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Report # 1

PORNOGRAPHY AND PROSTITUTION IN DENMARK, FRANCE, WEST GERMANY, THE NETHERLANDS AND SWEDEN

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PORNOGRAPHY AND PROSTITUTION IN FRANCE, THE NETHERLANDS, WEST GERMANY, DENMARK AND SWEDEN

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The views expressed in this report do not necessarily represent those of the Deparment.

ADDENDUM

THE NETHERLANDS (P.80):

The proposed Bill on ponorgraphy (1979) was amended during the month of November 1984 by the Second Chamber of the Parliament of Netherlands. The amendment on the protection of minors prohibits the depiction of minors under 18 years of age in pornography.

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Responsibility for our errors or shortcomings in the report rest entirely with us.

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INTRODUCTION

1. Introductory Remarks

This report describes the results of a study on five European countries; namely, Denmark, France, West Germany, The Netherlands, and Sweden. The study was commissioned by the Department of Justice of Canada in support of its indepth review of these areas of laws, to aid in making effective policy decisions and to address the concerns of the Special Committee on Pornography and Prostitution.

2. Methodology

After reviewing a discussion paper prepared by the Special Committee on Pornography and Prostitution, and in consultation with individuals from the Department of Justice in Canada, these five countries were selected because of their experiences in the development of laws and social policies relating to pornography and prostitution. A questionnaire was prepared for individuals known to be knowledgeable on the subject area in the selected countries. The questionnaires were sent to and answered by the following persons: B. Kutchinsky in Denmark, E. Wasslau in West Germany, F. Lombard in France, Jan van Dijk in The Netherlands; and, Jan Vilgeus from Sweden.

The questionnaire on pornography and prostitution consisted of two separate sections. Each section contained several items related generally and specifically to legislation; law enforcement policies and practices; social policies; public opinions; and present trends in legislation, jurisprudence and policy. Respondents were asked to answer each question by making reference to government documents, crime statistics, and research reports. In addition, interviews were conducted by some respondents with, for example, public prosecutors or police officers.

To avoid any problems relating to ambiguity in the meaning of prostitution and pornography, the following working definitions were used. Pornography was defined as

"materials (publications, films, etc.) and, or, performances of a sexual nature considered to be obscene or indecent, "while prostitution referred to sexual services for financial rewards and acts directly related to it such as operation of bawdy houses (brothel), or living off the avails (pimps)."

Based on the information provided by these respondents, the present report was written. The chapter on Denmark, however, was largely written by B. Kutchinsky himself.

3. Structure of the Report

The report is organized in the following manner. The experiences with pornography and prostitution in each of the selected countries are described in five separate chapters. The first chapter is on France, followed by the the Netherlands, West Germany, Denmark and Sweden. Each chapter begins with a very brief introduction on the constitutional and legal structure of the country at issue. Next, each country's experiences with pornography and prostitution are described in two separate sections and these sections are then divided into three main parts. First, a brief historical overview is presented on legislation and jurisprudences. In the second part, information is given on the size and nature of the problems of law enforcement, and other policies. Crime statistics are presented to depict the situation whenever this information was available. In the final part the attitudes of the public at large; the women's movement; particularly towards the policies; and possible future developments on the subject matter are discussed. The references from each country are located at the end of each chapter. The report ends with two summaries and some concluding remarks on the European experiences with pornography and prostitution respectively.

CHAPTER II

EXPERIENCES WITH PORNOGRAPHY AND PROSTITUTION IN FRANCE

1. Introductory Remarks

The Republic of France is a highly centralized governed state with approximately 50 million inhabitants. The constitution provides for a strong executive branch headed by the President and a legislature composed of a National Assembly and a Senate. The President is elected for seven years and, in turn, appoints the Prime Minister. The highest court is the Cour de Cassation, while the highest administrative court is the Council of State. The Republic is divided into departments, governed by a prefect, who is appointed by the President and an elected council. The Mayors of the cities are also elected. Criminal proceedings may only be instituted by the public prosecutors who are responsible to the Minister of Justice. French law recognizes the principle of expediency.

2. Pornography

2.1 Legislature and Jurisprudence

2.1.1 Legislation

The French Penal Code contains Section 283 prohibiting the dissemination of material which is "outrageous to good morals." This prohibition was already part of the original Penal Code of 1810 and later modified in 1939.

Section 283 reads:

> any person who manufactures or holds for sale, distribution, lease display or exposition, knowingly imports, causes to be imported, exports, causes to be exported, transports or causes to be transported for a like purpose,

> displays, exposes, or subjects to the public view, sells, or leases, even though not publicly, in any manner, directly or indirectly offers, even though gratuitously or privately, distributes or delivers for distribution in any manner, any printed matter, writing, drawing, sign, engraving, painting, photograph or cliché, phonograph record, emblems or any other object or representation, outrageous to good morals, will be punished by imprisonment from one month up to two years and a fine of $60 (Cda), not exceeding $5,000 (Cda).

The term "good morals" is restricted to refer to sexual morals. The term "outrageous to good morals" however, has a wider meaning than "obscenity." According to the French Supreme Court, pictures which incite sexual feelings can be outrageous to good morals without being obscene.

Since 1961, special rules of procedure apply to prosecutions and seizures involving books that print the name of the author and publisher. Under Section 283 of the Penal Code, prosecutors must consult with a special committee consisting of representatives from the Association of Writers and the National Union of Associations for Family Affairs before criminal proceedings can be taken against such books. The committee's opinions however, are not binding.

A law dating back to 1946, entitles the Association of Writers to ask for a review of a book twenty years later, after it had been found to contravene Section 283. This procedural rule was applied to some of the books written by C. Baudelaire (<u>les Fleurs du Mal</u>).

Section 284 prohibits the singing or other oral presentation in public of texts which outrage good morals and the public advertisements for licentious activities. Section R-38(9) of the Penal Code specifically prohibits "the display of indecent pictures or posters in or, at the public road or, in public places." The concept of indecency is to be interpreted with a view to the sexual feelings of the young.

In 1949 a law was enacted (which was later modified in 1960), introducing a special section for protecting youths against certain publications or the presenting of dangerousness. Publications primarily designed for youth may not "present debauchery in a favourable light" nor any criminal act or other form of anti social behaviour (e.g., racism). If the publication was published in a journal, then that journal can be prohibited from being sold for a period not exceeding two years. The authority to prohibit these publications is given to a special Committee for the Surveillance and Control of Publications Designed to Protect the Youth. The committee is entitled to bring to the attention of the public prosecutor any contraventions of this prohibition and to make suggestions to the Minister for Interior Affairs concerning books which ought to be banned. The committee's opinions, however, are not a condition for a prosecution.

In addition, the Minister for Interior Affairs has the authority to prohibit the dissemination of publications of any kind that are "dangerous for the young on account of their licentious or pornographic character or the place given to crime or violence." To

protect the youth, the Minister can impose a ban on the distribution and, or, public display of, and, or, advertisement of such a publication. Editors whose publications were banned for more than three times during a period of twelve months, are under the obligation to present three copies of all new publications to the Ministry of Justice three months prior to their appearance in public.

The authorities from larger towns have further enacted regulations concerning kiosks which prohibit the sale and public display of publications or pictures which are indecent or outrageous to good morals (e.g., regulation of 17 October 1953, Paris).

Since 1810, the French Penal Code contains a Section prohibiting all acts or gestures performed in public which "outrage the norms of decency" (Section 330). The legislator however, has not given a more detailed definition to the elements of this crime. Consequently, the courts have developed a set of standards for the interpretation of this Section. In principle, both live performances and nudism on the beach are covered under Section 330.

2.2 Major Jurisprudence Issues

The Penal Chamber of the Supreme Court has decided that all texts or images which incite sexual feelings can in principle, be considered as "outrageous to good morals" (Crim. 8, Jan., 1959). They can be considered outrageous to good morals in particular cases where "they contravene generally accepted standards of decency in such a way as to provoke the indignation and

condemnation of the public" (Court of Appeal, Paris, 12 March 1958). In determining the decency standards of the community, the courts "have to take into account all manifestations of the public's opinions and particularly, the opinions expressed by groups of concerned citizens (Court of Appeal, Paris, 10 June 1977).

According to the Supreme Court, tolerant administrative policies can never abrogate penal prohibitions like the ones in Section 283 (Crim. 4 May and 13 March 1957). In 1972 the Besançon Court of Appeal however, decided in 1972 that the sale of pornography in a specialised shop where minors are not admitted, and where the merchandise is not displayed exteriorly, does not constitute an offence under Section 283 (Court of Appeal, Besançon, 9 May 1972) on the grounds that the government has explicitly declared that such shops are not against the law. A similar decision concerning a "sex shop" was made by the Court of Appeal of Reims (Court of Appeal, Reims, 7 October 1977). The latter court decided that anyone who does not enter such a shop could not possibly be offended by it; that access was denied to minors, and that "the existence of such businesses is now accepted by the public at large."

With regard to the offence of Section 280 (exhibitionism) the courts have traditionally decided that live performances in theatres are not outrageous to norms of decency as long as the performers do not expose their sexual parts or make obscene gestures. The Supreme Court has never expressed an opinion on this subject. The court had decided in 1965 however, that the wearing of a so called monokini constitutes an offence under Section 280 (Crim., 22 December 1965).

2.3 Film Censorship and Related Issues

The production and presentation of films are covered under Section 283 on "pornography." In addition, the film industry is subject to several regulatory schemes. First, all films made for public presentation are screened by a Special Commission for the Control of Films consisting of representatives from various ministries, the cinematographic profession and other relevant professions. The Commission can recommend to the Minister of Information to ban a film altogether, or to impose an age restriction of 18 years or 13 years. The Minister, however, is not bound by the Commission's recommendation.

The Council of State decided in 1975 that the Minister, in making decisions on licenses for films must weigh the interests of the community against the human rights of the producers of the film and, especially, against their fundamental freedom of expression (C. of S., 4 January 1975). Consequently, the discretionary power of the Minister is presently much more limited than in the past.

The Mayors are generally not entitled to prohibit the presentation of pornographic films. The Mayor however, may stop the presentation of a particular film if it is a threat to public order (Counsel of State) opinion of 9 May 1950). According to a later decision by the Council of State (Counsel of State, 9 April 1960), such a proscription is justified only if the film has an immoral character according to the Council's (national) standards, and if the local situation specifically demands it (e.g., when several different sections of the local community have protested against the presentation of a film).

In accordance with a law dated December 30, 1975, France has adopted a special set of fiscal provisions on pornographic films and films which incite to violence. These include: a higher tariff of added value tax is imposed upon the sale of such films and upon the admittance fees of cinemas presenting them; a special tax of approximately $40,000 Cda. is levied on pornographic films imported from other countries; a special tax is levied on the profits made by the production, distribution and presentation of pornographic films; and, the law excludes any financial support by the government in the production, distribution and presentation of pornographic or horror films.

The Minister of Information, who is responsible for the cinemas, is authorized to classify a film as pornographic or violent (classification X) after having consulted the Commission for the Control of Films. These provisions are applicable to all films available for presentation in France regardless of whether they have been licensed or not. The Council of State has developed a standard to classify films which is to be applied by the government and the Commission. A film can be classified as pornographic if it presents, without aesthetic finesse and in a provocatively realistic way, sexual scenes, notably, sexual intercourse.

In 1979, the Supreme Court decided that films classified by the government as pornographic and, thereby, made subject to special fiscal provisions, do not constitute an offence under Section 283. The law of December 30, 1975 has waived such films from existing prohibitions. According to the Supreme Court, this law legalizes films which offend a part of the population's moral feelings due to their obscene character.

This law however, does not legalize films where the contents essentially consist of detailed depictions of acts of violence and sexual perversions, which degrade human beings and therefore, are outrageous to good morals (Crim., 25 January 1979). Consequently, the Court's decision has limited the scope of Section 283 to include films degrading to human beings because they depict acts of violence and sexual perversions.

2.4 Law Enforcement Policies

The office of the public prosecutor has gradually adopted a rather tolerant prosecution policy on the sale of pornographic materials in specialized shops or kiosks. Live performances of various sorts, especially in Paris, also seem to be tolerated.

According to reports from the National Union of Associations for Family Affairs (to be discussed later), and the Committee for the Surveillance and Control of Publications Designed to Protect the Youth, made recommendations to the public prosecutors or Minister of Justice on dangerous publications but, are quite often ignored. Recently, very few films were altogether banned by the Ministry of Information (Culture) while the Commission for the Control of Cinemas and the Minister have become more tolerant towards ordinary erotic films. An increasing number of such films are not even classified as X-rated. On the other hand, the Commission and the Minister tend to be increasingly critical of films depicting extreme acts of violence or sadism.

In Table 1, an overview is presented of the number of convictions for the various relevant offences relating to pornography.

TABLE 1

Number of Convictions for Four Categories of Pornography Offences" in France between 1961 through 1978

Year	Sec. 330 "exhibitionism"	Sec. 283, 84 "pornography"	"Dissemination of Pornography Among the Youth" (Law of 1949)	"Publications designed for Youth" (Law of 1949)
1961	4,554	234	-	-
1962	4,408	351	-	-
1963	4,750	347	-	-
1964	4,769	282	-	-
1966	5,523	204	189	4
1967	5,488	163	209	3
1968	4,599	154	170	13
1970	3,466	177	192	66
1972	3,637	222	130	50
1974	2,017	113	162	5
1976	3,352	133	110	4
1978	2,404	55	216	3

Table 1 illustrates that both the number of convictions under Section 330 (acts of exhibitionism) and Section 283, 84 (pornography) have drastically declined. Of the 3,466 persons convicted for "exhibitionism" in 1970, 2,648 were sentenced to imprisonment for an average of three months. Of the 177 persons convicted of pornography offences in 1970, 147 were sentenced to imprisonment for an average of three months.

Table 2, illustrates the sentences imposed for the four categories of relevant offences in 1978.

TABLE 2

Sentences Imposed for "Exhibitionism," "Pornography," "Dissemination of Pornography Among the Young," and "Publications Designed for the Young" in France for the year 1978

Type of Offence	Imprisonment	Suspended Imprison-ment	Totals	Recidi-vists
Exhibitionism Section 230	255	1,207	2,404	533
Pornography Section 283,84	0	10	55	18
Dissemination Among the Young (Law of 1949)	92	79	216	60
Publications Designed for the Young	1	0	3	1

2.5 Public Opinion and Current Policy Trends

Section 289 of the Penal Code, entitles associations of concerned citizens who have been formally acknowledged by the government to enter criminal proceedings on their own account (i.e. operate as party civil in a criminal trial) for cases under Sections 283 to 289. The Minister of Justice and Interior Affairs, for example, have registered the Provincial Unions of Associations for Family Affairs as organizations that can exercise these rights but, very seldom bring proceedings under these Sections. These Provincial Unions are united at the national level with the National Union of Associations for Family Affairs. This Union regularly publishes reports or memorandums

on pornography. According to one of these reports, between 500 and 670 of the 4,700 films presented in France in 1974 belonged to the category "pornographic" and in 1975, approximately 20% of all visitors of cinemas went to presentations of pornographic films (annex to report nr. B839, 20 January 1976). The Union concluded that the present interest of the public for such films would probably gradually diminish.

In a letter sent to the Prime Minister in 1982, the Union expressed its opinion about the recent boom in films portraying acts of extreme violence. The Union recommended the retention of the age limit of 18 years for such films and for all films classified as X-rated. In a memorandum dated July, 1983, the Union (Annexe no. 2 à la LO nr. 54.444) gave an analysis of the sudden increase in pornographic video films. The Union claimed that twenty to twenty five percent of all video films sold in France are "pornographic," and approximately twenty percent of the video films are produced illegally (i.e., in contravention of the laws on copyright).

According to this memorandum, the Law of December 1975 (which introduced a special fiscal regime for pornographic films) has had several effects upon the market for pornographic films: the importation of foreign pornography into France has decreased; the presentation of pornographic films is now largely restricted to specialized cinemas, consequently, fewer women view such films; the quality of pornographic films has deteriorated; and in the period 1975-76, large film companies have ceased to produce pornographic films.

The Union observed that the number of viewersof pornographic films has collapsed, whereas horror films and films depiciting extreme acts of violence now attract alarmingly high numbers of visitors. At the same time, the market of video films has become the centre of social demand for all forms of pornography. According to the Union, women would form a substantial part of the customers of these video films. The Union urged the government to make the production, distribution and presentation of pornographic video films subject to the same fiscal and licensing regulations as other films.

Several members of Parliament have urged the Minister for Cultural Affairs to take legislative steps in order to regulate the dissemination of pornographic video films (Journal Officiel N18-AN-2, May 1983; Journal Officiel-Debats Parlementaires Q-5, May 1983). As a result of this pressure by the Union and members of Parliament, on December 29, 1983, a law was enacted imposing the same severe fiscal regime as upon normal films, on pornographic video films. Although the Union agreed to the enactment of this law they further urged the government to expand the scope of the screening and licensing regulations to encompass all video films.

3. Prostitution

3.1 Legislation and Jurisprudence

Before 1946, prostitution was regulated by means of a system of registration. Prostitutes who worked in bawdy houses (maisons de la tolérance) were registered by the police while the houses themselves were licensed and controlled by local authorities. Prostitutes work-

ing outside brothels, were registered by the police after they had been arrested for a second time for solicitation. All registered prostitutes were obliged to undergo a medical examination twice a week. Most cities had municipal bylaws providing an elaborate system of prescriptions and proscriptions concerning the behaviour of prostitutes. On April 13, 1946, a law was passed abolishing the system of registering known prostitutes and licensing bawdy houses. Until 1960, a national registry of known prostitutes was still kept by the national health authorities as an instrument for tracing down prostitutes afflicted with venereal diseases who did not receive medical examinations. This registry was finally abolished on the grounds that it impeded the social reintegration of prostitutes and was not an effective method for control.

The Penal Code of 1810 contained a Section on procuring of minors and enticing minors into prostitution. In the 20th century, several prohibitions of procuring and living off the avails were gradually added to the Penal Code (1903, 1940, 1943). In 1946, all forms of involvement in the operation of bawdy houses were criminalized. The latter prohibitions were extended in 1960 and 1975. The Law of 1946 also introduced a national prohibition of street solicitation which was later amended in 1958.

Presently, the Penal Code distinguishes seven different forms of procuring or living off the avails, jointly called "proxénétisme." Section 334 makes anyone liable to imprisonment, not exceeding three years, who:

1) in any way willfully aids, abets or fosters the prostitution or pimping of others;

2) who in any way partakes in the profits of the prostitution of others or receives support from a habitual prostitute;

3) who knowingly cohabitates with a habitual prostitute;

4) who maintains a personal relationship with one or more prostitutes and whose way of live is out of proportion with his own sources of income;

5) who recruits, induces or keeps any person, with or without his approval, for prostitution or who leads such a person to prostitution or debauchery;

6) who in a professional way serves as an intermediary between prostitutes and those who exploit or pay for the prostitution of others; and,

7) who by way of threats, pressure, ruses or any other way, obstructs the activities of prevention, control, support or reeducation undertaken by associations for the benefit of prostitutes or persons at risk of becoming prostitutes.

Section 334(1) enumerates the special circumstances of the offence making the perpetrator liable to imprisonment from two years not exceeding ten years when (aggravating factors):

(a) the offence is committed with a minor;

(b) the offence is committed by means of threats, coercion, acts of violence, undue influence or fraud;

(c) the perpetrator was bearing a weapon openly or concealed;

(d) the perpetrator is the spouse, father, mother or guardian, or has any other form of authority over the victim;

(e) it is part of the perpetrator's official duties to participate in the struggle against prostitution, the protection of health or the maintenance of public order;

(f) the offence was committed against several persons;

(g) the victims were induced or incited to prostitution outside the territory of the Republic;

(h) the victims have been induced or incited to prostitution at their arrival in France or shortly after their arrival;

(i) the perpetrators have committed the offence collectively as associates or accomplices.

A separate Section makes it an offence to incite minors under the age of eighteen to debauchery or to foster their corruption habitually or to do so occasionally with minors under the age of sixteen (Section 334(2)). Since 1946, the Penal Code contains a scheme of offences on premises used for prostitution aimed at the total repression of all manifestations of the "maisons de la tolérance" (bawdy houses). Section 335 makes anyone liable to imprisonment or two years not exceeding ten years, who:

(a) personally, or by agent, maintains, runs, exploits, manages, makes functioning or partially or wholly finances a house of prostitution;

(b) personally, or by agent, maintains, runs, etc., a hotel, furnished house, boarding house, bar, restaurant, club, association, dancing, amusement hall or any other place accessible to the public or used by the public, and habitually accepts or tolerates that one or more persons prostitute themselves in these premises or solicit for the purpose of prostitution.

In addition, Section 335(6) makes anyone liable to imprisonment of six months, not exceeding two years:

(a) lets private premises to one or more persons, knowing that they will practice prostitution in them;

(b) who has the disposition over private premises for any reason and who renders or leaves them at the disposition of one or more persons of whom he knows that they practice or will practice prostitution in them.

The same Section gives the office of the public prosecutors the authority to inform the owners or landlords that their premises are used for prostitution. This obligation has the dual objective of prompting these persons to take action against such practices and of preparing evidence against the landlords if no action is taken. Finally, Section 335(6) obliges the judge deciding a case to terminate the letting contract and to expel the tenants, subtenants, or occupants who practice prostitution at the request of either the owner, the principal occupant or a neighbour in cases of habitual prostitution.

Several extra penalties must, or can, be imposed by the courts upon those convicted for one of the offences under Sections 334 and 335. In all cases, such persons lose the right to be employed by or to be commercially involved in any manner with the hotel and catering industry for the rest of their lives (Section 335(7)); all persons convicted under these Sections lose their civil rights (e.g., the right to vote or to be employed as a civil servant) for at least two years; the judges can proscribe the accused from taking a holiday for at least two years (restrict their freedom of movement); and confiscate all their profits from prostitution (Section 335(1)(3)).

The Penal Code recognizes three extra penalties which may be imposed upon those convicted under Section 335 (running of bawdy houses). The judge can either order the closure of the establishment; withdraw its

license; or confiscate its total capital. In cases of recidivism of the convict or of the establishment concerned, the judge is bound to confiscate the capital.

Before imposing these extra penalties, the judge must assure himself that the office of the public prosecutor has informed the owner or license holder of the establishment at issue of the prosecution. These persons must be informed of the date of the trial. They are entitled to submit evidence to the judge and to appeal against the imposition of one of the three extra penalties.

The Penal Code penalizes with fines, public solicitation for the purpose of prostitution. Section R-40(11) prohibits public solicitation for debauchery by means of gestures, words, texts, or by any other means (e.g., active solicitation). Section R-34(13) makes liable to a fine between $50 and $100 (Cda), anyone whose attitude on the public road is such as to solicit for the purpose of debauchery. According to the Supreme Court, an example of this section being violated is if a woman stands and loiters on the public way and incessantly looks at the passers-by (Crim. 28, November, 1962).

Finally, according to the prevailing doctrine, the mayors and police may not enact police regulations or any other bylaws which impose proscription upon prostitutes other than the ones contained in the Penal Code.

3.2 Law Enforcement and Other Policies

3.2.1 The Size and Nature of Prostitution

Although no official statistics on the number of prostitutes are available, the total number of

prostitutes in France is estimated at 100,000 of which 30,000 are professionals. No reliable estimates have been found on the number of minors prostituting themselves. Studies among such prostitutes have shown that the majority of them have taken up prostitution before they were seventeen (Le Moral, 1969; Feschet, 1975). Among the prostitutes studied, 38% of them have had their first sexual experience before they were thirteen.

Male prostitutes make up 0.5 to 1 percent of all prostitutes and it appears that the number is rapidly growing. Most professional prostitutes in France practice street prostitution. The recent closing down of most hotels previously used by prostitutes, has induced an increasing number of them to rent or buy rooms to receive their customers. No "eros centres" exist in France. According to the police, at least 45,000 persons per day go to a prostitute in Paris. The tariff varies from $10 Cda. (Saint Denis) to $100 Cda. (Champs Elysees). According to the Ministry of Interior, most prostitutes are supervised by pimps. In 1975, the Ministry estimated the total profits of the 15,000 pimps and procurers working in France (35-40% in Paris) at $1.2 billion (Cda) while their profits in 1983 are estimated at $1.6 billion (Cda).

3.2.2 Law Enforcement Policies

After the closure of bawdy houses in 1946, the prostitutes went to the streets. Many of the owners of former bawdy houses opened hotels and started to rent rooms to prostitutes. Since 1960,

the police have intensified their efforts to repress these new forms of procuring. In 1975 however, a committee of the senate concluded that the laws on procuring and solicitation were poorly enforced (Tailhaides and Vircipoullé, 1975). At the end of the seventies, a large number of the "hotels de passe" were finally closed down. During the seventies, the police also intensified their efforts to enforce the law on solicitation. According to Mr. Guy Pinot, President of the Court of Appeal of Paris, the continuous police raids among street prostitutes amounted to a real chasing around of prostitutes (Pinot, 1975). Some prostitutes are regularly sentenced to fines of $200 (Cda).

In response to law enforcement policies, large numbers of prostitutes occupied several churches in Paris during the summer of 1975 in order to draw attention to their problems. Later in the same year, some 600 prostitutes assembled in Paris in a meeting of protest. However, the police have not relaxed their enforcement policies on street solicitation.

Table 3 presents the number of convictions for procuring (Section 334, 2-7), assisting a prostitute (Section 334-1), running a bawdy house (proxénétisme hôtelier) and active or passive solicitation.

TABLE 3

Number of Convictions for Procuring, Assisting a Prostitute, Running a Bawdy House and Solicitation in France during the period 1961 through 1978

Year	Procuring	Assisting a Prostitute	Running a Bawdy House	Solicitation
1961	1,256	-	-	300
1962	1,266	-	-	447
1963	1,445	-	-	546
1964	1,600	-	-	376
1966	1,184	325	-	1,138
1967	1,058	299	-	2,018
1968	940	13	247	1,898
1970	889	18	159	2,439
1972	999	24	179	1,463
1974	1,086	26	299	2,034
1976	1,081	22	230	2,846
1978	1,276	95	195	3,708

Table 3 shows that at the end of the seventies, the number of convictions for procuring and solicitation have increased. In 1978, two thirds of all convictions for procuring were sentenced to unsuspended imprisonment (on average of one year) while the common penalty for (passive) solicitation is a fine between $50 and $100 (Cda).

3.2.3 Social Policies

On November 25, 1960, a law was introduced extending the prohibitions of procuring and solicitation and putting an obligation upon all provinces to establish social services for the benefit of those at risk to become prostitutes. This law further encouraged the establishment of special homes for former prostitutes. According to later legislation, such centres may provide lodgings,

meals, medical care, education and professional training for their guests. In 1974, the rules of admission to those establishments were modified to minimize the stigmatizing effects of the centres admitting several other categories besides former prostitutes. In spite of the legal obligations to establish special social services for prostitutes, at present, only six provinces have such services.

On April 9, 1975, a law officially entitled acknowledged associations for the aid of prostitutes, to act as private parties (party civil) in criminal trials on procuring and to demand compensation from the defendants for the harm done. Since the enactment of this law, the Association of Action Groups Against Trafficking in Women and Children has actually acted as a private party in more than one thousand trials of procurers. Recently, the association received between $8,000 and $12,000 (Cda) annually by way of compensation from procurers.[1] These sums do not cover however, the association's expenses made on behalf of (former) prostitutes.

Besides this very active association, which played a major part in the closure of the "hotels de passe" in Paris in 1979-1980, there are several other private associations in aid of prostitutes, including one with a twenty-four hour telephone service (SOS Prostituée).

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1 Esclavage-Document Social, journal published by the association, No. 28, III, 1980.

3.2.4 Public Opinion and Current Policy Trends

A report on prostitution by Mr. Pinot in 1975, revealed that many prostitutes felt victimized by the policy of tax collectors to impose taxes on them over the present and four preceding years if no taxes have been paid. In relation to this fiscal policy and the penal fines imposed upon them, the prostitutes have coined the term "governmental pimping" (proxénétisme d'Etat).

In response to the social problems caused by street prostitution and culminating in public protests by the prostitutes, a private members' Bill was presented to Parliament in 1978, which sought to reopen the traditional maisons de la tolérance. This Bill however, was rejected.

An opinion poll, conducted by the French Institute of Public Opinion (l'IFOP) in 1978, showed that 71% of the French population is opposed to the prohibition of prostitution, 50% is in favour of the reopening of bawdy houses (71% of those consider this to be in the interest of the prostitutes), and 59% view prostitution as a necessity (especially males, 66%; urban dwellers, and the higher social classes).

According to formal statements made in 1981 (August 17 and September 14), the present Minister Responsible for the Rights of Women, Mme. Roudy, is determined to continue "the struggle against prostitution." The Minister noted that police forces will be expanded with specialized officers for the struggle against procuring and prostitution and special efforts will be made to combat the internationally organized forms of procuring, in

accordance with decisions made by the European Parliament.

A committee of representatives from several relevant Ministries was established in 1981 to deal with the problems of prostitution, choosing as its policy goals the "demarginalization of prostitutes." In order to achieve this end, two approaches are recommended. First, the activities of prostitutes should be decriminalized as much as possible. The prohibition of solicitation ought to be reviewed and the existing prohibition to live together with a habitual prostitute (Section 334(3)). Secondly, the committee envisages the creation of services for the professional education of former prostitutes in order to facilitate their social reintegration.

Since 1983, the policies of the tax collector towards prostitutes have become less stringent; taxes over preceding years are no longer imposed upon former prostitutes. In 1983, a number of prostitutes established a formal association for prostitutes which aims at the formal and full acknowledgement of prostitution as a form of labour. The members of this organization demand that prostitutes be treated the same as other workers in the area of unemployment benefits, health insurance, on so forth. The Minister for the Rights of Women however, has declared that the present government will never accept the opinion that prostitution is a respectable form of labour.

CHAPTER III

EXPERIENCES WITH PORNOGRAPHY AND PROSTITUTION IN THE NETHERLANDS

1. Introductory Remarks

The Kingdom of The Netherlands is a constitutional monarchy and a unitary state with approximately 14 million inhabitants. The highest legislative body consists of two bodies: Parliament and the Senate (appointed by the provincial councils). These two central bodies have full legislative powers in all possible fields. The lower legislative bodies (the provincial councils and the city councils) cannot enact laws which contravene or overlap with state laws. The Council of State, which is an advisory committee to the government, can annul administrative decisions of the municipalities. Finally, the mayors for each city are appointed by the national government.

In The Netherlands, the criminal investigation departments of the various police forces are responsible to the public prosecutor. The prosecutors have the authority to withdraw proceedings against a defendant if the common interest does not warrant a prosecution. The public prosecutors are hierarchically organized. At the top of the structure is the assembly of prosecutors general, chaired by the secretary general of the Ministry of Justice, who represents the Minister of Justice. This body issues national guidelines for the investigation and prosecution of certain types of crimes. At the local level, the senior prosecutors have regular meetings with the mayors and chiefs of police. At the meetings, the public prosecutors consult their administrative counterparts on local prosecution policies and on individual cases that have a bearing on local administration (e.g., the prosecution of squatters).

2. Pornography

2.1 Legislation on Pornography

The original Netherlands Penal Code, contained a Section on pornography, but it only addressed pictorial materials. In 1911 however, all Sections on sexual offences were fundamentally revised to include new and more stringent laws. Although on several occasions these Sections were slightly modified, they are retained in the present Penal Code.

The Section on pornography prohibits the distribution, display, or exportation of any textual or pictorial material or object which "offends the norms of decency" (Penal Code, Section 240). A special Subsection further restricts the distribution or displaying of any such materials to a person under the age of eighteen. In addition, there is a separate Section that prohibits the distribution or displaying of any material likely to arouse the sexual feelings of any person under the age of eighteen (Section 451 bis). Section 239 of the Penal Code prohibits all acts which "outrage the norms of decency" that are performed in public or in the involuntary presence of others. This law on exhibitionism dates back to 1881 and has never been changed.

In 1977, the Law on Film Censorship of 1926 was repealed and later replaced by a law on the Presentation of Films. The enactment of this law abolished the procedures on screening and previewing films before they are shown in adult cinemas or on television. The cinemas however, are not allowed to show films to persons under the age of sixteen unless the films were certified by the National Board of Film Censorship, and

television broadcasting companies are not allowed to present such films before 21.00 hrs. The sole criterion for the Board's decision to have an age restriction is to protect the minors from the potentially harmful effects of the films. According to a memorandum, the Board is expected to particularly be on the alert for the presentation of acts of violence of a sadistic or otherwise perverted nature.

Finally, in accordance with the Dutch constitution, the right to freedom of expression precludes the enactment by local legislative bodies (e.g., city councils) of police regulations, or any other bylaws prohibiting textual or pictorial pornography. Some cities however, have enacted police regulations prohibiting the public display of purported "sex articles" such as sexual gadgets, stimulantia or erotic underwear. Since 1977, the mayors are no longer authorized to ban pornographic films in local cinemas.

2.1.1 Recent Jurisprudence

The High Court has continually reinterpreted the terms "offensive to norms of decency" and "outrage against norms of decency." According to the prevailing doctrine, any decision by the High Court on one of these terms is applicable to both Sections on pornography and exhibitionism. In 1970, the High Court decided that the term "norms of decency" is to be interpreted as what the large majority of the national population considers to be the standard of acceptance (The Chick decision[1]). This interpretation of obscenity by the High Court can be viewed as

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1 M.R. 28-11-1978, NJ 1979, 93.

can be viewed as sociological. According to the High Court, the judge can either rely upon expert testimony or upon his own judgement in determining the opinion of the large majority of the national population.

In 1978, the High Court further decided that the presentation of a pornographic film to a voluntary adult audience, who was informed of the film's content in advance does not constitute an offence against the norms of decency as such persons cannot reasonably assert that they were personally offended by the showing (The Deep Throat decision[2]). According to the High Court, it is unreasonable to assume that anyone who attends a showing voluntarily can be offended. Based on this decision, the obscenity of a film is to be determined in relation to the circumstances of its presentation. The Deep Throat decision has further narrowed the legal concept of obscenity. The concept of obscenity is now effectively restricted to public displays of pornographic material and to its exposure to minors. Furthermore, live shows performed for adults in nonpublic places are no longer viewed as an indecent act in the legal sense.

2.1.2. Legislative Developments

In 1972, the Advisory Committee for Legislation on Sexual Crimes presented to the Minister of Justice

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2 13-6-1972, NJ 1973, 297.

Justice a report on pornography. The Committee considers the free expression of one's sexuality to be one of the basic human rights indirectly safeguarded by the United Nations Declaration on Human Rights and the Treaty of Rome. Within this view, the boundaries of the individual's right to express and experience his sexuality are to be determined exclusively by the interests of his fellow citizens. According to the committee, no evidence has been shown to illustrate that pornography has a harmful effect upon adults. As a result of this finding, the committee does acknowledge but two objectives for the law on obscenity: the protection of minors, and the prevention of unexpected confrontations.

The conclusions of the Committee's Report have had considerable impact on the jurisprudence of the High Court and on the investigation and prosecution policies of the public prosecutors. Furthermore, in accordance with the Advisory Committee's main recommendations for legislative changes, a Bill was presented to Parliament in 1979 to amend the laws on pornography. The Bill proposed to replace the existing Sections on pornography with the following revisions:

> Section 240 states: anyone is liable to imprisonment not exceeding two months or a fine not exceeding ten thousand guilders (approx. $5,000) who knows or has a serious reason to suppose that a picture or object offends the norms of decency, and

> either displays it on or at a public place or mails it to an individual, unsolicited.
>
> Section 240(a) states: anyone is liable to imprisonment not exceeding two months or a fine not exceeding two thousand guilders (approx. $1,000) who distributes, offers or shows a picture or object, whose presentation to a minor can be considered harmful to persons under the age of sixteen, or to a person he knows or reasonably should have known to be under the age of 16.

In other words, the new Bill seeks to limit the prohibition of pornography to obtrusive forms of distribution and to lower the age of protecting minors from 18 to 16.

The same Bill, further seeks to repeal existing Sections on exhibitionism by introducing a law to prohibit the performance of indecent acts in public or in places accessible to minors. According to a memorandum explaining the purpose of the Bill, recreational nudism will not be considered indecent if it is performed on beaches or in other areas designated for that purpose by the local authorities.[3] The Bill has been favourably received by most members of Parliament, but it has not yet been passed, mainly due to the critical opposition of feminist groups. In the last section of this chapter, we will discuss the feminist groups' opposition to the proposed Bill which is still pending.

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3 Second Interim Report of the Advisory Committee on Legislation on Sexual Crimes, The Hague, 1972.

2.1.3 The Availability of Pornography

As the concept of pornography cannot explicitly be defined, it appears to be impossible to assess its prevalence in the Dutch society. Some indications of this however, can be presented. In 1977, the Research and Documentation Centre of the Ministry of Justice conducted a survey among the Mayors of 827 cities in The Netherlands regarding their city's experiences with commercial sex. According to the report,[4] there are approximately 500 specialized shops providing hard core pornography and sex articles distributed over approximately 100 cities. About half of these establishments also show hard core pornographic films. In addition, live shows, and, or, pornographic films are being presented in approximately 250 so called sex clubs. A large majority of the Mayors have indicated that over the past two years there had been no significant increases or decreases in the number of sex businesses.

According to a recent press publication, the sales of women's and men's magazines have declined since the early seventies. However, the sales of pornographic video cassettes, which are mostly imported from the U.S.A., have shown a sudden increase. An estimated 100,000 pornographic video cassettes are said to be sold annually in The Netherlands.[5]

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4 At present, large sections of the Dutch beaches have been assigned as nude beaches by the Mayors.

5 Ms. C. van der Werff a.o., Commercial Sex Business in The Netherlands, Research and Documentation Centre, Ministry of Justice, Oct. 1978 (in Dutch).

2.2 Law Enforcement Policies

In 1970, the Assembly of Prosecutors General issued national guidelines for the investigation and prosecution in the case of Section 240 of the Penal Code (pornography). The 1970 guidelines can be seen as an attempt to give a specific material definition to the legal concept of "an offence against the norms of decency." However, the adoption of the new more permissive standards of obscenity by the High Court in 1970 made these guidelines obsolete within a month after they were issued.

In 1976, the Assembly of Prosecutors General updated their national guidelines to reflect the new judicial standards of obscenity. The prosecutors were instructed to attune their law enforcement policies to those of local authorities. Prosecutions on pornography were to be initiated only if the acts or materials at issue are indecent according to the standard of the large majority of the national population; if the material was displayed in public, and if local members of the community have complained. In addition, the Assembly, anticipating the abolishment of film censorship for adults, gave instructions for initiating criminal procedures against cinemas with fifty seats or more who presented hard core pornography films. But the latter part of the guidelines were rendered inoperative by the Deep Throat decision of the High Court in 1978.

In 1979, a working group of prosecutors drafted a memorandum on investigation and prosecution policies of commercial sex businesses. Concerning pornographic acts or materials, the memorandum recommended a restrained law enforcement policy. This policy was to be directed exclusively against public displays (including unsolicited mailing) and against the presen-

tation of pornography to persons under the age of sixteen. The memorandum further recommended that all national guidelines on pornography be repealed and that future policies on prosecution be developed locally in close consultation with the mayors. Although no formal announcement was made to that effect, the above recommendations have all been implemented. Presently, there are no formal national guidelines on the investigation and prosecution of pornography.

The number of convictions for pornography offences has declined rapidly since 1960. In 1980, only two persons were convicted of committing offences under Section 240 of the Penal Code and there were no individuals convicted under Section 451 (distribution of pornography to a minor). Locally, some measures of control are still exercised on the performance of live shows and, or, on the exterior display of sex articles or sex magazines by specialized shops. In most parts of the country however, there are no formal controls being exercised on sexually arousing performances, films presented to adults, and on the dissemination or public display of explicit sexual materials.

2.3 Public Attitudes Toward Pornography

2.3.1 Public Opinion Research

A 1970 Gallup poll showed that 60% of a national sample was of the opinion that the purveyance of pornography to adults should not be prohibited by the law. In 1972, a more extensive national survey was conducted on the same subject.[6] In this study, 89% of the respondents said that adults should be allowed to

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6 Revu. Porno News, stigl. 24-2-1984.

read or see any sexual material. In response to another question, 71% percent claimed that they did not consider the present availability of pornography to be a serious problem. A majority of the people sampled however, stated that they would personally be annoyed if confronted with sexually explicit material in the following ways: unsolicited mailing of sex magazines (71%), exterior display of sex magazines in shop windows (75%), or unexpected presentation of sexual acts on television (54%). On the other hand, a clear majority stated that they would not be annoyed by various other, less sudden, confrontations with pornography (e.g., magazines displayed in a bookshop, sexual acts in a film presented in a cinema, etc.). These results were interpreted by the researcher as evidence for a general climate of tolerance toward nonobtrusive forms of distributing pornography.

In 1981, The Netherlands Foundation for Statistical Research conducted a study on twenty different social problems[7] in Holland. The study found that the availability of pornography was rated as the least pressing social problem. Three percent of the people surveyed considered pornography to be a topic of interest for the population at large. Only one percent of the sample indicated any emotional involvement with pornography as a social problem.

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7 T. Schalken, Pornography and Criminal Law, Ph.D., Leiden University (in Dutch, with an English summary), Gouda Quint, Arnhem, 1972.

2.3.2 The 1979 Bill on Pornography and the Feminist Critique

In most respects, the 1979 Bill on pornography would result in the public prosecutors continuing their present tolerant policies. The new Bill however, would probably induce the prosecutors to move towards a more active enforcement policy against anyone who displays pornographic material externally (e.g., window displays) in a manner that offends the public. In this case, the law would somewhat redress the previous trend towards de facto legalization of pornography.

Since the mid seventies, the free availability of pornography in The Netherlands has not encountered any discernible opposition from the public at large. Recently however, the 1979 Bill on pornography came under attack from several authors and groups.[8] According to some authors, pornography is degrading to women and therefore, should be outlawed. Other critics of the Bill assert that violent forms of pornography and pornography involving children are criminogenic factors.

In 1982, the Council for the Emancipation of Women, an official government body, issued a negative opinion on the Bill. The Council urged the State Government to commission research into the possible causal relationships between certain forms of pornography and deviant sexual behavior and into the extent to which coercion is exerted upon models participating in the production of pornography.

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8 Multi-Dimensional Indicators of Involvement with Social Problems, Report II, 1981, The Hague (in Dutch).

In 1983, the Minister of Justice and the Minister for the Emancipation of Women, issued a joint report on the future policies concerning sexual offences against women and girls.[9] The report announced that the government will commission a research project on the use of coercion upon pornography models. The government will sponsor groups or institutions which will try to develop a view of female sexuality acceptable to women. The report further acknowledges that certain forms of pornography give a dehumanized image of female sexuality. The discriminatory character of such materials could possibly justify the prohibition of its production and dissemination. The government report however, questions whether such a prohibition could be part of the pending Bill. It appears that no final decision has yet been made to this respect.

3. Prostitution

3.1 National Legislation and Jurisprudence

Since 1911, The Netherlands Penal Code contains Sections which penalize the procuring of minors (Section 250), habitual or occupational procuration (Section 250 bis) and trafficking of women or minors of both sexes (Section 250 ter).[10] The present Section 250 on the habitual procuration of adults however, is likely to be repealed. (The reason for this will be

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9 Women Against Pornography, issued by Women Against Sexual Violence, Amsterdam, Postbos 150241, Amsterdam (in Dutch).

10 Preliminary report on the Policies to Control Sexual Violence Against Women and Girls, Minister for the Emancipation of Women and Minister of Justice, October, 1983 (in Dutch).

discussed in the last paragraph.) In addition, the Penal Code provides a Section on "living off the avails" (Section 423.2). Although these Sections were modified several times, they are retained in the present Penal Code.

In 1983, the Minister of Justice drafted a Bill seeking to repeal the present section "living off the avails" by a new, more limited prohibition of coercive forms of pimping. The proposed Section on "living off the avails" reads:

> Anyone is liable to imprisonment not exceeding eighteen months or a fine not exceeding twenty-five thousand guilders (approx. $12,000) who forces another person by force or any other act, by the threat of force or the threat of any act, to share the profits of her prostitution with him.

Presently, the Bill is being reviewed by the High Council of the State.

3.2 Law Enforcement and Social Policies

3.2.1 The Prevalence of Prostitution

According to authoritative estimates, there are approximately 10,000 female prostitutes, of which 1,000 are under the age of eighteen. There are no national estimates on the number of male prostitutes. However, in Amsterdam the number of male prostitutes has recently been estimated at 2,000.[11]

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11 A minor is legally defined as a person under the age of 21. Procuration is defined as wilfully encouraging someone's immoral mode of life (prostitution).

The 1977 survey of Dutch Mayors revealed that more than 200 cities have some form of prostitution being practiced at approximately 2,500 addresses. Of these 2,500 addresses, approximately 1,000 addresses have prostitutes which solicit their customers from behind windows (so called window prostitution), while at another 1,000 addresses, traditional bawdy houses or purported sex clubs are being operated. According to most of the Mayors, the total size of the sex industry has remained fairly constant over the past two years. Authoritative sources have further noted that the traditional figure of the pimps, who have had a personal relationship with one or more prostitutes, has recently become less prevalent. Presently, there is an increasing number of prostitutes who are employed by the owners of sex clubs. Another significant trend is the increasing number of drug addicted prostitutes who practice the more dangerous forms of prostitution, such as street or highway solicitation.

3.2.2 Municipal Police Regulations

Commercial sex businesses, such as bawdy houses, sex clubs or "fronts" (massage parlours and saunas) are subject to several local planning regulations. Some cities have introduced special licensing schemes and regulations for the operation of massage parlours, saunas, and places where any form of entertainment is provided. These general regulations can also be applied to commercial sex businesses.

Special licences must be obtained from the Mayor for the retail of alcoholic beverages. Recently, the High Court has decided that all commercial sex businesses, serving alcoholic beverages on premises, are subject to the regulations under the Liquor and the Hotel and Catering Industry Act.

In addition, police regulations in approximately sixty percent of all cities prohibit owners and tenants of premises (e.g., houses, buildings, cars, boats) to allow their places to be used for the purpose of prostitution. The High Court has upheld the legitimacy of these bylaws on the grounds that they serve the purpose of protecting the public order and, therefore, have a different purpose than Section 250 of the Penal Code. The regulations usually provide for a system of administrative measures which facilitate their enforcement. The Mayor, for example, is authorized to formally close down the violating business or club and to prohibit all nonoccupants to enter these premises.

Police regulations of most larger cities also contain a Section which prohibits various forms of soliciting for the purpose of prostitution (e.g., street soliciting or soliciting from behind windows). The prohibitions are usually worded in a manner than known prostitutes can be arrested for loitering, standing, or sitting in or at a public place. In some cities, the soliciting by customers has recently been penalized. "Police regulations in The Hague, Utrecht, Arnhem, and other cities list certain streets which are exempted from the prohibition of soliciting. The

Amsterdam police regulations authorize the Mayor to issue a list of the streets where the regulations on soliciting do not apply.

Finally, some cities have passed police regulations authorizing the Mayor to notify individual persons (common prostitutes) that for a period not exceeding three months they are not allowed to be present in certain areas of the city during certain hours unless they are using public transportation.

The High Court has upheld the constitutionality of the regulations on soliciting.

3.2.3 Law Enforcement and Social Policies

In 1976, the Assembly of Prosecutors General issued national guidelines for the investigation and prosecution of prostitution. According to these prosecution guidelines, Section 423.2, "living off the avails," is no longer to be actively enforced, as prostitutes are unwilling to testify; an active enforcement policy is to be taken against the "procuring of minors"; and a restraint and selective law enforcement policy is to be used against the operators of bawdy houses and sex clubs. The latter prosecutions under Section 250 bis are to be initiated only when the activities occur outside the traditional designated areas for prostitution; where the public is offended; minors are unduly exposed to the manifestation of prostitution; or where prostitution causes a public nuisance. These guidelines however, have been repealed and no other guidelines exist.

In the same year, the Police Committee of the Association of Dutch Cities issued a report on the municipal policies on prostitution.[12] The report presented a detailed description of the current law enforcement and administrative policies in the larger towns. The report claimed that these policies impose a form of selective control over the manifestations of prostitution. The administrative and enforcement policies are typically aimed at a stringent enforcement of all police regulations concerning bawdy houses and street or window soliciting in all areas except those zoned specifically for prostitution. In most towns, police regulations provide the legal framework for these policies by explicitly exempting certain areas from the prohibition of soliciting. The policies of selective control are supported by means of informal police directives. In Amsterdam for example, the police do not arrest the owners or managers of existing bawdy houses in the inner city if they comply with the following rules: no prostitutes below the age of 21 or with a foreign nationality; no involvement in any other criminal activities; no blatant forms of soliciting; and no attempts at expansion.

The policy of selective control is often further supported by means of administrative measures. In some towns, the owners of bawdy houses or sex clubs who comply with the rules were issued formal licenses for the retail of liquor and, or, the presentation of films or other forms of entertainment. In The Hague for

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12 Scholtes, J.I.T., Prostitution, Data and Ideas, Mr. A. de Graaf Foundation (foundation seeking the social integration of prostitutes), Amsterdam, 1980 (in Dutch).

example, the city has recently decided to close off three "prostitute streets" to motorized traffic and to improve the condition of both the streets and the houses. The owner of the sex clubs have agreed to collaborate with the city in the latter improvements. The provision of the Penal Code prohibiting procuring (Section 250, bis) prevents the Mayors from licensing bawdy houses in an explicit manner. The report urged the central government to repeal this Section in order to give the cities more scope for the implementation of a policy of selective control.

In 1977, the Advisory Committee on Legislation on Sexual Crimes, issued a report on prostitution which generally endorsed the ideas expressed in the report of the cities.[13] The committee however, does not adopt the recommendation to repeal Section 250 (bis).

In 1979, a working group of prosecutors drafted a memorandum on the law enforcement policy for prostitution, which supported most of the views expressed in the two reports previously discussed. The group recommended that the 1976 guidelines should be repealed and future policies be determined at a local level after the Mayor was consulted, and the owners of commercial sex businesses were to be arrested preferably for violating local police regulations. The group however, recommended that Section 250 (bis) in

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13 Municipal Policies on Prostitution. Association of Dutch Cities, The Hague, 1976.

the Penal Code should be retained on the grounds that the Section may be needed as a last resort in the future. The working group were of the opinion that the intention of this Section (250) does not prevent the adoption of local regulatory schemes to control prostitution. As a result of these recommendations, the 1976 national guidelines for the investigation and prosecution of prostitution were repealed.

In 1980, twenty persons were arrested for procuring minors of which eleven have been convicted. Two persons were arrested for Section 250 (bis)(procuring), of which neither was convicted. According to a memorandum on the 1979 working group of prosecutors, a small number of persons are annually prosecuted and convicted for violating local police regulations on prostitution.

Regarding medical and health regulations, the local governments of some cities provide a special facilities clinic for the prostitute but, the prostitutes are under no obligation to get a physical examination. It is also worth mentioning that research in Holland has indicated that venereal diseases among prostitutes are less prevalent than among the general population.[14]

3.3 Public Opinion and Current Policy Trends

The subject of prostitution has never been included in an opinion poll in The Netherlands. It is generally assumed however, that the public at large is not strongly opposed to the current permissive policies of selective control.

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14 Third Interim Report of the Advisory Committee on the legislation on sexual crimes, Prostitution, The Hague, 1977 (in Dutch).

The 1977 survey among the Mayors from all Dutch cities, found that some form of prostitution existed in 202 of these cities. Of these 202 cities, 72 of the Mayors claimed that prostitution has generated some kinds of problems within the city. The most frequently cited problems appeared to be complaints of local residents about unwanted exposure to prostitution (42 cities), extensive noise (32 cities), unfair competition with normal pubs (29 cities), and adverse effects upon real estate prices (27 cities).[15] The Mayors of 13 cities reported that no satisfactory solutions have been found for these problems. An analysis of these findings indicates that street and window prostitution cause more problems than bawdy houses and sex clubs.

In some towns, local authorities appear to be successful in restricting most forms of prostitution to certain areas without generating too much opposition from the residents of these areas.[16] In Utrecht, the area concerned is scarcely populated; in The Hague, the city has offered financial support to those residents who decided to move to another area; and in Arnhem, the prostitution business is concentrated in a traditional red light district. In response to strong opposition from residents, the Mayor of Rotterdam has closed down all commercial sex businesses in the traditional red light district. The city however, has not succeeded

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15 Scholtes, J.T.I. Prostitution, Data and Ideas.

16 Schapenk, A.G.W., Prostitution Penal Law, Local Administration, in: Anti-revolutionaire staatskunde, Aug. 1977 (in Dutch).

in assigning a new "concentration area" for prostitution. The decision by the city of Rotterdam to license the exploitation of two ships as brothels was reversed by the High Council of State (Federal Court) on the grounds that the city would contravene Section 250 (bis) of the Penal Code. This last decision has caused the Mayors of Rotterdam and Amsterdam, several other public figures, and concerned groups to urge the central government to repeal Section 250 (bis).[17]

Recently, the feminist movement has expressed views that prostitution is as a symptom of a sexist society. Given the present situation however, the feminists argued that the prevention of exploitative and coercive forms of prostitution should be given high priority. Prostitutes should also be given the same legal and social protection as other workers. For this reason, some feminist authors support commercial sex businesses which are operated by a collective of prostitutes. In order to facilitate the operation of such businesseses, these authors also urge the government to repeal Section 250 (bis).[18,19,20] In March, 1984, the Minister of Justice publicly announced his intention to repeal Section 250 (bis).

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17 It must be noted, however, that once an area has officially been zoned as an area for prostitution, the real estate prices within that area tend to increase in value, as managers of sex clubs are willing to pay higher prices.

18 Scholtes, J.T.I., The State as Censor of Mores, in: Intermediair, 22 May 1981 (in Dutch).

19 Mooyen, J., Prostitution and the Sections 250 bis and 432 of the Penal Code, in: Trema (Journal of the Dutch Judiciary), October 8, 1982.

20 Report of the Conference on Sexual Crimes Against Women and Girls, The Hague, September, 1982 (in Dutch).

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CHAPTER IV

EXPERIENCES WITH PORNOGRAPHY AND PROSTITUTION IN THE FEDERAL REPUBLIC OF GERMANY

1. Introductory Remarks

The Federal Republic of Germany is a federation of ten states with approximately 60 million inhabitants.

The legislative power is exercised primarily by the Bundesrat (federal Parliament). The constitution embodies the Bundesrat with exclusive legislative power in certain fields. In all other fields, including criminal law, the states can supplement federal laws with their own laws but the latter can never suspend federal laws ("federal law over rules state law"). Both federal and state laws can be annuled for contravening the constitution by the constitutional Court (Bundesverfassungsgericht). The Supreme Court is the highest federal court deciding upon the interpretations of legal items. The highest court for administrative law is the Federal Court of Administrative Law.

Criminal proceedings may only be instituted by the public prosecutors, who are career lawyers. German law recognizes the principle of legality, which means that the public prosecutor is bound to prosecute if an offence is made known to him.

2. Pornography

2.1 Legislation

The original Penal Code, (enacted 1871) had a section prohibiting the distribution, recommendation, advertisement, production, storage, exportation of "indecent texts", and the displaying and advertising of sex articles (articles for indecent purposes). In

1900, this section was extended to prohibit the offering of indecent publications to youngsters.

In the sixties, several proposals were put forward for a new law on pornography and in 1970, the socialist government presented a Bill to Parliament seeking to restrict the scope of the prohibition to the distribution of hard core (sadistic and pedophile) pornography, the offering of pornographic materials to youngsters and unsolicited mailings. This Bill was criticized, particularly by representatives from the Catholic Church. In order to accommodate the critics, Parliament made several amendments to the Bill. The amendments enlarged the scope of the prohibition by penalizing the presentation of pornographic films in cinemas and on television, and the display of pornography in shop windows, so forth; by expanding the section on the distribution of hard core pornography to include the portrayal of sex with animals; and byintroducing a special section prohibiting the production and distribution of violent pornography as an offence against public order.

In a memorandum explaining the Bill, the government and several German penal experts, asserted that penal law should not seek to uphold certain standards of decency as a goal in itself. Sexual manifestations should only be penalized to the extent that they demonstrably damage the interests of individuals or the community. The penal experts who were consulted by a special committee however, did not testify to the harmfulness of pornography for adults. For this reason, the government gave priority to the right of individuals to determine their own way of life and

therefore, to liberalize most nonobtrusive forms of pornography. This liberalization would admittedly make it difficult to prevent the distribution of pornography amongst youngsters. The partial liberalization of pornography however, would enable law enforcement authorities to focus their efforts upon the distribution of pornography among the young. The Bill was enacted by Parliament in 1973.

In the present Penal Code, a distinction is made between the laws on common pornography and hard core pornography. Section 184(1) of the Penal Code punishes anyone who offers pornographic materials to persons under the age of eighteen; has an exterior display of such materials, and their unsolicited mailing; presents pornographic films in public places where the charge of admission is mainly meant for the presentation of a film; and prohibits the export of pornography to other countries. Section 184(2) prohibits the presentation of pornography on television and the radio. Section 184(3) on hard core pornography, penalizes the production and all forms of distribution of pornographic materials portraying the use of violence, the sexual abuse of children, or sexual acts of humans with animals. The maximum penalty for all pornography offences is one year imprisonment.

Part XIII, Section 131 of the Penal Code, which deals with offences against public order, prohibits the production and distribution of hate literature and violent pornography (not necessarily related to sexual acts). This section makes anyone who produces, distributes, displays, advertises, imports or distributes to minors "materials which depict acts of violence against human persons in a cruel or otherwise inhumane way and

thereby, glorify or treat as harmless such acts or which incite to racism" is liable to imprisonment not exceeding one year. This separate prohibition of "violent pornography" is unique in Europe and possibly throughout the world.

The Law on the Protection of the Young in Public Places contains a Section prohibiting the public presentation of films likely to be detrimental to the development of youth towards physical, moral or social fitness. The highest state authorities for the protection of youth are entitled to license films and to certify them as fit for the age groups under 6, 12, 16 or 18. Anyone who contravenes this prohibition or who by so doing thoughtlessly endangers a child or youngster in his development, is liable to a fine.

The Law of 1965, against the dissemination of materials which are harmful for the young (the so called Filth and Smut Statute) embodies the Federal Board of Censorship with the authority to put publications or other materials which are deemed harmful for youth on a special list. All materials listed may not be made available to persons under the age of eighteen. Written, pictorial or audio visual materials are deemed harmful for the young if they endanger their moral development, especially by being indecent, coarsening, or by inciting to acts of violence, crime, racism or glorifying war. Materials not listed, but covered by the definitions of pornography in Sections 131 and 184 of the Penal Code, or which seriously endanger the moral development of the young, can not be distributed among the youth. All these contraventions

are punishable with imprisonment of up to one year.

A special law prohibits grossly offensive advertisement for anticonceptives, stimulantia, and so forth. Finally, the Law on Commercial Activities (Gewerbe-ordnung) makes it obligatory for the managers of sex clubs which perform live shows, peep shows, etc., to apply for a license with the municipal authorities. According to this law, such licenses are not to be issued if the performances concerned will contravene positive law or morality.

2.2 Jurisprudence

The concept of pornography in Section 184 of the Penal Code was interpreted by the courts in the following way. A depiction is considered pornographic if it thrusts into the forefront sexual acts in a grossly obtrusive way and with the exclusion of all other aspects of human relations, and if its general purport is exclusively or predominantly aimed at a lustful interest in sexuality. In determining the pornographic character of any material, the courts do not take into account the subjective meaning given by the author. The courts have unanimously held that the mere portrayal of a naked female or male body, sex organs, or sexual acts, including sexual intercourse, is not by itself pornographic. The mere depiction of sexual acts by a child or of children in obscene postures is not considered to be hard core pornography as defined in Section 184(3) of the Penal Code.

The higher courts have delivered several decisions on the meaning and constitutionality of various specific elements of Section 184 of the Penal Code. The

Court of Constitutional Law (Bundesverfassungsgericht) has especially been asked to comment upon the constitutionality of the subsection prohibiting the presentation of pornographic films in ordinary public cinemas (e.g., cinemas which collect an admittance fee predominantly meant for the presentation of a film). According to a memorandum explaining the purpose of the Bill, this subsection wants to prevent the presentation of pornographic films to youngsters. The legitimacy of this prohibition however, was questioned with the argument that the licensing scheme of the Law on the Protection of the Young already sufficiently prevents the presentation of pornographic films to youngsters. The Court of Constitutional Law decided that the licensing system does not provide a sufficient amount of protection for youth, as ordinary cinemas can never prevent the incidental admittance of a youngster. Therefore, Section 184 regulations on films are not superfluous. Nevertheless, the courts found it extremely difficult to decide upon whether or not an admittance fee was collected "predominantly" for the presentation of a film. Presently, various courts apply quite different standards in determining this question. According to the Supreme Court (Bundesgerichtshof), this question must eventually be resolved by the legislator.

The Section on violent pornography (Section 131, P.C.) has also created severe of interpretation problems. The courts do not readily assume that a depiction of violent acts, however cruel or inhumane, glorifies such acts or portrays them as harmless. Consequently, the scope of the prohibition is very limited.

In a 1981 Federal Court of Administrative Law (Bundesverwaltungsgericht) claimed that the licensing by some municipal authorities of peep shows, should not be licensed as they are in contravention of morality. The Court was of the opinion that peep shows are injurious to human dignity, which according to the constitution is to be upheld against the wishes of the persons concerned. The Court decided that the mere exposition of a naked female body is not sufficient to injure human dignity and that other forms of live shows can still be licensed. The Court noted, that given their special characteristics (their automated procedures, the dehumanizing isolation of female bodies, and the opportunities given for masturbation) peep shows are to be considered particularly immoral.

It is still unclear what impact this verdict by the Court will have on the licensing of peep shows.

2.3 Law Enforcement

There are no special guidelines for the prosecution of pornography cases. In Hamburg, prosecutors may not initiate proceedings under Section 184 of the Penal Code, or any of the Sections in the Protection of the Young Law, against a first offender. Recidivists are usually offered the opportunity to pay a fine in order to avoid a conviction by the courts.

The Hamburg police force has a special unit for the protection of the young. This unit periodically inspects shops that sell forbidden pornographic material to minors. The police unit however, found it practically impossible to control the admittance

policies for cinemas, peep shows, etc., with regard to youngsters.

Since 1982, the Federal Republic has experienced a boom in the sale and renting of video films portraying acts of extreme violence. Several video shops that rent video films were known to contravene the Protection of the Young Law. Presently, the prosecution of these cases is one of the priorities for the public prosecutors.

An overview of the number of convictions and of the number of cases dismissed by the public prosecutors concerning Section 184 of the Penal Code is presented in Table 4.

TABLE 4

Numbers of Convictions and Cases Dismissed by the Public Prosecutors for Contraventions of the Sections on Pornography in the Penal Code for the Federal Republic of Germany between 1960 through 1982

Year	Convictions	Cases Dismissed
1960	444	unknown
1970	268	"
1971	388	261
1972	510	233
1973	488	303
1974	380	382
1975	298	226
1976	217	190
1977	217	197
1978	163	144
1979	163	108
1980	150	143
1981	120	93
1982	128	103

Table 4 shows that following the enactment of the new law in November, 1973, there is a decline in the number of convictions especially after 1974.

The relatively high number of dismissals seems to bear witness to the difficulty of submitting sufficient evidence for a conviction under Section 184.[1] The usual penalty for these offences is a fine. In 1982 however, 11 persons were sentenced to imprisonment. No statistics were available on the number of convictions for violent pornography. It is generally known however, that very few such convictions have occurred.[2]

2.4 Public Opinion and Current Policy Trends

2.4.1 Public Opinion

No relevant surveys on the attitudes towards pornography have been conducted in Germany. Presently, it appears that the public is not interested in the subject of pornography. Groups who oppose pornographic films, especially taking a view to protect the young, seem to agree that the government should take action in one form or the other against the spread of these films.

On the other hand, the negative decision by the Court for Administrative Law on the licensing of peep shows was severely criticized by penal lawyers and sexologists. The Director of the Department for Sexual Studies at the University Hospital in Hamburg, for example, has characterized the argumentation behind the decision as "backward" and "pathetic."

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1 Cases can be dismised by the prosecutor when he considers the evidence to be weak or when the defendant has agreed to pay a fine (relatively small) to the prosecutor.

2 E. Uschuld, Erfahrungen mit par. 131 StGB in der strafrechtlichen Praxis, in: Recht der Jugent und des Bildungswesen, 25 vol. nr. 4, July/Aug. 1977.

The feminist movement in West Germany appears to be divided on the question of pornographic policies. Some groups demand a total ban of all materials including advertisements that are sexist in character, similar to the antidiscrimination laws in other countries. The same groups also demand a total prohibition of distributing of violent video films because the victims in these films are predominantly of the female sex. Other feminist groups have ambivalent opinions on the use of more repressive measures. They fear that new prohibitions might not be directed against sexist pornography but against all forms of deviant sexual behaviour, including lesbianism. These groups also are concerned with the emergence of a new wave of puritanism that may negatively effect the emancipation of women, which never was one of the movement's objectives. The latter groups are, for example, also strongly opposed to the recent prohibition of peep shows because the women involved will be pushed into prostitution by this new repressive policy.

According to recent estimates, 5,000 video films of a horror and violent nature are for sale in the Federal Republic.[3] The sales of such video films have given cause for concern among a large part of the public.

Since the enactment of the new law on pornography in 1973, the number of rapes registered by the police has declined. This does not confirm nor infirm

[3] Bundestag-Drucksache 10/806, p. 37.

however, the hypothesis of some that the free availability of pornography will generate sexual crimes. Nevertheless, some people assume that the present day video film pornography will indeed generate sexual crimes.

2.4.2 Current Trends in Policy

In December 1983, the coalition government of Christian Democrats and Liberals published a draft document to amend the Law on the Protection of the Young in Public Places and other existing laws (Bundestag-Drucksache 10/722). The draft proposed the following legal provisions against the distribution of brutal and pornographic video films:

1. The dissemination of video cassettes among youngsters will be made subject to the same licensing regulations as ordinary films. This means that video cassettes may only be shown to youngsters if they have been licensed for that purpose by the state authority for the protection of the young;
2. Materials which are harmful for the young may not be distributed among them, regardless of whether they have already been indexed as such by the authorities or not. (This proposal is an amendment to the Law Against the Dissemination of Materials Which Are Harmful for the Young.) It will make the time consuming screening procedures established by this Law less important. The prohibition to distribute such materials will include the renting of video cassettes;
3. Finally, it is the government's intention to modify the existing section on violent pornography (Section 131, P.C.) in such a way that the manufacturers and purveyers of horror, or fighting films, which are socially harmful in a general sense, can be prosecuted more effectively. The production of all materials depicting acts of violence in a cruel or otherwise inhumane way will be prohibited.

> This proposal means that the present requirements for a conviction, that such materials glorify violence or suggest its harmlessness, will be dropped.

It is possible that the above-mentioned proposals will be enacted in the course of 1984.

3. Prostitution

3.1 Legislation and Jurisprudence

3.1.1 Legislation at the Federal Level

During the 19th century, there werestringent licensing regulations. This system however, was abolished in 1927 and a new law introduced prohibiting certain activities associated with prostitution (e.g., habitual or commercial procuration and living off the avails). During the reign of the national socialist party (1933-1945), the legal situation remained basically unchanged. The prostitutes themselves however, were subject to extremely repressive measures. Many of the prostitutes were detained under the laws on the Sterilization of Habitual Offenders and The Socially Unfit laws of 1933. From 1939, persons with venereal diseases amongst whom many were prostitutes, were detained in special institutions and later many of them were gassed by way of "euthanasia."

In 1970, a Bill was presented to Parliament for a new Penal Code containing revisions of prohibitions on prostitution. The government asserted in a memorandum that the moral harm done by the encouragement of extramarital liaisons did not by itself justify penal prohibitions. Procuration should only be prohibited with the aims of protecting the young and protecting

the interests of the prostitutes themselves. Concerning the latter objective, the government observed that few persons enter the profession of prostitution voluntarily and that all prostitutes run a great risk of being made dependent upon others or being socially harmed in other ways. The 1970 Bill which was finally enacted in November, 1973, includes several sections on procuration. Section 180 prohibits the procuring of minors under 18 years ("putting such persons in a position where they can prostitute themselves for personal gain or assisting them therein by means of mediation"). In addition, Section 180(a)(4) makes anyone liable to imprisonment, who leads someone under the age of 21 into prostitution or urges such a person to start or continue prostitution.

According to Section 180(a), a person who operates an establishment in which others prostitute themselves, is liable to imprisonment for "procuring":

> if the prostitutes are kept in a position of economical or personal dependency; if the prostitution is furthered by other means than by the simple provision of rooms and the usual accompanying services; if the prostitutes who are provided with lodgings are urged to prostitute themselves or are exploited financially for that purpose; if prostitutes are actively recruited; and, if prostitutes under the age of eighteen are provided with facilities of any kind.

Section 181(a) makes anyone liable to imprisonment for "exploitative pimping" who maintains a personal relationship with a prostitute and (a)

exploits her; (b) supervises her work for his own financial gain; (c) takes measures which prevent her from giving up her profession; and (d) facilitates her work in a business like manner by bringing her into contact with clients.

Section 181 makes anyone liable to imprisonment for "trafficking in human persons," who induces someone to be a prostitute by using violence, by threatening her or by applying a ruse; or, who recruits, or abducts someone, with the aim of compelling her to perform sexual acts by exploiting her vulnerability in a foreign country.

Finally, Sections 184(a) and 184(b) of the Penal Code, are directed against certain activities performed by prostitutes. Section 184(a) penalizes repeated contraventions of local bylaws prohibiting certain forms of solicitation (to be discussed below), while Section 184(b) prohibits prostitutes to solicit clients in the vicinity of schools or other places frequented by youngsters.

Each state within the Federal Republic of Germany is explicitly authorized by law within the Federal Penal Code of 1973, to pass bylaws prohibiting prostitution in certain parts of the towns and, or, during certain hours with the aims of protecting the young or protecting public decency. These bylaws however, may not ban prostitution altogether in towns with a population of more than 50,000. Towns must have at least one area exempted from this prohibition. All states have enacted such bylaws except for West Berlin, which repealed its prohibitions of soliciting in 1970.

The Law on the Repression of Venereal Diseases of 1954 authorizes health institutions in the states to demand medical examinations for anyone who is seriously suspected to have a venereal disease. According to this law, the states' health institutions can demand that prostitutes must register themselves and appear for regular medical checkups. All states have enacted state laws governing the details of these obligatory medical examinations.

Finally, any foreigner who acts as a professional prostitute can be deported under Section 10 of the Law on Aliens.

3.1.2 Legislation in the State of Hamburg

All states, except West Berlin, have passed bylaws designed to control street solicitation. In this report, the regulations of the State of Hamburg will be discussed by way of example. It must be pointed out however, that the State of Hamburg, with its international harbour is not typical of the other German states.

In 1980, the State of Hamburg passed a law prohibiting street or window solicitation in those parts of the city of Hamburg which have traditionally attracted prostitution. In these parts of the city, public solicitation is permitted between the hours of 8 p.m. and 6 a.m. On one particular street however, the Herbertstrasse in the district of St. Pauls, solicitation is still permitted during the whole day. The entrances to this last street are blocked and youngsters and women are not allowed. The prohibition is meant to diminish the nuisances caused by street

solicitation within the inner city of Hamburg. In other cities (e.g., München), the prohibitions are aimed at totally banning prostitution from the inner city.

In the State of Hamburg, all prostitutes are legally required to register themselves at the bureau of the central health inspector and to visit this bureau for a weekly medical examination. The enforcement of this regulation is the sole responsibility of the health inspector.

3.1.3 Jurisprudence

Concerning the new sections on "procuring" and "pimping" the courts have made a series of important decisions on the meaning of certain terms. The city of Hamburg has two "eros centres" (e.g., blocks of apartments with approximately 150 rooms that are rented to prostitutes for the reception of customers). The owners and managers of these "prostitution centres" cannot be convicted under Section 180(a) of the Penal Code (procuring), as long as they only provide basic facilities to prostitutes.

The operators of "call girl" businesses contravene the prohibition of procuring, because they usually recruit prostitutes. When customers are brought into contact with a particular prostitute by means of a personal communication with the operator of such business, the latter can also be convicted for pimping. The regular reception of large sums of money from a prostitute does not by itself constitute the crime of "exploitative pimping" (Section 181(a)). To be convicted under this Section, a person must have

grossly exploited the labour of a prostitute or exerted some form of undue influence upon her (e.g., by making use of a position of psychological dominance).

The simple provision of physical protection during work does not constitute the crime of "supervisory pimping" (Section 181(a)). To be convicted under this Section for instance, a person for instance, must control the payments to a prostitute.

A person cannot be convicted for trafficking in human persons (Section 181) if the woman involved was informed in advance of the purpose of her trip abroad. In such circumstances, the organizer of the trip cannot be said to have exploited her vulnerable position in a foreign country.

3.2 Law Enforcement and Social Policies

3.2.1 The Size and Nature of Prostitution

In 1973, the number of prostitutes per 1 million inhabitants was estimated at 1,500 in the large urban areas of West Germany.[4] On the basis of this rate, the total number of prostitutes in West Germany can be estimated at approximately 30,000.

In Hamburg, 1,688 female prostitutes were registered with the health inspector in 1979. Every month, approximately 70 new prostitutes are registered. There were no clear trends in the number of prostitutes since 1970. According to the Hamburg police, nonregistered prostitutes out-number the registered ones. In a recent monograph on prostitution in Hamburg, the total number of prostitutes was estimated to be at its lowest rate, with 4,500

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4 Kerner, H.J., Professionelles und organisiertes Verbrechen, Wiesbaden, 1973.

(Kahmann, Lanzerath, 1983). According to the Hamburg police, the number of prostitutes has increased since the mid seventies.

In Hamburg, like elsewhere in Germany, prostitution takes four main forms: street solicitation and solicitation in bars, etc.; prostitution in so called eros centres; special prostitution streets (window solicitation); and prostitution in private sex clubs and fronts (including call girls). In Hamburg, the police have identified approximately 100 to 120 sex clubs and fronts. The daily rent of the rooms is approximately 65 DM ($30 Cda). Consequently, only prostitutes who have many customers can afford to work in these centres. Their average daily earnings are approximately $200 Cda.

Since the mid seventies, the number of prostitutes offering their services in small ads in local papers is on the increase. They receive their customers in their own flats or meet them in hotels. The number of sex clubs outside the traditional red light districts has also increased. As a result of these trends, a second prostitution "market" has developed outside the traditional districts within the inner city. According to the police, the number of very young prostitutes working in private clubs, are increased. Most prostitutes in Hamburg, especially the younger ones, maintain a relationship with a pimp.

3.2.2 Law Enforcement

There are no guidelines or directives for the prosecutors or the police on prostitution in Hamburg.

The municipal police keeps under surveillance the traditional red light districts including the eros centres. The new regulations prohibiting street solicitation in certain parts of the city during day time are actively enforced by the police. Since the local courts of Hamburg demand clear evidence that a prostitute has effectively contacted a customer, the police have occasionally made use of decoys (police officers presenting themselves as potential customers). In spite of these efforts, the goal of containing street solicitation within certain areas has not yet been achieved.

According to the police, the investigation of cases of (exploitative) procuring or pimping is extremely difficult because the prostitutes are seldom willing to testify before a judge. If a prostitute files a serious complaint, the defendant is usually arrested at once and brought before the investigative judge. Quite often however, such cases are eventually dismissed due to the lack of evidence. It is expected that newly established units of the police specializing in organized crime and employing undercover agents, will be capable of investigating cases of exploitative pimping and trafficking more effectively.

The following table presents the number of convictions under sections 180, 180(a), 181, 181(a)and 184(b) of the Penal Code since 1975.

TABLE 5

Convictions Under the Section 180 (Procuring of Minors), Section 180(a) (Illegal Procuring), Section 181 (Trafficking in Women), Section 181(a) (Exploitative Pimping), Section 184(a) (Illegal Prostitution), and Section 184(b) (Prostitution Endangering the Young), of the Penal Code for the Federal Republic of Germany for the Years 1975 through 1982

	Section of the Penal Code					
	180	180(a)	181	181(a)	184(a)	184(b)
1975	95	42	16	290	579	0
1976	61	71	24	184	680	2
1977	50	96	14	160	583	7
1978	39	82	25	163	638	2
1979	43	70	17	126	587	2
1980	29	74	28	114	481	2
1981	35	89	27	103	306	2
1982	32	95	18	104	343	1

Source: Statistishces Bundesamt

In the cases of Section 180 (procuring of minors) and Section 180(a) (illegal procuring), the usual penalty given is a fine or a suspended sentence of imprisonment. Under Section 184(a) (illegal prostitution), the usual sentence for conviction is a fine. Defendants under Section 181 (trafficking in women) and Section 181(a) (exploitative pimping) however, are usually sentenced to a term of imprisonment (for 181(a) the average term is approximately 1 year).

3.3 Public Opinion and Current Policy Trends

There have not been any studies on the public's view on prostitution. It can be said however, that the women's movement in West Germany generally rejects all repressive measures directed against prostitutes.

Although prostitution is condemned as an expression of the repression of women in society, all repressive forms of controlling prostitution are rejected for being counterproductive. By such policies, the goal of repressing prostitution is not achieved at all while the prostitutes themselves are greatly victimized by it. For this reason, the women's movement in West Germany urges for improvements in the social position of prostitutes and the repeal of all existing prohibitions with discriminatory features.

The Bureau for the Emancipation of Women,[5] an official body established by the senate of the State of Hamburg, advocates the repeal of the existing bylaws prohibiting street solicitation in certain parts of the city. These prohibitions are a burden for the prostitutes and have not achieved their aims. The Bureau is also critical of policies aimed at containing prostitution within a few narrow areas in the city. This policy makes the prostitutes more dependent upon the landlords and gives the pimps optimal conditions for controlling "their" prostitutes. Finally, the Bureau supports the demand of many prostitutes, for the abolition of the discriminatory regulations on medical examinations. Although no formal statements have been made to that effect, it is to be expected that the system of obligatory registration and weekly visits to the health inspector will indeed be abolished in the near future. The present day availability of effective medicines against most venereal diseases has made the need for such an expensive system less urgent. A federal committee of governmental experts has

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5 Leitstelle zur Gleichstelling der Frau.

recently drafted a proposal for a new law which would make visits to a special clinic for veneral diseases optional.

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CHAPTER V
EXPERIENCES WITH PORNOGRAPHY AND PROSTITUTION IN DENMARK

1. Introductory Remarks

Denmark is a constitutional monarchy and a unitary state with a population of five million. Legislative power is held by a unicameral Parliament. The judicial system contains approximately eighty-four courts, two high courts and one Supreme Court. The Minister of Justice is responsible for prosecution and is represented by a Director of Public Prosecutors. At the first level, however, the prosecution is presented by lawyers working for the Chiefs of Police. The police lawyers are given general directions from the Director of Public Prosecutions. Danish law adheres to the principle of legality. Deviation from this principle is permitted only within very narrow limits.

2. Pornography

2.1 Legislation and Jurisprudence

From 1939 to 1967, Section 234 of the Danish Criminal Code had the following text:

> Subsection 1. Anyone shall be liable to fine, simple detention or, under aggravating circumstances, imprisonment up to six months, who:
>
> 1. offers or hands over obscene writings, pictures or objects to a person under 18 years of age;
>
> 2. publishes or distributes, or with such an intention makes or imports obscene writings, pictures or objects;
>
> 3. arranges public addresses, performances, or exhibitions of an obscene content.

> Subsection 2. If the mentioned actions are committed for commercial purpose, fines can only be used as penalty under especially extenuating circumstances.
>
> Subsection 3. Anyone who, for the purpose of gain, publishes or circulates or with such intention makes or imports written material, or pictures which, without being actually obscene, must be assumed to have a purpose commerical speculation in sensuality, shall be punished with a fine or simple detention for any term not exceeding one year.

Section 234, Subsection 3, was not included in the original version introduced in 1930 (proclaimed in 1933) it was inserted in 1939 in an attempt to extend the scope of "obscenity" to correspond with the worldwide puritan movement of the 1930's. However, in practice Subsection 3 was hardly ever used. Over the years convictions according to Section 234, although were few, were mainly concerned with importers and purveyors of foreign pornographic literature. In 1957, an English version of Cleland's Fanny Hill was found to violate the law along with a number of other books, but in 1965, a Danish (unexpurgated) translation of that same book was found not to be in violation by the Supreme Court. This clear indication of a change in the legal view of what was to be considered obscene was the reason for the Minister of Justice directing the Permanent Penal Law Committee to investigate the question of obscenity and make recommendations for a penal law reform.

The Permanent Penal Law Committee (1960), supporting its recommendations upon reports from, among others, educationalists, psychologists, criminologists, and a

report from the Medico-Legal Council[1], proposed a repeal of the ban on obscene writings. It was adopted by the Danish Parliament in 1967 by 159 votes to 13.

From 1967 to 1969, therefore, Section 234 was identical with Subsection 1 of the earlier version, except for the word "writings" which had been deleted. During the ensuing debate in Parliament on this amendment, there was a widespread inclination to extend the repeal to also include obscene pictures, objects, and performances, "if experiences with the present amendment turned out to be as positive as expected." The expected result was mainly a waning of interest in such material when similar interest was no longer spurred by the illegality. By 1969, politicians had become convinced that an absolute effect had in fact occurred (see Kutchinsky, 1973) and without once again asking the Penal Law Committee's advice, the present version of section 234 was adopted in Parliament.

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1 While it was generally agreed that all available evidence pointed in the direction of pornography not being directly harmful to individuals, the following concluding statement of the Medico-Legal Council may be of particular interest:

"On the basis of general psychiatric and child psychiatric experience it cannot be assumed that the direction of the sexual bent, the mental development of the personality or the total attitude toward sexual life and sexual-ethical norms can - in adults or in children - be influenced in a harmful direction through the media here discussed (pornogrpahic literature, pictures or films). Whether these media may have a beneficial influence on a group of inhibited and sexually shy neurotic personalities is doubtful, but can hardly be totally excluded. What has been said here, holds true no matter whether the pornographic publications, pictures, etc. describe normal or perverse sexual relations." (Report, 1966, p. 40). A review of the Penal Law Committee's Report, see Waaben, 1971.

Section 234 (1969) of the Danish Criminal Code, now reads whoever "sells indecent pictures or objects to a person under 16 years of age" is to be punished by fine. According to this law, it is not punishable, for instance, to show, give, send, or lend such material to persons under 16; the mere attempt to sell pornographic material to underage persons is not punishable[2]. According to this legal practice, the main criterion for prosecution with respect to a picture must contain detailed and strongly offensive depiction of sexual topics (including the sexual parts of a single person) in cases where such an illustration cannot be considered justified by artistic merits or by a scientific or educational purpose (Waaben, 1983, p. 99).

Section 235 (1980) has a special provision concerning pornographic photography depicting children. According to this new section, "any person who for commercial purpose sells or in other ways distributes or with such an intent produces or procures indecent photographs, films or the like of children, is punished by fine." The intention of this provision is to protect children against exploitation by the pornography industry[3]. While the very taking of pornographic pictures and films of children, has always been punishable according to other sections of the Penal Code (Sections 232 on indecent behaviour or

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2 The term "indecent" (Danish: utugtig) has been established (only) through trials prior to the 1969 amendments. "ObjectsL" refers mainly to obscene sculptures.

3 Since 1971 so-called "child pornography" has appeared on the market.

Sections 222, 223, 224 or 225 on sexual relations with a child under the age of 15 years) several police investigations of child pornography during the 1970's have shown that it is generally not possible to find the original author of the pictures. The new Act therefore, provides an adiitional means to curb the traffic in child pornography.

Non-commercial traffic in child pornography is not punishable, nor is the sale, publication or distribution of non-pornographic texts, drawings, and other depictions of children. "Indecent" has the same definition as mentioned under s. 234 above, which means, for instance, that the sale, publication or distribution of nude pictures of children (the contents of the majority of photographs in child pornography magazines; see Kutchinsky, 1980 and 1983), is not punishable. The definition of "children" however, has become non-distinct resulting in technical difficulties of proof for the prosecution. To clarify these problems guidelines are provided by the law makers suggesting that age groups under 15 years are children. However, in practice (which has not yet been established in court), the main criterion to define children will probably be whether the courts decide that the child was not yet entered or only just seems to have entered puberty (Greve, Larsen & Lindegaard, 1980, p. 240).

Section 232 of the 1930 Code, contains the same wording as section 185 of the 1866 Penal Code, provides additional protections against offences of indecency involving pornography. It provides punishment (from a

fine up to four years of prison) to any person who "by indecent behaviour violates feelings decency or gives public offence." Under this Section, for instance, a person who sends, shows or reads pornography to unconsenting adults or to children can be punished.

Standard Police Regulations, Section 12(1) defines the public display of writings and pictures "of an offensive (obscene) character,"and section 10(3) proscribes the distribution into houses of such writings and pictures to persons who have not ordered them. While provisions of this nature existed before 1969 "decriminalization" of pornography, they were partly amended and partly imposed in a circular by the Department of Justice in 1969. This was done to ensure that people were not unwillingly exposed to obscenities, whether in the form of displays in pornographic motion pictures, or in the form of advertising brochures from pornography firms distributed to people at random. (See also Greve, Bondo & Schart, 1981, p. 128 and 134ff.)

Similarly, postal laws forbid the mailing of obscene material to persons who have not ordered it. Denmark's continued adherence to international postal conventions forbid the mailing of pornographic material (even solicited) to countries where such material is forbidden. This provision does not apply to the shipment of pornography abroad through private agencies.

2.1.1 Film Censorship in Denmark

Until 1969, all films were censored by the Board of Film Censors. The film could be

classified as being totally forbidden (extremely rarely done), released to all audiences, or restricted to persons under 16 years. Release of a motion picture could depend on removal of certain parts, which were considered by the Board of Film Censors, to be either too explicitly violent or sexual. Criteria of violence and sex were also applied to the child protection rating. The criteria obviously changed considerably overtime and especially during the years before the repeal of the pornography ban and of adult film censorship. During the 1960's, the emphasis clearly changed in the direction of greater leniency regarding nonviolent sex, and eventually only explicit violence became grounds for censorship cuttings.

In 1969, the new Cinema Law removed censorship of motion pictures. Films could be shown to adults in licensed cinemas without passing the Board of Film Censors; however the film had to be labelled, "Restricted to persons over 16 years of age." The board had to approve films that the distributors wanted to show the children. The following ratings could be applied: "Restricted 16 years" using criteria gross violence and hard core pornography or "Forbidden to children under 12 years of age" using the criteria explicit violence and sexual scences.

Until 1972, a very strict licenses system prohibited the showing of films (including pornographic ones) on unlicensed public premises. License to run a public cinema was granted under

tight restrictions and could, in principle, be withdrawn if the owner did not keep up to a certain standard. In practice, however, no interference occurred especially 1969 when a few public cinemas began showing hard core pornographic movies quite regularly, and in 1972 the restrictive Cinema Law was replaced by a very liberal one, where a license was given to any applicant on conditions solely regarding health and fire standards of the premises.

Television broadcasting of films is not subjected to the cinema laws, but films not deemed by the Board to be suitable for children are usually shown late in the evening, and the announcer will comment that the "film is unsuitable for (young) children." Video films for private use are exempt from all censorship and in 1983, a working party of the Governmental Media Commission recommended a voluntary system of "control" implying only positive guidance of video films consumption for children: Lists of recommended video films are to be issued by a board regularly and placed in shops, libraries, and so forth.

2.1.2 The Availability of Pornography

Both production and contents have currently been studied (see Kutchinsky, 1973, 1983). Sales of pornographic material sharply decreased after an initial short period and during the months before and after the repeal of 1972. Due to the easy accessibility of crossing national and language borders, there is a considerable export

of pictorial pornography, which has resulted in a steady level of production.

Regarding the contents of pornography, no significant changes have occurred (except for the disappearance of child pornography over the counter) since the full spectrum of pornography became available around 1971. Contrary to claims[4] that violent pornography is increasing, the fact is that such themes as rape were more frequent in the pornography of the early 1970's than today. The explanation for this seems to be a very local one; one of the significnt producers of pornography in the pre-repeal and immediately post repeal days appear to have been by personal inclination to sadomasochist. The major publication "Weekend Sex", which appeared in several languages, regularly featured a soft core fashion of sadomachochism. When the publisher died in the mid 1970's, his publications reverted to the mainstream of pornography, continually illustrating "ordinary heterosexual orgies".[5]

The selling of pornographic material to minors is not regarded as a social problem in Denmark. If children want pornography, they may

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4 This claim stems from the USA, where violent pornography was only becoming available around 1975.

5 It is estimated that ordinary heterosexual orgies constitute 95% of all pornography. As well, it is estimated that "violent pornography" constitutes between one and two percent of the quantities of hard core pornography, which in turn constitutes about one percent of the printed mass entertainment media.

very easily obtain it. For example, they can view pornography from the small selection of pornographic literature available in some ordinary news stands (this represents no offence, as long as the material is not sold to them) or they can obtain it from vending machines. If one child has a pornographic magazine, it is often passed among the children. Institutions for children have adopted a very permissive attitude vis-à-vis pornography and very positive results of this policy have been reported (see Kutchinsky, manuscript). The general impression is that Danish children, having seen and having such an easy access to pornography, display remarkably little interest in it.[6] Perhaps one of the reasons for this is the obligatory sex education in schools and the easy availability of very explicit sex education and fiction literature on sexual matters for children in public libraries.

2.2 Law Enforcement Policies

Prior to 1960, there were very few prosecutions of pornography, no more than a handful, altogether before hard core pornographic magazines and films began to appear after the mid 1960's. Although large amounts of hard core magazines were seized by the police, there were few prosecutions and in some cases, the material was later returned to the trade people when it became legalized in 1969.

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6 It is unknown to what extent puberty children will use pornography for masturbation.

There have been few prosecutions pursuant to the present Section 234. Only one case is recorded, where the owner of a pornography shop was accused of having sold pornography to persons under 16 by placing a vending machine with pornography outside the shop. The Supreme Court acquitted the defendent in 1971, because the attempt to sell pornography is not punishable and there was no proof that sale to minors had acutally taken place.

Under the 1980 Child Pornography Act, no case of transgression have been prosecuted. In fact, child pornography disappeared from the distributor's catalogues, the shelves of Danish producers, wholesalers and retailers as soon as it became obvious that the Bill would be adopted. The apparent reason for this is that the demand for child pornography was very limited (see Kutchinsky, 1980 and 1983).

Considerable effort was made by police and prosecution to control public disply of pornography, unlicensed film performances (before 1972) and live sex show performances. Since 1969, there is a very specific and relatively restrictive policy on public display of sexually offensive pictures, whereas before the amendment to Section 234 in 1969, whatever was sold inside a sex shop could also be on display in the windows.

Along with the repeal of 1969 police introduced regulations explicitly prohibiting public displays which might be offensive to causual passerby. The policy adopted was much more restrictive than that regarding the definition of obscene in relation to

Section 234 (sale of pornography to minors). A display window (e.g., outside a pornography shop or a cinema showing pornographic movies) was considered offensive and the owner was liable to a fine not only if the show window taken as a whole contained a single picture explicitly showing sexual organs or sexual behaviour. Although the police were actively trying to enforce these regulations, it had taken some years (and the appearance of pornography shops in the most fashionable shopping street of Copenhagen (Stroget) before the control of public display was effective. This development can be seen from the following statistics. In 1969 (year of repeal and new police regulation), six pornography shop owners were fined (300-600 kroner -- at that time 7,50 kr was about equivalent to one U.S. dollar) while two received warnings from the court. Sixteen other owners were called to order by the police and instructed as to the kinds of displays could be accepted. In 1970, 17 shops were fined and two received warnings from the court, while 10 were called to order and instructed by the police. The appearance of pornography shops in Stroget, where many people, often families, would take their Sunday afternoon stroll, led to too much public outrage and even questions in Parliament to the Minister of Justice. Consequently, enforcement efforts were strongly sharpened. Between July, 1971 and September, 1972, under Police Regulations Section 12, about 60 cases of transgression were brought to court; and not only were the owners fined ranging from 500 to 1,500 kroner, but shop assistants were also fined, ranging from 500 to 1,000 kroner. Some cases were appealed to the High Court which in all cases increased the fine and in one particular case, a defendant recieved a fine of 5,000 kroner.

These measures proved effective. A habit of subdued pornography displays was instituted, and during the following years, transgressions became remarkably few. Although recent jurisprudence suggests that the very strict display rules during the early 1970's are no longer applicable (See Greve et al., 1981, p. 158), pornography shops and cinema displays in Denmark are among the most decent in major cities of the Western world.

2.3 Public Opinion and Current Policy Trends

The first public opinion poll on pornography, conducted in 1965 was only concerned with books. The survey showed that 46% of the polled population was in favour of legalizing pornographic books of all kinds. In 1968 another public opinion poll revealed that this figure had increased to 61%. (In both polls only a small minority of the people sampled were in favour of restrictions, while the remainder were undecided.) Interestingly, the figure in favour of repeal had increased from almost a minority to an absolute majority during the period when the repeal of banning pornographic books actually had taken place in 1967. A similar development also occurred relating to pictures. In may, 1968, people were asked, for the first time, whether they thought pornographic pictures ought to be legally available to customers; in this case, 49% said yes. In 1970, one year after the repeal of banning pornographic books had been executed, 57% of the individuals sampled declared they were in favour of the decision.

Presently, there is a group of women combatting pornography. Their views expressed in newspayer

debates and occasionally semipublic discussions are in most regards in concord with those expressed by their "mother organizations" in the USA (mainly "Women Against Pornography"), from whom they also receive most of their facts and arguments about pornography. As a group, they do not advocate a return for the prohibition of pronography. Instead individuals adhering to the Danish feminist movement have called for prohibition of viedo tapes expressing gross violence and degradation of women. In general, Danish feminists tend to see pornography as a sometimes very bleak, but, at least as far as the Danish scene is concerned, rather trivial symptom of sexual and gender related inadequacies of the industrialized patriarchal society. Many feminists appear to accept pornography as a poor, but under the circumstances acceptable surrogate sexual outlet for certain illfated sexual minority groups such as sadomasochists and pedophiles. Recently, many feminists and others have begun to advocate "counter-pictures" such as warm erotic pictures of love between equals to counteract what is seen as the cold, clinically sexual, degrading pictures of standard pornography.

All sexual crimes except forcible rape, significantly decreased in Denmark between 1967 through 1973. Rape remained essentially steady during that period, but subsequently increased somewhat, especially during the late 1970's and early 1980's. Experts agree that this increase in rape which is much less than the general increase in crimes, and about half the increase of other violent crimes is probably due to higher frequency of reporting brought about by greater awareness rape. Danish experts, including four Danish

feminist criminologists who have studied rape in Denmark, also agree that there is no relationship between pornography and rape. Kutchinsky studied the significant decrease of sex offences against small children in Copenhagen (by 85%) and West Germany (by 60%). He has shown beyond andy reasonably doubt that this decrease is very significant (e.g., not due to changes in the laws or to reduced reporting). In other words, the very strong decrease of registered offences against small children does indicate that there was a real reduction in the number of such crimes committed. Both in Denmark and West Germany the decrease coincides temporarily and exactly with the increasing availability of pornography and several other factors of sexually explicit material. This finding suggests that pornography may in fact have worked as a surrogate for persons (not necessarily pedophiles) who might otherwise have committed sex offences against children.

3. Prostitution

3.1 Legislation

Following the 19th century prostitution was publicly regulated. Although brothels were forbidden in 1901, police control of prostitutes (e.g., regular examinations for veneral diseases) was abolished in 1906. Since then, despite minor changes in the laws especially concerning the severity of punishments, the regulation of prosituituion has been essentially the same.

Prostititution is not directly punishable in pursuance of the Danish Penal Code. Section 199 however, contains rules on "idleness" which indirectly enables a certain control of prosititution. According

to Section 199, anyone who leads "a life of idleness" in such a way that it may be assumed that he or she is not trying to support him/herself in a legal way, must be ordered by the police to obtain a legal occupation. If this order is not obliged within reasonable time, the person is liable to presecution. Subsection 2 of the same Section makes it clear that prostitution as well as living off the avails of a prostitute, and gambling are not to be considered "legal occupations". The obvious purpose of this Section is to provide the possiblity of regulating prostitution without directly cirminalizing it. In practice however, this provision has not been used for many years.

In theory, prostitution can be punished in pursuance of Section 233, making it punishable for anyone to encourage or invite indecency or to display an immoral way of living in a manner which is likely to offend others or to cause public outrage. This provision can, under certain circumstances, be used against the customers of prostitutes. In practice however, Section 233 has not been used since 1934.

These provisions in the Penal Code are supported by police regulations, proscribing offensive forms of soliciting by prostitutes such as Section 5 allowing the police to forbid loitering in certain public places and Section 6 suspecting an individual of being a prostitute.

The promotion and commercial exploitation of prostitution is criminalized according to Sections 228 and 229 of the Penal Code. According to these Sections, a wide variety of offences related to

pimping, procuring, keeping a brothel, and so forth, are punishable. Not only is "active pimping" punishable, but also "passive" forms of "living off the avails of a prostitute," such as a man sharing an apartment with a prostitute after he has received a warning; anyone who encourages or helps someone under 21 years of age to become a prostitute; and anyone for example, hotel owners, who rent facilities to prostitutes at excessive rents can be punished.

Homosexual prostitution was specifically punishable until 1967, and between 1961 and 1965 it was punishable for customers to obtain homosexual relations with someone under 21 years of age for a payment or the promise of payment. Since 1967, homosexual prostitution has been regulated or not regulated according to the same rules as heterosexual prostitution, except for a man living off the avails or sharing the dwellings of a prostitute.

3.2 Law Enforcement and Social Policies

3.2.1 The Size and Nature of Prostitution

According to an estimate by the Copenhagen police, there are approximately 300 street prostitutes in Copenhagen. This figure however, must be considered as a very rough approximation. There are no estimates on other forms of prostitution or in other parts of Denmark. One popular mid-morning newspaper carries several small advertisments for prostitutes, "massage parlours", "call girls" and "escorts". (On the basis of these ads, a most uncertain estimate has been made to the effect that there are altogether

around 2000 part or full time prostitutes in Copenhagen and surroundings.)[7]

In Denmark, window soliciting is virtually unknown and there are very few brothels. Most common are places where one or occasionally two to three women work together in a "massage parlour". It is estimated that in Denmark there may be a few hundred such "massage parlours" at any given time. There are no more than a score of sex clubs and sex saunas, at least insofar as they are related to prostitution. However, there may be more of such places on a purely non-commercial "exchange" basis.

During the past fifteen years, there was a growing number of drug addicted women who worked as street prostitutes. No specific information exists on this topic either. According to the Copenhagen police, however, the problem has been constatnt for some years.

3.2.2 Law Enforcement and Other Policies

Since the mid-1970's there has been little reaction against prositutes. The special vice squad dealing with prostitutes, drugs and related issues have been abolished, and proceedings against prostitutes in pursuance of the "idleness"

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7 Since a rather qualified estimate suggest that around 1850 Copenhagen (which at that time had a total population ten times smaller than today) had about 800 prostitutes. There is little doubt that from a historical perspective, prostitutes have been strongly decreasing (Hartmann, 1949).

Section (199) have ceased when the massive unemployment made it difficult for anyone to get a "legal occupation". Moreover, social aid is considered a legal source of income, a fact which makes Section 199 invalid in practice. The present policy by police is that of noninterference as long as other criminal offences (e.g., rape, intercourse with minors, violence or drugs) are not involved. Police regulations concerning street soliciting are rarely used because the policy is to interefre only if prosititution is restricted to a very narrow area of towns (by tradition, no "zoning" regulations), there is little cause for intereference. Exact figures on soliciting are not available; in fact, the annual police reports of Copenhagen and for Denmark as a whole contain no reference at all to prostitution.

Since the abolition of the vice squad in 1971, reactions against the exploiters of prostitution have also been steadily decreasing. Exact figures are available only from 1960 to 1970. These are as follows:

Keeping a brothel - no arrests observed;

Encouraging or debauching prostitution - 1960 to 1970 a total of 43 charges of which 34 were convicted (mostly unconditional prison sentences). After 1970, very few if any cases;

Pimping and procuring - 1960 to 1970 a total of 113 cases (between 24 and 3 cases per year with a clearly decreasing tendency over the period) of which 57 were convicted. Since 1970, few cases (see below);

> Living off the avails of prostitution - 1960 and 1970 a totoal of 682 were charged, 360 were subsequently convicted, while 25 were acquitted. Additionally, 472 recieved warnings for sharing the dwellings of a prostitute. Of these, only 3 were subsequently convicted for not changing their situation. In all cases, there was a decreasing tendency during the period.
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> Since 1970, the only figures available are estimates on the total annual convictions of all forms of exploitation of prostitutes. The average annual number from 1970 through 1978 was approximately 25 cases, with a decreasing tendency, 18 persons were convicted in 1977 and 16 in 1978, of sentences rather than fines.

This obvious decrease in charges and convictions since 1960 is not only due to a more lenient policy towards prostitution but in the number of case of exploitation, and a change in the patterns of prostitution. The 1950's and 1960's were characterized by a considerable amount of pimping, and the prostitutes gradually becoming much more independent. Furthermore the reduced criminalization of prostitution has reduced the need for pimps, and it is today generally agreed upon that the relations between a prostitute and a man who is sustained by her are, with rare exceptions, voluntary. The majority of prostitutes are probably economically independent, although they may live with and partially support another partner. This development also coincides with and partially a consequences of an apparent "deprofessionalization" of prostitution. It seems that an increasing proportion of prostitutes are working part time for example, to supplement

unemployment insurance or other forms of public relief. Under these circumstances, it has become policy not to interfere with anyone living occasionally with a prostitute. Although no figures are available for recent years, it appears that Section 199, Subsection 2 concerning "living off the avails" has become obsolete.

Prostitution by minors is regarded as a more serious matter than that of adults, especially if the minor is under 15 years of age or if related to drug dependence. Street level guidance clinics operate in the neighbourhoods concerned, and various forms of help are offered by public and semipublic (church) institutions. There are no clear estimates of the size of this problem, but it is widely agreed upon that there is a social problem of women between the age 12-18, who are usually drug addicts, working at the very bottom of the "hierarchy of prostitutes", and little is done about it because of the lack of money. The Copenhagen police has observed no growth in this problem over the recent years.[8]

3.3 Public Opinion and Current Law Enforcement Trends

Danish feminists have expressed concern over what they regard as the growing problem of prostitution.

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8 However, a report published in May 1984 by the Divison for the Prevention of Juvenile Delinquency of the Copenhagen Police Department indicated that in 1982 the police have filed ten "social reports" on women prostitutes under the age of 18 including one which was under 15 years of age. In 1983 the figure increased to 21 "social reports" including four women under the age of 15.

Their arguments and views are based largely on extensive reports and studies from Sweden and Norway. Prostitution is seen as an extension and expression of the suppression of women in the modern patriarchal society, girls and women are forced into prostitution by economic and social circumtances, and they lead a miserable life and are more or less severly damaged by it. Contrary to feminists in Sweden and especially those in Norway, most Danish feminists want social action to help women get out of prostitution; more general and long term policy level; and a change in gender relations and the view of sexuality, especially male sexuality. Public education and exposure are seen as appropriate measures in this regard. The moderate expressions among the majority of feminists invovled in the debate which takes place in newspapers, journals and at public hearings tend to view prostitutes' client as being victims of oppressing sexual patterns, while a more extremist minority want criminalization of customers.

In contrast, this view is counteracted by a movement of radical sexual policy advocaters including some feminists and prostitutes who consider the feminist anti-prostitution movement a reflection of neopuritanism and middle class bigotry rather than concern for the prostitutes. They claim that prostitutes enter this occupation on their own free will; that they enjoy their work; are proud of the help they can offer to sexual minorities; and they want to combat the stigmatization and crminalization of a trade which is, in their opinion, only second to any other trade because of this social ostracism. In fact, while feminists against prostitution have not organized

themselves, pro-prostittion groups recently have (December, 1983) formed an organization with the purpose of promoting prostitution as a free and proud occupation. This organization, which is to serve also as a sort of trade union for prostitutes, was formed after a five week campaign of exhibitions and hearing in Copenhagen.

Government reports on prostitution were issued in 1955 and 1973. The latter proposed a removal of Penal Code Section 199 and replacing penal measures against prostitution with social ones. As far as exploitation is concerned, one Government proposed to repeal only the punishments for "passive pimping". These proposals were never brought before Parliament, and nothing has been done about it since. The suggestions of the Government committee reporting in 1973 have, however, become legal practice. No new legislation is expected to be passed nor any new policy to be developed in the near future. On a longer term, it is likely that the present legal practice may also become law.

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CHAPTER VI

EXPERIENCES WITH PORNOGRAPHY AND PROSTITUTION IN SWEDEN

1. Introductory Remarks

The Kingdom of Sweden is a constitutional monarchy and a unitary state with approximately 8 million inhabitants. The legislative powers are mainly embodied in Parliament consisting of one chamber (Riksdag). The Supreme Court decides on matters of law. The Swedish penal system recognizes the principle of legality. This means that the prosecutors in most cases are bound to prosecute if they believe a conviction can be obtained.

2. Pornography

2.1 Legislation on Pornography

Before 1970, there was a provision in the Penal Code, on offences against morality and decency. This provision implied that it was punishable to sell, show or otherwise distribute a publication or picture which offended propriety or morality. This provision was superseded by a new law on pornography in 1970. The new law, which was preceded by a report of a special committee, rests on the view that a person who wishes to view pornography should decide this for himself. On the other hand, no one should be forced against his will to be faced with pornographic representations which may be regarded as an offence against morality or offensive to propriety by a substantial part of the community. It was considered important to break the trend in recent years towards an increasingly uninhibited dissemination of exceptionally daring pornographic products among persons who do not wish to

take note of them. Only certain forms of dissemination of pornographic representations have therefore, been made punishable under the new rule. Otherwise all pornography, written and pictorial, has been made freely available.

Chapter 16, Section 11, Penal Code states that:

> a person who, on or at a public place, exhibits pornographic pictures by means of displays or other similar procedures in a manner which is likely to offend the public, shall be sentenced for unlawful exposition of pornographic pictures to pay a fine or to imprisonment not exceeding six months.

The same applies to a person who sends through the mail to or otherwise furnishes another person with pornographic pictures without his previous consent (eff. 1970).

In an explanatory memorandum on the law on pornography, pictures are considered to be pornographic if they portray sexual acts in an explicit and provocative way without having any scientific or artistic value. In determining the pornographic character of a picture, the courts are expected to base their judgements upon its objective characteristic and to disregard the author's intentions.

According to the Minister of Justice, all types of pictures fall under the provision, whether they are produced through a printing machine or by other means. Sculptures, three dimensional objects and films also fall under the prohibition. Displays or other similar exhibitions or pornographic pictures are punishable not only if they take place in a public place, but also at

places like in shop windows which face the street or other public places. The intention behind the provision is to criminalize displays or similar exhibitions of pictures in pin up magazines or similar publications which for example, show sexual intercourse or, in a importunate and detailed way, depict genitals.

The prohibition in Section 2 also includes pornographic pictures sent through the mail. The objective of this Section is to control the vast export of advertising brochures and similar publications of a pornographic character from Sweden. The offence is completed when a person delivers the picture to a post office. Oversea postal deliveries also fall under this provision.

According to Chapter 16, Section 12, a person who distributes among children or young persons a writing, picture, or film which due to its content may coarsen or otherwise involve serious risk for the moral development of the young, shall be sentenced for leading youth astray to pay a fine or to imprisonment not exceeding six months (eff. 1965). A person can be punished for the distribution of pornographic material which is occupational or in a planned manner aimed at children or youth. This includes, for instance, the distribution of advertising brochures in the neighbourhood of a school or other places where youngsters gather. Distribution through ordinary book shops or incidental selling or delivering to a person under a certain age does not fall under the scope of th provision.

No specific age limit has been settled in connection with the offence "leading youth astray." It was regarded by the government not to be suitable to fix an

age limit. The aim of the provision should serve only as an appropriate guideline for the courts. The Minister of Justice, for example, mentioned that the academic youth as a category and men serving in the military for the first time are groups not protected by the provision.

In 1979, a new provision was enacted concerning child pornography. A person who portrays a child in a pornographic picture with the intent of distributing it, or who distributes such a picture of a child shall, unless the circumstance make that act defensible, be sentenced to pay a fine or to imprisonment not exceeding six months for violation under child pornography offences (Chap. 16, Section 10, Penal Code, eff. 1979).

One reason for introducing a new provision on child pornography is the harm done to a child's integrity by involving him/her in the creation of a pornographic product. Whether the reproduction (usually by taking photos) takes place with the consent of the child or not, the act must, according to the Minister of Justice, be considered as a serious intrusion into the child's integrity. A child cannot normally foresee the consequences. In a memorandum explaining the new law, the Minister pointed out that the provision also included cases where the picture is given a special meaning through the child's position or gestures. No special age limit is given. The Minister claimed that considering the differences in the development of separate individuals it is not possible to prescribe such a limit. The aim of the provision is to protect young people who have not yet reached sexual maturity.

In the 1976-77 session of the Riksdag (Parliament) a private members' Bill on public pornographic perfor-

mances and sex clubs, and so forth was discussed. The Standing Committee of Parliament on Social Affairs urged for the establishment of a Special Committee on Prostitution which will be discussed in section 3.3.

Concerning public pornographic performances, the report recommended that a prohibition should be incorporated in the Public Order Statute.[1] On the other hand, there is no cause, according to the report, to prohibit variety shows which include nude performances and stripteases. On the basis of this recommendation, the government presented a Bill to Parliament in 1981, which interalia introduced a prohibition of all public pornographic performances. This Bill was enacted by the Parliament and became effective in July, 1982.

2.2 Legislation on the Presentation of Films

The National Bureau of Cinemas is responsible for the legislation regarding the censorship of films. If

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1 The following is a quotation from the report of the Committee on Prostitution (SOV 1981:71): "Where many of the participants in live shows are concerned, the step into prostitution is only a short one. The men patronizing these clubs are confirmed in their view of women as inferior and of sexuality as something apart from other human relations.

Sex clubs moreover, are a comparatively novel feature in our country and do not exist in the other Scandinavian countries. The programmes which are performed cannot be said to enrich the cultural life of Sweden. On the contrary, they run counter to the efforts of society to achieve sexual equality and genuine sexual liberty based on mutual loyalty and comradship.

Arguments against a ban on these activities include the risk of illegal clubs and opposition to new prohibitions. Another argument presented in favour of a prohibition, however, is the crucial fact of the Riksdag, year after year, having expressed its disapproval of the activities of sex clubs."

the Bureau gives a negative decision regarding a film, it is possible to appeal such a verdict to the national government.

According to the legislation, all films must be prescreened and classified before shown in public. These regulations however, only apply to films that are to be shown in cinemas; video films and movies shown on television (which is controlled by a state agency) are not censored.

The decree (1959:348) prescribed that a film may not be licensed if "due to the way in which the events are described and the context in which they take place, it can have a brutalizing or otherwise detrimental effect or incite to crime." An approval can further be refused in cases where the presentation of a film "is deemed to be inappropriate in regards to the state's relations with a foreign state or can lead to informations about facts whose revelation can cause damage to the national defence or otherwise to the security of the state," or where the presentation of the film would obviously be contrary to the law. In short, an intervention by the Bureau is made only if a film contains sadistic pornography or descriptions of extreme violence which are not necessary for the film's general tenor or otherwise artistically justifiable.

The above described criteria are used at the preliminary screening of films that are made for persons 15 years of age and over.

Regarding films to be shown to children and films made for children, the latter will not be licensed if the Bureau has reason to believe that the film will have a psychological effect on the child. According to the ordinance of cinemas, the Bureau can refuse to

license any film made for children if the film is likely to have a negative psychological effect on the following three age groups: children under the age of 7, children between the ages of 7 and 11, and children above the age of 11 and under 15.

In 1981, a law (1981:485) was introduced proscribing the dissemination of films and video films that feature violence. According to Section 1 of the law, it is forbidden to professionally or otherwise commercially distribute to the public through offering for sale, renting, or showing films and video films containing blatant or prolonged descriptions of persons subjected to raw and sadistic violence. The prohibition is applicable only in cases where it is obvious that the distribution is not acceptable. In Section 2, there is a special provision aimed at the protection of children under fifteen. According to this Section, films and video films containing detailed and realistic descriptions of violence, or the threat of violence against men and animals cannot be distributed or shown to children professionally or commercially.

2.3 Law Enforcement

According to statistics recently presented by the press, there was a decrease in the selling of "men's magazines" and other soft pornographic publications. No official figures are available on hard core pornography, which is sold in special sex shops, and no data are available on the trends in the nature of the pornography sold or produced.

There are no special guidelines or directives for the prosecution of pornography offences. In fact, the

Swedish prosecutors are bound by the law to prosecute all cases presented to them by the police.

Criminal statistics on sexual offences are a minor category when compared to other forms of criminality and for that matter, their importance is decreasing. The offences which are of interest for this study are not given separately in the statistics. The Bureau of Statistics however, provided the following information about convictions for offences against Chapter 16, Section 11, (obtrusive exposition of pornography): there were five convictions in 1971; seven in 1972; five in 1973; none in 1974; one in 1975; and there was one conviction in 1976. Furthermore, two cases were dismissed in 1971 and one in 1973. These figures are for the whole country.

It is generally known that very few persons have ever been convicted under Chapter 16, Section 12 (leading the youth astray).

Concerning "child pornography offence" (Chapter 16, Section 10(a), Penal Code) there have only been a few cases reported to the police after the provisions became effective in 1979.

The prohibition of exterior displays of pornography in Stockholm is only routinely inspected by the police. The police conduct inspections at irregular intervals to places where pornographic displays take place notoriously. If the officer is of the opinion that the display is close to the borderline of what is permitted, he points this out to the person responsible for the display. In most cases, this person takes heed to these warnings. Interventions are only made in cases where pictures of sexual intercourse are displayed. Other pictures are deemed not to be illegal

according to present interpretation of the law. Public complaints are very rare. The police maintain that due to their supervision, the contraventions of the law have decreased lately (DsJu 1978:8). The number of police investigations and prosecutions is steadily decreasing. The number of prosecutions for such crimes has been five, at the most, during the last three to four years (DsJu, 1978:8).

2.4 Public Opinion and Current Policy Trends

A survey conducted in 1969 by the Swedish Central Bureau of Statistics, found that 49% of the general population was in favour of the proposed liberalization of most forms of pornography (Zetterberg, 1969). Recently, no special opinion polls have been done in this field.

However, the Committee for the Freedom of Speech, which consists of several members of Parliament, has recently expressed an opinion about pornography in its report "Protect the Freedom of Speech" (1983). The committee claims that the most serious consequence of the sale of pornography, which is said to have increased since the decriminalization in 1970, is that the youth will get a wrong impression of sexual life, love, and the relationship between the sexes. Sex will be dehumanized by the negation of other emotional relations between man and woman than the purely sexual ones. Our knowledge of the effect of pornography on many however, is very defective. From what we know, which is very little, it is not possible to draw the conclusion that the effect of pornography is a purely

negative one.[2] The committee asserted that the best way for an open society to counter these presumed negative effects is that an effort must be made to change the people's attitudes and make them see sexuality as just one form of human behaviour. The bad influence pornography may have on youth has to be counteracted in ways other than by criminalization. The committee concluded that changes to the present legislation on pornography are not to be recommended.

The committee further observed that contraventions against the prohibition of public displays are still very common. The committee however, did not find it necessary to change the law, but were of the opinion that respect for the law by individuals was lacking. To uphold general obedience to the law was not within the terms of reference of the committee.

Lastly, the committee proposed a change to the present system of censorship of films for adults. Censorship is to remain, but in the future there should no longer be a possibility for the Bureau to prohibit a film from being shown. The task of the Bureau should be to give an opinion on whether a film contains an unlawful description of violence. If the Bureau comes to this conclusion, the film may still be shown. It will be up to the courts to decide whether a criminal offence has been committed or not.

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2 During the last decade, there has been a decrease in the number of registered sexual crimes in Sweden, with the exception of rape. According to a Swedish researcher, Mr. Kühlhorn, it is not possible to prove that among all relevant factors the sale of pornography has had a certain impact on the trends of sexual offences in this connection.

The committee's proposals are now under consideration by the government.

3. Prostitution

3.1 Legislation

During the period 1850 through 1918, prostitution was regulated by law. The arrangement, which involved the registration of the women concerned and an obligation to report regularly for medical examination, was principally aimed at curbing the spread of venereal diseases. The regimentation was superseded by other regulations with the aim of controlling the prostitutes. These regulations have gradually been abolished during this century.

Prostitution as such, is no longer a criminal offence in Sweden. However, acts directly related to it such as the operation of bawdy houses and "living off the avails" are punishable to some extent.

According to Chapter 6, Section 7 of the Penal Code, a person who habitually, for personal gain, encourages or exploits another person's immoral mode of life, or induces someone under twenty years of age to enter into such a life, can be sentenced for procuring to imprisonment not exceeding four years. If the crime is particularly serious, imprisonment for at least two and at the six years, shall be imposed. In judging the gravity of the crime, special attention shall be paid to whether the offender has widely encouraged an immoral way of life or has ruthlessly exploited others. The phrase "immoral mode of life" in Chapter 6, Section 7 of the Penal Code, means entering habitually, extramarital liaisons of a more casual

nature, above all more or less occupational female and male prostitution.

Encouraging another person's immoral mode of life can, according to the law, be done in many different ways: for instance, through operating a brothel or giving addresses of clients to prostitutes.

The provision concerning the exploitation of another persons's immoral mode of life is directed towards pimps, but is also applicable to such cases where somebody profits from another person's immoral mode of life, for example, when a landlord obtains unreasonable rents from prostitutes.

The third case of procuring in Chapter 6, Section 7, namely enticing a person under twenty years into an immoral mode of life, was introduced at a later stage. The aim of this Section is to increase the possibilities of taking action against pimps and prostitutes who entice minors into prostitution. A person who, in order to gain a profit, encourages temporary sexual relations between others, can be sentenced for promoting immorality to a fine or to imprisonment not exceeding six months (amended 1969).

According to Chapter 16, Section 8, a person who, by promising or giving compensation, obtains or tries to obtain a temporary sexual relationship with a person under eighteen years of age, can be sentenced for seduction of youth to a fine or to imprisonment not exceeding six months (amended 1978).

Other provisions dealing with prostitution must be mentioned in this context. According to Section 1 of the Care of Young Persons Act (1980), care is to be provided for a young person without his consent if <u>inter alia</u> the young person seriously endangers his

health or development by drug abuse, criminal activity or any other comparable behaviour. In the Bill, prostitution was mentioned as an example of such behaviour.

According to Section 43 of the Act on Aliens (1980:376), an alien may be expelled if he/she makes a living from prostitution.

In 1981, an additional provision was introduced in Chapter 12, Section 42 of the Real Property Code, 1970, implying that the right to rent is forfeited and the landlord thus entitled to cancel the agreement if the flat wholly or to an essential part is used for commercial or similar activities, which constitute, or to an essential part involve criminal activities. According to a memorandum explaining the section, one example of such activities is the situation where the tenant uses the flat for prostitution. There are no zoning regulations, or other police regulations concerning prostitution in Sweden. Soliciting for the purpose of prostitution has not been criminalized.

3.2 Law Enforcement and Social Policies

3.2.1 The Size and Nature of Prostitution

According to the report from the Committee on Prostitution (SOU 1981:71), prostitution has considerably diminished in recent years. A comparison made during the mid seventies of five types of prostitution in Sweden, revealed that street prostitution declined by 40%, prostitution as massage institutes and nude modelling studios decreased by 60%, and sex club prostitution had dropped by 80%. Hotel and restaurant prostitution and call girl activities

have also declined. The reason for this decrease may be that in recent years much attention has been given to prostitution by the media, the police, the courts, political bodies, and social welfare authorities.

Large number of people however, are still involved in prostitution. Every year about 100,000 men are active as clients, 2,000 women as vendors and an estimated 2,000 persons as procurers. About 1,000 of the women involved are street prostitutes, some 500 are prostitutes is massage institutes, and studios, about 100 are sex club prostitutes, and more than 300 are "high class" prostitutes.

The allegations frequently made that many young girls become prostitutes and that prostitution is affecting progressively lower age groups have proved groundless. Less than 5% of known street prostitutes and practically no prostitutes of other categories are under the age of 18. Less than 1% of street prostitutes are under the age of 15. On the other hand, the number of women who have at one time or another, been prostitutes is relatively large. For example, about 2% of the women born in Sweden in the mid fifties have been prostitutes, though many of them have only been for a very short period of time.

Street prostitution is a permanent feature of the urban scene in Stockholm, Gothenburg, Malmö and Norrköping. Casual street prostitution occurs occasionally in about ten other large towns and cities in Sweden.

There are about 100 massage institutes located in the larger towns and cities of central and southern Sweden, but they are especially numerous in and around Stockholm and Gothenburg.

Sex clubs exist in Stockholm and Gothenburg and in four other cities in central and southern Sweden, though not in Malmö. Prostitution occurs at sex clubs in the provinces, but no such activities were observed at the clubs now operating in Stockholm and Gothenburg.

As a result of live shows being banned by a new law in 1982 on pornography, the number of sex clubs might have recently declined further.

Hotel and restaurant prostitution probably occurs in most of the major towns and cities where suitable facilities are available. This type of prostitution, like call girl activities, is difficult to chart in detail because of its nonpublic character and the reticence of those involved.

Most women prostitutes come from the group with the greatest social difficulties. Crime and drug abuse are many times more common among them than among average women. About half of the known women street prostitutes have criminal records, as against two or three percent of the female population as a whole. About 25% of studio and sex club prostitutes have previous convictions, the most common offences being minor offences against property and drug offences. The proportion of drug abusers among women prostitutes varies considerably from one locality to another. In Malmö, for example, practically all known street prostitutes are drug abusers, while the corresponding figure in Stockholm can be put at roughly 25% of the known street prostitutes.

The men/clients can be roughly divided into two groups. The overwhelmingly predominant group comprises a cross section of ordinary Swedish men, often married or living in a permanent relationship and with children. The other group comprises of men from the underworld many of them with serious criminal records.

The procurers can be divided into very different groups. The largest of these groups comprises of domestic procurers, while a smaller group is made up of professional procurers. Advertisers, landlords and sex club proprietors are also classifiable as procurers in many cases.

Where prostitution is concerned, finance is an important topic of discussion. Gross prostitution earnings in Sweden during 1980 was estimated at Skr 120 million, with massage and studio prostitution accounting for the largest share, about Skr 65 million. After deduction has been made for overheads and salaries of various kinds, an estimated Skr 30 million remains for investment in capital goods and savings for the procurers.

The impression that prostitution is common among homosexuals does not appear to be true. In Stockholm and Gothenburg there are probably a few dozen young men or boys in each city who are to a greater or lesser extent involved in prostitution.

3.3 Law Enforcement

There are no guidelines or directives for the investigation and prosecution of prostitution offences in Sweden. It must be noted however, that prosecutors are bound by the legality principle. It must also

be pointed out that Sweden does not have any national or local prohibition on soliciting.

Police statistics show that the number of persons suspected of procuring has oscillated around 30 in the period 1960-1982. The number of persons suspected of seducing a person under the age of 18 to give a sexual favour in exchange of money has oscillated around five during the sixties and seventies but has recently shown an increase.

Tables 6 and 7 give an overview of the sentences for procuring and seduction of minors in the period 1974-1982.

TABLE 6

Sentences for Procuring in Sweden between 1974 and 1982

Year	Imprisonment	Probation	Conditional Sentence	Fines	Total
1974	8	2	3	1	14
1975	19	4	5	-	28
1976	24	8	3	-	35
1977	23	7	4	2	37
1978	24	3	4	-	31
1979	29	2	5	-	36
1980	22	10	-	-	33
1981	9	3	2	1	16
1982	11	2	-	-	14

TABLE 7

Sentences for Seduction of Youth in Sweden between 1974 and 1982

Year	Conditional Imprisonment	Fines	Total
1974	-	4	4
1975	-	5	5
1976	-	1	1
1977	-	1	1
1978	-	-	-
1979	-	1	2
1980	1	7	8
1981	1	1	1
1982	-	-	-

3.4 Social Policies

Much has been done by public authorities and social workers to reduce prostitution, especially in Stockholm and Malmö. Intensive outreach activities have been undertaken.

In Parliament, the subject of prostitution was extensively discussed during the 1976-77 session in connection with a private members' Bill on sex clubs and public pornographic performances. As a result of this debate, a Committee on Prostitution was established which submitted a report in 1981 (see paragraph 2.1).

The committee recommended that, in addition to certain measures of a more legal nature, the social measures undertaken in Stockholm and Malmö be extended to other towns and cities where street prostitution exists. The measures taken should be aimed at instructing and assisting the men who purchase the services of prostitutes. Reference is made to the useful role which could be played by the Church and

voluntary organizations both in a practical context and by means of debates and information on interpersonal relations. An entire chapter in the report is devoted to information and public education. The following suggestions were made: youth receptions; mother care centres and similar institutions provide good opportunities to disseminate necessary information; compulsory military service could be used as an opportunity of establishing better contact with men; trade unions and a host of other organizations and institutions could provide natural channels for the encouragement of debate and the distribution of information. The RFSU (National Swedish Association of Sexual Information) also has an important part to play in this context.

Based on the report, the government presented a Bill (prop. 1981/82:187) proposing certain measures to prevent prostitution. It was stated that prostitution never could be accepted and that several different circumstances influence its prevalence. Therefore, efforts in many fields must be made in order to counteract prostitution. For instance it is necessary for a society to be able to offer people, and particularly women, social and economic security. As well, it is essential to provide open and objective education and information about sexual matters both in school and later on in life.

The Bill, stated that a comprehensive effort will be made by different authorities and organizations in order to prevent prostitution.

In the Bill, the government announced that resources will be provided for social research aimed at developing prevention methods. Funds will be made available for different research projects directed at increasing the knowledge of the customers of the prostitutes and of young girls who run the risk of becoming prostitutes. The proposals of the Bill were endorsed by Parliament and became effective in July, 1982, together with a new law on public pornographic performances.

3.5 Public Opinion and Current Policy Trends

Recently, no relevant public opinion polls have been conducted on prostitution in Sweden.

In 1982 however, the Committee on Sexual Offences, a committee in which the Swedish women's movement is strongly represented, published a report on "Rape and Other Sexual Abuses" (SOU; 1982:61). The report proposed several amendments to the Penal Code provisions on sexual offences. An essential part of the Committee's task was to consider what penal regulations should exist to prevent the exploitation of people by prostitution. Today, it is punishable to have a liaison in exchange of money with a person under 18 years of age. The Committee decided not to propose any stricter criminalization of persons who seek contact with a prostitute for sexual intercourse. This standpoint is based on the argument that such criminalization would drive prostitution underground and thus counteract the effort to contact and help those who are engaged in prostitution.

The committee further proposed that those who promote or exploit another person's prostitution must

be criminalized to a greater extent than today. Under the existing law, liability for procuration is limited to those who habitually or for profit promote or exploit another person's libidinous mode of life. The committee proposed that a person who promotes another person's prostitution shall be punishable even if not acting on a habitual basis. A person who financially exploits another's prostitution shall be guilty of procuration. The committee wanted to extend the criminal liability of those who entice other persons into prostitution by making it punishable regardless of the age of the person involved.

An important innovation in the committee's proposals is that a landlord shall be punishable for procuration if he allows another to conduct prostitution in one of his apartments. Criminal liability shall exist in such cases regardless of whether the landlord does or does not collect an excessive rent. The proposal should render it easier to prosecute the owners of brothels and sex clubs.

The proposal regarding procuration should be applicable only to acts in connection with prostitution. A person who enables others to have casual, adulterous, sexual contacts ought not be sentenced for procuration. The proposal contained no penal regulation for the promotion of fornication.

To sum up, the committee's proposals in this respect will lead to the substantial extension of the criminal liability for those who promote prostitution. In addition, acts such as gross procuration (including the preparation and conspiring of) will also become

punishable. Recently, a Bill was introduced to Parliament containing essentially the same proposals as those made by the committee.

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CHAPTER VII
SUMMARY AND CONCLUDING REMARKS

Pornography

In spite of the many historical and cultural differences between the five European countries under scrutiny, their penal policies on the dissemination of explicit sexual materials during the sixties and seventies show similarity in many respects.

In the sixties, all countries experienced a sharp increase in the sale of pornographic books and magazines. The courts had great difficulty in interpreting the old obscenity laws. These developments promoted all five societies to reconsider their existing laws and policies on pornography.

In all countries, the issue of the law of obscenity was heavily debated in the public, among the scientific community, and in especially established governmental committees. Finally, it was unanimously concluded by the various committees across Western Europe that the state should not act as a censor morum by prohibiting the dissemination of explicit sexual material as being intrinsically lewd or bad. The experts argued that it is not for the state to prohibit adult citizens from choosing what they may or may not read or view. In addition, the committees concluded that no incontrovertible evidence was found that showed the use of explicit sexual materials is injurious to private citizens or society at large.

On the other hand, it was also generally acknowledged that individual citizens have a right to be free from unwanted exposure to materials which are offensive to a substantial part of the community. The task of the legisla-

ture appeared to be to strike a balance between the right to self expression of some groups and the right to privacy of others.

The second limiting principle, acknowledged almost unanimously by the experts, is the protection of the young against exposure to at least certain forms of explicit sexual materials. According to some, such exposure might be detrimental to their psychological development, while others have stressed that such exposures at any rate interfere with the moral task of parents to raise their children as they think fit.

Several governments have paid heed to experts' opinions by repealing their existing legislation. Denmark led the way by repealing its general prohibitions of the dissemination of explicit sexual texts and pictures in 1967 and 1969 respectively. Sweden followed the example set by Denmark in 1970 and West Germany in 1973. In The Netherlands and France, no legal changes have yet been carried through. In the latter countries, a process of de facto decriminalization by means of increasingly permissive judicial standards and prosecution policies has taken place instead.

In Denmark, Sweden, and West Germany, the principle that nobody should be involuntarily exposed to grossly indecent materials was laid down in new laws prohibiting obtrusive methods of disseminating such materials (the aggressive window displays and unsolicited mailing). In The Netherlands, a Bill is pending which seeks the replacement of the existing general prohibition by a focussed prohibition.

In Denmark, the sale of pornographic pictures or objects to a person under the age of 16 years is still prohibited. Sweden and Germany have retained elaborate legal provisions prohibiting the distribution of pornography

to youngsters. In France and The Netherlands, such a prohibition forms part of the existing laws.

Worthy of a special commentary is the subject of film censorship. In line with the views on pornography espoused in the late sixties, the prescreening of films was criticised for being paternalistic and elitist. The old systems of prescreening and licensing all films were abolished in Denmark (1969) and The Netherlands (1977), but retained in Sweden, France and West Germany (in the latter country, the prescreeing is a form of self regulation by the film industry). In Sweden, the licensing scheme for films has recently been criticized by a governmental committee. In Denmark, Germany and The Netherlands, special boards were embodied with the authority to license films for public presentation to the young.

In the late seventies, it appears that the debate on pornography was reopened to a certain extent. Contrary to the situation in the previous decade, several concerned groups now demand from the government more stringent prohibitions and, or, prosecution policies. Two largely independent social factors seem to have propelled the current "back lash" on pornography. First, pornography is condemned by many feminists as sexist and discriminatory against women. Secondly, feminist authors have, in particular, criticized the distribution of materials depicting sex with young girls and sadistic acts. The new criticism against pornography was aggravated by the recent increase in the sales of video films of a pornographic or sadistic nature.

In response to this new criticism, Denmark (1980), and Sweden (1979) have enacted laws prohibiting child pornography. In Sweden, public pornographic performances have been outlawed in 1982. West Germany's pornography laws of 1972 already contain a provision prohibiting the distribu-

tion of hard core pornography depicting pedophilia, sodomitic or sadistic acts, and a unique provision prohibiting materials portraying extreme acts of violence. These prohibitions will now be made more stringent. In The Netherlands, the new Bill on pornography is still pending as a result of the opposition by feminist groups.

With regard to video films, Sweden has enacted new laws in 1981 prohibiting the distribution of video films depicting acts of extreme violence. The government of West Germany also intends to make the dissemination of video films among the young subject to the same licensing regulations as normal films. France imposed a special tax regime upon pornographic video films in 1983.

To sum up, the five European countries studied, have all liberalized their laws or policies on the dissemination of pornographic materials in the late sixties or early seventies in one way or the other. The new prohibitions are mainly targeted against obtrusive forms of distributing such materials. Besides, the existing prohibitions on the dissemination of explicit sexual materials to the young have been retained. In fact, the enactment of new, more permisive laws has often been justified by the expressed wish to focus the efforts of the police and the public prosecutors upon obtrusive forms of distribution and distribution among the young. The validity of this argument appears to have been confirmed by the facts. In Denmark and Sweden, the sale of pornography has become more discreet after the liberalization. In France and The Netherlands, the old obscenity laws were retained but, in reality however, few controls are currently exercised over the dissemination of pornogrpahy.

In the late seventies, the pendulum has clearly started to swing back as a result of the feminist critique of the dehumanizing, degrading, and discriminatory aspects of some

forms of pornography. There are no indications however, that the legislative and other changes of the sixties will be made undone. The newly proposed or enacted prohibitions are no longer targeted against explicit sexual materials per se but mainly at materials depicting deviant sexual activities like pedophilia and sadism or other acts of extreme violence.

Prostitution

At the turn of the century, prostitution in Western Europe was generally controlled by means of a regulatory system known as "registration." The main elements of this system were: the licensing or condoning of bawdy houses; a central registrar of known prostitutes; and the obligation of regular medical examinations for registered prostitutes.

The campaign for abolition, that is, for abolishing the system of registration, started in England but soon gained momentum across the European continent. The prevailing regulatory systems were increasingly criticized as tolerating sexual permissiveness by men on the one hand, and repressing prostitutes on the other. The system was abolished in Denmark in 1901, in The Netherlands in 1911, in Sweden in 1918, in Germany in 1927, and in France in 1946.

The abolishment typically meant the repeal of the system of registration for prostitutes. In Germany and France however, the obligation of regular visits to a health inspector were retained. In Germany, prostitutes are still under this obligation. In France, it was repealed in 1960. As part of the abolition laws were enacted prohibiting the operation of bawdy houses and other forms of procuring (including living off the avails).

In most countries, the new provisions on procuring and living off the avails were amended several times.

Presently, the prohibitions in France (amended in 1958 and 1975), and Sweden (amended in 1982) have the widest scope. The Swedish government has submitted a Bill to Parliament which will widen the scope even further. In West Germany, only certain forms of exploitative procuring and pimping are covered by the new 1973 law. The government of The Netherlands has prepared a legislative change in the same direction. In Denmark, prosecutions for procuring and pimping became very liberal in 1970.

None of the five countries have enacted laws which prohibit the act of prostitution. In Sweden, solicitation for the purpose of prostitution is not prohibited either. In Germany, France, The Netherlands, and Denmark, either national or municipal legislatures have passed bylaws prohibiting certain forms of street solicitation. In West Germany, the courts demand evidence that a prostitute has actually contacted a client for a conviction under the local provisons of soliciting. The French national law distinguishes two different forms of soliciting; namely, active, and passive soliciting. Passive soliciting encompasses all acts or gestures which can reasonably be interpreted as attracting customers for the purpose of prostitution. In The Netherlands, most city councils have passed police regulations which make liable to a fine all known prostitutes who loiter or wait in or at public places.

In several cities in West Germany and The Netherlands, the prohibitions of soliciting do not apply in certain areas or streets. Especially in some Dutch cities, street prostitution is effectivley contained within small areas by means of zoning regulations, supported by various administrative measures. The success of such policies of selective control appears to be dependent largely upon the appropriateness of the zones selected for prostitution, both from the perspec-

tive of the local residents and the prostitutes. The "eros centres" in certain German cities seem to be rather unpopular with the prostitutes. In Holland, the assignment of certain new prostitution areas has been met with violent opposition from the residents.

According to official estimates, the number of prostitutes has declined in Sweden over the past years. This is not the case in the other four countries. From a general European perspective, the abolitionist has not effected the number of prostitutes in any discernible manner over the last fifty years. Neither the various forms of prostitution nor the public nuisances associated with it have shown a declining trend. At the same time however, the need to fight the repression and discrimination against women, of which prostitution is often considered to be the archetype, is felt more keenly now than ever. These facts have prompted the governments to reconsider the underlying assumptions and the objectives of their policies on prostitution.

In the area of prostitution these European governments are faced with three fundamental dilemmas. First, a general and stringent prohibition of all forms of procuring appears to be desirable with a view to the prevention of the exploitation of women. In practice however, such prohibitions often appear to have serious negative side effects for the prostitutes themselves. Only a small minority of the prostitutes are capable of carrying out their work on their own premises without any form of organizational support from others. For this reason general prohibitions of procuring often force them to work either in illegal sex clubs, etc., or on the streets. In both cases, the prostitutes are particularly vulnerable to expoitation by others. In short, such prohibitions have often been found to be counterproductive in respect to the prostitutes' best interests.

The second and related dilemma is the conflict of interest between the community at large, which sometimes demands a total ban of all forms of procuring including the operation of brothels and the interests of residents of inner city neighbourhoods who are faced with the nuisances caused by street solicitation when such a prohibition is actually enforced.

The third dilemma of present day European govenments in the area of prostitution is the necessity to reconcile the interests of the prostitutes with the interests of local residents. The prohibitions of street soliciting and the policies of zoning are usually welcomed by local residents (at least by those not living in the vicinity of prostitution areas). Such policies however, are naturally opposed by many prostitutes as an infringement upon their right to make a living for themselves.

Recently representatives of the women's movement and other concerned groups in Germany, France, The Netherlands, and Denmark have expressed the view that the interests of both prostitutes, local residents and the community at large are served best by the legalization of certain forms of prostitution. According to these groups, prostitutes should be allowed to carry out their work in an organized setting, either in private clubs, or at addresses in or outside areas zoned for prostitution. In order to facilitate these relatively unobtrusive and safe forms of prostitution, the governments are asked to liberalize certain parts of the existing prohibitions on procuring and soliciting and, particularly, the mere provision of organizational support to prostitutes ought not to be prohibited.

To sum up, in Sweden the governmental policies on prostitution are still clearly targeted against all forms of procuring and will continue to be so in the years to come. In France, the official policy is quite repressive towards

both procurers and prostitutes, but this policy appears to be rather controversial. Presently the law enforcement and fiscal policies towards prostitutes are presently made less stringent. In West Germany, The Netherlands, and Denmark, the drift of the emerging policies is towards a new system of legalized prostitution. The new model however, is different from the old European system of "registration." Although organized forms of prostitution are again permitted under certain conditions, these conditions are now geared towards the promotion of the prostitute's own interest to a much greater extent than in the past. Priority is given to the repression of exploitative forms of pimping.

APPENDIX

QUESTIONNAIRE ON LEGISLATION AND GENERAL POLICIES CONCERNING PORNOGRAPHY AND PROSTITUTION

Explanation: The questionnaire deals with the subjects of pornography and prostitution separately. Each part has three sections, dealing with (A) legislation, (B) law enforcement policies or social policies and (C) public opinion and present trends in legislation or policy. On each of these issues some general questions are asked followed by more specific questions. If the latter questions raise items which have already been covered in a prior answer, they can of course be skipped. All questions are to be answered as completely and specifically as possible.

In order to save unnecessary work we have filled in some answers provisionally on the basis of documents available in Holland. Please check them out for accuracy.

We would like you to submit a complete list of the literature which was used. If personal communications are used as a source, please mention the name and function of the spokesman.

We assume most questions can be answered by consulting books, documents, and research reports. However, we would like to advise you to interview a specialized police officer from a large town on some of the questions on law enforcement of the laws on pornography and prostitution.

It is quite possible that some of the questions are irrelevant in the legal or social frame of your country. Please do not hesitate to say so. On the other hand, it is to be expected that we have overlooked certain aspects of

the subject that appear to be important. We want to urge you to elaborate on these aspects as much as possible. Some of the most valid information might be contained in it.

We wish you good luck with the work.

Pornography

Working definition

Materials (publications, film etc.) and/or performances of a sexual nature considered to be obscene, indecent etc.

A.(1) General questions on legislation

1. All present provisions in the criminal code (federal, provincial) and in police regulations. If relevant, any other provisions (e.g. law on film censorship, customs act, post act.)
2. Important jurisprudence on these provisions. Please specify.
3. Brief overview of all jurisprudence and legislative changes in the 20th century, with an emphasis on changes since 1960. Please summarize the main arguments for these changes as apparent from committee Reports, white papers etc.

A.(2) Special questions on legislation

1. Are there special provisions on the sale, etc. to minors? Is there any jurisprudence on that matter? Please specify.
2. Are there special provisions on pornography of a special kind (eg. depicting children, acts of sexual violence)? Any jurisprudence? Please specify.
3. Is there a system of film censorship? What are the categories, and age levels?

B.(1) General questions on law enforcement policies

1. Statistics on annual numbers of arrests for these acts since 1960.

2. Statistics on annual numbers of convictions for these acts since 1960.
3. Statistics on severity of sentences for these acts (most recent ones).
4. Are there any official guidelines/directives for the prosecutors or police officers on arrests or convictions for these crimes? Please specify their contents. How these guidelines changed since 1960?
5. What are the present policies of police and prosecutors? What are the criteria for condoning or making arrests? Have there been any recent changes? Please try to answer this question for one large town in particular (preferable the capital). We advise you to consult a police expert on this.
6. If there is a film censorship, what are the present criteria? Any recent changes?

B.(2) Special questions on law enforcement policies

1. Is there a special policy for the sale etc. to minors? Please specify.
2. Is there a special policy on the extent of public display? Please specify.
3. Is there a special policy on certain forms of pornography (depicting children, acts of violence, etc.)? Please specify.
4. Is there a special policy for the sale of video films?
5. Is there a special policy on the participation of children in the production of pornography?

C. General questions on public opinion/policy trends

1. Results of all relevant opinion polls since 1960. Please give a summary of the findings. Changes of opinion are of course particularly relevant.

2. Recently have any concerned groups or experts expressed views on pornography (reports, academic articles, etc.)? Please specify.
3. Is there some form of a semi-official opinion about pornography of feminist/woman's lib movements/groups? Any reports, formal statements, etc.?
4. Have there been issued any recent new government reports on pornography or have any proposals for new legislation been made? Any Bills pending? Please elaborate on any current debate. Is it to be expected that new legislation will be passed or new policies developed in the near future? Please specify.
5. Are there any data on the trends in the sale or production of pornography (increases/decreases)? Are there any data on the trends in the nature of the pornography sold or produced?
6. What are the trends in the number of registered sexual crimes? What is the expert's opinion on the relationship between pornography and sexual crimes?

Prostitution

Working definition

Sexual services for financial rewards and all acts directly related to it: operation of bawdy house (brothels), living off the avails (pimps) etc.

A.(1) General questions on legislation

1. All present provisions in criminal law or administrative law on prostitution (incl. street soliciting, operation of brothels, pimps, etc.) on federal and, or, provincial or state level.

2. An overview of relevent jurisprudence.
3. An overview of municipal bylaws, police regulations, etc. We would like you to report on all regulations in one large town, preferably the capital.
4. Please comment upon the historical developments in the legislation and regulation since 1900 with an emphasis upon trends since 1960. What are the main arguments for the present laws or regulations?

A.(2) Special questions on legislation

1. Are there any laws or regulations on the customers?
2. Are there any laws or regulations which apply a form of licensing to prostitution or the operation of brothels? Please specify the details of such a system (medical check ups, etc.). For one town.
3. Are there any laws or regulations which apply a system of zoning to prostitution or the operation of brothels (condoning it in certain areas only)? Please specify for one town.

B.(1) General questions on law enforcement and social policy

1. If possible an estimate of the present number of prostitutes (women, men). Please report on one large town.
2. If possible an estimate of the present number of addresses where prostitution takes place. Please report on one large town. If available we would like to have a breakdown into the categories:
   a. public prostitution (street soliciting, window soliciting);
   b. nonpublic prostitution (brothels, sex clubs, sex saunas, etc.);
3. Are there any recent trends in the numbers or forms of prostitution?

4. Statistics on the number of arrests for prostitution (e.g. for street soliciting, running a brothel, living off the avails) since 1960.
5. Statistics on the number of convictions since 1960.
6. An overview of present sentences for these crimes.
7. Are there any prosecution guidelines, or directives for the police on the enforcement of the existing provisions or regulations? Have there been any changes? Please specify and report on one large town.
8. What are the actual policies for making arrests and for initiating criminal procedures on prostitution? Have there been any recent changes? Please specify and report on one large town.
9. If there is a form of licensing, what are the criteria applied?

B.(2) Special questions on law enforcement/social policy

1. Please give all information available on any existing policy of licensing or zoning on prostitution.
2. Is there a special policy on prostitution by minors?
3. To what extent are prostitution and drugs related?

C. Questions on public opinion/policy trends

1. Results of all relevant public opinion polls on prostitution (incl. data on having been a customer). Please comment upon any changes.
2. Recently have any concerned groups or experts expressed views on prostitution (reports, academic articles, etc.)? Please specify.
3. Is there a semi-official opinion about (aspects of) prostitution of feminists/women liberation groups? Any reports, etc?

4. Have there been issued any recent government reports on prostitution or any proposals for new legislation or new policies been made? Is it to be expected that new legislation will be passed or new policies be developed in the near future?