broadly characterised as specific knowledge in a particular field of action (Meuser & Nagel, 2009). According to Kaiser (2014) experts are identified on the basis of their specific knowledge, their position in the community, or their status (see also: Döringer, 2021). In my case, all participants had specific knowledge of sex work from different perspectives and were involved in the (debate on the) development of sex work laws and policies. Most of them were or had been active in the sex worker rights movement, often in leadership positions and for a long time.

The sampling of my participants was “theoretically driven” (Mason, 2002: 6): I did not have a fixed sample at the outset but built my sample as my study progressed, depending on what I needed to answer my research questions. However, practical limitations and considerations also played a role, including the restrictions posed by Covid-19, the accessibility of participants, and time constraints. In total I conducted 28 semi-structured interviews with 26 sex worker rights activists and allies, totalling more than 48 hours of taped interviews: 9 in Germany, 3 in Spain, 4 in France, 2 in Belgium, 1 in Ireland, 1 in Denmark, 1 in Greece, 2 in the Netherlands, in addition to activists from ESWA, SWAN and TAMPEP (see Table 1).

Table 1. No. of interviews

Country	No. of participants
Germany	9
Spain	3
France	4
Belgium	2
Ireland	1
Denmark	1
Greece	1
Netherlands	2
ESWA	1

SWAN	1
TAMPEP	1
Total	26

I recruited my participants through my personal network of sex worker organisations and allies, service providers, sex work researchers, and other stakeholders, many of whom I knew personally. In most cases I approached them by email, explaining my study and enclosing the participant information sheet (see annex 1⁵⁷). Where appropriate I referred to previous personal contacts or people who had referred or introduced me to them.

In general, sex workers are seen as a relatively hard-to-reach group. They tend to be over-questioned, overworked, especially in the times of Covid-19, and legitimately wary of research findings being misused. However, the fact that I had been involved in sex worker rights for a long time meant that I knew many activists personally or by name, and many knew me personally or at least by name. This created a level of trust and made it relatively easy to recruit my participants. In several cases, not only was I interested in talking to them, but they were also interested in talking to me. Also, none of my participants raised the issue of payment. Trust has several dimensions: willingness on the part of my participants to give me their time and expertise and trust that I will not hurt them, and responsibility on my part to use the data in a way that does not cause harm and to 'give something back' (for more discussion of the role of trust in research see Emmel et al., 2007; Guillemin et al., 2018; Palmer et al., 2020). The importance of trust was illustrated by the fact that one of the participants felt confident to speak freely with me because she trusted that I would not misuse the data, but did not want the recording and/or anonymised transcription of the interview to be archived in the

⁵⁷ I used two participant information sheets: one for the three cases studies with the original design of the study, and one with the adapted design of the study for the interviews with the national sex workers' organisations and the European networks.

UK Data Archive for use by future researchers.⁵⁸ In contrast, one of the other participants did not want to remain anonymous but wanted the interview to be accessible to as many people as possible, especially other sex workers. In my view, this contrast reflects the impact that being a marginalised, discriminated against and silenced group has in this field: on the one hand, there is a legitimate fear that anything you say can be used against you and, on the other, there is a need to express your experiences and knowledge as loudly as possible to as many people as possible.

Methods of data collection per chapter

My methods of data collection varied slightly from chapter to chapter. For the chapter on the meaning and use of human rights by the sex worker movement (Chapter 4), I draw primarily on interviews with 10 sex worker rights activists of the three European networks and the national sex worker organisations in the five selected countries, supplemented by documents produced by various sex worker organisations and networks. For the German case study (Chapter 5), I draw on 9 interviews with German sex worker rights activists and allies, documents produced by them and other stakeholders in the context of the debate on the Prostitutes Protection Law (ProstSchG) and the challenge to the law made before the Constitutional Court, as well as press releases, magazines, newspapers, academic articles, websites, and research reports and articles on the impact of the law. In the case studies on France and Spain (Chapter 6), I focus particularly on the use of litigation. In this chapter, I draw on interviews with French and Spanish sex worker rights activists and two of the lawyers involved in the respective court cases as well as newspapers, academic articles, and press releases. I also analyse the court rulings and other legal documents relating to the

⁵⁸ I included this question in my consent form after one of my German participants pointed out the relevance of documenting history and archiving research to keep it accessible for future research and learning. I suggested the UK Data Archive because it is associated with the University of Essex and I am familiar with it from the workshops organised by the UK Data Service.

respective court cases. Below I discuss my data collection methods in more detail. I start with the three case studies because they formed the original design of my study and shaped the interviews with the European networks and national sex worker rights activists.

Germany

In the case of Germany, I started by making a preliminary list of possible participants who were actively involved in the debate on the ProstSchG, based on my own knowledge and contacts. I then asked for advice from German sex worker rights activists I knew from my personal network, which led to some new names. My criteria for the selection of the German participants were that they were actively involved in the public, political and/or legal debate around the ProstSchG, and that they were sex workers, sex worker rights activists, or worked for an organisation that supported the rights of sex workers, for example by submitting statements during the consultation process on the ProstSchG. I also aimed to have a geographical spread in my participants but this was only partially achieved. The majority of my respondents were based in Berlin. One reason for this is that Berlin is the seat of the Bundestag and the main site of protests against the ProstSchG. Another is that after March 2020 it was no longer possible to travel and conduct face-to-face interviews due to Covid-19.

In August 2019, I attended a workshop on police and sex work organised by one of the researchers I interviewed and also the open day (for non-sex workers) of the annual German sex workers conference, titled “World of Whore Craft”, both in Berlin. Some of my participants also attended these meetings. They put me in touch with two new German participants, one of whom worked for the Social Democratic Party (SPD) and had been involved in the negotiations with the Christian Democratic Union (CDU) on the ProstSchG. Thanks to previous email correspondence and my participation in the meetings, I was able to arrange most of the interviews during my time in Berlin. I conducted two interviews later: one in December 2019 and one online in April 2022.

In total, I conducted nine interviews in Germany with leading activists from BeSD, the German trade association for erotic and sexual services; an ex-worker from Hydra, a sex worker-led advocacy and counselling centre for sex workers; a board member of a counselling centre for sex workers and member of the national alliance of counselling centres Bufas; a sex worker rights activist from a local association; two German PhD researchers involved in the sex worker movement; and the SPD worker. They were all involved in the public and political debate on the ProstSchG from different perspectives.

I was not able to interview everyone I wanted to for various reasons, including the staff member from AidsHilfe who had been dealing with the law, as she had left the organisation and her replacement did not feel knowledgeable enough about the issue. In the case of the Women's Council and the German Association of Women Lawyers, I did not receive a reply to my emails. I had been in personal contact with the latter at the time of the debate on the ProstSchG because of a similar bill pending in the Netherlands, but my contact did not reply despite several attempts. I was also unable to arrange an interview with anyone from KOK, the German anti-trafficking organisation, and Dona Carmen, the organisation that filed the constitutional challenge to the ProstSchG on behalf of 25 plaintiffs, most of whom were sex workers in addition to brothel owners and clients. I was also unable to arrange an interview with the Berlin-based organisation of black sex workers, who were new to me and whom I met very late in my research. Table 2 provides a breakdown of each of the interviews conducted in Germany.

Table 2. Overview of participants German case study. Interviews held during Augustus 2019 (7), December 2019 (1) and April 2022 (1)

Organisation/role	Recruitment strategy	Mode of interview	Duration interview
BesD, Berlin	pers. contact	F2F, individual	1.00
BesD, Berlin	pers. contact	F2F, individual	1.53

BesD, Berlin	Berlin workshop	F2F, individual	1.07
Hydra, Berlin	snowballing: through another participant	F2F, individual	2.04
Counselling centre Bochum; alliance of service providers BUFAS	snowballing: through another participant	F2F, individual	1.35
Researcher/ally, Berlin	pers. contact	F2F, individual	1.35
Researcher/ally, Berlin	pers. contact	F2F, individual	1.06
SPD worker, Berlin	Berlin workshop	F2F, individual	1.24
BesD, Hamburg	snowballing: through another participant	Online, individual	1.52
9 participants			13 hr 36 m

Spain

For my interviews in Spain, I used my personal connection with the communications officer of OTRAS, the sex workers' union, which I had developed through my membership of the board of ICRSE. She introduced me to their general secretary. I contacted my OTRAS participants by email and translated my participant information sheet into Spanish. They in turn put me in touch with their lawyer. I had several interviews with OTRAS: one with the communications officer alone, one with her and the secretary general, and one with both of them and their lawyer (see Table 3). I travelled to Barcelona for the interviews in February 2020. I had originally planned to do more interviews in Spain outside Barcelona at a later date but Covid made this impossible.

Table 3. Overview participants Spanish case study. Interviews held in February 2020.

Organisation/role	Recruitment strategy	Mode of interview	Duration interview
OTRAS	pers. contact	F2F, individual	0.20
OTRAS	snowballing: through another participant	F2F, joint interview	1.45

Lawyer OTRAS	through OTRAS	F2F, joint interview	1.25
			3 hr 30 min

France

I also used my personal contacts to recruit my participants in France. In one case, I was introduced by the coordinator of ESWA. I focused on sex workers and allies involved in the case filed at the national Constitutional Court and the European Court of Human Rights (ECHR). I was personally involved in the court case at the European Court of Human Rights (ECHR) as the organiser and author of a Third-Party Intervention on behalf of 25 Dutch NGOs. Participants included two of the leading members and original litigants of STRASS, the key sex worker organisation in the court case, and the lawyer from Médecins du Monde who was acting as intermediary between the complainants and the case lawyers. I also spoke to one of the researchers involved in a study on the impact of the criminalisation of clients to gain background information, whom I met in Berlin. See Table 4 for an overview of the interviews.

Table 4. Overview participants French case study. Interviews held in August 2019 / October 2021-April 2022

Organisation/role	Recruitment strategy	Mode of interview	Duration interview
Strass/complainant	pers. contact	online	1.22 1.02
Strass/complainant	snowballing: through another participant	online	3.07
Lawyer/Medecins du Monde	pers. contact	online	3.07
[Researcher/ally	Berlin workshop	F2F	1.52]
4 participants			10 hr 30 min

National sex worker organisations and European networks

For my interviews with national sex workers organisations I used my personal contacts in the

case of Belgium, the Netherlands and Ireland. In the first two countries, I was personally involved in the national debate on sex work policies. In the case of Denmark, I did not know individual members of the Danish sex worker organisation, so I approached the organisation for an interview. I knew the Greek sex worker organisation and had contact with them through their membership of ESWA. Before approaching the Greek Sex Workers Empowerment Network I had tried to arrange an interview with Positive Voice by means of an introduction by the coordinator of ESWA but ultimately lost this contact. See Table 5 for an overview of these interviews. In the case of the European networks, I knew each of the participants personally from a shared history. See Table 6 for an overview of the interviews with European networks.

Table 5. Overview participants national sex worker organisations. Interviews held July 2021 - May 2022

Country/organisation	Recruitment strategy	Mode of interview	Duration interview
Belgium, UTSOPI	pers. contact	F2F	1.40
Belgium, UTSOPI	pers. contact	F2F	1.43
Denmark, SIO	through the organisation	online	3.22
Greece, Sex Workers Empowerment Network Athens	through the organisation	online	1.31
Ireland, SWAI	pers. contact	online	3.28
Netherlands, SekswerkExpertise/ various sex worker initiatives	pers. contact	F2F, individual & joint interview	51
Netherlands, SAVE (migrant sex workers)	snowballing: through another participant	F2F, joint interview	49
7 participants			13 hr 24 min

Table 6. Overview participants European sex worker networks. Interviews held in April and August 2021

Organisation	Recruitment strategy	Mode of interview	Duration interview
--------------	----------------------	-------------------	--------------------

ESWA	pers. contact	online	1.59
SWAN	pers. contact	online	2.26
TAMPEP	pers. contact	online	1.46
3 participants			6 hr 11 min

3.5.3 DESIGN AND DYNAMICS OF THE INTERVIEWS AND POSITIONALITY

I chose to use semi-structured interviews because their loosely structured form gave my participants maximum space to share their views, experiences and analyses and to reflect on the research questions. It also gave me, as researcher, the flexibility to follow my participants and adapt my questions and responses to the situation (Edwards & Holland, 2013: 29). Being actively involved in the sex worker movement myself made my position one of a co-activist or colleague rather than a 'neutral' outsider and created a level of mutual understanding and trust that gave me access to the interview participants, but also made it easy for both my participants and me to speak freely. It also influenced my approach to interviewing as a reciprocal process, characterised by a loosely structured, informal and non-hierarchical form. They were reciprocal in the manner suggested by Oakley (1981: 49), who states that “that there can be ‘no intimacy without reciprocity’, in which researchers give something of themselves back to their participants”. For me, this means that not only do I hope that my study will contribute to better protection of the human rights of sex workers, but also that I wanted the interviews to be interesting for both myself and my participant, and that I want to write in a way that is accessible to them.

The position of colleague-activist also influenced the issue of payment, which was not raised by me or my participants. There were several reasons for this. One was the personal relationship and shared history of collaboration with several participants, for example through my activities in the Dutch sex worker movement and ESWA. Bringing in money would have changed the relationship and created a kind of hierarchical aspect. In retrospect, this may also have something to do with the fact that my first identity is not as an academic or researcher.

My academic 'career' is more of a 'side step' and the closure of the paid part of my working life. Another is that some of my participants had a paid position in the movement or an allied organisation. In some cases the issue was simply not raised. There is only one case where I think the fact that I did not raise the issue when I first contacted them (after meeting them at a conference) acted as a barrier. This was with a sex worker organisation that was new to me and that I had never worked with before. Of course my being a strong insider also created blind spots, as any position will. One of my blind spots probably is that I mostly worked with activists and organisations that I knew before, so I may have missed out newer sex worker organisations, that may have a different perspective than the more established ones.

The interviews were informal, usually lasting between one and three and a half hours, and often took the form of a dialogue and shared reflection and analysis rather than 'question and answer'. In many cases, and depending on the participant, the interviews also included an element of sharing experiences, views and reflections, which I hope made the interviews also interesting for my participants. The advantage of being well-known in the world of sex worker rights is that people were interested and felt free to talk to me, which created space for analysis and reflection. The pitfall, however, is that it became more of a shared discussion or conversation than an interview, and my reactions to my participants' answers became too leading. This was also a learning process for me. An important way of learning and correcting myself was to listen back to the recordings of the interviews.

My ideal interview was with a German participant, sitting outside in the garden of the workplace she shared with colleagues with time to establish a personal relationship, drink a coffee and develop an interesting conversation based on my questions. Such a setting was less possible with online interviews, which are much more driven by technology and therefore involved dealing with different time zones, varying connection quality, and time limits, and in which it is also more difficult to pick up on and respond to non-verbal communication. I

would have much preferred to conduct all my interviews face-to-face, as I myself feel more comfortable in direct personal contact and feel that the atmosphere in a face-to-face setting is more conducive to the kind of open analysis, evaluation and reflection that I invite my participants to engage in. However, although I expected in-depth interviews to be more difficult and less informative online, I was surprised to find that my negative expectations were not confirmed. Although I would still prefer face-to-face interviews, the online interviews also developed in the same direction as the face-to-face interviews in terms of depth and the establishment of an interesting and rich conversation. This experience confirms earlier findings on telephone interviews, which showed that the quality, quantity, nature and depth of responses did not differ significantly from face-to-face interviews (Sturges & Hanrahan, 2004).

At the same time, I am aware of my limitations and of my own privileged background as a Dutch, middle-class, highly educated, white, cisgender, non-sex worker. Had I been a sex worker myself, for example, or black or transgender, this would undoubtedly have influenced the interviews, as did the fact that I am not. However, it is also precisely this privileged background that has allowed me to openly engage with sex workers and the sex workers' rights movement over the last 35 years without worrying about being stigmatised by association and without having to fear losing my job, being harassed or raped 'because it's my job'. To an extent, my privileged background has been the facilitator of my activist career and of this very PhD and has acted as both a limitation and a 'vector'.

In regard to a feminist standpoint epistemology, my privileged standpoint is not based on a shared experience as sex worker, but rather on a shared experience of a collective political struggle as sex worker rights activists, which strongly colours my perspective, my relation with participants and my knowledge production. This is relevant as my research does not focus on the lived experience of sex workers in their sex work but on their lived experience as

sex worker rights activists. This makes me both an insider and an outsider. I am an insider as a sex worker rights activist and an outsider as a non-sex working academic researcher. This dual positioning gives me a potentially advanced epistemic location. At the same time I have a feminist perspective based on a (shared) experience as a woman, although I am also very aware of the differences between women's experience and the diverse and socially situated production of knowledge. In my case my knowledge is, for example, situated in being white, middle-class, a lawyer, and Dutch. Moreover, there is clearly not one single feminist standpoint. In that sense, I agree with Hartsock where she argues that "it is not a single privileged perspective, but rather the interplay between different perspectives that gives us the best kind of knowledge" (Welton, 1998: 8, quoting Hartsock).

As my study testifies, starting off research from sex workers' lived experience not only generates less partial and distorted (and more objective) accounts of their lives but also knowledge of the social political order within which their lives are enmeshed and the ways in which male-dominated ideologies distort reality (Harding, 1993; Bowell, n.d.). One side of enquiry that emerges from sex workers' lived experience includes their struggle for human rights: why are sex workers excluded from the rights other workers and citizens are entitled to?⁵⁹

The interviews followed three slightly different item lists (see annex 2). The first was designed for interviews with participants in the case studies and included a number of specific questions about the situation in the country concerned, for example about the organisation of the opposition to the disputed law; whether (human) rights arguments played a role in the debate; what factors they believed led to the law being passed; what underlying views about sex work, women, sexuality and migrants played a role in the debate; and considerations

⁵⁹ See for more on feminist standpoint theories *The Feminist Standpoint Theory Reader* (Sandra Harding, 2004).

about turning to litigation. The second was directed to the three European sex worker rights networks and included questions about the role of the network in supporting national sex worker organisations in using a human rights framework. The third was aimed at national sex worker organisations. The last two lists started with the question of what the slogan 'sex workers' rights are human rights' meant to the participant and/or their organisation.

All item lists included questions about the most important (human) rights they were fighting for and the main challenges facing sex workers; the use of (human) rights by the sex worker rights movement and other actors; the value, risks and barriers of using a human rights framework; the role of human rights in the public and political debate, including the role of dignity arguments; the conflation of sex work and trafficking, and the framing of sex work as violence against women; the role of sex workers in the debate on sex work policies; the use of litigation and international human rights mechanisms; and lessons learned from the participants' experiences. All participants received a participant information sheet prior to the interview and signed a consent form at the beginning of the interview (face-to-face interviews) or gave their oral consent (online interviews).

3.5.4 DOCUMENTARY DATA

A second source of data were textual sources. In the case of Germany, these included parliamentary documents on the ProstSchG; position papers from sex worker organisations and other stakeholders, such as health organisations and service providers, submitted to parliament during the consultation process on the ProstSchG in 2015; press releases; advocacy documents, such as petitions and open letters to parliament, briefings and public comments from sex worker organisations and allies; blogs; interviews; newspaper clippings and magazine articles; and articles and comments on the websites of relevant organisations (including abolitionist organisations). I collected documents through online searches and existing contacts, the websites of the German government and sex worker organisations and

allies, and with the help and advice of my participants. I also consulted publications in academic journals and reports on the impact of the Act. I retrieved most of these documents between August 2019 and February 2022; they cover the period between 2013 and 2022.

In the case of France, I collected advocacy documents and press releases from sex worker organisations, newspaper clippings and documents relating to the adoption of the law criminalising clients, including the advice of the National Advisory Commission on Human Rights and the Human Rights Defender. I also collected publications in academic journals, newspaper clippings, research reports and press releases from sex worker organisations on the impact of the law. I accessed some documents online and others through my participants. I retrieved most of the documents between September 2018 and May 2022. Most of them cover the period 2013 – 2021, with the exception of relevant case law which may be older.

In the case of Spain, I used advocacy documents produced by OTRAS, the Spanish sex workers union, and ESWA; governmental documents; press releases; newspaper clippings; YouTube videos of OTRAS press conferences; and articles in academic journals. I retrieved some documents online and some through my participants. I retrieved most of the documents between September 2018 and May 2022. Most documents cover the period 2018-2021.

I also analysed various documents produced by the three European sex worker rights networks and the global sex worker network NSWP, as well as documents related to the (use of) shadow reporting as one of the mechanisms under the Women's Convention (CEDAW). The first I retrieved mostly from the websites of the various sex worker networks. The latter included shadow reports submitted by European sex worker organisations to the Women's Convention's Supervisory Committee as part of its reporting mechanism, the Committee's Concluding Observations, and documents related to the drafting of General Recommendation 38 on Trafficking in Women and Girls in the Context of Migration (GR 38) produced by CEDAW, sex worker organisations and other stakeholders. Most of the documents I retrieved from the

UN Treaty Body Database on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CEDAW website. Others I had co-authored myself, as I was part of the lobby around the drafting of GR 38 (e.g. Brooks-Gordon et al., 2020; Dutch CEDAW Network, 2020). I retrieved most documents between December 2018 and March 2022. They cover a period from 2009 to 2022.

3.5.5 CASE LAW

A third source of data included case law and other legal documents, as in all three case studies I especially focussed on the use of public litigation by sex workers organisations. Resources included court rulings, documents produced by the litigants, press releases, newspaper articles and other documents pertaining to the court cases studied.

For the German case study, I used, among other documents, the book that Doña Carmen e.V. published about their court case against the ProstSchG, in which they collected all legal documents, press releases and newspaper articles about the case (Doña Carmen e.V., 2019). For the French case, I analysed the rulings of the Council of State and the Constitutional Court, as well as the various documents relating to the case before the European Court of Human Rights (ECHR). These included the application to the ECHR on behalf of several NGOs and 261 sex workers and the observations setting out the legal arguments presented by the applicants to the Court, the communication between the ECHR and the French government, and the various so-called Third Party Interventions (TPIs). One of the parties submitting a Third Party Intervention was a coalition of 25 Dutch organisations, of which I was a co-organiser and author. I also studied the relevant case law of the French national courts, the ECHR, and the UN Human Rights Committee. My sources also included newspaper articles, briefings, press releases, and other documents produced by STRASS, Médecins du Monde and ESWA, as well as email correspondence between the various organisations and individuals involved in the submission of Third Party Interventions supporting the sex worker position. For the Spanish case, I analysed

the rulings of the Audiencia Nacional and the Supreme Court, as well as the documents submitted to the court by OTRAS, which I was able to access through my participants. Sources also included press releases and newspaper articles about the case.

I collected the various documents between May 2019 and March 2022. I gained access to some of these documents through my participants and my own involvement in the French case, and retrieved others from public websites, including HUDOC, the database of the European Court of Human Rights. The documents mainly cover the period from 2015 to 2021, with the exception of some older French and ECHR case law.

References to these documents are not cited here, but when relevant, citations and references to them are included in the chapters that follow

3.6 DATA ANALYSIS

In order to analyse my data I used qualitative thematic analysis (Braun & Clarke, 2012; Caulfield, 2022). After transcribing the interviews, I began my analysis by coding the German interviews and the interviews with the national and European sex worker organisations using NVivo. In this way, I organised my data into categories and subcategories leading to the identification of different themes, each with a number of subcategories. In developing these themes I used a combination of inductive data-driven and deductive approaches. On the one hand, the themes emerged from my data. On the other hand, I also used key theoretical and conceptual themes derived from my literature review, previous research, and my personal knowledge and experience.

In my analysis of the use of human rights by the sex worker rights movement (Chapter 4), I build in particular on the work of Merry et al. (2010) on the different dimensions of the mobilisation of human rights by social movements as law ‘from below’. Within this context, I also address the use of treaty mechanisms, in particular the submission of shadow reports

under the Women's Convention (CEDAW). During the interviews, I also took notes which were useful in helping me to interpret my data during the post-interview data analysis process.

I did not use NVivo to code the interviews with the French and Spanish participants but worked directly from the transcriptions. This was because there were fewer interviews and many of the themes that emerged in the interviews coincided with, overlapped with, or complemented the themes identified in the interviews with the other participants. A large part of the interviews and documentary analysis also focused specifically on the use of litigation as a means of achieving social change, its organisation, its barriers and conditions, the process of going to court, and the use of human rights by the French and Spanish courts in their rulings. In addition to the work of Merry et al. I draw here on the work of McCammon and Mcgrath (2015) on legal conscientiousness and legal mobilisation.

Secondly, based on the interviews, newspapers and other documents, I analysed the role of human rights in the public, political and legal discourse and how notions of dignity and self-determination, female sexuality, good and bad sex, female victimhood, agency, consent, and human trafficking shaped the debate. In doing so, I draw on the work of Haveman (2000) and De Blois (1998) on dignity and self-determination. I also build on the work of Cunningham (2018), who analysed the discursive role of 'dignity talk' and its connection to the stigmatisation and the dehumanisation of sex workers, building on Laclau and Mouffe's (1985) Discourse Theory. Following Cunningham's use of the term 'dignity talk', I coined the term 'victim talk' as a discursive tool and its connection to the dehumanisation and exclusion of sex workers.

Furthermore, I build on Birgit Sauer's (2019) study of the use of affective framing to mobilise shame and disgust in anti-sex work mobilisation in Germany and Austria. Building on the role of emotions and affects in social movement theory (Gould, 2004), she analysed how abolitionist strategies use affects as mobilising resources to exclude and silence sex workers.

While Sauer used texts from abolitionist online campaigns and websites as her source and starts her analysis from the abolitionist perspective, I started from the sex workers' rights perspective. In this way, my analysis and Sauer's are complementary.

Finally, I draw on postcolonial feminist legal theory, in particular the work of Ratna Kapur (2006; 2018), to critically examine human rights and their normative claims.

3.7 ETHICAL ISSUES

I adhered to the principles of ethical sociological research as set out by the University of Essex's Guidelines of Ethical Approval and the British Sociological Association's Statement of Ethical Practice (British Sociological Association, 2017). The key principles that guided my research can be categorised into the following themes: protecting all participants from harm, obtaining appropriate informed consent, ensuring participant confidentiality, and maintaining professional integrity. The wishes of my participants varied in terms of confidentiality. For example, one participant wanted the transcription of the interview to be shared with the European Alliance of Sex Workers (ESWA) to make it accessible to other sex workers. Another asked permission to publish parts of the interview on her organisation's website. In some cases, it was almost impossible to maintain participants' complete anonymity due to their public profile and actions as sex worker rights activists. I discussed with them how I should refer to them. In several cases, I sent them the text of the chapter and asked them to check their quotes to see if they were comfortable with them. In one case I changed a quote on the request of the participant. With the permission of the participants from ESWA, OTRAS, STRASS and Médecins du Monde I am using their public names, i.e., the names they themselves use in their activist work. In the other cases I use a pseudonym.

I sent the transcript of the interview to all participants, giving them the opportunity to check that I had understood everything correctly and to comment, add or correct the text. A few

participants used this opportunity to make corrections or add information.

In addition, in line with the feminist approach taken in this research, I have given careful consideration to the ethical issues relating to the way in which I conducted the research and my responsibilities to the participants.

I decided not to offer participants any payment for their time. This did not seem appropriate given the relationship between myself and my participants and the fact that in most cases we knew each other, as well as the subject matter of the interviews. As discussed above, none of my participants raised the issue of payment.

3.8 CONCLUSION

In this chapter, I presented my methodological approach and rationale. I discussed the background to my study, the development of my research question and design, my data collection methods and sampling strategy, and my data analysis. In doing so, I reflected on my own positionality and epistemological positioning as well as the limitations of the study. I concluded the chapter with the ethical considerations that informed my study.

CHAPTER 4. THE MOBILISATION OF HUMAN RIGHTS BY THE SEX WORKER MOVEMENT

4.1. INTRODUCTION

This chapter discusses how sex worker rights organisations mobilise human rights in their advocacy. It explores how they understand the meaning of human rights, what they see as their value, and how they use them, but also the limitations of the human rights framework they encounter and the dilemmas they struggle with. It also examines how the anti-sex work movement is mobilising human rights to advocate for the further criminalisation of sex work, and how sex worker organisations are responding.⁶⁰

It is important to note that the level of public and political debate about sex work varies greatly in the countries where my participants are active.⁶¹ In Greece, for example, sex work is technically legal but subject to a wide range of regulations which means that many sex workers are effectively working illegally. There is little public debate about sex work and politicians do not seem to be interested in the issue. In Denmark, the debate has calmed down after a period of heightened discussion about criminalising clients (which was eventually rejected) between 2007 and 2015. SIO, the Danish organisation to which my participant belongs, was founded in 2008 in response to this debate. In the Netherlands, policies have become increasingly restrictive since the lifting of the ban on brothels in 2000 and the introduction of municipal licensing systems. Since 2008, a bill has been under discussion to introduce compulsory registration of sex workers and the criminalisation of clients and 'facilitators' of sex workers who are unwilling or unable to register. In Ireland, the debate on the Criminal Law (Sexual Offences) Act 2017, which criminalised the purchase of sex and

⁶⁰ The chapter is based on interviews with ten sex worker rights activists. They are active in one or more national sex worker rights organisations in Belgium, Denmark, Greece, Ireland and the Netherlands, and/or in one of the three main European sex worker rights networks. These are the European Sex Workers Alliance (previously ICRSE), the Eastern European and Central Asian Sex Workers' Rights Network (SWAN), and the European Network for the Promotion of Health and Rights among Migrant Sex Workers (TAMPEP).

⁶¹ See Chapter 3 section 5.1 for more information about sex work policies in the selected countries. A more extensive discussion of sex work policies in European countries can be found in Jahnsen & Wagenaar, 2018.

doubled the penalties for brothel keeping, has reignited following the announcement of a government review (Department of Justice Ireland, 2020) and the recent publication of an Amnesty International report documenting how the law facilitates the targeting and abuse of sex workers (Amnesty International, 2022). In Belgium, the lack of state support and social protection for sex workers during Covid led to a renewed debate on sex work policy. Thanks to the successful advocacy of UTSOPI, the Belgian sex workers' organisation, progressive politicians, and a committed Minister of Justice, a bill to decriminalise sex work was passed in March 2022. At the European level, ESWA faces challenges from both a strong lobby from the abolitionist European Women's Lobby (EWL),⁶² a coalition of women's rights NGOs that defines sex work as violence against women and seeks to 'free' Europe from sex work(ers) by criminalising clients, and a European Parliament that remains deeply divided on the issue of sex work.

In what follows, I begin with a brief, more general discussion of the functions of human rights and the mobilisation of human rights as global law 'from below', as Merry et al. (2010) call it, and their three dimensions. From there, I start with the first question I posed to my participants: "What do human rights in the slogan 'sex workers' rights are human rights' mean to you?" Drawing on the three dimensions identified by Merry et al., I then discuss the ways in which the sex workers' movement mobilises human rights in their activism. While recognising the value of human rights, my participants are also critical of their limitations, particularly in protecting migrant sex workers, and raise a number of dilemmas around their use. They also discuss how abolitionists mobilise human rights against sex worker rights, thus turning human rights into a double-edged sword. The chapter concludes with a 'Discussion

⁶² See for the EWL campaign "Together for a Europe free from Prostitution" to criminalise clients of sex workers: <https://www.womenlobby.org/Together-for-a-Europe-Free-From-Prostitution?lang=en>, accessed 12 April 2024. See for the launch of the EWL campaign,

The Guardian, "Do we really want to rid Europe of its Sex Workers" (Brooks, 2012), <https://www.theguardian.com/commentisfree/2012/dec/09/europe-sex-workers>, accessed 12 April 2024. For more information about the role of the EWL in EU anti-prostitution policies, see Outshoorn (2018: 369-370).

and Conclusions' section.

4.2. HUMAN RIGHTS MOBILISATION AS 'LAW FROM BELOW'

As discussed in the literature review, human rights perform different functions. They can be used to protect individuals from interference by the state and other citizens, as entitlements to make claims on the state, and as a linguistic tool to reframe narratives around sex work and position sex workers as rights bearers. As Dworkin argues, rights can not only protect from interference by both the state and other citizens, but can also be a way to protect individual or group interests which do not fit with the interests of the majority: “a right to do something even when the majority thinks it would be wrong to do it” (Dworkin, 1977: 194). This is what he refers to when he calls rights ‘political trumps held by individuals’ (Ibid: 133). The latter also requires states to create the conditions for the protection of rights, including the possibility for (groups of) individuals to call upon the state for protection against interference with their rights by other citizens. An example of the use of the protective function of human rights is the *Bedford v Canada* case in which Canadian sex workers challenged repressive prostitution policies, and the French case which I discuss in chapter 6, where 261 sex workers and allies challenge the criminalisation of clients.

Human rights can also be used to claim entitlements from the state in terms of health, education, food or physical safety (Nussbaum, 1999) or to challenge the structures underlying sex work. An example are the claims made in the World Charter of Prostitutes Rights (Pheterson, 1989: 41) in terms of services, housing and social benefits. Finally, the language of rights can be a powerful political tool to make sex workers' voices heard, giving sex workers recognition as part of the political community and making it harder to ignore their interests. Rights are important not only for their content, but also as a symbol of the recognition of sex workers as human beings who deserve to be treated as “full and equal members of society”, as conceptualised by Dworkin (1977). For my participants, this is the

first meaning of the slogan 'sex workers' rights are human rights'.

As discussed in this and the next chapters, all of the above functions are important to sex workers and are mobilised by sex worker rights organisations to address violence, challenge repressive laws and policies, demand a voice in laws and policies that affect them, address stigmatisation, and fight for social justice. How sex worker rights organisations frame their claims may vary depending on the nature of the claim and the broader context. The following section discusses the different ways in which social movements mobilise human rights as distinguished by Merry et. al. (2010).

In their case study on the mobilisation of human rights by social movements, Merry et al. (2010) describe how human rights provide social movements with a kind of global law 'from below': a form of cosmopolitan law that subalterns can use to challenge their subordinate position (Santos & Rodriguez-Garavito, 2005). They argue that while the use of the human rights legal system requires extensive legal expertise and political skills, by “using human rights as an ideology of justice and a practice of claims making”, human rights offer “a variety of discursive, political and strategic benefits to social movements, even if they do not mobilise them as law” (Merry et al., 2010: 102).

They distinguish between three different uses of human rights in social movement activism: as a system of international law, as a set of values, and as a vision of good governance, each of which provides resources for grassroots social movements in different ways. The first dimension relates to human rights as a formal legal system, based on conventions and international and regional human rights bodies, such as the European Court of Human Rights. The second refers to human rights as a philosophical and moral system of values, based on the principle of the universality of human rights, which seeks to protect the rights and well-being of all people by virtue of their humanity. Core ideas are human dignity, equality, non-discrimination, protection from state violence and other forms of violence, and freedom. The

third meaning of human rights as a mode of democratic governance, “a mode of governance that upholds human rights” (Merry et al., 2010: 107), is more recent and a product of a merger of human rights with development and democracy projects.⁶³ Human rights as ‘good governance’ emphasizes the process principles of participatory decision-making, transparency and accountability, which are important dimensions of the way human rights are understood to have an effect in the world.

As Merry et al. (2010) notice, the first two dimensions – human rights as a legal system and as a set of values - are in many ways complementary. On the one hand, the legal side of human rights law depends on the work of NGOs that document human rights violations, write reports, and submit information to human rights bodies. On the other hand, the codification of human rights in treaties and conventions ratified by states lends credibility and legitimacy to the human rights claims of social movements.

Yet, there are also contradictions between the legal and moral dimensions of human rights. Merry et al., for example, mention how the pragmatic aspects of law may violate the moral commitments of the value system or, in their words, “mobilising law requires pragmatic compromises and accommodations to the state and state law” (Merry et al., 2010: 125). This tension is especially visible in the limitations of human rights to protect migrant sex workers, as I present below with reference to my empirical data.

In the following section I discuss how sex worker organisations mobilise the three dimensions of human rights: as a set of values and principles, as a vision of good governance, and as a system of law. Before discussing the different dimensions, I start with the question what the

⁶³ The right to participation in public life is enshrined in international human rights law, for example in the Universal Declaration on Human Rights (Art. 21 UDHR) and the International Covenant on Civil and Political Rights (Art. 25 ICCPR). According to Law Insider, meaningful participation means engaging a diverse group of stakeholders who are representative of the communities that policies and programs will impact, not only in consultative roles to provide input, but also to co-plan or lead program development efforts, have access to data and resources to make informed decisions, have decision-making authority, and participate in the analysis of data and program impact efforts .

slogan 'sex workers rights are human rights' meant to my participants.

4.3. THE RIGHT TO HAVE RIGHTS: 'SEX WORKERS ARE ALSO HUMAN'

Having human rights begins with the question of 'who counts as human' and is therefore entitled to human rights. When asked what the slogan 'sex worker rights are human rights' meant to them, this question ran through the responses of almost all my participants. In spite of the (supposed) universality of human rights, many of my participants talked about how their value as human beings is being questioned and how they have to fight for their humanity to be recognised, and to be treated "as full and equal members of society" (Dworkin, 1977) . It was the first theme emerging on the meaning of rights.

For my participants, the slogan meant first and foremost that sex workers are human beings who should be treated in the same way as other human beings with the same rights. As Freja (Denmark) put it, it means respect and dignity, "which means being seen as a human being on the same level as everyone else". Ava (Ireland) commented that the human rights framework would have more value "if we can get Irish people to see us as human beings", while Milena (SWAN) described its core meaning as the recognition of sex workers as human beings, stating that "we are all human, we are all equal and we all have a right to dignity", and that sex workers should not be treated differently because of their choice of work. This also means, Freja (Denmark) added, that there is no different set of rules for sex workers than for everyone else, and that what is harmful to other people is also harmful to sex workers:

If criminalisation is going to hurt everybody else, then it follows that it's also going to hurt sex workers. If the idea is that it's impossible for sex workers to meaningfully employ the concept of consent to their sex life, if that's not a good way of looking at everybody else, then why would it be a good way to look at sex workers? It's really about not suddenly thinking fundamentally differently, and what kind of boundaries and needs they have. It just means sex workers are human beings. And we have to take that concept seriously in every aspect of talking about sex work (Freja).

Significantly, several participants described convincing the public that sex workers are human beings as a crucial part of their advocacy. In the words of Alex (Greece), “we want to try and explain to the general public that we are humans after all”. Or, as Freja (Denmark) described when discussing how the sex worker organisation she belongs to resisted the criminalisation of clients: "I guess we tried to make sure that people saw us as normal people [...], that people could see that this is a real human being". One of the strategies they used, she recalled, was to use a lot of personal stories and (literally) show their own faces, saying:

“Look, here’s an example of a sex worker, I’m an example of a sex worker”. So it was sort of a balance between here's me in a t-shirt and jeans and sneakers, and I have kids, and I have a boyfriend, and I'm a perfectly normal woman who wants the same as everybody else. And then also, sometimes showing this is what life is like at the brothel, and that's also okay. I can be both these things (Freja).

The issue of showing one's face was also raised by Ava (Ireland), who described how repression and stigma in Ireland prevent sex workers from being open about their involvement in sex work and showing their face: "If they show their face, they lose their families". She went on to say that she felt it was her duty to at least show hers because "we need them to see us as human beings":

I think it's hard when you're fighting for human rights in a country where the state doesn't see you as a human [...] My hope is that Irish people will start seeing us as people who are worthy of human rights, who can't be paternalized and spoken over and acted for (Ava).

Asked what human rights meant to her, she said “exactly that”:

to be allowed to house ourselves; to be allowed to live with roommates, partners or family,⁶⁴ to be allowed to earn money to house, clothe and feed ourselves and our children; to be allowed to work together for safety; to be allowed to be honest with

⁶⁴ Under the prohibition on brothel keeping in the Irish criminal code, roommates, partners and family of sex workers whom they work or live with can be prosecuted as pimps. Two sex workers who work together can be prosecuted for brothel keeping.

healthcare providers without fear of deportation; to not have criminal records for sex work that blacklist us from future employment or opportunities for residency or citizenship (Ava).

Also for Alice (Netherlands) the slogan referred to the basic rights all people need. At the same time, she said, “it is weird that there is a slogan for it, as that already shows that they do not have them”.

A second theme is the relationship between human rights and labour rights, and the recognition of sex workers as labourers who contribute to society. Although there is an overlap between human rights and labour rights (see Chapter 2.2), for my participants labour rights meant first and foremost being treated in the same way as other workers and recognition of their contribution to society. They mention the right to work legally and safely with the same rights and protections as other workers, to be able to work together with a friend or colleague for safety and to live with partners, family and children without fear because of their work. They also made a strong link between labour rights and human rights, seeing recognition as workers as a gateway to recognition of human rights. For them recognition as workers was directly linked to recognition as human beings, as equal members of humanity and the political community. This reflects Ronald Dworkin's approach to human rights when he places equality at the heart of human rights, holding that each person should be treated as equal and full member of the community and given equal respect from governments (Dworkin, 1977).

Pascal (Belgium), for example, shifted the focus to sex workers as citizens and workers who are part of society and the economy and who need rights like everyone else "whether you like what they do or not" when he described how sex workers' fundamental rights are not respected "as if they were not citizens like others". Freja (Denmark) also referred to the contribution of sex workers to society when she noted that the state was happy to take their

tax money but unwilling to give them rights in return: "Shouldn't we get rights for this money? We're contributing to society. Why are we not allowed to get the benefits from society that everyone else gets?"

For most participants, human rights and labour rights were closely linked. 'Human rights are sex worker rights' implied for them that sex workers need to be treated in the same way as other workers. Alice (Netherlands) described the recognition of sex work as work as the gateway to human rights when she said:

In the rules [on sex work] there is always discrimination and sex workers are put outside and different from other workers. Because there are no labour rights, people don't have human rights (Alice).

She was not the only one to mention how the lack of recognition of sex work as work and the exclusion from labour rights negatively affect sex workers' access to human rights. Freja (Denmark) also made a direct link between access to "the rights that we technically have but don't have in real life" and the recognition of sex work as work:

I guess the most important thing is to acknowledge that sex work is a job. [...] So, I would say we need the right to de facto be acknowledged, to have sex work acknowledged as a job (Freja).

A third theme running through the responses was the principle of the universality of human rights, referring to what Cunningham (2018) calls 'inherent dignity', the type of dignity invoked in international human rights texts: the idea that whatever sex workers are told or how society and authorities treat them, they have inherent rights simply because they are human. This is what Leona (Netherlands) referred to when she said:

I'm a human person, so it doesn't matter if I am a sex worker or [someone else]. Sex workers are also human [...] So the rights are intrinsic to my person. That should not be questionable (Leona).

A similar idea of universality was expressed by Freja (Denmark) when she discussed the

importance of Amnesty International including the rights of sex workers within the framework of human rights:

I think that's one of the things that made Amnesty's way of talking about it [sex worker rights] very powerful too. That they fit everything into that framework and they're an organization that works exclusively with human rights. So you know just by them having put their stamp on it that that's what it is about (Freja).

From this perspective, human rights offer a framework and language that is instrumental in the development of sex workers' growing rights consciousness, defined by McCammon and McGrath (2015: 129) as the development of a shared group consciousness that allows collective actors to “view their disadvantaged social identities as in violation of their perception of basic rights”. According to them, this is a first step in what is often referred to as 'legal mobilisation', the use of litigation as a means of achieving social change, which will be discussed in Chapter 6. A similar note is made by Minow (1987), when she states that even if rights claims fail, they can give rise to increased rights consciousness, which she describes as “individuals and groups may imagine and act in light of rights that have not been formally recognised or enforced”.

To summarise, in this section I discussed the three layers of meaning of the slogan 'sex workers' rights are human rights' that emerged from the interviews: the struggle of sex workers for recognition as human beings, the relationship between human rights and labour rights, and the universal nature of human rights. In the next section, I will discuss the mobilisation of human rights by the sex workers' movement using the three dimensions identified by Merry et al. (2010).

4.4 HUMAN RIGHTS AS A SET OF VALUES

The three key ways in which the sex worker movement mobilises human rights as a set of values are to address violence against sex workers as a human rights violation and to advocate

for the full decriminalisation of sex work⁶⁵ as a precondition to protect sex workers' human rights; as a framework for advocacy; and as a basis for alliance building across movements and countries, based on a shared commitment to human rights values.

4.4.1 VIOLENCE AGAINST SEX WORKERS AND THE (DE)CRIMINALISATION OF SEX WORK

The discussion about the human rights of sex workers is inextricably linked to the disproportionate levels of violence and other abuses that they experience, often at the hands of the police or other state actors. A key argument for the sex worker movement's call for the full decriminalisation of adult consensual sex work involves the relationship between criminalisation and violence against sex workers. In the words of the participants at the 2022 ESWA Congress, decriminalisation means "to get the police out of sex work".⁶⁶ As argued by Luca Stevenson, the coordinator of ESWA:⁶⁷

We know that there is violence in the sex industry, and this is why we need rights and not more criminalisation, because it's clear that criminalisation increases our vulnerability to violence (Luca).

Ava (Ireland), for example, described how in Ireland sex workers are raided, harassed, intimidated and their money seized by the Gardai, the Irish police, and how brothel-keeping laws are used to prosecute sex workers and evict them from their homes. As an illustration, she cited the case of two young migrant women, one of whom was pregnant, who were convicted of brothel-keeping because they were working together for safety:

And it's funny because the police and everybody else who defends the law keep saying that these laws are to protect women. How? [...] Like the pregnant girl who was put in

⁶⁵ The NSW (2020) defines full decriminalisation as the removal or repeal of all criminal laws that prohibit sex work and related activities. It also includes the removal of all legal oppression beyond criminal laws, including laws that disproportionately affect sex workers, such as laws against vagrancy, public nuisance, obscenity, drug use, homosexuality, and cross-dressing. In Östergren's typology previously mentioned (see Chapter 3.5.1), this would fall under the "integrative approach". In this approach, labour, administrative and commercial law is applied to sex work as to any other service sector, but with specific legislation designed to protect sex workers as an occupational category (Östergren, 2017: 16).

⁶⁶ See for the panel on 'Policing, criminalisation and access to justice': ESWA, 2022a.

⁶⁷ With Luca's permission, I am using his public name. The other names in this chapter are pseudonyms.

prison for nine months for the crime of working with a friend for safety. How, in what way was she protected? [...] I'm talking to people who said they would rather take their own lives than call the police. They would sooner die rather than reach out for them for help (Ava).

Freja talked about how the relationship with the police in Denmark has deteriorated since the government decided to crack down on sex work, and how sex workers have come to fear and hate the police. She described police raids on brothels, sex workers not being allowed to put on clothes and being interrogated naked by a group of male police officers, and the many cases of police violence that her organisation has dealt with:

Things like being raped by a police officer, being threatened into providing free sexual services in return for them not taking you in and charging you with procuring or tax fraud, or whatever they can do. [...] Things like threatening to do this and that if you don't give them a blow job or whatever (Freja).

However, she said, it is virtually impossible to file a complaint because a police officer's testimony in court is viewed as being worth that of two people, meaning it takes three sex workers against one police officer for a complaint to be recognised in court: "That's how they get away with it. They can do whatever they want as long as there are as many of them as there are sex workers". She also described the intersection of police violence with class and race, and how sex workers share their experiences of abusive police treatment with other marginalised groups like homeless people or people of colour. One example is the indifference sex workers face when they try to expose police violence against them:

I don't think people want to realize how bad it is with the police, because it feels so safe and nice to think that the police wouldn't do something like that. And as long as they're not doing it [abusive treatment] to privileged people, so the general middle class and the majority, it's very hard to get people to believe it, because it [complaints] is always coming from people who aren't getting believed anyway, no matter what they're saying (Freja).

The role of class and privilege in the development of repressive sex work laws and policies

was highlighted by Ava (Ireland), who described how the lobby to criminalise clients and increase penalties for brothels was led by religious groups, church-founded NGOs and a female Irish billionaire:⁶⁸

[W]hen you look at the people who brought in these laws [that criminalise clients of sex workers] you've got well-rested, well-connected millionaires versus people with a lot of multi-generational trauma, people from deprived areas, disadvantaged people who have addictions, and also we've all grown up being told we're shit, you know, while the people who brought in these laws think their shit don't stink. They think they can do no wrong (Ava).

Class, race, colour and privilege permeate discussions of sex work in multiple ways. My participants mentioned two of these. First, how, as Mac & Smith (2018) argue, anti-prostitution feminists are predominantly white middle-class women, whereas the targets of the laws and policies they pursue are predominantly migrant, black, poor and trans women. And secondly, as stated by Ava en Freja, the police may be the best friend of white middle-class women, but this is not the case for sex workers and other marginalised and disenfranchised communities. This makes the abolitionist movement and their advocacy for the criminal justice system as the solution to social and other problems deeply classist, the kind of carceral feminism Bernstein (2018) describes.

The regional networks address human rights abuses such as the ones presented above in various ways. For example, Milena (SWAN) talked about how they use human rights techniques such as training sex workers about their rights with the police and setting up collective projects to document human rights violations which formed the basis for several reports on human rights abuses against sex workers in Central and Eastern Europe and Central Asia (e.g. SWAN, 2009, 2014b, 2015). More recently, they have begun to develop national

⁶⁸ She is referring to the heiress of the Waterford Crystal fortune, who is a very influential politician and had an important role in the adoption of the Irish law that criminalises the purchase of sexual services.

networks of trained community members as paralegals who can provide advice and support to sex workers who have been victims of violence or other human rights abuses, help them file complaints, and refer them to a lawyer when necessary.

Several participants underlined the importance of Amnesty International's recognition of violence and other forms of abuse against sex workers as human rights violations and its call for decriminalisation of sex work on the basis of human rights arguments (Amnesty International, 2016a, 2017). Ava (Ireland), for example, described Amnesty's report about the impact of the Irish criminalisation of clients on sex workers as a big step in changing the conversation about sex work in Ireland (Amnesty International, 2022). While sex workers had always challenged the practices of the state and the church, she said, the Amnesty report strengthened their voice and prevented the church and faith-based organisations from pushing their approach unchallenged. Similarly, Freja (Denmark), when discussing their campaign against the criminalisation of clients, mentioned the importance of the support from Amnesty Denmark, which conducted its own independent research and openly stated that it supported sex workers' human rights and decriminalisation.

At the same time, participants pointed to the gap between human rights in theory and the protection they offer in practice. Freja (Denmark), for example, described how sex workers in her country have all the basic human rights in theory, but in practice are treated as outlaws who can be abused with impunity:

[I]n theory all the basic human rights of sex workers are respected in Denmark, in the law and so on. But *de facto* sex workers are raped with impunity, murdered with very little investigation, robbed, beaten, and so on. There's a sense that sex workers are outlaws, in reality. And there's nothing technical we can really point to to say, "Look, we don't have that basic right". But in the reality that's what unofficially happens (Freja).

A key theme running through all the interviews is the mobilisation of human rights to argue

for the decriminalisation of sex work as a primary condition for the protection of sex workers from violence and abuse. Without exception, my participants identified the police as one of the main sources of violence and without exception they linked police violence to the criminalisation of sex work, if only because it gives the police almost unlimited power over sex workers while depriving them of the means to defend themselves against police abuse.

By defining violence against sex workers as human rights violations sex workers organisations added a new frame to their work “for thinking about the relations of power and inequality in society” (Merry, 2006: 180). The experiences of my participants underline how, as Carol Smart (1989) argues, the language of human rights can be a powerful tool for putting inequalities on the political agenda and mobilising support, which can act as a catalysator for changing attitudes towards marginalised groups. A good example is the impact that, according to my participants, Amnesty International's recognition of violence against sex workers as a human rights violation for which states could be held accountable, had on the discourse on sex work. It gave legitimacy to sex workers' claims, recognised them as rights holders and underpinned their demand for the decriminalisation of sex work to protect them from violence and humiliation, particularly at the hands of the police and other state actors. At the same time, however, human rights offer little protection in practice. As Freja (Denmark) outlined, on paper sex workers have all the human rights, in practice they can be abused with impunity.

To address human rights violations, sex worker organisations use a range of human rights strategies such as documentation and publication of human rights abuses, human rights training for sex workers and other stakeholders, the development of resources to promote human rights consciousness, and victim support. These strategies, in turn, feed into the use of human rights as a legal system, for example to help victims obtain redress and as a basis for submitting information to human rights bodies, as discussed in section 4.6. In this sense, as

Merry et al. (2010) point out, the moral and legal dimension of human rights are complementary.

4.4.2 HUMAN RIGHTS AS A FRAMEWORK FOR ADVOCACY

My participants cite several reasons for using human rights as a framework for their advocacy: it is a recognised system that places sex workers' rights in a global perspective; it provides a set of minimum standards and a basis for building alliances; and it is positively valued by the majority of the population and politicians. As Luca (ESWA) said “it is difficult to say that you are against human rights”:

So I think for us it is useful to say, yes, 'sex workers' rights are human rights' because it's putting it in this more global family of marginalized communities that need rights the same as other people (Luca).

Milena (SWAN) recalled that when SWAN was founded in 2000, 'human rights' was not a familiar concept: “We didn't talk about human rights in our socialist countries, it was like (laughs), it was considered achieved, we are all equal”. She explained how, coming from a background of HIV prevention and public health, SWAN began to integrate human rights into its work, linking HIV and the right to health to wider issues such as violence against sex workers and criminalisation; and how this made them aware that sex workers' vulnerability to HIV was a consequence of wider issues. In many Eastern European countries, however, human rights and Western concepts have a mixed symbolic meaning, she said. On the one hand, there is the idea that only ‘whores and faggots’ come from Western cultures, but on the other hand, there is this progressive ring and the idea of “wanting to be civilised”. This makes referring to human rights in their advocacy a complex situation, “but sometimes it has value [for the authorities] to pretend at least that [they] are open minded and civilized and not rigid and backwards”.

For TAMPEP, human rights function above all as a standard against which to measure the

reality of migrant sex workers. Francesca (TAMPEP) described how they always distinguished two levels in their work: the 'theoretical' part that includes their vision, and the 'practical' part where they try to apply this vision in their daily work. For the former, human rights provide a normative framework for their advocacy work, as they set standards against which the actual living and working conditions of migrant sex workers can be compared. The practical part refers to human rights as a tool of empowerment by educating migrants about their human rights so they know how to argue and defend themselves, even when as a migrant that is very difficult. But, she said, just to have this notion “that they are not invisible, that they exist, that they have rights is important [...] to know that even if you are undocumented, you have the right to go, for instance, to an NGO, and ask for support”.

Several participants described how they use human rights strategically and flexibly depending on the context, the audience, their objectives and their assessment of what kind of arguments will work. For example, Alex (Greece) mentioned how they use different frameworks depending on the situation. Sometimes they will highlight that something is a human right, whereas in other cases they will refer to labour rights and the privileges that other workers enjoy.

As discussed in this section, sex worker organisations use human rights as a framework for their advocacy for different reasons. It places sex workers' struggle for rights in a wider global context, provides minimum standards on which sex worker organisations can base their advocacy, facilitates linking different rights and emphasises their interconnectedness, it connects the sex worker movement with other social movements, and it contributes to building a collective sense of rights. Importantly, human rights also have a positive connotation for politicians and the general public. As Luca put it, "it is difficult to be against human rights". However, organisations are also flexible in using different frameworks depending on the audience and their objectives. For example, they may switch between a

human rights framework and a labour rights framework depending on which arguments they believe will be most effective.

4.4.3 BUILDING COALITIONS AROUND HUMAN RIGHTS

Various participants referred to human rights as a basis for building coalitions across movements based on a common language and a shared commitment to a human rights framework. As Milena (SWAN) argued, whether you are working on specific issues such as sex worker, LGBT, minority, or migrant rights, the underlying human rights concepts are the same. She not only emphasised the importance of human rights in building cross-movement solidarity, but also stressed the importance of learning from each other and from more experienced groups: “You don't have to invent the wheel. There are some conceptions already existing, there are some data existing that you can attach to and develop further”.

For ESWA, building cross-solidarity between social movements is a core element of their strategy. Although they also invest in building relationships with institutions, said Luca (ESWA), their focus is on influencing civil society and building alliances with other movements, such as undocumented migrants, anti-trafficking and LGBT organisations, to try to change the way sex work is framed:⁶⁹

I think for us trying to create this norm within civil society that sex work is work and that criminalisation is not the right answer... even more than sex work is work, this norm that policing and criminal law is not the right approach to what is fundamentally

⁶⁹ An example of successful coalition building is the *European Coalition on Sex Workers Rights and Inclusion*, a diverse group of 15 leading civil society networks and human rights organisations (ESWA, 2022c). The coalition was launched at ESWA's annual Congress in 2022 and is based on the understanding that it is “only by adopting a human rights approach, decriminalising sex work, and meaningfully including sex workers and sex worker rights defenders in decision-making, that sex workers can be protected”. Coalition members are Aids Action Europe (AAE); Amnesty International; Correlation European Harm Reduction Network (Correlation EHRN); European Aids Treatment Group (EATG); European Digital Rights (EDRi); European Network Against Racism (ENAR); European Sex Workers' Rights Alliance (ESWA); Equinox - Racial Justice Initiative; Fair Trials; Human Rights Watch; International Planned Parenthood Federation European Network (IPPF EN); International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA-Europe); La Strada International (LSI); Platform for International Cooperation on Undocumented Migrants (PICUM); and Transgender Europe (TGEU).

a social issue allows us to have more power, like changing the ways of thinking [about sex work] (Luca).

With more movements critical of the police, such as Black Lives Matter and the anti-racism movement, it will be harder to push for the further criminalisation of sex work, he argued.

In a similar vein, Freja (Denmark) discussed an initiative to bring together different minority groups, like people from the Muslim community, people of colour, disabled people, people with mental illnesses and sex workers, based on the idea of a shared struggle for human rights. The underlying idea is that if they could learn to work together "instead of being indifferent to each other because we think [their struggle] is not our struggle", they could achieve much more. Interestingly, she also mentioned that sharing experiences with other marginalised groups has helped her to better understand the mechanisms of exclusion and stigma, while also providing an opportunity to practice explaining to other people what sex workers are fighting for in a safe and non-hostile environment, and to see how they share similar struggles.

An important strategy of particularly the regional networks is building alliances across social movements both as part of their advocacy and as an opportunity to share knowledge and learn from each other. The interviews show that human rights as an overarching ideology of justice not only function as an important vehicle for cross-movements coalition building, but also facilitate an intersectional approach that emphasises the connection between different forms of discrimination and different marginalised groups.

4.5. HUMAN RIGHTS AS GOOD GOVERNANCE

As argued by Merry et al., the meaning of human rights as good governance is relatively new. Key elements are the principles of participation, transparency and accountability (Merry et al., 2010: 107). Over the last decade meaningful participation of sex workers in the design, implementation and assessment of laws and policies that affect their lives and safety has

become a key demand of the sex worker rights movement, captured in the slogan 'Nothing about us without us', called by ESWA “Mobilising from the margins” in their reflections on the developments and changes in laws, policies and attitudes following the 2005 Brussels conference (ICRSE, 2016b).⁷⁰ As formulated by the NSW, “Participation in public life is considered to be a key element of democratic governance, as well as a means to strengthen community empowerment” (NSW, 2021: 1).

Participants discussed the significance of the shift in focus to good governance for their work, while stressing the importance of sex workers' (lack of) participation in the development of laws and policies that affect their working and living conditions. Milena (SWAN), for example, described how the integration of a human rights framework shifted SWAN's focus towards working on the meaningful involvement of sex workers in national processes, strategy planning and the development or amending of policies and laws. This required investing in capacity building of sex worker organisations but also a lot of discussion with project partners, like other community networks, because of the different ideas people have about what meaningful community involvement means: from organising a focus group to collect data, to working as equal partners and learning together. It also required educating policy makers and other stakeholders on ways to meaningfully involve sex workers in their work. An example is the guide SWAN made for law and policy makers, researchers, and civil society stakeholders in Central-Eastern Europe and Central Asia (CEECA) with recommendations and practical advice on how to meaningfully engage sex workers in policymaking, research, and civil society advocacy and programming (SWAN, 2019).

The intensive participation of sex workers in the policy-making process played a crucial role

⁷⁰ See also *Amnesty International Policy on state obligations to respect, protect and fulfil the human rights of sex workers* (2016: 2). The demand for meaningful participation of affected communities developed as a core human rights principle in the field of health and HIV. The WHO, for example, mentions participation of all concerned stakeholders, including sex workers, together with accountability, equality and non-discrimination, as one of the core principles of human rights underlying its guidelines on HIV, hepatitis and STI prevention (WHO, 2022:7).

in the change of law in Belgium. Significantly, Belgium is both the only European country where there has been a recent positive shift towards decriminalising sex work, and the only country where the new policy has been developed in close consultation with sex workers. As Hugo (Belgium) said: "The cabinet talks to us first and then to the others because it is about sex workers and that is why they talk to us". In contrast, in Ireland sex workers were almost completely excluded from the policy debate that led to the criminalisation of clients (Jackson et al., 2017b; Poppy, 2022; Eilís Ward, 2017, 2019).

In addition to human rights as a set of values, sex worker organisations use the human rights framework to demand for the meaningful involvement of sex workers in laws and policies that affect their lives. Practice shows that the meaningful involvement of sex workers is directly linked to the quality of laws. It leads to better laws to improve living and working conditions of sex workers and helps to prevent unwanted negative side-effects. A good example is Belgium, which recently decriminalised sex work and passed a labour law, developed in collaboration with the Belgian sex workers organisation, that allows sex work to be carried out in an employment relationship and provides sex workers access to social security. At the same time, the law ensures that sex workers are protected in the workplace from the risks specific to their occupation and imposes conditions on employers (UTSOPI, 2024). Globally, the best example is New Zealand, which developed its policies on decriminalisation in close cooperation with the New Zealand Prostitutes' Collective (NZPC) (Rottier, 2018).

4.6 HUMAN RIGHTS AS A SYSTEM OF LAW

Sex worker organisations primarily mobilise human rights as a value system and a vision of good governance. However, they are also developing the skills, partnerships and expertise to use human rights as a legal system. Examples are the submission of shadow reports to the monitoring committees of the major human rights treaties, in particular CEDAW, and the use

of strategic litigation as a means to achieve social change, which is discussed in Chapter 6.

This does not take away that, when it comes to direct changes of national law, my participants rely in the first place on their national laws and constitutions. As they explained, these are closer to everyday reality, better known, more concrete, and easier to translate into practical demands. Several participants also mentioned that they do not feel familiar (enough) with the international human rights framework to use it as a legal system at the national level. For example, Hugo from the Belgian sex workers' organisation said:

I'm not familiar enough with what's in all the human rights declarations, but according to the Belgian Constitution, all nationals should enjoy the same rights and all nationals should also enjoy social protection in the law. And that's not the case for sex workers, and therefore there is structural discrimination. [...] I don't know whether social protection is a universal human right, but it is in any case a Belgian right (Hugo).

Interestingly, by appealing to the principle of non-discrimination, the example also shows how human rights principles are integrated in national law.

Below I expand on the use of human rights as a system of law by discussing how sex worker organisations use human rights as a legal system by submitting shadow reports to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

4.6.1 SUBMITTING SHADOW REPORTS TO HUMAN RIGHTS TREATY BODIES

SWAN is one of the sex worker organisations that has invested extensively in facilitating the participation of sex worker organisations in the CEDAW process to address human rights violations.⁷¹ They were the first to develop a guide for sex worker organisations on how to use the Women's Convention (SWAN, 2013), in collaboration with the international women's

⁷¹ All major human rights treaties are monitored by a committee of elected experts from different countries. States parties are required to submit periodic reports on their implementation of the treaty to this monitoring committee. NGOs can submit their own so-called shadow reports, in which they critically assess the government's account of the situation. As part of the process, NGOs have the opportunity to meet directly with Committee members to explain their report. The review process ends with so-called concluding observations, in which the Committee formulates recommendations for the State party concerned.

rights organisation IRAW-AP (International Women's Rights Action Watch Asia Pacific), who organises training and guidance for NGOs who participate in the process of shadow-reporting. As Milena (SWAN) remarked, IRAW-AP's expertise and willingness to work with SWAN were crucial factors. Without this kind of partner, she said, it would have been much more difficult to understand the processes and "learn from scratch". She also described how the direct confrontation of committee members with sex workers made sex work a personal issue for them rather than a theoretical discussion. As an example, she mentioned how one of the sex workers, in response to a CEDAW member talking about sex workers as 'selling their bodies', stood up and said, with all the emotion that it entailed:

“Do you see me, do I miss some part of my body? [...] How can you say that I am selling my body, where is my arm, what did I sell? Here am I, I am selling a service and you have to make that decision [...], if you say that you are for women's rights, listen to me, I am a woman. Do I not fit in your concept of women?” (Milena)

The example shows, she said, the importance of meaningful involvement, that sex workers are able to have their own voice and agency, because “you can continue to have theoretical debates, but the personal story, a sex worker with concrete experience being there and confronting those views in a very eloquent and very humane and very nice way, that, I think, makes a big difference”. While the results of their first shadow report were very encouraging and led to a CEDAW recommendation to the Hungarian government to improve the working conditions of sex workers, results may vary depending on, among other things, the composition of the committee. However, according to Milena, there are other benefits to engaging in the reporting process: it increases commitments because recommendations need to be followed up, the process of collecting data and writing the report improves the work of the organisation, and it provides opportunities for partnerships with other NGOs and collaboration at the local level.

Although many of its recommendations follow an abolitionist approach (e.g. a heavy accent

on exit programs), until recently CEDAW avoided taking a position on sex work as such (Van den Brink & Wijers, 2012). This changed in 2020 with the adoption of General Recommendation 38 on trafficking in women and girls in the context of global migration (GR 38), which calls for the criminalisation of clients as a means of combating trafficking and encourages states to ratify the obsolete 1949 Convention.⁷² It was adopted despite a multi-year consultation process involving a wide range of sex workers', women's, human rights and anti-trafficking organisations and UN agencies, which consistently underlined the negative impact of criminalisation on the safety, health and rights of sex workers, and emphasised the need for a human rights-based and evidence-led approach (Brooks-Gordon et al., 2020).⁷³

The fact that the Committee, despite the engagement of so many parties including Amnesty International, the Global Alliance Against Trafficking in Women (GAATW), former Rapporteur on Violence Against Women Radhika Coomaraswamy, and former CEDAW members such as Patricia Schulz, ignored the call for evidence-based policy and failed to include sex workers in the CEDAW's mission to protect women's rights, made Luca (ESWA) sigh:

[I]t is so un-transparent and so undemocratic. And they don't pretend to be democratic, it's a consultation, they can write what they want, but the whole process is so undemocratic that it feels like if you can't even get your voice heard there, when you have so many allies, what really is the point. So we will keep engaging but there's something so fundamentally wrong with the way it is set up that it's completely unfair. So, yeah, it makes it a bit difficult to want to engage with these kind of processes (Luca).

The above illustrates some of the problems of using human rights as a legal system: it requires money, skills and training, and partner organisations with specialised human rights expertise;

⁷² *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, New York, 1949. The convention declares prostitution “incompatible with the dignity and worth of the human being”, conflates trafficking and sex work, and obliges states to criminalise any third party involvement.

⁷³ See for all inputs on General Recommendation 38 received by CEDAW during the consultation process: <https://www.ohchr.org/en/calls-for-input/2019/call-contributions-draft-general-recommendation-trafficking-women-and-girls>.

it takes patience and a long time; and (as with court cases) the results are unpredictable and depend on many factors beyond the control of NGOs, especially the current composition of the committee, which changes every two years. On the other hand, as Milena points out, participation in international human rights mechanisms also has an internal value: it helps build the capacity of sex workers, strengthens the organisation and provides opportunities for increased local collaboration.

While sex worker organisations use human rights in various ways, they are also critical of their limitations and raise several questions and dilemmas. These will be discussed in the next section.

4.7. DILEMMAS, LIMITATIONS AND TENSIONS IN USING THE HUMAN RIGHTS FRAMEWORK

In this section I focus specifically on the three European sex workers networks and delve deeper in their critical stance towards the use of human rights in their advocacy and demands. All three organisations document human rights violations (e.g. ICRSE, 2015; SWAN, 2015); write policy briefs linking sex workers' rights and human rights, e.g. on consent and criminalisation (ESWA & European Coalition on Sex Workers' Rights and Inclusion, 2021) and digital rights (ESWA, 2022b); submit reports to UN bodies (e.g. ICRSE, 2021c; TAMPEP, 2019); make toolkits on how to use human rights mechanisms (SWAN, 2013); and write guides for sex worker human rights defenders (SWAN, 2014a). They write position papers and reports on the situation of migrant sex workers (e.g. TAMPEP, 2015; SWAN, 2021b) and publish reports on the impact of anti-trafficking laws and policies on sex workers' human rights (e.g. ICRSE, 2019b). They use human rights in their campaigns and lobbies and organise webinars, workshops, and training on human rights for national sex worker rights activists.⁷⁴

⁷⁴ See e.g. https://www.eswalliance.org/workshop_sex_workers_rights_are_human_rights.

However, there are differences in how they see the value of human rights due to the different contexts in which they operate and their target groups. Here I discuss the dilemmas, tensions and limitations that my participants struggle with in their use of human rights frameworks. To do justice to their complex points, I use extensive quotes here.

4.7.1 'SEX WORK IS WORK', SOCIAL JUSTICE, AND THE VALUE AND LIMITATIONS OF SLOGANS

For all participants sex work is work. They argued why sex work should be considered work and why sex workers should be entitled to the same rights as other workers. Yet, the slogan 'sex work is work' is not without discussion. As Luca (ESWA) remarked, even if sex work were to be recognised as work, it would not give rights to migrant sex workers or solve the issue of violence against sex workers, people of colour, migrants, and trans people. On the one hand, he argued, it is important to have slogans that convey a clear message, but on the other hand, slogans are generally problematic because prostitution is such a complex issue and covers a wide variety of lived experiences that are hardly comparable. How do you compare, asked Luca, a young male Syrian refugee in Greece who gives a blow job for a sandwich with a dominatrix in London who works with MPs and earns £1,000 an hour?

They are both exchanging sexual services for something material but the reality is so different that it's a bit problematic. So I still think it's important to have slogans to convey a clear message like sex work is work, but [...] by this we mean a certain economic activity that people engage in in order to pay for whatever is needed, whether it's food, accommodation, luxury, transition, drugs, whatever they need. So, yes, it's a form of work but then I have to nuance it a little bit (Luca).

The limited space that slogans offer for a more nuanced discussion also translates into bigger questions of social justice, such as inequality, poverty and discrimination, and the right to do sex work without being punished, discriminated against or violated, but also the right not to do sex work. That is why, Luca explains, in their campaigns they do not just say that sex work should be recognised as work, but also that sex work can be the result of a lack of other

economic opportunities, like refugees and undocumented migrants who sell sex because they don't have the right to work in other places. So, beyond that, their demand is for better welfare for refugees and asylum seekers and the right to work so that they do not have to resort to sex work.

The problem with this kind of catchy slogans, much needed as they are, Luca continued, is that they create a kind of one-size-fits-all. They erase the differences, the diversity of demands and local contexts, rather than focusing on demands tailored to the specific situation or country. For example, it is not clear to what extent the demand for sex work to be recognised as work is a priority for national sex worker movements. To illustrate, he cites his conversations with young trans workers in Albania and Turkey about decriminalisation:

They're not gonna say the most important thing for me is to recognize sex work as work. Many of them would say, the most important is that we end transphobia so that me and my colleagues can do something else than sex work. And I think that sometimes gets lost a bit in the sex worker rights movement (Luca).

Partly, he argued, this is the effect of the norm-setting impact of global movements, which is complicated by the dominant role of organisations from the global North. However, also human rights themselves have a similar normative impact. He recalled that the only good argument he had heard against Amnesty International taking a position on sex work came from an Amnesty worker working in the Middle East and Africa. She thought that the idea that Amnesty should have a position on sex work was problematic because in many countries in that region there was no law on prostitution, and by imposing a norm that sex work should be decriminalised and recognised as work, it would actually make a phenomenon more visible than it was before:

And I thought that was quite interesting to frame it this way, that you can actually create more issues by forcing a language and a concept on a region. It's a bit similar with LGBTI issues in the region. It's like, there's different ways of approaching sexual

issues that maybe are better not framed in a way that is not contextual to the region (Luca).

A similar point is made by Milena from SWAN. As she explains, most countries in the region do not advocate for legal changes but rather focus on other issues because the risk of making things worse is greater than the possible benefits. This is especially true in countries where there is no reference to individual sex work in the law, such as in Kyrgyzstan, where the sex workers' organisation responded with a firm 'no', knowing that if they started talking about decriminalisation it would do more harm than good. Their position is “At least let's keep people not being punished”, as Milena said.

A related point of critique that was raised by Luca (ESWA) is how the human rights framework, by defining what is feasible, risks limiting imagination and silencing more radical voices within the movement. As an example, he pointed to the focus on the right to work and questioned whether the sex worker movement shouldn't be more radical and ambitious in addressing underlying social injustices such as inequality and poverty, rather than simply demanding that sex work not be criminalised:

[M]anaging to all agree around decriminalisation and sex work is good, but by doing that we actually silence maybe voices which are maybe more right ... or radical. [...] If you look at the current state of affairs in the world, after one year of Covid, is that we got billionaires like Bezos and Amazon, which have huge wealth that's like never seen in history of human civilization before, the poor getting poorer, there is more precarity, there is more migration control, there are more climate challenges, and what we are saying is that, yes, sex work is work. Shouldn't we be bold to say a bit more than that, like nobody should have to sell sex, while people have 10 billion dollar every year. There should be radical control of wealth, of capitalism so that nobody has to sell sex. [...] for me this idea that the best we can ask as a movement is that we are not criminalized and that sex work is work, shows a bit lack of ambition (Luca).

The slogan 'sex work is sex work' represents a global demand of the sex workers' movement, but participants were also critical of its limitations. Slogans mask complexity, tend to erase

differences in local contexts, and leave little space for larger questions of social justice and inequality. The participants discussed the normative role of global demands, but also of the human rights system itself, in limiting ambitions to address social injustices and silencing more radical voices.

4.7.2 MIGRANTS' RIGHTS AND THE LIMITATION OF HUMAN RIGHTS

A third critical point raised by participants concerned the limitations of the human rights system in relation to migration and migrants' rights. Migrants make up a large proportion of the sex worker population across Europe, which makes justice for sex workers inseparable from justice for migrants. Luca, for example, described how ESWA runs up against the limitations of the human rights system, which seems to set limits on what can be demanded, rather than offering forward-thinking solutions:

I don't exactly know how it's framed in international human rights but I think the right to migrate should be a principal one. [...] when I joined, for example, an undocumented migrants' network, I didn't know much about the way they frame policy [...] And for me it's very clear that there should be no deportation of migrants. But lots of people, like migrant rights organizers, were like, oh, actually, it's a bit more complicated and the state should have the right to deport, for example, a criminal person. And actually, in terms of policy, they were much less forward-thinking than what I see from grassroots activists like 'no border, no deportation'. So, I think sometimes, the human rights framework can almost limit what could be your demands (Luca).

This creates a constant tension between principles and pragmatism, radical demands and feasibility, grassroots activism and what Luca calls NGO-isation, the institutionalisation of the movement. The problem with NGO-isation, he said, is that you lose the edge of your initial recommendations, because if you want to be successful in lobbying, you have to adapt your language to the language of the institutions you are targeting:

Because you work so closely with institutions you end up using their language and you

lose your own language. So unlike, you know, migration for example, you go from open borders, no deportation, no rehabilitation, no detention centres to having some recommendation asking for the right to work for asylum seekers. It's like you lose so much of your core demands because you try to use the same language as the people you're trying to convince (Luca).

In articulating the tension between grassroots activism and institutionalisation and how human rights can act as a straitjacket, silencing more radical voices, Luca echoes Douzinas (2007) when he writes how rather than challenging the power of the state, human rights have been transformed from a discourse of rebellion against domination and oppression into one of state legitimacy, diplomacy and legal claims, moving the struggle for rights from the streets to the court room.

The tension between human rights and migrants' rights was also expressed by Francesca (Tampep) when she talked about the gap between the fundamental rights of migrants - the right to migrate and the right to work - and the actual practice, where these rights depend on their status and are severely restricted by laws: "That's why I always say they are migrants first, not sex workers. They have to settle their migrant status before they come to any other rights". At the same time, she stressed that human rights are still important as an empowerment tool to make people aware that they have rights even in this situation, as migrants, as women and as sex workers.

Other participants also raised the issue of how human rights carry little weight for (undocumented) migrant sex workers, and how they run into what Hannah Arendt (Azar, 2019) called the paradox of universal and 'inalienable' human rights: human rights are universal, but it is national states that have to protect those rights. If these states do not care about the human rights of non-citizens, such as refugees or migrants, then these rights are worth little. Without citizenship, and the right to belong to a political community, human

rights lose their significance.⁷⁵ Alice (Netherlands) sharply articulated what Arendt called 'the right to have rights' as a precondition underlying any concept of human rights:

[T]he limitation is that not everyone has those rights and the moment you're a migrant or undocumented, they can ultimately do whatever they want with you and human rights don't offer any protection. So, nice, human rights if you have them, but a very large proportion just don't have them (Alice).

Alice recognised the value of the human rights framework because it is important that sex workers know their rights and that, in principle, they have the same rights as others. However, she also fiercely condemned how migrant sex workers who come to the Netherlands in search of basic human rights such as food and a roof over their heads can be assaulted by clients with impunity, only to be deported the moment the authorities get involved. The authorities' standard response, she said, is that 'rules are rules' and that they do not make the rules, they just enforce them:

The rules are more important than human rights, the rules are more important than people. [...] And I think, how can people say that without shame? *'Befehl ist Befehl'* ['orders are orders'] that's what I think then. I think it's terrible (Alice).

Asked how she deals with this in her advocacy work she said:

I try to explain what the consequences are if you push people into illegality. I give examples of the people without rights. Who got robbed, who got killed, who committed suicide, and then the people have to make the conclusion themselves (Alice).

The limitations of the human rights framework are one of the reasons why she prefers to use the 'my body my business' frame. She feels that female sexual autonomy, being the boss of

⁷⁵ In her critique of the Universal Declaration of Human Rights, Arendt claims that the Declaration itself embodies a contradiction between the universal or inalienable character of human rights and the principle of national and territorial sovereignty (Azar, 2019). According to her, this paradox can only be resolved by recognising the 'right to have rights' as a precondition for the protection of other human rights, which in turn is based on the right to belong to a political community. Since the nation-state is the only authority that can guarantee human rights, human rights lose their meaning once a person ceases to count as a citizen of a particular state.

your own body and sexuality, is a stronger and more empowering frame than human rights because it starts from something you have rather than something you do not have:

Because with human rights, you often think of people who have no rights, people who are in prison or who are pitiful [...] And I feel that a frame like 'my body my business' is stronger, that you look more self-confident. When I think of 'my body is my business', [...] I think of tough women who claim their autonomy and independence. [...] And also words like autonomy and independence, those are basic words that trigger people, just like the word freedom. [...]. Of course I totally agree with human rights, but I would just choose a different language and different words (Alice).

She stresses the importance of using language that creates positive associations with sex work, without falling into the trap of the supposed contradiction between the 'happy hooker' and the 'helpless victim'.

One area in which the limitations of the human rights system are evident is its failure to protect the human rights of (undocumented) migrant sex workers. This not only exposes the limits of the concept of the universality of human rights but also demonstrates what Luca (ESWA) called the 'normative impact of human rights': the phenomenon that the human rights system also acts as a means of containing the imagination of what the demands of the movement could or perhaps should be. This creates tension between 'feasibility' and more radical demands, between grassroots activism and the institutionalisation of the movement, and between daring to dream of a more just society and encapsulation within the existing system.

4.8. HUMAN RIGHTS AS A DOUBLE-EDGED SWORD

It is not only sex workers who use the human rights framework, but also the anti-sex work movement. While the sex worker movement is built on an emancipation and labour-based perspective on sex work, the abolitionist movement moves sex work back into the realm of (female) victimhood and crime, with a focus on repression and control rather than rights and

empowerment.⁷⁶ Through the gateway of conflating sex work and trafficking, and framing sex work as violence against women and a violation of human dignity, they use the human rights framework to call for further criminalisation of sex work and to dismiss the negative impacts on the safety and health of sex workers as acceptable collateral damage, thereby turning human rights into a double-edged sword.

Here I present the experiences and analyses of my participants of how human rights are used as a vehicle to silence them and justify their repression, focussing on the three themes that emerge from the literature and the interviews: the conflation of sex work and trafficking, and the framing of sex work as violence against women and a violation of human dignity.

4.8.1 CONFLATION OF SEX WORK AND TRAFFICKING

One of the most common ways in which efforts to decriminalise sex work are undermined is through the conflation of sex work and human trafficking (e.g. Bernstein, 2007, 2018; Mgbako, 2020; Outshoorn, 2018; Vanwesenbeeck, 2017; Wijers, 2015, 2021; Ward & Wylie, 2017). This is often accompanied by inflated and unsubstantiated figures about the number of women and girls trafficked for sexual exploitation (a type of exploitation which as mentioned earlier in itself is undefined and quite problematic).

A standard justification for repressive measures is that all, or at least the vast majority, of sex workers are victims of trafficking and that, even if there are exceptions, protecting the human rights of victims legitimises sacrificing the human rights of sex workers. Freja, for example, mentioned how Danish politicians say they understand the difference between forced labour and consensual sex work, but consequently argue that trafficking is so terrible that it is worth sacrificing the rights of consensual sex workers. Francesca from Tampep also recalled how abolitionists use the human rights argument against sex workers by invoking the human rights

⁷⁶ See for a discussion of the opposed views on sex work, Chapter 2.4.

of victims: "These people have human rights. We have to help them and save them from this horrible situation they are in, because they are all forced into it".

In Ireland, the Gardai tell sex workers who speak up that they are not representative of sex workers because "90% of them are enslaved against their will". The same argument was used to justify criminalising the purchase of sexual services. This was largely based on a study funded by the Religious Sisters of Charity,⁷⁷ the foreword of which, as paraphrased by Ava (Ireland), stated that "it's too hard to tell the difference between sex work and trafficking, so why bother". The study was commissioned by the Immigrant Council of Ireland (ICI), which was founded in 2001 with financial assistance from the same religious order, and was the driving force behind the 'Turn off the Red Light' (TORL) crusade, along with Ruhama, a faith-based organisation that now works with on-street prostitutes. The report (Kelleher et al., 2009) asserted that "there were 1.000 women available for prostitution each day in Ireland, of whom 97 percent were migrants" (read: victims of trafficking) and achieved "'canonical' status in terms of truth claims about the nature of the sex trade in Ireland", trumping any competing or critical voices despite difficulties with its methodology and research methods (Eilís Ward, 2017: 90). One way in which the report conflates sex work and trafficking and inflates the number of 'trafficking victims' is by stretching the concept of coercion to include economic reasons for sex work, a common abolitionist strategy (Haveman, 2000; Vanwesenbeeck, 2018) that was also used in Germany (labeled as 'Elendsprostitution', misery prostitution, see chapter 5). The final law denied sex workers the validity of consent, as in cases of statutory rape, arguing that what was termed 'social policy' "trumped any individual rights that might be claimed to inhere in the act of selling sex" as well as liberal concerns with harm reduction, choice or agency, or the complexity and diversity within sex work, premised

⁷⁷ The Religious Sisters of Charity are one of the religious orders that ran the Magdalene Laundries to house and rehabilitate 'problem girls', which included sex workers and the unmarried daughters of Catholic families (Berry & Frazer, 2021). Also Ruhama originates from the Magdalene Laundries (Phipps, 2020: 154).

on the view that consent was not possible or irrelevant in prostitution (Ward, 2017: 97).⁷⁸

This placed sex workers in the same category as children. This makes the Irish law not only an example of 'morality politics', but also of the failure of rights as 'political trumps' to protect individual citizens and groups against policies that would violate their status as an equal member of the political community (Dworkin, 1977: 133), on the argument that sex workers simply could not consent to sex work. As argued by Ward (2019) this produces the death of the sex worker, the person who consents to the act of selling sex, and removes the obligation to consider core human rights such as equality before the law. It is also an example of how the indeterminacy of rights allows parties to manipulate the facts (or rather the lack of facts) and decision-makers to accept whatever account suits their prejudices, as criticised by Tushnet (1984).

Another standard argument against decriminalisation is that it would undermine the protection of victims and make it more difficult to prosecute traffickers. As stated by Hugo, my Belgian participant, this was used by prosecutors and the judiciary to oppose the Belgian law reform, along with the abolitionist argument that decriminalisation would increase violence against women and children.

Migrants are particularly portrayed as victims of trafficking. There is often a deliberate conflation of working illegally and being a victim of trafficking, which transforms the deportation of migrant sex workers into combating trafficking. Freja (Denmark), for example, described how the crackdown on migrant sex workers is presented as a crackdown on trafficking: "It's marketed to the population as 'look how hard we're being on trafficking. We're fighting trafficking'". At one point, she explained, Danish politicians even suggested specifically criminalising street workers, who are mostly migrants who work illegally, as it is

⁷⁸ For the alliance between radical feminists and evangelical Christianity, see also Jackson et al., 2017b.

impossible to get a visa for sex work. According to Freja, this might have happened if SIO, her organisation, had not strongly opposed it.

As argued by various authors (e.g. Calderaro & Giametta, 2019; Kulick, 2003; Lima de Pérez, 2014) repressive sex work policies cannot be isolated from national concerns about immigration control. Behind the frame of migrant sex workers as victims in need of rescue, there is always an anti-migrant undercurrent suggesting that it would be better if they were not there at all, often combined with thinly veiled racism. However, as Francesca from Tampep pointed out, the majority of migrant sex workers today are EU citizens, who have a much more secure legal position than traditional migrants from outside the EU:

They are Romanians, Bulgarians and Hungarians. But in order to have arguments for repressive measures, they put them all in the same basket, even though they have different rights (Francesca).

Resisting the abolitionist victim frame is particularly difficult because it relies on emotive and sensationalist images and narratives of defiled innocence and feelings of superiority and pity, what Birgit Sauer (2019) calls ‘affective framing’. Mac & Smith (2018: 60) describe how victims often are presented with their ‘girlishness’ emphasised: “Young women are styled to look pre-pubescent, in pigtails or hair ribbons, holding teddy bears”. Also Doezema (2010: 49) mentions dolls and teddy bears as iconic as iconic indicators of youth and innocence.

Francesca described the following scene at a conference she attended:

[T]hey brought in a woman, I don't know if [she was] Russian, with a teddy bear in her hand. Everything very childish and emotional. That's how they present the situation: very childish and naïve, very ‘oh, poor little thing, so defenceless, so incapable of taking decisions’. That is the idea: to pity them and assume a paternalistic position (Francesca).

One factor that makes it easier for the abolitionist movement to victimise migrant sex workers is their general under-representation in sex worker organisations. According to Francesca

(Tampep), some of the reasons are the language barrier and the fact that they are here primarily to work: "We've always said that migrants don't come here to do politics, they come to work, also because it's not their country". However, the persistent framing of migrant sex workers as victims also affects migrant sex workers themselves. For example, Leona (Netherlands), a (transgender) migrant sex worker, said that she hates that they are always portrayed as victims and that this did not reflect reality. For her, sex work meant taking her life into her own hands when she found herself in a new country with no family or friends and no one to help her, including the state.

The consistent conflation of sex work and trafficking means that sex workers' organisations are put in a position where they have to constantly argue that sex work and trafficking are not the same, that decriminalising sex work does not mean making it legal to force someone into prostitution, and, just as importantly, that sex workers and trafficked people have a common interest in the protection of their human rights. In Denmark, Freja argued, this is even more difficult because in the public and political debate 'trafficking' is simply used to refer to any form of facilitation of sex work across borders, regardless of coercion or consent: "It's just assumed that every migrant worker is trafficked in the worst sense of the word."

But also in the Netherlands, Alice (Netherlands) noted how the persistent association of 'sex work-trafficking-illegal' has influenced all thinking about sex work. For example, it used to be no problem to meet a client in a hotel, but now hotels are trained to 'identify' and evict sex workers in the name of combating trafficking:

[This means] that they can throw you out at three in the morning in your underwear, and you can barely grab your phone and you have nothing left. No clothes, no money. [...] Just your lingerie and your phone (Alice).

While sex worker organisations need to invest in emphasising the difference between trafficking and sex work, they must be extremely careful to avoid any suggestion that they are

denying the existence of trafficking or the need to protect the rights of victims. This acts as a barrier to critically questioning the anti-trafficking framework as a tool to address exploitation and abuse in the sex industry, as abolitionists will use this as evidence of sex workers' 'selfishness' and 'indifference' to the suffering of victims. However, as Freja (Denmark) and Alice (Netherlands), among others, argued, repression of sex work only makes it more difficult to combat abuse, including trafficking, “because the more you fight all voluntary sex work, the less of a pathway you have to reach the people who are victims of forced labour” (Freja). In addition, Alice (Netherlands) argued that the more repressive the policies, the more sex workers become dependent on third parties and vulnerable to exploitation.

4.8.2 SEX WORK AS VIOLENCE AGAINST WOMEN

While sex worker organisations emphasise the diversity of sex workers and their living and working conditions, an inherent element of defining sex workers as victims per se is the erasure of individual differences. As discussed by, among others, Ward (2019) and Mac & Smith (2018), by uniformly framing sex workers as victims and denying them the capacity to give or withhold consent, the neo-abolitionist discourse deprives sex workers of agency. Freja (Denmark) eloquently describes how this disqualifies any choices sex workers make and reduces them to objects, things, rather than subjects:

I feel like very often in public discussions and in the way politicians talk about it, [it sounds] as if sex workers are empty vessels that are just being passed around by other people. And there's no point at which the sex worker has a mind of their own, or an ability to make a choice. And if they do make a choice, then it's just... they're manipulated into it by people who don't want what's right for them. And the way to save sex workers is to make sure they're manipulated by people who want what's right for them (Freja).

In addition, as pointed out by several authors, by defining all sex work as violence against women, the actual violence against sex workers disappears from sight: consensual sex and

rape become the same (Gaudy & Le Bail, 2021; Graceyswer, 2020, online). Several of my participants explained that the ‘sex work is violence’ discourse in practice translates into lack of action when acts of violence against sex workers are committed, to the extent that they can be committed with impunity, whether by clients, criminals or the police. If sex work is ‘paid rape’, as abolitionists call it, Freja said, then sex workers can be raped with impunity, because ‘rape is their work’:

[S]ex workers, if they get raped, say by a potential client or anyone else really, they go to the police station and they're practically laughed out of the police station... because there's this rhetoric around sex work that you essentially voluntarily get raped for money. They just go "Well, you get raped every day. So sure, we can try to make him pay the 70 euro or however much he owes you for the service that he's stolen from you. Well, we can't charge him with rape, you're a hooker. It's what you do (Freja).

This makes sex workers completely allergic to the word ‘protection’, because measures that pretend to protect them “never really [have] to do with the security and autonomy of the sex worker” (Freja, Denmark). Underlying this, she said, is the idea that sex workers are incapable of organising their own lives and making the right decisions, and therefore need other people to do this for them:

So, you have to completely remove agency from sex workers, otherwise they'll do stupid things. It's a weird idea that a lot of politicians have, that sex workers have to be controlled by someone else to be free (Freja).

Similarly, Ava (Ireland) described how one of the Irish politicians who was instrumental in passing the criminalisation of clients openly stated that she did not believe sex workers had a right to autonomy. As Ava put it: "We don't know ourselves, we can't be trusted".

Common ways of excluding sex workers as legitimate partners in the debate are to disqualify them as suffering from a false consciousness, damaged, exceptions, or paid by pimps (Doezema, 2010; Levy & Jakobsson, 2014; Maciotti & Geymonat, 2016; Pheterson, 1989; Phipps, 2017). In a variation of the whore-madonna trope, sex workers who refuse to identify

as victims and stand up for their rights are disqualified as privileged exceptions and heartless 'happy hookers' who are indifferent to the suffering of the voiceless victims and therefore have no right to speak. Alice, for example, told how this is used as an argument against her when she questions repressive measures in the name of combating trafficking:

[T]hat is also what the police tell me when I get a control and I have to take off my ad. And I ask them, what do I have to do with human trafficking? “Yes, that's the whole prostitution, and you are selfish for not standing up for your colleagues”. I heard that not one time, but maybe ten thousand times. Not only from police, but also from municipalities, from everyone actually. For them, there are only two kinds of sex workers, the happy hooker and the victim (Alice, Netherlands).

Freja talked about how the 'happy hooker' argument is used against sex workers in Denmark, where any critical comment about working conditions is used as proof that sex work should be criminalised::

The whole discussion about the happy hooker, where it's like you have to prove that you're happy working in this job, otherwise you have to be criminalized. You never hear that from any other worker's rights movement (Freja).

Another argument used to disqualify sex workers is that they are paid by pimps, or, as was used in Denmark to disqualify SIO, the sex workers' organisation, that they were the ‘puppets of millionaire clients’. That was one of the reasons, said Freja, why SIO decided from the beginning that they would be a money-free organisation, so that nobody could say, "See? They're being paid".

Both of the above sections, the conflation of sex work and trafficking and the ‘sex work is violence’ discourse highlight how the anti-sex work discourse, in whatever form it takes, is used to disqualify sex workers not only as agentic and wilful people capable of making their own choices, however constrained those choices may be, but also to disqualify them from the right to claim human rights, by portraying them as selfish, unwilling or unable to acknowledge the abuses in the industry, or corrupt, that is part of the ‘pimp lobby’. In this

way they are pushed out of the human rights discourse and framework.

4.8.3 SEX WORK AS VIOLATION OF HUMAN DIGNITY

While abolitionists claim that sex work is a violation of human dignity, according to participants this seems to be a less dominant discourse, perhaps because it can be interpreted in so many different ways. As Alex (Greece) said, “How do you define dignity? For whom?”

Sex workers and their organisations have different ways of countering the dignity argument. Some assert their own right to dignity, others use dignity as an argument in their own advocacy, and still others avoid discussing dignity and shift the debate to the impact of policies. Leona (Netherlands), for example, makes her own claim to dignity by comparing sex work to modelling, where you also earn money with your body and which is considered a dignified profession:

I think the same principle applies for me also. When I'm doing my work, I try to look as beautiful as possible, and also make my clients as happy as possible. That's also... that has a dignity sense and meaning (Leona).

For SWAN, dignity means living free from stigma and discrimination as an integral part of human rights:

Dignity is connected with living free of stigma and discrimination, being able to live your full potentials and [...] to have a right to decent work and to be treated decently, not to be humiliated, not to be excluded, not to be seen as a lesser person because of your profession (Milena).

Interestingly, UTSOPI (Belgium) used the concept of dignity during the Covid crisis to raise political and public awareness of how policies violated the human dignity of sex workers by depriving them of state support: "People losing their homes, people not being able to feed their children, people really starving [...]. These are all things that go against human dignity" (Hugo).

However, even if sex work is seen as not compatible with human dignity, said Luca from ESWA, the answer is to provide more opportunities for people not to do sex work, rather than taking away options and making people more precarious and "actually even furthering this lack of dignity". So rather than engaging in discussions about the concept of dignity, it is more important to focus on the policies abolitionists advocate:

If somebody really believes that prostitution is against human dignity, I'd be like, how great that you care so much about sex work, about prostitutes [...]. Even if I was agreeing with you that it's against human dignity, then what do you do to stop people? Let's work together to challenge the lack of services available, poverty, migration control (Luca).

In this way, he said, instead of making somebody your enemy you agree to disagree and try to move the debate to what you can do together: "So that's my approach. If they want to have a conversation with us, which is rare anyway".

Whilst in Western Europe 'dignity talk' is an integral part of the victim frame, in Eastern Europe and Central Asia dignity refers predominantly to sex workers as deviants:

[I]n comparison to the Western concept of victims when people are like, oh you are a victim and we need to save you, here it is, no, you are a sex worker and it is a shame, we have to punish you [...]. So we don't deal with the rhetoric that all sex workers are victims, we still deal with the rhetoric that all sex workers are undignified foreign women who are like easy women or lazy women (Milena).

The above illustrates the two competing claims of dignity of the abolitionist and sex worker movements, turning the concept of dignity into a double-edged sword. While abolitionists appeal on what might be called 'dignity as coercion', sex workers appeal on 'dignity as recognition'.⁷⁹ As described by Cunningham (2018), both abolitionists and sex workers appeal on dignity as 'intrinsic dignity', the type of dignity that Leona invokes in the beginning

⁷⁹ A full discussion of the concept of dignity can be found in the literature review (Chapter 2.6).

of this chapter when she says “I’m a human person, so it doesn't matter if I am a sex worker or [something else]” and that one has merely by virtue of being human. This type of dignity is closely linked to respect for human autonomy and freedom from state intervention.

However, it is also used by abolitionists to justify prohibitions through the representation of sex work as inherently harmful and incompatible with human dignity. Dignity then takes the form of a ‘substantive condition’, representing a particular moral view about how individuals must behave in order to maintain dignity. In this form, as stated by Cunningham (2018), it is often used by courts in the context of sex work to enforce particular sexual norms that reify emotional and relational intimacy, as will be seen in the French case study discussed in Chapter 6. It is therefore also called ‘dignity as coercion’.

In contrast, the sex workers in the quotes appeal to dignity as ‘recognition’, a type of dignity that not only represents the freedom to make one’s own decisions but also recognises the importance for individuals and groups to have these respected and validated by the community and the state. It is this type of dignity that Milena and the sex workers in the beginning of the chapter claim when they connect ‘sex worker rights are human rights’ with the recognition of sex workers as workers and their contribution to the economy and society.

As argued by Cunningham, whereas framing sex worker rights as human rights affirms sex workers’ humanity and denounces their dehumanisation as ‘deviant’ others, the representation of sex work as ‘beneath dignity’ risks constructing ‘dehumanised’ subject positions for people who sell sex and reinforce existing stigma (2018: 39).

4.9 DISCUSSION AND CONCLUSION

In this concluding section I expand upon three points that emerge from the discussion above: firstly, the different layers of meaning that sex workers attach to the slogan ‘sex workers’ rights are human rights’. Secondly, how the use of human rights by the sex worker movement

relates to theories of the mobilisation of human rights by social movements as a kind of global law 'from below' (Merry et al., 2010). And thirdly, how sex workers' struggles to prove to the outside world that they are human and have the right to live and work are linked to the anti-rights movement's dehumanising strategies to exclude sex workers from human rights.

Firstly, in the interviews three levels of meaning of the slogan 'sex workers' rights are human rights' can be distinguished. First, the recognition of sex workers as human beings as a fundamental condition for the right to (protection of) human rights and to be treated “as full and equal members of society” (Dworkin, 1977). Participants recount how sex workers' very humanity - or what I call 'human-ness' - is challenged, and how their advocacy must therefore start from this fundamental point. Secondly, they make a direct link between human rights and labour rights. For them, 'sex workers' rights are human rights' implies the recognition of sex workers as workers and their contribution to the economy and society. They also see the recognition of sex work as work as a gateway to human rights. Thirdly, 'sex workers' rights are human rights' is tied to the universality of human rights: the message that, as human beings, sex workers are entitled to the same rights as other human beings. This, in turn, is the basis for the growing rights consciousness among sex workers. This is expressed, among other things, in the use of strategic litigation as a tool to achieve social change, which is discussed in Chapter 6.

Secondly, as discussed above, when describing the value of human rights for social movements Merry et al. (2010) distinguish between three dimensions: human rights as a set of values, as a system of law and as a vision of good governance. All three dimensions are reflected in the way sex workers mobilise the human rights system.

Sex worker organisations primarily mobilise human rights as a set of values, such as equality, non-discrimination, protection from violence, dignity, and freedom. They use the human rights framework to address violence against sex workers as a human rights violation, to

document human rights abuses and the impacts of criminalisation on their lives and work, to raise awareness of human rights violations against sex workers, to build alliances and to advocate for decriminalisation as a prerequisite for the protection of their human rights. Several participants recalled the importance of Amnesty International's call for decriminalisation and their inclusion of sex workers' rights within the human rights framework. It recognised that sex workers' rights are indeed human rights, identified violence against sex workers as a human rights violation for which states can be held accountable, and recognised sex workers as rights holders. Framing sex workers' rights as human rights lends public and political legitimacy to sex workers' rights, but also works to build rights awareness within the sex worker community.

Human rights as a set of values are also mobilised by sex worker networks such as ESWA and SWAN through human rights training for their members, by developing briefing papers on human rights and human rights issues, and in the building of coalitions and alliances with civil society networks, human rights organisations and other social movements, such as the LGBTI+ and migrant rights movements and the rights-based part of the anti-trafficking movement.

Even when sex workers mostly use human rights as a set of values, over the last years they also started to use the second dimension of human rights: human rights as law. One way in which increased rights awareness and partnership building is being translated is through the use of human rights as a legal system. Two examples are the increasing use of the human rights Treaty Body system by sex worker organisations, particularly the submission of shadow reports to CEDAW, and the use of litigation. In both cases, partnerships with organisations that have expertise in the use of the legal dimension of human rights have proven to be critical. Milena (SWAN), for example, stressed the importance of their partnership with IWRAW in building the knowledge and skills needed to participate in the CEDAW process. In

the French case, the partnership with Médecins du Monde and its access to legal expertise and specialised (pro bono) lawyers played a crucial role, as will be discussed in Chapter 6. On the other hand, when it comes to concrete legal changes at national level, sex worker organisations rather call upon their national law and constitution, like the Belgian sex workers organisation.

In their discussion of human rights as both a legal system and a set of values, Merry et al. (2010) point to the contradictions between the legal and moral dimensions of human rights and how the pragmatic aspects of law may violate the moral commitments of the value system. An illustration is the clash between the ideology of universality and social justice as a moral commitment and the little weight human rights have in protecting the rights of migrant sex workers in their legal application. Luca (ESWA) succinctly captured the contradiction between grassroots demands and human rights law when he described how he felt that the human rights system, rather than offering a radical vision, tended to act as a 'straitjacket' in limiting the demands that could be made and silencing more radical voices. In this he echoes Douzinas (2007) when he writes how human rights as a discourse of rebellion against oppression have been transformed into one of state legitimacy and diplomacy. This makes him raise the fundamental question of whether the sex worker movement should not be more radical and ambitious in addressing underlying social injustices such as inequality and poverty, rather than simply calling for the decriminalisation of sex work.

A related critique is the 'normative impact' of global claims like 'sex work is work', which tend to create a kind of 'one-size-fits-all', erasing the diversity of demands and local contexts. Partly this is the 'norm-setting' impact of global movements, complicated by the dominant position of organisations from the global North, but human rights themselves have a similar normative effect. For example, Amnesty's position on decriminalising sex work could actually create more problems in countries where there are no laws on sex work, by imposing a norm

and making sex work more visible than it was previously.

The third dimension of human rights - human rights as a vision of good governance - has gained increasing momentum in the sex workers' movement, particularly the right of sex workers to meaningfully participate in laws and policies that affect them, an issue that is captured in the slogan 'Nothing about us without us'. While the demand for meaningful participation of affected communities originally evolved as a key human rights principle in the area of health and HIV, it has become a key demand of the global sex workers movement. This is expressed by Milena when she describes how integrating a human rights approach into their work has shifted the original focus of SWAN on HIV to enabling the meaningful participation of sex workers in projects and policy making, both at local, regional, and international levels.

Thirdly, the human rights framework is being mobilised not only by the sex worker rights movement, but also by the abolitionist movement. Through the gateway of framing sex work as violence against women and a violation of human dignity, and by conflating sex work with trafficking, they use the human rights framework to call for further criminalisation of sex work, thus turning human rights into a double-edged sword. While framing sex workers' rights as human rights affirms the humanity of sex workers and denounces their dehumanisation as 'deviant others', framing sex work as violence against women and a violation of human dignity has the opposite effect (Cunningham, 2018).

As argued by Cunningham, dignity is a key indicator of contemporary understandings of the human. Like dignity, I argue, agency, as the capacity to make one's own decisions about one's life, can be seen as a key indicator of human-ness. An inherent element of agency is the ability to give or withhold consent. By uniformly portraying sex workers as victims and denying them the capacity to consent, the abolitionist discourse deprives sex workers of agency and therefore of human-ness. They become non-persons, objects rather than subjects,

"empty vessels", as Freja says. It banishes sex workers from the public debate, excludes them from the human rights framework, and absolves states of their responsibility to protect their human rights. Furthermore, if all sex work is violence, then consensual sex and rape become the same, implying that sex workers can be raped with impunity because 'rape is their work'. By depriving sex workers of agency, subjectivity, and dignity, they are consequently deprived of their human-ness. This places sex workers in a position where they first and foremost have to 'prove' that they are human, as expressed by my participants.

CHAPTER 5. THE PROSTITUTES PROTECTION ACT: THE CASE OF GERMANY

5.1 INTRODUCTION

Germany is one of the European countries where the abolitionist movement significantly increased its influence following the adoption of the 2002 Prostitution Act (ProstitutionsGesetz (ProstG), 2001)⁸⁰ which legalised sex work. The law met with fierce opposition from conservative states (Länder) and provoked an anti-sex work movement which in 2016 led to the adoption of the Prostitutes Protection Act (ProstituiertenSchutzGesetz, 2016, in short: ProstSchG⁸¹) (Sauer, 2019). Among other things, the ProstSchG requires sex workers to register, to carry a special 'prostitute ID', and to undergo mandatory health counselling. According to Jahnsen and Wagenaar (2018), the 2017 German Prostitutes Protection Act⁸² can be seen as an example of increased state control and surveillance of sex workers, a trend that can be observed across Europe.

This chapter examines the role of human rights arguments in the public and political debate that led to the passing of the Prostitutes Protection Act (ProstSchG). I first look at the recognition of sex work as work by the 2002 Prostitution Act (ProstG)⁸³ and its background, the rise of the abolitionist movement, their campaign against the 2002 law, and the arguments they used to demonstrate its failure and the need for a 'new' law. I then discuss the ProstSchG, the opposition against the law and the use of human rights by the sex worker movement in their campaign against the ProstSchG. This is followed by a discussion of how the abolitionist movement hijacked human rights as a vehicle to silence sex workers and exclude them as

⁸⁰ In full: *Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten* (Law on the regulation of the legal relations of prostitutes).

⁸¹ In full: *Gesetz zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen* (Law on the Regulation of the Prostitution Trade and the Protection of Persons engaged in Prostitution).

⁸² The law passed end 2016 and came into force July 1, 2017. I therefore indicate the law as the 2017 Prostitutes Protection Act (ProstSchG), as it is generally referred to.

⁸³ The law passed in 2001 and came into force January 1, 2002. I therefore indicate the law as the 2002 Prostitution Act.

legitimate partners in the debate. Through the gateway of human dignity and female victimhood, human rights were used to dismiss the impact of the law on sex workers' human rights as collateral damage and re-instate the white middle-class model of 'good sexuality', based on the belief that sex should be kept within the confines of the romantic couple (Bernstein, 2012). In doing so, I pay particular attention to the use of what Birgit Sauer (2019) calls 'affective framing' by the abolitionist campaign to mobilise supporters, target the general public and politicians, and change the 'feeling culture' around sex work. I start by presenting the 2002 Prostitution Act (ProstG) and then move on to the abolitionist campaign against its recognition of sex work as work.⁸⁴

5.2 THE 2002 PROSTITUTION LAW (PROSTG): RECOGNITION OF SEX WORK AS WORK

The 2002 Prostitution Act (ProstitutionsGesetz (ProstG), 2001) was the result of twenty years of campaigning for labour rights from the late 1980s onwards by German sex worker rights groups like Hydra, Madonna, Cassandra and HWG ('Huren Wehren sich Gemeinsam').⁸⁵ Although the ProstG did not create the equal treatment with other workers and industries that the sex workers movement had been campaigning for (Bundesverband Sexuelle Dienstleistungen e.V. (BSD), 2022), it recognised sex work as work by removing the 'immoral character' ('Sittenwidrichkeit') of sex work contracts, brought sex work under the constitutional right to freedom of occupation,⁸⁶ and allowed brothels to provide a good

⁸⁴ The chapter is based on interviews with nine German sex worker rights activists. The majority of them were sex workers and active in sex worker-led organisations. Others were working for counselling centres for sex workers or as researchers. One participant worked for the SPD (Social Democratic Party). All participants were or are actively involved in the public and/or political debate on the ProstSchG.

⁸⁵ Hydra e.V. is a sex worker led advocacy organisation and counselling centre for sex workers (<https://www.hydra-berlin.de/>), Madonna e.V. is an association promoting the professional and cultural education of sex workers (<https://www.madonna-ev.de/>), Cassandra e.V. is an information and support centre for sex workers (<https://www.kassandra-nbg.de/en/>), HWG e.V. was a self-help organisation from 1984 till 1999 in Frankfurt am Main (https://de.wikipedia.org/wiki/Huren_wehren_sich_gemeinsam).

⁸⁶ As laid down in Art. 12(1) on freedom of occupation of the German Basic Law (GG) and confirmed by the Constitutional Court in its ruling of 28 April 2009 (Beschluss Vom 28. April 2009, 1 BvR 224/07, Rn. 1-31, 2009).

working environment.⁸⁷ This meant that sex workers could legally conclude agreements with clients and brothel keepers and that they got access to social security. As Camille, one of the sex worker participants, expressed:

[O]ne very important thing for the sex workers happened: all of a sudden, we were granted rights. We were granted the right to work and we were also granted the right to enter the social security system. Before 2002 this was not possible and you could be rejected by health insurances for example. They would just be saying, ‘what you do, your trade is not recognised, you can't be insured by us’. [Before 2002] you could not access unemployment benefits and brothels were prosecuted for empowering sex workers by providing a nice working environment (Camille).

One of the leading ideas behind the 2002 law was that the majority of sex workers would become employed by brothels instead of being self-employed, so that they would have access to the social security system, including unemployment benefits, pensions, etc. However, as Camille explained, this did not happen because most sex workers and brothel owners preferred a self-employment relationship, if only because of the relationship of authority inherent in an employment relationship. The right to sexual self-determination was also the reason why the 2002 ProstG laid down the principle of limited authority of the employer while explicitly providing that this did not stand in the way of an employment relation.⁸⁸

5.2.1 RISE OF THE ABOLITIONIST MOVEMENT

The 2002 Prostitution Law faced strong opposition from conservative governments in various *Länder*.⁸⁹ It also gave momentum to the anti-prostitution movement, led by the well-known German feminist Alice Schwarzer and her magazine *EMMA*, a leading feminist magazine,

⁸⁷ Until the passing of the 2002 ProstG, the provision of good working conditions by brothels could be prosecuted as promotion of prostitution.

⁸⁸ Art. 3.2 ProstG: “In the case of prostitutes, the limited right to give instructions within the framework of a dependent activity shall not preclude the assumption of an employment relation within the meaning of social security law” (Prostitutionsgesetz, 2001).

⁸⁹ Germany is a federal state composed of 16 constituent ‘Länder’ (states) with their own jurisdiction. The federal legislative power is vested in the Bundestag (the German parliament) and the Bundesrat (the representative body of the Länder, Germany's regional states).

who strongly resented the law (Sauer, 2019).⁹⁰ From 2010, the abolitionist movement began mobilising for a new prostitution law, declaring that the 2002 law had failed. This resulted in the adoption of the Prostitutes Protection Act in 2016 (ProstSchG, 2016) which came into force in 2017.⁹¹ Several participants described the gradual creation of a climate in which the debate on sex work became increasingly dominated by narratives of trafficking, and the sex sector came to be portrayed as a cradle of violence and criminality - a process that can be seen across Europe (Darley et al., 2018; Jahnsen & Wagenaar, 2018):

So, the narrative changed to the poor exploited women who don't have a voice, who get highly traumatised. This entered the centre stage all of a sudden, and it also became very apparent in Germany that this is going to be a big part of the discourse as of now (Camille).

A key abolitionist narrative was that the legalisation of sex work had led to an 'explosion' in trafficking while depriving the police of their means of control. In abolitionist language, the 2002 law had made Germany an “Eldorado for traffickers, pimps and brothelkeepers” (Kraus, 2016). Another argument to prove the 'failure' of the ProstG was the small number of sex workers who had actually entered into an employment relationship. This was used by the anti-sex work movement, as Camille recounted, to claim that “everyone else [was] still vulnerable with no protection”. According to participants, all three arguments did not correspond with reality. Being self-employed did not mean that sex workers did not have access to social security, but that, like other self-employed workers, they had to organise it themselves; trafficking had not increased but decreased (Dolinsek, 2016); and the law still gave the police the power to enter brothels.

⁹⁰ Alice Schwarzer (1942) is a German journalist and prominent feminist. She is founder and publisher of the German feminist magazine *EMMA*. Her most famous books is *Der kleine Unterschied und seine großen Folgen* (*The small difference and its big consequences*) (1975).

⁹¹ In full: *Gesetz zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen* (Law on the Regulation of the Prostitution Trade and the Protection of Persons engaged in Prostitution).

All three unsupported claims – the supposed lack of social protection for sex workers, the increase in trafficking and the lack of power of the police to combat trafficking – contributed to the image of sex workers as a vulnerable group in need of protection and control, especially by the police, and created a sense of urgency that ‘something had to be done’. One of the emotive arguments, designed to invoke moral indignation, that fuelled this was the claim made by Social Democrat minister Manuela Swesig that it was "easier to open a brothel than to open a snack bar":

[T]hat argument circulated a lot and of course that created a sort of 'Oh my God' panic. That was the argument for introducing those very tight regulations on brothels (Camille).

However, by far the most powerful argument used by the anti-sex work lobby was the dramatic image of Germany as the ‘brothel of Europe’ (Hydra e.V., 2015b), allegedly fed by busloads of vulnerable Eastern European young women:

One of the first graphic descriptions I heard by abolitionists and new prohibitionists is that there are buses that go from one Romanian or Bulgarian orphanage to another to collect fresh 18-year-old virgins, [...] force them in the buses, drive them to Germany and then carousel them around all these meat fucking factories. And this was used in a very descriptive language, like ‘fresh meat’. They were not referring to victims of sexual exploitation as such, but as fresh meat being handed around. One person actually said that vulnerable women are kept naked in basements, chained to the wall as sex slaves for being shat upon. [...] And this was like a high-profile politician who said this in an official podium discussion. That was the wording she used, the picture she used to make sure that she gets her point across of the exploitation that happened (Camille).

The image of the 'brothel of Europe' functioned as a powerful trope as it plays into both anti-prostitution and anti-migrant sentiments, but, as Peršak writes (2014: 201), couched in the language of care and protection. At the same time terms like ‘fresh meat’ and (semi-pornographic) images such as ‘sex slaves chained naked to the wall’ are intended to provoke bodily feelings and to get ‘under the skin’ (Sauer, 2019). However, the ‘brothel of Europe’

trope is not unique for Germany, the same argument of the Netherlands becoming the ‘brothel of Europe’ was used by abolitionists against the lifting of the ban on brothels in 2000.

The call for more repressive sex work policies cannot be seen in isolation from the growth on the number of migrant sex workers. Just as Kulick (2003) argued that the Swedish sex purchase law was largely a response to Sweden's accession to the EU and fears of identity loss, fuelled by reports of Eastern European sex workers ‘invading the country’, several participants set the trope of the Eastern European victim and the lobby for the ProstSchG against the backdrop of anti-immigration sentiments and the EU enlargement. The latter gave Eastern European women the right to work in Germany and made it more difficult to control their movements. As Luisa, one of the participants, commented, there was a lot of anti-migrant sentiment in the debate, especially in relation to the poorer EU countries, as embodied by the figure of the Eastern European prostitute. Some participants, for example, argued that one of the aims of compulsory registration was to make it more difficult for Eastern European sex workers to work legally in Germany, as many of them would have problems registering because they did not have a fixed address in Germany or because of language barriers. According to Rosa, one of the sex worker participants, Eastern European sex workers functioned both as the prototype of the vulnerable victim, but were also perceived as a threat and that it would be better if they did not come at all:

The cliché of the sex worker in Germany is East Europeans coming here for sex work, making a lot of money, sending it back home, and paying nothing back to the state, and even maybe taking away the work for the German whore [...] and they have the fear that they will come in thousands and ten thousands and, you know, just be here and flooding (Rosa).

On the one hand this is illustrative of the fear of indigenous citizens that low-income migrants will abuse the welfare system and displace them in the labour market, which, as described by Wagenaar (2018: 17), is a central theme in the policies on sex work and migration of high-

income welfare states of Northwestern Europe. On the other hand it shows how thin the line is between victim and deviant. The migrant sex worker is simultaneously a passive victim of brutal traffickers and an unwanted deviant nuisance who does not pay taxes and takes jobs away from Germans, undermining the social fabric of the German welfare state (Doezema, 2010; Levy & Jakobsson, 2013; Outshoorn, 2012). At the same time it revives the stereotype of the sex worker as either endangered or dangerous and the associated distinction between good and bad women, innocent and guilty victims (Pheterson, 1996).

5.3 THE 2017 PROSTITUTES PROTECTION ACT (PROSTSCHG)

In 2016, Parliament passed the Protection of Prostitutes Act (Gesetz Zum Schutz von in Der Prostitution Tätigen Personen (ProstSchG), 2016). In line with the growing dominance of a victim and crime frame, the Explanatory Memorandum of the law emphasised the vulnerability of sex workers and the criminogenic nature of the sector. Prostitution is described as "an area in which fundamental rights such as sexual self-determination, personal freedom, health and personal rights of those involved are actually particularly at risk" (Deutscher Bundestag, 2016: 1). It also stated that "prostitution is often practised by people who are in a particularly vulnerable or stressful situation and who are therefore not in a position to defend their rights in a self-determined way"⁹² (Ibid: 1). A similar argument of lack of capacity for self-determination' was used by the Dutch Minister of Justice during the debate on the lifting of the ban on brothels to justify the criminalisation of recruitment for sex work across borders irrespective of the use of coercion, when he stated that sex workers from third world countries did not possess "the mental ripeness to oversee the consequences of one's actions and make independent decisions", so it was better to prevent them from coming at all (Wijers, 2018: 490).

⁹² Original text: "Zugleich muss berücksichtigt werden, dass Prostitution nicht selten von Personen ausgeübt wird, die [...] nicht in der Lage sind, selbstbestimmt für ihre Rechte einzutreten".

The ProstSchG, which came into force on 1 July 2017, introduced compulsory registration of sex workers, the requirement to carry a special 'prostitute ID' with a photo and personal details while working, and the obligation to attend (bi)annual health counselling to determine whether they entered sex work voluntarily and had the mental capacity ('Einsichtsfähigkeit') to make a conscious decision to do so. Sex workers are prohibited from working without registration and unregistered sex workers can no longer work in legal brothels. Registration data are shared with the tax office. The law also prohibits sex workers from sleeping where they work and from working during the last stages of pregnancy, and makes the use of condoms compulsory for clients. The stated purpose of the registration and mandatory health counselling is to identify victims of trafficking and to inform sex workers of their rights and responsibilities, such as the paying of taxes, available support services and exit programmes.

The ProstSchG was a compromise between the Social Democratic Party (SPD), which wanted to regulate brothels, and the Christian Democrat Union (CDU), which wanted to register sex workers. As a result, in order to be able to set standards for brothels, the SPD agreed to registration. As the SPD worker explained:

[W]e had to look how we can put together the demands of the conservatives, the CDU, and our own. In the beginning we just wanted to regulate the brothels, but the conservatives wanted to know how many prostitutes do we have in Germany. [...] So, they wanted to register them. [...] Their argument was when we can register them, we can talk to them and then we can have a look [at] them and can maybe find out if they are victims of trafficking. [...] this was very difficult because our position was that we will never find out whether somebody is a victim of trafficking when she is at the Behörden [public authorities] and has to register herself. So, these were the two points from where we came (SPD worker).

To regulate brothels the law introduced a licensing system for brothels, without making a distinction between large brothels and two sex workers working together in a flat, and gave the police the power to enter the homes of individual sex workers without their permission if

they are suspected of working with a colleague or someone else (ICRSE, 2017; Maciotti & Geymonat, 2016). Municipalities were given greater powers to ban or close sex businesses. Violations of the regulations can be punished with fines of up to 1,000 euros for sex workers and up to 10,000 euros for sex businesses and operators. Clients who do not use a condom can be fined 5,000 euros.

The registration of sex workers, however, was not the only item on the CDU's wish list. They also wanted to reintroduce compulsory STD testing, give officials the power to refuse sex workers registration if they felt they lacked '*Einsichtsfähigkeit*', and raise the legal age for sex work from 18 to 21. Several participants argued that under the guise of 'protection', the real intention of the ProstSchG is to reduce sex work. This was confirmed by the SPD worker:

We recognised that the CDU wants more than registration. Because they made clear that they want to prohibit the prostitutes to work as a prostitute when they register. [...] And the CDU was of the opinion that a minimum of the women and men have the insight to make this decision and their hope was that the civil servants won't give any prostitute permission to work, not 'not any [prostitute]', but not many (SPD worker).

According to Vanwesenbeeck (2017), this 'regulation to deter' (Dolinsek, 2016) is part of a broader, well established development in which sex work is framed as extremely problematic and needs to be repressed. As Voice4sexworkers, a network of sex workers and allies, writes: "the entire construct of the ProstSchG is intended to deter people from entering prostitution and render sex work impossible in most places" (Voice4Sexworkers, 2015).

The raising of the legal age and the possibility to refuse sex workers' registration were rejected during the parliamentary debate on the grounds, among others, that they violated the right to freedom of occupation. Opponents of the law argued that raising the legal age for sex work would force young sex workers into illegality and reduce their access to support services and exit programmes. It would also contradict the unity of the legal system, as 18 is the age of majority under German law, and sex workers cannot generally be assumed to have a lower

level of maturity (Deutsche Aidshilfe, 2015; Deutscher Frauenrat e.V. et al., 2015). The proposed reintroduction of mandatory STD-testing was dropped as a result of the opposition of sex workers and public health organisations and was replaced by mandatory health counselling (BVÖGD und 22 Gesundheitsämtern, 2015; Deutsche Aidshilfe, 2015; Deutsche Frauenrat e.V. et al., 2015).

5.3.1 PARADIGM SHIFT: FROM LABOUR RIGHTS TO A VICTIM & CRIME FRAME

Whereas the 2002 Prostitution Act was based on an emancipatory and labour perspective of sex work, the 2017 ProstSchG reflected the increasing dominance of the anti-trafficking discourse and moved sex work back into the realm of (female) victimhood and crime rather than rights and empowerment. As a result, politicians and the media largely framed the debate on sex work policy in terms of concerns about human trafficking (Darley et al., 2018; Jackson, 2016). As Camille pointed out, the problematisation of sex workers as victims in need of protection profoundly shaped the ProstSchG, reflecting a broader pattern across Europe and beyond (see e.g. Jackson, Reed, & Brents, 2017; Outshoorn, 2018; Ward, 2019; Jahnsen & Wagenaar, 2018). It made the ‘voiceless victim’ a key figure in the public and political debate and the dominant justification for compulsory registration and counselling, the prohibition on sleeping in the brothel and on working in the last stages of pregnancy, and the *de facto* ban on working with a colleague. As explained by Sophie:

The argument for the registration was, we don't know where the women are, they are brought here by bus and then they are being brought from city to city and we don't know where the women are [...]. Some well-meaning feminists really thought that these were like abducted women and if we could register them, then we would at least know where they are (Sophie).

The main objective, as Camille put it, was that it would force women out of their environment so that they would "open up about their terrible circumstances, because otherwise they don't have any agency and no possibility [to do so]". Similarly, the ban on sleeping in brothels - as

many women did to save money - was based on the idea that women needed to be taken out of the brothel "to see something else" (Macioti & Geymonat, 2016: 41):

This whole idea that you can't sleep in the brothel where you are working [...] goes directly back to this narrative that people are kept in brothels and they never ever see day light, they are forced to be there (Camille).

Reflecting on the victim discourse, Camille pointed out that the ProstSchG rests on two conflicting ideas and how the framing of sex workers as victims takes away their agency: on the one hand there is the narrative of a legal business, on the other hand the idea of the poor women "forced into dire circumstances and kept in a state of mind in which they are not able to have their own agency". Taking away the agency of sex workers, she said, does not just suppose that they are not able to make their own decisions, but also removes their right to make bad decisions, which other people are granted: "So, even if the situation is perceived [as] dangerous you are not granted the decision to make it for yourself to say this is dangerous or not (Camille).

The ProstSchG can be seen as part of a growing trend to control and punish that can be observed in various European countries (Jahnsen & Wagenaar, 2018; Outshoorn, 2012; Persak et al., 2014; Skilbrei & Holmström, 2013). At the same time, it shows again how thin the line is between sex workers as 'endangered' and in need of protection, and 'dangerous' and in need of repression and control. They are victim and threat at the same time. The migrant sex worker is simultaneously a passive victim and an unwanted deviant nuisance who does not pay taxes and takes jobs away from Germans. Sex workers are defined as vulnerable and (according to the Explanatory Memorandum on the ProstSchG) lacking the capacity for self-determination, but simultaneously treated as a threat and potential law breakers.⁹³

Significantly, as remarked by the public health services, the protectionist framework of the

⁹³ See for a discussion of the thin line between endangered and dangerous, victim and threat, Chapter 2.4.4.

ProstSchG defines sex workers as potential lawbreakers and a danger to the “life, freedom, sexual self-determination or health” of others,⁹⁴ rather than as subjects worthy of protection whose capacities and empowerment should be strengthened (BVÖGD und 22 Gesundheitsämter, 2015). As Emilia remarked, despite the fact that it is a legal profession, the ProstSchG regulates sex work in terms of criminal offences. According to her, this is indicative of the legislator's view of prostitution and in line with the logic of ‘we need to protect women from sexual violence’. This makes Reva Siegel’s (2008: 1694) observation about women-protective abortion restrictions in the 1970s that “[I]ike old forms of gender paternalism, the new forms of gender paternalism remedy harm to women through the control of women” directly applicable to the ProstSchG, and places sex workers’ struggle for the right to decide over their own body and lives in the broader context of women’s sexual and reproductive rights (see for a discussion of dignity and the regulation of female sexuality Chapter 2.6.2).

The shift of paradigm from a labour to a victim frame also made it more difficult for sex workers’ organisations to utilise a labour rights frame. As worded by Hydra, a meeting point and counselling centre for sex workers, the “hegemonic perspective on sex work as a hotbed of violence, coupled with the increasingly frequent claim that the majority of migrant sex workers are victims of poverty and forced prostitution [hindered] the promotion of a stance centred on workers’ labour rights instead of fighting crime” (Hydra e.V., 2015b).

Abolitionists used the promotion of a labour frame against sex workers, firstly by claiming that calling for sex work to be recognised as work denied the violence and exploitation that

⁹⁴ Section 11(3) of the ProstSchG makes it, for example, possible to issue administrative orders against sex workers “to protect clients or other persons from dangers for their life, freedom, sexual self-determination or health”, “for the protection of minors” or “to prevent other significant adverse effects or threats to the public interest, in particular the protection of residents and the general public from noise, behavioural or other nuisances”.

took place in the sector⁹⁵ and, secondly, by suggesting that this meant that sex workers were - and had to be - 24/7 happy with their work. This in turn was used to create the counter stereotype of the 'voiceless victim': the heartless 'happy hooker', indifferent to the suffering of the helpless and exploited victims. White privileged exceptions who could not speak for the voiceless majority of (Eastern European) victims. This happy hooker/voiceless victim dichotomy played a crucial role in disqualifying not only sex workers as legitimate partners in the debate, but also their claims to protection of their (human) rights (See for a discussion of the happy hooker-voiceless victim dichotomy Chapter 2.4.1 and 2.4.2).

This paradigm shift not only affected the representation of sex workers but also of clients. This is, for example, reflected in the discussion about the criminalisation of clients who made use of the services of trafficked persons. As worded by Hydra: "This may sound reasonable, but of course rape and sex with a trafficked person is already illegal in Germany. The main purpose of this law seems thus to convey to clients that their behaviour is morally unwanted and that they are walking a thin line" (Hydra eV, 2015:3). According to Bernstein (2012), the use of criminal law as a deterrent to men's bad behaviour is consistent with carceral feminism's use of criminal law as a means to restore an amatory sexual ethic of familial domesticity and the domestication of men, based on the belief that sexuality should be kept within the confines of the romantic couple. By shifting the focus from sexually improper women to sexually improper men, she argues, human rights discourse has become "a key vehicle both for the transnationalisation of carceral politics and for the reincorporation of these politics into the domestic terrain in a benevolent, feminist guise" (Bernstein, 2012: 233).

5.3.2 OBJECTIONS TO THE LAW

The ProstSchG was adopted despite strong opposition from the field. Sex worker organisations,

⁹⁵ This is actually an interesting statement, because labour law has been developed since the end of the 19th century precisely to combat exploitation and abuse in labour relations.

counselling centres, health and STI organisations, anti-trafficking NGOs, the German Women's Council and the Women Lawyer's Association (djb) predicted that instead of protecting sex workers, the law would have a serious negative impact on the position of sex workers. They argued that compulsory registration would push large numbers of sex workers into illegality, undermine their access to health and social care, increase discrimination and make sex workers more vulnerable to trafficking and other forms of violence and abuse, while cutting off access to the police for the most vulnerable groups (BesD, 2014; BesD e.V., 2015a, 2015b; BVÖGD und 22 Gesundheitsämtern, 2015; BVÖGD und 25 Gesundheitsämter, 2015; Deutsche Aidshilfe, 2015; KOK e.V., 2015; Deutsche Sti-Gesellschaft (DSTIG), 2015; Deutscher Juristinnenbund e.V., 2015; Dolinsek, 2016; Hydra e.V., 2015b, 2015a; Maciotti & Geymonat, 2016; Voice4Sexworkers, 2015). They also foresaw that a large group would be unwilling to register for fear of stigma and involuntary outing, while another group, including the most vulnerable and marginalised sex workers, would be unable to register because they did not meet the requirements, such as having a fixed address and residency status. As a consequence, unregistered sex workers would be forced into more hidden areas of sex work, putting them at greater risk of violence and abuse.

In particular, the requirement to carry a special 'prostitute ID card' while working, or 'Hurenausweis' as sex workers called it in reference to Nazi Germany, was the subject of fierce resistance. One sex worker, for example, tells how the 'whore ID' affected the mental health of a Jewish colleague: "She said, 'we had this once already in this country. You know what happened then'" (ICRSE, 2017: 9). Sex workers and other opponents stressed that it would increase the stigmatisation of sex workers and, if lost or stolen, put them at risk of blackmail, stalking and unwanted exposure.

Health organisations warned that compulsory health counselling violated the principles of anonymity and voluntariness and would undermine sex workers' trust in health care and social

services (BesD e.V., 2015a; BVÖGD und 22 Gesundheitsämter, 2015; BVÖGD und 25 Gesundheitsämter, 2015; Deutsche Aidshilfe, 2015). Sex workers also emphasised the humiliating and patronising nature of compulsory counselling, which insinuated that sex workers were “irresponsible, mentally incapable beings” (Maciotti & Geymonat, 2016: 45).

Anti-trafficking organisations warned that identifying victims is not possible in a one-off interview, but requires building a relationship of trust, and that registration could be used against victims in court cases to cast doubt on their victimhood, as they had the opportunity to seek help but did not do so. Unregistered victims, on the other hand, would be afraid to report to the police for fear of being punished themselves. Registration would also endanger migrant sex workers from countries where sex work is illegal if their work became known, for example through the exchange of data by officials or the theft of their prostitute ID (BesD, 2015; Deutsche Aidshilfe, 2015; Deutscher Frauenrat et al., 2015; KOK e.V., 2015).

Major concerns also existed about the privacy sensitivity of a register of sex workers and the risk of the abuse of data (BesD e.V., 2015b; Deutsche Aidshilfe, 2015; Deutscher Juristinnenbund e.V., 2015; Uhl, 2017).

5.4 SEX WORKERS’ RESISTANCE TO THE PROSTSCHG

In order to better understand how human rights were and were not mobilised by the sex worker movement in their campaign against the ProstSchG, this section discusses how the resistance of sex workers against the law unfolded, the abolitionist strategies to disqualify sex workers and their use of affective framing to change the ‘feeling culture’ around sex work.

5.4.1 SEX WORKERS ORGANISING AGAINST THE PROSTSCHG

In contrast to the victim protection-based repressive frame underlying the ProstSchG, sex workers’ advocacy was rooted in rights-based frames. As stated by Jackson (2016), rights-based frames are grounded in agency and autonomy and are at odds with the victim frame of

rescue, rehabilitation and protection. Rather than accept being defined as passive victims, sex workers claimed agency and the ability to make their own decisions about their lives and bodies and to define their own needs and demands. Major themes in the campaign against the ProstSchG were ‘sex work is work’, the distinction between sex work and trafficking, the recognition of sex workers’ agency, and the refusal to be categorised as victims.

One of the first actions taken by the German sex worker movement was a counter campaign against the ‘Appeal against prostitution’ of Alice Schwarzer and her magazine *EMMA* (2013) initiated by the BesD, the Professional Association of Erotic and Sexual Services (*Berufsverband erotische und sexuelle Dienstleistung*), which was founded in 2013 as a nationwide organisation in response to the growing abolitionist influence (Guldner, 2013). Under the heading ‘Appeal for prostitution’ it called to strengthen the rights of sex workers and improve their living and working conditions (BesD e.V., 2013; Lehmann, 2013). It opened firmly by stating:

Prostitution is not slavery. Prostitution is an occupation, where sexual services are offered in exchange for payment. Such transactions are based on the voluntariness of the parties involved. Without consent to sexual activities, there is no prostitution since sex against a person’s will is rape. [...] Prostitution is not a synonym for human trafficking. [...] To flatly label sex workers [...] as victims is an act of discrimination (BesD e.V., 2013a).

Sex workers were actively involved in the public and political debate on the ProstSchG. They lobbied politicians and voiced their objections to the bill by submitting position papers and making statements to Parliament (BesD e.V., 2015b; Doña Carmen e.V., 2015; Hydra e.V., 2015a). They launched counter-campaigns, protested at panel discussions organised by Alice Schwarzer (BesD e.V., 2013b), organised demonstrations (Voice4Sexworkers, 2015⁹⁶), and

⁹⁶ See e.g. for the demonstration in Frankfurt: https://www-voice4sexworkers-com.translate.google/prostituiertenschutzgesetz-verstoest-gegen-unsere-grundrechte/?_x_tr_sl=de&_x_tr_tl=en&_x_tr_hl=en, accessed 1 May 2024.

participated in discussions with political parties and in Round Tables organised by different federal states.

According to my participants, however, the debate was highly emotional and rational objections hardly had an impact. Although sex workers were involved in the debate, they did not feel that their voices were being heard. As expressed by Hilde:

[O]f course Hydra was heard, like, we spoke, but nobody listened. We were in these meetings and we wrote all these papers, and everybody was like, yeah really interesting, and then they didn't do it [what we were advocating for]. So, yes, sex workers were involved in the process but nobody listened (Hilde).

The same happened, participants said, to other stakeholders who testified against the ProstSchG: “They got heard, they got thanked for and they got ignored, like we did” (Camille).

One of the problems faced by the sex worker movement was that the media largely framed the debate as 'feminists versus sex workers', despite the fact that many feminist organisations, such as the German Women's Council and the Women Lawyer's Association (djb), opposed the law. When talking about it, Sophie is still angry:

There are so many people who are not for a prohibition who have been working in this field for decades, there are feminists out there, but in the media the dichotomy is always feminists versus sex workers. [...] And then there is always Alice Schwarzer versus sex workers. It really, really makes me angry (Sophie).

The growing strength of the abolitionist movement also affected the position of traditional allies of the sex workers movement. Organisations that had been allies for many years withdrew, such as the trade union Verdi and Terre des Femmes, both of which shifted their position from supporting sex workers' rights to an anti-prostitution position. Partly, said Camille, this was the result of a strategy begun ten years ago by abolitionists and right-wing fundamentalists to penetrate political structures and systems of power, partly it was because

the radical feminists were very vocal and "not afraid to stray from facts and statistics and research and studies and stuff like that".

Sophie analysed how the sex workers' slogan 'listen to sex workers' had had a perverse effect of stopping (feminist) allies from speaking out more clearly, including herself at the time, in contrast to the radical feminists who were very loud and had no problems with talking over people. She explained how, at one point during the negotiations on the bill, the hashtag #listentosexworkers emerged and gained a lot of traction:

And that changed the discourse on the side of the supporters because they said, "well, listen to sex workers". These progressive people stopped speaking out for sex workers and so the support from those disappeared, precisely because they wanted to listen to sex workers and they didn't realise that they had to be vocal as well in this debate (Sophie).

And, she said, you can listen to sex workers, but what do you do if sex workers can't speak because they will have to out themselves.

Initially, sex workers' advocacy focused on the full decriminalisation of sex work, the distinction between sex work and trafficking, the recognition of sex workers' agency, and the refusal to be categorised as victims. However, as the prospect of the bill becoming law grew, they were faced with the dilemma of either continue to radically oppose the bill or focus on damage control to mitigate its worst elements. Several participants felt that the ProstSchG was just the first step in a debate about the criminalisation of clients, and that if they would oppose the law too much, the alternative would be the Swedish model. As a result the opposition against the law became to be focused on damage control, trying to remove its most harmful elements, rather than on the law itself. This was fed by a feeling that it was not feasible to stop the law, because of the coalition agreement, the strength of the CDU and the dominant position of the anti-prostitution lobby in the public and political debate. As Camille expressed:

We were highly focusing on decriminalisation but at some point, it became apparent that this is Utopian (...). And we then also had this so-called ‘Real-Politik’ thing where we're saying it is good that they talk to us, so we need to meet them somewhere. So, we tried to do harm reduction [...] to make the law as soft as possible (Camille)

All my participants are convinced that they are still in the middle of the abolitionists' plan to introduce the Swedish model and that this is a real possibility.⁹⁷ As stated by Camille: “They have money, they have means, they have a strategy, they have advisors. We have none of that. Or very miniscule compared to them”. Moreover, they have a strong lobby within the political parties, including the social democrats. Looking back, Camille felt that they had focused too much on what was 'realistic' instead of taking a more radical approach: “We were trying too much like, ‘ha, you're talking to us now’, so we don't want to lose that, we tried to be nice”.

In June 2017, twenty-five sex workers, brothel managers, and clients submitted a complaint against the ProstSchG at the Federal Constitutional Court (Doña Carmen e.V., 2017; 2019). The complaint focused on the violation of fundamental rights of the German Basic Law, notably the right to sexual and informational self-determination, to freely choose one’s profession, and to the inviolability of the home. In June 2018 the case was declared inadmissible as according to the court the complaint was not sufficiently substantiated (BVerfG, 2018; Rath, 2018). The appeal to the European Court of Human Rights also failed as the Court found that domestic solutions had not been fully exhausted (ECHR, Appl. no. 8557/19) (Doña Carmen e.V., 2019).

5.4.2 THE DISQUALIFICATION OF SEX WORKERS AS LEGITIMATE PARTNERS IN THE DEBATE

As my participants discussed in the previous chapter, common ways of excluding sex workers as legitimate partners in the debate on sex work laws and policies are to disqualify them as suffering from a false consciousness, damaged, exceptions (‘happy hookers’), or part of the

⁹⁷ Their fears have appeared to be justified: in February 2024, the CDU succeeded in getting the criminalisation of clients debated in the German parliament (BesD, 2024a, 2024b).

pimp lobby (see also, for example, Doezema, 2010; Levy & Jakobsson, 2014; Maciotti & Geymonat, 2016; Phipps, 2017, and Chapter 2.4.1). Similarly, sex workers who spoke out against the ProstSchG were systematically labelled as damaged, unaware of their oppression, or untrustworthy (e.g. Kraus, 2016). This not only invalidates sex workers consent to engage in sex work, but also undermines their opinions on the law (Ward, 2019). However, the two most common ways in which sex workers were disqualified as legitimate partners in the public and political debate on the ProstSchG was by branding them either as privileged exceptions, who could not speak for the majority of victims, or as part of the 'pimp lobby'. As Hilde said, everybody who said “I am a sex worker and it’s ok, I like it”, was told that they were too privileged and could not speak for the victims:

What they say is all these privileged sex workers are not allowed to talk about other sex workers, but I am, as a middle-class woman who never even did sex work (Hilde).

A step further was depicting sex workers who spoke up as exploiters themselves:

This was also what happened from the opposition to our statements. This started when they painted us as the enemies, as the exploiters, that we are the few privileged ones who neglect our colleagues who are exploited and that our success and our income is based on the exploitation of all the other poor sex workers. You can't be trusted (Camille).

The consenting sex worker as a figure “beyond trustworthiness” is a recurring theme, either because she cannot exist (Ward, 2019: 8), is corrupt (because part of the pimp lobby or an exploiter herself) or because she lacks the right awareness. The lack of trustworthiness of sex workers was not only used in the German debate, for example by *EMMA* to disqualify the leaders of the BesD, but was also mentioned by, for example, Ava in the context of the Irish debate on the criminalisation of clients. As she put it: "We don't know ourselves, we can't be trusted".

As in other countries, a common argument was that sex workers who opposed the ProstSchG were not really sex workers but “lobbyists for the sex industry“ who did “not represent the interests of the prostitutes but rather those of pimps and brothel owners, even those of human traffickers, in that they minimise or cover up their roles in the prostitution industry” (*EMMA*, 2014, online). Academics were also attacked in this way:

I have been labelled pro prostitution. And so, that is a way to delegitimise our research, even though our conclusions are based on academic standards and research and facts, but nobody cares (Sophie).

At the same time, sex workers were pathologized as victims who were not aware of being traumatised because they were still in the stage of ‘self-harm’ or ‘self-denial’.⁹⁸ Rosa described how the idea that no one can do sex work of their own free will was used to create the idea that people must be ill to want to engage in it:

[T]hen of course the trafficking argument, that there is no sex work of free will, that there is only trafficking by pimps and that there are only very, very few altogether emancipated sex workers. And that even they, the emancipated sex workers, the whores from free will, that they cannot know for themselves because maybe they are ill, because they have been abused or raped, you know, the pathology of sex working persons. That was coming all the time from the pity bourgeois direction, that people need to be ill to want to do sex work and that you cannot take them seriously (Rosa).

In addition, particularly the spokeswomen of the BesD were the target of vicious personal attacks, among others in *EMMA* (2014). This included portraying them as abnormal (by systematically highlighting their work as dominatrixes), untrustworthy and defending the interests of pimps, as well as trying to find out their passport names and involuntarily outing them. The message was clear, stated Camille, who was one of the sex worker activists who was attacked: “If you become active, we are going to be on you and we are going to out you and there is nothing you can do to avoid that, so better be careful”. Of course, she said,

⁹⁸ See also the use of the concept of ‘symbolic violence’ in France: Chapter 6.

“nobody said that directly, but this was really the message behind the smear campaign”.

5.4.3 THE USE OF AFFECTIVE FRAMING BY THE ABOLITIONIST MOVEMENT

One of the factors that made it difficult for the sex workers' movement to counter abolitionist campaigns was their use of affective framing to get their message across. As argued by Peršak (2014: 213), behind the criminalisation of clients lies a new type of legal moralism, which is revealed in the moral indignation that many of their statements exude, “directed towards those who are of a different opinion, including *ad hominem* arguments and the use of a variety of pejorative terms to describe those who disagree”. This makes it not only difficult to counter abolitionists campaigns, but also has the effect of silencing any opposition, as related by my participants.

In her study of anti-sex work mobilisation in Germany and Austria, Sauer describes how abolitionist campaigns “seek to physically affect a potential audience, they want to provoke bodily feelings and intend to get ‘under the skin’” (Sauer, 2019: 7). Several participants noted that it is precisely this playing on emotions that made it so difficult to counter abolitionist narratives:

Like people stop thinking when it's about prostitution [...]. And that's also part of their strategy, they go to the emotions. So they speak about bodily orifices, *Körperöffnungen*, they become very explicit in the language, they become very pornographic at times to get people emotional, that people feel something in their belly, I guess, and then... 'oh we must stop it, we want to be against prostitution' [...]. They stop thinking about what law is, what it means, what the goal of law is (Sophie).

An example of semi-pornographic language is the image used by the anti-sex work lobby of “women kept naked in basements, chained to the walls as slaves” to evoke moral designation of Germany becoming the ‘brothel of Europe’. Also Emilia described how difficult it is to reason against emotions and to get across a more complex and differentiated message, if only because it takes more time:

[O]f course we want to protect women and girls, who doesn't want to protect people from violence! It is very difficult to speak against that in the debate and also in the political debate. [...] I believe that all this has had something to do with why it was so difficult to use logic and differentiation to counter these highly emotionalised narratives, because differentiation also costs time. [...] In a speech you do not have that time (Emilia).

To change what Sauer calls the 'feeling culture' around sex work, anti-sex work campaigns feed on social attitudes towards prostitution, which have historically been a mixture of shame, disgust, fear and guilt, while constructing sex workers as deviant, abnormal and a threat to society, public health and the family. A key strategy used to appeal to politicians was to create disgust and shame and then blame them for it. This is how Christine formulated the abolitionist message to politicians:

Hundreds of thousands of young women from Eastern Europe are enslaved in prostitution in Germany and raped in brothels every day and that is in Germany and we do nothing about it. That cannot be! You are the politicians, you must take care that these women are not raped (Christine).

In the case of male politicians, this was compounded by the accusation of being a client. For example, the *EMMA* article mentioned above suggested that (male) politicians who listened to the BesD did so because they were threatened by them with being outed as clients:

Should certain politicians be threatened here? Politicians who do not dare to say that they "use sexual services"? Politicians who must do what the prostitution industry wants - if they do not want to end up on page 1 of the "unpredictable media"? (*EMMA*, 2014).

Female politicians who did not oppose the 2002 prostitution law were denounced as "submissive to their male party comrades" and accused of "willingly collaborat[ing] with the party masters", according to the website of Kofra, one of the members of the *Stop Sexkauf* alliance, which campaigns for the criminalisation of clients (quoted by Sauer, 2019: 8).

Penttinen (2006: 134, quoted by Peršak, 2014: 134), commenting on the discussion on client

criminalisation in Finland, describes a similar discourse, noting how men who were not willing to criminalise buying were accused of using prostitute's services themselves, and how views opposing criminalisation were ridiculed and stigmatised as supporting prostitution and violence against women. The effect of the combination of accusations and personal attacks was that it made people afraid to speak out for the rights of sex workers.

5.5 THE USE OF HUMAN RIGHTS BY THE SEX WORKERS MOVEMENT

According to my participants, sex workers rarely mobilised human rights and human rights language in their campaign against the ProstSchG for a number of reasons. One reason they gave were that they were caught up in damage control. For Hilde, for example, human rights were associated with something big and abstract, rather than a practical tool to address attacks on sex workers' rights. As she put it, they were constantly in 'damage control mode' and thinking about human rights felt like something for later:

We're always like OMG something bad is happening, how can we stop that or twist it a little bit so it is not that bad? And thinking about human rights is more like, ok, we can do that later. It is like the bigger picture, but we don't have time for this right now, it is like everything is on fire and no one wants a discussion about human rights and how we can apply them, we have to organise an extra demonstration (Hilde).

A second reason they gave was the lack of support from human rights organisations. Camille, for example, mentioned that they had hoped to engage human rights activists and data protection organisations by using human rights arguments, but that this did not happen. As a result, they decided to rely on their own strategy. Hilde compared it to the use of labour rights, where the sex workers' movement also lacked allies with the institutional framework and expertise to help translate the issues they were struggling with into the language of labour rights:

I think the problem is often that we don't argue with these rights because we have no allies supporting us. Lack of knowledge even, because they are the experts, so they maybe have ideas like, ok, that's a right and we should talk about that and we can do a campaign or even in the UN because we are the experts on human rights or labour rights or whatever. And if there is no support, then we don't have this broad framework, we only have the small garbage fires we have to put out everywhere (Hilde).

In contrast, she continued, there were many organisations in the health sector that supported them and had the knowledge and institutional framework, such as the German Aidshilfe:

So there is this department where we don't have to do all the work and they support us, like, it is bad for health too when we have these repressive laws. And we [say], look Deutsche Aidshilfe says it, so, we don't have to do all the work, like being human rights experts and labour and sex workers and activists and everything at once (Hilde).

The fact that several participants mentioned that they felt they lacked the tools to mobilise human rights, both in terms of expertise on how to translate the objections to the ProstSchG into the human rights framework and in terms of institutional support, underlines the importance of allies who have the expertise and institutional resources to translate sex workers' rights claims into the language of human rights. As my participants suggested, allies are important not only because of the specific expertise they can bring, but also because of their social status and institutional capacity to research, formulate arguments and take them forward in the political context.

Overall, the protection of sex workers' human rights received little attention in the political debate. They were either ignored, discredited, or dismissed as acceptable collateral damage for the greater good of rescuing victims. For example, there was little discussion of Amnesty's call for the decriminalisation of sex work, partly, according to Sophie, because people did not realise how much these ideas were under threat. When the position of Amnesty International and other human rights organisations was put forward, they were discredited as being misled by the international pimp lobby, which prompted Camille to comment:

The audacity you have to think about... Amnesty International misled by the pimp lobby? The World Health Organisation, really? [...] If it wouldn't be so impactful it would be ridiculous. But it does have an impact, especially in these times of fake news (Camille).

As Camille described, the debate around the ProstSchG was heavily framed in terms of (the failure of) control, “so it was never a discussion about freedom or sexual freedom, that was actually carefully avoided”. She attributed the lack of a fundamental discussion about the human rights of sex workers to the unpopularity of the issue among policymakers, who felt that supporting the rights of sex workers would damage their careers and expose them to personal attacks and accusations of being part of the 'pimp lobby'. She also recalled how different this was when the Prostitution Act was being debated in 2001. At that time, she said, the mood was more open to sexual freedom, there was a Green-Red coalition, and it was also the time for gains on abortion rights but “then it changed over the next 10 years, the whole idea of sexuality changed to a more conservative approach”.

Another reason why, according to Sophie, sex workers' human rights did not play a significant role in the ProstSchG debate was that much of the support for sex workers came from queer groups who were focused on identity politics rather than human rights. This made the discussion about sex work part of the discussion about inclusive feminism, as people realised that the same radical feminists who were excluding trans people also excluded sex workers: "So it was never about the reality of sex work and the reality of implementation [of the law]".

When human rights were used by sex workers, it was mostly in the form of ‘*Grundrechte*’, fundamental rights, as enshrined in the German Basic Law (Grundgesetz (GG)) or, as Rosa called it, democratic rights. Sex worker organisations and allies argued, for example, that mandatory registration violated the right to free development of personality and informational

self-determination (Art. 2 GG)⁹⁹ and that raising the legal age for sex work violated the right to free choice of profession (art. 12 GG) (BesD, 2015; Deutscher Frauenrat e.V. et al., 2015; BVÖGD und 22 Gesundheitsämtern, 2015; Voice4Sexworkers, 2015). Mandatory registration and counselling was also argued to violate the right to equal treatment (Art. 3 GG) as it only applied to sex workers (Voice4Sexworkers, 2015).

An example of the explicit use of human rights was the opposition to the power of the police to enter the homes of sex workers without their permission if they were suspected of working with a colleague or someone else. This still raised emotions during the interviews as it was perceived as a serious violation of not only the German Basic Law (Art. 13 GG) but also of a fundamental human right:

[W]e have the fundamental right to inviolability of the private, meaning that only with a special court decision police or other authorities can come into your private home without your agreement, and only then. This is not true anymore for people suspected of doing sex work or places where sex workers are suspected. So, suddenly you have this one gap in law where human rights are pushed aside through the Prostitutes Protection Act, which is also something we actually used against the registration as an argument (Camille).

However, Camille said, every appeal by sex workers to human rights was countered by the abolitionist lobby with the 'victim argument', dismissing violations of sex workers' rights as 'minor inconveniences' that they should be happy to endure for the 'greater good':

[I]t was also used by the opposition to say... the whole law is going to help protecting the human rights of the victims [...] and only one victim that is saved by this is going to outweigh anything we have to endure. And we should be happy that, if we are like 'have a little bit inconvenience'. This was the wording, that we help save the poor victims from their horrible fate. So, they used it against us (Camille).

⁹⁹ The right to informational self-determination is included in the general personality rights in Art. 2 of the German Basic Law. It is understood by the German Court as "the authority of the individual to decide himself, on the basis of the idea of self-determination, when and within what limits information about his private life should be communicated to others" (BVerG 65 1, 15 December 1983).

Nevertheless, human rights and human rights principles ran (indirectly) through several of the comments on the ProstSchG, including the principles of equal treatment, non-discrimination, and meaningful participation. An example is the briefing paper on the ProstSchG by various sex worker organisations, in which they pointed to the de-stigmatisation of sex work as a particularly important human rights objective, which the ProstSchG “not even rudimentarily satisfies”, and the failure of legislators to listen to sex workers and other experts from various fields (ICRSE et al., 2017: 21).

Another example is the appeal on the EU Data Protection Directive¹⁰⁰ which is based on the right to privacy as enshrined in the European Convention on Human Rights. The Directive prohibits the processing of so-called ‘sensitive data’, which includes data concerning a person’s (professional) sex life. Sex workers and the German Association of female lawyers (djb) argued that the bill did not meet the conditions for making an exception, nor did it provide adequate safeguards to protect the privacy of sex workers (BesD, 2015; Deutscher Juristinnenbund e.V., 2015). This argument, however, was dismissed by the national Data Protection Authorities:

Then we also used the Data Protection Act but we were told by a variety of sources that it is not applicable in Germany because as long as the institution or the state institute can prove that they oblige the law they get an exception. [...] We wrote a few requests to the [...] different Data Protection Authorities [on state and federal level]. We wrote to them all and they didn't see a problem with the law, none of them (Camille).¹⁰¹

¹⁰⁰ Now replaced by the General Data Protection Regulation (GDPR).

¹⁰¹ A similar bill on compulsory registration of sex workers is pending in the Netherlands since 2008. It is highly questionable whether the ProstSchG meets the conditions for an exception to the prohibition on processing sensitive data, in particular the so-called necessity-test. This means that the processing of sensitive data not only requires a legal basis and strict data protection, but also must meet the criteria of effectiveness, proportionality and the principle of subsidiarity. This means that registration needs to be effective to achieve the stated aims, that it must be proportional to the aim and that there are less intrusive means to achieve the aim. Contrary to the German Data Protection Authorities, the Dutch Data Protection Authority (DPA) and the Council of State are highly critical of whether the bill on mandatory registration of sex workers meets the conditions for an exception to the prohibition (see Roth et al., 2015). For the advise of the DPA, see: <https://www.autoriteitpersoonsgegevens.nl/documenten/advies-wet-regulering-sekswerk>, accessed 1 May 2024.

5.6 THE USE OF HUMAN RIGHTS BY THE ANTI-PROSTITUTION LOBBY

In this section I present how, in the views and experiences of my participants, human rights were mobilised by the anti-sex work movement in the debates and policy processes informing the 2017 law to silence sex workers and their allies, dismiss their objections to the ProstSchG and relieve the state of its accountability to protect sex workers' human rights.

Where human rights played a role in the public and political debate about the ProstSchG, they were almost completely hijacked by the abolitionist lobby. As discussed in Chapter 4, the main gateways into the human rights framework were the systematic conflation of sex work and human trafficking and the framing of sex work as violence against women and a violation of human dignity.

A core component of the framing of sex work as male violence against women is the call for the criminalisation of clients. Several participants discussed how the abolitionist campaign is about disciplining sexuality, not only of women but also of men. As Christine stated, the abolitionist argument is no longer just about saving women, but about changing society and to restore, in the words of Bernstein (2012) an amative sexual ethic of familial domesticity and the domestication of men:

A society where there is no prostitution, where men don't 'buy women' but experience it [sex] with their partner and where eroticism is something intimate [...]. The debate is not that women should not be independent, that is accepted [...]. The problem is that the man should be back in the family with his sexuality and all sexuality should be back in the family and nowhere else (Christine).

According to Sauer, abolitionist discourse aims to govern people's sexuality through the construction of images of love, sexuality and partnership, creating an illusion of 'love versus disgust' by positioning a 'pure and natural (female) sexuality', located in the private sphere of an intimate relationship, against the perverse desires of (male) clients, such as anal sex, bondage and domination. Male clients are portrayed as sexual predators who despise women,

lack empathy, and not only use and abuse the bodies of exploited women but also want to control women and “have women’s bodies at their demand” (Kraus, 2016: 8-9). As stated in a press release by Kofra, member of the ‘*Stop Sexkauf*’ (‘Stop Sex Purchase’) alliance: “They [clients] therefore should not belong to the affective community of good citizens, but should be excluded, outlawed and stigmatized” (quoted by Sauer 2019: 14). At the same time, the BesD frontwoman's work as a dominatrix, including her 'specialities' (described in the most physical and colourful terms), was systematically highlighted, aiming to fuel a mixture of disgust and curiosity by constructing both her and sex work as 'abnormal' (EMMA, 2014).

Although the portrayal of sex work as violence against women and the conflation of sex work and trafficking played a greater role, the framing of sex work as a violation of human dignity was an integral part of the abolitionist campaign. When asked about the role of human rights arguments in the debate, Sophie responded:

[T]o be honest it was used more from the anti-prostitution side, so more this conservative idea of human rights and human dignity [...]. Especially trafficking played a role, but human dignity played a role and still plays a role [...] They argue with Article 1 of the German Basic Law, saying that it is against human dignity whatever, and they tell these stories of men who ‘buy’ women, quotation marks, for 30 euros and it is against human dignity. So, they use it and usually couple it with this pornographic language (Sophie).

A good example is the ongoing petition 'Criminalise sex buying, dismantle prostitution' by the *Stop Sexkauf* alliance, launched in May 2015, which calls on the government to criminalise clients. The petition describes the 2002 ProstG as a “legal licence to humiliate and exploit women”, claims that it has made Germany the 'brothel of Europe' and the 'centre of human and drug trafficking', and depicts sex work as a violation of women's dignity:

Prostitution violates the human dignity of women, it humiliates and devalues them. Women are severely traumatised and damaged in prostitution, often for life, even if they ‘voluntarily’ decided to do sex work. The Prostitution Act of 2002 allows and

encourages this! (Stop Sexkauf, 2015)

The same petition compares sex work to the atrocities of German Nazism and refers to the UN Declaration of Human Rights' prohibition of torture and cruel, inhuman or degrading treatment, which is, according to the petition, "exactly what happens, entirely legally, to thousands of women in German prostitution every day". The petition attempts to shame politicians by admonishing the fact that Germany "of all countries" has not ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which it describes as "an essential UN agreement affirming the dignity and protection of human beings".¹⁰²

As Emilia noted, both the anti-sex work lobby and the sex worker rights movements use the same concepts but with very different meanings and consequences. As an example, she cited the constitutional principle that "human dignity is inviolable", which both sides agree on. However, she said, the abolitionists use it to demand the abolition of prostitution, whereas the sex workers' rights movement says, "support sex workers and do them justice so that their human dignity is not fucked up". In terms of Cunningham (2018), one could say that the anti-sex work movement appeals on 'dignity as coercion', whereas sex workers appeal to 'dignity as recognition'.

As mentioned above, while the main argument is that prostitution is a form of violence against women, the abolitionist campaign exploited the anti-trafficking discourse by systematically conflating sex work and trafficking. This ties into the three posits of the conservative anti-trafficking movement, holding that the demand for prostitution is responsible for trafficking, that trafficking and prostitution are the same, and that prostitution

¹⁰² The Preamble of the 1949 Convention declares 'prostitution and the accompanying evil of the trafficking in persons' incompatible with the dignity and worth of the human person and a danger to the welfare of the individual, the family, and the community. It obliges state parties to criminalise any third party involvement in prostitution, independent of coercion or consent.

is a form of violence of men against women and girls (Bernstein, 2018; Jackson, 2016). The aforementioned petition and the call for ratification of the 1949 Convention is an example of how, as Janie Chuang argues, anti-prostitution activists ideologically hijacked the trafficking discourse to realise their goal of abolishing sex work, transforming the anti-trafficking movement into an anti-prostitution campaign at the expense of the need to develop policies to protect the human rights of trafficking victims (Chuang, 2010, cited by Mgbako, 2020: 118).¹⁰³ Several participants described, for example, how despite the preoccupation with victims and trafficking, any proposal from the sex worker rights movement to actually improve the position of trafficked persons was sidelined as belonging to another law.

A common abolitionist strategy involves unsubstantiated and exaggerated claims about the scale of trafficking and the number of women and girls trafficked for 'sexual exploitation'. An example is a statement by Kraus, an anti-prostitution activist and psychotherapist, that "Never before in human history have there been as many sex slaves as there are today. Not even in the days of slavery! And this just to serve the supposed right of men to have sex" (Kraus, 2016: 2).¹⁰⁴ Camille described a confrontation during a workshop with a policeman who claimed that 90% of the sex workers in the area were victims of trafficking and were forced to serve 30 clients a day. However, she said, a quick calculation based on the official figures for the number of sex workers and people living in the area showed that each sex worker had to work 16 hours a day with only 20 minutes per client and that 80% of the adult males in the area had to go to a brothel once a week to achieve these figures: "So I was [...] like, have you actually considered this? And they just walked away".

¹⁰³ The same ideological campaign to turn the UN Trafficking Protocol into an anti-prostitution treaty prevented the inclusion of stronger victim protection provisions during the negotiations on the Protocol. See Ditmore & Wijers, 2003, and Wijers, 2015 and 2021.

¹⁰⁴ Kraus echoes the words of Gary Haugen, founder of the American Christian evangelical anti-trafficking organisation International Justice Mission (ICJ), "[T]here are approximately twenty-seven million slaves in our world today [...]. That's more slaves in our world today than were extracted from Africa during four hundred years of the transatlantic slave trade" (Bernstein, 2007: 129). ICJ focuses on 'sex-trafficking' and has been criticised for its raid & rescue operations, leading to the arrest and deportation of sex workers.

As mentioned, Eastern European sex workers in particular were presented as victims. To be able to do so the concept of ‘force’ or ‘coercion’ was rhetorically stretched to include economic circumstances or family responsibilities, labelled by the anti-prostitution lobby as “*Elendsprostitution*” (‘misery prostitution’) (Vanwesenbeeck, 2018: 3; Haveman, 2000).

Although Eastern European migrant sex workers in particular were framed in this way, this did not stop sex workers in general from being portrayed as victims. Camille, for example, recounted how the idea that all sex workers were victims - or that 95% are victims - was repeated over and over again without ever being fact-checked, along with violent fantasies about how the sex trade worked.

Several participants mentioned the use of violent pornographic images, or ‘torture porn’ as Luisa called it, to show how horrible sex work is. As Claudia said, “A huge problem, I think, with the abolitionist argumentation is that they are very much able to implant cruel images in people's minds”. What is worrying her, Luisa added, is that it gets this idea in people's heads that sex workers, and especially migrant sex workers, are people you can do anything to:

[T]his I find like [...] very dangerous in kind of [...] how to deal with sex workers, especially because, this is something I got from my research, [sex workers] say if they see me as an East European sex worker they think they can do a lot more things with me. [...] I mean this is kind of creeping in again ... that sex workers are disposable (Luisa).

Another way in which the anti-prostitution lobby co-opted human rights was to use the ‘happy hooker versus the exploited victim’ dichotomy to position themselves as the ‘good ones’, who stood up for the human rights of the voiceless victims, as opposed to the privileged happy hookers who did not care about them. Illustrative is the quote from the SPD worker, who described how the SPD talked to the BesD and used their arguments in its negotiations with the CDU, but could not say so openly:

[T]he problem was that the CDU did not respect them as serious partners in the debate,

because they said X [the chair of the BesD] is a domina who has a lot of money and they are interested in earning a lot of money in the future and we don't talk with people who just are interested in earning money but not in the human rights of prostitutes (SPD worker).

The CDU's positioning of themselves as the 'good ones' can also be seen as an example of what Penttinen (2006, quoted by Peršak, 2014) calls the need of Western feminist abolitionists "to create and maintain the category of 'threat' (trafficking) and of the 'vulnerable victim' (of that threat) in order be able to justify themselves as protectors and saviours".

The problem, of course, as several sex worker participants pointed out, is that it is precisely their privileged position that allows them to engage in political work which is time-consuming, unpaid, makes them a target of abolitionist attacks and puts them at risk of involuntary outing. Many sex workers simply cannot afford this. At the same time, the (false) dichotomy between the 'happy hooker' and the 'voiceless victims' whose protection the abolitionists took to heart, was an easy strategy to dismiss the spokeswomen of the BesD; a strategy that research also found in the Nordic countries (Jahnsen & Skilbrei, 2017; Vuolajärvi, 2019) and which was also mentioned by sex worker rights activists in the previous chapter.

As described by Sauer (2019), abolitionist campaigns used a gender equality and emancipation frame to appeal to the conscience of feminist actors, claiming that the abolition of prostitution is the only possible position for any feminist or politician advocating for gender equality. At the same time, they appealed to left-wing parties and the leftist part of the women's movement by framing sex work as the epitome of capitalist exploitation. However, rather than addressing gender inequality, Sauer argues, abolitionist frameworks tend to "re-establish the sexual dispositif¹⁰⁵ of monogamy, of romantic love in the privacy of a

¹⁰⁵ Sauer uses the concept of 'dispositif' here in the sense of Foucault "to point different sets of institutions, practices, knowledge structures and discourses which maintain power relations" (Sauer, 2019: 17, note 13).

heterosexual relationship - a dispositif that has been the foundation of the capitalist, patriarchal, affective order for the oppression of women and men since the 19th century" (Sauer, 2019:16) . A similar critique is offered by Bernstein (2012: 246) when she describes how, "rather than regarding the heterosexual nuclear family as another institution of male domination to be abolished", feminist anti-trafficking activists and their evangelical Christian counterparts have ironically embraced a pro-familial strategy, situating the family as a privatised sphere of safety for women and children". As Sophie puts it:

We all know that women only have sex for love and for free - which is patriarchy, the purest patriarchy ever (Sophie).

To the extent that human rights played a role in the public and political debate that led to the passage of the ProstSchG, they were almost entirely appropriated by the anti-sex work movement. When the sex worker movement used human rights, it was mostly in the form of fundamental rights as enshrined in the German Basic Law. An important reason given by my participants is the lack of support from human rights organisations that have the knowledge and the institutional framework to translate the impact of the ProstSchG on the safety, health and rights of sex workers into the human rights framework. In general, the impact of the law on the human rights of sex workers barely played a role. When raised by sex worker organisations, they were countered by abolitionists with the 'victim argument' and dismissed as 'a little inconvenience' that sex workers should be happy to suffer for the sake of the majority of victims.

5.7 CONCLUSION AND DISCUSSION

This chapter examined the role of human rights in the public and political debate surrounding the adoption of the 2017 Prostitutes Protection Act (*Prostituierten Schutz Gesetz* (ProstSchG)). Before further discussing the points advanced in the chapter, it is worth noting

that there is no Germany-wide systematic review yet of the impact of the ProstSchG, but research to date and the experience of sex workers and service providers show the following picture (AidshilfeNRW, 2019; BesD e.V. et al., 2019; Degenhardt & Lintzen, 2019; Deutscher Bundestag, 2019; Henning et al., 2021; Voice4Sexworkers, 2019). As predicted a large number of sex workers have not registered but have disappeared into what the Germans call the 'Dunkelfeld', the invisible circuit, whereas they had previously worked legally.¹⁰⁶ Especially the most vulnerable groups of sex workers cannot meet the requirements for registration. It has become more difficult to work legally together with a colleague in private apartments, forcing many to work alone with greater safety risks. Sex workers who are unable or unwilling to register are no longer allowed to work in legal brothels, which are relatively safe workplaces. They have moved online, which has led to an increase in reports to counselling services of physical and sexual violence, stalking, and clients refusing to pay because they know the sex worker can't go to the police. More sex workers are working illegally, making them more vulnerable to trafficking and exploitation. and less accessible to social and health services. Large groups of sex workers have dropped out of sight, even from voluntary, anonymous health and social services as they no longer trust them. The law has also opened up new opportunities for blackmail and exploitation, and created a new market for, for example, postal addresses, setting up websites for sex workers who can no longer work in legal brothels, security guards and other 'consultants' who offer to help sex workers adapt to the new rules. There is no indication of an increase in the identification of trafficking victims due to registration or mandatory health counselling. On the contrary, the trend towards a decrease in the number of registered cases of trafficking continues.

Germany is one of the countries where the anti-sex work movement has gained considerable

¹⁰⁶ According to Federal statistics, end 2022 about 28.800 sex workers have registered themselves, that is less than 15% of the estimated number of sex workers (Statistisches Bundesamt, 2023).

power, especially following the adoption of the 2002 Prostitution law which recognised sex work as work and enabled employment relations and access to social security. The law galvanised an anti-sex work movement, led by the well-known feminist Alice Schwarzer and her magazine *EMMA*, which as of 2010 began to mobilise for a new law, arguing that the 2002 law had failed. The main arguments were that the legalisation had led to an increase in trafficking and that Germany had become the ‘brothel of Europe’ fed by busloads of vulnerable Eastern European young women. As in Sweden (Kulick, 2003), underlying the victim discourse, but never openly discussed, was an undercurrent of anti-migrant sentiment, fed by the enlargement of the EU which gave Eastern European women the right to work in Germany and made them harder to control.

As a result, a climate was created in which the debate on sex work was increasingly dominated by the trafficking discourse, narratives of thousands of helpless victims who were cruelly exploited, and the sex sector as a cradle of criminality, leading to the adoption of the 2017 Prostitutes Protection Act (ProstSchG). The law strongly reflected the problematisation of sex work as violence against women and introduced a wide range of measures to control sex workers and put them under surveillance. These included compulsory registration and health counselling for sex workers; a special ‘prostitutes ID’ (or ‘Hurenausweis’, as sex workers call it) that sex workers are required to carry with them when working; a ban on sex workers sleeping at their place of work; powers for the police to enter the homes of sex workers without their permission; and a detailed licensing system for brothels, including situations where women work together in private apartments.

In contrast to the ‘empowerment and labour’ frame that underpinned the 2002 Prostitution Act, the 2017 ProstSchG was heavily shaped by a ‘victim and crime’ frame. It reduced sex workers to the status of children in need of ‘protection’ and absolved the state of its responsibility to respect and protect the human rights of sex workers. Rather than

criminalising clients as in France, the German law is instead designed to regulate and repress the lives and livelihoods of sex workers under the guise of both ‘protection’ and ‘public order’ as a form of what is called “regulation to deter” (Dolinsek, 2016).

The ProstSchG passed despite widespread opposition from sex worker organisations, counselling centres, health organisations, anti-trafficking organisations, and legal experts who unanimously pointed to the negative impact of the law on the safety, health and rights of sex workers. They argued that instead of making sex workers more visible and protecting them, mandatory registration would drive sex workers underground, cut them off from health care and social support services and make them more vulnerable to human trafficking and other forms of violence and abuse. Jurists also pointed to the prohibition on processing sensitive data, including information about someone’s (professional) sexual life, which can only be breached under strict conditions.

In opposition to the ‘victim protection’ frame underlying the ProstSchG, sex workers’ advocacy was rooted in rights-based frames. Major themes were ‘sex work is work’, the distinction between sex work and trafficking, the recognition of sex workers’ agency, and the refusal to be categorised as victims. Sex worker organisations hardly mobilised human rights or human rights language, partly because they were constantly in “damage control mode”, as one participant put it, and partly because they lacked support from human rights organisations that had the institutional framework and expertise to translate the attacks on sex workers’ rights into human rights language. When they did invoke human rights, it was mostly in the form of ‘*Grundrechte*’, fundamental rights under the German Basic Law (‘*Grundgesetz*’), or, as one of the sex worker participants called it, democratic rights. They argued that the law undermined the right to freedom of occupation, the inviolability of the home, and the right to informational self-determination and protection of privacy as enshrined in the German Basic Law and EU data protection law (ICRSE et al., 2017). The fact that sex workers’ organisations hardly

invoked human rights in their campaigns against the ProstSchG also tells us something about the importance of enforceability in decisions how to frame a rights claim. While national rights are concrete and it is (relatively) clear from whom they can be claimed, human rights are more indeterminate and it is more difficult to identify what constitutes a violation and where claims should be made. Moreover, as argued by Tushnet (1984), their indeterminacy allows parties to manipulate the facts relating to the right to suit their own agenda's. As the debate in Germany shows, this is all the more true in the case of sex work, where positions are so strongly divided. An example are the abolitionists claims that the 2002 ProstG had made Germany "the brothel of Europe" and the exaggerate claims about the number of trafficking victims, or 'sex slaves' in abolitionist language.

According to participants, the protection of the (human) rights of sex workers played a minor role in the political debate. They were either ignored, discredited or dismissed as acceptable collateral damage. Any appeal by sex workers to human rights was countered by the abolitionist lobby with the 'victim argument', presenting violations of sex workers' rights as a minor inconvenience that they should be happy to endure for the greater good. As one participant said, "that was the phrase": that we should be happy to "help save the poor victims from their terrible fate". The different value that abolitionists place on the human rights of sex workers and the victims whose human rights they claim to protect, not only reflects and reinforces the (patriarchal) distinction between 'good' women who deserve protection and 'bad' women who have forfeited their right to protection, but also marks sex workers as 'less full human beings' with the corresponding entitlement to human rights protections.

Underlying this view is the notion that the right of women to be protected from abuse is determined by their sexual purity or honour, which is not only harmful for sex workers but for all women (Doezema, 2010; Wijers, 2015).

In what follows I further elaborate on the ways in which the abolitionist movement used

human rights to disqualify sex workers as legitimate partners in the debate, to problematise sex work as violence against women and a violation of human dignity, and to advocate for the further repression of sex work and the criminalisation of clients, while de-humanising sex workers and dismissing the impact of the ProstSchG on sex workers' human rights as a minor inconvenience.

Firstly, the anti-prostitution movement in Germany has been very effective in using affective framing to mobilise followers, target the public, and change the 'feeling' culture around prostitution in order to re-establish the white middle-class model of 'good' sexuality, based on the conviction that “sexuality should be kept within the confines of the romantic couple” (Bernstein, 2012: 246), which excludes sex workers and their clients (Sauer, 2019). The movement feeds on social attitudes towards prostitution, which are historically a mixture of shame, disgust, fear and guilt, while constructing sex workers as deviant, abnormal and a threat to society, public health and the family. As Sauer argues, abolitionist discourse aims to govern sexuality through the construction of images of love, sexuality and partnership and creating an illusion of ‘love versus disgust’. By pitting a pure, natural (female) sexuality located in the private realm of a (heterosexual) intimate relationship against the perverse desires of (male) clients, it aims to discipline not only the sexuality of women but also that of men. It is precisely this playing upon emotions, as sex worker activists remarked, that makes it so difficult to counter abolitionist narratives.

Affective strategies were used to de-humanise, disqualify and scare sex workers and other opponents, mobilise people, and hijack the debate. Statements exuded moral indignation and were directed against sex workers and those who opposed the ProstSchG, including *ad hominem* arguments and the use of a variety of pejorative and degrading terms to describe those who disagreed. As argued by Peršak (2014: 213), this reveals that behind the criminalisation of clients and the language of care and protection, lies a new type of legal

moralism. This not only makes it difficult to counter abolitionist campaigns, but also has the effect of silencing any opposition, as related by my participants. Sex workers who opposed the ProstSchG were portrayed as abnormal, damaged, unaware of their oppression, untrustworthy, part of the ‘pimp lobby’ or even exploiters themselves. Male politicians were accused of being clients themselves, female politicians were denigrated as ‘submissive to their male party masters’ and in favour of violence against women. Clients were describes as sexual predators who “should not belong to the affective community of good citizens”. A key way of discrediting sex workers who spoke up against the law was to portray them as privileged exceptions: heartless happy hookers who only cared about money, and could not speak for the majority of voiceless victims. This created a false dichotomy between the ‘happy hooker’ and the ‘voiceless victim’ that played a crucial role in disqualifying sex workers as legitimate partners in the debate, and made the voiceless victim a key figure in the public and political debate and the dominant justification for forced registration and the other repressive measures of the ProstSchG. A problem with the figure of the ‘voiceless victim’, as my participants pointed out, is of course, that she can only exist by being voiceless. The moment she speaks, she is disqualified precisely because she has a voice. Secondly, Germany is an example of a more general shift across Europe (and beyond) from an emancipatory, rights-based perspective, based on the agency of sex workers as adult persons, (or better I should say adult women since the debate is always about the agency, or lack thereof, of female sex workers) and aimed at empowerment, to a victim-protection perspective, where protection boils down to repression and control, with a strong penchant for criminal law. In the end, the ProstSchG is a highly punitive law, with substantial fines for sex workers who refuse to register or comply with other restrictive regulations. As such, the ProstSchG is an affirmation of Siegel’s observation in the context of ‘women-protective’ abortion restrictions in the 1970s, that “[l]ike old forms of gender paternalism, the new forms of gender

paternalism remedy harm to women through the control of women”.

Thirdly, the German case is part of a wider trend in which the growing prevalence of a criminal justice frame over a social justice model is strongly supported by feminist activism. This raises questions, as posed by Bernstein, about how feminism, and sex and gender more generally, have become intricately intertwined with punitive agendas, the relationship between neoliberalism and the carceral turn that feminist advocacy has taken, and the role of human rights discourse as a vehicle for the transnationalisation of carceral policies and their incorporation into domestic policy “in a benevolent feminist guise” (Bernstein, 2012: 235).

While the sex worker movement’s opposition to the ProstSchG was primarily based on the fundamental rights enshrined in the German constitution, the abolitionist lobby hijacked human rights as a vehicle to exclude and silence sex workers. Similar to what the sex worker rights activists discussed in the previous chapter, the German sex worker rights activists recounted how human rights were mobilised against them through the deliberate conflation of sex work with human trafficking, accompanied by inflated numbers of victims, and the portrayal of sex work as violence against women and a violation of human dignity. At the same time, the construction of the 'happy hooker' versus the 'voiceless victim', was used by abolitionists to position themselves as the 'good' ones, who stood up for the human rights of the voiceless victims, as opposed to the privileged happy hookers who did not care about them.

The overarching theme that runs through all three representations of sex work is that of female victimhood and the use of human rights to place sex workers *as sex workers* outside the human rights system as holders of rights, while at the same time absolving the state of its accountability for the impact of the ProstSchG on the rights of sex workers and as the bearer of the duty to protect the human rights of sex workers – *as sex workers*. As discussed in the conclusions of the previous chapter, by depriving sex workers of agency, subjectivity, and

dignity, they are consequently deprived of human-ness with the corresponding recognition as legitimate partners in the political and public debate and entitlement to human rights protections. Rather than using human rights to address violence against sex workers and other human rights abuses, the protection of human rights is used as a justification to silence sex workers and call for the criminalisation of sex work, particularly the criminalisation of clients, despite overwhelming evidence of its negative impact on the safety, health and well-being of sex workers.

CHAPTER 6. LITIGATING CHANGE: THE CASE OF FRANCE AND SPAIN

6.1 INTRODUCTION

As discussed in Chapter 4, over the last two decades sex worker activists have started to pursue strategic litigation as a means to bring about social change. A landmark case, based on ‘rights as protections’, is the 2013 *Bedford v Canada* case, in which sex workers sought to overturn Canada’s prostitution laws which, among other restrictions, prohibited brothel keeping, living off the avails of prostitution and communication in public for the purpose of prostitution. Their argument centred on how these laws made sex work more dangerous by forcing sex workers to choose between working legally and working safely. All contested provisions were struck down by the Supreme Court, which held that they violated sex workers’ rights to security, arguing that “by imposing dangerous conditions on prostitution; they prevent people engaged in a risk, but legal, activity from taking steps to protect themselves from the risks” ; Supreme Court of Canada, 2013: recital 60) (D. Bennett, 2013; Galldin et al., 2011; Hudson & Van der Meulen, 2013). However, the case backfired when, rather than developing new rights-based legislation in cooperation with sex workers, the Canadian conservative government responded by enacting new, even more harmful, laws (Porth, 2018). Within a year the government passed the Protection of Communities and Exploited Persons Act 2014 (PCEPA), which criminalised the purchase of sexual services, alongside provisions against soliciting in certain areas, advertising, making a gain from prostitution, and procurement of prostitution. Another landmark case was the *Montgomery* case in New Zealand (*Montgomery v M & T Enterprises Limited* [2014] NZHRRT 6, 2014), which in 2003 decriminalised consensual adult sex work (Abel et al., 2010; Rottier, 2018). The case concerned a female sex worker who filed a complaint against the brothel manager for sexual harassment. Upholding her complaint the Tribunal awarded her compensation of \$25,000 for “humiliation, loss of dignity and injury to feelings” while asserting the rightful

place of sex workers as equal human beings who “have the same human rights as other workers” (Cunningham, 2018: 160-161).

This chapter discusses the use of legal mobilisation - the use of litigation with the aim to achieve social change- by the sex worker movement in Europe. I begin with a general discussion of social movement legal mobilisation, and how my participants viewed the use of litigation. I then turn to the French and Spanish cases. After discussing the national background of each case, I examine how the respective courts dealt with the competing abolitionist and sex workers’ rights claims. In discussing the Spanish case I pay particular attention to the public and political debate around the union and the government’s efforts to have its statutes annulled.¹⁰⁷ In the French case, I focus on the process of legal mobilisation.¹⁰⁸ With the permission of my French and Spanish participants, I am using their public names.

6.2 SOCIAL MOVEMENT LEGAL MOBILIZATION

Activists’ engagement in what is referred to as social movement ‘legal mobilisation’ typically involves legal cases designed to “challenge core assumptions about the extent of a social group’s social rights” (McCammon & McGrath: 128). Like the Canadian and New Zealand cases mentioned above, the French and Spanish cases discussed in this chapter are examples of social movement legal mobilisation.

One of the primary conditions of social movement legal mobilisation is the development of a legal rights consciousness, defined by McCammon & McGrath as the ability of collective actors “to conceptualize their grievances as a violation of individual rights that can be

¹⁰⁷ The Spanish case is based on interviews with the secretary general and communications officer of OTRAS and a joint interview with their lawyer.

¹⁰⁸ The French case is based on interviews with two of the sex worker-complainants, who are or were also leading members of STRASS, the French sex workers union, and the lawyer of Medecins du Monde, who acted as an intermediary between the sex worker complainants and the (pro bono) lawyer who conducts the case. Médecins du Monde (Doctors of the World) is an international humanitarian organisation which has been working with sex workers for many years to improve their access to health. See e.g. <https://doctorsoftheworld.org/blog/in-support-of-human-rights-for-sex-workers/>. I also talked with one of the authors of the report on the impact of the law (Calderaro & Giametta, 2019; Le Bail et al., 2018).

remedied by mobilizing the law” (McCammon & McGrath, 2015: 129). This definition contains two components: the development of a sense of rights and a belief in the legal system as a tool for change. The latter, as already visible in the previous chapters, is not a belief that is automatically shared by sex workers.

The translation of collective grievances into enforceable rights typically entails relying on legal experts who possess the necessary legal knowledge and litigation expertise, as well as negotiating how legal strategies interact with other movement strategies. Both issues are also mentioned by Merry et al. (2010). One way of dealing with the need for legal expertise is through coalitions with what Merry et al. call ‘cosmopolitan legal elites’: NGOs that are experienced in using the human rights system and have access to legal expertise and cosmopolitan knowledge. According to Merry et al., such collaboration between social movement leaders, grassroots activists, and legal experts enables relatively powerless actors to mobilise human rights law and discourse from below. At the same time, as we will see in the French case, such partnerships generate tensions in dealing with differences in status and power and communication between grassroots organisations and lawyers.

Other conditions for social movement legal mobilization to take place, as mentioned by McCammon & McGrath (2015), include organisational and legal resources and contextual opportunities. While a favourable public or political climate may encourage legal mobilisation, a closed political system that makes it difficult to achieve change through legislative means may also lead activists to resort to the court system. This was the case in France. Similarly, litigation can also be a response to countermovement mobilisation, as the Spanish case illustrates. Other factors McCammon & McGrath mention are the strategic selection of cases, the development of a legal strategy, and the legal framing of the case, defined as “the process by which social movement actors make meaning, by defining social problems, assessing causes, and formulating solutions” (2015: 134).

Opinions differ regarding the outcomes of social movement litigation. A risk that was identified by my participants but is not evident in the literature is that even if the lawsuit is successful, a backlash may lead to even more repressive laws, as happened in the Canadian *Bedford* case (see section 6.1).

Many of the factors mentioned by McCammon & McGrath (2015) and Merry et al. (2010) resonate with the interviews I conducted with sex worker rights activists. As discussed in Chapter 4, the human rights framework and its claim on universality has significantly contributed to the development of a shared group consciousness among sex workers of 'having (human) rights' and that those rights are being violated, reflected in the slogan 'Only rights can stop the wrongs'. Also several authors argue how using the language of rights can give rise to increasing rights consciousness, bring rights violations into the consciousness of the wider population and support a continued quest for rights, even if rights have not been formally recognised or a claim for rights is rejected by the state (e.g. Minow, 1987).

Along with increased rights awareness, a cautious process of legal mobilisation is taking place, as testified by the two cases discussed in this chapter. However, views on the use of litigation were mixed. As stated, belief in the legal system as a tool for social change is not automatically shared by sex workers. Their lived experience is that, rather than protecting them, the law is a tool to arrest, jail and punish them. Or, in the best case, it is indifferent to violations of their rights, as captured here by Luca:

[F]or sex workers it seems that the law is not necessarily [on their side]. Like the law is so oppressive that it is difficult to [believe] that the law can be used towards our rights when it's always been used against us [...]. So it's interesting to try to push it [the law] and try to change it and use the different arguments and instruments available. But for sex workers to have this trust that putting themselves out to challenge a case is going to be positive for them or for the community is quite difficult to grasp (Luca, ESWA).

Luca touched here on one of the specific barriers for sex workers: the stigma of sex work and the danger sex workers put themselves in when publicly outed. As Luca explained: “for sex workers to out themselves for some kind of really unlikely outcomes, it's really a lot of risk without direct benefit for them”. Protecting their privacy and anonymity is a concern shared by all sex workers, including activists. This is why they do not use their legal names, wear masks to hide their faces at demonstrations, and do not want to be photographed or registered. However, such protective measures are much more difficult, if not impossible, to use in court, as this requires complainants to provide their legal names and other personal data. The matter of anonymity is not mentioned by McCammon & McGrath (2015) or Merry et al. (2010), but it is particularly important for sex workers and may also be relevant to other marginalised and stigmatised groups.

Other conditions for the use of litigation mentioned by my participants were access to legal expertise and representation, money, a strong local support group, finding a legal inroad into the system, and sex workers who are able and willing to take the case to court. The barriers they identified included the long duration of court cases, the risk of losing the case with potentially far-reaching negative consequences, and the long time and energy it takes to litigate, which places a heavy burden on mostly voluntary organisations. Almost all of these elements played a role in the French case discussed below.

6.3 CRIMINALISING CLIENTS: THE CASE OF THE 2016 FRENCH LAW

On 6th April 2016, after two and a half years of debates, auditions and protests, and after being rejected three times by the Senate, the French National Assembly adopted the criminalisation of the purchase of a sexual act with the aim of “strengthening the fight against the prostitution system and assisting prostituted persons” (Loi N° 2016-444 Du 13 Avril 2016 Visant à Renforcer La Lutte Contre Le Système Prostitutionnel et à Accompagner Les Personnes Prostituées, 2016). Next to pimps, clients were framed as the main perpetrators of the

“prostitution relationship” defined as “violence against women that perpetuates gender inequalities and violates human dignity” (Darley et al., 2018: 95). In line with the neo-abolitionist paradigm, ‘prostitutes’ (as they were referred to) were to be considered as victims and no longer as delinquents (*Les Echos*, 2016), based on the reasoning that no woman can voluntarily consent to prostitution.

In the debate, as well as in figures about the number of ‘victims’, ‘trafficking’ and ‘pimping’ (or ‘procuring’) were systematically conflated, even though ‘trafficking’ requires the use of force, coercion or deception, while ‘pimping’ according to the French penal code, simply covers any form of assistance, including, for example, renting an apartment to a sex worker. Even two women working together in an apartment for safety reasons can be prosecuted for pimping each other. According to my participant Thierry Schaffauser from STRASS, most trafficking cases are prosecuted under procuring as this charge does not require proof of coercion. As a result, many trafficking victims are excluded from the protection measures to which victims of trafficking are entitled.

The criminalisation of clients in the new law came in addition to the existing criminalisation of any third-party involvement, regardless of conditions of coercion or consent. In exchange for the criminalisation of clients, the offence of ‘passive soliciting’, which was introduced in Sarkozy’s 2003 Law on Domestic Security (‘Loi pour la sécurité intérieure’) as part of his security and anti-immigration agenda (Allwood, 2014; Calderaro & Giametta, 2019; Darley et al., 2018), was repealed. The law also provided for support measures and a six-month temporary residence permit for migrant sex workers on condition that they exited sex work. Sex workers are required to declare their income and pay income tax and social security contributions, which are usually around 25% of their earnings. If they fail to do so, they can be charged with ‘hidden employment’, an allegation that, according to my participants, is often used against sex workers and can amount to thousands of euros.

6.3.1 PUBLIC AND POLITICAL DEBATE AROUND THE BAN ON BUYING SEXUAL SERVICES

The transformation of prostitution policy into a national security issue coincided with the convergence of French mainstream anti-sex work feminists and traditional neo-abolitionist organisations, and more than 15 years of campaigns, policies and parliamentary reports denouncing prostitution as a violation of human rights and advocating for its abolition (Allwood, 2014; Calderaro & Giametta, 2019; Darley et al., 2018; Mai et al., 2021). The driving forces were the catholic *Movement du Nid* and the *Fondation Scelles*, which played a pivotal role in ‘Abolition 2012’, an alliance of around 80 neo-abolitionists and institutional feminists with well-established access to Members of Parliament and officials (Calderaro & Giametta, 2019).

Key elements in the debate included the conflation of sex work and trafficking, erasing any form of agency that (especially migrant) sex workers may have; the framing of sex workers as damaged persons; and the use of inflated statistics on the number of trafficking victims, incest rates among sex workers, and the profits of pimping. As in Germany, by defining sex work as male violence against women, the ‘fight against the prostitution system’ was framed as a women’s rights issue (Calderaro & Giametta, 2019). Arguing that the majority of sex workers were victims of traffickers or pimps and that criminal networks could not profit if there was no demand, the criminalisation of clients was presented as necessary ‘to ensure the dignity of the person and public order’ (Béguin & Dupont, 2013; Darley et al., 2018).

Significantly, like in Spain, France’s repressive policies were the result of the efforts of socialist politicians. Building on Marxist ideas about the commodification of the labour force, abolitionists presented prostitution as the ultimate exploitation and the culmination of capitalism. In this way, they could use anti-capitalist rhetoric to claim that the law was not only progressive but also anti-capitalistic (Calderaro & Giametta, 2019). As related by Cybèle Lespérance, my other participant from STRASS:

The right-wing parties were not really in favour [of the law] in general. [...] It was adopted when there was a left-wing party, the Socialist Party [...] in power and, yeah, the right-wing were mostly in favour of sex workers not being penalized at all. It [sex work] was seen as only an economic activity and fighting trafficking was more important (Cybèle).

As in Germany, sex workers were categorically silenced in the political debate as victims either of traffickers or pimps, or of post-traumatic stress disorder caused by child abuse or prostitution itself. When they stood up for their rights, they were delegitimised as a negligible ‘white’ minority (as opposed to the majority of migrant victims) or agents of the ‘pimp lobby’. STRASS, for example, was discredited as an organisation of ‘men and men in dresses’:

[T]here's a part of our opponents that call us the pimp lobby, they're usually using a vocabulary that basically says that it's an organisation of men and men in dresses. So there's a lot of conflation of swerfs [Sex Worker Exclusionary Radical Feminists] and terfs [Trans Exclusionary Radical Feminists]. Anyway, it's the same thing in France (Cybèle).

Specific to France was the delegitimization of sex workers as victims of ‘symbolic violence’. This is a typically French notion which was used by politicians in both the debate on the criminalisation of clients of sex workers and the ban on the hijab,¹⁰⁹ and refers to “violence exercised upon a social agent with their complicity” (Calderaro & Giametta, 2019: 167). This allowed policymakers to claim that “dominated people, in this case veiled women and sex workers, unconsciously accept being dominated and even claim the right to be so” (Ibid: 167). This effectively invalidated any claim to rights by Muslim women or sex workers. As worded

¹⁰⁹ In 2004, France banned headscarves in public schools, and in 2010, it passed a ban on full face veils in public spaces, including public transport, parks, streets and administrative buildings. The official justification is the protection of France’s strict form of secularism (‘laïcité’). Since then it is also prohibited to wear a headscarf in government buildings, when playing sports, for public officials, for girls under 18 in public, and for mothers accompanying their children on school trips. Burkinis are prohibited in public swimming pools. A ban to wear abayas (the full-length dress worn by some Muslim women) will enter into force beginning September 2023.

by Thierry:

[W]e have this old story that everyone is trafficked and we were all raped in our childhood and the like. Now it's the official narrative and if you oppose it you are the negationist, you are the one who is denying the truth. Because the state has already said what the truth is, and it's not for sex workers to say it. Even the way they talk about human dignity, we know what human dignity is for you. It's not for you to decide what is your dignity, we already know it. And apparently it's about to have sex for money or your dignity (Thierry).

In his view this way of thinking is very close to the first Catholic thinkers, like Paul of Tarse, who re-conceptualized the idea that your body doesn't belong to you, “it belongs to God and you can't do what you want with your body”:

Officially we are secular, but in practice [...] it's a completely Catholic morality behind all the secular laws. And sex work is a good example. Officially it is not about religion, except that in practice all the Catholic organizations, like Movement du Nid, are funded a lot of money to save us, which is what the church has done since the medieval time, it hasn't changed. It just replaced the church by the state, but they do exactly the same (Thierry).

In the case before the European Court of Human Rights (see 3.4) Thierry's words are echoed in the observations of the French government on the admissibility and merits of the case when it states that "the French legislature has chosen to punish the purchase of any sexual act on the grounds that [...] prostitution is violence in itself and the body is not a commodity that can be bought with contempt for the 'dignity of the human person'" (ECHR, 2023c: recital 14).

As in other countries, the increase in migrant sex workers in France since the 1990s helped abolitionists to gain influence by reviving the trafficking frame. Migrant sex workers were consistently portrayed as young, innocent, naive and 'culturally vulnerable', deceived by evil men to migrate and prostitute themselves. This implied that they did not really intend to migrate and engage in sex work and would be grateful to go 'back home'. As described by

Darley et al. (2018: 98): “This way of merging migrant prostitution and trafficking in women [has] worked as a legitimization for the deportation of migrant sex workers, explaining its quick adoption by politicians” (see also the interview with Freja, where she describes a similar transformation of the deportation of migrant sex workers into ‘combating trafficking’ by conflating working illegally and being a trafficking victim in Denmark).

According to Calderaro and Giametta (2019), the French construction of the ‘problem of prostitution’ should be seen in light of broader political anxieties over sexism in the poor ‘black’ suburbs (*banlieues*). These were explicitly identified as sites of sexual violence and oppression of women, and needing immigration control, which justified the national priorities of security and public order. Drawing parallels between the debate on the hijab and sex work, Calderaro and Giametta (2019) describe how, in the name of women’s rights, moral and racist arguments came together in the debate on sex work: poor and working-class clients of sex workers were pathologised as ‘bad’ sexual subjects “who have no place in the civilised space of the Republic”, while at the same time they were racialised “as ‘regressive’ sexual subjects who do not know how to treat a woman with respect and who are very likely to exploit [their] women by buying sex from them, pimping or trafficking them” (Ibid: p.161). In both cases, as Billaud and Castro note, the bodies of veiled women and sex workers, either covered or revealed, are supposed to be a threat to the nation and its values requiring state intervention, as played out in public and political debates. In their words: “As non-permissible bodies, prostitutes and veiled Muslim women have come to determine the inner boundaries of French citizenship” (Billaud and Castro, 2013: 82), This is reminiscent of Siegel’s observation about the competing claims to dignity in the debates over abortion and same-sex marriage, that ‘today, as in the 1970s, dignity’s meaning is being forged in cross-border conflicts over dignity’s sex’ (Siegel, 2012: 379). It also links to the work of Shenila Khja-Moolji, a feminist and postcolonial scholar, who discusses the constitution of ‘human’ in human rights

discourses and analyses the ways in which the public discourse reinscribes “brown, Muslim, female bodies as perennially vulnerable to brown male violence” and as threatening the “integrity of the white, anglophone, often Christian male subject” (Khoja-Moolji, 2016: 377). Phipps calls this colonial feminism, referring to the work of Leila Ahmed: “feminism used against other cultures in the service of oppression, exploitation and genocide”, which implied that progress could only be achieved by abandoning indigenous ways of life and adopting the ways of the colonisers (Phipps, 2020: 48).

6.3.2 OPPOSITION TO THE LAW

The law was adopted despite the strong opposition of sex worker organisations, Medecins du Monde and other social, health and human rights organisations, and pro-sex worker rights feminist activists (Gardères, 2016; Leicester, 2016; Medecins du Monde, 2015; Medecins du Monde & Act-up et al, 2016; STRASS & signatories, 2013; STRASS, 2015a, 2016; STRASS et al, 2013). Opponents uniformly pointed out that the law would push sex workers into more remote and dangerous locations, increase their vulnerability to violence, reduce their bargaining power with clients, increase their dependence on third parties, cut them off from health and social care, reduce their willingness to report violence to the police and worsen their already precarious working conditions (Darley et al., 2018; ICRSE, 2016b). In addition, sex workers argued that treating sex workers as minors by invalidating their consent placed them in a separate class of citizens which would reinforce stigma and discriminatory practices (STRASS & signatories, 2013).

Objections were also raised by the French National Consultative Commission on Human Rights (CNCDH, 2014)¹¹⁰ and the Defender of Rights (Le Défenseur des droits, 2015)¹¹¹ in

¹¹⁰ The French National Consultative Commission on Human Rights (Commission nationale consultative des droits de l’homme – CNCDH) is the French national institution for human rights (<https://www.cncdh.fr/>).

¹¹¹ The Defender of Rights (Défenseur des droits) is an independent administrative authority enshrined by the French Constitution to ensure respect for rights and freedoms and combat discrimination (<https://www.defenseurdesdroits.fr/en>).

their advice to the government on the law. The National Consultative Commission for Human Rights (CNCDH) questioned the legislator's decision to base the fight against prostitution on the violation of the principle of dignity, given its divisive and ambivalent nature. With regard to the framing of sex work as violence against women and an obstacle to equality, the CNCDH pointed to the diversity of prostitutes (including women, men and transgender people), which, according to the Commission, made it difficult to invoke the principle of equality. It also warned that the shift towards more invisible forms of prostitution would make it more difficult to provide assistance to victims of trafficking (CNCDH, 2014; ECHR, 2021b).

The Defender of Rights pointed out that several aspects of the law were in contradiction with the human rights of sex workers, such as the lack of evidence that the majority of sex workers were 'victims', 'weak' and 'exploited'; the conflation of sex work with human trafficking; and the fact that the right to social assistance was made conditional on exiting sex work (Le Défenseur des droits, 2015). He also drew attention to the controversial nature of the 'Swedish model', noting that while the impact on the extent of prostitution was expected to be limited or nil, the detrimental effects of client criminalisation on the health and safety of sex workers and their access to fundamental rights had been well documented by both national and international institutions, including several UN bodies (Le Défenseur des droits, 2015).

As sex workers were rarely listened to, one strategy of the sex workers' movement was to gather allies to speak up for sex workers against the law, such as Médecins du Monde, AIDES (the French HIV/AIDS association) and Planned Parenthood. Cybèle cites the example of the Senate hearings, where STRASS was not only the last organisation to be heard but also the only sex worker-led organisation involved:

So it gave a little bit the tone that the people that are most hit by the law are not really listened to or their contribution is the last one. Considering that, very often when we

lobby we're trying to rely on bigger state-funded HIV or human rights groups (Cybèle).

6.3.3 CONSTITUTIONAL COUNCIL: SEX WORKERS' HEALTH AND SAFETY AS COLLATERAL DAMAGE

In 2018, five sex workers, among them the two sex worker participants in this study, and seven NGOs, including STRASS and Médecins de Monde, filed a complaint with the French Council of State. They held that criminalising the purchase of sexual services, even between consenting adults and in a private space, violated the right to privacy, freedom of enterprise and freedom of contract, as well as the principles of necessity and proportionality of penalties, as enshrined in the French Constitution. They also invoked the right to respect for private life, as enshrined in Art. 8 of the European Convention on Human Rights (ECHR), which includes the right to personal autonomy and sexual freedom.¹¹² In addition, they argued that the law violated the right to health by forcing sex workers to work in more isolated areas, exposing them to increased violence and health risks (Conseil Constitutionnel, 2019a). Their arguments were supported by a two-year study by Médecins du Monde (Le Bail et al., 2018). The study showed how the law had worsened the working and living conditions of sex workers, increased violence and stigma, led to greater health risks, and reinforced marginalisation. There was no evidence that the number of sex workers had decreased (see also: Giametta et al., 2018).¹¹³

¹¹² In several cases the European Court of Human Rights (ECHR) has held that the right to self-determination is part of Article 8 (the right to respect for private and family life), arguing that it is a fundamental principle underlying all other rights: "The very essence of the Convention is respect for human dignity and human freedom and the notions of self-determination and personal autonomy are important principles underlying the interpretation of its guarantees" (ECHR 10 June 2010, *Jehovah's Witnesses of Moscow/Russia*, para. 135). This includes the right to make one's own choices, that is "to make choices that accord with one's own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others" (Ibid. para. 136). See also ECHR 29 April 2002, *Pretty v. United Kingdom* (para. 62): "[...] the ability to conduct one's life in a manner of one's own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned": and *K.A. and A.D. v. Belgium* in which the court acknowledges that it is a violation of privacy to forbid BDSM, except when it is done without consent as in this case (ECHR, 2005).

¹¹³ See for a comparison of the evaluation reports of Médecins du Monde et al. and the government Gaudy & Le Bail (2021). Contrary to the reports of Médecins du Monde, the government evaluation only looked at the implementation of the law but not at its impact.

On 5 September 2018, the Council of State forwarded the question to the Constitutional Council for a preliminary ruling on constitutionality (QPC).¹¹⁴ On 1 February 2019 the Constitutional Council found that the criminalisation of clients was compliant with the Constitution (Conseil Constitutionnel, 2019a, 2019b). In its ruling it argued that 1) the vast majority of sex workers were victims of procuring or trafficking which was made possible by the demand for paid sexual services; 2) that the criminalisation of clients in order to reduce the demand was not a clearly inappropriate means in light of the aim of the policy; and 3) that the lawmaker had reconciled, on the one hand, the objective of maintaining public order, preventing crime and protecting human dignity, and on the other, personal freedom in a manner that was not manifestly unbalanced. The Council also found that the contested provision did not violate the freedom of enterprise, while acknowledging that criminalising clients was an infringement of the right to free enterprise (and thus implicitly recognising sex work as work even if it could be restricted for the greater good). With regard to Article 8 ECHR, the Constitutional Council found that the criminalisation of clients, despite the fact that it included sexual acts freely entered in private between consenting adults, did not constitute an excessive interference with the right to respect for private life (Conseil Constitutionnel, 2019a, 2019b; ECHR, 2021a; ECHR, 2021b).¹¹⁵

The ruling rested on three pillars: the objective of the law to "strengthen the fight against the system of prostitution", which was described in terms of enslavement and a violation of human dignity; the assumption that the majority of sex workers were victims; and the view that it was not up to the Council to replace the legislator's assessment of the health consequences for sex workers with its own assessment. With regard to the right to respect for

¹¹⁴ Significantly, the Constitutional Council is not composed of judges but of former politicians, of which the majority, according to Thierry, came from the Socialist Party.

¹¹⁵ Article 8 ECHR is a qualified right, which means that States may interfere if certain conditions are met (as set out in Art. 8(2)). This is why the Constitutional Council could find that the law did not constitute an excessive interference.

private life, it considered that the legislator had sought to combat pimping and trafficking for sexual exploitation:

It thus intended to ensure the safeguarding of the dignity of the human person against these forms of enslavement and pursued the constitutional objective of safeguarding public order and preventing offences (Constitutional Council, para 11).

The fact that the law also criminalised sexual acts which, in the words of the Court, were “presented as being performed freely between consenting adults” did not render the means inappropriate as the legislature had considered that:

[T]he vast majority of persons engaged in prostitution are victims of pimping and trafficking and that these offences are made possible by the existence of a demand for paid sexual relations. By prohibiting this demand by the impugned offence, the legislature has adopted a means that is not manifestly inappropriate to the public policy objective pursued (Constitutional Council, para 12).

It further rejected the violation of the right to health as it did not consider itself competent to make its own assessment of the health consequences: ¹¹⁶

[I]t is not for the Constitutional Council to substitute its assessment for that of the legislature on the health consequences for prostitutes of the contested provisions, since that assessment is not, in the state of knowledge, manifestly inadequate (Constitutional Council, para 16).

Three aspects of the judgment stand out. Firstly, it is notable that the Council accepts the conflation of human trafficking and sex work, without regard to issues of consent or coercion, and the unsubstantiated assumption that the majority of sex workers are victims of pimping or trafficking, without distinguishing between the two.

Secondly, its use of the concept of dignity is significant. According to my participants, the concept of dignity as a ‘component of public order’ can be traced back to the 1995 decision of

¹¹⁶ In contrast, the Canadian Supreme Court in the Bedford case critically assessed the empirical evidence presented to the court (Hudson & Van der Meulen, 2013: 130-132; Supreme Court of Canada, 2013).

the Council of State in the case of a tiny stuntman, Manuel Wackenheim, who protested against the ban on so-called ‘dwarf-tossing’, which the French state claimed was against human dignity. Wackenheim, on the other hand, argued that the ban was discriminatory and deprived him of his income and social life, stating that there was no work for dwarves in France and that his job did not constitute an affront to human dignity “since dignity consists in having a job” (Conseil d’État, 1995). He lost his case in both the French court and the Human Rights Committee (2002), which ruled that the ban was “necessary for the protection of public order, which includes considerations of human dignity”, holding that dwarf-tossing was an attack not only on Wackenheim’s dignity but on the dignity of all dwarves (Maffesoli, 2013: 47).

The case of Wackenheim paved the way for the use of the concept of human dignity as a justification for repressive measures in the name of protecting public order, even when the activity is consensual and the persons themselves do not feel that their dignity is being violated. As Thierry commented, the law is not about protecting sex workers but about protecting society:

[T]he penalisation of clients is a way to impose a society norm. [...] We don't do it for sex workers, we do it for the society to maintain [this norm], for everyone to understand that prostitution is bad. As politicians, as lawmakers we have an obligation to say what are the society norms and good behaviour. [...] So it is not about protecting people (Thierry).

Where rights can be a way to protect individual or group interests which do not fit with the interests of the majority – ‘a right to do something even when the majority thinks it would be wrong to do it’ (Dworkin, 1977) – upholding sex workers rights is treated by the court as secondary to ‘safeguarding public order’.

Thirdly, the court failed to test the health consequences of the law against the duty of the state to protect the right to health of sex workers, as it considered the state’s assessment “in the

state of knowledge” not “manifestly inadequate”. This is a remarkable observation, given the availability of twenty years of research on the harmful effects of client criminalisation on the safety and health of sex workers. In essence, this means that in the name of protecting human rights, the court declared the protection of sex workers from actual violations of their health and safety as irrelevant,¹¹⁷ or at least not worthy of serious investigation. They are reduced to collateral damage. For Thierry, the judgement showed the relative value of human rights and how easily they can be set aside:

I saw with the Constitutional Council how very easily the judges erased science. It was just [like] fighting human trafficking is also a constitutional obligation for states so we can deprive you [of] your human rights. And even if they didn't say it like that, it's what it meant. They were, like, public order is also a constitutional obligation, so the state is legitimate to criminalize your clients, even if we recognize it may deprive [you of] your human rights (Thierry).

The Council of State followed the judgment of the Constitutional Court in its ruling of 7 June 2019. As to the claim under Article 8 of the European Convention on Human Rights, noting that forced prostitution is incompatible with human rights and dignity and that the vast majority of sex workers were victims of trafficking or pimping, it reiterated that the contested provisions could not be considered an excessive interference with the right to respect for private life considering the public interest objectives they pursued, even though they were likely to target sexual acts “said to be entered into freely” by consenting adults in a private space (Conseil d’État, 2019, para 6). As Thierry commented, the ruling makes clear how sex workers’ human rights are secondary and can be sacrificed in the name of protecting public order. Or, as STRASS wrote in their 2023 shadow report to the CEDAW Committee: “The France Conseil d’État’s decision was based on the assumption that only a minority of sex

¹¹⁷ See also chapters 2.4.1 and 4.8.2 on how defining all sex work as violence obscures the actual violence committed against sex workers.

workers are not victims of human trafficking, and therefore, their human rights can be sacrificed to protect the ‘vast majority’ and the ‘general interest’” (STRASS, 2023).

It also makes clear how problematic, as argued by Haveman and Cunningham, the use of dignity is as a justification for repressive measures against a particular group of citizens, even if that group does not feel violated in its dignity and is harming nobody. By turning dignity into a component of the 'public interest', human rights are 'inverted': instead of protecting citizens from the state, the defence of human rights is used to protect the state from a particular group of citizens, be it sex workers or veiled/Muslim women. In the words of Thierry: the law is not about protecting people, it is about protecting society.

6.3.4 EUROPEAN COURT OF HUMAN RIGHTS: DECLARATION OF ADMISSIBILITY

Having exhausted all domestic remedies, 261 sex workers working in France filed an appeal with the European Court of Human Rights (ECHR) in December 2019, demanding the repeal of the law. They were supported by 19 community, health and feminist organisations (STRASS et al., 2019). They argued that the criminalisation of clients violated the right to life (Article 2) and the prohibition of torture and inhuman and degrading treatment (Article 3) as it endangered the physical and mental integrity and health of sex workers by driving them underground, making them more vulnerable to their clients, putting them at greater risk of robbery, assault, stigmatisation and STDs, and restricting their access to health care and social services, while not contributing to the fight against trafficking. With regard to the right to respect for private life (Article 8), they maintained that the criminalisation of the use of sexual services between consenting adults in private spaces for payment fundamentally undermined the right to personal autonomy and sexual freedom (ECHR, 2021a, 2021b).¹¹⁸

¹¹⁸ See for a critical review of the criminalisation of clients and the right to sexual self-determination the report of the Norwegian Criminal Law Council and its advice to re-decriminalise the purchase of sexual services

In April 2021, the ECHR declared the case admissible (ECHR, 2021b), which signals the importance it gives to the issue and at least makes visible that the criminalisation of clients raises human rights questions, especially given that only 5 percent of the cases submitted to the ECHR pass this first filter. As expressed by Cybèle:

That was a big deal in a way. Just knowing that we passed that filter means that it has been considered enough of a topic, enough difficult a situation to be examined (Cybèle).

The Court also approved five abolitionist and five pro-sex worker rights parties to submit a so-called ‘third party intervention’ (TPI).¹¹⁹ The first group consisted of the Swedish (Ministry for Foreign Affairs, 2021) and Norwegian governments and several French abolitionist NGOs.¹²⁰ The second group included the UN Special Rapporteur on the Right to Health; Amnesty International; Médecins du Monde & 25 other NGOs; the Dutch platform SekswerkExpertise on behalf of 25 NGOs (SekswerkExpertise, 2021); and the UK & Irish Sex Work Research Network.¹²¹

In the proceedings, however, the French government again raised the issue of admissibility, denying that the applicants were victims for the purpose of the convention and that domestic remedies had been exhausted. On 31 August 2023 the Court renewed its decision that the application is admissible and confirmed that the applicants can “claim to be victims [...] of the violation of their rights under article 2, 3 and 8 of the Convention” (ECHR, 2023b: recital 44). In its decision the Court cites the testimonies of ten sex workers how the law has

(Norwegian Criminal Law Council, 2022) and the recent ruling of the Constitutional Court of Portugal (Acórdão N° 218).

¹¹⁹ The ECHR allows third parties to submit written pleadings on the case, based on their expertise of the issues at stake, which can greatly influence the Court decision. The TPIs are not public, unless published by the party concerned itself, as Sweden and SekswerkExpertise did.

¹²⁰ Including: Coalition pour l'abolition de la prostitution, Amicale du Nid, Zéromacho-Des hommes contre la prostitution, Maison des femmes de Paris, and Mémoire Traumatique et Victimologie.

¹²¹ Over 45 pro sex worker rights organisations or networks were prepared to submit a TPI to the ECHR, demonstrating the widespread support for the case, but only five were admitted by the Court.

impacted their lives, health and safety, stating that “According to the claimants [...] the criminalisation of prostitution clients has pushed prostitutes into clandestinity and isolation, has exposed them to a heightened risk to their physical integrity and their lives, and impacts their freedom to decide on how to lead their private lives, thereby infringing their rights under Articles 2, 3 and 8 of the Convention” (ECHR, 2023b: recital 43). Although the decision does not prejudice the merits of the case, the recognition that the mere existence of the law has a negative impact on sex workers and that this is a case that deserves debate, is a landmark victory for sex workers and the organisations that support them, as stated in the joint press release of Médecins du Monde and ESWA (Egré, 2023; ESWA & Médecins du Monde, 2023). The decision was also welcomed by the Special Rapporteur on the right to health, Tlaleng Mofokeng, who expressed the hope that “the future ruling on the law by the ECHR will be based on international human rights and standards” (OHCHR, 2023).

6.3.5 THE PROCESS OF LEGAL MOBILISATION

In this section, I discuss the process of challenging the criminalisation of the purchase of sexual services in court. I pay particular attention to the motivations and considerations that led to the decision to litigate and appeal to the European Court of Human Rights, the partnership between STRASS, the sex workers' union, and Médecins du Monde, and the interaction of legal strategies with other movement strategies. I also discuss the tensions that are inherent in the collaboration between social movement activists and legal experts and how these were managed. In doing so I build on the concept of social movement legal mobilisation as discussed by Merry et al. (2010) and McCammon & McGrath (2015). To do justice to my participants, I regularly use extensive quotes.

The decision to pursue litigation was taken when, after years of campaigning against the law, it was clear that the legislative route was closed. There was a strong collective sense among sex workers that the law violated their fundamental human rights, but, they said, the debate

was never about the human rights of sex workers. As Thierry expressed it:

[F]or me, it's obvious that the law is against sex workers' human rights, but the problem is that nobody talks about our human rights. The debate is not about sex workers' human rights and the only way to make it a debate about our human rights is to go to court (Thierry).

After losing the case in the French courts, shifting the debate from repression to the human rights of sex workers was one of the main reasons for filing a complaint with the European Court of Human Rights. According to Thierry, the French Council of State's ruling was clearly a political decision not to recognise sex workers as equal citizens with rights. This made the step to the ECHR both a last resort and a logical step, because, as he said, “even if we don't win, at least we can expose the situation, and for once the debate is about sex workers' human rights”:

[I]t's like everything is made to deny our own decision, agency, capacity, everything is made to make sure that you have no voice [...] and that's why we go to the European court because what's the alternative? What are the other ways to be recognized even as a human being [...], because if it's about human rights, it is like, are we like other human beings? It [submitting the case to the ECHR] changes the nature of the debate, because usually it's about trafficking, how to protect the society. But here [at the ECHR] the question is, do we have human rights and can we be protected or not? (Thierry).

Another argument mentioned by Cybèle was that this was the first opportunity to legally challenge the "Swedish model" at European level, which put a kind of moral obligation on them:

It has been one of my arguments that we have a duty, a moral duty [to challenge the Swedish model]. We are the first country to have this opportunity of constitutional, well of European challenge and other countries are looking at us. Nobody has this process done at all levels in order to reach a European Court before. So now the eyes of sex workers' advocates throughout Europe and even the world are turned to that case that will make a huge difference (Cybèle).

Even if they lost the case, Cybèle said, the fact that sex workers are challenging the law would at least create a counter-narrative to the government's 'rescue narrative'. This was one of the important reasons for recruiting as many sex workers as possible to join the case before the European Court as complainants. Expanding the number of complainants not only served to demonstrate to the Court the importance of the case to sex workers but also aimed to counter the abolitionist narrative that the law was only being resisted by a few privileged French sex workers paid by pimps. As Thierry explained:

[T]he whole narrative about the law is about saving us, and the very people that they [the abolitionists and the government] want to save are actually attacking them in the European Court. [...] That's also why they [...] call us pimps, because if they recognize us as real sex workers, then it's a contradiction to their own system. So, one of our strategies was to have many sex workers, not just the five that we were [in the original case before the French court] but to try to find many sex workers who accept also to be part of the challenge (Thierry).

Sarah-Marie Maffesoli from Médecins du Monde put it like this:

We agreed that one of the main arguments is always that there is such a minority of sex workers willingly doing sex work and the vast majorities are not willing and they're forced to do sex work and blah, blah. And also that a lot of, or all migrant sex workers are forced to do sex work because they're trafficked. So it was important for us, we discussed it with our lawyer and we asked him, okay, if we manage to bring a lot of sex workers in front of the court, is that going to be useful? (Sarah-Marie)

As well as arguments in favour of going to the ECHR, there were also arguments against. One was the fear that losing the case would damage the sex workers' movement. The worst case scenario would be for the Court to follow the French government and rule that sex work is against human dignity, which would seriously undermine any future resistance to the criminalisation of clients, not only in France but in other countries as well. Although according to the lawyers this was unlikely to happen as it would go against the case law of the court, there is always a risk. As Sarah-Marie from Médecins du Monde stated, human rights

are a political tool, like human dignity they can be interpreted one way or another, and they can be used by sex workers but also against them:

Actually human rights, it doesn't mean anything because it depends on what the judge is going to decide. That's why for me, it's a political tool and I think that... Well, we can use them because we have this jurisprudence on human rights that we can use. But we also know that maybe it's not going to work. It's just a way to try to convince people (Sarah-Marie).

Another factor was that people were exhausted and cynical after years of campaigning against the law and losing the case in the French court. As Cybèle said: “Having lost so many fights, why would we win this one?”:

I think people were mostly exhausted from years of mobilization, always this sense of emergency. There was a history of pain between people that were advocating because it was so stressful and they gave so much and many people left in 2019. Many people when they lost the case [at the Constitutional Court] said, okay, over with this, I fought so much for so little (Cybèle).

Moreover, criminalising clients had left sex workers with less income and more violence, she added: “So, where is the time to go and represent yourself? And how can you trust that anything will change by getting involved?” Furthermore, in the national court case, the (passport) names of the sex worker complainants had been leaked by the abolitionists, despite the fact that their names were supposed to be kept confidential. This had seriously undermined sex workers' trust in promises of anonymity, although, according to Cybèle, by this time many of them were so desperate about the impact of the law that they were prepared to go to court anyway. Despite the fear of public outing and the limited timeframe,¹²² STRASS, migrant sex worker groups and other member organisations of Parapluie Rouge, the national network of community-based organisations, found more than 250 sex workers

¹²² The application to the European Court had to be submitted within 4 months after the final domestic judicial decision.

prepared to join as complainants. This was important not only for the Court but also for the movement because, as Sarah-Marie stated, there are few victories and the fight is harsh: “It was actually a quite huge victory to see that it was possible to mobilise so many sex workers”.

As argued by Merry et al. (2010), the use of human rights as law typically requires reliance on legal experts who have the necessary legal knowledge and litigation expertise. One way of dealing with this is to form coalitions with what Merry et al. call 'cosmopolitan legal elites'. In this case, it was the long-standing partnership between STRASS and Médecins du Monde, an NGO with extensive experience in the human rights system, that provided access to the necessary legal expertise. It also led to the offer from a well-known human rights lawyer who had handled several cases for Médecins du Monde and had extensive experience in bringing cases before the European Court of Human Rights, to take on the case *pro bono*.

A key factor in the collaboration was the long-term alliance between STRASS and Médecins du Monde, as well as the long-standing personal relationships between members of STRASS and Sarah-Marie, the Médecins du Monde (MdM) lawyer who acted as ‘liaison officer’ between the sex workers' organisations and the case-lawyer(s). This shared history created a basis of mutual trust between all parties, which, as all participants emphasised, was a key factor throughout the process in successfully overcoming the inevitable obstacles and tensions.

One challenge was the organisation of the communication and decision-making process between the sex worker-applicants, the sex worker organisations and the lawyers. This was solved by setting up a tiered structure in which each of the sex worker organisations involved appointed a contact person. They discussed legal strategy and other legal issues with each other, the results of which were shared with the MdM lawyer, who in turn discussed them with the case lawyer(s), and vice versa. For their part, the sex worker organisations kept the wider sex worker community, and through them the wider group of complainants, informed

through social media, websites, posters and even a theatre performance explaining the process. This was not an easy task, as Cybèle explained: “it’s a challenge only to explain it and even if we explain it [...] how can they participate? There’s not many things nowadays that they can do”. As all the participants pointed out, this communication structure worked because of the trust between the parties and, as Sarah-Marie stressed, because of the discipline of the sex workers' organisations, who responded diligently to emails despite short deadlines and heavy workloads.

This is not to say that the collaboration between the sex worker activists, as experts on sex work, and the case lawyers, as experts on the law, who ultimately decided on the legal strategy, did not generate its own tensions. In addition to dealing with differences in status and power, the collaboration had to bridge two different realities - the sex workers' reality and the legal reality - and two different languages - 'common' language and 'legal' language. This made the role of Sarah-Marie, who knew both realities and spoke both 'languages', crucial as mediator and 'translator'.

One area of tension concerned the choice of legal strategy and the decision of the lawyers, against the advice of STRASS, to focus exclusively on legal arguments and not to challenge the unsubstantiated abolitionist figures, such as that 99% of sex workers were victims of trafficking. This made sex workers feel that their knowledge of the political reality was not being listened to. It also questioned, as Cybèle said, "our involvement in the things that concern us, which is what we always ask for in politics, to be involved in the policy". Sarah-Marie also referred to this example when she described how she had to explain to the lawyer what the sex worker organisations wanted, but also understood what the lawyer was explaining and trusted his expertise:

What was difficult was, because I had to deal with the frustration of [...] the sex workers' organizations because for Spinosi [the lawyer] the argument had to be a legal

argument and we know that it doesn't always work [like that] and we wanted to also explain why the criminalisation of clients doesn't work against trafficking. And sometimes it was difficult to be heard because in their [of the lawyers] law rationality, which I totally get, it is about making legal arguments, but we know that it's an emotional debate and we need to answer [to it]. [...] Actually, they're the specialist of the European Court, we're the specialist on sex work (Sarah-Marie).

Another area of tension was the choice of legal arguments, particularly in the national case. Rather than the right to security, the lawyers chose to emphasise the right to freedom of enterprise, which they saw as the most promising legal argument, along with the rights to privacy and health.¹²³ This was a legal strategy, Thierry said, that was difficult to explain to sex workers, because for them the right to safety was paramount and one of the main arguments on which they had built their campaign against the law, especially after the murder of a trans sex worker, Vanesa Campos, in 2018, who was killed in a remote part of the Bois de Boulogne in Paris while trying to defend a client who was being attacked by a group of thugs (Bachlakova, 2020). The defence lawyers in the case openly stated that the suspects started attacking clients of sex workers after the new law was passed because they knew that clients would not report the crime because they themselves were criminalised.

Finally, an important 'success' factor was the support of the European Sex Workers Alliance (ESWA) and the broad national and international network of NGOs, researchers and jurists that ESWA, STRASS and the other sex worker organisations had built up over the years and which could be mobilised at short notice. This was, for example, a key factor in organising the submission of the Third Party Interventions (TPIs) on behalf of the sex worker applicants within a very short time.

¹²³ French law recognises sex work as an independent profession and freedom of enterprise is one of the most protected rights in France. In *V.T. v. France* (2007), for example, the government defended the French law as being in line with European Court of Justice case law that recognised prostitution as a paid service that falls within the concept of economic activity (*Jany case*, EU Court of Justice, 2001a). Another argument was that an appeal on the freedom of enterprise did not require quantitative evidence, such as epidemiological studies, of the negative impact of the law on the health and safety of sex workers.

As described by Merry et al. (2010) and McCammon & McGrath (2015), using human rights as a system of law requires extensive legal expertise, as well as support networks and grassroots support. A key factor that enabled sex worker organisations in France to successfully mobilise human rights law ‘from below’, as Merry et al. call it, was their long-term partnership with Médecins du Monde, an NGO which had experience in using the human rights system and had access to legal expertise. Equally important, they had a strong national sex worker movement and (inter)national network of NGOs, researchers and lawyers that they could mobilise. An important factor in managing the inherent tensions in the collaboration between grassroots activists and legal experts, for example over the choice of legal strategies and arguments, was the trust between the parties involved, build on the long term partnership between STRASS and Médecins du Monde and personal relationships.

6.4 THE RIGHT TO UNIONISE: THE CASE OF SPAIN

As a catholic country, Spain has a long tradition of prohibition, persecution and repression of prostitution, with sex workers alternately categorised as criminals, “fallen women in need of re-education and forgiveness”, or “socially and morally dangerous people” (Bernal Solano et al., 2018: 289-290). A turning point came in 1995 when Spain adopted a new penal code which abolished the criminalisation of prostitutes while pimping remained illegal (Law 10/1995 of 23 November). Due to ambiguous national legislation, local governments have a high degree of autonomy to introduce repressive measures through the adoption of bylaws, often under the heading of combating trafficking and mostly focused on the use of public space (Bernal Solano et al., 2018).

The current ‘equality policy’ of the socialist feminist government follows the abolitionist and hyper-victimised view of sex work, promoting a stereotyped view of women as sex objects and leaving no space for sex work as a voluntary and respectful choice (Bernal Solano et al., 2018). As elsewhere the discussion almost exclusively focusses on female sex workers.

Across Spain, in addition to working on the streets, which exposes sex workers to persecution, many sex workers work and live in so-called sex hotels. By law, sex workers are just ‘hotel guests’ who rent a room, which ensures that the hotel owners do not get into trouble. In reality, however, according to my participants, the hotel owners act as bosses, but without employment rights for the sex workers. Other parts of the sex industry are legal, such as porn, webcam services, and erotic massage parlours, but even when legal, sex workers in these sectors work in poor conditions, with few rights, minimal contracts and are prone to abuse.

6.4.1 OTRAS: FOUNDATION OF THE FIRST SPANISH SEX WORKERS' TRADE UNION

In June 2018, a group of Spanish and migrant sex workers founded OTRAS (Organización de Trabajadores Sexuales), the first Spanish sex workers' union. As the secretary general of OTRAS, Conxa Borrell, explained:

We saw that the abolitionists were self-organising, also inside the political parties, the NGOs etc., so in our politicization process we realized we had to fight for our labour rights and the only way to fight for those labour rights is to form a union, that is the legal tool to fight for your labour rights (Conxa).

One of the union's first goals is to improve working conditions in the legal part of the industry and to empower sex workers to know their rights as workers. As Conxa explains, even in situations where sex workers could have employment contracts, such as in massage parlours, they do not because the owners do not want to register and pay social security and taxes, and the women do not feel strong enough to stand up for their rights because of the stigma attached to their work. A second goal of the union is decriminalisation, especially for street workers, so that they can work safely and without fines or police harassment. The ultimate goal, said Conxa, is that sex workers who work for a third party, such as in sex hotels, can get

a contract and access to social security. Underpinning all this is the struggle for sex work to be recognised as work. As she explained:

The only thing that is not regulated in Spain is the rights of sex workers, because everything is regulated, the hours, the places you can work, where it is a problem, the streets where you cannot offer sex, it is all regulated. Except our rights.

On 4 August 2018, the Directorate General of Labour published the official registration of OTRAS as a trade union in the Official Gazette (BOE Num. 188, 2018), an event that initially passed without anybody noticing. However, when the Socialist government found out almost a month later, the Minister of Labour called it the worst disgrace of her political life and vowed that the government would not support a union for an activity that 'violates the fundamental rights of women in general and also of men, who are forced to give their bodies to a third party to abuse' (ABC Sociedad Madrid, 2018, 30 August). The Minister for Equality stated that accepting the union would give "free rein to sexual exploitation" and that "we have the right not to be prostituted, this is not a job" (ABC Sociedad Nacional, 2018, 30 August) and the president of the Andalusian government urged the national government to do what it had to do to stop the attempt "to legalise prostitution, trafficking and sexual exploitation of women", claiming that the vast majority of the women were exploited victims and held against their will (ABC de Sevilla y Andalucía, 2018, 30 August).

In a press release on 30 August, the Ministry of Labour announced that it had initiated proceedings to challenge the statutes of OTRAS, stating that "[P]rostitution is not legal in Spain and the government cannot allow that under the subterfuge of a 'union' of sex workers prostitution is tolerated" (El Ministerio de Trabajo Migraciones y Seguridad Social, 2018). Two months later the Ministry of Labour announced that it had asked the Fiscal General del Estado (State Prosecutors Office) to challenge OTRAS in court, claiming that its statutes violated "the freedom of association, the dignity of the person and the principle of equality"

while linking sex work to sexual exploitation and trafficking “which the authorities have a duty to combat” (El Diario, 2018a, 29 October). As the minister of Labour argued, the right to freedom of association is “only recognized for employed persons and prostitution can never be the subject of an employment contract” (El Diario, 2018b, 29 October; GAATW, 2018). According to the newspaper’s gender editor, such a ruling “would not only be the annulment of the statutes, but also a legal decision on whether or not freedom of association applies to prostitution” (Aguilar, 2018, El Diario, 9 October).

6.4.2 PUBLIC AND POLITICAL DEBATE

Opinions in the public debate were mixed. While the government and abolitionists dismissed OTRAS and anyone who supported them as being paid by pimps, there were also several supportive responses:

They [the political parties] only put the focus on the demand site, the male site, the rapists, the johns, whatever, and the pimps, but they never listen to us. And when we scream, when we express ourselves, the result is ‘no you are the pimp lobby, the pimps are behind you [...]’. But [on] the other hand, we saw very nice reactions from a lot of pro-rights feminists (Conxa).

Several op-eds in newspapers echoed OTRAS's response to the government's statements, in particular, that it found it "incredible" that the government "[did] not know what is legal and what is not", since "nowhere in the Penal Code does it say that voluntary prostitution by an adult is illegal"(Cabaleiro, 2018, 1 September; El Salto, 2018, 3 September). The latter observation was shared in several media, such as a blog in the digital newspaper *El Confidential* titled “Hasn’t it been explained to the president?” (Caraballo, 2018, 4 September) and an op-ed in *El Diario* which reminded the government that “the Penal Code is enlightening in explaining what is and what is not a crime in the area of prostitution” (Briz & Garaizabal, 2018, 1 September). The same authors questioned how it could be a disgrace for a socialist Minister of Labour that women organised themselves to fight for their labour rights,

adding that the ones who benefitted from the government's policy of "prohibit, persecute, fine, find the perfect victim and launch simplistic messages in the face of a complex reality" were the owners of the big brothels who had only seen their profits increase. In another opinion piece in *El Diario* the author expressed her lack of understanding for "the frontal opposition of a government that calls itself socialist and working class to the demand for labour rights of a group as oppressed, marginalized and socially and institutionally stigmatized as that of sex workers" (Abreu, 2018, 4 September). Both op-eds reminded their readers of the fact that an earlier union of operators of brothels had been declared legal by the Supreme Court: "The government is launching a crackdown on self-organised prostitutes and the brothel owners are getting off scot-free. Hence the need for union organisation" (Briz & Garaizabal, 2018, 1 September).

Support also came from the mayor and city council of Barcelona, who sharply criticised the government for trying to outlaw the union, saying that it should instead "strengthen their [sex workers'] self-organisation to protect them from abuse" (El Diario, 2018a, 3 September).

Interestingly, Barcelona's Councillor for Feminism linked the issue to the interests of all women, stating that "the self-organisation of sex workers is not only positive from the perspective of labour rights, but also from the perspective of the fight against the stigma of whore, which affects all women, and the fight against gender violence" (El Mundo, 2018, 1 September). In response, the government accused the mayor of Barcelona of 'promoting and subsidising prostitution' (El Diario, 2018a, 3 September). More than 300 feminist activists, journalists, lawyers, academics, film directors and artists also signed the manifesto '*Nunca sin Nosotras*' ('Never without us'), which defended the right of all women to organise to defend their interests and demanded that the case against the union be dropped (Orellana, 2018, 12 November; OTRAS, 2018). The Manifesto was launched by OTRAS at a press conference and highlighted the diversity of views on sex work within the feminist movement while

rejecting the conflation of trafficking and sex work and the idea that a sex workers' union would favour pimping. It also stressed that sex workers should have a voice in the debate on sex work and that their agency in making decisions about their own lives should be recognised. Alliances were also formed with the migrant community, especially domestic workers, because, as Sabrina Sanchez, OTRAS's communications officer, explained, many have a shared nationality with sex workers and complement domestic work with sex work. Both groups also face a lack of rights and exploitative working conditions. Other alliances were built with the LGBT movement and the trans community, who are also under attack from the abolitionist movement.

According to OTRAS, the creation of the union was a turning point in Spanish politics because it put the debate on the table and forced people to take a stand. On the one hand, they said, it radicalised the abolitionist movement, while on the other it gave rise to a pro-sex workers' rights movement. As an example, Sabrina and Conxa cited an attempt by abolitionists to prevent OTRAS from speaking at a conference at *A Corunya* University, arguing that 'human rights are not up for debate'. In response, 20 public universities organised debates on sex work, not, as Sabrina said, because they were so concerned about sex workers' rights, but in defence of freedom of speech. As they said in their announcement:

The action is based on the conviction that there is a right in all democratic societies to offer public debates and represent arguments from different angles, as well as include the voice of sex workers who demand their rights be respected (Universitat Autònoma de Barcelona (UAB), 2019).

As Sabrina noted, the abolitionists' attempts to silence them also made visible to a wider audience how they (mis)treated sex workers, especially as they also began to attack allies by calling them the pimp lobby:

That's when they realised how they act [...]. It made it visible and that helped us also, with the allies and some people in the general public to say like, ok, these white rich women are telling trans migrant women that they are pimps, like, what!?! (Sabrina),

This quote touches on a theme that runs through the debate: the question of class. As Conxa commented: “[They] are worried about the glass ceiling, I am worried about taking my money home on a daily basis”. Besides, Sabrina said, the abolitionists have a 40-year head start on them:

In the 70s the abolitionists were starting to get to the universities, to the political parties, to make alliances on that level, and they were not worried about survival, they were not being arrested, they were not having their kids taken away. So, it is easy to be an abolitionist with not that kind of survival thing and access to education and a degree and college, you know, to get that level of institutionalisation. And it is so easy to go against something that you think is immoral or it's bad for all women [...] I think the worst argument is saying like, the fact that I do something that's bad for all women. That makes no sense, it doesn't work that way and it's not real (Sabrina).

The latter – that sex workers do something that is bad for all women - can be described as a form of what Sauer (2019) calls affective framing in her study of the strategies used by the abolitionist movement in Germany (see Chapter 5.4.3) and relates to arguments such as 'no woman is born to be a prostitute'; suggesting that sex workers are responsible for violence against women by linking sex work and rape; calling sex workers and allies who stand up for rights of sex workers ‘the pimp lobby’; presenting unsubstantiated and inflated statistics such as '90% of sex workers are trafficked'; and using cases of violence and abuse as representative of all sex work. The same type of emotive arguments were used by the Spanish government and in court by suggesting that recognition of the union would legalise pimping and the sexual exploitation of women. Blaming sex workers for violence against women is also a form of blaming the victim and shows how thin the line is between ‘victim’ and ‘villain’ (see also Chapter 2.4.4).

6.4.3 AUDIENCIA NACIONAL: ANNULMENT OF THE STATUTES OF OTRAS

On 12 September 2018, the Commission for the Investigation of the Ill-treatment of Women and the Plataforma 8 de Marzo de Sevilla (linked to the Socialist Party), together with the Public Prosecutor, filed a lawsuit against OTRAS in the National Court, asking the court to declare the nullity of its statutes and, consequently, the dissolution of OTRAS (Audiencia Nacional, 2018). At the heart of the conflict was Article 4 of OTRAS's statutes, which defined its functional scope as “activities related to sex work in all its aspects”, which did not exclude prostitution.

According to the complainants, the approval of the statutes of OTRAS would imply the recognition that prostitution could be exercised in an employment relationship and would therefore legalise pimping. The Public Prosecutor supported this argument, adding that prostitution could not be the subject of an employment contract because it would violate the right to sexual freedom due to the authority to give instructions inherent in an employment relationship. In addition, the complainants argued that "sexual exploitation and forced prostitution are a form of violence against women, which violates the dignity of the person, sexual freedom and the principle of equality between women and men" (Audiencia Nacional, 2018: 3).

On 19 November 2018 the Court declared the statutes of OTRAS “null and void” (Audiencia Nacional, 2018; Aguilar, 2018b). It recognised freedom of association as a fundamental right, but held that the right to trade union freedom depended on being an employee, which required "the existence of a legitimate employer against whom the rights that trade union freedom implies can be exercised" (Audiencia Nacional, 2018: recital 6). As prostitution could not be practised in an employment relationship, prostitutes could not have the status of workers and thus could not exercise the right to freedom of association. According to the reasoning of the court, recognising the legality of the statutes would be giving “the character of employment to

a contractual relationship with an unlawful purpose” and “admitting that pimping [...] is a lawful business activity” (Audiencia Nacional, 2018: recital 7). This in turn would imply that pimps have the right to create employers’ associations with which OTRAS could negotiate the conditions under which prostitution should be carried out, which would violate the right to sexual freedom. The fact that, as argued by OTRAS, the scope of the union included a wide variety of jobs that were perfectly legal under Spanish law, such as hostesses, erotic dancers and porn actors, did not change this. In the summary of the judgement of the court:

[I]t is not admissible that the functional scope of action of a trade union includes activities that, by their nature, cannot be the subject of a valid employment contract, such as prostitution on account of another person (‘por cuenta ajena’) (Audiencia Nacional, 2018: Summary of the Judgment).

To substantiate the illegality of a contract of employment for prostitution, the court referred to the 1949 Convention for the Suppression of the Traffic in Persons and of the Prostitution of Others and the Penal Code, both of which prohibit the exploitation of the prostitution of another person. It further referred to previous rulings by the Supreme Court, which described "the exploitation of the prostitution of others [...] as a form of gender violence, slavery of women and an activity contrary to morality", and the European Parliament's (controversial) so-called ‘Honeyball resolution’,¹²⁴ which stated that "prostitution, forced prostitution and sexual exploitation [...] constitute violations of human dignity, contrary to the principles of human rights, including gender equality" (Audiencia Nacional, 2018: recital 5 sub 3).

OTRAS' argument that the Supreme Court, in an earlier decision (rec 108/2004, 27 November

¹²⁴ MEP Mary Honeyball was the rapporteur of a report prepared by the Committee on Women’s Rights and Gender Equality on sexual exploitation and prostitution in 2013. The report frames prostitution and sexual exploitation of women and girls as violence and a violation of human dignity, presents them as cause and consequence of the inequality of women and promotes the ‘Nordic model’ as the best way to combat prostitution and trafficking (Outshoorn, 2018: 371). Based on the report, the plenary of the European Parliament voted for a non-binding resolution to criminalise clients of sex workers. The report was contested by 560 NGOs and civil society organisations as well as 86 academics and researcher who urged the European Parliament to reject the report “for our safety, health, respect and human rights” (ICRSE et al, 2014b, 2014a; NSWP, 2014; Lehman et al., 2014).

2004), had recognised the legality of the union of sex hotel operators was rejected. According to the Court, the recognition related only to the employment relationship with other workers, such as waitresses and cleaners, and to the provision of facilities for prostitution, and not to the activity of prostitution itself, while it was also not proven – as the Supreme Court stated – that the real purpose of the establishment was the exploitation of prostitution. Surprisingly, the 1949 Convention, which prohibits any third-party involvement, did not stand in the way of recognising the association of brothel owners in this case.

Interestingly, OTRAS had never disputed that prostitution could not be practised in an employment relationship. As they argued, the court confused two arguments:

The ruling makes a mess between the working relationship and the right to form a union. [...] We are not discussing whether there is an employment relationship or not, because the Supreme Court has already ruled that it is not. That is another debate. Our main point is the constitutional right that we have as persons to organise (Sabrina).

This effectively brings the legal dispute back to the question of whether prostitution can be practised on a self-employed basis and, secondly, whether the law allows self-employed persons to join a trade union. The answer to both would have been yes. The first question has already been answered by the EU Court of Justice in the case of *Jany and Others*, in which it found that prostitution can be exercised as self-employed if certain conditions are fulfilled (EU Court of Justice, 2001a).¹²⁵ The second question is answered by the Spanish law on freedom of association, cited by the Court itself, which recognises the right of self-employed workers to join a trade union. This would have left only the question of whether it is a legal condition for the establishment of a union that all the types of work covered by it can be

¹²⁵ The Court ruled that prostitution falls within the concept of 'self-employed economic activities' when it is practised by the provider of the service without any relationship of authority as regards the choice of the activity, working conditions and the remuneration; under her/his own responsibility; and for remuneration which is wholly and directly paid to her/him (*Jany and Others*, EU Court of Justice, 2001: recital 70).

carried out in an employment relationship. Significantly, the Court ignored all three questions, which reinforces the impression of a judgement driven more by moral and ideological motives than by legal arguments.

6.4.4 SUPREME COURT: RECOGNITION OF THE RIGHT OF SEX WORKERS TO UNIONISE

Following the decision of the Audiencia Nacional, OTRAS appealed to the Supreme Court. Two and a half years later, they won their case on appeal. On 1 June 2021, the Tribunal Supremo overturned the decision of the Audiencia Nacional and ruled in favour of the right of sex workers to form a union (Sindicato OTRAS, 2021; Tribunal Supremo, 2021). In its ruling, the court rigorously refocused the dispute on the question of whether the freedom of association claimed by OTRAS fell within the scope of Spanish legislation while dismissing the other issues raised as morally interesting but irrelevant to the issue at hand. In the words of the Supreme Court:

[I]t should be noted that the subject of the current proceedings is not the legal nature of the relationship between sex workers and their employers, nor the qualification of the work itself from the point of view of morality and human dignity, nor from the point of view of gender. Both in the contested SAN and in the briefs submitted by the parties, there is a slide from the issue under discussion to another highly relevant but unrelated issue. The subject matter of the procedure for contesting the statutes of a trade union cannot be broadened or blurred and shifted to the determination of the type of relationship that exists in certain cases between those who carry out an activity and those who remunerate it (Tribunal Supremo, 2021: recital 2 sub B).

It should therefore be clear, according to the Supreme Court, that trade union statutes cannot determine the legality (or illegality) of any activity and that the court should examine the content of the statutes, not that of “parallel or related realities”. It also stated that “the debate on the legalisation, tolerance or criminalisation of prostitution for another party/in an employment relationship is completely alien to this dispute, all the more so as it is not mentioned in the statutes” (Tribunal Supremo, 2021: recital 2 sub B). After discussing the

fundamental nature of freedom of association, which "discourages restrictive interpretations", it ruled that the functional scope of OTRAS's statutes was in line with the law, arguing that "sex work in all its aspects" could only be understood as work performed in the context of a valid employment relationship, without, as OTRAS itself pointed out, there being a place for prostitution. As an additional consideration, it noted that "[I]f self-employed prostitution is considered to be legal in our legal order, the union OTRAS can accommodate these persons", referring to the statutes of OTRAS which included self-employed workers as possible members.

Interestingly, as remarked by OTRAS, if the complainants had succeeded in invalidating OTRAS, they would have created, in the name of gender equality, a situation in which the operators of the sex hotels, mostly men, were organised in a legal union, while the organisation of the workers, mostly women, was declared illegal.

Four months later, in October 2021, the Spanish Prime Minister pledged to abolish prostitution, which he claimed enslaved women, and announced the Spanish government's intention to introduce the Swedish model. In response, OTRAS and the European Sex Workers' Rights Alliance (ESWA) launched a campaign called 'Don't outlaw sex workers' consent!' (ESWA & European Coalition on Sex Workers' Rights and Inclusion, 2021).

6.5 DISCUSSION AND CONCLUSION

This chapter looked at the use of human rights as a legal system by the sex worker movement. It discussed how the French and Spanish sex worker movements used litigation to achieve social change. In France, sex workers went to court to challenge the criminalisation of clients; in Spain, sex workers resisted the efforts of abolitionist NGOs and the state prosecutor to have the trade union dissolved. I discussed the court cases, their background and the public and political debates surrounding them. In the case of France, I paid particular attention to the

process of 'going to court', drawing on the literature on legal mobilisation. In the case of Spain, I paid particular attention to the public and political debate surrounding the government's efforts to ban OTRAS, the sex workers' union. While the sex workers' movement used human rights to claim the right to self-determination, safe working conditions and health in France and the right to organise in Spain, the neo-abolitionist movement also used human rights as a tool to exclude and silence sex workers and to justify their oppression. As elsewhere, the main arguments were that the majority of sex work is forced, that it constitutes (male) violence against women and that it is a violation of human dignity, accompanied by unsubstantiated high numbers of trafficking.

Significantly, in both France and Spain, repressive sex work policies were the result not of conservative but of socialist governments. This is notable in the context of their fierce opposition to labour rights for sex workers, which was also noted by critical opinion-makers in the Spanish public debate. Traditionally, the call for (more) criminal law is part of the right-wing political agenda. However, in the case of sex work, it is left-wing socialist governments that turn to the use of criminal law as a policy tool rather than an *ultimatum remedium*, based on the idea that punishment will help to bring about social change, in this case the eradication of sex work (and consequently sex workers), in defiance of principles of (criminal) law and human rights, such as the right to sexual self-determination and the caution that should be exercised “with regard to criminalisation contrary to the harm principle in order to try to influence social phenomena that are considered problematic” (Norwegian Criminal Law Council, 2022: 35.3.3. See also Peršak, 2014: 215 and Chapter 2.3). The fact that it is socialist governments that are now calling for repressive policies and the criminalisation of clients is a direct result of the abolitionist/radical feminist framing of sex work as violence against women and an issue of gender equality which gives it a feminist veneer and fits into the 'me

too' discourse,¹²⁶ while at the same time portraying sex work as the epitome of capitalist exploitation (e.g. Calderaro & Giametta, 2019; Sauer, 2019). This makes sex work an attractive political issue both for progressive parties who want to show how feminist they are, and for left-wing socialist parties who can use it as an exemplary illustration of the evils of capitalism. It also fits in with the 'family values' agenda of the Christian right, which is a major force in Catholic countries such as France and Spain, both in terms of the traditional representations of sex work (as a symbol of social deviance and 'fallen women') and the nuclear heterosexual family (as the cornerstone of society and a "privatised sphere of safety for women and children" (Bernstein: 2012)), and in terms of the organisation and financial resources at their disposal. A third factor is the connection with women's human rights', which, as pointed out by Douzinas (2002, 456) carries a 'high symbolic capital', which explains their importance for political campaigns.

An important factor in the adoption of repressive policies in both countries was the political pressure exerted by a relatively small but powerful and very vocal coalition of radical feminists, 'left' liberals, traditional and neo-abolitionist organisations and (mainly) Catholic organisations, which had systematically worked their way into political and public institutions over the years. A process in which the sex workers' movement is lagging 40 years behind, as Conxa of the Spanish union OTRAS pointed out.

Sex workers who spoke out were disqualified as a privileged 'white' minority (as opposed to the majority of migrant victims), as part of the 'pimp lobby' or pimps themselves, or as damaged persons. A specific French variant of the latter was the concept of 'symbolic violence', referring to victims who are unconsciously complicit in their own domination, or even claim the right to their own domination, which by definition invalidates any consent or

¹²⁶ Although, ironically, the 'me-too' discourse is about the relevance of woman's consent, while the abolitionist anti-sex work discourse is about the irrelevance of women's consent.

claim to rights. The French case was also specific in that the fight against the prostitution system, as in Germany, was presented not only as a women's rights issue but also as an anti-capitalist struggle which framed sex work as the ultimate capitalist commodification and exploitation.

As in Germany, the turn towards increasingly repressive sex work policies took place against the backdrop of a growing presence of migrant sex workers and is embedded in broader anxieties about immigration control and loss of national identity. Several authors draw parallels between the French debate on the hijab ban and sex work, highlighting how women's heads and bodies became a battleground as symbols of French identity. Billaud & Castro (2013), for example, describe how the exclusion and criminalisation of prostitutes and veiled Muslim women, who as 'unacceptable bodies' supposedly pose a threat to the nation and its values, manifests a renewal of French nationalism and its reframing along sexual lines. This again ties in with Don Kulick's (2003) analysis of how the criminalisation of clients in Sweden was closely linked to Sweden joining the EU and fears of losing its identity.

Typical of what Wagenaar and Altink (Hendrik Wagenaar & Altink, 2012b) call morality politics, the debate was highly ideologically driven, emotionally charged and resistant to facts.¹²⁷ Research on the actual number of victims of trafficking and the negative impact of repressive policies on the safety and health of sex workers and the situation of trafficked persons had little impact on the debate. Rather, the debate relied on moral arguments and the use of 'affective framing' (Sauer, 2019), for example by portraying migrant sex workers as young, naive and innocent, denouncing opponents as the 'pimp lobby', describing sex work in

¹²⁷ Wagenaar & Altink define morality politics by six characteristics: it is ruled by an explicit ideology; experts have limited authority as everyone feels they "own" prostitution policy; it is highly emotionally charged; it is resistant to facts; the symbolism of policy formulation is seen as more important than policy implementation; and it is subject to abrupt changes (Hendrik Wagenaar & Altink, 2012b).

terms of slavery and male domination, and framing the recognition of a sex workers' union as legalising pimping.

The conflicting human rights claims of sex workers and the abolitionist movement are echoed in the rulings of the French Constitutional Court and the Spanish National Court. The French case shows how, by defining human dignity as a component of public order, the defence of human rights becomes a justification for repressive measures against the group of citizens whose dignity it pretends to protect, even if those citizens do not feel violated in their dignity and they cause no harm to others. As argued by Haveman, “Violation and protection of human rights become one and the same” (Haveman, 2000: 61). Instead of protecting the individual from the state, human rights are being used as a tool to protect the state from a particular group of individuals, who are perceived as a threat to the nation and its values, be they sex workers, veiled women or tiny stuntmen.

Underlying is a particular view of human dignity, in which dignity is inherent to all human beings, but not something that individuals can decide for themselves. As Thierry pointed out, it is very closely related to the Catholic (and Kantian) idea that “your body does not belong to you but to God and you can’t do what you want with it”. Maffesoli calls this “dignity of humanity” as contrary to “dignity of the person”. Whereby dignity as a personal attribute appears to protect against the intrusions of others, dignity attributed to ‘humanity’ does not so much protect the person as such, but rather the part of humanity that he or she contains within him or herself, “with the consequence that his or her freedom can be limited in order to protect the human in him or her if the person behaves in a way that is deemed to be detrimental to humanity as a whole” (Maffesoli, 2013: 47).¹²⁸ This is the kind of dignity that the Constitutional Council and the Council of State used in their ruling on the criminalisation

¹²⁸ The English translation from French is mine.

of clients, and which underlies the argument that sex work violates the dignity not only of sex workers, but of all women. As a consequence, by subordinating the human rights of sex workers to 'the greater good' in the form of the public interest and failing to examine the impact of criminalising clients on their health, the court essentially reduced sex workers to collateral damage in the name of protecting human rights.

Cunningham refers to this type of dignity as 'dignity as substantive conditions'. Substantive conditions represent a particular moral view of how individuals must behave in order to maintain dignity. They seek to uphold community norms of appropriate behaviour and morality and often lead to prohibitions. As his study shows, this type of dignity is often used by courts in the context of sex work to enforce particular sexual norms that reify emotional and relational intimacy, as exemplified by the French and Spanish cases. Because substantive conditions can be politically enforced, often against the will of the affected individuals, this form of dignity is also called 'dignity as coercion' (Cunningham, 2018).

In the Spanish case, it is striking how the Audiencia Nacional conflated the question of whether or not sex workers had the right to form a union with the question of whether or not there could be an employment relationship in prostitution (which OTRAS never disputed), only to follow the complainants' argument that recognition of the union would imply recognition of pimping as a legal activity. Interestingly, and fortunately for OTRAS, two and a half years later the Supreme Court referred the case back to the question of whether the freedom of association claimed by OTRAS was within the boundaries of the law, dismissing the moral issues as 'interesting but irrelevant to the question at hand'. This shows that also in the courts, the protection of sex workers' human rights against abolitionist claims and ideology is far from a given, but can still produce surprising results, as in the case of the Spanish Supreme Court.

In the French case, participants stressed how the debate about criminalising clients never was

about the human rights of sex workers, despite the grave impact it had on their living and working conditions. This was an important reason for taking the case to the European Court of Human Rights after national remedies had failed. Then, as Thierry from STRASS said, for once the debate would be about the human rights of sex workers. However, they also had to consider the risks of bringing the case to the European level, not only for sex workers in France but also for the sex worker movement. For example, if the Court were to follow the French government's argument and declare sex work to be contrary to human dignity. As Sarah-Marie from Médecins du Monde stated, “human rights are a political tool, they can be interpreted one way or another, like human dignity they can be used by sex workers but also against them”. This made the ECHR's decision of 31 August 2023 in which it reconfirmed the admissibility of the case and recognised that the law creates a situation from which sex workers directly suffer the effects, a milestone victory (ECHR, 2023a). The decision was not only welcomed by sex workers and their allies but also by the Special Rapporteur on the right to health, Tlaleng Mofokeng, who expressed the hope that the future ruling on the law by the ECHR would be based on international human rights and standards (OHCHR, 2023).

The decision to litigate was made possible by the partnership with Médecins du Monde which provided access to legal expertise and representation. At the same time the French case illustrates the tensions in the use of ‘human rights as law’ inherent in the collaboration between grassroots activists and legal experts, for example in the interaction of legal strategies with other movement strategies, and in the translation of the collective sense of injustice into legal language and enforceable rights.

CHAPTER 7. CONCLUSIONS

7.1 INTRODUCTION

Since the 1970s, sex workers across the world have begun to organise and challenge the stereotypes of sex workers as ‘dangerous’ or ‘endangered’ (Pheterson, 1996). They are claiming legitimacy and demanding labour rights and human rights with the slogan ‘sex workers’ rights are human rights’. However, fed by the dominant anti-trafficking discourse, sex workers’ human rights are under attack by an increasingly influential coalition of traditional abolitionist organisations, radical feminists, evangelical and conservative Christians, and left wing liberals who advance the view that sex work is violence against women and a violation of human rights (Bernstein, 2018; Grant, 2013; Jackson et al., 2017; Vanwesenbeeck, 2017; Weitzer, 2007).

As I show in the thesis, both those who see sex work as a violation of human rights and those who advocate for the recognition of sex work as work draw on human rights arguments.

Abolitionists claim that sex work constitutes a violation of gender equality and human dignity, arguing that no woman can voluntarily consent to sex work. Alternatively, sex workers and their allies invoke the principle of individual self-determination and the right to personal and bodily autonomy (ICRSE, 2005a), enshrined by the European Court of Human Rights as “the ability to conduct one’s life in a manner of one’s own choosing”¹²⁹ and the “right to make choices about one’s own body”¹³⁰ (ECHR, 2002). According to them, it is not prostitution itself, but conditions of coercion, abuse, and deceit that can make sex work a violation of human rights. Both dignity and self-determination have deep roots in the history of human rights thinking and can be seen as the foundation of human rights as such (De Blois, 1998;

¹²⁹ “[W]hich may also include the opportunity to pursue activities perceived to be of a physical or morally harmful or dangerous nature for the individual concerned”, ECHR, G.C. 29 April 2002, *Pretty v. the United Kingdom*, no. 2346/02, recital 62 (ECHR, 2002).

¹³⁰ *Ibid.*, recital 61, 62 and 66.

Haveman, 2000).

While a growing number of international organisations such as Amnesty International, Human Rights Watch, UNAIDS, and the International Commission of Jurists are calling for the decriminalisation of the sex industry as a precondition for the protection of the human rights of sex workers, at the national level there has been a notable shift towards more repression and criminalisation. In many cases, this is justified by the argument of combating human trafficking. The most visible example is Sweden's criminalisation of clients of sex workers in 1999, followed by similar policies in Norway, Iceland, Canada, Northern Ireland, France, and the Republic of Ireland, despite a growing body of research documenting the negative impact of criminalisation on the safety, health and rights of sex workers.

This thesis explored the role of human rights in the public, political and legal debate on sex work laws and policies in Europe, as mobilised by the sex worker rights movement and other actors, including civil society actors, legislators and the courts. In addressing this objective, I prioritised the views and experiences of sex workers. The overarching question of this research is: how are human rights mobilised in the advocacy for sex workers rights? More specifically the questions underpinning this research are:

- How do sex worker rights organisations and activists mobilise human rights to advocate for civil, labour and human rights? How do they use strategic litigation and (international) human rights mechanism?
- How do sex worker rights organisations and activists view and respond to the deployment of human rights by the anti-sex work movement, legislators and courts in debates on sex work laws and policies?
- How do sex workers experience and negotiate their exclusion from fundamental human rights protections and as legitimate partners in debates about their lives and work?

In order to answer these questions I used a qualitative mixed methods approach, consisting of semi-structured interviews, documentary analysis and case law analysis. The majority of my participants were sex workers, others were service providers, researcher/activists and lawyers. In addition to interviews with sex worker rights activists from national and European sex worker rights organisations, I carried out three country case studies. I chose Germany, France, and Spain as case studies because all three countries have a strong sex worker movement but, under the influence of neo-abolitionist/radical feminist ideology, adopted repressive sex work laws and policies. In 2016 Germany introduced mandatory registration and counselling for sex workers, France criminalised clients in 2016, and in Spain the government contested the right of sex workers to unionise in 2018. In all three countries, human rights of sex workers are at stake and in all three countries sex workers have gone to court to challenge repressive laws and policies and to defend their human rights.¹³¹

After discussing some of the limitations of my study, this final chapter provides an overview of the main findings and conclusions of my research. It concludes with some reflections on how my findings might contribute to the existing literature and possible directions for further research.

7.2 LIMITATIONS OF THE STUDY

A limitation of the study is the small sample of sex worker rights activists I interviewed, particularly from national sex worker rights organisations. Due to practical limitations, including restrictions imposed by Covid-19, accessibility of participants and time constraints, some important countries and organisations are missing. This particularly applies to sex worker organisations from Eastern Europe and the Nordic countries, as well as organisations of black sex workers/sex workers of colour. The latter in particular means that important

¹³¹ In Germany the case against the Prostitutes Protection Act was declared inadmissible by both the National Constitutional court as well as the European Court on Human Rights.

experiences and perspectives are missing. Future research would benefit from a larger and more diverse sample of sex worker activist participants.

A second factor is related to my own positionality as a researcher, in this case my own privileged background as a Dutch, middle-class, highly educated, white somewhat, cisgender, non-sex worker with a history in working with victims of trafficking (which somewhat protected me from accusations of being part of the ‘pimp industry’). This means that I have not experienced the victimisation, exclusion and stigma that my participants encounter and negotiate daily. However, at the same time my privileged position allowed me to be openly involved in the sex worker rights movement for the last 35 years, without having to worry about being stigmatised by association and without fear of losing my job, or being harassed or raped because of my work.

7.3 OVERVIEW OF KEY FINDINGS

In this section I discuss my main findings and conclusions in relation to my research questions.

First and foremost, my data shows how human rights can be both a tool of empowerment and a tool of repression. On the one hand, human rights are mobilised by the sex workers' movement to address violence and other human rights violations against sex workers, to resist their dehumanisation as victims or deviants, and to advocate for the protection of their human rights and the decriminalisation of consensual adult sex work. On the other hand, human rights are used by the abolitionist movement as a vehicle to exclude and silence sex workers and justify their repression. Through the gateway of human dignity and female victimhood, I argue, human rights are used to create a hierarchy of ‘human-ness’ to contain deviant sexuality and re-establish the white middle-class monogamous model of ‘good’ sexuality, while at the same time dehumanising sex workers and relieving states of their accountability

for the protection of sex workers' human rights. This turns human rights into a double-edged sword: on the one hand they are an important tool of empowerment in sex workers' struggle for recognition of their humanity and the right – in the words of Dworkin (1977) to be treated as full and equal members of society. On the other hand, they are used as a tool of repression to dehumanise sex workers by depriving them of agency, subjectivity and dignity and consequently of their human-ness and their entitlement to human rights protections.

Secondly, sex worker organisations mobilise human rights as a set of values as well as a legal system and a vision of good governance, the three dimensions that Merry et al. (2010) distinguish in their discussion of the discursive, political and strategic benefits the human rights framework offers social movements as a kind of 'global law from below'. In all cases, participants stressed the importance of support from organisations with the institutional framework and expertise in using the human rights framework and language.

Sex worker organisations mobilise human rights as 'a set of values' to address violence against sex workers as a human rights violation for which states can be held accountable, as a framework for advocacy, to develop partnerships, to build cross-movement alliances, to frame the debate and to advocate for the full decriminalisation of sex work as a primary condition for protecting sex workers from violence and abuse. Framing sex worker rights as human rights lends legitimacy to their claims, provides minimum standards against which the actual situations of sex workers can be measured, puts sex worker rights in the global perspective of marginalised communities, and offers a framework and language that is instrumental in building rights awareness within the sex worker community.

One way in which sex worker organisations are translating the growing rights awareness of sex workers is through the use of human rights as a legal system. Two examples are the increasing use of the human rights treaty body system by sex worker organisations, particularly through the submission of shadow reports to CEDAW, and the use of litigation as

a means of achieving social change, as illustrated by the case studies of France and Spain. In both cases, partnerships with organisations with expertise in using the legal dimension of human rights have proved crucial. Sex worker organisations also use human rights as a 'vision of good governance' through their demand for meaningful participation in laws and policies that affect their lives, captured in the slogan 'nothing about us without us'.

Several participants described Amnesty International's recognition of violence against sex workers as a human rights violation and its call for the decriminalisation of sex work to protect the human rights of sex workers as a milestone in changing the discourse on sex work.

In addition to the value of the human rights framework, the sex worker activists in my study also discussed the limitations of the human rights framework and the dilemmas they struggle with. They pointed out the gap between theory and practice and how the ideology of universality and social justice clashes with the little weight that human rights have in protecting the rights of (undocumented) migrant sex workers. This can be seen as an example of what Merry et al. (2010) describe as contradictions between the legal and moral dimensions of human rights. The failure of the human rights system to protect the human rights of (undocumented) migrant sex workers not only exposes the limits of the concept of the universality of human rights but also demonstrates what Luca (ESWA) called the 'normative impact of human rights': the fact that the human rights system, by defining what is feasible, also risks limiting the imagination of what the demands of the movement could or perhaps should be and silencing more radical voices within the movement. A question Luca raises, for example, is whether the sex worker movement should not be more ambitious in addressing underlying social injustices such as inequality and poverty, rather than simply demanding that sex work not be criminalised. This creates a constant tension between principles and pragmatism, radical demands like 'no border, no deportation' and feasibility, grassroots activism and the institutionalisation of the movement as part of the system, and

between daring to dream of a more just society and adaptation to the current system.

Human rights begin with the question of 'who is considered to be human' and therefore entitled to human rights. When asked what the slogan 'sex worker rights are human rights' meant to them, this question was a recurring theme in the responses of almost all participants in this study. Many of them talked about how, as sex workers, their value as human beings was being questioned and how they had to fight for their humanity to be recognised. For them, the slogan meant first and foremost that sex workers are human beings who should be treated in the same way as other human beings. Significantly, several participants mentioned that convincing the public that sex workers are human beings was a crucial part of their advocacy. For most sex workers in my study, human rights were also closely linked to labour rights and the recognition of sex workers as workers who contribute to society. Recognition as workers was seen as a gateway to accessing and enjoying human rights.

Thirdly, as discussed above, the human rights framework is mobilised not only by the sex worker rights movement but also by the abolitionist movement. While the sex worker movement builds on an emancipatory and labour-based perspective on sex work, the abolitionist movement moves sex work back into the realm of (female) victimhood and crime, with a focus on repression and control rather than rights and empowerment. The sex worker activists in my study describe how, through the gateway of framing sex work as violence against women and a violation of human dignity, and by conflating sex work with trafficking, the anti-sex work movement uses the human rights framework to silence sex workers and call for the further criminalisation of sex work, turning human rights into a double-edged sword.

As Cunningham (2018) argues, dignity can be seen as a key indicator in contemporary understandings of the human. Like dignity, I argue, agency, as the ability to make one's own decisions about one's life, can be seen as a key indicator of human-ness and of what is generally considered to distinguish humans from (other) animals. An inherent element of

agency is the ability to give or withhold consent. By uniformly portraying sex workers as victims and denying them the capacity to consent, the abolitionist discourse deprives sex workers of agency and therefore of human-ness. They become non-persons, objects rather than subjects, "empty vessels", as one of my participants puts it. While framing sex worker rights as human rights affirms the humanity of sex workers and denounces their dehumanisation as 'deviant others', framing sex work as violence against women and a violation of human dignity has the opposite effect (Cunningham, 2018). By depriving sex workers of agency, subjectivity, and dignity, they are consequently deprived of their human-ness and thus of their entitlement to human rights. This places sex workers in a position where they first and foremost have to 'prove' that they are human, as expressed by the sex worker activists in my study.

In particular, the conflation of sex work and human trafficking, usually accompanied by inflated and unsubstantiated figures on the number of women and girls trafficked for 'sexual exploitation', is used to discredit sex workers' call for decriminalisation. This is argued by claiming that the vast majority of sex workers are forced and that even if there are exceptions - labelled as 'happy hookers' who do not care for the victims - protecting the human rights of the victims justifies sacrificing sex workers' human rights. This makes it difficult for sex worker organisations to critically question the trafficking framework as a tool to address exploitation and abuse in the sex industry, as abolitionists use it as proof of sex workers' 'selfishness' and 'indifference' to the suffering of the victims. It also makes it harder for sex worker organisations to use a labour rights framework, as abolitionists use this to claim that sex workers are denying the violence and exploitation that takes place in the sector. As one of the participants said: "If we are critical of working conditions in the sector, it is used as evidence that sex work should be criminalised. But if we say we are happy with our work, it is used to disqualify us as 'happy hookers'".

The overarching theme that runs through all three framings of sex work – as violence against women and a violation of dignity and the conflation of sex work and trafficking - is that of female victimhood and the use of human rights to place sex workers *as sex workers* outside the human rights system as holders of rights, while at the same time it absolves states of their accountability for the impact of laws and policies on the human rights of sex workers *as sex workers*. Rather than using human rights to address violence against sex workers and protect their agency and dignity, the 'protection of human rights' is used as a justification for further criminalisation of sex work, particularly the criminalisation of clients, despite overwhelming evidence of its negative impact on the safety, health and well-being of sex workers. As Haveman (2000) states, when the defence of human rights is used to justify the violation of human rights by the state, the concept of human rights becomes an empty shell.

Another theme that runs through the abolitionist campaign for increased state control and criminalisation of sex work, as raised by my participants, is the relationship between class, race, and trust in the state, criminal law and the police. As Mac & Smith (2018: 16) argue, while for white middle-class women the police may be their best friend, “for sex workers and other marginalised and criminalised groups the police are not a symbol of protection, but a real manifestation of punishment and control”. The intersection with class, race and legal status makes the call of the abolitionist movement for further criminalisation of sex work deeply classist and permeates any discussion in which white, middle-class, non-sex working feminists advocate the criminal justice system as a solution to social and other problems, the kind of carceral feminism described by Elizabeth Bernstein (2018).

Interestingly, in both France and Spain, repressive sex work policies were the result not of conservative but of socialist governments. Traditionally, the call for (more) criminal law is part of the right-wing political agenda, but in the case of sex work, it is left-wing socialist governments that turn to the use of criminal law as a policy tool rather than an *ultimatum*

remedium, based on the idea that punishment will help to bring about social change, in this case the eradication of sex work (and consequently of sex workers), in defiance of principles of (criminal) law and human rights, such as the right to sexual self-determination and the “caution that should be exercised with regard to criminalisation contrary to the harm principle in order to try to influence social phenomena that are considered problematic” (Norwegian Criminal Law Council, 2022).

Fourthly, in all three case studies, an important factor in the adoption of repressive policies was the political pressure exerted by a relatively small but powerful coalition of radical feminists, left wing liberals, traditional and neo-abolitionist organisations and Christian organisations, which, particularly in France and Spain (but also in Ireland), had systematically worked their way into political and public institutions over the years. As Conxa of the Spanish union OTRAS pointed out, this is a strategy that leaves the sex workers' movement 40 years behind.

Sex workers who stood up for their rights were dismissed as a privileged 'white' minority (as opposed to the majority of migrant victims), as part of the 'pimp lobby', as pimps themselves, or as damaged persons. A specific French variant of the latter was the concept of 'symbolic violence', referring to victims who are unconsciously complicit in their own domination, or even claim the right to their own domination, which by definition invalidates any possibility of consent or claim to rights (Calderaro & Giametta, 2019). By creating a false dichotomy between the so-called 'happy hooker' and the 'voiceless victim', abolitionists positioned themselves as the 'rightful ones' who stood up for the human rights of the victims, as opposed to the 'happy hookers', who did not care about the victims and were only interested in making money. A strategy that research also has found in the Nordic countries (e.g. Jahnsen & Skilbrei, 2017; Vuolajärvi, 2019). Specific to France was also that the fight against the 'prostitution system' was presented not only as a women's rights issue but also as an anti-

capitalist struggle, with sex work being framed as the ultimate capitalist commodification and exploitation.

In general, the national policy debate in all three countries paid little attention to the impact of proposed laws and policies on sex workers' human rights, such as the right to privacy, safety and health, or considered this as acceptable damage. As my German participants mentioned, any appeal by sex workers to human rights was countered by the abolitionist lobby with the 'victim argument', casting violations of sex workers' rights as 'minor inconveniences' that they should be happy to endure for the 'greater good', the rescue of victims. They also mentioned how, in their campaign against the Prostitutes Protection Law (ProstSchG), they had missed the support of human rights organisations that had the expertise and institutional framework to translate the attacks on sex workers' rights into human rights language. However, one of the reasons the French sex worker organisations brought the case to the ECHR was precisely because the national debate was never about sex workers' human rights, as Thierry stated.

Another point that several participants discussed is how the abolitionist campaign is about disciplining sexuality, not only of sex workers and women in general but also of men. As described by Sauer (2019) in her analysis of anti-sex work mobilisation in Germany and Austria, by pitting a pure, natural (female) sexuality located in the private realm of a (heterosexual) intimate relationship against the perverse desires of (male) clients, such as anal sex, bondage and domination, the abolitionist discourse aims to discipline not only women's sexuality of but also men's.

All three countries are part of a wider trend in which the growing prevalence of a criminal justice framework over a social justice model is strongly supported by a significant section of feminist activism. According to Bernstein, the use of criminal law as a deterrent to men's bad behaviour is consistent with carceral feminism's use of criminal law as a means of control to restore an amatory sexual ethic of familial domesticity and the domestication of men, based

on the conviction that sexuality should be kept within the confines of the romantic couple. By shifting the focus from sexually improper women to sexually improper men, she argues, human rights discourse has become "a key vehicle both for the transnationalisation of carceral politics and for the reincorporation of these politics into the domestic terrain in a benevolent, feminist guise" (Bernstein, 2012: 233). The abolitionist call in Germany for the criminalisation of clients is a good example of the use of criminal law to discipline men's sexual behaviour and restore 'family values' under the 'benevolent guise' of feminism. As stated by one of the German participants: "[Men] should be back in the family with [their] sexuality and all sexuality should be back in the family and nowhere else".

The development of the anti-sex work debate cannot be separated from anti-migration policies and fears of 'being flooded' by foreign prostitutes. In all three countries, Germany, France and Spain, the turn towards increasingly repressive sex work policies took place against the backdrop of a growing presence of migrant sex workers and is embedded in broader anxieties about immigration control and loss of national identity. In France, several authors draw parallels between the French debate on the hijab ban and sex work, highlighting how women's heads and bodies have become a battleground as symbols of French identity (Calderaro & Giametta, 2019; Billaud & Castro, 2013). This is reminiscent of Don Kulick's (2003) analysis of how the criminalisation of clients in Sweden was closely linked to Sweden's accession to the EU and fears of identity loss. In Spain, too, the increase in the number of migrant sex workers generated a new social alarm about prostitution and led to its appearance on the political agenda (Bernal Solano et al., 2018). One of the government's justifications for its action against OTRAS, for example, was its duty to 'combat human trafficking', accompanied by inflated and unsubstantiated figures of the number of victims of human trafficking.

Typical of what Wagenaar et al. (2012) call morality politics, in all three countries the debate was highly ideologically driven, emotionally charged and resistant to facts. Research on the

actual number of victims of trafficking and the negative impact of repressive policies on the safety and health of sex workers and the situation of trafficked persons had little or no impact on the debate. Rather, the debate relied on moral arguments and what Sauer calls 'affective framing' (Sauer, 2019), for example by creating an image of Germany as the 'brothel of Europe'; portraying migrant sex workers as young, innocent, naive and 'culturally vulnerable'; denouncing opponents as the 'pimp lobby'; describing sex work in terms of slavery and male domination; and framing the recognition of a sex workers' union as legalising pimping and the sexual exploitation of women.

A fifth point that emerges from the analysis of my empirical data is how the conflicting human rights claims of sex workers and the abolitionist movement are echoed in the rulings of the French Constitutional Court and the Spanish National Court. By defining human dignity as a component of public order, the French case illustrates the problem of using human dignity as a justification for repressive measures, even when the activity is consensual and the individuals themselves do not feel that their dignity has been violated. As Haveman (2000) argues: "If the citizens whose human rights are supposed to be protected by repression do not themselves feel that their dignity is being affected, then the boundary between what the state may do and what it may not do is crossed: the violation and the protection of human rights become one and the same" (2000: 61). By subordinating the human rights of sex workers to 'the greater good' and failing to examine the impact of criminalising clients on their health, the French court essentially reduced sex workers to collateral damage in the name of protecting human rights.

In the Spanish case, it is striking how the Audiencia Nacional conflated the question of whether or not sex workers had the right to form a union with the question of whether or not there could be an employment relationship in prostitution (which OTRAS never disputed), only to follow the complainants' argument that recognition of the union would imply

recognition of pimping as a legal activity. Interestingly, and fortunately for OTRAS, two and a half years later the Supreme Court referred the case back to the question of whether the freedom of association claimed by OTRAS was within the bounds of the law, dismissing the moral arguments as ‘interesting but irrelevant to the question at hand’.

What the French and Spanish cases show is that even in the courts, the protection of sex workers' human rights against abolitionist claims and ideology is not a given, but can sometimes have surprising results, as in the case of the Spanish Supreme Court. It also shows, how, as stated by Sarah-Marie from Médecins du Monde, human rights are a political tool. They can be useful for sex workers, but they can equally be a dangerous tool.

The French case is a good example of how, as Merry et al. (2010) and McCammon & McGrath (2015) describe, using human rights as a system of law requires extensive legal expertise and political skills, as well as support networks and grassroots support. A key factor in enabling sex workers in France to successfully mobilise human rights law and litigate against the state was their long-term partnership with Médecins du Monde, an NGO with extensive experience in using the human rights system and access to legal expertise and representation. Equally important is the presence of a strong sex workers' organisation that could provide leadership, a strong and united national sex worker movement, and a strong national and international network of NGOs, researchers and lawyers that could easily be mobilised in moments of need.

A factor not mentioned by Merry et al. and others, but which played a crucial role in the French case, is the importance of personal relationships and trust between the parties involved, particularly between the sex worker organisations and activists and the Médecins du Monde lawyer who had previously worked for STRASS and who acted as a ‘liaison’ between the sex workers' organisations and the case lawyer(s). This helped to manage the tensions inherent in dealing with the differences in status and power between grassroots activists and

legal experts, as well as in bridging the different sex worker and legal realities and languages that were not always easy to translate.

7.4 REFLECTIONS ON THE CONTRIBUTION OF MY STUDY

My thesis shows how human rights are used to de-humanise sex workers by depriving them of agency, subjectivity, and dignity, and consequently of their human-ness. History teaches that the de-humanisation of a group is always the first step and a necessary condition for outlawing them and excluding them from the human rights other citizens are entitled to. This is no different in the case of sex workers and should serve as a warning against any ideology that robs sex workers of their humanity.

While this prompts us to keep a critical eye on the use of human rights to establish a hierarchy of human-ness, it also calls to question whether the human rights framework brings sex workers what they hoped for when they drafted the 1986 *Statement on Prostitution and Human Rights*. Does it help to hold states accountable for human rights violations against sex workers? We do not know yet. In that respect, the French Constitutional Court fundamentally failed sex workers. The forthcoming ruling of the European Court of Human Rights will be a litmus test. However, as exemplified by the rulings discussed in this thesis, courts do not operate in a vacuum and will move between fluid and contradictory developments: on the national level the tendency towards increased control and criminalisation, on the international level a growing consensus for full decriminalisation as a prerequisite for the protection of sex workers' human rights. This is accompanied by a strengthening of both the sex worker rights movement and the abolitionist movements.

As this study has shown, human rights have a strong rhetorical value, both to support sex workers' claims to recognition and rights, as well as to legitimise the exclusion of sex workers *as sex workers* from human rights. Human rights have given sex workers a tool to fight the

systematic and everyday abuses they face, but also lead to violations in their name. As such they are both a tool of empowerment and repression. In the end, human rights are as much a site of power as any other politics of inclusion and exclusion, of who belongs and who does not. Yet, to speak with Radna Kapur (2006), while there is a need to address the complicity of human rights in interventions that do more harm than help, rights are still radical tools for those who never had them. It is this potentially progressive and transformative power that makes it worthwhile to keep investing in them, even if it is a long and challenging journey.

While there is limited academic research on human rights violations against sex workers, this gap is (partly) filled by sex workers' organisations' own documentation of the daily forms of violence, abuse and discrimination they experience. There is also a growing body of research on the impact of the criminalisation of sex work on the safety, health and living and working conditions of sex workers. More research has also been done on the anti-trafficking and anti-prostitution movements and the tensions between the two. However, there is much less research on the mobilisation of human rights by the sex worker rights movement in its advocacy, including the use of human rights mechanisms and collective litigation. Similarly, there is little research on the role of human rights in the public, political and legal debate on sex work laws and policies from a sex worker and sex worker rights perspective. With this study, I aimed to contribute to filling this gap.

From my background as a human rights lawyer and sex worker rights activist, the relatively unique contribution of my thesis is the integration of a sociological, legal, human rights and sex worker rights perspective in addressing my research questions. As well as looking at how human rights are mobilised in the public and political debate about sex work policy, I examine how these debates are reflected in the way the national courts in France and Spain dealt with the competing human rights claims of the sex worker rights and abolitionist movements. In addition, I bring my experience as part of the sex worker rights movement,

which has given me an 'insider view' of how sex worker rights organisations mobilise human rights, how they value human rights, and the limitations and dilemmas they face. While human rights are mobilised as a tool of empowerment by the sex worker movement, I show how they are also used as a tool of repression by an increasingly influential alliance of radical feminists, traditional abolitionists, conservative Christians and 'left' liberals to re-establish the white middle-class monogamous model of 'good' sexuality, while dehumanising sex workers and absolving states from their responsibility to protect sex workers' human rights. In this respect, my dissertation aims to contribute to the scholarship on the mobilisation of human rights by social movements, as well as the processes of dehumanisation that are a first and necessary step in excluding specific groups from human rights protection.

My findings relate to the sex worker movement and the geographical area of Europe, including Central and Eastern Europe and Central Asia. As such they cannot be simply generalised outside Europe. However, they may contribute to an understanding in other regions of how human rights provide sex workers and other marginalised groups with a tool to fight the systemic and everyday abuses they face, but also lead to violations in their name. Similarly they may contribute to a better understanding of the role of human rights as a tool of both empowerment and repression in the wider field of sexual and reproductive rights, including the anti-trans and anti-gender movement.

Ultimately, I hope that my research will contribute to better protection of the human rights of sex workers.

BIBLIOGRAPHY

- ABC de Sevilla y Andalucía. (2018, August 30). *Susana Díaz urges the Government to “stop” the creation of the sex workers union*. https://sevilla.abc.es/andalucia/sevi-susana-diaz-urge-gobierno-parar-creacion-sindicato-trabajadoras-sexuales-201808301322_noticia.html#vca=mod-sugeridos-p2&vmc=relacionados&vso=susana-diaz-urge-al-gobierno-a-parar-la-creacion-del-sindicato-de-trabajadoras-sexuales&vli=noticia.video.sociedad
- ABC Sociedad Madrid. (2018, August 30). *Valerio asegura que le han «colado un gol» y que anulará el sindicato de trabajadoras sexuales*. https://www.abc.es/sociedad/abci-valerio-asegura-colado-y-anulara-sindicato-trabajadoras-sexuales-201808301541_noticia.html#vca=mod-sugeridos-p1&vmc=relacionados&vso=valerio-asegura-que-le-han-colado-un-gol-y-que-anulara-el-sindicato-de-trabajadoras-sexuales&vli=noticia.foto.sociedad&ref=
- ABC Sociedad Nacional. (2018, August 30). *El Gobierno feminista de Sánchez da luz verde al primer sindicato de trabajadoras sexuales*. https://www.abc.es/sociedad/abci-gobierno-feminista-sanchez-verde-primer-sindicato-trabajadoras-sexuales-201808301239_noticia.html#vca=mod-sugeridos-p1&vmc=relacionados&vso=el-gobierno-de-sanchez-da-luz-verde-al-primer-sindicato-de-trabajadoras-sexuales&vli=noticia.video.sociedad
- Abel, G., Fitzgerald, L., Healy, C., & Taylor, A. (2010). *Taking the crime out of sex work* (G. Abel, L. Fitzgerald, C. Healy, & A. Taylor (Eds.)). Bristol University Press. <https://doi.org/10.2307/j.ctt9qgqkd>
- Abreu, M. L. M. (2018, September 4). ¿Desandar lo andado? Lo van a tener difícil. *ElDiario.Es. Opinión*. https://www.eldiario.es/opinion/tribuna-abierta/desandar-andado-van-tener-dificil_129_2755194.html
- Adamo, K. D., Health, R., Albert, K., & Manley, J. (2021). *Attacking Demand, Escalating Violence The Impact of Twenty Years of End Demand Implementation on People who Trade Sex*. <https://www.ceasenetwork.org/>.
- Aguilar, A. R. (2018a, October 9). El Gobierno baraja acudir a la Audiencia Nacional como vía más sólida para anular el sindicato de prostitutas. *ElDiario.Es*. https://www.eldiario.es/economia/gobierno-audiencia-nacional-sindicato-prostitutas_1_1901526.html
- Aguilar, A. R. (2018b, November 21). La Audiencia Nacional anula los estatutos del sindicato OTRAS porque entiende que la prostitución no es un trabajo. *ElDiario.Es*. https://www.eldiario.es/economia/audiencia-nacional-estatutos-sindicato-prostitutas_1_1832618.html
- Agustín, L. (2013, August 17). The sex worker stigma: How the law perpetuates our hatred (and fear) of prostitutes. *Salon*. https://www.salon.com/2013/08/17/the_whore_stigma_how_the_law_perpetuates_our_hatred_and_fear_of_prostitutes_partner/
- Agustín, L. M. (2007). *Sex at the margins : migration, labour markets and the rescue industry*. Zed Books.
- AidshilfeNRW. (2019). *Zwei Jahre Prostituiertenschutzgesetz: Aidshilfe NRW fordert Richtungswechsel*. https://www.ahnrw.de/upload/PDF/Service/2019_05_forderungspapier_prostschg.pdf
- Allwood, G. (2014, January 14). *How France is trying to fight prostitution*. In Genere Website. <http://www.ingenere.it/en/articles/how-france-trying-fight-prostitution>

- Amnesty International. (2015, August 14). *Sex Workers' Rights are Human Rights*.
<https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>
- Amnesty International. (2016a). *The human cost of "crushing" the market: criminalization of sex work in Norway*. <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>
- Amnesty International. (2016b). *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*.
<https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>
- Amnesty International. (2016c, May 26). *Amnesty International publishes policy and research on protection of sex workers' rights*. <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>
- Amnesty International. (2017). *Our policy to protect sex workers' human rights: frequently asked questions*. <https://www.amnesty.org.uk/policy-protect-human-rights-sex-workers-qa>
- Amnesty International. (2022). *"We live within a violent system." Structural violence against sex workers in Ireland*. <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>
- Audiencia Nacional. (2018). *Sentencia N°: 174/2018*. <https://sedejudicial.justicia.es>
- Azar, L. F. (2019). *Hannah Arendt: The Right to Have Rights*.
- Bachlakova, P. (2020). How the Nordic model in France changed everything for sex workers. In *openDemocracy*. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/long-read-how-nordic-model-france-changed-everything-sex-workers/>
- Barry, K. (1995). *The Prostitution of Sexuality: The Global Exploitation of Women*. New York University Press.
- Béguin, F., & Dupont, G. (2013, September 18). *Prostitution : "Quand on transgresse un interdit, il peut y avoir sanction."* *Le Monde*.
https://www.lemonde.fr/societe/article/2013/09/18/prostitution-quand-on-transgresse-un-interdit-il-peut-y-avoir-sanction_3479994_3224.html
- Belak, B. (2018). Bedford v. Canada: A Breakthrough in the Legal Discourse. In E. M. Durisin, E. Van der Meulen, & C. Bruckert (Eds.), *Red light labour: sex work regulation, agency, and resistance* UBC Press, p. 374.
- Bennett, D. (2013, December 20). *Supreme Court rules in favour of sex workers! Canada v. Bedford- The decision in 705 words*. Pivot.
https://www.pivotlegal.org/canada_v_bedford_a_synopsis_of_the_supreme_court_of_canada_ruling
- Bennett, T., & Stardust, Z. (2022). Positive Potential: How Sex Positivity Can Benefit Legal Thinking and Sex Work Regulation in Australia. *Monash University Law Review (Advance)*, 48(1).
<https://worldsexualhealth.net/declaration-on-sexual->
- Benoit, C., Jansson, S. M., Smith, M., & Flagg, J. (2018). Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers. *The Journal of Sex Research*, 55, 457–471. <https://doi.org/10.1080/00224499.2017.1393652>
- Bernal Solano, M., Danet, A., & Carles March Cerdà, J. (2018). Spain. In S. Ø. Jahnsen & H. Wagenaar (Eds.), *Assessing prostitution policies in Europe*. Routledge.
- Bernstein, E. (2007). The Sexual Politics of the "New Abolitionism." *Differences: A Journal of Feminist Cultural Studies*, 18(3).
- Bernstein, E. (2012). Carceral politics as gender justice? The "traffic in women" and neoliberal circuits of crime, sex, and rights. *Theory and Society*, 41(3), 233–259. <https://doi.org/10.1007/s11186->

012-9165-9

- Bernstein, E. (2018). *Brokered subjects: sex, trafficking, and the politics of freedom*. The University of Chicago Press.
- Berry, A., & Frazer, P. (2021). How Sex Workers Understand Their Experiences of Working in the Republic of Ireland. *Sexuality Research and Social Policy*, 18(4), 869–884. <https://doi.org/10.1007/s13178-021-00626-2>
- BesD. (2024a). Die CDU/CSU bringt das Sexkaufverbot vorzeitig im Bundestag ins Gespräch-wir sagen Ihnen warum! Press release. <https://www.berufsverband-sexarbeit.de/index.php/2024/02/21/pm-21-02-2024-cdu-sexkaufverbot-bundestag-warum/>
- BesD. (2024b). Anhörung im Bundestag zu Sexkaufverbot – Berufsverband Sexarbeit sagt NEIN. Press release. <https://www.berufsverband-sexarbeit.de/index.php/2024/02/23/pm-21-02-2024-cdu-sexkaufverbot-bundestag/>
- BesD e.V. (2013a, November 1). *Appell FÜR Prostitution*. <http://www.sexworkeurope.org/news/general-news/appeal-prostitution>
- BesD e.V. (2013b). Sex Workers protest against Alice Schwarzer's panel discussion about prostitution in Berlin. <http://www.sexworkeurope.org/news/general-news/sex-workers-protest-against-alice-schwarzers-panel-discussion-about-prostitution>
- BesD e.V. (2014). *BesD responds to Bundesrat Resolution about Prostitution Act Reform*. <https://www.berufsverband-sexarbeit.de/index.php/2014/05/09/german-sex-worker-organisation-besd-responds-to-bundesrat-resolution-about-prostitution-act-reform/>
- BesD e.V. (2015a). Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend:"Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen". <https://bsd-ev.info/wp-content/uploads/2019/02/StellungnahmeProstSchG-RefE.pdf>
- BesD e.V. (2016). Stellungnahme des Berufsverbandes erotische und sexuelle Dienstleistungen e.V. zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen. In *Deutscher Bundestag 2016.06.06, Ausschussdr18(13)76j*.
- BesD e.V., Hydra, & Ratschlag Prostitution Hamburg. (2019). *Written submission to CEDAW on the general discussion on trafficking in women and girls in the context of global migration (General discussion on TWGCGM)*. <http://www.berufsverband-sexarbeit.de>
- Billaud, J., & Castro, J. (2013). Whores and Niqabeés: The Sexual Boundaries of French Nationalism. *French Politics, Culture & Society*, 31(2). <https://doi.org/10.3167/fpcs.2013.310205>
- Bindel, J. (2017). *The pimping of prostitution: Abolishing the sex work myth*. Palgrave Macmillan. <https://doi.org/10.1057/978-1-137-55890-9>
- Bindel, J. (2019, April 30). *Prostitution is not a job. The inside of a woman's body is not a workplace*. The Guardian. shorturl.at/vBRTV
- BOE Num. 188. (2018). Anuncios Ministerio de Trabajo Migraciones y Seguridad Social. In *Bolletín Oficio del Estado*, BOE-B-2018-40130. <https://www.boe.es/boe/dias/2018/08/04/pdfs/BOE-S-2018-188.pdf>
- Bourdieu, P. (1987). What Makes a Social Class? On The Theoretical and Practical Existence Of Groups. *Journal of Sociology*, 32, 1–17.
- Braun, V., & Clarke, V. (2012). Thematic analysis. In H. Cooper (Ed.), *APA handbook of research methods in psychology, Vol 2: Research designs* (Vol. 2, pp. 57–71). American Psychological

- Association. <https://doi.org/10.1037/13620-004>
- British Sociological Association. (2017). *Statement of Ethical Practice for the British Sociological Association*.
<https://www.google.com/search?q=Statement+of+Ethical+Practice+for+the+British+Sociologica+Association&oq=Statement+of+Ethical+Practice+for+the+British+Sociological+Association&qs=chrome..69i57.1565j0j7&sourceid=chrome&ie=UTF-8>
- Briz, M., & Garaizabal, C. (2018, September 1). Hablemos de derechos, no de goles. *ElDiario.Es, Tribuna Abierta*. https://www.eldiario.es/opinion/tribuna-abierta/hablemos-derechos-goles_129_2755470.html
- Brooks-Gordon, B., Wijers, M., & Jobe, A. (2020). Justice and civil liberties on sex work in contemporary international human rights law. *Social Sciences, 9*(1).
<https://doi.org/10.3390/socsci9010004>
- Brooks, L. (2012, December 9). Do we actually want to rid Europe of its sex workers? *The Guardian, The Guardian*. <https://www.theguardian.com/commentisfree/2012/dec/09/europe-sex-workers>
- Bunch, M. J. (2014). Communicating for the Purposes of Human Rights: Sex Work and Discursive Justice in Canada. *Canadian Journal of Human Rights, 3*(1).
- ProstituiertenSchutzGesetz (ProstSchG), Bgbl. I S. 2372 2372 (2016). www.bundesanzeiger-verlag.de
- Bundesverband Sexuelle Dienstleistungen e.V.(BSD). (2022, June 2). „Das heimliche Treiben der Männer & Justitias Macht“ Pressekonferenz. <https://bsd-ev.info/pressekonferenz-am-02-juni-im-fkk-artemis-berlin/>
- BVerfG (2009). Beschluss vom 28. April 2009, 1 BvR 224/07, Rn. 1-31, ECLI:DE:BVerfG:2009:rk20090428.1bvr022407 (2009).
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/04/rk20090428_1bvr022407.html
- BVerfG. (2018). Beschluss vom 26. Juli 2018, 1 BvR 1534/17, Rn. 1-5. In ECLI:DE:BVerfG:2018:rk20180726.1bvr153417.
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2018/07/rk20180726_1bvr153417.html
- BVÖGD und 22 Gesundheitsämter. (2015). *Stellungnahme zum Referentenentwurf des BMFSFJ. Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen*. https://www.aidshilfe.de/sites/default/files/documents/2015-09_Stellungnahme_ÖGD.pdf
- BVÖGD und 25 Gesundheitsämter. (2015). *Stellungnahme zu den Vereinbarungen der Koalitionsfraktionen zum Prostituiertenschutzgesetz vom 03.02.2015 in Ergänzung zu den im August 2014 vereinbarten Eckpunkten*. http://www.stiftung-gssg.de/upload/Gesundheitsaemter_Statement_ProstSchutzG_Pflichtuntersuchung_Maerz_2015.pdf
- Calderaro, C., & Giametta, C. (2019). ‘The Problem of Prostitution’: Repressive policies in the name of migration control, public order, and women’s rights in France. *Anti-Trafficking Review, 12*, 155–171. <https://doi.org/10.14197/atr.20121771>
- Campbell, L. M., & Zimmerman, Y. C. (2014). Christian Ethics and Human Trafficking Activism: Progressive Christianity and Social Critique. *Journal of the Society of Christian Ethics, 34*(1), 145–172. <https://doi.org/10.1353/sce.2014.0003>
- Caraballo, J. (2018, September 4). La cacicada de las putas. *El Confidential, Blog*.

- https://blogs.elconfidencial.com/amp/espana/matacan/2018-09-04/sindicato-trabajadoras-sexuales-cacitada_1611253/?__twitter_impression=true
- Caulfield, J. (2022). *How to do Thematic Analysis | Guide & Examples*. Scribbr. <https://www.scribbr.co.uk/research-methods/thematic-analysis-explained/>
- Chang, J. (2010). Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy. *UNIV. Pa. L. Rev.* , 158(6).
- Chevalier, J. M., & Buckles, D. J. (2013). *Participatory Action Research. Theory and Methods for Engaged Inquiry*. Routledge.
- Clamen, J., Elliott, R., Laliberté, É., Sandra, K. S., Hon, K., Ka, S., Chu, H., & Glass, R. (2013). Sex Work Law Reform in Canada: Considering Problems with the Nordic Model. *Alberta Law Review*, 51, 101–124. <http://www.thestar.com/opinion/editorialopinion/2011/10/19/>
- Commission nationale consultative des droits de l'homme (CNCDH). (2014). *Avis sur la proposition de loi renforçant la lutte contre le système prostitutionnel*. <https://www.cncdh.fr/publications/avis-sur-la-proposition-de-loi-renforcant-la-lutte-contre-le-systeme-prostitutionnel>
- Commissioner for Human Rights Council of Europe Dunja Mijatović. (2024). *Protecting the human rights of sex workers*. <https://www.coe.int/en/web/commissioner/-/protecting-the-human-rights-of-sex-workers>
- Conseil Constitutionnel. (2019a). Décision No. 2018-761 QPC. In *ECLI 423892: FR: CECHR: 2018: 423892.20181112*. <https://www.conseil-constitutionnel.fr/en/decision/2019/2018761QPC.htm>
- Conseil Constitutionnel. (2019b). *Press Release Decision No. 2018-761 QPC*. <https://www.conseil-constitutionnel.fr/actualites/communiquede/decision-n-2018-761-qpc-du-1er-fevrier-2019-communiquede-presse>
- Conseil d'État. (1995). *Conseil d'État, 27 octobre 1995, Commune de Morsang-sur-Orge et Ville d'Aix-en-Provence*. <https://www.conseil-etat.fr/decisions-de-justice/jurisprudence/les-grandes-decisions-depuis-1873/conseil-d-etat-27-octobre-1995-commune-de-morsang-sur-orge-et-ville-d-aix-en-provence>
- Conseil d'État. (2019). Decision No. 423892. In *ECLI:EN:CECHR:2019:423892.20190607*. <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000038566449/>
- Constitutional Court Portugal (2023). Acórdão Nº 218/2023. Processo no. 955/2022, 3.ª Secção. <https://www.tribunalconstitucional.pt/tc/acordaos/20230218.html>
- Cowan, D. (2004). Legal Consciousness: Some Observations. *The Modern Law Review Limited* , 67(6), 928–958.
- Cruz, K. (2018). Beyond Liberalism: Marxist Feminism, Migrant Sex Work, and Labour Unfreedom. *Feminist Legal Studies*, 26, 65–92. <https://doi.org/10.1007/s10691-018-9370-7>
- Cunningham, S. (2016). Reinforcing or Challenging Stigma? The Risks and Benefits of 'Dignity Talk' in Sex Work Discourse. *International Journal for the Semiotics of Law*, 29(1), 45–65. <https://doi.org/10.1007/s11196-015-9434-9>
- Cunningham, S. (2018). *The concept of human dignity and its use in legal and political discourses on commercial sex*. Law School, Strathclyde.
- Darley, M., David, M., Guienne, V., Mainsant, G., & Mathieu, L. (2018). France. In S. Ø. Jahnsen & H. Wagenaar (Eds.), *Assessing Prostitution Policies in Europe* (p. 92106). Routledge.
- Davis, A. Y. (1983). *Women, Race & Class*. Vintage Books.
- De Blois, M. (1998). Self-determination or human dignity. Core Principles of Human Rights. In M. Bulterman, A. Hendriks, & J. Smith (Eds.), *To Baehr in our minds. Essays on human rights from*

the heart of the Netherlands (p. 608). SIM Special No. 21.

- De Vries, P. (1997). *Kuisheid voor mannen, vrijheid voor vrouwen. De reglementering en bestrijding van prostitutie in Nederland, 1850-1911*. Verloren.
- De Vries, P. (2010). From Slave to Sex Worker. Feminist Debates and Prostitution Politics in the Netherlands, 1880-2000. *L'Homme, Europäische Zeitschrift Fuer Feminismus*, 21(1).
- Decker, M. R., Crago, A. L., Chu, S. K. H., Sherman, S. G., Seshu, M. S., Buthelezi, K., Dhaliwal, M., & Beyrer, C. (2015). Human rights violations against sex workers: Burden and effect on HIV. In *The Lancet* (Vol. 385, Issue 9963, pp. 186–199). Lancet Publishing Group.
[https://doi.org/10.1016/S0140-6736\(14\)60800-X](https://doi.org/10.1016/S0140-6736(14)60800-X)
- Deering, K. N., Amin, A., Shoveller, J., Nesbitt, A., Garcia-Moreno, C., Duff, P., Argento, E., & Shannon, K. (2014). A systematic review of the correlates of violence against sex workers. *American Journal of Public Health*, 104(5), 42–54. <https://doi.org/10.2105/AJPH.2014.301909>
- Degenhardt, T., & Lintzen, L.-M. (2019). *Auswirkungen des Prostituiertenschutzgesetzes auf die Prostitutionsszene in NRW. Zweite korrigierte Fassung vom 14.05.2019*.
https://www.researchgate.net/publication/345186804_Auswirkungen_des_Prostituiertenschutzgesetzes_auf_die_Prostitutionsszene_in_NRW
- Department of Justice Ireland. (2020). Minister McEntee publishes Terms of Reference for the Review of Part 4 of the Criminal Law (Sexual Offences) Act 2017. Press release. gov.ie.
<https://www.gov.ie/en/press-release/2c3e6-minister-mcentee-publishes-terms-of-reference-for-the-review-of-part-4-of-the-criminal-law-sexual-offences-act-2017/>
- Deutsche Aidshilfe. (2015). *Stellungnahme Deutsche Aidshilfe zum Entwurf eines „Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen“ (Prostituiertenschutzgesetz, ProstSchG) des Bundesministeriums für Familie, Senioren, Frauen*. https://www.aidshilfe.de/sites/default/files/documents/2015-09-11_PrSchG_DAH-Stellungnahme_final.pdf
- Deutsche Sti-Gesellschaft (DSTIG). (2015). *Stellungnahme der Deutschen STI-Gesellschaft zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen vom 29.07.2015*. <http://dstig.de/literaturleitlinienlinks/stistd-beratung.html>
- Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen, (2016).
<http://dipbt.bundestag.de/dip21/btd/18/085/1808556.pdf>
- Deutscher Bundestag. (2019, February 15). *Evaluierung des Prostitutionsgesetzes, des Prostitutionsschutzgesetzes und des effektiven Schutzes Prostituerter. Drucksache 19/7810. Antwort der Bundesregierung der Abgeordneten Gyde Jensen, Nicole Bauer, Alexander Graf Lambsdorff, weiterer Abgeordneter und der Fraktion der FDP, Drucksache 19/7322*. Deutscher Bundestag. <https://dserver.bundestag.de/btd/19/078/1907810.pdf>
- Deutscher Frauenrat, Deutsche AIDS-Hilfe, Deutscher Juristinnenbund, Diakonie Deutschland, Dortmunder Mitternachtsmission, Evangelische Frauenhilfe in Westfalen, & Frauentreff Olga. (2015). *Koalitionspläne: Prostituierten drohen neue Gefahren*.
<https://www.aidshilfe.de/meldung/koalitionsplane-prostituierten-drohen-neue-gefahren>
- Deutscher Frauenrat e.V., Deutsche AIDS-Hilfe e.V., Deutscher Juristinnenbund e.V. (djb), Evangelischer Frauenhilfe in Westfalen e.V. mit ihren Beratungsstelle Nadescha für Opfer von Frauenhandel und den Prostituierten- und Ausstiegsberatungen Theodora und Tamar, Diakonie Deutschland-Evangelischer Bundesverband, Dortmunder Mitternachtsmission e.V., & Frauentreff Olga. (2015). *Offener Brief ProstSchG*.

- https://www.djb.de/fileadmin/user_upload/presse/stellungnahmen/st15-02_Offener_Brief-ProstSchG.pdf
- Deutscher Juristinnenbund e.V. (2015). *Stellungnahme 15-10 / zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen (ProstSchG-RefE)*. <https://www.djb.de/st-pm/st/st15-10/>
- Ditmore, M. H. (2011). *Prostitution and sex work. Historical Guides to Controversial Issues in America*. Greenwood.
https://books.google.com/books/about/Prostitution_and_Sex_Work.html?hl=nl&id=d1Qx3qqRE3kC
- Ditmore, M., & Wijers, M. (2003). The negotiations on the UN Protocol on Trafficking in Persons. *Nemesis*, 4, 79–88. <https://documentation.lastradainternational.org/doc-center/1006/the-negotiations-on-the-un-protocol-on-trafficking-in-persons-moving-the-focus-from-morality-to-actual-conditions>
- Ditum, S. (2014, December 1). Why we shouldn't rebrand prostitution as "sex work." *The New Statesman*. <https://www.newstatesman.com/politics/2014/12/why-we-shouldnt-rebrand-prostitution-sex-work>
- Dodillet, S., & Östergren, P. (2011). *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*. <http://www.petraostergren.com/upl/files/54259.pdf>
- Doezema, J. (1996). Choice in Prostitution. In *Conference book, Changing Faces of Prostitution*. Unioni, the League of Finnish Feminists.
- Doezema, J. (1998). Forced to Choose: Beyond the Voluntary v Forced Prostitution Dichotomy. In K. Kempadoo & J. Doezema (Eds.), *Global sex workers: rights, resistance, and redefinition*. Routledge.
- Doezema, J. (1999). Loose women or lost women. The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women. *Gender Issues*, 18, 23-50.
- Doezema, J. (2001). Ouch!: Western Feminists' "Wounded Attachment" to the "Third World Prostitute." *Feminist Review*, 67, 16–38. <https://www.jstor.org/stable/1395529>
- Doezema, J. (2010). *Sex slaves and discourse masters: the construction of trafficking*. Zed Books.
- Dolinsek, S. (2016). *Sex workers fight against compulsory registration and identification in Germany*. OpenDemocracy|beyond Trafficking and Slavery. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-fight-against-compulsory-registration-and-identification-in/>
- Doña Carmen e.V. (2015). Statement by sex worker counselling centre Dona Carmen in response to the derecognition of its charitable status. In *Research Project Germany*. <https://researchprojectgermany.wordpress.com/tag/dona-carmen/>
- Doña Carmen e.V. (2017). Erfolg! Verfassungsbeschwerde gegen Prostituiertenschutzgesetz in Karlsruhe eingereicht! *Www.Donacarmen.De*.
- Doña Carmen e.V. (2019). *Entrechtung durch Schutz. Streitschrift gegen das Prostituiertenschutzgesetz*. Doña Carmen e.V.
- Doña Carmen e.V. (2019). Prostituiertenschutzgesetz: Europäischer Menschenrechtsgerichtshof verweigert Befassung mit Klage gegen Deutschland. Pressemitteilung. In *Pressrelease*. <https://www.donacarmen.de/prostituiertenschutzgesetz-europaeischer-menschenrechtsgerichtshof-verweigert-befassung-mit-klage-gegen-deutschland/#more-2265>
- Döringer, S. (2021). 'The problem-centred expert interview'. Combining qualitative interviewing

- approaches for investigating implicit expert knowledge. *International Journal of Social Research Methodology*, 24(3), 265–278. <https://doi.org/10.1080/13645579.2020.1766777>
- Dottridge, M., & GAATW. (2007). *Collateral damage : the impact of anti-trafficking measures on human rights around the world*. Global Alliance Against Traffic in Women.
- Douzinas, C. (2000). *The End of Human Rights*. Hart.
- Douzinas, C. (2002). The End(s) of Human Rights. *Melbourne University Law Review*, 26(2), 445–465. <https://www5.austlii.edu.au/au/journals/MelbULawRw/2002/23.html>
- Douzinas, C. (2007). *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. Routledge-Cavendish.
- Durisin, E. M., Van der Meulen, E., & Bruckert, C. (2018). *Red light labour: sex work regulation, agency, and resistance*. UBC Press,.
- Dutch CEDAW Network. (2020). *Dutch CEDAW Network, comments on DRAFT General Recommendation on Trafficking in Women and Girls in the Context of Global Migration*. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/TraffickingGlobalMigration/NGOs/Dutch_CEDAW_Network-Comments_on_TWGCGM.docx
- Dworkin, A. (1981). *Pornography: Men Possessing Women*. Perigee.
- Dworkin, A. (1987). *Intercourse*. Free Press.
- Dworkin, A. (1993). Prostitution and Male Supremacy. *Michigan Journal of Gender and Law*, 1(1), 1–12. <https://repository.law.umich.edu/mjgl/vol1/iss1/1/>
- Dworkin, R. (1977). *Taking rights seriously*. Duckworth.
- ECHR. (2002). *Pretty v. The United Kingdom, appl. no. 2346/02*. <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%222346/02%22%5D,%22itemid%22:%5B%22001-60448%22%5D%7D>
- ECHR. (2005). *K.A. and A.D. v. Belgium, appl. no. 42758/98 and 45558/99*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-4010%22%5D%7D>
- ECHR. (2007). *V.T. v. France, appl. no. 37194/02*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-82240%22%5D%7D>
- ECHR. (2021a). *M. A. and Others v. France, appl. no. 63664/19, 64450/19, 24387/20 et al. Information Note*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-13245%22%5D%7D>
- ECHR. (2021b). *M. A. et 256 autres c. France, appl. no. 63664/19. Exposé des faits*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-209407%22%5D%7D>
- ECHR. (2023a). *Décision M.A. c. France et autres requêtes, appl. no. 63664/19*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-226443%22%5D%7D>
- ECHR. (2023b). *Decision M. A. et autres v. France and other applications, appl. no. 63664/19*. <https://hudoc.echr.coe.int/#%7B%22fulltext%22:%5B%22M. A. et autres contre la France%22%5D,%22itemid%22:%5B%22001-226443%22%5D%7D>
- Edwards, R., & Holland, J. (2013). *What is qualitative interviewing*. Bloomsbury.
- Egré, P. (2023, August 31). Prostitution: une “victoire d’étape” contre la pénalisation du client. *Le Parisien*. <https://www.leparisien.fr/faits-divers/prostitution-une-victoire-detape-contre-la-penalisation-du-client-31-08-2023-NR65U5N2PRFGVMFQZE2VEPYOOE.php?s=09>
- El Diario. (2018a, September 3). Ada Colau llama “hipócrita” al Gobierno y defiende la creación de un sindicato de trabajadoras sexuales. *ElDiario.Es*. https://www.eldiario.es/politica/ada-colau-hipocrita-sanchez-trabajadoras_1_1952901.html

- El Diario. (2018b, October 29). El Ministerio de Trabajo pide a la Fiscalía que impugne en los tribunales al sindicato de prostitutas OTRAS. *ElDiario.Es*.
https://www.eldiario.es/economia/ministerio-trabajo-fiscalia-impugnacion-prostitutas_1_5869396.html
- El Diario. (2018c, November 21). La Audiencia Nacional anula los estatutos del sindicato OTRAS porque entiende que la prostitución no es un trabajo. *ElDiario.Es*.
https://www.eldiario.es/economia/Audiencia-Nacional-estatutos-sindicato-prostitutas_0_838166337.html
- El Ministerio de Trabajo Migraciones y Seguridad Social. (2018). *El Ministerio de Trabajo, Migraciones y Seguridad Social inicia el tramite de impugnacion de la "Organizacion de Trabajadoras Sexuales."* <https://prensa.mites.gob.es/WebPrensa/noticias/laboral/detalle/3350>
- El Mundo. (2018, September 1). El Ayuntamiento de Barcelona defiende el sindicato de trabajadoras sexuales. *Elmundo.Es*.
<https://www.elmundo.es/cataluna/2018/09/01/5b899236268e3e7f288b45d2.html>
- El Salto. (2018, September 3). El Gobierno trata de frenar la creación de un sindicato de prostitutas: cronología de un incendio. *Editorial El Salto*.
<https://www.elsaltodiario.com/sindicatos/sindicato-prostitutas-cronologia-boe-trabajo-gobierno>
- Ellison, G. (2016). Who needs evidence? Radical feminism, the christian right and sex work research in Northern Ireland. In *Reflexivity and Criminal Justice: Intersections of Policy, Practice and Research* (pp. 289–314). Palgrave Macmillan. https://doi.org/10.1057/978-1-137-54642-5_13
- EMMA. (2013). *Appel gegen Prostitution*. <https://www.emma.de/artikel/appeal-against-prostitution-311976>
- EMMA. (2014, September). Wer sind die "Sexarbeiterinnen" wirklich? *EMMA*.
<https://www.emma.de/artikel/prostitution-von-wem-laesst-die-politik-sich-da-beraten-317675>
- English Collective of Prostitutes. (2019). *Comparing sex work with other jobs traditionally done by women*. www.prostitutescollective.net
- ESWA. (2021, July 17). *Call to European Parliament Members: Reject Amendments that Would Outlaw Sex Workers' Ability to Consent*.
https://www.eswalliance.org/european_parliament_members_reject_amendments_that_would_outlaw_sex_workers_ability_to_consent
- ESWA. (2022a). *ESWA Congress 2022: "Beyond Decrim. An intersectional approach to sex workers' rights"*. YouTube. <https://www.youtube.com/watch?v=Wge720Angjc>
- ESWA. (2022b). *The Impact of Online Censorship & Digital Discrimination on Sex Workers*.
https://www.eswalliance.org/the_impact_of_online_censorship_and_digital_discrimination_on_sex_workers
- ESWA. (2022c, October 13). *European Coalition on Sex Workers' Rights and Inclusion*.
https://www.eswalliance.org/launching_european_coalition_sex_workers_rights_inclusion
- ESWA, & European Coalition on Sex Workers' Rights and Inclusion. (2021). *Don't outlaw sex workers consent! Policy brief to law proposal to criminalise sex work and calls for the abolition of prostitution in Spain*.
https://www.eswalliance.org/don_t_outlaw_sex_workers_consent?recruiter_id=485
- ESWA, & Médecins du Monde. (2023). *Milestone Victory at the European Court of Human Rights: Joint Statement Médecins du Monde and European Sex Workers' Rights Alliance*.
https://www.eswalliance.org/milestone_victory_at_the_european_court_of_human_rights_joi

nt_statement_with_mdm

- EU Court of Justice. (2001a). Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie. Case C-268/99. In *European Court Reports 2001 I-08615*. ECLI:EU:C:2001:616. <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61999CJ0268>
- EU Court of Justice. (2001b). Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie. In *Judgment of 20 November 2001, case C-268/99, ECLI:EU:C:2001:616*. <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C%2CT%2CF&num=&parties=Jany&dates=error&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>
- European Parliamentary Forum for Sexual and Reproductive Rights (EPF). (2021). *Tip of the Iceberg: Religious Extremist Funders against Human Rights for Sexuality & Reproductive Health in Europe*. <https://www.epfweb.org/node/837>
- EWL. (n.d.). *Together for a Europe Free From Prostitution*. European Women's Lobby. Retrieved May 25, 2019, from <https://womenlobby.org/-Together-for-a-Europe-Free-From-Prostitution-?lang=en>
- Farley, M. (2004). "Bad for the Body, Bad for the Heart". Prostitution Harms Women Even if Legalized or Decriminalized. *Violence Against Women*, 10(10), 1087–1125. <https://doi.org/10.1177/1077801204268607>
- Farley, M. (2018). #MeToo Must Include Prostitution. *Dignity: A Journal on Sexual Exploitation and Violence*, 3(1). <https://doi.org/10.23860/dignity.2018.03.01.09>
- Fedorkó, B., Stevenson, L., & Maciotti, P. G. (2021). Sex workers on the frontline: An abridged version of the original ICRSE report: 'The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe.' *Global Public Health*, 0(0), 1–10. <https://doi.org/10.1080/17441692.2021.1945124>
- Feminist Standpoint Theory. (n.d.). In *The Internet Encyclopedia of Philosophy*. Retrieved April 10, 2024, from <https://iep.utm.edu/fem-stan/#H1>
- Feminists for Sex Workers. (2016). *Feminists for Sex Workers: Our Manifesto*. <https://feministsforsexworkers.com/>
- Ferčíková Konečná, I. (2024). Excluded but Fighting: Where Are the Voices of Sex Workers and Their Allies in EU Anti-Trafficking Policymaking? *Social Sciences*, 13(3), 148. <https://doi.org/10.3390/socsci13030148>. <https://www.mdpi.com/2076-0760/13/3/148>
- Ferris, S., Lebovitch, A., & Allard, D. (2021). Sex Work Research, Ethics Review Processes, and Institutional Challenges for "Sensitive" Collaborative Research. *International Journal of Qualitative Methods*, 20. <https://doi.org/10.1177/16094069211033437>
- Fitzgerald, S., & McGarry, K. (2016). Problematizing Prostitution in Law and Policy in the Republic of Ireland: A Case for Reframing. *Social & Legal Studies*, 25(3), 289–309. <https://doi.org/10.1177/0964663915614886>
- Frazer, N., & Lacey, E. (1993). *The Politics of Community: A Feminist Critique of the Liberal-communitarian Debate*. Harvester Wheatsheaf.
- Fuckförbundet. (2019). *Twenty years of failing sex workers. A community report on the impact of the 1999 Swedish Sex Purchase Act*. <https://www.nswp.org/resource/member-publications/twenty-years-failing-sex-workers-community-report-the-impact-the-1999>

- Fukuyama, F. (2002). *Our Postmodern Future*. Profile.
- GAATW. (2011). *Moving beyond "Supply and Demand" catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking*. <http://www.royaltyfreeimages.net>
- GAATW. (2016). *Response to UN Women's consultation on sex work - The Global Alliance Against Traffic in Women (GAATW)*. <https://www.gaatw.org/events-and-news-old/68-gaatw-news/857-response-to-un-women-s-consultation-on-sex-work?highlight=WyJzZXgiLCInc2V4liwid29yayIsIndvcmsnLCIsIndvcmsnLilsIndvcmsnliwic2V4IHdvcmSiXQ>
- GAATW. (2018a). *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*. *Anti Trafficking Review*. <https://gaatw.org/resources/publications/941-sex-workers-organising-for-change>
- GAATW. (2018b, September 4). *Spain needs to open the debate on sex work based on rights and evidence*. GAATW. <https://gaatw.org/events-and-news/68-gaatw-news/969-spain-needs-to-open-the-debate-on-sex-work-based-on-rights-and-evidence>
- Galldin, K., Robertson, L., & Wiseman, C. (2011). Bedford v. Canada: a paradigmatic case toward ensuring the human and health rights of sex workers. *HIV/AIDS Policy & Law Review*, 15(3).
- Gardères, N. (2016). Loi sur la pénalisation du client: une aberration juridique. *Le Figaro*. <https://www.lefigaro.fr/vox/societe/2016/04/05/31003-20160405ARTFIG00222-loi-sur-la-penalisation-du-client-une-aberration-juridique.php>
- Gaudy, T., & Le Bail, H. (2021). Comparative Summary of Evaluation Reports on France's 2016 Prostitution Act. In *HAL-0338161*. <https://hal-sciencespo.archives-ouvertes.fr/hal-03389161>
- Gaventa, J., & Valderrama, C. (1999). *Participation, Citizenship and Local Governance*. <https://www.uv.es/~fernandm/Gaventa,%20Valderrama.pdf>
- Gerasimov, B. (2020). *Sex workers can tell you why sex work is work – speak to them*. Open Democracy. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-can-tell-you-why-sex-work-is-work-speak-to-them/>
- Gesetz zum Schutz von in der Prostitution tätigen Personen (ProstSchG), Pub. L. No. BGBl. I S. 2372 (2016). <https://www.gesetze-im-internet.de/prostschg/BJNR237210016.html>
- Giametta, C., & Bail, H. Le. (2022). The national and moral borders of the 2016 French law on sex work: An analysis of the 'prostitution exit programme.' *Critical Social Policy*. <https://doi.org/10.1177/02610183221101167>
- Giametta, C., Le Bail, H., & Mai, N. (2018). The impact of the "Swedish model" in France: chronicle of a disaster foretold. In *openDemocracy*. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/impact-of-swedish-model-in-france-chronic/>
- Gibbs, G. R. (2018). *Analyzing_qualitative_data* (U. Flick (Ed.)). Sage.
- Gilead, A. (2010). Philosophical Prostitution. *Journal of Social Sciences*, 6(1), 85–92. <https://doi.org/10.3844/JSSP.2010.85.92>. <https://www.thescipub.com/abstract/10.3844/jssp.2010.85.92>
- Glaser, B. G., & Strauss, A. L. (1967). *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago). Aldine.
- Goffman, E. (1963). *Stigma: Notes on the management of spoiled identity*. Penguin.
- Gould, D. (2004). Passionate political processes: bringing emotions back into the study of social movements. In J. Goodwin & J. M. Jasper (Eds.), *Rethinking social movements: structure, meaning and emotion*. Rowman & Littlefield.

- Graceyswer. (2020, August 4, online). *Consent and Choice in Survival Sex Work*.
<https://streethooker.wordpress.com/2020/08/04/consent-and-choice-in-survival-sex-work/>
- Grant, M. (2013). The War on Sex Workers. In *Reason*. <https://reason.com/2013/01/21/the-war-on-sex-workers/>
- Grant, M. G. (2014). *Playing the Whore: The Work of Sex Work*. Verso.
- Grover, A. (2010). Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. In *Human Rights Council, UN A/HRC/14/20*. <https://doi.org/10.1163/ej.9789004180048.i-962.273>
- Guillemin, M., Barnard, E., Allen, A., Stewart, P., Walker, H., Rosenthal, D., & Gillam, L. (2018). Do Research Participants Trust Researchers or Their Institution? *Journal of Empirical Research on Human Research Ethics*, 13(3), 285–294.
<https://doi.org/10.1177/1556264618763253/FORMAT/EPUB>
- Guldner, J. (2013, October 30). Sex Workers Unite. Germany Gets First Prostitution Lobby. *Spiegel International*. <https://www.spiegel.de/international/germany/johanna-weber-founds-first-german-sex-worker-professional-association-a-930831.html#ref=nl-international>
- Habermas, J. (2003). *The Future of the Human Nature*. Polity.
- Haraway, D. (1988). Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective. *Feminist Studies*, 14(3), 575–599. <http://www.jstor.org/stable/3178066>
- Harding, S. (1987). Introduction: Is There a Feminist Method? In S Harding (Ed.), *Feminism and Methodology* (pp. 1–14). Indiana University Press.
- Harding, Sandra. (1993). Rethinking Standpoint Epistemology: What is Strong Objectivity? In L. Alcoff & E. Potter (Eds.), *Feminist Epistemologies*. Routledge.
- Harding, Sandra (Ed.). (2004). *The Feminist Standpoint Theory Reader*. Routledge.
- Harkins, B. (2020). Base motives: The case for an increased focus on wage theft against migrant workers. *Anti-Trafficking Review*, 15, 42–62. <https://doi.org/10.14197/atr.201220153>
- Haveman, R. H. (2000). De grenzen van de repressieve samenleving. In R. H. Haveman, F. P. Ölger, T. A. de Roos, & A. J. L. van Strien (Eds.), *Seks, zeden en strafrecht* (pp. 57–62). Gouda Quint.
- Heath, M., Braimoh, J., & Gouweloos, J. (2016). Judging Women's Sexual Agency: Contemporary Sex Wars in the Legal Terrain of Prostitution and Polygamy. *Signs: Journal of Women in Culture and Society*, 42(1).
- Henning, J., Hunecke, I., & Walentowitz, G. (2021). Das Prostituiertenschutzgesetz im Lichte der Kriminalitätsstatistik. *Monatsschrift Fur Kriminologie Und Strafrechtsreform*, 104(4), 359–374. <https://doi.org/10.1515/mks-2021-0144>
- Holt, V. (2020, April 17). In a world where abuse against sex workers is trivialised, getting support as domestic violence victims can be hopeless. *The Independent*.
<https://www.independent.co.uk/voices/sex-work-domestic-abuse-government-labour-jess-phillips-a9470936.html>
- Hudson, G., & Van der Meulen, E. (2013). Sex Work, Law, and Violence: Bedford v. Canada and the Human Rights of Sex Workers. *Windsor Yearbook of Access to Justice*, 31(1), 115.
<https://doi.org/10.22329/wyaj.v31i1.4318>
- Hughes, D. M. (2008). Combating Sex Trafficking: A Perpetrator-Focused Approach. *University of St Thomas Law Journal*, 6(1). <https://www.researchgate.net/publication/308674732>
- Human Rights Committee. (2002, July 15). *Manuel Wackenheim v. France, Communication No 854/1999*. U.N. Doc. CCPR/C/75/D/854/1999.

- http://www.worldcourts.com/hrc/eng/decisions/2002.07.15_Wackenheim_v_France.htm
- Montgomery v M & T Enterprises Limited [2014] NZHRRT 6, (2014).
<https://www.justice.govt.nz/assets/Documents/Decisions/2014-NZHRRT-6-DML-v-Montgomery-and-MT-Enterprises-Ltd.pdf>
- Human Rights Watch. (2019a). *Why Sex Work Should Be Decriminalized*.
<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>
- Human Rights Watch. (2019b). *Why Sex Work Should Be Decriminalized. Questions and Answers*.
<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>
- Huschke, S., & Schubotz, D. (2016). Commercial sex, clients, and Christian morals: Paying for sex in Ireland. *Sexualities*, 19(7), 869–887. <https://doi.org/10.1177/1363460716638094>
- Hydra e.V. (2015a). *Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen (ProstSchG-RefE)*. <https://bsd-ev.info/wp-content/uploads/2019/02/Stellungnahme-Gesetzesentwurf-HYDRA-10-9-2015.pdf>
- Hydra e.V. (2015b). The German Prostitution Law: An Example of the “Legalisation of Sex Work” The benefits, shortcomings and the danger of forthcoming revisions to the current legislation. *Research for Sex Work*, 14. <https://www.nswp.org/resource/the-german-prostitution-law-example-the-legalisation-sex-work>
- ICJ. (2023). *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*. <https://www.icj.org/icj-publishes-a-new-set-of-legal-principles-to-address-the-harmful-human-rights-impact-of-unjustified-criminalization-of-individuals-and-entire-communities/>
- ICRSE. (2005a). *Sex Workers in Europe Manifesto*. <https://walnet.org/csis/groups/icrse/brussels-2005/SWRights-Manifesto.pdf>
- ICRSE. (2005b). *The Declaration of the Rights of Sex Workers in Europe*.
https://www.nswp.org/sites/default/files/Declaration_booklet_colour%20icrse.pdf
- ICRSE. (2007). *Report of the European Conference on Sex Work, Human Rights, Labour and Migration*.
<https://walnet.org/csis/groups/icrse/brussels-2005/SWRights-Conference.pdf>
- ICRSE. (2015). *Structural violence. Social and institutional oppression experienced by sex workers in Europe. Community Report*.
https://www.eswalliance.org/community_report_on_structural_violence
- ICRSE. (2016a). *Exploitation: Unfair Labour Arrangements and Precarious Working Conditions in the Sex Industry*.
https://www.eswalliance.org/community_report_on_exploitation_in_the_sex_industry
- ICRSE. (2016b). *Nothing about us without us. Ten years of sex workers’ rights activism and advocacy in Europe*.
https://www.eswalliance.org/nothin_about_us_without_us_10_years_report_on_sex_workers_rights_in_europe_and_central_asia
- ICRSE. (2016c). *Surveilled. Exploited. Deported. Rights violations against Migrant Sex Workers in Europe and Central Asia*.
https://www.eswalliance.org/surveilled_exploited_deported_rights_violations_against_migrant_sex_workers_in_europe_and_central_asia
- ICRSE. (2016d, April 11). *France: ICRSE condemns the vote on penalisation of clients in France*.
<https://www.sexworkeurope.org/news/general-news/france-icrse-condemns-vote-penalisation-clients-france>

- ICRSE. (2017). *Understanding sex work as work. A brief guide for labour rights activists*.
https://www.eswalliance.org/understanding_sex_work_as_work_a_brief_guide_for_labour_rights_activists
- ICRSE. (2018a). *Policing and Detention of Sex Workers in Europe and Central Asia*.
- ICRSE. (2018b). *Sex workers deprived of liberty in Europe and Central Asia. Submission from the International Committee on the Rights of Sex Workers in Europe (ICRSE) to the UN Working Group on the issue of discrimination against women in law and in practice*.
https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/DeprivedLiberty/CSO/International_Committee_on_the_Rights_of_Sex_Workers_in_Europe.pdf
- ICRSE. (2019). *A brief guide on collateral damages of anti-trafficking laws and measures on sex workers*.
https://www.eswalliance.org/collateral_damages_of_anti_trafficking_laws_and_measures_on_sex_workers
- ICRSE. (2020). *Undeserving victims? A community report on migrant sex worker victims of crime in Europe*.
https://www.eswalliance.org/undeserving_victims_a_community_report_on_migrant_sex_worker_victims_of_crime_in_europe#:~:text=On%2028th%20October%202020%2C%20ICRSE,reporting%20crime%20and%20accessing%20justice.
- ICRSE. (2021a). *From vulnerability to resilience: sex workers organising to end exploitation*.
https://www.eswalliance.org/report_on_sex_work_migration_exploitation_and_trafficking
- ICRSE. (2021b). *ICRSE Statement on CEDAW Committee General Recommendation No 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*.
https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/87/attachments/original/1632470213/2021_01_ICRSE_statement_on_CEDAW_GR_20_01_2021.pdf?1632470213
- ICRSE et al. (2014a). *ICRSE and 560 NGOs and CSOs urge you to reject Ms Honeyball's report on sexual exploitation and prostitution*. <https://hivlawcommission.org/2014/02/18/560-ngos-and-94-researchers-demand-members-of-european-parliament-to-reject-ms-honeyball-report/>
- ICRSE et al. (2014b). *Response of MEP Honeyball to 560 organisations who oppose criminalisation of clients: "they are comprised of pimps"*.
<https://abbattoimuri.files.wordpress.com/2014/02/copia-di-icrse-response-to-letter-to-mep.pdf>
- ICRSE, Hydra e.V., & BesD e.V. (2017). *Professed Protection, Pointless Provisions. Overview of the German Prostitutes Protection Act (Prostituierenschutzgesetz-ProstschG)*.
https://www.eswalliance.org/briefing_paper_on_germany_s_new_prostitutes_protection_act
- International Planned Parenthood (IPPF). (2022). *IPPF Policy on Sex Work*.
<https://www.ippf.org/resource/ippf-policy-sex-work>
- Jackson, C. A. (2016). Framing Sex Worker Rights: How U.S. Sex Worker Rights Activists Perceive and Respond to Mainstream Anti-Sex Trafficking Advocacy. *Sociological Perspectives*, 59(1), 27–45.
<https://doi.org/10.1177/0731121416628553>
- Jackson, C. A., Reed, J. J., & Brents, B. G. (2017a). Strange confluences. In *Feminism, Prostitution and the State* (pp. 66–85). Routledge. <https://doi.org/10.4324/9781315671437-5>
- Jackson, C. A., Reed, J. J., & Brents, B. G. (2017b). Strange confluences: Radical feminism and evangelical Christianity as drivers of US neo-abolitionism. In Eilis Ward & G. Wylie (Eds.), *Feminism, Prostitution and the State. The Politics of Neo-Abolitionism* (pp. 66–85). Routledge.
<https://doi.org/10.4324/9781315671437-5>
- Jahnsen, S., & Skilbrei, M. L. (2017). Leaving no stone unturned: The borders and orders of

- transnational prostitution. *British Journal of Criminology*, 58(2), 255–272.
<https://doi.org/10.1093/bjc/azx028>
- Jahnsen, S., & Wagenaar, H. (2018). *Assessing Prostitution Policies in Europe* (S. Jahnsen & H. Wagenaar (Eds.)). Routledge.
- Jeffreys, S. (1997). *The Idea of Prostitution*. Spinifex Press.
- Jeffreys, S. (2009). *The Industrial Vagina: The political economy of the global sex trade*. Routledge.
<https://doi.org/10.4324/9780203698303>
- Jenness, V. (1993). *Making it Work: The Prostitute's Rights Movement in Perspective*. Aldine de Gruyter.
- Kaiser, R. (2014). *Qualitative Experteninterviews: Konzeptionelle Grundlagen und praktische Durchführung*. Springer.
- Kant, I. (translation by W. S. P. (1790). *Critique of Judgment*. Hackett.
- Kapur, Radna. (2001). Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern. *Denver University Law Review*, 78(4), 855–885.
- Kapur, Ratna. (2006). Human Rights in the 21st Century. Take a Walk on the Dark Side. *Sydney Law Review*, 28(4), 665–688.
- Kapur, Ratna. (2018). *Gender, alterity and human rights. Freedom in a Fishbowl*. Edward Elgar Publishing.
- Kelleher, P., O'Connor, M., Pillinger, J., & Kelleher, C. (2009). *Globalisation, Sex Trafficking and Prostitution. The Experiences of Migrant Women in Ireland*.
<https://emn.ie/publications/globalisation-sex-trafficking-and-prostitution-the-experiences-of-migrant-women-in-ireland/>
- Kennedy, D. (2002). The Critique of Rights. In W. Brown & J. Halley (Eds.), *Left Legalism/Left Critique*. Duke University Press.
- Khan, U. (2018). From Average Joe to Deviant John: The Changing Construction of Sex Trade Clients in Canada. In *Red Light Labour: Sex Work Regulation, Agency, and Resistance*.
https://www.academia.edu/38001551/From_Average_Joe_to_Deviant_John_The_Changing_Construction_of_Sex_Trade_Clients_in_Canada
- Khoja-Moolji, S. S. (2016). The Making of Humans and Their Others in and through Transnational Human Rights Advocacy: Exploring the Cases of Mukhtar Mai and Malala Yousafzai. *Signs: Journal of Women in Culture and Society*. <https://doi.org/10.1086/688184>
- Kingdom, E. (1991). *What's Wrong with Rights?* Edinburgh University Press.
- KOK e.V. (2015). *Stellungnahme des KOK e.V. zu dem Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen vom 29.07.2015*.
<https://www.bmfsfj.de/resource/blob/119052/0a3be1e3da23d569971392cd6baf976f/kok-data.pdf>
- KOK e.V. (2016). Kurz-Stellungnahme des Bundesweiten Koordinierungskreises gegen Menschenhandel - KOK e.v. - anlässlich der Anhörung am 6. Juni 2016 im Ausschuss für Familie, Senioren, Frauen und Jugend zu dem Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen in der dem Bundesrat vorgelegten Fassung vom 01.04.2016 BR-Drs. 156/16. In *Deutscher Bundestag, Ausschuss F. Familie, Senioren, Frauen und Jugend. Ausschussdrucksache 18(13)76b* (Issue 0, p.

- 6).
https://www.bundestag.de/resource/blob/425136/639e14abb7240922b7f716c7d1a2241e/18-13-76b_Andrea-Hitzke.pdf
- Kraus, I. (2016, December). Prostitution. Es gibt kein Recht auf Sex. *Raum & Zeit Newsletter (Online)*.
https://www.raum-und-zeit.com/cms/upload/Newsletter/raumzeit_Newsletter_205_Artikel.pdf
- Krüger, R. (2004). Sex Work from a Feminist Perspective: a Visit to the Jordan Case. *South African Journal on Human Rights*, 20, 137–150. <https://doi.org/10.1080/19962126.2004.11864812>
- Kulick, D. (2003). Sex in the new Europe. The criminalization of clients and Swedish fear of penetration. *Anthropological Theory*, 3(2), 199–218.
<https://journals.sagepub.com/doi/pdf/10.1177/1463499603003002005>
- Kulick, D. (2005). Four hundred thousand Swedish perverts. *GLQ*, 1, 0–000.
- Laclau, E., & Mouffe, C. (1985). *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. Verso.
- Lap Chew. (2016). Reflections by an Anti-trafficking Activist. In K. Kempadoo, J. Sanghera, & B. Pattanaik (Eds.), *Trafficking and prostitution reconsidered: New perspectives on migration, sex work, and human rights*. Taylor and Francis.
- Lather, P. (1991). *Getting Smart: Feminist Research and Pedagogy with/in the Postmodern*. Routledge.
- Le Bail, H., Giametta, C., & Rassouw, N. (2018). *What do sex workers think about the French Prostitution Act? A study on the Impact of the Law of 13 April 2016 against the “Prostitution System” in France*.
<https://www.medecinsdumonde.org/en/actualites/publications/2018/04/12/study-impact-law-13-april-2016-against-prostitution-system-france>
- Le Défenseur des droits. (2015). *Avis 15-28 du 16 décembre 2015 relatif à la lutte contre le système prostitutionnel et à accompagner les personnes prostituées: proposition de loi n°3149 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées*.
https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=16965
- Le Nid. (1993). Slavery and Prostitution. *Mouvement Du Nid*.
- Lebovitch, A., & Ferris, S. (2018). *Combating systemic stigma: The displacement and disempowerment of sex workers in academic research. The whore and the feminist*.
<http://www.whoreandfeminist.ca/presentation/combating-systemic-stigma-the-displacement-and-dis-empowerment-of-sex-workers-in-academic-research/>
- Lehman, M., Levy, J., Mai, N., & Pitcher, J. (2014). *A critique of of the “Report on Prostitution and Sexual Exploitation and its Impact on Gender Equality” by Mary Honeyball, MEP*.
- Leicester, T. (2016, April 6). Pénalisation des clients: je travaille auprès de prostituées. Cette loi les met en danger. *L’OBS*. <https://leplus.nouvelobs.com/contribution/1503255-penalisation-des-clients-je-travaille-aupres-de-prostituees-cette-loi-les-met-en-danger.html>
- Leidholdt, D. (1993). Prostitution: A Violation of Women’s Human Rights. *Cardozo Women’s Law Journal*, 1(1), 133–147.
- Leigh, C. (1997). Inventing Sex Work. In J. Nagle (Ed.), *Whores and other Feminists* (pp. 225–231). Routledge.
- Les Echos. (2016, April 6). Prostitution: the penalization of clients definitively adopted. *Les Echos*.
<https://www.lesechos.fr/2016/04/prostitution-la-penalisation-des-clients-definitivement->

adoptee-206337

- Levy, J., & Jakobsson, P. (2013). Abolitionist feminism as patriarchal control: Swedish understandings of prostitution and trafficking. *Dialectical Anthropology*, 37, 333–340. <https://doi.org/10.1007/s10624-013-9309-y>.
- Levy, J., & Jakobsson, P. (2014). Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers. *Criminology and Criminal Justice*. <https://doi.org/10.1177/1748895814528926>
- Levy, Jay. (2018). The Nordic Model of Criminalising the Purchase of Sex. In S. A. FitzGerald & K. McGarry (Eds.), *Realising justice for sex workers : an agenda for change* (p. 233). Rowman & Littlefield International,.
- Lim, L. L. (1998). *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia I* (L. L. Lim (Ed.)). ILO publications. https://www.amazon.com/Sex-Sector-Economic-Prostitution-Southeast/dp/9221095223/ref=sr_1_2?dib=eyJ2IjoiMSJ9.T-rf7-WGYMgDO_1-ufHxhUKg_14WQWMYL3J84KK3RfN1DrbGpueXPL8O48noSjBQ.5kLC8qR9IEff_bbEk2nY9P_CJWe91S6qRIU7XtYJ6p0&dib_tag=se&qid=1712942875&refinements=p_27%3ALin+Lean+Lim&s=books&sr=1-2
- Lima de Pérez, J. (2014). Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries. In Nina Peršak & G. Vermeulen (Eds.), *Reframing Prostitution, From Discourse to Description, from Moralisation to Normalisation?* Maklu.
- Link, B. G., & Phelan, J. (2014). Stigma power. *Social Science and Medicine*, 103, 24–32. <https://doi.org/10.1016/j.socscimed.2013.07.035>
- Link, B. G., & Phelan, J. C. (2001). Conceptualizing Stigma. *Annual Review of Sociology*, 27(1), 363–385. <https://doi.org/10.1146/annurev.soc.27.1.363>
- LOI n° 2016-444 du 13 avril 2016 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées, Journal officiel électronique authentifié n° 0088 du 14/04/2016 (2016). <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000032396046/>
- Mac, J., & Smith, M. (2018). *Revolting prostitutes. The fight for sex workers' rights*. Verso.
- Macioti, P. G., & Geymonat, G. G. (2016). *Sex workers speak. Who listens?* (P. G. Macioty & G. Garofolo Geymonat (Eds.)). Beyond Trafficking and Slavery/OpenDemocracy. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-speak-who-listens/>
- MacKinnon, C. (1989). Sexuality, Pornography, and Method: "Pleasure under Patriarchy." *Ethics*, 99, 314–346.
- MacKinnon, C. A. (1983). Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence. *Signs*, 8(4).
- Maffesoli, S.-M. (2013). Dignité de la femme et liberté des femmes. *Esprit*. <https://doi.org/10.3917/espri.1310.0041>
- Mai, N., Macioti, P. G., Bennachie, C., Fehrenbacher, A. E., Giametta, C., Hoefinger, H., & Musto, J. (2021). Migration, sex work and trafficking: the racialized bordering politics of sexual humanitarianism. *Ethnic and Racial Studies*, 44(9), 1607–1628. <https://doi.org/10.1080/01419870.2021.1892790>
- Maldonado-Torres, N. (2017). On the Coloniality of Human Rights. *Revista Crítica de Ciências Sociais*, 114, 117–136. <https://doi.org/10.4000/rccs.6793>
- Malik, M. (2001). Minority Protection and Human Rights . In T. Campbell, K. D. Ewing, & A. Tomkins

- (Eds.), *Sceptical Essays on Human Rights*. Oxford University Press.
- Mason, J. (2002). *Qualitative Researching*. Sage.
- McCammon, H. J., & McGrath, A. R. (2015). Litigating change? Social movements and the court system. *Sociology Compass*, 9(2), 128–139. <https://doi.org/10.1111/SOC4.12243>
- McEwen, H., & Narayanaswamy, L. (2023). *The International Anti-Gender Movement. Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*. <https://www.unrisd.org/en/library/publications/the-international-anti-gender-movement-understanding-the-rise-of-anti-gender-discourses-in-the-conte>
- McNeill, M. (2015). The Revolt of the Prostitutes. In *The honest courtesan (blog)*. <https://maggiemcneill.wordpress.com/2015/06/02/the-revolt-of-the-prostitutes/>
- Médecins du Monde. (2015, December 6). *Témoignage. Des prostituées contre la pénalisation des clientes*. <https://www.youtube.com/watch?v=KmpZYajfVgQ&t=82s>
- Médecins du Monde, & Act-up et al. (2016, April 5). *Prostitution: un volet social ou effet d'annonce?* Press Release. <https://strass-syndicat.org/prostitution-un-volet-social-ou-effet-dannonce/>
- Merry, S. E. (2006). *Human rights and gender violence. Translating International Law into Local Justice*. University of Chicago Press.
- Merry, S. E., Levitt, P., Rosen, M. Ş., & Yoon, D. H. (2010). Law from below: Women's human rights and social movements in New York City. *Law and Society Review*, 44(1), 101–128. <https://doi.org/10.1111/J.1540-5893.2010.00397.X>
- Meuser, M., & Nagel, U. (2009). The expert interview and changes in knowledge production. In A. Bogner, B. Littig, & W. Menz (Eds.), *Interviewing experts*. Palgrave Macmillan UK.
- Meyers, D. T. (2014). Recovering the human in human rights. *Law, Culture and the Humanities*, 12(3), 1–11. <https://doi.org/10.1177/1743872114528440>
- Mgbako, C. (2020). The Mainstreaming of Sex Workers' Rights as Human Rights. *Harvard Journal of Law & Gender*, 43(92), 92–136. https://apps.who.int/iris/bitstream/handle/10665/90000/9789241506182_eng.pdf
- Mill, J. S. (1985). *On liberty*. Penguin Classics, Penguin Books.
- Ministry for Foreign Affairs. (2021). *Third Party Submission by the Swedish Government in M.A. and others v France*. <https://www.docdroid.net/of8olvC/63664-19-ma-and-others-v-france-and-related-applications-se-third-party-submission-210907-pdf#page=3>
- Minow, M. (1987). Interpreting Rights: An Essay for Robert Cover. *Yale Law Journal*, 96(8), 1860–1915. <https://www.jstor.org/stable/796400>
- Morris, L. (2006). Rights: Sociological perspectives. In *Rights: Sociological Perspectives*. <https://doi.org/10.4324/9780203001875>
- Nagle, J. (1997). *Whores and other feminists*. Routledge.
- Norwegian Criminal Law Council. (2022). *Criminal law protection of the right to self-determination. Proposal for reform of Chapter 26 of the Penal Code*. https://docs.google.com/document/d/1S-3libf4P2SKXuDmZxZd4itXBWwA-zZ-TUbk2M_H_Fs/edit#heading=h.3tey6s5eteda
- NSWP. (2013). *Consensus Statement on Sex Work, Human Rights, and the Law*. <https://www.nswp.org/resource/nswp-publications/nswp-consensus-statement-sex-work-human-rights-and-the-law>
- NSWP. (2018). *Carol Leigh coins the term "sex work" | Global Network of Sex Work Projects*. www.Nswp.Org. <https://www.nswp.org/timeline/event/carol-leigh-coins-the-term-sex-work>

- NSWP. (2020)..*The Smart Sex Worker's Guide to Decriminalisation*.
<https://www.nswp.org/resource/nswp-smart-guides/smart-sex-workers-guide-decriminalisation>
- NSWP. (2021). *Briefing Note: Sex Workers' Participation in Public Life*.
<https://www.nswp.org/resource/nswp-briefing-notes/briefing-note-sex-workers-participation-public-life>
- NSWP. (2022, December 2). *Bold and pioneering sex work activist Carol Leigh has died*.
<https://www.nswp.org/news/bold-and-pioneering-sex-work-activist-carol-leigh-has-died>
- Nussbaum, M. (1999). *Sex and Social Justice*. Oxford University Press.
- O'Connell Davidson, J. (2003a). "'Sleeping with the enemy"? Some problems with feminist abolitionist calls to penalise those who buy commercial sex.' *Social Policy and Society*, 2(1).
- O'Connell Davidson, J. (2003b). 'Sleeping with the enemy'? Some Problems with Feminist Abolitionist Calls to Penalise those who Buy Commercial Sex. *Social Policy and Society*, 2(1), 55–63.
<https://doi.org/10.1017/s1474746403001076>
- Oakley, A. (1981). Interviewing women: A contradiction in terms. In H. Roberts (Ed.), *Doing feminist research* (pp. 30–61). Routledge. <https://qualpage.com/2019/06/13/classic-texts-ann-oakleys-interviewing-women-a-contradiction-in-terms/>
- OHCHR. (2006). *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version Second International Consultation on HIV/AIDS and Human Rights Third International Consultation on HIV/AIDS and Human Rights* (pp. 23–25).
<https://www.ohchr.org/Documents/Issues/HIV/ConsolidatedGuidelinesHIV.pdf>
- OHCHR. (2023, September 5). *UN expert welcomes European Court decision to hear appeal against French anti-prostitution law | OHCHR*. <https://www.ohchr.org/en/press-releases/2023/09/un-expert-welcomes-european-court-decision-hear-appeal-against-french-anti>
- Orellana, G. (2018, 12 November). 300 feministas piden la retirada de la demanda para ilegalizar el sindicato OTRAS. *El Salto*. <https://www.elsaltodiario.com/sindicatos/300-feministas-piden-retirada-demanda-ilegalizar-sindicato-otras>
- Östergren, P. (2017). *From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies* (DemandAT Working Paper No. 10). www.demandat.eu
- OTRAS. (2018). *Nunca Sin Nosotras. Manifiesto por la retirada de la demanda judicial contra el sindicato OTRAS*. <https://nuncasinnotras.wordpress.com/2018/10/26/manifiesto-12n/>
- Outshoorn, J. (2004). The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce. In *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*. Cambridge University Press.
<https://doi.org/10.1017/CBO9780511489044>
- Outshoorn, J. (2012). Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control. *Sex Res Soc Policy*, 9, 233–243. <https://doi.org/10.1007/s13178-012-0088-z>
- Outshoorn, J. (2018). European Union and prostitution policy. In S. Ø. Jahnsen & H. Wagenaar (Eds.), *Assessing prostitution policies in Europe* (London/New York, pp. 363–375). Routledge.
- Outshoorn, Joyce. (2012). Assessing the impact of women's movements. *Women's Studies International Forum*, 35(3), 147–149. <https://doi.org/10.1016/J.WSIF.2012.03.013>
- Overs, C. (2002). *Sex Workers: Part of the Solution. An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries*.
https://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf

- Palmer, J., Burton, L. J., & Walsh, A. (2020). Emerging spheres of engagement: the role of trust and care in community–university research. *Qualitative Research*, 20(6), 749–766. <https://doi.org/10.1177/1468794120904891>
- Penttinen, E. (2006). Providing security: white western feminists' protecting "other" women. In M. Haugaard & H. H. Lentner (Eds.), *Hegemony and Power: Consensus and Coercion in Contemporary Politics* (pp. 133–151). Lexington Books.
- Peršak, N. (2014). The framing of prostitution as victimhood and violence for criminalisation purposes. In N. Peršak & G. Vermeulen (Eds.), *Reframing prostitution: from discourse to description, from moralisation to normalisation* (pp. 199–223). Maklu.
- Peršak, N, Vermeulen, G., & (Eds.). (2014). *Reframing Prostitution, From Discourse to Description, from Moralisation to Normalisation?* (N. Persak & G. Vermeulen (Eds.)). Maklu
- Pheterson, G. (1986). Alliances between Women: Overcoming Internalized Oppression and Internalized Domination. *Signs: Journal of Women in Culture and Society*, 12(1), 146–160. <https://doi.org/10.1086/494302>
- Pheterson, G. (1989). *A Vindication of the rights of whores* (G. Pheterson (Ed.)). Seal Press.
- Pheterson, G. (1993). The Whore Stigma: Female Dishonor and Male Unworthiness. *Social Text*, 37, 39–64.
- Pheterson, G. (1996). *The prostitution prism*. Amsterdam University Press.
- Pheterson, G. (2001). *Dutch Prostitution Law "Reform". Emancipation Strategy or Colonial Instrument of Migration Control*.
- Phipps, A. (2017). Sex wars revisited: A rhetorical economy of sex industry opposition. *Journal of International Women's Studies*, 18(4), 306–320.
- Phipps, A. (2020). *Me, not you. The trouble with mainstream feminism*. Manchester University Press.
- Pinker, S. (2008, May 28). The Stupidity of Stigma. *The New Republic*. <https://newrepublic.com/article/64674/the-stupidity-dignity>
- Pipps, A. (blog). (2019). *Feminists fighting sexual violence in the age of Brexit and Trump*. <https://genderate.wordpress.com/2019/04/30/fighting-sexual-violence/>
- Platt, L., Elmes, J., Stevenson, L., Holt, V., Rolles, S., & Stuart, R. (2020). Sex workers must not be forgotten in the COVID-19 response. *The Lancet*. [https://doi.org/10.1016/S0140-6736\(20\)31033-3](https://doi.org/10.1016/S0140-6736(20)31033-3)
- Platt, L., Grenfell, P., Meiksin, R., Elmes, J., Sherman, S. G., Sanders, T., Mwangi, P., & Crago, A. L. (2018). Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS Medicine*, 15(12). <https://doi.org/10.1371/journal.pmed.1002680>
- Poppy. (2022, January 25). Sex worker in Ireland: New law has made my business more dangerous. *Irish Examiner*. <https://www.irishexaminer.com/opinion/commentanalysis/arid-40792227.html?fbclid=IwAR2mzqCD1hTLrzGTaGwK4DjxZMpucwPNwDPrt1zLWvidcfEFtbnMifV1eE>
- Porth, K. (2018). Sex Lies and Committee Hearings: Challenging Prostitution Propaganda. In E. M. Durisin, E. van der Meulen, & C. Bruckert (Eds.), *Red Light Labour*. UBC Press.
- ProstitutionsGesetz (ProstG), Bgbl. I S. 3983 (2001). <https://www.gesetze-im-internet.de/prostg/ProstG.pdf>
- Rahman, M., & Jackson, S. (2010). *Gender and sexuality: sociological approaches*. Polity Press.

- Rand, H., & Simpsons, J. (2024). Sex work politics and consent: The consequences of sexual morality. In L. James-Hawkins & R. Ryan-Flood (Eds.), *Consent. Gender, Power and Subjectivity*. Routledge.
- Rao, N. (2011). Three concepts of dignity in constitutional law. *Notre Dame Law Review*, 86(1), 183–271.
- Rath, C. (2018, August 15). BVerfG zu Prostituiertenschutzgesetz: „Abstrakt, fiktiv und lückenhaft“. *Taz.De*. <https://taz.de/BVerfG-zu-Prostituiertenschutzgesetz/!5525185/>
- Roth, P., Uhl, B. H., Wijers, M., & Zikkenheiner, W. (2015). *Data Protection Challenges in anti-trafficking policies. A Practical Guide*.
- Rottier, J. (2018). *Decriminalization of Sex Work: The New Zealand Model. An Analysis of the Integrative Sex Industry Policy in New Zealand (Aotearoa)*. Willem Pompe Instituut.
- Rubin, G. S. (1984). Thinking Sex: Notes for a radical theory of the politics of sexuality. In C. Vance (Ed.), *Pleasure and Danger*. Routledge & Kegan, Paul.
- Sauer, B. (2019). Mobilizing shame and disgust: abolitionist affective frames in Austrian and German anti-sex-work movements. *Journal of Political Power*, 00(00), 1–21. <https://doi.org/10.1080/2158379x.2019.1669262>
- Saunders, P. (2005). Traffic Violations: Determining the Meaning of Violence in Sexual Trafficking versus Sex Work. *Journal of Interpersonal Violence*, 20(3).
- Scarlett, M. (2023). In Conversation With: PION, Norway - European Sex Workers' Rights Alliance. In *ESWA*. ESWA. https://www.eswalliance.org/in_conversation_with_pion_norway
- Scorgie, F., Vasey, K., Harper, E., Richter, M., Nare, P., Maseko, S., & Chersich, M. F. (2013). *Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study*. <https://doi.org/10.1186/1744-8603-9-33>
- Scoular, J. (2004). The 'subject' of prostitution: Interpreting the discursive, symbolic and material position of sex/work in feminist theory. *Feminist Theory*, 5(3), 343–355. <https://doi.org/10.1177/1464700104046983>
- Scoular, J. (2010). What's Law Got To Do With it? How and Why Law Matters in the Regulation of Sex Work. *Journal of Law and Society*, 37(1). <http://assembly.coe.int/>
- Scoular, J. (2015). *The subject of prostitution: sex work, law and social theory*. Routledge.
- SekswerkExpertise. (2021). *Third Party Intervention on the case of M. A. and 256 others against France and 4 other applications (Applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20)*. <https://sekswerkexpertise.nl/third-party-intervention-in-de-zaak-van-franse-sekswerkers-voor-europees-mensenrechtenhof-28-sept-2021/>
- Siegel, R. B. (2008). Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart. *The Yale Law Journal*, 117(8), 1694–1800.
- Siegel, R. B. (2012). Dignity and sexuality: Claims on dignity in transnational debates over abortion and same-sex marriage. *International Journal of Constitutional Law*, 10(2), 355–379. <https://doi.org/10.1093/icon/mos013>
- Silbey, S. S. (2005). After Legal Consciousness. *Annual Review of Law and Social Science*, 1(1), 323–368. <https://doi.org/10.1146/annurev.lawsocsci.1.041604.115938>
- Sindicato OTRAS. (2021, June 9). *Somos legales y siempre los fuimos!* <http://www.sindicatootras.org/>
- Skilbrei, M.-L., & Holmström, C. (2013, December 16). The “Nordic model” of prostitution law is a myth. *The Conversation*. <http://theconversation.com/the-nordic-model-of-prostitution-law-is-a-myth-21351>

- Smart, C. (1989). *Feminism and the Power of Law*. Routledge.
- Stardust, Z. Z. (2017, August 9). The stigma of sex work comes with a high cost. *The Conversation*. <https://theconversation.com/the-stigma-of-sex-work-comes-with-a-high-cost-79657>
- Statistisches Bundesamt. (2023). *Ende 2022 rund 28 280 Prostituierte bei Behörden angemeldet. Pressemitteilung Nr. 368 vom 15. September 2023*. Pressemitteilung Nr. 368 Vom 15. September 2023. https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/09/PD23_368_228.html?nn=206104
- Stevenson, L., & Dziuban, A. (2017). Silent no more. Self-determination and organization of sex workers in Europe. In H. Wagenaar & S. Ø. Jahnsen (Eds.), *Assessing prostitution policy in Europe* (pp. 376–392). Routledge.
- Stop Sexkauf. (2015, May 14). *Sexkauf bestrafen, Prostitution abbauen!* Change.Org. <https://www.change.org/p/sexkauf-bestrafen-prostitution-abbauen>
- STRASS. (2015a). *Appel à manifestation contre la pénalisation des travailleurSEs du sexe et de leurs clients!* <https://strass-syndicat.org/appel-a-manifestation-contre-la-penalisation-des-travailleuses-du-sexe-et-de-leurs-clients/>
- STRASS. (2015b, October 15). *Neither penalization of soliciting, nor penalization of customers: but when will there be rights for whores?* <https://strass-syndicat.org/ni-penalisation-du-racolage-ni-penalisation-des-clients-mais-a-quand-des-droits-pour-les-putes/>
- STRASS. (2016, April 4). *Rassemblement contre la pénalisation des clients des travailleurSEs du sexe*. <https://strass-syndicat.org/assemblement-contre-la-penalisation-des-clients-des-travailleuses-du-sexe/>
- STRASS. (2023). *Shadow Report for the Review of France at the 86 th CEDAW Session*. <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000038566449>
- STRASS & signatories. (2013, September 16). *Manifesto against the penalization of prostitutes and their clients*. <https://strass-syndicat.org/manifeste-contre-la-penalisation-des-prostituees-et-de-leurs-clients/>
- STRASS, Acceptess-T, Autres Regards, Cabiria, Federation Parapluie Rouge, Griselides, Les amis du bus des Femmes., Médecins du Monde, Paloma, & Sidaction. (2019). *France: 250 sex workers appeal to the European Court of Human Rights. Press Release*. <https://www.nswp.org/news/france-250-sex-workers-appeal-the-european-court-human-rights>
- STRASS et al. (2013). *Les “abolitionnistes” l’ont fait! Analyse de la proposition de loi déposée par Maud Olivier et Catherine Coutelle visant à « renforcer la lutte contre le système prostitutionnel*. <https://strass-syndicat.org/wp-content/uploads/2013/11/dp-ppl-version-finale-couleurs1.pdf>
- Sturges, J. E., & Hanrahan, K. J. (2004). Comparing telephone and face-to-face qualitative interviewing: research note. *Qualitative Research*, 4(1), 107–108.
- Sullivan, B. (2010). When (Some) prostitution is legal: The impact of law reform on sex work in Australia. In *Journal of Law and Society*. <https://doi.org/10.1111/j.1467-6478.2010.00496.x>
- Supreme Court of Canada. (2013). Canada (Attorney General) v. Bedford. 2013 SCC 72, [2013] 3 SCR 1101. In *Supreme Court Judgments*. <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13389/index.do>
- SWAN. (2009). *Arrest the Violence. Human Rights Abuses Against Sex Workers in Central and Eastern Europe and Central Asia*. https://swannet.org/files/swannet/File/Documents/Arrest_the_Violence_SWAN_Report_Nov2009_eng.pdf

- SWAN. (2013). *Reporting from the Shadows. Using CEDAW to Advocate for Sex Workers' Rights in Central Eastern Europe and Central Asia*. https://swannet.org/wp-content/uploads/2021/10/Reporting-on-the-Shadows-cedaw_eng.pdf
- SWAN. (2014a). *A Guide For Sex Worker Human Rights Defenders*. <https://www.swannet.org/files/swannet/A%20Guide.pdf>
- SWAN. (2014b). *Stronger Together: Addressing Violence Against Female, Male and Transgender Sex Workers in Central Eastern Europe and Central Asia*. <https://swannet.org/wp-content/uploads/2014/12/Stronger-Together-SWAN-eng.pdf>
- SWAN. (2015). *Failures of Justice. State and Non-State Violence Against Sex Workers and the Search for Safety and Redress. A Community-Based Research Project of the Sex Workers' Rights Advocacy Network in Central and Eastern Europe and Central Asia*. <https://swannet.org/resources/failures-of-justice-state-and-non-state-violence-against-sex-workers-and-the-search-for-safety-and-redress-2/>
- SWAN. (2019). *Nothing about us without us! A brief guide on meaningful involvement of sex workers and their organisations in Central-Eastern Europe and Central Asia (CEECA)*. https://www.swannet.org/files/swannet/NothingAboutUsWithoutUs_ENG_web.pdf
- SWAN. (2021). *Sex Work and Migration in CEECA*. <http://www.aidsactioneurope.org/en/publication/sex-work-and-migration-ceeca>
- Swanström, Y. (2017). From contested to consensus. Swedish politics on prostitution and trafficking. In E Ward & G. Wylie (Eds.), *Feminism, Prostitution and the State. The Politics of Neo-Abolitionism*. Routledge.
- TAMPEP. (2015). *TAMPEP zur Situation von inländischen und migrierten Sexarbeiter_innen in Europa*. <http://www.gaatw.org/resources/statements/754-gaatw-is->
- TAMPEP. (2019). *Position Paper on CEDAW General Recommendation 38*. <https://tampep.eu/wp-content/uploads/2019/02/TAMPEP-Position-paper-CEDAW-2019.pdf>
- The Lancet Editorial. (2015). Keeping sex workers safe. *The Lancet*, 386, 504. <https://doi.org/10.1016/S2214>
- Tinsman, H. (1992). Behind the Sexual Division of Labor: Connecting Sex to Capitalist Production. *Yale Journal of International Law Article*, 17(1), 1992.
- Tribunal Supremo. (2021). CASACION num.: 29/2019. Sentència núm. 584/2021. In *STS 2252/2021 - ECLI:ES:TS:2021:2252*. <https://www.iberley.es/jurisprudencia/sentencia-social-n-584-2021-ts-sala-social-rec-29-2019-01-06-2021-48361165>
- Tushnet, M. (1984). An Essay on Rights. *Texas Law Review* .
- UglyMugs Ireland. (2019). *Crime has almost doubled in the two years since new law came in*. <https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>
- Uhl, B. H. (2017). Das neue Prostituiertenschutzgesetz: Mehr Rückschritt als Erfolg. In *missy-magazine.de*. <https://missy-magazine.de/blog/2017/07/05/das-neue-prostituiertenschutzgesetz-mehr-rueckschritt-als-erfolg/>
- UNAIDS. (2014). *The legal status of sex work. Key human rights and public health considerations. Briefing Note*. (Issue February). <https://www.nswp.org/news/unaid-briefing-note-the-legal-status-sex-work>
- UNAIDS. (2021). *HIV and Sex Work. Human Rights Factsheet Series 2021*. https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf

- Universitat Autònoma de Barcelona (UAB). (2019, October 17). *Twenty public universities organise sex work debates*. <https://www.uab.cat/web/newsroom/news-detail/twenty-public-universities-organise-sex-work-debates-1345668003610.html?noticiaid=1345799111491>
- UTSOPI. (2024, May 3). *Belgische arbeidswet voor sekswerkers: wat en hoe?* UTSOPI. <https://www.utsopi.be/nl/our-work/decriminalisering/cadre-du-travail>
- Valensise, L. (2019). What we talk about when we talk about trafficking. Being a feminist anti-trafficking organisation and support sex workers. In *openDemocracy*. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/what-we-talk-about-when-we-talk-about-trafficking/>
- Van Den Brink, M., & Wijers, M. (2012). "Because to me, a woman who speaks in public is a public woman". 30 Years Women's Convention and the struggle to eliminate discrimination of women in the field of trafficking and prostitution. In I. Westendorp (Ed.), *The Women's Convention Turned 30*. Maastricht Centre for Human Rights: Intersentia.
- Vanwesenbeeck, I. (2001). Another decade of social scientific work on sex work: A review of research 1990–2000. *Annual Review of Sex Research*, 12, 242–289.
- Vanwesenbeeck, I. (2017). Sex Work Criminalization Is Barking Up the Wrong Tree. *Archives of Sexual Behavior*. <https://doi.org/10.1007/s10508-017-1008-3>
- Vanwesenbeeck, I. (2018). The Making of "The Trafficking Problem." *Archives of Sexual Behavior*. <https://doi.org/10.1007/s10508-018-1367-4>
- Voice4Sexworkers. (2015, June 14). *Prostituierenschutzgesetz verstößt gegen unsere Grundrechte*. <https://www.voice4sexworkers.com/prostituierenschutzgesetz-verstoest-gegen-unsere-grundrechte/>
- Voice4Sexworkers. (2019). Prostitutes Protection Act: Conservatives Fully Achieved Their Objectives. In *Research Project Germany*. <https://researchprojectgermany.wordpress.com/2019/06/19/prostitutes-protection-act-conservatives-fully-achieved-their-objectives/>
- Vuolajärvi, N. (2019). Governing in the Name of Caring-the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex. *Sexuality Research and Social Policy*, 16(2), 151–165. <https://doi.org/10.1007/s13178-018-0338-9>
- Vuolajärvi, N. (2021). Preventing Violence Against Women or Violence Work?-The Swedish Model of Prostitution. In *SfK Research Seminar, 2021: Sexual Violence in the Nordic Countries*.
- Wagenaar, Hendrik. (2018). Introduction: prostitution policy in Europe - an overview. In S. Ø. Jahnsen & H. Wagenaar (Eds.), *Assessing prostitution policies in Europe* (pp. 1–29). Routledge.
- Wagenaar, Hendrik, & Altink, S. (2012a). Zweeds verbod op prostitutiebezoek werkt niet. *Sociale Vraagstukken*. <https://www.socialevraagstukken.nl/zweeds-verbod-op-prostitutiebezoek-werkt-niet-1/?s=09>
- Wagenaar, Hendrik, & Altink, S. (2012b). Prostitution as morality politics or why it is exceedingly difficult to design and sustain effective prostitution policy. *Sexuality Research and Social Policy*, 9(3), 279–292. <https://doi.org/10.1007/s13178-012-0095-0>
- Wagenaar, Hendrik, Amesberger, H., & Altink, S. (2017). *Designing Prostitution Policy. Intention and Reality in Regulating the Sex Trade*.
- Ward, Eilís. (2017). The Irish parliament and prostitution law reform. The Politics of Neo-Abolitionism. In Eilís Ward & G. Wylie (Eds.), *Feminism, Prostitution and the State*. (pp. 86–102). Routledge. <https://doi.org/10.4324/9781315671437-6>

- Ward, Eilís. (2019). 'Killing off' the (unbearable) sex worker: prostitution law reform in Ireland. *Journal of Political Power*, 1–16. <https://doi.org/10.1080/2158379X.2019.1669259>
- Ward, Eilís, & Wylie, G. (2017). *Feminism, Prostitution and the State. The Politics of Neo-Abolitionism* (Eilís Ward & G. Wylie (Eds.)). Routledge. <https://doi.org/10.4324/9781315671437>
- Weitzer, R. (2007a). Prostitution: Facts and Fictions. *Contexts*, 6(4), 28–33.
- Weitzer, R. (2007b). The social construction of sex trafficking: Ideology and institutionalization of a moral crusade. *Politics and Society*, 35(3), 447–475. <https://doi.org/10.1177/0032329207304319>
- Weitzer, R. (2010). The Movement to Criminalize Sex Work in the United States. *Journal of Law and Society*, 37(1).
- Weitzer, R. (2012). Sex Trafficking and the Sex Industry: The Need for Evidence-based Theory and Legislation. *Journal of Criminal Law and Criminology*, 101(4).
- Weitzer, R. (2018). Resistance to sex work stigma. *Sexualities*, 21, 5–6. <https://doi.org/10.1177/1363460716684509>
- Welton, K. (1998). Nancy Hartsock's standpoint theory: From content to "concrete multiplicity." *Women and Politics*, 18(3), 7–24. https://doi.org/10.1300/J014v18n03_02
- West, R. (2003). *Re-Imagining Justice*. Ashgate. <https://scholarship.law.georgetown.edu/facpub/685http://ssrn.com/abstract=1901680>
- WHO. (2022). *Consolidated guidelines on HIV, viral hepatitis and STI prevention, diagnosis, treatment and care for key populations*. <https://www.who.int/publications-detail-redirect/9789240052390>
- Wijers, M. (2015). Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol. *Anti-Trafficking Review*, 4. <https://doi.org/10.14197/atr.20121544>
- Wijers, M. (2018). Fifteen Years Lifting of the Ban on Brothels: the Struggle of Policy Makers between Sex Workers as Agents or Victims. In R. Piotrowicz, C. Rijken, & B. H. Uhl (Eds.), *Routledge handbook of human trafficking* (pp. 473–486). Routledge.
- Wijers, M. (2021, February 11). *How we got here: the story of the Palermo protocol on trafficking*. OpenDemocracy. <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/how-we-got-here-story-palermo-protocol-trafficking/>
- Wijers, M., & Lap-Chew, L. (1999). *Trafficking in Women Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*. STV/GAATW. <https://documentation.lastradainternational.org/lisidocs/1137-Trafficking%20in%20women%20Wijers-Lap%20Chew.pdf>
- Wijers, M., & Van Doorninck, M. (2009). They get what they deserve: Labour rights for sex workers. In D. Canter, M. Ioannou, & D. Youngs (Eds.), *Safer Sex in the City: The Experience and Management of Street Prostitution*. Ashgate Publishers Ltd.
- Williams, P. J. (1991). *The Alchemy of Race and Rights*. Harvard University Press .
- Working Group on discrimination against women and girls. (2023). *Guidance document of the Working Group on discrimination against women and girls: Eliminating discrimination against sex workers and securing their human rights. A/HRC/WG.11/39/1*. <https://www.ohchr.org/en/documents/tools-and-resources/guidance-document-working-group-discrimination-against-women-and>
- Yacoub, A. R. (2019). Consensual sex work: An overview of sex-workers' human dignity in law, philosophy, and Abrahamic religions. *Women's Studies International Forum*, 76. <https://doi.org/10.1016/j.wsif.2019.102274>

Zatz, N. (1997). Sex Work/Sex Act: Law, Labor and Desire in Constructions of Prostitution. *Signs*, 22(2), 277–308.

Zimmerman, Y. C. (2011). Christianity and Human Trafficking. *Religion Compass*, 5(10), 567–578.
<https://doi.org/10.1111/j.1749-8171.2011.00309.x>

ANNEXES

1. Participant information sheet case studies, July 2019
2. Participant information sheet national and European sex worker organisations, April 2021
3. Item list interviews case studies, July 2019
4. Item list interviews national and European sex worker organisations, April 2021



1. PARTICIPANT INFORMATION SHEET CASE STUDIES - JULY 2019

Title Study: Human Rights and Sex Work: going beyond dangerous or endangered

Department: University of Essex, Department of Sociology

"I just really wanna live in a world where my vagina isn't considered more dangerous and in need of stricter regulations than guns" (tweet of a sex worker, 22 June 2016)

Introduction

My name is Marjan Wijers and I am doing a PhD at the University of Essex in Colchester in the UK. My research seeks to explore the role that human rights arguments as put forward by the sex workers rights movement, play in the political and legal debate on sex work laws and policies. I am particularly looking at the factors that operate to exclude sex workers from human rights protections and as legitimate partners in the political and legal debate.

My starting point is the 2005 *Declaration on the Rights of Sex Workers in Europe of the ICRSE*¹³² and the 2013 *Consensus Statement on Sex Work, Human Rights and the Law* of the Global Network of Sex Worker Projects¹³³.

What is the purpose of my study

My study explores the use of human rights arguments by the sex workers movement and other stakeholders – service providers, the neo-abolitionist movement, policy makers and the courts – in three case studies: the introduction of mandatory registration and counselling in the 2016 prostitution law (ProstSchG) in Germany; the constitutional challenge of client criminalisation by sex workers rights organisations in France; and the right to establish a union in Spain. In all three cases sex workers organisations actively draw upon human rights, both in the public and political debate and in court. And in all three cases there is a strong counter movement.

Next to interviews with sex workers rights organisations and other stakeholders I will study social media, political documents, court rulings and related legal documents. I will use the findings of the case studies to further explore with the participants in the study and other stakeholders what opportunities and risks the human rights framework offers sex workers to challenge human rights abuses and secure labour and human rights.

Do you have to take part?

It is entirely your decision to take part in the study and you can change your mind and withdraw your consent to participate at any point in the process.

What will you do in the project?

You will be asked to have an interview with me, in person or via skype. The interview should last no longer than one hour. I speak English, Dutch, reasonably German and a bit of Spanish, but if the interview cannot be done in English, I will discuss with you to organise an interpreter. The interviews will take place between August 2019 and July 2020. Dates and times will be arranged around your schedule. If the interview is being conducted in person, I will come to any location that is suitable for

¹³² See: <https://www.sexworkeurope.org/foundational-resources/declaration-sex-workers-europe>. The declaration was elaborated and endorsed by 120 sex workers and 80 allies from 30 countries at the European Conference on Sex Work, Human Rights, Labour and Migration 15 - 17 October 2005, Brussels, Belgium..

¹³³ See: <https://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

you. I would like to record the interview on a voice recorder, but should you wish otherwise, I can also take notes. I will send you the transcript of the interviews, so you have an opportunity to make corrections or withdraw consent. I will also ask you to take part in a national round table meeting with the other participants in your country to discuss the preliminary outcomes of the interviews and document study (depending on funding). You are of course not obliged to participate in this meeting, but I would appreciate to be able to discuss my preliminary findings with you as I believe that would increase the quality and usefulness of the study.

Why have you been invited to take part?

You have been invited to take part because you are involved in the political and legal debate on sex work in relation to one of the three case studies mentioned. This can be as member of one of the sex workers rights organisations involved, as health organisation or service provider, as lawyer or legal expert, as cooperation partner, or in another quality.

What are the potential risks to you in taking part?

There are no potential risks identified by taking part in this study.

What happens to the information in the project?

Your participation will be fully anonymous, and you will choose how you would like to be identified in the research. The audio recording and all transcripts will be securely stored on a password locked computer.

What happens next?

If you agree to be involved in the study, I will ask you to sign a consent form. If you do not want to be involved, I want to thank you for taking the time to consider participation.

The data gathered as part of this study will be used in my PhD thesis and potentially also in journal articles, book chapters and a book. Should you wish to be kept informed about any publications arising from this study then please contact me at m.wijers@hetnet.nl.

Thank you for reading this information – please ask any questions if you are unsure about what is written here.

Researcher contact details:

Marjan Wijers
T: +31 (0)6 30546012
E: m.wijers@hetnet.nl or: mw18793@essex.ac.uk

Supervisor details:

Isabel Crowhurst
E: icrow@essex.ac.uk

If you have any questions/concerns, during or after the investigation, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

Sarah Manning-Press, University of Essex. Email: sarahm@essex.ac.uk; Tel: + 44 (0) 1206 873561.



2. PARTICIPANT INFORMATION SHEET NATIONAL & EUR SEX WORKER ORG'S - APRIL 2021

Title Study: Human Rights and Sex Work: going beyond dangerous or endangered

Department: University of Essex, Department of Sociology

"I just really wanna live in a world where my vagina isn't considered more dangerous and in need of stricter regulations than guns" (tweet of a sex worker, 22 June 2016)

Introduction

My name is Marjan Wijers and I am doing a PhD at the University of Essex in Colchester in the UK. My research seeks to explore the role of human rights arguments in the public, political and legal debate on sex work laws and policies, as used by the sex workers rights movement and other actors, including civil actors, law makers and the courts. My starting point is the 2005 *Declaration on the Rights of Sex Workers in Europe of the ICRSE*¹³⁴ and the 2013 *Consensus Statement on Sex Work, Human Rights and the Law* of the Global Network of Sex Worker Projects¹³⁵.

What is the purpose of my study

I am exploring the role of human rights arguments in the debate on sex work laws and policies by looking at several European countries where there is an active sex worker rights organisation and an ongoing debate on sex work policies. In the selection of countries and participants, I consider geographical spread, different policy regimes and diversity of sex worker organisations, including representation of migrant and trans/lgbti-workers. In my analysis I look both at the ways sex worker rights activists use the human rights framework to advocate for sex worker rights and the discourses, narratives, actions and beliefs that operate to exclude sex workers from human rights protections and as legitimate partners in the debate. I have a special interest in the use of strategic litigation by the sex workers rights movement. I pay specific attention to Germany (introduction of mandatory registration and counselling in the 2016 Prostitutes Protection Law); France (the constitutional challenge of client criminalisation by sex workers organisations and allies); and Spain (the right to establish a sex workers union). In all three cases (human) rights of sex workers are at stake, the courts are involved and there is a strong anti-sex work countermovement.

I am especially interested in the following questions: What role do human rights arguments play in the public, political and legal debate? What role do sex workers play in the debate? How do sex workers use the human rights framework to advocate for their rights? What opportunities and obstacles do they meet in doing so? What are the commonalities and differences in the public, political and legal debate in the different countries? And drawing upon the findings of these questions: How could human rights more effectively be mobilised to realise sex workers rights?

Next to interviews with sex workers rights activists and organisations and other stakeholders I will study press articles, political documents, court rulings and related legal documents. If possible (covid-wise), I want to organise focus groups to discuss my findings and further explore with the participants and other stakeholders what opportunities and risks the human rights framework offers sex workers to challenge human rights abuses and secure labour and human rights.

Do you have to take part?

It is entirely your decision to take part in the study and you can change your mind and withdraw your

¹³⁴ See: <https://www.sexworkeurope.org/foundational-resources/declaration-sex-workers-europe..>

¹³⁵ See: <https://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law.>

consent to participate at any point in the process.

What will you do in the project?

I will ask you to have an interview with me, in person or via zoom or skype. The interview should last about one hour. I speak English, Dutch, reasonably German and some Spanish. If the interview cannot be done in English or German, I will discuss with you to organise an interpreter. Dates and times will be arranged around your schedule. If the interview is being conducted in person, I will come to any location that is suitable for you.

I would like to record the interview, but should you wish otherwise, I can also take notes. I will send you the transcript of the interview, so you have an opportunity to make corrections or withdraw consent. I will also ask you to take part in a focus group with other participants to discuss the preliminary outcomes of the interviews and document study (depending on the covid-situation). You are of course not obliged to participate in this meeting, but I would appreciate to be able to discuss my preliminary findings with you as I believe that would increase the quality and usefulness of the study.

Why have you been invited to take part?

You have been invited to take part because you are involved in the political and/or legal debate on sex work in your country. This can be as member of one of the sex workers rights organisations involved, as health organisation or service provider, as lawyer or legal expert, as cooperation partner, or in another quality.

What are the potential risks to you in taking part?

There are no potential risks identified by taking part in this study. However, if you have any concerns, please discuss them with me and we will find a solution.

What happens to the information in the project?

Your participation will be fully anonymous, and you will choose how you would like to be identified in the research. The audio recording and all transcripts will be securely stored on a password locked computer.

What happens next?

If you agree to be involved in the study, I will ask you to sign a consent form. If you do not want to be involved, I want to thank you for taking the time to consider participation.

The data gathered as part of this study will be used in my PhD thesis and potentially also in journal articles, book chapters or a book. Should you wish to be kept informed about any publications arising from this study then please contact me at m.wijers@hetnet.nl.

Thank you for reading this information. Please ask any questions if you are unsure about what is written here.

Researcher contact details:

Marjan Wijers

T: +31 (0)6 30546012

E: m.wijers@hetnet.nl or: mw18793@essex.ac.uk

Supervisor details:

Isabel Crowhurst, E: icrow@essex.ac.uk

This investigation was granted ethical approval by the University of Essex Ethics Committee.

If you have any questions/concerns, during or after the investigation, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact Sarah Manning-Press, University of Essex. Email: sarahm@essex.ac.uk. Tel: + 44 (0) 1206 873561.

3. ITEM LIST INTERVIEWS CASE STUDIES - JULY 2019

Position/role participant

- What organisation do you work for? What is your role in the organisation?
- Involvement in political activism on sex work/sex work/working with sex workers

Discussion advocacy on the selected topic (mandatory registration, client criminalisation, union)

- Why is the issue important for sex workers? What is its relation with sex workers rights?
- What was/is your role and the role of your organisation in the lobby/campaign/court case?
- Can you tell something about the strategies your organisation/the SRM used?
 - Objectives, arguments, target groups, allies/partners, opponents?
 - Organisation & cooperation/alliances with other SROs, stakeholders, movements (domestic & international)?
- Can you tell something about the political debate and how it led to the adoption of the law/court case against the union?
- What are in your view the main reasons/factors that the law was adopted despite the opposition of SROs and other stakeholders/ the union was challenged?
- According to your view, what underlying views on sex work, women/men/transpersons, sexuality and migrants played a role in the debate? Can you give examples?
- Do you feel that sex workers were/are included as legitimate partners in the public and political debate? Can you give examples?

Discussion role human rights in advocacy/lobby

- Did your organisation/SROs/allies use human rights in your advocacy? Can you give examples?
- What do (these specific) human rights mean to you as individual/activist/ally?
- Did other actors in the debate use human rights as arguments? What influence did they have? Can you give examples?
- Did arguments on dignity and/or sex work=violence and/or human trafficking play a role in the public and political debate? Did stigma play a role? Can you give examples?
- Do/did human rights arguments play a role in the debate? Can you give examples?
- What benefits do you see of using human rights? Can you give examples?
- What risks do you see of using human rights arguments? Can you give examples?

Evaluation advocacy/lobby

- If you could advise other SRO's in a similar situation, what would be your most important advice?
- How could the SRM better make use of the human rights framework? What conditions would be needed? Can you give examples?

Discussion court case

- What were your considerations to go to court /Did your organisation consider going to court?
- What obstacles did/do you meet? Legal rules (e.g. who can litigate), money, lawyers, finding litigants, other? How did you solve these?
- What were/are the most important legal arguments? Do you know of other cases that are relevant for your case?
- Discuss key quotes from the judgment concerned: record participants responses to the court's conclusions and discuss reflections
- Which considerations play(ed) a role in the decision (not) to appeal/go to the ECtHR?
- If you could advise other SRO's, based on your experience, what would be your most important advice?
- What kind of support would help you in conducting the case?

Use of international human rights mechanisms

- Did you/other SROs (consider to) use international human rights mechanisms, like shadow reporting? Explain

Anything I forgot/ you want to add?

4. ITEM LIST INTERVIEWS NATIONAL & EUR SEX WORKER ORGANISATIONS - APRIL 2021

Position/role respondent

- How are you involved in the sex workers rights movement and /or advocacy?

Use of human rights in advocacy/lobby

One of the slogans of the SWR movement is "*Sex workers rights are human rights*":

- What does this slogan mean to you? How do you explain 'human rights' in this slogan?
- What are the main issues of the sex workers movement in your country?
- Do you use the term (human) rights or other terms in your advocacy? Or different terms in different situations? Can you give examples?
- What do you see as the value of using the human rights framework? Do you also see risks or limitations? Can you give examples?
- Are there situations where you successfully used human rights in your advocacy?
- Are there also barriers in using human rights in your advocacy? Pls explain.
- What do you see as the role of ESWA/NSWP/SWAN in supporting national sex workers organisations in advocating for sex workers' rights?
- What would help you in using human rights more effectively in your advocacy?

Use of human rights by other actors

- Do other actors – allies or opponents - use human rights arguments in the public and political debate on the issues you mentioned? Can you give an example?
- Are human rights arguments also used against sex worker rights? Can you give an example? How do you deal with that?
- Do arguments on dignity or 'sex work = violence' or human trafficking play a role? Can you give an example? What does dignity mean for you/for sex workers?

Role of sex workers in the debate

- Do you feel that sex workers are included as legitimate partners in the public and political debate? Can you give an example?

Use of international human rights mechanisms

- Have you ever used international human rights mechanisms, like shadow reports to CEDAW? If so, what was your experience?

Generally

- If you could advise other SWO's on using human rights, what would be your most important advice? Do you have 'lessons learned'?

Use of strategical litigation

Over the last years, sex workers have started to use public litigation as a strategy (e.g. Bedford case Canada, case France)

- Did you ever make use of strategical litigation or considered to go to court?
- If yes: what were your arguments to do so? What supported you in doing so? What do you see as risks? What obstacles did/do you meet? How do you deal with these?
- If there is a judgment: discuss quotes from the judgment concerned. If applicable: did you consider to appeal to the ECtHR?
- What would help you in using public litigation as a strategy?
- Do you know of other cases (apart from France and Spain) that I should look into?

Anything I forgot/ you want to add?