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EUROPEAN MORALITY POLITICS: AN OVERVIEW ON PROSTITUTION

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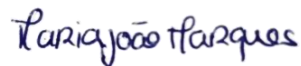
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Anti-Plagiarism Statement

According to Article 20º-A of NOVA School of Law's Regulation of the 2nd Cycle of Studies leading to a Master's degree in law, I declare, on my honor, that the present dissertation is an original work. The contributions of other authors are properly acknowledged and referenced. I am conscious that the improper use of third parties' material constitutes an ethical and disciplinary offense.

Lisbon, September, 2024,

Maria João Moreira Marques



Acknowledgments

*To my parents, who showed me that every dream is possible as
long as we work for it.*

*To my sister, who always offered her help even when I was not
brave enough to ask for it.*

*To my friends, who heard me rumbling about this goal and
always made me believe I could do it.*

To Professor Nausica for her feedback and guidance.

Quoting and Other Conventions

The present dissertation is written in American English, except when quoting sources written in British English. The use of italics is limited to words in Latin or other languages, as well as to name certain documents, as it is the case of the European Parliament Resolutions.

Regarding the citations, those are present within the text, according to the following model:

(Last name of the author, date, page)

When a multiple-author contribution is cited, there is only the mention of the last name of the first author, followed by the use of the Latin expression “*et. al.*”.

At the end of the document, all the complete references are provided under the chapter named “Bibliography”. All the internet sources have a link attached to the bibliographic reference.

List of Abbreviations and Acronyms

EU European Union

EP European Parliament

EC European Commission

CJEU Court of Justice of the European Union

TEU Treaty of the European Union

TFEU Treaty of Functioning of the European Union

ICPR International Committee for Prostitutes' Rights

ICRSE International Committee on the Sex Workers' Rights in Europe

ESWA European Sex Workers Alliance

EWL European Women's Lobby

STD Sexually Transmitted Disease

NGO Non-governmental organization

Number of characters

The body of this dissertation, including spaces and footnotes, has **157 963** characters.

Abstract:

Prostitution is a complex phenomenon that interests academics, jurists, and feminists. The debate around prostitution implies the discussion of moral values, which makes prostitution a clear example of a subject of morality politics. However, depending on whether we consider prostitution as a form of violence against women, or a legitimate form of professional occupation, the rights of gender equality, and the freedom of labor and movement enter into collision within the European Union spheres. The recent decades have shown that the neo-abolitionist discourse, that puts gender equality at the core of prostitution policies, has won adepts within the European Union. That neo-abolitionist preference is evident in several European Parliament Resolutions on the matter. Nevertheless, these documents have a non-binding nature, and, even the most recent one has clearly stated that prostitution is under national jurisdiction. Due to this fact and the controversial nature of the subject, prostitution has been excluded from the legislative initiative of the European Union.

Keywords: prostitution; gender equality; European Union; neo-abolitionism; legalization.

Resumo:

Prostituição é um fenómeno complexo que desperta o interesse de académicos, juristas e feministas. O debate sobre prostituição implica a discussão sobre valores morais, o que torna a prostituição um exemplo claro de um dos temas que estão cobertos pelas políticas de moralidade. Contudo, dependendo se consideramos prostituição uma forma de violência contra as mulheres, ou uma forma legítima de ocupação profissional, os direitos de igualdade de género, assim como os de liberdade de trabalho e de movimento, entram em colisão no espaço da União Europeia. As décadas recentes mostraram que a narrativa neo-abolicionista, que coloca a igualdade de género no seu seio, tem ganho adeptos no Parlamento Europeu. Essa preferência neo-abolicionista é evidente em várias Resoluções do Parlamento Europeu sobre o tema. No entanto, estes documentos não são vinculativos, e mesmo na Resolução mais recente, o Parlamento Europeu reconheceu que a competência para legislar sobre prostituição continua nas mãos dos Estados Membros. Devido a este facto e à natureza controversa do tema, prostituição tem sido excluída das iniciativas legislativas da União Europeia.

Palavras-chave: prostituição, igualdade de género, União Europeia, neo-abolicionismo, legalização.

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1. Introduction

Prostitution is a complex social, cultural, and economic phenomenon that draws interest from academics, feminists, and jurists. The discussion over prostitution policies at the European Union level goes back to the 1980s. However, no legally binding instrument has been adopted specifically to cover this matter (Outshoorn, 2018).

Prostitution policies are interesting from a legal perspective, due to their complex nature. It calls for the protection of numerous rights, such as human dignity, sexual freedom, and freedom of labor. Still, it is also necessary to ensure values such as morality or social justice. As Rigotti states “Prostitution sparks off the interest of jurists, as it is at the intersection between social order and the fundamental rights of each individual, and as it questions the division of labor, the free disposal of everyone’s own body, as well as human sexuality” (Rigotti, 2021, p.1).

The interpretation and analysis of prostitution, whether from a social perspective or a legal one, requires the use of a gender lens to look into the subject. There is indeed a gender dimension attached to prostitution since there are LGBTIQ+ people, as well as heterosexual men who sell sexual services. However, the legal framework, whether at a national or at an EU level, is focused on the offering of sexual services by women, and the purchase of those services by men (Rigotti, 2021, p.1).

A study conducted by the International Union of Sex Workers¹ in 2023 presents relevant data on the subject. This study shows that out of the 52 million people who offer sexual services, 41.6 million are women, representing 80% of the prostitutes globally (Branson, 2023). On the purchasing side, it is also evident that the majority of clients are male, considering that 16% of the male inquired have admitted to having purchased sexual services. In contrast, only 1% of the women have admitted the same thing (Branson, 2023).

In this regard, it is important to underline that female and heterosexual prostitution will be the only focus of this thesis. Through this means, my thesis targets the vast majority of people who are the audience of prostitution policies and it is possible to

¹ The International Union of Sex Workers was an organization founded in 2000 by a migrant sex worker in collaboration with a group of scholars and colleagues. Its main purpose is to advocate for better conditions for sex workers around the world, by responding to legislation proposals and assisting people who struggle due to their work (International Union of Sex Workers, 2023a).

provide deep insight into prostitution at the EU level by focusing its research on heterosexual practices.

Race, culture, and socio-economic aspects are also closely related to prostitution. Its nature and definition are not only limited to the selling of sexual services by white women, for instance (Rigotti, 2021, p.3). At this point, it is important to understand that the only prostitution that this paper refers to is the female one, not focusing on the other vulnerable groups that might suffer from this problem.

The emergence of the debates around prostitution at the EU level is not surprising, considering the rise of the concept of ‘European values’ which is largely used to refer to the ‘European identity’. EU institutions frequently highlight common values to promote a shared sense of identity and legitimize European integration. The interlinkage between this wave of debates on delicate matters and the rise of those values in the EU leads to a new configuration of European Morality Politics (Foret e Rubio Grundell, 2020, p.3).

Mattson (2016) has appointed three aspects that explain the emergence of prostitution in the EU political agenda. Firstly, women started to gain political positions which marked a change of discourse, since they started to voice and advocate for prostitution policies at the EU level. Secondly, there is a polarization of prostitution policies within the EU Member States. Some prefer to legalize it, whereas others prefer to abolish it. Lastly, there is a net of different political actors, from NGOs to governmental agencies, at the national and international level, which provides for different stages to advocate for prostitution (Mattson, 2016, pp.5-6).

Those three aspects favored the introduction of prostitution into the EU political agenda, but that fact did not produce major advancements. The technical nature of the EU, its efforts to have consensus-based decision-making, and its respect for diversity and plurality have proved obstacles to achieving concrete policies on morality issues (Foret *et al.*, 2020, pp.1799-1800). There are no major developments in the area of prostitution at the EU level. Only the European Parliament has dedicated some Resolutions on the matter. Although its initiatives are not binding, the EU institutions have progressively taken the position that prostitution is a form of violence against women, and, therefore, agrees with the abolitionism ideas.

This thesis will examine the following key research question: “Does the European Union Member States have a common understanding of how to address prostitution, and,

does the European Union will act on that common understanding and adopt a common approach at the EU level?”

The first chapter will be dedicated to the study of the multiple feminist perspectives on the conceptualization of the terms ‘prostitution’ and ‘sex work’. From the consideration of a radical feminist perspective or a liberal viewpoint, we can consider prostitution in different manners. The first expresses prostitution as being intrinsically violent and a product of the male-dominated society, while the latter considers that the provider of sexual services is an ordinary worker as any other professional from another economic sector. Moreover, the relationship between human trafficking and feminist narratives about prostitution will also be explored. The study of these theoretical considerations is essential to understanding the prostitution policies developed in the following chapters.

In the second chapter, I intend to give a comprehensive insight into morality politics and from that standpoint to understand how morality politics are built at the EU level. It is important to understand how the ‘European values’ influence the EU policies concerning prostitution.

After analyzing the moral values that are embedded in the drawing of policies, especially, of prostitution policies in the EU, the second chapter will focus on two opposite approaches to regulating prostitution. By considering two main legislative projects that were adopted by the EU Member States on the matter, it is possible to understand which values are taken into account, and, therefore, comprehend how they influence the construction of policies at the EU level. Thus, the analysis and study of the Nordic Model and the Dutch Model are essential to understanding the legislative differences within the EU Member States. One represents a neo-abolitionist approach, while the other has a reputation for being too liberal and upholding the legalization of prostitution.

The study of the Nordic and Dutch Models will enable us to understand the main trends within the EU Member States that will ultimately influence the debate around prostitution in the EU agenda. There are indeed many approaches adopted through the different EU Member States at its national level, but the analysis of every one would be impossible. One represents a neo-abolitionist approach, while the other has a reputation for being too liberal and upholding the legalization of prostitution. So, they represent two,

at least, opposite approaches to prostitution. Besides, they are commonly known and have taken the grand stage in the debates around prostitution at the EU level.

In the third chapter, the focus will be given on how prostitution has been regulated by the EU initiatives in the past and how that reflects on the current legal framework at a national and EU level. By comprehending the historical and cultural context behind past initiatives to regulate prostitution, it is possible to understand how prostitution entered into the EU political agenda, and how the debate around prostitution has been built throughout the years. Moreover, the existing EP Resolutions adopted in the matter will be examined, as well as a track on the developments adopted one by one until the most recent one.

Finally, the fourth chapter can provide an idea of what we might expect from the EU on the regulation of prostitution in the future. There is a general silence on the EU institutions on prostitution, only the EP has adopted some Resolutions on the matter. However, these Resolutions have a non-binding nature which means that they are not enforceable on the EU Member States. Besides, these Resolutions show a preference for neo-abolitionist ideas, which is not consensual among the EU Member States. So, will the EU institutions continue to prefer the neo-abolitionist ideas, and, then adopt a common policy on prostitution soon?

This structure will enable me to respond to my thesis' aim of understanding whether or not prostitution will be regulated through a holistic approach at the EU level in the future. The recent debates especially within the European Parliament serve as evidence of the emergence of abolitionist ideas in the regulation of prostitution. However, the non-binding nature of its Resolutions maintains prostitution in the arms of national jurisdictions. This fact combined with the legislative differences among the EU Member States and the argument that only the national jurisdictions are competent to regulate prostitution, build multiple obstacles to the adoption of a common prostitution policy at the EU level.

2. Prostitution, Sex Work, and Human Trafficking: Definitions and Implications

Dwelling on prostitution policies implies that there is a conceptualization of prostitution. It is important to understand what is prostitution, and which activities are referred to when prostitution is mentioned. The crucial factor is to acknowledge that our definition of prostitution will necessarily be influenced by our reasons for seeing certain aspects of prostitution as morally or socially unacceptable, or as deserving of legal punishment or prevention, in the first place (Green, 2016, p.185).

There is also a common use by jurists and academics of the terms ‘prostitution’ and ‘sex work’, but they are products of different theoretical views on the same circumstances. Hence, the different theoretical feminist perspectives will be explained to understand how the conceptualization of prostitution is shaped and, in the next chapters, understand the different political approaches to the subject that might be adopted.

The consideration of human trafficking in the debate about prostitution is fundamental. Not only because it served as an excuse to start the debate on prostitution at the EU level, but also because the different theoretical perspectives on prostitution ultimately influence the view on human trafficking for sexual purposes.

2.1. Conceptualizing Prostitution and Sex Work

Defining ‘prostitution’ is not as easy as it may seem. Some authors consider prostitution to be the oldest profession in the world, while others view it as a modern concept (Agustín, 2008). There is controversy over the term ‘prostitution’ since this concept is historically constructed by moral, cultural, and legal aspects, therefore, creating dissonance among its definition (Green, 2016, p.185).

In general, it is perceived as the offering of sexual services in trade for monetary benefits². However, many questions can be raised about that definition. “For instance, should the activity be carried out habitually and/or professionally? Is it still prostitution whenever there is no physical contact? Or, more provocatively, what if the sexual

² ‘Prostitution’, according to the Cambridge Academic Content Dictionary, means “the business of having sex for money” (“Prostitution”, 2024).

performances are not provided on an indiscriminate basis?” (Rigotti, 2021, p.2). These questions are answered according to the national and cultural environment in which the term ‘prostitution’ is discussed. Hence, the concept is open to interpretation depending on its social understanding (Rigotti, 2021).

There are two feminist narratives surrounding the definition of prostitution. On one side, a radical feminist movement, that considers prostitution as the apogee of men’s dominance over man, that portrays the prostitute as a victim of sexual exploitation, that needs help to escape that way of living. On the other side, there is a liberal feminist movement that considers prostitution as a choice of profession, which means that prostitution can be referred to as ‘sex work’ (Outshoorn, 2005, p.145).

As part of the feminist radical movement, Dworkin³ describes prostitution as the simple act of abusing a woman’s body in exchange for money from a man. For this author, prostitution is the mere act, the repetitive use of a woman’s body by a man in exchange for payment (1993). There is violence attached to prostitution by nature. When the concept of prostitution is theorized outside of that simple continuous, and violent act, then prostitution is not being discussed, but rather a debate that belongs to the “world of ideas” (Dworkin, 1993, p.2).

Prostitution is usually referred to as the transaction between the offering of sexual services and the purchase of those services between two individuals, without considering gender. Besides, the offering of sexual services in exchange for compensation gives the idea that both parties benefit from the transaction. Nonetheless, prostitution does not exist apart from gender inequality, and the individuals who are engaged in it are not gender-neutral (Leidholdt, 2004, p.170).

The reasons behind the beginning of practicing prostitution are, in its majority, economic ones, such as poverty, financial debts, limited education, unemployment, and others (Branson, 2023). So, the women who enter into prostitution depend on it for economic survival.

Radical feminists believe that prostitution is one form of maintaining male supremacy over women. The core feminist objection to prostitution comes from the economic limitations that force a woman's sexuality to be expressed only in ways that

³ Andrea Dworkin is a known American radical feminist, who started her career as a writer in 1974. It is known for her anti-pornography and anti-sex work ideas (Operations, 2022).

please men. Due to that financial pressure, prostitution eventually has the same moral position as rape (Jaggar, 1994, p.108).

According to Dworkin, prostitution is a result of the male-dominant society that goes back to the idea that women who have money can make choices. If a woman is not poor, she can choose not to have intercourse with men, which means that they would lose something that they consider to be entitled to. The condition of prostitutes is the necessary evil to maintain the *status quo* of men and for them to not lose power over a woman's body (Dworkin, 1993).

This feminist movement considers that the end of prostitution can only be achieved once the male economic power is eradicated, alongside the disuse of the idea that women are sexual objects (Jaggar, 1994, p.108). The element of money exchange to conceptualize prostitution means that any woman has a prize and that any amount of money that is given to the prostitute is worth more than her. The payment makes the concept of prostitution more tolerable as it would make the sexual experience more likable and excusable (Dworkin, 1993, p.4).

The second approach toward prostitution is that it is a professional activity that provides economic survival as any other, and, thus, the sexual freedom, the freedom of labor that allows that choice of profession should not be interfered with. Prostitution is not a problem by nature, but safety, and hygiene, i.e., the conditions through which it is exercised should be assured (Outshoorn, 2005, p.145).

There is a simplistic contractual position within the liberal feminist narrative since they consider the agreement between the prostitute and the buyer as any other business transaction, and, thus, legitimate in every sense of it (Jaggar, 1994, p.103). Stuart Mill, however, considers that a contract loses its legitimacy once it depends on the abdication of one's freedom, and one loses the capacity to make future decisions about their life. Thus, those lifelong contracts or those through which the person sells himself to slavery should not be enforceable (Stuart Mill *et.al.*, 2015).

This question of contractual legitimacy did not catch the attention of liberal feminists, since they believe that prostitution belongs within the private sector of the individual's life (Jaggar, 1994, p.104). For liberals, prostitution is based on a private contract between two parts (Pateman, 1994, p.127) that should not be subject to legislation or any other governmental interference (Jaggar, 1994, p.104). In this regard,

the freedom of contract exposes the patriarchal right to access women's bodies anytime and through the market (Pateman, 1999, p.127).

Liberal feminists ignore the social purpose of prostitution which is to maintain and keep access to all men to the women's bodies (Giobbe, 1994, p.121). "(...) The prostitute symbolizes the value of women in society. She is paradigmatic of women's social, sexual, and economic subordination in that her status is the basic unit by which all women's value is measured and to which all women can be reduced" (Giobbe, 1994, pp.124-125).

Female sexuality is viewed differently by these two narratives. The first considers that women are passive actors and victims of male sexuality, while the sex work approach takes into account that women are sexually active beings. Both perspectives look into male sexuality as a guarantee, as something that will always exist (Outshoorn, 2005, p.146).

The theoretical changes from looking into the livelihood of prostitutes as a violent, victimizing, result of the male-dominant society that characterized the radical feminist movement, to the idea that prostitution is based on business contracts, and therefore, a professional occupation as any other, brought a linguistic change attached to it (Sanders *et al.*, 2009, p.9). From the term 'prostitution', the liberal feminist movement started to prefer the use of the term 'sex work' (Outshoorn, 2005, p.145).

The term 'sex work' was used by the liberal feminist movement (Outshoorn, 2005, p.145), and invented by Carol Leigh⁴ (Jeffreys, 2015, p.2; Leigh, 1997, p.168). To combat the social stigma around prostitution, those feminist organizations started to use the term 'sex work' to legitimize that practice as any other professional occupation. They believed that by calling it 'work', the stigma would be reduced, and women would be more supported and protected (Rigotti, 2021). As Leigh states: "This invention was motivated by my desire to reconcile feminist goals with the reality of my life and the lives of the women I knew. I wanted to create an atmosphere of tolerance within and outside the women's movement for women working in the sex industry" (Leigh, 1998, p.1).

⁴ Carol Leigh (1951-2022), or "Scarlot Harlot" as was also well-known, was a sex worker, artist, and activist who advocated for the safeguarding of sex worker's human rights worldwide. In her 1979 article "Inventing Sex Work", the term "sex work" was first used (Red Umbrella Fund, 2023).

This conceptual change brought to light another perspective on prostitution, which boosted the debate around the issue (Rigotti, 2021). Nonetheless, this term is not free of flaws, since the concept of ‘sex work’ only refers to the providers of sexual services, and the buyers seem to be excluded from the equation, which overlooks the importance of third parties in the participation of the sex industry (Green, 2016, p.185). Besides, it ignores the violent nature of prostitution, which does not characterize any other form of employment. The social stigma did not disappear with the terminology change, therefore, sex worker who suffers from violence will be overlooked by society because there are no moral and social standards that do not tolerate aggression against them (Sanders *et al.*, 2018, p.11).

Prostitution laws in EU Member States will be influenced by these radical and liberal feminist narratives on prostitution. The considerations of prostitution as a product of a violent patriarchal society or as any other form of employment shape the legislative measures adopted at the EU Member States, and, ultimately, the EU itself.

At the EU level, the most recent definition of ‘prostitution’ provided by any EU institution was the European Parliament 2023 Resolution on “regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights” which defines it as “(...) not an individual act of a person renting his or her body for money, but rather a system organized for profit which is intrinsically violent, discriminatory and deeply inhuman and that operates as a business and creates a market where pimps plan and act to secure and increase their markets and where buyers of sex play a key role in boosting them” (European Parliament, 2023, paragraph 8).

There is no mention of ‘sex work’ *per se*, but in the same EP Resolution, the term ‘sex worker’ is defined as “(...) the self-description of some people who are engaged in prostitution and regard it as professional employment, but who only represent a minority of people in prostitution (...)” (European Parliament, 2023, paragraph A).

In both of these definitions, it is possible to understand that the radical feminist movement influenced the definition of the term ‘prostitution’ since the EP recognizes its systematic violent nature. Besides, the definition of ‘sex worker’ refers to the liberal position, since it mentions those people who engage in prostitution as a professional occupation, but also underlines the fact that these people represent a ‘minority’ (European Parliament, 2023).

The different feminist perspectives about prostitution are important to be born in mind throughout the reading of the next chapters. However, to maintain accuracy in this thesis, the terms "prostitution" and "sex work" will be used interchangeably, depending on the sources we are referencing.

2.2. Prostitution and Human Trafficking

Prostitution and human trafficking are often discussed simultaneously. When one issue is being discussed, the other is almost inevitably mentioned. The connection between human trafficking and prostitution may be attributed to the lack of opportunities in the country of origin, which includes women's exposure to poverty and social marginalization (Musacchio, 2004, p.1020).

Historically, feminists would mention both issues when the discussion around the combat of the white slave trade, i.e., a discussion that emerged in the 19th century that had the purpose of tackling the deception of women into forced prostitution in an establishment. The abolition of prostitution was often called for by those who campaigned against the white slave trade, and, therefore, the two concepts seem to go hand in hand since then (Rigotti, 2021).

The radical and liberal feminist movements influence the perceptions that will be given to human trafficking. According to the radical feminist movements, women who are recruited for sexual exploitation are always victims. Prostitution is behind the existence of human trafficking because if there was no need to provide sexual services, then no women would be trafficked (Outshoorn, 2005, p.146).

As for the sex work perspective, not every woman to crosses a border to provide sexual services elsewhere is trafficked, provided that she was not forced into entering prostitution (Outshoorn, 2005, pp. 146-147). Prostitution is considered a professional occupation like any other form of employment, therefore, if a woman decides to migrate to another country to provide her sexual services voluntarily, then it is not trafficking, but rather simple migration for better employment conditions (Jeffreys, 2009, p.318).

In this regard, 'forced prostitution' and 'voluntary prostitution' are distinguished. According to liberal thinking, there is only women trafficking when they are coerced to enter into prostitution due to violent threats, and when the perpetrators keep their income (Lee *et. al.*, 2022, p.89).

At the EU level, this crime is defined in the Art. 2.1 of the EU Directive 2011/36/EU as “the recruitment, transportation, transfer, harbouring, or reception of persons, including the exchange or transfer of control over those persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

It is important to keep in mind this definition, since, prostitution policies have a direct impact on the combat of human trafficking. Depending on the understanding of how we consider prostitution (as a violent form of male dominance or as any professional occupation) that will later define prostitution policies that have a direct interference on the elimination of human trafficking. Besides, as we will later see, the combat to human trafficking was often used by stakeholders to introduce the debate around prostitution to the EU political agenda.

3. Defining “Morality Politics”

Prostitution is considered to be a typical example of ‘Morality Politics’ (Knill, 2013). Since the subject of prostitution is intimately related to ‘Morality Politics’, it is important to understand, firstly, what is ‘Morality Politics’ and how it is designed. However, the moral values that emerge from the debate around prostitution at a national level differ from those values that are discussed at an EU level. Thus, it is essential to comprehend which values clash in the discussion of regulating prostitution at the EU level, to further understand the steps that have already been taken and the difficulties to achieve more advancements. The result of the conflict of values is the one that dictates how prostitution policies are discussed and built.

3.1 What is “Morality Politics”?

The definition of “morality politics” is not free from debate. There is no consensus on which terms can be incorporated into that concept. Policies are deemed morality policies if the public decisions they implement are intimately linked to the regulatory content of social values, even though the exact nature of this relationship may change over time and across different policies and countries (Knill, 2013, p.311).

It is generally accepted that this concept refers to policies focused on first principles, and when there exists a conflict within the public opinion regarding those. It is not possible for the different ideologies present in the political spectrum to see eye to eye on the definition of what is considered to be first principles (Wagenaar *et. al.*, 2012, p.281).

Christopher Mooney writes: “the important distinction between morality and nonmorality policy is that at least a significant minority of citizens has a fundamental, first-principled conflict with the values embodied in some aspects of a morality policy” (Mooney, 1999, p.675). Besides, it recognizes that criminal law and other policies also establish moral standards of behavior, but they echo a consensus over certain values, while morality politics have a controversial nature (Mooney, 1999, p. 675).

Through morality politics, there is the confirmation of what is right, or as Mooney puts it: “morality policy is (...) no less than the legal sanction of right and wrong” (1999,

p.675). Another author, Kenneth Meier (1999), expresses the same idea, i.e., that the design of morality politics is the governmental confirmation of one set of values to the detriment of others (Meier, 1999, p.681; Permoser, 2019, p.311).

In this regard, three important aspects characterize morality policies: it regulates by distinguishing what is right from wrong in the cornerstone aspects of personal life; confirm a particular set of values at the expense of others (Mooney, 1999, p.675; Meier, 1999, p.681); and that it is different from other categories of policies since it embodies values that are considered to be controversial in society, whereas the latter defines values that correspond to a consensus in public opinion (Mooney, 1999, p.675; Permoser, 2019, p.311).

That means that the conflict of values that is present in the drawing of morality politics cannot be solved by compromise. One set of values will prevail over the other. The reasoning behind the morality policy is the definition of what is right and that the preference of a set of values over others is based on a conviction that those are non-negotiable values since are deeply held by first principles (Meier, 1999, p.681), and, therefore, a ‘deep conflict’ emerges (Wagenaar *et. al.*, 2012, p.3). The policies are determined by principles and their upholding is also the purpose of the morality policies themselves.

This uncompromising aspect of morality politics is often criticized, because, although moral values are non-negotiable and upheld by profound private beliefs, the practical aspects regarding the implementation of the policies are discussed and achieved through compromise between the polar sides (Permoser, 2019, p.312).

The reason behind the assumption that the clash of moral values is uncompromised is explained by Theodore Lowi. According to this author, the moralization of the discussion over certain policies is a political strategy enforced by political actors. Thus, there is only a discussion over moral values in the design of a policy because political actors want it (Schwartz *et al.*, 2018, p.8). However, this idea is easily refuted since, in the abstract, it is possible to charge any issue with morality aspects, but, in practice, some issues are likely to be moralized when compared to others, and, coincidentally, every one of them appears to be non-economic related (Schwartz *et. al.*, 2018, p.8).

Mooney considers that regulating first principles is the most relevant characteristic of morality politics since it enables and boosts citizens' participation in the debate. Taking into account that the debate is on basic aspects of life, anyone can participate in the debate and can claim to be well-informed on the subject. Due to their technical simplicity, the involvement of citizens increases, since the subject of debate touches everyone's lives and it is technically simple (Mooney, 1999, p.676).

This element of citizen participation is criticized by Engeli *et. al.*, considering that it only reflects the United States context and that the morality issue is not deprived of its relevance whether there is no significant participation (Engeli *et. al.*, 2012, p.23). Those authors also argue that the definition of the morality issue is based on the public perception of the matter. To provide an insightful example to understand this argument we might think of health care since it can include decisions regarding life or death, but it is not generally considered a subject that can raise a moral conflict over first principles (Engeli *et. al.*, 2012, pp.23-24)

Wagenaar and Altink consider that there are six important aspects of morality politics. First and foremost morality policies are built according to a certain ideology. The author believes that the policies in which the subject is a moral cause, tend to have a pedagogical purpose, the decision-making is intended to persuade the opposition and to accomplish the ideological politics hegemonic (2012, p.283).

Secondly, morality policies are lay policies, since they produce an idea of ownership to everyone. In the debate behind the construction of a morality policy, the technical considerations are irrelevant, the discussion is focused on the first principles that are being debated, and, therefore, everyone considers themselves to be sufficiently well-informed to discuss them (Wagenaar *et. al.*, 2012, p.283).

Thirdly, morality policies are “emotionally charged”, since they are discussed through a language that embodies a “moral crusade”. Usually, the debate on the policy subject is not a “dispassionate exchange of ideas (...)”, but rather an opportunity to demonstrate the correctness of the speaker's position in the face of much allegedly wrong-headed opposition” (Wagenaar *et. al.*, 2012, p. 284)., those that tend

Fourthly, the morality policies do not give importance to facts. There is a general lack of interest in basing the discussion on numbers and statistics. Besides defending one

value, at the expense of another, tends to exacerbate the numbers to favor their arguments (Wagenaar *et al.*, 2012, p.284).

Fifthly, the policy implementation is not urgent when it comes to morality policies. The debate seems to focus on the first principles of life that the instrumental aspects are overlooked. Thus, even at the implementation stage, the abstract discussion is more important than the practical one (Wagenaar *et al.*, 2012, p.284). As Mooney (1999, p.83) puts it: “At stake are basic questions about right and wrong, not subtle questions about policy impact.”

Lastly, morality policies are easily influenced by drastic changes, i.e., changes in policies that embody different values and principles (Wagenaar *et al.*, 2012, p.284). Engeli *et al.* goes further by naming all the subjects that are included in the concept of morality politics. Thus, abortion, contraception, gambling, same-sex marriage, drugs, pornography, capital punishment, physician-assisted suicide, and prostitution, are at the heart of the “deep conflict” (Wagenaar *et al.*, 2012, p.281) that defines morality politics (Engeli *et al.*, 2012)

Despite that characterization made by Engeli *et al.*, some authors believe that this definition is too restrictive to embark on every aspect that the concept of ‘morality politics’ seems to embody. As such, some authors argue that some subjects can be considered a controversial issue, but could become generally accepted over time.

This can be said about abortion or same-sex marriage, for instance (Wagenaar *et al.*, 2012, p.281). Wagenaar *et al.* believe that “Deep conflict is not an intrinsic quality of morality politics” (2012, p. 281), since there is no correlation between the controversial nature of the issues and the morality attached to them. Some issues that are not considered to be morally judged, such as taxation or education can be controversial and subject to “deep conflict” (Wagenaar *et al.*, 2012, p. 281), but does not turn them on issues of “morality politics” (Wagenaar *et al.*, 2012, p. 281).

That initial definition of the concept of morality politics can also be overruled by the fact that it requires a distinction between ‘first principles’ from other values. ‘First principles’ seem to coincide with cornerstone issues of personal life, such as birth and death (Wagenaar *et al.*, 2012, p.282). Knill even categorizes morality issues as “(1) issues of ‘life and death’ (including abortion, euthanasia, artificial insemination, stem cell research and capital punishment); (2) issues of sexual behaviour (e.g., homosexuality,

prostitution, pornography); (3) issues related to addictive behaviour (e.g., gambling, drug regulation); and (4) issues referring to basic decisions over the relationship between individual freedoms and collective values (e.g., religious education, gun control)” (2013, p. 312).

The question that is raised is if other values should not also be considered. Does liberty or equality have a lack of meaning in morality politics? (Wagenaar *et. al.*, 2012, p.282). Deborah Stone makes an interesting point by stating that policy-making is focused and developed based on the “struggle of ideas” (Stone, 2012, p.13). As she argues: “Ideas are the center of political conflict...Each idea is an argument (...) in favor of different ways of seeing the world” (Stone, 2012, p. 13). Hence, she does not reduce policy-making on moral aspects, but rather expresses and demonstrates how values such as equity or liberty play their role in the policies’ drawing (Stone, 2012).

Another aspect that is criticized is the fact that morality politics is distinguished from other policies regarding the values that they uphold. Mooney even defines morality issues as “the public clash of private values” (Oliver, 2002, p.294), since it is a public conflict over privately held beliefs. However, it is argued that public policies only consider public values, not private ones and that public opinion can distinguish between them (Permoser, 2019, p.311). Thus, a person can support the design of a public policy to allow abortion, for instance, even though he does not decide to do one, because it does not fit within their private values (Permoser, 2019, p.311).

Regarding the formation of that “deep conflict”, that the majority of the authors seem to rely on to define morality policies, Schattschneider (1975), and, afterward, Baumgartner and Jones (2009), developed the idea that morality issues are often discussed within a ‘policy monopoly’, i.e., a limited group of actors that share the same ‘policy image’, a negative or positive perspective over the matter, and an ‘institutional arrangement’ that reinforces that perspective (Baumgartner *et. al.*, 2009; Engeli *et. al.*, 2012, p.9). Nevertheless, morality issues “(...) can be expanded beyond the existing policy monopoly and into a broader political conflict (...)” (Engeli *et. al.*, 2012, p.9).

Baumgartner and Jones (2009) identified four elements that lead to the agenda-setting of the conflict. These four elements – attention, actors, framing, and venues – are important to expand the conflict from those ‘policy monopolies’ to a wide political conflict over morality issues (Engeli *et. al.*, 2012, p.10).

First, they argue that attention is important since it determines whether or not a major audience is interested in the conflict, and not only those actors that can be directly influenced by the outcome of the conflict. Secondly, is the “(...) actor constellation around the issue (...)” (Engeli *et. al.*, 2012, p.9), i.e., whether or not those issues can be defined by a specialized and limited group of actors, or easily discussed by unspecialized ones.

Thirdly, there is the ‘policy image’ or the definition of the problem. There is a tendency to discuss the issues from a specific perspective, which excludes the others that might arise on the issue. That perspective would eventually define the main insight into the morality issue (Engeli *et. al.*, 2012, pp.9-10)

Lastly, the conflict on the morality issues will change whether the debate is before a court, a parliament, or another institution. Thus, the conflict on a morality issue would change depending on the institutional venue through which it is debated (Engeli *et. al.*, 2012). Baumgartner and Jones (2009, pp.31-35) even call ‘venue shopping’ when actors try to move the discussion on the morality issue from one institutional venue to another to create an incident during the political process and to force political change.

Indeed, it is possible to understand that the initial definition of ‘morality politics’ is not consensual. Discussing what is right and wrong over the ‘first principles’ of life, of being the debate around one set of values at the expense of others, are usually appointed as characteristics of morality politics, but they are not free for disagreements.

The question that remains to be answered is: Do the political ideologies and the parties that advocate for them have a grand impact on the design of morality policies? The parties' impact on the morality output is one of the most raised questions within political science (Adam *et. al.*, 2020).

This question remains unanswered, however, there is a general belief that the left-wing parties are more open-minded in morality issues when compared to the right-wing parties. As argued above, depending on the institutional venue through which the morality issue is debated, the conflict on what is right or wrong will change too. Political parties play that role since they define the scope of the conflict based on their ideologies (Engeli *et. al.*, 2012). Is it possible that alongside the morality conflict, there is also a right/left conflict?

The authors believe that morality issues will only serve as a “hook” (Engeli *et. al.*, 2012, p.14) in countries where the right-wing parties take the lead, and, within them, the liberal faction does not have political significance. Conservative parties tend to defend traditional family values, which might serve as a reason to clash with liberal positions since they tend to be more receptive to progressive values. The same might happen within the left-wing parties since some old voters might not agree with the responses that their parties might have to resolve morality conflicts (Engeli *et. al.*, 2012).

It is possible to conclude that the left/right conflict will serve as a foundation for the politicization of a moral conflict since it would only take place when there is a right-conservative political force, that would enable left parties to rise as an oppositive force. Nonetheless, even that scenario would only occur in a political environment in which the liberal factions would not have political significance for their disagreement to be felt (Engeli *et. al.*, 2012).

It is impossible to overlook the conservative parties' religious background, so they will also attempt to avoid the discussion of morality issues by giving them little attention (Engeli *et. al.*, 2012, p.7). It is generally argued that the Catholic Church plays an important role in the debate on morality issues by confirming its position as a “societal veto player” (Engeli *et. al.*, 2012, p.7) since it takes advantage of its capacity to mobilize people to one side of the conflict. Another aspect to consider is that, although religious aspects are important for being a source of moral values, and, therefore, of morality conflicts, that does not mean that morality politics are defined by religion alone. Some moral values might not be formed from a religious belief. So, some moral conflicts do not arise from a clash of religious and secular views (Engeli *et. al.*, 2012, p.25).

Taking into account that the party systems are broadly modeled by the left and right conflict, which only offers limited possibilities to include and debate morality issues (for the reasons argued above), then those will be considered and named “ethical questions” (Engeli *et. al.*, 2012, pp.19-20) and, therefore, inappropriate for the partisan rivalry (Engeli *et. al.*, 2012).

3.2 The Morality Politics on Prostitution

Prostitution is a typical subject of Morality Politics as some authors remarked it mentioned above (Wagenaar *et. al.*, 2012, p.281; Knill, 2013, p.312). It is important to keep in mind the characteristics of Morality Politics that were discussed previously, at least in its most simple manner. Thus, Morality Politics are characterized by the conflict of first principles (fundamental questions of life and death), which lead to a conflict of uncompromising values that create a political and societal cleavage, and that enhance the participation and debate within the civil society.

By being the policies that separate what is right from wrong, prostitution is also covered by these types of policies. The design of prostitution policies tends to be an attempt to draw a line between “good” and “bad” behavior since there is a common moral idea that sexual relationships should not be built as part of some service (Hubbard *et. al.*, 2016, p. 194). This decision about what is right from wrong depends on the consideration of human dignity and public order, so, prostitution policies have to provide a compromise between individual freedoms and the common good, which would later establish the moral order (Euchner, 2022, p.836).

There is the historical idea that the figure of ‘the prostitute’ is the opposite or the antonym of a ‘respectable woman’, which affects the design of policies (Bjønness, 2012, p.193). If we go back to the 19th century, the image of a prostitute not only served to describe the one who offered sexual services but also to define someone of ill-reputation who behaved in a “sinful” manner in public spaces (Bjønness, 2012, p.193). Due to cultural and historical roots, there is a tendency for prostitution policies to be elaborated according to moral convictions rather than by evidence. It seems there is limited room for an evidence-based approach to prostitution without relying on moral beliefs (Hubbard *et. al.*, 2016, p.194).

Taking into account that what is discussed is the difference between right and wrong, there is no great need for expert knowledge of the sex industry, since public opinion and the enhanced participation of civil society in the debate are considered to be as important as any researcher's opinion on the subject. When a subject is debated in the public sphere as one being morally charged, technicalities and evidence tend to be dismissed, since anyone is expert enough to discuss what is right and wrong (Hubbard *et. al.*, 2016, p.194).

Prostitution is different from other morality issues, such as abortion, despite also being debated in the public sphere, since it has a strong economic dimension. The purchase of sexual services that embody prostitution turns the subject into a business sector (Foret *et. al.*, 2020, p.1808). Therefore, the shape of its policies is shaped by the specific nature of the conflicted and uncompromising values that are being debated.

Foret and Rubio Grundell (2020) believe that contrary to abortion, for instance, prostitution does not have a direct influence on religious arguments in the shape of its policies. As Foret, et al., puts it “[Prostitution] is structured by different secular fundamental rights related, on the one hand, to human dignity and gender equality and, on the other hand, to freedom of movement and labor, all of which are particularly salient as European values” (2020, p. 1800).

Other authors tend to disagree and argue that religious values influence the design of prostitution policies. From a religious perspective, two moral justifications explain why prostitution should be condemned. Firstly, because the only sex that is morally acceptable is the heterosexual, monogamous, and marital; and the one that envisions procreation (Green, 2016, p.205). Secondly, prostitution threatens the family's integrity (Green, 2016, p. 206). Thus, some values of religious nature can enter into conflict in the debate around prostitution.

At the EU level, however, those religious values do not seem to have great influence. It is possible to conclude that the main conflicting moral values that design European prostitution policies are not religious. The “first principles” that clash have a secular nature because they are intimately related to European values, which means that they do not enter into conflict with religious aspects. The discussion around prostitution leads to a conflict between fundamental European values: on one side, gender equality, and sexual freedom, and, on the other side, the freedom of movement and labor (Foret *et. al.*, 2020, p.1800).

Prostitution has been framed as a gender equality issue, and by being included within the sexual violence against women regulation within the EU, as we will later analyze in chapter 5. In this regard, it is important to understand that the conflict of first principles that characterize morality politics takes place differently when we debate prostitution, especially at the EU level. The nature of the uncompromising values that are at the core of the debate can explain the difficulties of drawing prostitution policies in the

EU, considering that those values are coincident with those that are fundamental and are at the origins of the EU itself.

The consideration of morality politics to further understand the design of prostitution policies at the EU level is crucial to the comprehension of which values will prevail over others. Does gender equality will weigh more than freedom of movement and labor? It is the result of this conflict of values that dictates the design of a prostitution policy in the EU.

4. The Main Legal-Regulatory Approaches to Prostitution in the Member States of the EU

Prostitution has a strong economic component that divides the European Union, since there is a need to balance certain values such as gender equality and human dignity, with the freedom of movement and labor that embody the core values of the European Union (Foret *et. al.*, 2020, p.1800). Moreover, there are different prostitution policies among the EU Member States, which not only increases the debate on prostitution since it is possible to advocate for different ways how to address the issue but can also be an obstacle to further adopting a common policy at the EU level (Mattson, 2016, pp.5-6). By lacking a common ground, the prostitution policies of the EU Member States are of significant importance, since it is the first standpoint to the development of a future EU policy on prostitution.

In this regard, the first subchapter will be dedicated to analyzing the different regulatory approaches, that existed or still exist in Europe, to understand the various ideas that flow and are discussed when prostitution is being debated. Thus, a historical brief about the evolution of prostitution policies will be presented, followed by the consideration of different methods to address prostitution, by criminalizing it, decriminalizing, or legalizing it (Mossman, 2007). Through this analysis, it will be possible to understand the existing several approaches to prostitution that will further enable us to comprehend the most recent prostitution policies adopted by the EU Member States.

In the next subchapters, I intend to develop and give insight into two main approaches to regulating prostitution within the European Union. Taking into account that national agendas seem to have extrapolated from its national borders to influence the EU policies (FitzGerald *et. al.*, 2022, p.62), the study of the Nordic Model and the Dutch Model seems to be essential, considering that are often mentioned as typical examples of prostitution policies.

The Nordic Model and the Dutch Model seem to be the opposite of how to address prostitution, one adopting a neo-abolitionist approach, while the other seems to adopt a legalized one. Despite both models seeking to respond to that subject, one is more

punitive than the other, and both try to balance the individual freedom of the prostitutes with public health and the general well-being of the societies.

These two models are essential to comprehend the general debate emerging at the EU level since they are examples and are often cited when prostitution policies are being discussed. By understanding these two models, it is possible to comprehend what has motivated the organisms of the EU to adopt certain initiatives on prostitution and how those might shape a common prostitution policy in the future.

4.1 Different Regulatory Approaches to Prostitution in Europe

The different perspectives that define prostitution whether it is from a liberal discourse that envisions it as a choice of profession, or from a radical feminist narrative that looks into prostitution as the epitome of gender inequality and as a form of violence against women, provide different regulatory ways to address prostitution. If prostitution is considered a job, then legalization seems to be the right path, while if prostitution is viewed as a form of violence, then the next move is to criminalize and seek to abolish it.

How to regulate prostitution depends on historical context, so this analysis will start by comprehending the evolution of prostitution policies in Europe. By considering the historical evolution, it will be possible to retrieve different regulatory approaches to prostitution – criminalization, legalization, or decriminalization. The reasons behind the adoption of one approach over another will also be explored since it provides the grounds upon which prostitution should be addressed.

At the end of the 19th century, the majority of European countries wanted to regulate prostitution. Most countries adopted the so-called French system, or, as Fitzgerald and Skilbrei call it: “the regulationist model for medical policing of prostitution” (2021, p.49), in which prostitution was legal, provided that prostitutes would register themselves and that were submitted to regular health check-ups. This regulatory approach combined the registration of prostitutes, surveillance from the state authorities, and health examinations to prevent contamination from sexually transmitted diseases (STDs) (Dolinsek *et. al.*, 2022, p.124).

The regulative intent was based on the fear of the spread of STDs, but the laws and regulations of the time were also morally charged. “Most regulatory regimes

stipulated where prostitutes could work and where not, in what type of establishments, what clothing prostitutes should wear, but also how brothels should hide prostitutes from view (Malta, Norway) and how proprietors and clients were to behave toward prostitutes” (Wagenaar, 2018, p.12). Those provisions did not produce any direct effect on the propagation of STDs but were designed bearing moral values in mind.

There was a general prejudice towards prostitutes that considered them to be lazy and immature, which called for necessary supervision of their activities⁵. Besides, 19th-century middle-class reformers were obsessed with the lifestyle of the poor, making them the main target of applying projects of the emergent social sciences. There were major state interventions on the poor to improve their life conditions and the same can be said regarding the prostitutes. By applying the tools of the social sciences, they were preventing social disorder, and the spreading of immoral activities (Wagenaar, 2018, p.13).

During that period, prostitutes were viewed as not being feminine. There was a general belief that femininity was not granted by women when they were born, it was rather something that women achieved and needed to maintain (Scott, 2011, p.60). That interest in female sexuality revealed an idea that it was passive, while the male sexual behaviors were dynamic. Thus, prostitutes were considered to have masculine behaviors which made them less feminine when compared to other women. It was as if the prostitute was “a male soul in a female body” (Scott, 2011, p.60).

The concerns about the improvement of the living conditions of the poor, combined with the idea that prostitutes lacked female sexuality due to the poor management of their lives, made it believable that prostitutes could have their redemption with governmental help. If women, who entered into prostitution, were unable to appropriately govern themselves, then the state authorities should intervene and regulate prostitution (Scott, 2011, p.60).

Those obsessions of the middle class were hidden behind scientific purposes and schemed to improve the living conditions of the poor, as well as moralizing them. But

⁵ An Italian author, Cesare Lombroso, in his work “La donna delinquent: la prostituta e la donna normale” from 1893, even theorized that prostitutes had physical anomalies that explained their promiscuous behavior, their tendency for criminality, and their moral flaws. The condition of the prostitute was considered to be innate and inheritable, which meant that the state authorities needed to control them to maintain public order (Dolinsek *et. al.*, 2022, p.128).

Wagenaar goes further by stating that those obsessions are not so different from those that influence prostitution policies today: “(...) a combination of obsessive attention that is driven by middle-class obsessions with the poor, with migrants and with sexual conduct, a feverish desire by state authorities to intervene and regulate, the application of scientific instruments that give a gloss of authority to discursive images, and the ignoring of the rights of sex workers as the acceptable collateral of regulation – remains by large unchanged” (Wagenaar, 2018, p. 13).

The critiques that arose to the French system were that imposed double standards between men and women, since women seemed to be the only contagious source for STDs, considering they were the only ones to do health examinations⁶; and men were not discouraged from buying sexual services (Dolinsek *et. al.*, 2022, p.124). The regulation project did not have many fruits, so at the beginning of the twentieth century, there was a call for an abolitionist approach to control and contain prostitution (Wagenaar, 2018, p.13).

The abolitionist approach started to gain attention at the end of the 19th century. Josephine Butler⁷ was the prominent public figure to defend this approach when pleaded for the revocation of the Contagious Diseases Act in the UK. This Act, inspired by the French system, imposed that prostitution would be legal provided that prostitutes were registered before the police authorities; and they needed to go through invasive health examinations for STDs (Summers, 2006, p.215).

In 1875, Butler created the ‘International Abolitionist Federation’⁸, which intended to erase those double standards between men and women and to eliminate any state regulation about prostitution (Dolinsek *et. al.*, 2022, p.125). If there was any interference from state authorities to prostitution, then there were no discriminatory attitudes toward prostitutes.

⁶ “The very idea of regulation rested on the assumption that VD [Venereal Diseases] spread from the body of a particular kind of woman to a man and, by inference, to this family. There was no written theory that laid down systematically a medical model of contagion that excluded male bodies as sources of contagion, but such a model is evident from the theories and practices of the time” (De Vries, 2001, p.47).

⁷ Josephine Butler (1828-1906) was a Victorian feminist who led the women’s campaign for the rights of prostitutes in the UK. She welcomed at her house in Liverpool prostitutes from the local workhouse to take care of them (The History Press, 2024).

⁸ Josephine Butler wanted to expand the abolitionist movement through the European countries, therefore, the British, Continental, and General Federation was formed in 1875. Later on, the organization’s name changed to ‘International Abolitionist Federation’, and, in 1877, held its first international conference in Geneva (Summers, 2006, p.216).

That movement expanded through the European countries and by the 1920s, abolitionist women's organizations were represented before the League of Nations, which resulted in their ideas being consecrated in the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, from 1949⁹ (Dolinsek *et. al.*, 2022, p.125).

The purpose of the abolitionist movement was not so successful since discriminatory actions were still perpetrated against prostitutes. Thus, since the 1980s, women's organizations have advocated for legislative measures against prostitution and this debate has become rather polarized. A new 'abolitionist' movement has been raised, but instead of revindicating the end of regulation, intends the end of prostitution itself (Dolinsek *et. al.*, 2022, p. 127).

It is important to understand that, nowadays, exist multiple approaches to address prostitution. Another aspect to consider is that there is no consensus among scholars on the classification of regulatory models for prostitution (Post *et. al.*, 2019, p.103). For instance, Immordino *et. al.* divide the classification of prostitution policies into three categories: prohibition (in which any prostitution activity is illegal); regulation (in which prostitution is legal, but there are some restraints to the market); and *laissez-faire*¹⁰ (in which prostitution is legal, and there is no state intervention on the matter) (2015, p.14). Mossman (2007) also reduces prostitution policies into three categories, but differently: criminalization, legalization, and decriminalization (2007, p.5). These different approaches, as it is expected, have different goals regarding prostitution.

Criminalization is imposed when there is the general belief that prostitution should have its end, and, therefore, should be illegal. It is possible to subdivide those jurisdictions that criminalize prostitution on whether they adopt a prohibitionist approach or an abolitionist approach (Mossman, 2007, p.11).

Those who adopt a prohibitionist approach believe that any form of selling and purchasing of sexual services, as well as any activities involved, should be illegal (Bonache *et al.*, 2021, p.1992). Prostitution is regulated under the cover of criminal law,

⁹ For instance, Article 6 of the 1949 Convention establishes the abolition of any registration or special documentation for people who engage in prostitution (*Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949).

¹⁰ An expression that refers to "a philosophy or practice characterized by a usually deliberate abstention from direction or interference especially with individual freedom of choice and action" (*Laissez-faire*, 2024).

so people are penalized for spreading STDs and for having immoral conduct. The support of prohibitionist approaches “(...) tends to be linked to a particular view on the morality of sex outside of heteronormative and private relationships, where prostitution is considered as an immoral, illicit, and unlawful act that causes moral harm (...)” (Bonache, *et. al.*, 2021, p. 1992). So this approach is morally charged and perhaps the most influenced by moral or religious grounds.

The abolitionist approach defines as illegal the associated activities of the selling of sexual services, for instance, brothel keeping. The truth is, by prohibiting those related activities, they make the selling and purchase of sexual services impossible to be carried on, without committing any criminal offense (Mossman, 2007, p.11).

Prohibitionist approaches reduce the sex market, by discouraging the purchase of sexual services. Nonetheless, criminalization presents an obstacle to the report of violence, since the fear of punishment leads the victim to not report any abuse that had suffered, and, therefore, increases the marginalization of prostitutes (Joulaei *et al.*, 2021, p.3). Besides, criminalizing the selling of sexual services does not permit the creation of exit programs, which means that the sex worker needs to continue that activity.

In the countries that have adopted neo-prohibitionist approaches, such as the United States of America and Hungary, studies show that not only violence against sex workers but also the number of fines and arrests of those offering sexual services had increased (Bonache, *et. al.*, 2021, p.2).

When the abolitionist approach is adopted, the dialogue between prostitutes and state authorities is enabled, therefore, the access to health care services, as well as law enforcement instruments, can be addressed. Simultaneously, the sex market reduces, since the demand for sexual services decreases. Despite these advantages, the community of sex workers can be affected by the implementation of this approach, since the ban of the establishments, increases the risk of the prostitutes operating isolated (Joulaei, *et. al.*, 2021, p.4).

In the countries where prostitution is legalized, there is the general belief that prostitution “(...) is necessary for stable social order. Prostitution nonetheless should be subject to controls to protect public order and health (...)” (Mossman, 2007, p.12). It is also an approach adopted to reduce the crimes committed and associated with

prostitution. Among those “controls”, we might find licensing, mandatory registration, or health checks as conditions imposed by the state (Mossman, 2007, p.12).

Through the legalization approach, prostitutes stop operating secretly, so they are more protected from violence and within a community built with other sex workers. Nevertheless, the trafficking flows tend to increase. Besides, health checks are usually mentioned as one of the advantages of this approach, but they are only performed on sex workers, leaving their clients in the loop, which does not protect them specifically from STDs. The possibility of family rejection can also be enhanced because this approach is not socially accepted. The market can expand since the “employers” of the sex workers can seek profit freely, which means that they would have to meet the client’s demands despite the harm that might represent to them (Joulaei, *et. al.*, 2021, p.4).

As for the decriminalization regimes, there are no laws against prostitution or some activities associated with it. It is essential, however, to distinguish between voluntary prostitution and forced one, since the latter continues to be illegal. Within these regimes, there are no conditions or controls imposed by the state as it happens on those that adopt the legalization approach. The regulation of prostitution is under administrative and labor law since the main laws that address prostitution are concerned with employment or health issues (Mossman, 2007, p.12).

By decriminalizing prostitution, there would be a reduction of the social stigma, and, therefore, prostitutes would have better access to health care services and to law enforcement instruments which would enable them to report violence. However, this approach defies the gender equality principle, since prostitution has become a normal job, so, the creation of exit programs becomes also limited (Joulaei, *et. al.*, 2021, p.4).

These different regulatory approaches, in practice, can diverge from these descriptions. At the implementation level, they are adapted to the local circumstances of prostitution in a certain place. It is necessary to consider several factors such as the number of people involved in the sex market, the interests of the locality, or the perception that the general population has of the sex market in the region (Di Ronco, 2022, p.872).

4.2 Nordic Model

The Nordic Model of prostitution policy has its origins in Swedish legislation. The Nordic countries had a reputation for being progressive in their legal and social options for sexuality. Sweden, Norway, Finland, Denmark, and Iceland are considered Nordic countries¹¹. The Faroe Islands, Greenland, and Åland are three regions included in this term (Skilbrei *et. al.*, 2013, p.1).

Those countries were the advocates for sexual freedom, for instance, when they introduced sex education for children and the production of explicit sexual content, in the 1960s (Langford and Skilbrei, 2021, p.165). This assumption that the Nordic countries are more liberal regarding sexuality comes from cultural and historical aspects. For instance, due to the protestant majority in those countries, divorce and abortion were more permissive when compared to the Catholic countries (Skillbrei *et. al.*, 2013, p.29).

The liberal perception of the Nordic countries changed when they adopted a different approach to prostitution (Langford *et. al.*, 2021, p.165). Prostitution policies have been adopted at different times across the various Nordic countries. National and international theoretical perspectives on gender, sexuality, and social well-being influenced those policies. The legal options regarding prostitution in those countries are very similar because of their cooperation (Skillbrei *et. al.*, 2013, p. 1).

Criminalizing the purchase of sexual services, while maintaining the providence of those services as legal meant a different move from those categorized prostitution policies that were explored in the previous subchapter. It did not fit within the legalization nor decriminalization categories of prostitution policies. Although the only approach that is close to the Nordic prostitution policy is the abolitionist, the latter does not fulfill the purposes of that classic category since it is believed that the eradication of prostitution altogether requires a criminalization of the purchase of sex, but also of the selling side (Skillbrei *et. al.*, 2013, p.13).

Niklas Jakobsson and Andreas Kotsadam (2013) use the term ‘neo-abolitionism’ to welcome the Nordic approach to prostitution (p.91). The term "neo-abolitionism" was coined to characterize the Nordic model since it was difficult to include the prostitution

¹¹ The terms ‘Nordic’ and ‘Scandinavian’ should not be used interchangeably. ‘Nordic’ refers to all these five countries, while ‘Scandinavian’ only refers to Norway, Sweden and Denmark (Skillbrei *et. al.*, 2013, p.1).

policy from the Nordic countries into the categories of policies that were often proposed (Skillbrei *et. al.*, 2013, p.13).

Sweden introduced this approach to prostitution with the Sex Purchase Act in 1999, so the historical context of the country of origin of this prostitution policy is important to analyze in order to understand the change of perception toward prostitution across time that led to the birth of this approach.

In the wake of the international discourse surrounding prostitution, Sweden also abolished the state regulation that existed during the 19th century (Månsson, 2017, p.4). Sweden adopted the *Lex Veneris*¹² in 1919, a regulation to stop the spread of sexually transmitted diseases. At the time, prostitution was perceived as a public health problem (Langford *et. al.*, 2022, p.174). Alongside this law, the so-called Vagrancy Law, adopted in 1885, targeted people who lacked means of sustenance but did not intend to get a proper job. It is important to underline that money earned through immoral ways of living, as was the case of prostitution, was not considered. So, prostitutes were covered by this law, since their way of living was considered a threat to the societal order (Svanström, 2022, p.150). There were no legal impositions beyond the application of these two laws, so, prostitution itself was not regulated nor criminalized (Svanström, 2022, p.146).

During the 1960s, there were sociological studies about prostitution that argued it was a result of poverty, which meant that there was a lack of public policies and social services to tackle that problem. Instead of focusing on prostitution as a threat to public order, those sociological studies called for the inadequacy of the welfare state services and its regulations (Månsson, 2017, p.4). By focusing on the living conditions of the people who engage in prostitution, public opinion shifted and started to consider prostitution as a social issue (Langford *et. al.*, 2022, p.174).

The 1970s marked a sexual revolution in which sexual behavior started to be discussed on the political agenda, especially by feminist movements (Yttergren *et. al.*, 2016, p.145). There was a more open mind to sexuality that underlined individual

¹² This national legislation was imposed to control STDs, according to which, people who are suspected of having any signs of these diseases, should report, themselves and others, to a doctor that would then report to a public health inspector. Despite providing free health treatment, the law was still invasive, since medical treatment was obligatory to contain the spread of STDs (Svanström, 2022, p.146).

freedom ultimately leading to the use of less moralistic language in the legislation, as well as less punitive character (Månsson, 2017, p.4).

It was initiated an official inquiry about prostitution in 1977, and for the first time, the experiences of women who were in prostitution were heard. Through this inquiry, the reality of prostitution was made known, and the subject stopped being only described by sociological experts (Månsson, 2017, p.7). Besides, the role of the demand in prostitution was explored, and the idea that the complete comprehension of the sex market requires the understanding of, not only the selling side but also of the reasons for buying sexual services (Månsson, 2017, p.7).

The report that resulted from this inquiry, *Prostitutionen i Sverige: en rapport*¹³, published in 1981, argued that prostitution did not respect sexual freedom or gender equality, and, therefore, did not match with Swedish society's values (Månsson, 2017, p.6). Criminalization was not recommended, but the provision of social measures was considered necessary to reduce prostitution. In this regard, prostitution as a social phenomenon was well-recognized, and the intention of the prostitution policy in the country should be to help those involved in the sex industry, to leave it, independently of being sex workers or sex buyers (Yttergren *et. al.*, 2016, p.46).

The criminalization of the purchase of sexual services was adopted within a law to combat violence against women, referred to as *Kvinnofrid*¹⁴, that entered into force in 1999 (Danna, 2012, p.81). This law is mentioned as the 'Sex Purchase Act' since it focuses on the fact that criminalizes the buyers, rather than prostitution in general (Danna, 2012, p.81; Vuolajärvi, 2019, p.152; Langford *et. al.*, 2022, p.175).

In 1999, prostitution was not only considered a social issue but "(...) it was also defined as a result of and as something that contributed to gender inequality. With this came an understanding of prostitution as linked to power relations, both in structural and individual terms and this is key to understanding the movement towards criminalizing 'the demand side', the party deemed most powerful and blameworthy" (Langford *et. al.*, 2022, p. 175).

As a result of the radical feminist narratives, prostitution is perceived as the epitome of the submission of women in a male-dominant society. It is a form of violence

¹³ Translated to English as "Prostitution in Sweden: A Report", own translation.

¹⁴ This term means "women's peace" (Danna, 2012, p. 81).

against women perpetrated by men, and women who enter into prostitution are considered victims of the economic difficulties that they endure, which gives them no choice but to resort to prostitution to survive. From this perspective, a distinction between ‘voluntary’ and ‘forced’ prostitution is not meaningful, and even problematic because if there is the assumption that some women enter into it free-willingly, then it ignores the violent nature of prostitution (Levy *et. al.*, 2013, p.335).

The purchase of sexual services should be illegal based on the idea that prostitution is a form of violence against women, as a result of the patriarchy, and that it would be disrespectful to human rights to perpetuate it (Langford *et. al.*, 2022, p.174). It looks into prostitution as a problem of men rather than as a problem of women. It questions why men believe that women’s bodies should be publicly available in the market, if not to guarantee that they maintain access to their bodies as commodities (Pateman, 1994, p.129).

For the Nordic prostitution policies, the use of the terms ‘buyer’, ‘seller’, and ‘sex market’ to refer to the social schemes of prostitution and to the people who engage in it, is misleading. Using economic terms to describe prostitution leads to an interpretation of the issue that it is not compatible with the Nordic perception of prostitution (Skilbrei *et. al.*, 2013, p.2). Nevertheless, a study showed that, at the time of the Sex Purchase Act, 67% considered that buying sexual services should not be illegal (Yttergren *et. al.*, 2016, p.47).

Regarding human trafficking, it is believed that by criminalizing the purchase of sexual services, the demand for those services would reduce, which would not only benefit the elimination of the sex market but also human trafficking. If men did not seek sexual services, then the trafficking flows for sexual purposes would lose their target and their consumers (Danna, 2012, p.82).

A decade afterward, Norway and Iceland adopted the same approach, by turning illegal the purchase of sexual services. But in 2006, Finland had already adopted a partial criminalization, by illegalizing the purchase of sexual services from human trafficking victims, as well as from sex workers that were exploited by pimps. Due to the Swedish legislation's influence on other Nordic countries, the prostitution regulative model has been referred to as the “Nordic Model” (Langford *et. al.*, 2021, p.175).

According to Langford and Skillbrei, the Nordic Model of prostitution combines three crucial components: “[the] criminalization of sex purchase, decriminalization of sex sale, and welfare support” (p. 175, 2022). Through this approach, sex buyers were sent a message that the purchase of sexual services was illegal, and, therefore, wrong, which might prevent them from accessing these services for fear of prosecution. Sex workers were protected from any criminal offense which enabled them not only to report any violent act and abuse committed against them but also to access health services without any fear, respecting their human rights and general well-being. Combined with these two aspects, social welfare support was also provided, creating exit routes for prostitutes from the sex industry (Langford *et. al.*, 2022, p.175).

The Nordic Model can be full of paradoxes. Firstly, the idea of prostitution as violence against women did not emerge within the prostitution debate in these countries, despite being the base of the criminalization of clients (Östergren, 2018, p.173). Secondly, the quality, and quantity of the social welfare schemes for prostitutes were not constant among the Nordic countries, nor over time. For instance, although the Swedish Sex Purchase Act was supposed to be followed by an offer of more social providence, the fact is that they remained as weak as they were before the adoption of the Act (Langford *et. al.*, 2022, p.177).

Thirdly, the supporters of the Nordic Model claim that the adoption of its policies reduces the sex market, and, even, human trafficking (Langford *et. al.*, 2022, p.177). It is important to take into account that the Swedish approach can produce negative consequences. By criminalizing the clients, violence, and abuse toward sex workers may not reduce as expected. Those who sell sexual services might be more vulnerable to violence, considering that criminalization might impose a need for clandestine trade movements, which means that violent actions will not be made accountable (Kingston *et. al.*, 2019).

Takes place a “special switching” (Kingston *et. al.*, 2019, p.430), in which prostitution turns to be operated in invisible spaces, such as the online world. Instead of the sex industry being reduced (as expected), sex workers and sex buyers tend to leave the public sphere due to fear of prosecution and adapt their movements to become invisible to the state authorities. Their invisibility can be easily misled by a reduction of the sex market, but it is truly an adaptation of the sex market to the legal provisions

(Kingston *et. al.*, 2019, p.430). For instance, Gunilla Ekberg (2004), as the human trafficker adviser to the Swedish Government, concluded that, in 2004, the Sex Purchase Act adopted in the country, reduced exponentially the sex market, but online prostitution was not considered in the design of that study (Langford *et. al.*, 2022, p.177).

Vuolajärvi (2019) also calls for attention to the implementation of the Sex Purchase Act in practice, by stating that there is a gap between the ‘law in books’ and ‘the law in action’ (p.152). Due to this disconnection between the purposes of the Act and the reality, she argues that there are “double standards with respect to the governance of national and foreign sellers of sexual services” (Vuolajärvi, 2019, p.152). The criminalization of third parties and the provision of welfare social services seem to be only applicable to the national prostitutes. Foreign people who engage in prostitution in the country are overlooked by the state social services and treated in a punitive manner, through deportation, for instance (Vuolajärvi, 2019, p.152).

Despite these critiques of the Nordic prostitution policies, the Swedish government has shown positive effects of their approach. According to their evaluation, the law and the social services have produced effects in stopping and reducing the demand for sexual services in the sex market and human trafficking by 2010. The emergence of online prostitution is also recognized, but it is stated that it is exaggerated to argue that there was a “switching” (Kingston *et. al.*, 2019, p.430) from the streets to the virtual world (Swedish Gender Equality, 2024).

Another aspect to consider is that the Nordic Model received a lot of international attention. But why was the model highly referred to within the policy debates around the world? The adoption of the Sex Purchase Act (1999) by Sweden did not only envision producing social changes at a national level but also influencing other countries in the region (Berlin *et. al.*, 2023, p.2). This ambition was supported by the Swedish government, and, afterward, by the Norwegian, through efforts to circulate knowledge about the ideas and the reasons behind the adoption of this approach in their countries (Langford *et. al.*, 2022, p.178). It was not so much an attempt to make the legislation commonly known, but the ideology behind it, the idea that the purchase of sexual services is an outcome of patriarchal values that perpetuate violence against women (Coy *et. al.*, 2019).

The spread of the Nordic Model was fueled by the states that adopted that approach, but also by transnational organizations. Swedish government organized events and public awareness campaigns both in their country and abroad, to share information on the reasons behind the adoption of this approach. For instance, the movie *Lilya 4-ever*¹⁵ was transmitted across the world, with the cooperation of Swedish embassies and consulates to share knowledge on the issue of human trafficking (Langford *et. al.*, 2022, p.179). But the feminist organizations and movements also took advantage of the idea of prostitution as a violent action against women to further spread this argument throughout the different prostitution policy debates (Langford *et. al.*, 2022, p.179).

Indeed a lot of other countries have adopted abolitionist ideas as the ones defended by the Nordic countries, such as Israel that imposed a rather interesting measure. The one who purchases sexual services will not have a criminal punishment but will have to attend an educational program to understand the harm that prostitution causes within the communities (Langford *et. al.*, 2022, p.184). Nevertheless, some countries were not convinced by the abolitionist ideas spread by the Nordic countries, such as Luxembourg. In 2014, Luxembourg dropped its attempts to adopt a bill that would criminalize sex buyers, because there was a belief that the negative consequences of the abolitionist approach would represent a danger to the sex industry in the country (Kingston *et. al.*, 2019, p.430).

To conclude it is essential to understand that, although the Nordic Model is the one that it is most referred to in prostitution policy debates, its paradoxes and negative effects are still to be considered. The combination of criminalizing the purchase of sexual services, while protecting the sex workers and providing them with social welfare support that would enable them to leave the sex industry is an interesting theoretical perspective. However, its practical implementation has been under the expectations, since even in Sweden the social welfare schemes have proven to be weak, for example.

The international relevance of the Nordic Model can be also questioned. The public awareness campaigns of the originating states and the feminist organizations make

¹⁵*Lilya 4-Ever* is a movie launched in 2002 and directed by Lukas Moodysson that tells the story of a sixteen-year-old Russian girl who goes to Sweden with the expectation of improving her living conditions, but rapidly enters into prostitution for economic survival (MUBI, 2024).

us wonder if the spread of abolitionist ideas is due to its effectiveness or due to the marketing capacity of those actors.

4.3 Dutch Model

The Netherlands is known for its liberal approach toward drugs, euthanasia, and prostitution. Despite the definition of the concept of “liberal” is not commonly agreed upon, it is usually associated with the promotion of individual freedom, freedom of choice, and state neutrality in issues of personal morality (Post *et. al.*, 2019, pp.99-100). However, this categorization of Dutch policies as *laissez-faire* is too reductive as it will be perceived by our historical analysis.

As was the case of any other European country, the Netherlands’ prostitution regulations followed the French system in the 19th century that envisioned the control of the spread of venereal diseases, and looked into prostitution as immoral conduct (De Vries, 2001, p.44). A woman could only enter into prostitution in the country, provided that proceeded to a mandatory registration before the local authorities, followed by a health examination to ensure that was not a source of contamination of a venereal disease (De Vries, 2001, p.45).

Despite the adoption of the French system, there were no national regulations on prostitution. Local regions or municipalities were autonomous and could decide on what and how to regulate prostitution. For instance, some cities dedicated certain neighborhoods of the town to prostitution, while others, such as Amsterdam, did not even regulate prostitution at all (De Vries, 2001, p.45).

The abolitionist wave that crossed Europe in protest of the French project for prostitution also built its mark in the Netherlands. The leader of this turn to abolitionism was the Reverend Hendrik Pierson¹⁶ who argued that the state should not interfere in prostitution since that would be organizing sinful practices; that the health measures were

¹⁶ The Reverend Hendrik Pierson was the director for the Helderling Rescue Homes that welcomed prostitutes. In 1877, published his translation of Butler’s work, namely “*Une Voix dans le Désert*”. Moreover, founded a national branch of the International Abolitionist Federation, the Dutch Society Against Prostitution, in 1879 (De Vries, 2001, p.50).

inadequate and that, for the prevention of venereal diseases, the best option was to close the brothels (De Vries, 2001, p.50).

In 1911, the Act Against Immorality was adopted in the country, which banned the establishment of brothels. As it happened all over Europe, the concerns about the living conditions of the poor influenced the adoption of this law, since it was believed that the moral decline of a certain group of people would ultimately impact the entire society (Post *et. al.*, 2018, p.106).

According to the Act of 1911, prostitution is seen as a sinful act that is morally condemned. Nevertheless, the punishment was not applied to prostitutes, because the sex worker was seen as a victim of the immoral conduct of others, i.e. brothel owners and customers (Post *et. al.*, 2019, p.105). This idea has an underlying abolitionist approach since prostitutes were protected, brothels were banned and the trafficking of women was tightly criminalized. Clients were not targets of this legislation, taking into account that brothel visiting or the purchase of sexual services was not criminalized (Post *et. al.*, 2019, p.106).

There were clear moralistic reasons behind the adoption of this act, brothel owners were seen as “highly anti-social and morally and socially dangerous”, whose “parasitic existence” should be eliminated (Kamerstukken II 1909/10, 56, pp. 1-2). As a result of this legal measure, the number of brothels operating clandestinely increased, but the state authorities did not punish those, provided that they did not present a social threat to the public order (Altink *et. al.*, 2018, p.62).

That wave of abolitionism was not successful, therefore, prostitution policies turned to regulations through the 20th century, relying on the actions of local authorities that allocated the sex market to certain parts of their towns (Outshoorn, 2012, p.234). In the 1970s, the sex market expanded greatly, which proportionally increased the importance of control instruments (Altink *et. al.*, 2018, p.62).

Some municipalities tried to regulate prostitution locally, but their efforts were always in vain since the courts overruled those regulations constantly on the grounds that it was impossible to regulate something that was forbidden nationally. However, the Association of Dutch Municipalities managed to petition before the national parliament for the revocation of the ban on brothels (Outshoorn, 2012, p.234). If the ban on brothels

was lifted, then local authorities would be able to regulate prostitution according to the local circumstances.

During that period, feminist theories were emerging that called for the recognition of prostitution as sex work, i.e., as any other professional occupation whose workers lacked protection (Outshoorn, 2012, p.234). This feminist wave declined the idea that there was a distinction between good and bad behavior, honorable or respectable woman, and believed that the recognition of prostitution as a job would improve their living and working conditions (Altink *et. al.*, 2018, p.63).

*De Rode Draad*¹⁷, founded in 1985, campaigned for the labor protection of sex workers (Altink *et. al.*, 2018, p.63), and the Foundation Against Trafficking of Women (“*Stichting tegen Vrouwenhandel*” (STV)), campaigned for the victims of human trafficking, were the main actors on this feminist lobby (Outshoorn, 2012, p.234). As a consequence, prostitution was no longer considered a moral issue, but rather a juridical one, since it was concerned with public order and the safety of prostitutes (Post *et. al.*, 2019, p.107).

The first bill dedicated to the ban on brothels was passed in the national parliament in 1987, but the Senate was an obstacle to its imposition. The bill was only adopted in 2000 called “Act Lifting the Ban on Brothels” and “the major aims of the bill were (1) to control and regulate the sex sector, (2) combat ‘undesirable forms’ of prostitution (i.e., involuntary prostitution and prostitution by minors), and (3) protect the position of the sex workers” (Altink *et. al.*, 2018, p.64).

There were significant changes due to the adoption of the 2000 law. Firstly, the age of consent was raised from 16 to 18 years old (Outshoorn, 2012, p.235). Secondly, the local state authorities had to establish a licensing system for brothels to operate. Those establishments had to follow some hygiene and safety requirements, as well as not accommodate minors or illegal workers, for the license not to be rescinded. The local authorities had to inspect those establishments to guarantee that the lawful working conditions were being met by them (Zeegers *et. al.*, 2015, p.360).

¹⁷ The name of the sex worker’s organization was given by the academic and activist Gail Pheterson and was inspired by a novel written by Nathaniel Hawthorne. That novel told the story of a ‘fallen woman’ who had to use an embroidered scarlet letter with a Red Thread (=De Rode Draad), as a symbol of her sinful way of living (Altink, 2016).

The distinction between ‘voluntary’ and ‘forced’ prostitution is important, considering that only the first is legal and perceived as work (Outshoorn, 2012, p. 234). Article 250a of the Dutch Criminal Code punished forced prostitution and human trafficking for sexual purposes (Zeegers *et. al.*, 2015, p.360). Lifting the ban on brothels meant that prostitution was regulated by administrative law, and so the Dutch Penal Code was only applied when there was a crime involved, in cases of forced prostitution or the prostitution of minors. This made the Dutch approach as being a mixture of the legalization and decriminalization approaches (Altink *et. al.*, 2018, p.64).

The protection of the labor conditions of the sex workers was one of the aims of the 2000 bill. This meant that the establishment of a labor contract between employer and sex worker was established between them without the interference of the state, as the same happens with so-called regular jobs. However, some might argue that the authority exercised by the employer can diminish sexual autonomy and be a threat to the right of self-determination of the sex worker. Altink *et. al.* argue that this is not entirely true, since the sex worker continues to have the right to refuse certain clients or sexual acts. It is important to recall that if prostitution is considered as any other regular job, then the brothel keeper needs to oblige to general labor laws, and so needs to pay social security taxes (Altink *et. al.*, 2018, p.65).

At the time, brothel keepers complained about the number of regulations that suddenly they had to comply with, which would probably force them to close their establishments. Sex workers were also not very content with the bill since it seemed that the bill intended to protect them and provide for better working conditions, was only presented them with a tax bill (Daley, 2001).

Article 250a of the Dutch Criminal Code was altered to Article 273f, to accommodate the provisions of the international treaties and the EU law on human trafficking (Zeegers *et. al.*, 2015, p.361). In 2003, a Public Administrative Probity Screening Act was adopted, which established that brothel owners have to prove that their financial conditions are according to the law (Altink *et. al.*, 2018, p.65).

The aims of the bill from 2000 were lately overlooked by a focus given on the combat of trafficking. “Gradually, the focus on fighting and preventing trafficking has taken precedence over the central aim to improve the legal position and work conditions of sex workers” (Altink *et. al.*, 2018, p.65). That focus was exacerbated by the Sneeep

Case, which attracted a lot of public attention. The police report on the Sneep Case showed that 78 women were victims of three traffickers, who ran a major prostitution network in Amsterdam¹⁸ (Post *et. al.*, 2019, p.110). This case showed the flaws of the Dutch prostitution policy in the combat of human trafficking since even in licensed prostitution there were trafficked women involved.

That special attention to human trafficking is easily understandable when the Netherlands is considered to be the main country destination for human trafficking victims at the EU level. According to CoMensha (“*Coördinatiecentrum tegen mensenhandel*”), only in the year 2022, 814 new victims were reported to the center. It is true that represents an incredible decrease from the previous years (1372 in 2019 and 1013 in 2020), but it is still a significant number (CoMensha, 2022).

The regulationist attempts were important, in the context of the combat of human trafficking, since the state authorities believed that provided that the sex market is built with consented and legal sex workers, it would become difficult for traffickers to introduce victims into the market flow (Mancarella, 2021, p.43). From 2008 on, the government attempted to adopt a “Law Regulating Prostitution and Suppressing Abuse in the Sex Industry”, which aims to impose mandatory registration of sex workers to combat those trafficking flows, and to establish 21 years old as the age of legal prostitution (Altink *et. al.*, 2018, p.68).

Prostitution has been largely regulated by local authorities since 2004 when the Dutch government adopted the *Ordering bescherming van de prostitutiesector*¹⁹, whose responsibility is to define the standards for the exercise of prostitution and to prevent the commitment of crimes in the sex industry (Mancarella, 2021, p.45). The majority of Dutch cities have limited the emission of licenses to open brothels, so there is little chance of opening new establishments, which limits the offering of sexual services to the existing ones (Altink *et. al.*, 2018, p.69). Some municipalities do not regulate prostitution at all, whereas others are highly strict with the imposition of its norms, which might explain the reduction of window prostitution in the country.

¹⁸ The majority of the victims were from the Netherlands, Germany, Ireland, Poland, Bulgaria and the Czech Republic. Those victims were working in window prostitution. They asked their pimps to stop working, some women reported that they had to deliver at least 1000€ daily, and the majority were virtually tracked all day (Schepers, 2011, p.2).

¹⁹ Translated to English as “Regulation for the protection of the prostitution sector”, own translation.

Although the Netherlands is always mentioned as the country where there is more prostitution, the truth is the number of window prostitutes has decreased exponentially from 2096 in 1999 to 1466 in 2009. The most prominent type of prostitution is the escort business, erotic massages (that according to Dutch law is a form of prostitution), and there is a trend toward offering and purchase of sexual services through the Internet (Altink *et. al.*, 2018, p.68).

To conclude, it is possible to understand that Dutch law has turned from a regulationist approach to establishing more and more controls on prostitution. Besides, the feminist lobbying has shifted. *Rode Draad* closed its doors in 2013, due to lack of state funding. At the same time, PROUD was founded. This women's organization advocates for the rights of sex workers, but perceives prostitution as a form of violence against women (Altink *et. al.*, 2018, p. 73).

In this regard, "The old stereotypical portrayal of sex workers as victims has re-entered Dutch discourse on prostitution. Until recently, regulated prostitution was often associated with labor emancipation and progressive liberal values (although not without controversy). In current discourse, however, prostitution is perceived as amoral, criminogenic, and crude." (Altink *et. al.*, 2018, p.73).

The Dutch law is a perfect example of how to build a prostitution policy that is volatile to the emerging values of the society in which intends to apply. At first, the combination of elements characteristic of the legalization and decriminalization approaches was essential to respond to the social needs at the time. The social campaigns that declined that prostitution policies should not be based on the difference between right and wrong behavior, but rather on a human rights-based approach were essential. It is the combination of legalizing sex work to improve their living and working conditions, but with the restraints that characterize the decriminalization approach to prevent and combat crimes committed in the sex industry that embodies the Dutch law.

Alongside that mixture of approaches, the two-tier legislation at a national and local level might have produced the opposite intent when the prostitution policy was designed. The local authorities seem to have hijacked the legalizing purposes at a national level, by imposing high controls at a local level. The ultimate goal of ending prostitution does not seem to be near achieving, but as the evidence shows, the sex market

has been reducing in the Netherlands. However, neo-abolitionist values seem to take a place in the feminist discourse in the country

5. The European Union's approach to prostitution

After analyzing the prostitution approaches that crossed the European countries over time, and comprehending how the perceptions toward prostitution changed, it is important to understand how and when the debate around prostitution emerged at the EU level. Comprehending the motivations behind the design of the Nordic and Dutch Model will help us understand their influence on the debate on prostitution within the EU.

Introducing the debate on a subject within the EU political agenda requires the existence of a collaborative platform built by several actors, and the right political environment to advance with the discussion. Beyond that, framing the issue according to the core EU objectives is also crucial to get the institutions' attention on a certain matter²⁰ (Allwood, 2018, p.126).

Three elements can explain the emergence of the debates about prostitution into the EU political agenda. According to Mattson (2016), the growing access to political functions for women; the advocacy made by several actors (NGOs or governmental agencies); and the different prostitution policies adopted by the EU Member States explain the crescent discussion about prostitution within the EU. Women in political positions and several organizations or agencies started to advocate for prostitution policies, initiating the debate on the issue. Moreover, the different approaches adopted by the EU Member States allowed the EU to be influenced by different perspectives that ultimately resulted in a more interesting debate (pp.5-6).

Those favored elements of the agenda-setting process of prostitution within the EU are overturned by two reasons that explain the silence of the EU on the matter: the lack of competence of its organisms to do so; and the controversial nature of the matter which enables a constant blockage to its entrance into the EU political agenda, since policy-making is consensus-based (Allwood, 2018, p.127).

²⁰ As Kingdon (2014) defines, "agenda" is the term used to refer to the set of subjects that is getting great attention from governmental officials at a particular moment. From that group of subjects, some will be preferred over others, due to the agenda-setting process (p. 3).

The lack of competence blocks certain controversial issues from the EU political sphere. Only sexual exploitation of women is mentioned in Article 83²¹ of the Treaty on the Functioning of the European Union (TFEU) as being under the legislative competencies of the EU. However, it is possible to understand that what we consider to be under the auspices of the EU is a product of interpretation of the Treaties. The concept of ‘competence’ is not static, and framing issues as being of EU’s competence requires an interpretative effort. Thus, linking sexual exploitation with prostitution to frame the latter within the EU’s competencies is an interesting strategy (Allwood, 2018, p.127).

For instance, the transnational nature of human trafficking turns the subject under the competencies of the EU. Still, prostitution was considered to be a national matter, and, therefore, should be regulated under the national jurisdictions. The regulation of prostitution calls for the respect of the subsidiarity principle (Article 5 of the Treaty of the European Union²²), according to which, policies should be designed at a national level whenever it is possible (Outshoorn, 2018, p.364).

Some believe that some controversial and delicate matters are not discussed within the EU, due to their consensus-seeking decision-making. Differences of opinion about particular issues can raise conflicts, which means those subjects would probably be blocked when legal initiatives are presented (Allwood, 2018, p.127). Some controversial issues, such as environmental problems, have been successfully introduced within the EU political agenda. Thus, controversy is not a reason enough to exclude certain matters from the agenda and to impede the debate around them (Allwood, 2018, p.128).

Another aspect to consider is that the existence of multiple bodies that incorporate the EU’s organizational structure can produce positive or negative effects, depending on the circumstances. On the one hand, the multiplicity of organisms dedicated to several subjects allows the existence of many stages where the issue can be introduced on the

²¹ Article 83 of the TFEU: “The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children (...)”.

²² Article 5 (3) of the TEU: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (...)”.

agenda. On the other hand, organizational complexity can reflect on multiple veto points that never allow the debate around the issue to take the form of a decision (Allwood, 2018, p.127).

The 1980s marked the beginning of the discussion in the European Union on how to set policies focused on human trafficking, especially, women and prostitution. At the time, some measures, such as binding joint actions and frameworks, designed by the European Council were taken, but none concerned prostitution (Outshoorn, 2018, p.363). Some subjects were introduced within the EU political agenda, due to the work of various actors who framed those issues efficiently to match their debate with the EU's concerns. In the case of prostitution, it was necessary to frame it under other broad concerns of the EU. Otherwise, it would be blocked from the EU political agenda, due to a presumed lack of competence from the EU institutions to act on it (Allwood, 2018, p.128).

In this regard, it is possible to identify two major approaches to address prostitution at the EU level. On one side, there was a radical feminist neo-abolitionist approach, influenced by the EU Member States that adopted the Nordic Model, that considered that prostitution was the result of the structural patriarchy of society, and, therefore, was contrary to gender equality (FitzGerald *et. al.*, 2022, p.58). On the other hand, there was a sex worker human rights perspective that recognized prostitution as a result of a free choice from women, and, so, they should have the same labor rights and protection as any other profession. They argue that prostitution is not intimately related to violence and abuse, but the abolitionist ideas perpetuate the violent and clandestine climates for sex workers (Fitzgerald *et. al.*, 2022, p.58).

In this context, it is perceptible from this conflict between feminist movements, a conflict of values adjacent to it. On the neo-abolitionist approach, gender equality is the main value that is revindicated, while on the sex work approach, the freedom of labor and movement prevail over other values in the design of a prostitution policy (Foret *et. al.*, 2020, p.101).

From the 1990s onwards, the European Parliament (EP) left behind the hesitation that characterized its position on prostitution and began to defend a neo-abolitionist option by understanding that prostitution is a form of violence against women, that it is closely related to human trafficking and that promotes sexual exploitation (Grundell, 2021). The turn to a neo-abolitionist approach regarding prostitution is evidence of a main

trend. The neo-abolitionist ideas have taken further ground in the political and policy debate around prostitution since the mid-1980s, with the influence of some EU Member States (Grundell, 2021, p.426).

The settlement of the neo-abolitionist approach within the EU is, however, striking. Firstly, unlike the other regional and national organizations, prostitution is being addressed *per se*, rather than only being mentioned by its relation to human trafficking. In the second place, the adoption of a neo-abolitionist approach removes prostitution from the labor market perspective through which every gender equality policy is based within the EU (Grundell, 2021, p.426).

Despite that lack of competencies, prostitution was intimately related to human trafficking, making it impossible to regulate one effectively without mentioning the other. So, prostitution was mentioned in the EU policies dedicated to human trafficking by condemning forced prostitution, which implies that there exists some form of voluntary prostitution. Nevertheless, this mention of prostitution does not affect policies at a national level. Indeed, the close relationship between prostitution and human trafficking led several actors to take advantage of the debate around the combat of human trafficking to bring the subject of prostitution to light (Outshoorn, 2018, p.364).

This chapter will have its focus on the theoretical options that were discussed at the EU level on how to address prostitution. In the first subchapter, the agenda-setting process of prostitution into the EU political agenda will be analyzed. The documents and instruments of soft law that were drawn during the decades of the 1980s to the 2000s will also be explored to understand the major arguments drawn in the advocacy of prostitution in the EU. The analysis of the theoretical advancements made during that period is essential to understanding the political agenda on prostitution that was later settled within the EU.

The second subchapter will delve into the ideas that emerged from the 2000s onwards within the EU. By analyzing the documents published during this time, it will become clear that there was a general acceptance of a neo-abolitionist approach. In this section, it will be possible to comprehend the via through which the obstacles to regulating prostitution in the EU seem to have been overcome.

5.1 The Political Agenda Setting Around Prostitution

The first time that the EU mentioned the subject of prostitution was in 1981. The European Parliament (EP) requested the European Commission (EC) to investigate prostitution and to recommend measures to eliminate it in the member states. Prostitution was considered a violation of human rights, according to the legal framework provided by the Universal Declaration of Human Rights (Outshoorn, 2018, p.365).

The Court of Justice of the European Union (CJEU) ruled over prostitution in the 1981 *Adoui and Cornuaille v. Belgium* (C-115 and 116/81). In this case, Belgium denied residence permits to two French women, considering that since they were sex workers, it would be possible to deny the permits on the grounds that their behavior was contrary to public policy because they worked as waitresses at a morally questionable bar. The exception of public policy to restrict freedom of movement was, at the time, predicted in Articles 48 and 56 of the EEC Treaty (CJEU, 1982). The CJEU ruled that taking into account that the selling of sexual services was not criminalized in Belgium, then, those women's conduct could not constitute a serious threat to Belgian society and, therefore, does not legitimize the use of that exception to impede their freedom of movement (CJEU, 1982).

That ruling of the CJEU recognizes that the freedom of movement applies to sex work, as it applies to any other profession (Grundell, 2023, p.98). This serves as a confirmation of the sex work perspective, and can even be perceived by the women's movement as a recognition of prostitution as any other professional occupation by the EU (Foret *et. al.*, 2020, p.104).

In the same decade, Hedy D'Ancona, a Dutch Member of the European Parliament (MEP) and an advocate for the regulation of prostitution as sex work at a national level, published a report regarding prostitution. In this report, prostitution was perceived as it was conceived by the radical feminists and the abolitionist movement, i.e., as a form of violence against women, of gender inequality, and denied the distinction between 'forced' and 'voluntary' prostitution, since there is no choice when women enter into prostitution (D'Ancona, 1986; Outshoorn, 2018, p.365).

As a result of that report, the EP Resolution of 1986 on *violence against women* was adopted (Grundell, 2021, p.425). Of course, the resolutions call for the

decriminalization of prostitution in the EU Member States and recognize prostitution as a “profession” However, it also mentions prostitution as “a form of exploitation of women”, which presents an ambivalence on the subject (European Parliament, 1986, paragraph 9). This resolution addresses both prostitution and human trafficking but in an isolated manner (Grundell, 2021, p.425).

In the 1990s, the dialogue between feminist organizations and feminist MEPs intensified. So, in 1996, the Colombo Svevo Report²³ of the EP Committee on Civil Liberties and Internal Affairs was released. In this report, the abolition of prostitution as a means to reduce human trafficking was not suggested. Afterward, this report was complemented by the Van Dijk Report²⁴, which denied that every prostitute was a victim, and, therefore, some of the women who moved to another country and entered into prostitution are not, necessarily, victims of human trafficking, but migrants. With this report, the distinction between ‘forced’ and ‘voluntary’ prostitution was reinforced within the EP (Outshoorn, 2018, p.366).

In the same year (1996), the Resolution on Trafficking of Human Beings (European Parliament, 1996) was adopted. This Resolution followed those arguments and defined human trafficking as a form of coercion for a person to stay in another country in order to exploit them for prostitution, among other motivations (European Parliament, 1996, paragraph F). Thus, prostitution is perceived as a motivation to commit human trafficking, rather than a violation of human rights itself.

That EP Resolution was the foundation for further EU policies on human trafficking without relating it to prostitution (Outshoorn, 2018, p.366). In those years, the EP’s Committee on Women’s Rights and Gender Equality started to use neo-abolitionist language in their recommendations, by stating that prostitution is a problem, cause, and effect of gender-based violence (Fitzgerald *et. al.*, 2022, p.59).

The next EP resolution on the subject was the 1997 resolution *on the need to establish an EU-wide campaign for zero tolerance of violence against women*. This resolution came as an outcome of a report elaborated by the Swedish MEP Marianne

²³ This Report was named after the MEP Maria Colombo Svevo from the European’s People Party (EPP) (Outshoorn, 2018, p.366).

²⁴ This Report is named after the rapporteur Nel Van Dijk of the Committee for the Rights of Women (Outshoorn, 2018, p.366).

Eriksson²⁵ (Grundell, 2021, p.426). In that resolution, prostitution is explicitly defined as a form of violence against women, the cause of sexual violence, and, therefore, exists due to the structural gender inequality present in our societies (European Parliament, 1997, paragraph 13). It rejects the idea that there is no freedom in prostitution and that women do not freely choose that way of living, but they are rather forced and influenced by third parties (European Parliament, 1997, paragraph 14). The decline of the concept of prostitution as a free choice from the individual serves as an argument to advocate for the criminalization of clients and pimps, combined with mechanisms of support for prostitutes (Grundell, 2021, p.426).

As Fitzgerald and Skillbrei state: “It is notable that by 1997 the EP no longer prioritises sex worker’s rights and personhood before the law; but rather, in ways that mirror their Swedish feminists’ problem representation of prostitution, all Parliamentary Reports and Resolutions direct the EU’s ‘gaze’ onto male clients’ behaviour as the locus on the problem” (2022, p. 60).

That focus was further reinforced by the EP’s 2004 *report on the consequences of the sex industry in the EU*, despite being the result of an intensive debate within the EP in which both neo-abolitionist and sex work arguments were heard (Grundell, 2021, p.6). For that reason, this report acknowledges that many positions can be taken into account to create an efficient approach to prostitution, so, “the views of the women involved should be heard” (Parvanova, 2004, paragraph 10). It starts by underlining the fact that the competence to legislate on prostitution remains under the EU Member States’ jurisdiction (Parvanova, 2004, paragraph N).

Another aspect to consider is that the report recognizes that the EU legislation regarding the freedom of movement and goods should be applied to the legal aspects sex industry (Parvanova, 2004, paragraph E). However, the report denies this ruling of the ECJ, since it defends that prostitution “can never be reduced to a choice of profession” (Parvanova, 2004, paragraph 14).

The 2004 Report contradicts the CJEU’s jurisprudence that recognized prostitution as any other professional occupation (Grundell, 2021, pp.426-427). In fact,

²⁵ Jane Marianne Eriksson was an MEP for the Left Party for two parliamentary terms, 1995-2004 and 1999-2004. It was Vice-Chair of the Committee on Women’s Rights and Equal Opportunities between 1999 and 2004 (European Parliament, 2024).

in the 2001 *Jani and Others v. Staatssecretaris van Justitie* case (268/99), the CJEU ruled that prostitution was an economic and profitable activity, therefore, within the scope of the rights of freedom of movement established in the Treaties (CJEU, 2001).

In 2005, the International Committee on the Rights of Sex Workers in Europe²⁶ (ICRSE) organized the European Conference on sex work, human rights, labor, and migration, in Brussels. This was the greatest mobilization of the sex work approach supporters within the EU. Despite the CJEU rulings and this attempt to call for support for the sex work approach, the neo-abolitionist ideas did not seem to be beatable (Grundell, 2023, p.107).

The neo-abolitionist ideas flourished from the Eriksson report to other EP documents, there was a steady establishment of a government strategy (Fitzgerald *et. al.*, 2022, p.59). Maria Carlshamre, another Swedish MEP, drafted the 2005 EP report *on the situation in combating violence against women*. In this report, prostitution is related to sexual abuse and violence showing that “65-90% of prostituted women had already been subjected to sexual abuse”, which portrays prostitutes as victims (Carlshamre, 2005, paragraph K). The distinction between ‘forced’ and ‘voluntary’ prostitution becomes blurred, and the violent nature of prostitution is highlighted. Besides, it defends that prostitution, as a form of violence against women, is an obstacle to women’s freedom of choice of profession and women’s access to the free labor market (Carlshamre, 2005, paragraph L).

In 2009, the EP Resolution *on the elimination of violence against women*, the neo-abolitionist discourse was maintained (Grundell, 2021, p.427). In this resolution, the EP recognizes that the “tolerance of prostitution” does not reduce trafficking flows for sexual purposes (Carlshamre, 2005, paragraph N). This resolution sends a message to the sex work approach supporters that argue that the legalization of prostitution would reduce human trafficking.

The 2011 EP Resolution *on priorities and outline of a new EU policy framework to fight violence against women* continues to recognize that prostitution is a form of

²⁶ The International Committee on the Rights of Sex Workers in Europe began its work in 2002, as a collective of sex workers to advocate against the emergence of neo-abolitionist ideas in Europe. In 2021, the organization changed its name to the European Sex Workers’ Rights Alliance (ESWA) (*About ESWA*, 2024). Its influence in the debate about prostitution in Europe will be further analyzed in the subchapter 5.2.2. However, I will use the organization’s former designation, since it was its name at the time of their contributions that I am referring to.

violence against women (European Parliament, 2011, paragraph J). but highlights the importance of consent in any sexual relationship (European Parliament, 2011, paragraph 3).

All of these Resolutions repeated the neo-abolitionist ideas about prostitution and were reinforced when Mary Honeyball²⁷, the then EP's Committee on Women's Rights and Gender Equality (FEMM) rapporteur, published a report that described prostitution as a form of violence against women and, therefore, should be a crime under the EU legislation (Fitzgerald *et. al.*, 2022, p.60). According to the Honeyball report, prostitution "is a form of slavery incompatible with human dignity and fundamental human rights" (Honeyball, 2014, paragraph B). In this regard, prostitutes were viewed as victims, rather than workers (Fitzgerald *et. al.*, 2022, p.60). Moreover, the report advocated for the criminalization of the purchase of sexual services, while maintaining the selling side legal (Honeyball, 2014, paragraph 5).

The 2014 Resolution *on prostitution and its impact on gender equality* was the cornerstone of the settlement of the neo-abolitionists (Grundell, 2021, p.427). The concepts of 'voluntary prostitution' and 'forced prostitution' are rejected by the Resolution that states that prostitution is, simultaneously, the cause and effect of gender inequality (FitzGerald *et. al.*, 2022, p.61; European Parliament, 2014, paragraph E).

The role of those who purchase sexual services was, for the first time, in the spotlight, and it tried to raise awareness of the importance of the criminalization of the client to reduce the demand (European Parliament, 2014, paragraph 10). However, it establishes that it should be a criminal offense to buy sexual services from minors 21 years old, but offering those same services is legal (European Parliament, 2014, paragraph 19).

The Nordic Model is recognized as a viable solution to eliminate human trafficking and reduce the sex market. Moreover, it acknowledges that this model is greatly supported by public opinion, and that has produced a change in the attitudes of the general population (European Parliament, 2014, paragraphs 29 and 31). Alongside

²⁷ Mary Honeyball was a British MEP from the Group of the Progressive Alliance of Socialists and Democrats. Between 2017 and 2019, was Vice-Chair of the EP Committee on Women's Rights and Gender Equality (FEMM) (European Parliament, 2024).

that acknowledgment of the effectiveness of the Nordic Model, there is a clear rejection of the legalization approach of prostitution (European Parliament, 2014, paragraph 34).

The criminalization of the purchasing side of prostitution is perceived as a way to reduce the sex market and human trafficking (European Parliament, 2014). Besides, the distinction between ‘forced’ and ‘voluntary’ prostitution is irrelevant, since it adopts the perspective that every prostitute is a victim of the exploitation that is characteristic of the sex industry (European Parliament, 2014, paragraph 7). For that reason, it promotes the criminalization of the purchase of sexual services to eliminate the sex industry and human trafficking (Grundell, 2021, p.427).

The Honeyball Report mentions gender equality as the main value that justifies the EU’s action to address prostitution. However, as we will see later, it was necessary to mention all the negative consequences of commercial sex work to other policy areas that were of great interest to the EU and its Member States (Fitzgerald *et. al.*, 2022, p.61). For instance, the EP presented the 2014 Resolution in a press release with the headline “Punish the client, not the prostitute” (European Parliament, 2014), which insists on the argument that prostitution is a form of violence. Prostitution was highlighted as a significant issue for the EU and its Member States when it was linked not only to exploitation and abuse but also to human trafficking (Fitzgerald *et. al.*, 2022, p.61).

In the outcome of the European values that entered into conflict with the debate about prostitution, gender equality seemed to be the prevailing value. The CJEU jurisprudence that framed prostitution within the values of freedom of labor and freedom of movement were insignificant in the neo-abolitionist emergent context (Foret *et. al.*, 2020, p.104). We will next study the elements that explain the turn to the neo-abolitionist ideas in the EU and why they prevailed in the prostitution discourse, therefore, a subchapter will be dedicated to the study of how different political actors maneuvered the value of gender equality to justify EU’s intervention on prostitution.

5.2 The Turn to Neo-Abolitionist Ideas of the EU

The proliferation and establishment of the neo-abolitionist approach within the EU were due to three main factors: the accession of Sweden in 1995; the settlement of a “velvet triangle”, as Grundell calls it (2021, p.428), made of the different organizations that influenced the European discourse on prostitution; and the development of policies to uphold gender equality as a fundamental value that echoed neo-abolitionist ideas (Grundell, 2021, p.428).

As a result, the three factors will be examined separately for organizational and structural purposes only, since they are co-related and it is impossible to categorize one from the other.

5.2.1. The Swedish Accession in 1995

The debates around adopting the Swedish Sex Purchase Act of 1999 happened simultaneously with the discussions about the country's accession to the EU. Curiously, prostitution was one of the reasons considered by the Swedish not to join the EU. There was a general reluctance because it was believed that the Swedish prostitution policies would be vulnerable to the Dutch model that was prevailing across Europe at the time. Beyond that fear of the Dutch influence on prostitution, there was also a fear of having major migrant sex workers flow from other European countries (Grundell, 2023, p.91).

Swedish feminists feared that its EU's accession would mean the establishment of lower standards for national gender equality policies. As Grundell explains: “(...) the fear was that accession would expose Sweden to *Brothel Europe*, that is, to the Dutch model of legalization, as well as to an *invasion* of Central and Eastern Europe sex workers; ideas that circulated widely among the general public” (p. 428, 2021). The Swedish reluctance maintained even after the accession since the adoption of the Sex Purchase Act happened while an infringement procedure against Sweden was taking place for improper transposition of the Pregnant Workers Directive at a national level (Grundell, 2023, p.91).

The fear of having its national prostitution policies influenced by other European countries only produced an impulse of action from the Swedish feminists who started to advocate for neo-abolitionist ideas at the EU level (Grundell, 2021, p.8). According to

Mattson (2016), the presence of women in political positions within the EU was essential to introducing prostitution into the EU political agenda. Their gender legitimizes their perspectives as being the only one that women would believe (Mattson, 2016, p.5).

When Sweden joined the EU, Swedish feminists and MEPs influenced the prostitution discourse drawn until then. If we recall the aim of the Swedish Sex Purchase Act to be an international reference, to spread the neo-abolitionist ideas to other countries and influence their prostitution policies, then the EU spheres were perfect to accomplish that ambition (Grundell, 2021, p.9).

Among those Swedish feminists were Marianne Eriksson (an important member of the EP's Committee on Women's Rights and Gender Equality) and Anita Gradin²⁸ who made efforts to introduce the neo-abolitionist ideas into the prostitution debate within the EU and working as "norm entrepreneurs" (Foret *et. al.*, 2021, p.103). It is not a coincidence that the Swedish Marianne Eriksson became the EP's Committee on Women's Rights and Gender Equality rapporteur two years afterward the Swedish accession to the EU (Fitzgerald *et. al.*, 2022, p.59).

The influence of the Swedish prostitution policy through their presence in the EU was crucial to starting the debate on prostitution with neo-abolitionist ideas. The purpose of the Swedish Purchase Act (1999) to spill their effects, not only nationally, but also at an international level was accomplished through the EU organisms. However, the success of the Swedish feminists in the EU was also aided by the international networks of advocacy for prostitution policies existent at the time. Those feminists were among the various political actors who acted in an articulated manner to advocate for the same approach to prostitution (Grundell, 2023, p.92).

5.2.2. The Institutional Dialogue

The development of EU policies on violence against women, prostitution, and human trafficking was made by the success of the dialogue between feminist organizations, and some EU institutions, such as the European Commission and the EP. These collaborative efforts established a so-called "velvet triangle in light of its close

²⁸ Anita Gradin was the European Commissioner for Justice and Home Affairs between 1995 and 1999 (Historical Archives of the European Union, 2024).

collaboration (...)” (Grundell, 2023, p.92). Those supporters of a sex work approach at the EU level were not sufficiently in a collaborative platform that did not manage to be an obstacle to the turn to a neo-abolitionist approach within the EU (Grundell, 2023, p.92).

The number of organizations with sex workers as members, and that advocate for sex workers' rights increased during the 1960s and 1970s all around the world. At the end of the 1970s decade, the International Committee for Prostitutes' Rights (ICPR) was created to serve as an international organization that covered all the others existent regionally and nationally. This international organization is known for hosting two congresses, the “World Whores' Congresses”, in Amsterdam and Brussels, as well as for publishing the “World Charter for Prostitutes' Rights” (Jaggar, 1994; Scaramuzzino *et al.*, 2015).

At the European Union level, the European Women's Lobby (EWL) received support from the EC to be founded in 1990. This organization was created to serve as an umbrella for its national coordinating organizations²⁹, as well as other 17 organizations dedicated to women's rights in Europe (EWL, 2015). The EWL is a haven for radical feminists, therefore, frequently advocates for the neo-abolitionist approach to prostitution, and usually associates prostitution with violence against women, gender inequality, and human trafficking (Mattson, 2016, p.45).

In 1995, the Platform of Action of the UN International Women's Conference in Beijing distinguished “voluntary prostitution” from “forced prostitution” which received protests from multiple feminist organizations and movements. In 1998, at the General Assembly of the EWL, the organization adopted a resolution that repudiated that distinction and convened prostitution as a violation of human rights. A few years afterward, in 2001, the General Assembly passed a motion urging member organizations to advocate for the criminalization of clients before their national governments, presenting it as a measure to combat the trafficking of women for prostitution (Outshoorn, 2018, p.370).

In the 2000s, the engagement between the EU and civil society organizations was ruled by new legal obstacles, that limited the activity of those that advocated for sex

²⁹ From Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, the Netherlands, and the UK (European Women's Lobby (EWL), 2015).

workers. There are eligibility criteria that civil society organizations must comply with for the EU to consult them, such as their permanent existence at the EU level; to keep a great number of member organizations that represent the majority of member states and are acknowledged as representative by them; to be financially independent and autonomous in decision-making; to advocate for interests that align with the European values (Grundell, 2021, p.435).

Organizations that are dedicated to prostitution usually do not comply with those impositions. They lack the financial resources to exist permanently within the EU and often do not have organizations as members from the majority of the EU Member States. So, they are rarely considered to be representative, due to the small number of memberships, and due to stigma that also results in an obstacle to mobilization (Grundell, 2021, p.435).

Despite those representation obstacles, in the early 2000s, sex workers formed a collective to advocate for the sex work approach in response to neo-abolitionist advocacy present at the EU level. In this context, the International Committee for the Rights of Sex Workers in Europe (ICRSE) was founded to accommodate the different national organizations that advocated for the sex work approach to address prostitution at the EU level. Its members were mostly sex workers, and they were able to present before the EP their “Declaration on the Rights of Sex Workers in Europe” and the “Sex Workers in Europe Manifesto” (Scaramuzzino *et. al.*, 2015, p.141). These two documents, provide a list of human rights that everyone enjoys and demonstrate how their protection is flawed regarding people who engage in prostitution (ICRSE, 2005a; ICRSE, 2005b).

The ICRSE did not have an easy presence in the European spheres since beyond those representation restrictions, the EWL seems to have the monopoly of the funds for women’s organizations and there is an idea that providing financial resources to these organizations can be convenient for criminal purposes (Grundell, 2021, p.435). Besides, the lack of space for civil society organizations to interfere within the EU also means a deficit of institutionalism regarding intersectionality. This favors those organizations that advocate for one form of inequality and give voice to one discriminated group, rather than have an intersectional voice (Grundell, 2021, p.10).

The first moment that these two organizations entered into conflict was at the purpose of the EWL 2013 Call “Together for a Europe free from prostitution”

(Scaramuzzino *et. al.*, 2015, p.144). In this call, the EWL aimed to encourage the EU Member States to adopt prostitution policies that would conceive the issue as a form of violence against women and a violation of human dignity (EWL, 2012, p.2). By framing prostitution as a form of gender inequality and underlining its connection to human trafficking (EWL, 2012, p.2), the EWL found the perfect legal excuse to explain the necessary EU intervention in prostitution (Scaramuzzino *et. al.*, 2015, p. 145).

In response to this EWL campaign, the ICRSE made a statement in which it shows their opposition to the abolitionist approach to prostitution. They consider that sex workers are not victims, but rather need to have their labor and human rights respected to end the violence that is sometimes perpetrated against them. Besides, it defends that criminalizing the purchasing side can grow their dependency on third parties (Scaramuzzino *et. al.*, 2015, p.145).

The second moment of confrontation between these two organizations was when a proposal from the FEMM Committee was presented that favored the adoption of the EWL's perspective across Europe. The FEMM Committee approved a "Motion for a European Parliament Resolution on sexual exploitation and prostitution and its impact on gender equality", which promoted the adoption of the Nordic Model within the EU Member States. The ICRSE protested against the decision of the FEMM Committee to support the abolitionist approach. As a result, two statements elaborated by the ICRSE were signed by various organizations and 94 researchers. Furthermore, an open letter urging all MEPs to oppose the resolution was addressed to them (Scaramuzzino *et. al.*, 2015, p. 146).

The ICRSE action was more reactive to the work of the EWL than aimed to be disruptive (Scaramuzzino *et. al.*, p.147). Due to this strategic action, the financial support that the EWL receives, and the representativeness obstacles that other organizations that advocate for sex workers' rights endure, the abolitionist approach to prostitution prevailed at the EU level (Grundell, 2021, p.435). The ICRSE granted the strong position of the EWL at the EU since it only reacted to their action and failed to promote their perspectives on prostitution before the EU institutions (Scaramuzzino *et. al.*, 2015, p.149).

5.2.3 Gender Equality Policies

In the conflict of values that was translated into a conflict between feminist movements, gender equality earned its place as a winning value with the prevailing neo-abolitionist support at the EU level (Foret *et. al.*, 2021, p.101). Gender equality is recognized in Article 2 of the TEU³⁰, in Article 8 of the TFEU³¹, and in Article 23 of the Charter of Fundamental Rights of the EU³² but it was given a different understanding of this value. The concept of gender equality was rethought from an economic phenomenon to a sexual one, through the substitution of sexual subordination as the main cause of gender inequality, in place of economic subordination (Foret *et. al.*, 2020, p.104).

There was an expansion of gender inequality policies from labor aspects to other subjects, such as violence against women (Grundell, 2021, p.436). The first EU Directives focused on achieving formal equality in employment, for example, the 1975 Equal Pay Directive. However, in the 1980s, the EU started to address other issues in women's lives, such as health, education, and violence against women (Grundell, 2023, p.93).

By defining violence against women as a problem of sexual and economic submission of women, and, therefore, an issue of gender equality, the grounds for the EU's action on the matter were found (Grundell, 2021, p.436). Nevertheless, the emergence of neo-abolitionist ideas comes from the conceptualization of "free labor and legitimate sexuality that implicitly excludes sex work" (Grundell, 2021, p.436). The idea that sex workers were influenced by exogenic factors to sell sexual services, excludes the fact that sex work is free labor and that it is the example of sexual determination of women. Thus, prostitution can only be seen as a form of violence against women, which explains the reason why prostitution is not considered under the labor market perspective (Grundell, 2021, p.436).

³⁰ Article 2 of the TEU: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".

³¹ Article 8 of the TFEU: "In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women".

³² Article 23 of the Charter: "Equality between men and women must be ensured in all areas, including employment, work and pay (...)".

Those who support sex work as a profession and, therefore, reject neo-abolitionism ideas, usually bring to the debate the values of freedom of movement or freedom of labor to legitimize their arguments, since the value of gender equality is highjacked by the neo-abolitionist to argue their positions. Nevertheless, the debate about prostitution framed in values other than gender equality did not gain political importance, beyond those small victories before the CJEU (Foret *et. al.*, 2020, p.105).

5.3 Current EU Legal Framework on Prostitution

The lack of competence of the EU and the controversial nature of prostitution are reasons often appointed to the inaction of the EU institutions in this matter. Gender equality (provisioned in Articles 2 of the TEU, 8 of the TFEU, and 23 of the Charter) was the value used to frame prostitution as a subject of concern for the EU. There have been advancements in introducing the debate around this subject within the EU political agenda, as has happened within the EP. However, among other institutions, such as the European Commission, the debate around prostitution continues to be cast aside (Allwood, 2018).

That silence from the EC remained even when Ursula von der Leyen, the President of the European Commission, stated that “prostitution is not a profession like any other and that exiting it should always be the goal” (European Parliament, 2023, paragraph V). However, among other institutions, such as the European Commission and the European Council, the debate around prostitution continues to be cast aside (Allwood, 2018), even though Ursula von der Leyen, the President of the European Commission, has stated that “prostitution is not a profession like any other and that exiting it should always be the goal” (European Parliament, 2023, paragraph V).

The EU Gender Equality Strategy 2020-2025 designed by the European Commission, calls for the absolute achievement of gender equality in Europe, but does not mention prostitution at all (European Commission, 2020a). The same can be observed from the EU Gender Action Plan III (GAP III), which was designed to promote gender equality in the foreign policy spheres of the EU but does not shed any light on prostitution (European Commission, 2020b).

In the meantime, it was adopted the EU Directive on Combating Violence against Women and Domestic Violence, in 2024. This was the first regulatory instrument at the EU level wholly dedicated to violence against women. However, it only mentions prostitution once in paragraph 71 of its preamble stating that female prostitutes are one special vulnerable group that has a high risk of experiencing violence (European Parliament and Council, 2024). Despite not imposing any legal standards regarding prostitution, even in this Directive, the recognition of prostitution as an environment in which violence against women can be enhanced is important, since it shows the continuity of a neo-abolitionist preference when looking into prostitution.

Consent is also given a lot of focus in the EU Directive on Violence Against Women. In Article 35 (1) of the Directive, the importance of consent in sexual relations is highlighted, and it is expressly stated that it “must be given voluntarily as a result of the person’s free will”. This is relevant to discussions around prostitution since neo-abolitionists consider that prostitutes are not able to consent truly, considering that their decisions are influenced by heterogeneous factors.

In this regard, it is possible to understand that there is a general silence on the other EU institutions concerning prostitution. Within the EP, the presence of prostitution in its political agenda was the only institution in which the introduction of the subject to discussion was successfully made (Allwood, 2018, p.129). However, when the possibility to attribute legal and regulatory changes to prostitution standards all over the EU Member States, even the EP excuses itself for taking such a step, preferring to adopt Resolutions or other documents without any enforceable meaning.

In 2023, an EP Resolution *on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights* was adopted. This was a Resolution drafted by the MEP Maria Noichl under the auspices of the FEMM Committee (European Parliament, 2024). Taking into account that the rise of authoritarian and populist ideas is taking place, at a national and EU level, and the impact of the Covid-19 pandemic which means a setback in the defense of gender equality (European Parliament, 2023, paragraph AC), the adoption of this resolution was a great reinforcement of the EP’s position on prostitution.

Consent is considered not given with free will when it results from an offer of sexual services in trade for money or other benefits, according to the articulate C of the

EP 2023 Resolution. If we look into this concept of consent and the one present in the EU Directive on Combating Violence Against Women, it is possible to conclude that the EP considers that, in the context of prostitution, there is no true consent, so the sexual relationships take place in a violent circumstance (European Parliament, 2023; European Parliament and Council, 2024).

Regarding the violent nature of prostitution, paragraph H of the EP 2023 Resolution also recognizes it, by stating that “(...) women in prostitution report trauma comparable to victims of torture and a high number of women in prostitution report having been raped since entering prostitution (...)” (European Parliament, 2023). Moreover, it acknowledges that violent actions can be committed by third parties, such as brothel keepers, clients, or, even, law authorities, but these people remain unaccountable, due to the general stigma that leads to a lack of reporting from victims (European Parliament, 2023).

The EP 2023 Resolution calls for an intersectional human rights-based approach to reduce the stigmatization and marginalization of sex workers and, thereby, increase efficient criminal investigation to ultimately reduce criminality (European Parliament, 2023, paragraph J). Besides, it recognizes that the purchase, incitement, and recruitment to prostitution in the online spheres does not differ in its negative consequences as in real life. For the first time, virtual spaces are mentioned as an environment that boosts prostitution (European Parliament, 2023, paragraph L).

The fact that the majority of sex workers want to leave prostitution is also highlighted as the importance of the EU Member States to design prevention measures, social support, and exit programs to prevent the entrance of more people into prostitution while providing the necessary means for those who want to leave it, is underlined (European Parliament, 2023, paragraph U).

From what it is described in the EP 2023 Resolution, there is a preferred position towards prostitution according to the Nordic Model, i.e., by considering that prostitution is a cause and effect of gender equality; that prostitutes are more exposed to violence; that prostitution is not a result of a consent-based practice, and by recognizing that the majority of sex workers want to leave prostitution. Nevertheless, in paragraph AF, the EP states that “the Nordic/Equality model, which entails the decriminalization of the person in prostitution while criminalizing the buyer, is not a fix-all solution to reduce demand,

sex trafficking, violence or exploitation” (European Parliament, 2023). So, in the EP 2023 Resolution, the advantages of the Nordic Model are underlined, but it acknowledges that every country might not be well-served with the application of that Model.

Several organizations reacted to the adoption of this EP Resolution. As was expected, the EWL praised the attitude taken by the MEPs since they reinforced the neo-abolitionist legacy, as well as encouraged the EU Member States to adopt the Nordic Model (EWL, 2023). At the same time, the European Sex Workers Rights Alliance³³ (ESWA) demonstrated their disagreement towards the adoption of this EP Resolution through an open letter calling for the rejection of that proposal to the MEPs (ESWA, 2023).

In this regard, the 2023 EP Resolution represents the most recent development about prostitution at the EU level. However, their non-binding nature still does not impose any obligation to adopt the neo-abolitionist approach toward prostitution over the legalizing one. Despite the recognition from the EP that prostitution is a form of violence against women through recent decades, no binding efforts have been made by the EP.

5.4 Recent Jurisprudence on Prostitution

The European Court of Human Rights (ECtHR)³⁴ has decided on the *M.A. and Others v. France* case. Two hundred and sixty-one men and sex workers of twenty different nationalities complained before the ECtHR, in 2019, about the criminalization of the purchase of sexual services in French law (ECtHR, 2023).

The applicants argue that the criminalization of the purchase of sexual services is contrary to the rights of life, and the prohibition of inhuman or degrading treatment (Articles 2 and 3 of the European Convention of Human Rights), since it represents a particular endangerment to the physical and mental integrity of the sex workers. Besides, the right to respect to private life (Article 8 of the Convention), is also argued on the grounds that by turning into a criminal offense the buying of sexual services between two consenting adults constitutes a particular restriction to the right to privacy, as well as the

³³ The former International Committee for Sex Workers Rights in Europe (ICSRE).

³⁴ The ECtHR guarantees respect for the European Convention of Human Rights (1950), to which every EU Member State has ratified it. The EU has not ratified the Convention, however, there have been recent efforts to finally join the Convention (Camut, 2023).

right to personal autonomy and sexual freedom (ECtHR, 2023; European Convention of Human Rights, 1950).

As we have seen before in other jurisprudence cases, the supporters of the sex work approach advocate for the sex workers' rights by framing prostitution on values other than gender equality since the neo-abolitionist supporters tend to monopolize that value to defend their positions. Despite their attempts to frame prostitution into different values and legal rights, they have not been successful in their complaints before the judicial bodies (Foret *et. al.*, 2021, p.105).

In July 2024, the ECtHR acknowledged that prostitution is a violation of human dignity, especially when prostitution is engaged under a coercive character. Furthermore, it recognizes the difficulties of adopting one common approach to prostitution, since it raises various ethical and moral questions (ECtHR, 2024). Those moral and ethical questions were responded to differently depending on the multiple perspectives that were considered in the heated parliamentary debates in France. The ECtHR considers that the result of those different points of view regarding prostitution, which ultimately led to the criminalization of the purchase of sexual acts was a balanced decision that accommodated the concurrent interests (ECtHR, 2024).

Taking into account the national context of the adoption of the ban on the purchase of sexual services, the Court ruled that the French law does not violate Article 8 of the Convention. However, this is not a final judgment, considering that the applicants have three months to recur to a higher instance, the Grand Chamber of the Court, according to Articles 43 and 44 of the Convention (ECtHR, 2024).

Women's rights organizations reacted to this decision from the ECtHR. The ESWA, as expected, condemned the Court's position, by presenting a joint statement with other organizations³⁵ who argue that the criminalization of the purchase of sexual services represents an additional layer of marginalization of sex workers (ESWA, 2024). On the other hand, the EWL has praised the decision of the ECtHR and recognized it as a major development in the debate around prostitution (EWL, 2024)

³⁵ Among those organizations were: Equinox Initiative for Racial Justice; ILGA Europe; Global Alliance Against Traffic in Women; AIDS Action Europe; Trans Europe and Central Asia (TGEU); IGLYO; La Strada International; PICUM; and European AIDS Treatment Group (EATG).

6. Future trajectories in EU policymaking around prostitution

Some authors consider that, at the moment, the trend of neo-abolitionism at the EU level is having consequences at a national level, since the purchase bans are being adopted in some national jurisdictions (Fitzgerald *et. al.*, 2021, p.62). The reluctance of the EU to adopt a holistic approach to prostitution makes the EP Resolutions so significant since it clearly shows its preference for the neo-abolitionist approach (Fitzgerald *et. al.*, 2021, p.62). It remains the question: what can we expect to be the next steps of the EU regarding prostitution policies?

Belgium has seemed to escape from the neo-abolitionist trend in the EU, and contrary to what happened in other EU Member States, such as France, which adopted sex purchase bans, this country has decided to follow a legalizing path. In 2022, the government had already decriminalized prostitution, but in May of 2024 approved with 93 votes in favor, 33 abstentions, and 0 votes against, a labor law to regulate sex workers under an employment contract (UTSOPI, 2024).

This regulatory approach turned Belgium into the first country in the world to adopt such an approach to prostitution, however, it only covers physical sexual contact, thus, porn, for instance, is not covered. In this regard, the person in prostitution who works under an employment contract has certain rights, such as access to health services or social security. In contrast, the employer has certain obligations, such as the guarantee that there is a safe work environment (UTSOPI, 2024).

By permitting persons in prostitution to work under an employment contract, Belgium has acted against the recommendations given by the EP 2023 Resolution. It ignores the violent nature of prostitution, that it is a breach of gender equality, and that its practice is not consent-based. Nonetheless, it is important to remember that the EP Resolutions does not have a binding character, so there is no legal campaign that might be launched against the country.

When we bear in mind the different positions that the EU Member States and EU institutions harbor, the adoption of a common approach to prostitution at the EU level seems to be far from reality. Moreover, the EP has recognized that only the Member States have jurisdiction over prostitution. The argument of lack of competence, which explains the silence of the EU institutions on the matter, has seemed to win in the EP 2023

Resolution. In paragraph 26 of the EP 2023 Resolution, there is a clear statement that “(...) the competence to regulate prostitution remains with the Member States (...)”.

Taking into account, the lack of legally binding action from all the EU institutions, the argument of lack of competence at the EU level to do so, and the differences between regulative measures between Member States, the dream of obtaining a common EU approach to prostitution does not seem to be within the near future.

7. Conclusion

Prostitution is a complex phenomenon that requires the application of different lenses on the analysis of the subject. Even the definition of the term ‘prostitution’, as well as ‘sex work’ is not consensual, despite the EP 2023 Resolution pronounced on the matter. In this thesis, I looked into prostitution from a social and legal perspective to understand which position we expect from the EU in the future on the subject.

Due to its complexity, prostitution is perceived and conceptualized in different manners depending on the feminist theoretical perspectives that we adopt. If we consider what radical feminists argue, then prostitution is considered a form of violence against women and a product of gender inequality. In the opposite movement, liberal feminists consider prostitution to be a professional occupation whose activity is contract-based.

Morality Politics are often considered to cover prostitution, thus, in my first chapter, we found the definition of those types of policies and how they are generally designed. By understanding that morality policies are built around the conflict of certain values about ‘first principles’, and, therefore, matters of life and death, we could advance to comprehend which values conflict within the EU. In this regard, gender equality and freedom of movement/labor are the ones that enter into collision when prostitution is debated at the EU level.

In the third chapter, general regulatory approaches to prostitution are analyzed, as well as their advantages and disadvantages. Furthermore, we look into two approaches to prostitution that are greatly present within the EU Member States: the Dutch Model and the Nordic Model. It is important to comprehend these two approaches to understand the main policy designs within the EU Member States that ultimately influence the prostitution policies at the EU level.

As for the fourth chapter, we managed to have an insight into how prostitution was brought into the agenda of the EU institutions, framed within the gender equality value. That agenda-setting process resulted in a steady evolution of Resolutions published by the EP that showed a preference for abolitionist ideas. Besides, it shows a general silence of other EU institutions, besides the EP, on the matter. It is argued that the EU has a lack of competence on the matter, and, therefore, the jurisdiction on prostitution remains at a national level. Despite the attempts from the supporters of the sex work approach to

frame prostitution, considering other values, these were unfruitful, given the hegemonic neo-abolitionist ideology in the EU.

Lastly, in the last chapter, the question of whether or not the EU will adopt a common and holistic approach to prostitution is finally answered. As we have seen, the differences between states, the lack of action of other EU institutions, and the argument that the EU has no competence on the subject present some obstacles to the adoption of a common prostitution policy at the EU level.

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