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**Cautionary note:** The terms 'child prostitution' and 'prostituted children' are used in this text to denote children that are sexually exploited and sexually trafficked. The connotative manner in which these definitions are perceived and analyzed may differ due to linguistic, cultural, and perceptual differences.

## IMPLEMENTATION OF THE *NORDIC MODEL*: A COMPARATIVE ANALYSIS

*In the early 2000's, laws recognizing prostituted persons as victims began to emerge. The Swedish model, later referred to as the Nordic Model as it is largely followed beyond Sweden, implements the decriminalization and support of persons involved in prostitution, the criminalization of the purchase of sex acts, the criminalization of sex buyers and procurers, public awareness and prevention. Today, Sweden, Norway, Iceland, Canada, Northern Ireland, France, Ireland and Israel have adopted this model. Through the comparative analysis of these countries, what are the outcomes of the laws inspired of the Nordic model?*

On December 2<sup>nd</sup>, 1949, the United Nation General Assembly adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This abolitionist-inspired text proclaims for the first time that: "prostitution and the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person". It thus enjoined its 82 signatories to fight against all forms of sexual exploitation. While this convention marks a significant step in the protection of prostituted persons, its scope remains limited. Indeed, the commitment of the State Parties is delineated to the repression of the different forms of exploitation of prostitution, whereas the issues relating to the purchase of sex acts are not mentioned.

It was only from the early 2000's that a paradigm shift began with the emergence of legislation which truly recognized prostituted persons as victims. On January 1<sup>st</sup>, 1999, Sweden, while exempting the latter group from criminal prosecution, became the first country to

criminalize the purchase of sex acts. Through the penalization of the sex buyers, the objectives of the Swedish legislator are manifold. It is primarily about fighting against all forms of violence towards prostituted persons and to guaranty the effectiveness of the principle of gender equality undermined by the practice of paid sexual relations. During their preparatory work, Swedish legislators recognized that prostitution enables the commission of all kinds of assaults on persons who engage in it. Being a lucrative activity, it is also a breeding ground for the development of organized crime networks. Besides its punitive aspect, the Swedish law finds its originality in its proposal of an exit plan to prostituted persons, and tends to impulse a change in the perception of prostitution by the general public.

Relatively exhaustive, this legislation was rapidly presented as an example to follow by supporters of the abolitionist system.

Gradually replicated by Norway, Iceland, Canada and more recently by

Northern Ireland, France and the Republic of Ireland, this model has thus spread beyond the borders of the Swedish Kingdom. Consequently, today we no longer refer to it as the “Swedish model” but rather the “Nordic model”. While the legislation of the above-mentioned nation states each have specificities, their study nevertheless reveals the existence of a common ideology, itself supported by the use of similar means. The criminalization of sex buyers and procurers (not of prostituted persons), coupled with the establishment of awareness and prevention programs, as well as support programs for people wishing to exit prostitution, constitute the Nordic model’s cornerstone. Hence, in its resolution on February 26<sup>th</sup>, 2014, the European Parliament saw in this legal approach of the prostitution phenomenon a means of “fighting against the trafficking of women and young girls for sexual exploitation purposes, and improving equality between women and men”.

### **The decriminalization and support of persons engaged in prostitution**

Prostitution, contrary to human dignity, cannot be considered as “sex work”. The Nordic model views the prostituted person as a victim, subject to procurers and sex buyers. Also referred to as “reinforced abolitionism”, this system is based on the premise that prostitution is never unconstrained nor chosen, on the contrary it finds its origin in a path of violence, precariousness or addiction. The vulnerability of prostituted persons and the inherent violence of the prostitution phenomenon therefore constitute obstacles to their exit. According to the Nordic approach, criminalising persons who engage in prostitution would further diminish their possibilities of permanently leaving prostitution and reintegrate society.

Indeed, the entry of convictions in criminal records, when it is susceptible to be brought to the attention of a potential employer, very often constitutes a barrier to employment, all the more so when these convictions have been handed down on counts of solicitation or prostitution.

Consequently, not criminalising and not penalizing prostituted persons is the first axis of the Nordic model, which furthermore calls for the establishment of targeted support programs for this often isolated public. Indeed, the willingness of prostituted persons, although primordial, is often insufficient to enable them to leave prostitution if they are not upheld by social, medical, psychological, professional and financial support.

### **Penalization of sex buyers and procurers**

While the penalization of procurers and individuals involved inhuman trafficking is not a specificity of the Nordic model, the penalization of the purchase of sex acts is characteristic of the Nordic model. For instance, the Swedish law was a pioneer when it came into force in 1999, then was closely followed by some of its neighbours. This criminalization of the sex buyer, now an “offender”, appears to be the logical corollary of the recognition of the victim status for prostituted persons. It is important to make the sex buyer become accountable to his role, not as a mere consumer but a contributor to the maintenance of dependency and precariousness of prostituted persons, as he benefits from paid sexual relations. However, the ambition of the Nordic model is not to repress as a fundamental principle. Besides fines or terms of imprisonment used as a deterrent, some laws inspired by the Nordic model also include educational sanctions, such as awareness-raising courses. The penalization of the sex buyer can therefore

be seen as a preventive tool, likely to ultimately lead to a change in mentality and deter prostitution networks.

### **Raising public awareness and prevention**

The Nordic model, beyond the sex buyer, aims more broadly to raise awareness of prostitution related issues among the general population, to reverse the triviality of this phenomenon. To do so, it relies on various tools: information campaign at the national level, education in schools to explain to young people the ravages of prostitution, and also reinforced training for the various public and private actors likely to be confronted with these subjects (teachers, police officers, magistrates, social workers, hospital staff, etc...).

### **Effectiveness of the laws inspired by the Nordic model**

First implemented in Sweden in 1999, the Nordic model retains a strong appeal, as evidenced, for example, by the adoption of the law in France on April 13<sup>th</sup>, 2016. Nevertheless, although it is acclaimed by some, it is still regularly challenged. Thus, during the parliamentary debates that preceded the adoption of the French law, many questioned the effectiveness of this approach. The results of this system should therefore be measured by means of a comparative analysis of the legislation of Sweden, Norway, Iceland, Canada and Northern Ireland.

#### **Sweden**

On January 1<sup>st</sup>, 1999, Sweden became the first country in the world to criminalize the purchase of sex acts. As currently drafted, the Swedish Penal Code penalizes anyone for obtaining a “sexual relation in exchange for payments” (Chapter 6, section 11). In this regard, it

should be noted that the terms of this law adopted on June 4<sup>th</sup>, 1998 are subject to extensive interpretation, making it possible to penalize sex buyers. Thus, the term “sexual relations” encompasses sexual relations in the *stricto sensu* definition of the term, as well as other acts of sexual nature, dealt with on a case-by-case basis through the jurisprudence. Similarly, the notion of “payment” does not solely refer to cash remuneration but includes any form of remuneration in kind (e.g. drugs or alcohol). As for the seller and the buyer, they can indifferently be female or male; yet it is specified that prostituted persons are not liable to be prosecuted in relations to their activity. The text lastly states that the offence of “purchase of sex acts” has occurred even if the payment was promised or made by a person other than the person who benefited from the paid sexual relation. Depending on the circumstances, including the offender’s state recidivism and personality, the penalties incurred range from a fine, adjustable according to income, to one year of imprisonment. In order to avoid any risk of reoccurrence, sex buyers may also be offered therapeutic support, which can take the form of discussion groups to reflect on their actions. Like sex buyers, procurers are likely to be subject to criminal sanctions in Sweden, although this is not typical of the Nordic model. The penalty incurred is four years’ imprisonment, it being stipulated that aggravating circumstances are likely to increase this quantum. Furthermore, the Swedish Land Code provides that in order to prevent the use of apartments or rooms for prostitution, the owner or landlord is required to terminate the leasing contract if he suspects prostitution is taking place, and the lessee must leave the housing used for these purposes (Land Code 1970: 994 chap. 12 § 42.1.9; Condominium Act 1991: 614, chap. 7 § 18.8 2003 : 31).

In contrast, the Swedish law has the specificity of tackling the prostitution phenomenon by accompanying prostituted persons out of prostitution through exit plans. The equivalent of EUR 20 million (USD 22,64 million) has been allocated by the government to the reintegration of prostituted persons, and a national plan of action was implemented from 2008 to 2010 in order to make the fight against prostitution a national priority (*Le Monde Diplomatique*, January 2017). During this period, the Swedish government allocated approximately EUR 4.5 million (USD 5.09 million) to finance training activities for legal professionals (GRETA, May 27, 2014). Since the entry into force of the law, programmes to exit prostitution, run by specially trained social workers, have been developed to meet the needs of prostituted persons and enable them to reintegrate society through social and financial support. The last axis of the Swedish law aims to raise public awareness and prevent prostitution by targeting those at greater risk of being affected, in particular children and adolescents.

Eighteen years following its entry into force, the law on June 4<sup>th</sup>, 1998 has been the subject of several evaluations designed to measure the effectiveness of its provisions. Thus, an initial report submitted to the Swedish government on July 2<sup>nd</sup>, 2010 gave a positive assessment by indicating that street prostitution had fallen by more than half since 1999, that human trafficking in the country had been curbed and that the population's perception of this phenomenon had evolved considerably. In effect, the number of people in favour of penalizing sex buyers has risen from 30% to 70% of the population in ten years (*Fondation Scelles*, 2016).

Following this first report, the critics of the law argued that while street prostitution had decreased, prostituted persons were

now forced underground, making them more vulnerable than in the past and dissuading them from cooperating with the police. Similarly, it was mentioned that the reform had resulted in the displacement of Swedish nationals to countries where prostitution was regulated. Aware of the potential for improvement in its model, the Swedish government has continued its fight against the prostitution phenomenon. Accordingly, in 2014, the emphasis was placed on raising awareness among the civilian population by encouraging tourism professionals to work more closely with the police. A bill to penalize Swedish nationals who engage in commercial sex with prostituted persons abroad is under study (*Euro-topics*, December 9, 2016). In an effort to better respond to the existing realities on the ground, the government has also commissioned the Stockholm County Administrative Council to conduct a new assessment of the state of prostitution in the country. Published in March 2015, this second report confirms that penalizing sex buyers has had a number of beneficial effects. Surveys carried out have shown that street prostitution has halved since 1995. For example, for the city of Stockholm alone, the number of prostituted persons engaging in street prostitution has decreased from about 650 to 200 between 1995 and 2014. Similarly, the awareness-raising efforts seem to have borne fruit as 72% of the population (85% of women and 60% of men) is in favour of prohibiting the purchase sex acts. In order to ensure that the criminalization of sex buyers is accompanied by an increased awareness of these perpetrators, and increasing number of police services have introduced psychologists in their units. Despite these advances, the rapporteurs intend to point out that prostitution has not been eradicated and alert the government to the rise of new forms of prostitution.

Despite the fact that the number of sex buyers has remained constant since 2010, the studies conducted highlighted the growing role of the Internet in the development of prostitution. For example, in recent years, police forces have observed that a growing number of persons have been prostituting through online apartment rental websites, such as Airbnb, booked by either themselves or their procurers. In early 2016, 200 apartments registered on Airbnb and other sublease services were identified as having been used for prostitution purposes (*Vice News*, February 15, 2016).

Over the past eight years, the number of ads published on the Internet has increased twentyfold yet this progression is not correlated with an increase in the number of individuals concerned. Similarly, the report highlights the development of clandestine prostitution, particularly in massage parlours. As a result of this growth, the hunt for sex buyers, once made possible by a network of informants, has changed field forcing investigators to adapt their investigation techniques. The results are positive in this respect: 500 men are arrested yearly, a figure that remains constant. Nevertheless, police forces regularly draw the government's attention on the lack of resources available to them to tackle the new forms of prostitution. There remains the question of the effectiveness of the sanctions imposed on convicted "consumers". Indeed, while the penalties incurred since 2011 may go up to a year's imprisonment, no custodial sentences have yet been imposed as magistrates prefer to impose fines.

Despite these limitations, Sweden remains the country in Europe where rates of human trafficking, prostitution and acts of violence against prostituted persons are the lowest. Simon Häggström, head of the Stockholm anti-prostitution brigade, was

heard by the Senate's special committee as part of the preparatory work for the adoption of the French law (April 13<sup>th</sup>, 2013). He stressed the advantages of penalizing sex buyers in the context of dismantling prostitution and human trafficking networks. According to him, the law would not lead prostituted persons to refuse all forms of cooperation with the police. On the contrary, he believes that the society's improved view of them would be liberating. These advances in the fight against human trafficking have been confirmed by European institutions tasked in evaluating the Swedish legislation. In its report of May 24<sup>th</sup>, 2014, mandated by the Council of Europe, the Group of Experts on Action against Trafficking in Human Beings (GRETA) welcomes "the measures adopted by the Swedish authorities to combat human trafficking and support victims [...] It also welcomes the efforts made by the Swedish authorities in the field of international cooperation and the support they have provided to anti-trafficking activities in other countries".

### **Norway**

Faced with a surge in prostitution on its national territory, Norway is the first country to have taken inspiration from the Swedish legislation by addressing the demand for paid sex acts through the criminalization of sex buyers. Since the law of December 12<sup>th</sup>, 2008 (entered into force on January 1<sup>st</sup>, 2009), article 202(a) of the Norwegian Penal code prohibits the purchase of sex acts regardless of the age of the prostituted person. Similarly to Sweden, the penalization of this offence is rather widely accepted. The offence is thus characterized against any person who obtains sexual intercourse or any other type of sex acts, for himself or a third party, in exchange of remuneration or an agreement providing for remuneration.

Similarly, a person who would benefit from sex acts, paid for by others, may be liable to criminal prosecution on the same basis. Norway goes further than Sweden in its logic of penalizing sex buyers by giving its law an extraterritorial scope. Indeed, Norwegians who have commercial sex with a prostituted person abroad are also likely to be subject to the full force of the law. Sex buyers found guilty are liable to a fine and up to six months imprisonment. In the presence of aggravating circumstances, the quantum is increased to a year or more if the victim is a child. Procuring, human trafficking and the advertisement of prostitution are also punished in Norway. Concomitantly to this repressive component designed to reduce the scope of the sex market, prevent entry into prostitution and thus curb sexual exploitation in Norway, the law includes a number of provisions designed to protect prostituted persons and accompany them in their exit of prostitution. Children who are victims of prostitution and human trafficking are the subject of particular attention by the Norwegian authorities.

Subject to similar criticism targeting the Swedish legislation, the law of December 12<sup>th</sup>, 2008, appeared for a time threatened with its repeal. Following the publication in 2012 of a report by the field association *Pro Sentret*, which reported a sharp increase in violence against prostituted persons, some political decision-makers publicly declared themselves in favour of the law's abolition. While several studies agree that Norway remains an important country of destination for human trafficking, the 2008 law nevertheless seems to begin to prove its worth (*GRETA*, May 27 2014; *US Department of State*, June 2014). In a report published in August 2014, the independent research firm *Vista Analyse* noted a sharp reduction in the demand for acts of sexual nature. Since the

enactment of the law, street prostitution would have dropped between 20% and 25% and more than 1500 persons would have been convicted of charges of "purchase of sex acts". While the sentences handed down remain monetary in nature they remain a deterrent to sex buyers, as evidenced by the sentence of Bård Hoksrud, a Norwegian *Fremskrittspartiet* deputy (populist right-wing), ordered to pay a fine of around EUR 3,200 (USD 3,621) in September 2011 (*Le Figaro*, July 7, 2012). Indoor prostitution is also reported to have decreased by 10% to 20%. Shortly after the law came into force, the prostitution market, as its lowest level, finally stabilized at a lower level than before 2009. Combined with the repressive texts of law against procuring and human trafficking, the 2009 law would have made Norway a much less attractive country for prostitution networks. It is in Oslo that the most significant changes can be observed, with a sharp decrease in street prostitution within the city, as well as an evolution in the population's perception of prostitution, especially among the younger generations. According to the report, there is no evidence to show that the law has resulted in an increase in violence against prostituted persons as its detractors claim.

Nevertheless, due to a lack of political will and resources, progress remains to be made in some areas. In 2015, the number of persons prosecuted for the purchase of sex acts in Oslo sharply decreased, as the police forces mobilized their staff on more complex cases (*The Local*, February 11, 2015). According to *Rosa*, an association for the assistance of prostituted persons, the lack of police resources is a major obstacle to the dismantlement of prostitution networks, so much so that to this day Norway remains an attractive country for human traffickers. Consequently, the government is often questioned regarding

the situation of migrants who, due to their precarious circumstances, remain a target of human trafficking networks. While noting that Norway has implemented a number of significant social policies aimed at the victims of human trafficking and prostituted persons, *Vista Analyse* researchers emphasize that the Norwegian authorities must pursue their efforts in order to diversify the offer of exit programs out of prostitution. In their view, the support provided to prostituted persons must include, among other things, the development of language and vocational training courses, as their beneficial effects no longer requires to be demonstrated. In their 2016 evaluation report, Amnesty International also emphasized the necessity to strengthen the protection of prostituted persons. Through a critical analysis of the Nordic model, the organization comments that prostituted persons are too often discriminated against in Norway. For example, it is noted that prostituted persons in irregular situations would not dare to file a complaint when they are victims of violence, out of fear of being sent back to their country of origin (*Independent*, May 26, 2016). While the penalization of sex buyers seems to have a more limited impact than in Sweden, due in part to a more recent application of the law and a lack of willingness from political leaders, the overall results are nevertheless positive on the reduction of street prostitution in Norway.

### ***Iceland***

Akin to Norway, Iceland has in recent years become a transit and destination country for human trafficking, mainly for prostitution purposes (*US Department of State*, July 2015). The fight against sexual exploitation has therefore become a priority for the Icelandic government. Over the course of 2009, the government was in turn inspired by the Swedish law. It

introduced a national action plan against human trafficking and amended its Penal code to penalize the purchase of sex acts. Icelandic law is indeed very similar to the legislation previously studied and considers prostitution as a form of violence against women. On one hand, prostituted persons cannot be prosecuted. The national action plan against human trafficking thus emphasizes on the prevention and support of prostituted persons in collaboration with associations concerned: legal assistance, accommodation, etc. On the other, it follows provisions of article 206 of the Penal code that any person who pays or promises a payment or any other form of remuneration to obtain sexual relations from a prostituted person is liable to a fine or up to one year imprisonment. The definition of the offence, as well as the penalties incurred, are therefore very similar to those laid down in the Swedish and Norwegian legislation. Although, the Icelandic law provides that these penalties are increased to two years imprisonment when the victim is a child. Under the same article, procuring, human trafficking, corruption of children and the advertisement of prostitution are also subject to criminal penalties. During the adoption of the law, opinion polls showed that over 70% of the population was in favour of the prohibition of the purchase of sex acts. Since a 2010 law, Iceland also prohibits striptease shows. The aim of this text, put forward by the female politician Kolbrún Halldórsdóttir, is to pursue the fight against gender inequalities by preventing anyone from benefiting of the nudity of their employee, but also to strengthen the fight against prostitution. This law authorized the Icelandic authorities to shut down all striptease establishments which had links with prostitution, human trafficking and other illegal activities.

In contrast with Sweden or Norway, there is no planned formal evaluation of

the 2009 law that penalizes the purchase of sex acts. Nevertheless, some organizations have taken an interest in the effectiveness of the Icelandic legislation. The Icelandic Women's Rights Association (IWRA) and the Icelandic Human Rights Centre (ICEHR), in a report published in 2016 on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, had the opportunity to review the scope of prostitution and human trafficking within the country (*Kvenréttindfélag Islands*, February 3, 2016). While these two organizations welcome the reforms initiated by the Icelandic legislator, they note that the implementation of the law remains uneven across the country and is, for the time being, relatively ineffective. They first point out that, in the first cases implementing the provisions on the prohibition of the purchase of sex acts, Icelandic courts chose not to disclose the identities of convicted sex buyers. The two organizations also argue that the sentencing decisions were not published on the internet, as is usually the protocol followed regarding court decisions. Henceforth, the authors of the report fear that this guarantee of anonymity granted to sex buyers may render the law criminalizing the purchase of sex acts ineffective, or at least deprive it of any deterrent effect. Basing themselves on a study conducted by the National Commissioner of the Icelandic Police in 2015, ICEHR and IWRA report an increase in prostitution in Iceland in recent years, particularly in Reykjavik and in the country's major cities. According to the police, Iceland is indeed a popular destination for sex tourists. This has resulted in a sharp increase in the advertisement and offer of sex acts, notably through personal ads offering "escort girl" services on the Internet. To illustrate this point, a website that had 34 such ads in 2016 had

149 in October of the same year (*Iceland Review*, October 20, 2016). Similarly to Sweden and Norway, the police forces are also faced with the emergence of new forms of prostitution, including through online housing rental sites (*Iceland Review*, October 20, 2016). The surge of highly prized "champagne clubs" by tourists has been drawing the authorities' attention, as the police suspect these establishments to be involved clandestinely in human trafficking. According to the US Department of State, Iceland remains a preferred destination for human trafficking for sexual exploitation purposes. The traffickers would take advantage of the existing rules on the free movement of persons within the Schengen area to exploit their victims in Iceland before making them return the country as the legal deadline for them to register with the authorities has expired. Nonetheless, the Icelandic government's efforts in the field of prevention are highlighted. In 2015, 17 information sessions were held throughout the country for health, justice and social sector professionals to enable them to better identify and refer victims to the appropriate services. In 2016, about 30 seminars had been held and more than a thousand professionals trained.

Nevertheless, NGOs continue to denounce the lack of human and financial resources and cite, to illustrate this situation, the closure of the Kristínarhús shelter for women victims of human trafficking and prostitution, merely two years after its opening due to a lack of resources. Finally, they regret that the 2010 law banning striptease is not applied more rigorously by police forces.

### **Canada**

In considering the conclusions of the Bedford decision, at the end of which the Supreme Court judged that certain

provisions of the Criminal Code were unconstitutional, as they were damaging to prostituted persons' right to safety, the Canadian legislature profoundly reformed their laws concerning this matter (*Fondation Scelles*, 2016). Thus, law C-36, or the "Protection of Communities and Exploited Persons Act," was implemented on December 6<sup>th</sup>, 2014, and acknowledged prostitution as a form of sexual exploitation. Furthermore, this law took inspiration from the Nordic Model in that it targets sex buyers and procurers rather than prostituted persons themselves. While the short-term objective of this law is to reduce demand for prostitution and to discourage anyone from doing so, the longer-term goal is to abolish the system of prostitution. To this effect, Article 286.1 of the Criminal Code condemns buying sex acts by stating that "any person in any place who obtains, for remuneration, the sexual services of any person or communicates with any person for the purpose of obtaining, for remuneration, such services," is susceptible to criminal prosecution. The penalties for this charge are particularly severe, with prison sentences ranging from 18 months to five years and graduated fines ranging from 500 to 4,000 Canadian dollars (CAD) (USD 371 to 2,969) depending on the circumstances. In addition to prohibiting obtaining sexual services for remuneration, the Canadian legislation provides for a number of other offences relating to the offering, providing or obtaining of sex acts for remuneration. Indeed, before the reform, the majority of prostitution-related offences (82%) reported between 2009 and 2014 involved communication or attempted communication with a person with the intention of engaging in sexual activity or obtaining sex acts (*Juristat*, November 10, 2016). From now on, Article 213 of the Criminal Code prohibits the

solicitation of sex acts in public places or places accessible by the public, whether by the sex buyers or by the prostituted persons. The advertisement of sex acts is prohibited. The Act C-36 also provides for a budget of CAD 20 million (USD 14.8 million) over 5 years dedicated to the support of people who wish to leave prostitution.

Even though Act C-36 act officially came into effect by Royal Assent in 2014, its practical implementation has been confronted with a lack of will on the part of the authorities, and its effectiveness appears unequal across provinces. Thus, in certain cities such as Regina, the capital of the Saskatchewan province, police continue to tolerate massage parlors as long as they don't employ minors, and there is no suspicion of human trafficking. In December of 2014, when the law had just come into effect, a group of academics, lawyers and activists asked Christy Clark, the Prime Minister of British Columbia, not to prosecute on the basis of the new legislation. As in Nordic countries, there is a lack of consensus on the penalization of sex buyers, and critics fear that the new legislation which drive prostituted persons into clandestinity, thus putting them at greater risk of violence. Although the Government of British Columbia did not expressly approve this request, it indicated that it would leave enforcement in the hands of the police department. However, the British Columbia police have made it clear that they will not mobilize additional resources to combat the sex trade, such as the closure of brothels, and that it would only continue to ensure the safety of prostituted persons. Thus, the focus is put on human trafficking and protecting children. Conversely, some provinces indicated that they will not grant requests for the challenging of the constitutionality of Act C-36. Thus, the government of Quebec clearly

indicated that the new provisions of the Criminal Code will be applied in the province. These rules are enforced rigorously in some cities where the police do not hesitate to carry out major undercover operations in order to arrest as many sex buyers in search of sex acts. At the end of the Summer of 2015, the regional Police of Cape Breton arrested 27 men who were soliciting paid sex acts from prostituted persons on the street. The names, ages and addresses of the individuals involved were published at a high-profile press conference. The City of Saskatoon has refused to grant and renew licenses for businesses offering “adult services” (*striptease*, escort agencies and massage parlors).

Although it is difficult to evaluate the effects of Act C-36 just 4 years after it came into effect, the first conducted studies have been overwhelmingly positive. For example, according to a survey on criminality in 2015 by *Statistique Canada*, the number of cases for the purchase of sex acts reported by the police rose to 345, of which only 9 were in Quebec. Generally speaking, there were 799 prostitution-related cases compared to 1,073 the year before (*Le Devoir*, July 23, 2016). In 2017, 741 cases of purchasing sex acts were reported by the police force in Canada, according to *Statistique Canada*.

The provisions of the law relative to the prohibition of the advertisement of the sale of sex acts seems to be difficult to apply. Indeed, it is noted that throughout the country, these types of advertisements on websites hosted abroad as well as in certain Canadian newspapers have persisted. The Montreal police admits in this respect that these types of advertisements are not a priority, and that they will only be investigated if they are likely to constitute evidence in more complex cases. Finally, there are significant disparities

between provinces in the number of court cases involving procurers. According to a study by a Canadian newspaper, the number of criminal hearings conducted each year concerning procurers in Ontario since 2007 is equal to that of Quebec over the span of 10 years (*La Presse*, May 17, 2016). This difference could again be explained by the difference in police resources, as Toronto police services are better equipped than those in Quebec City. In general, in 2017, the police caught 78 people in 47 cases of human trafficking, as compared to 107 people in 68 cases in 2016 and 112 people in 63 cases in 2015. 4 people were sentenced for offences of sex trafficking in 2017 (10 in 2016 and 6 in 2015) and the penalty was 2 to 12 years' prison time (compared with 6 months to 9.5 years in 2016). Authorities recorded a total of 367 trafficking victims in pending court cases in 2016 (*US Department of State*, June 2017).

Published on June 18, 2015, Act C-452 proposed to amend the Criminal Code by inserting a presumption of sexual exploitation when a person who is not exploited lives or is usually in the company of an exploited person (section 279.01 of the Criminal Code). Similarly, the sentence imposed on a person on this basis was served consecutively to any other punishment for related offences based on the same facts and to any other punishment being enforced (section 279.05 of the Criminal Code). However, this law never came into effect, as the Ministry of Justice considered that this last provision risked being judged as an unjustifiable restriction to the rights protected by Article 12 of the Canadian Charter of Rights and Freedoms. On the basis of this article, the courts have held that the right to protection from cruel and unusual treatment or punishment is intended to prevent the imposition of grossly disproportionate sentences. Many

of the offences involved in consecutive enforcement are punishable by mandatory minimum prison sentences ranging from one year to six years, making them disproportionately punitive. Also, the new C-38 Bill was tabled in the House of Commons in February 2017 to amend Act C-452 itself amending the Criminal Code and repealing the consecutive sentencing section. If the new version of Act C-452 is adopted, the incrimination of sexual exploiters will be facilitated (*Canadian Ministry of Justice*, February 9, 2017).

### **Northern Ireland**

A part of the United Kingdom, Northern Ireland is a region of origin, transit and destination for human trafficking (*US Department of State*, June 2018). Because of its geographical location between Ireland and the rest of the United Kingdom, it is possible to consider that the situation is accentuated in the country. For this reason, the Assembly of Northern Ireland has passed a law to prevent and combat human trafficking, slavery and other forms of exploitation, including measures for preventing and combating exploitation, and for providing support to victims of exploitation (Preamble of *Human Trafficking and Exploitation Act* of 2015). On January 13<sup>th</sup>, 2015, the Human Trafficking and Exploitation Act was passed and, by amending Article 64 of the Sexual Offences Order of 2008, brought Northern Ireland into the narrow circle of states that adopted the Nordic model. Indeed, Article 15 of the 2015 law (64A paragraph 1 in the 2008 law) stipulates that a person is committing a crime if they obtain a sex act from another person in exchange for money. The 2015 law goes further by removing Article 59 of the 2008 law, which penalized the act of prostitution in public places (Article 15 paragraph 4). Northern Ireland thus became the 5<sup>th</sup> country to

criminalize the purchase of sex acts and to decriminalize the act of prostitution completely.

Put into effect on June 1<sup>st</sup>, 2015, the text punishes the act of buying sex acts as well as the promise of payment (even by way of a third party). Payment shall be understood as any financial benefit including the settlement of a debt or the provision of goods or services (other than sex acts) free of charge or at a reduced price (Article 64A Paragraph 3). The notion of sexual services, which is not specified in this text (*Department of Justice*, October 2014), is defined by Article 4 of the Sexual Offences Order of 2008: “penetration, touching or any other activity is sexual if a reasonable person would consider that (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both), it is sexual” (Article 4 of the Sexual Offences (Northern Ireland) Order 2008). This concept is supplemented by Article 64A, which states that a crime is committed only if the sex buyer is in the presence of the prostituted person, in physical contact with the prostituted person, or “the prostituted person caresses herself in a sexual manner for the sexual pleasure of the sex buyer.” “Sexual services” corresponds with acts considered sexual by a reasonable person and which imply the physical presence of the concerned people, which differentiates between prostitution and pornography. The Policing and Crime Act of 2009 amended the law of 2008 to including the penalization of the sex buyer, but only if the prostituted person submitted under coercion. One can easily imagine the difficulties faced when proving that a prostituted person was coerced at the moment of the offence, which could have, in

part, incited the legislature to once again amend Article 64A in 2015. It should be noted that the purchase of sex acts from children falls under Article 37 of the Sexual Offences Order of 2008 and is a sexual crime.

The penalties for purchasing sex acts are 1 year in prison either accompanied with or replaced by a fine of up to GBP 5,000 (USD 6,501.25) (*Law Center NI, Northern Ireland, 2015*). Concerning the purchase of sex acts from children, the law is much more severe. If the child is under 13 years old, the sex buyer is liable to life imprisonment; if the child is less than 16 years old, the sex buyer is liable to up to 14 years' imprisonment; and if the minor is less than 18 years old, the sex buyer is liable to up to 7 years' imprisonment.

An assistance plan for leaving prostitution has been published (*DHSSPS, December 2015*). This plan, which came into force before April 1<sup>st</sup>, 2016, aims in particular to provide an overview of prostitution in Northern Ireland, to identify obstacles to exiting prostitution, ways to exit, as well as identifying appropriate bodies. The plan focuses on street prostitution, indoor prostitution, escort services and brothels, however its provisions are not limited to just these categories (*DHSSPS, December 2015*). The scope of the plan is restricted: it does not include victims of trafficking, as there already are existing programs of aid specifically dedicated to helping these people. Minors are also excluded, and are instead referred to organizations dedicated to helping victims of sexual abuse. Although the law doesn't distinguish between gender (paying for sexual services of a person), the strategy for aiding the exit from prostitution is consistent with the reality of the field, and proposes assistance exclusively for women, who represent 68% of prostituted persons in Northern Ireland (*Department of*

*Justice, October 2014*). Through this plan, twelve barriers to getting out of prostitution are identified (substance addiction, housing difficulties, physical and/or mental disability, childhood violence, criminalization, coercion, lack of education or skills, age of entry into prostitution, stigma, need to provide for themselves and/or their children). To address these barriers, 8 aid sectors have been provided (medical, financial, housing, employment/training, legal, domestic and sexual violence, reception centers, advice), each of with its own specific body. However, despite the large number of services proposed by the plan, only the Belfast Drop-in Service for Commercial Sex Workers was dedicated to prostituted persons. Additionally, it was noted that prostituted persons had a significant lack of knowledge of the existing aid services, and an advertising strategy for these services is not explicitly foreseen. The plan also reflects a weak political will by simply stating that the (exceptional) financial difficulties encountered lead to existing services, resources and personnel being used to achieve exit objectives, with social workers, police officers, health personnel and others working in the community are most likely to be in contact with prostituted persons, without specifying the terms and conditions (*HSPSD, December 2015*). The law in Northern Ireland does not provide for any extraterritoriality clause for its nationals concerning the purchase of sex acts abroad, possibly because this would affect the legislation of other nations in British territory. In 2015, the Irish NGO Ruhama was concerned that Ireland would become a top sex tourism destination in Northern Ireland and expressed its support for harmonizing legislation on the island (*Vice, February 19, 2015*). It was indeed noted by the NGO *Immigrant Council of Ireland* that the implementation of the law has led to an increase in online prostitution

services in Ireland (*Irish Examiner*, November 5, 2015). Following the adoption of a similar law by Dáil Éireann (Irish Parliament) in February 2017, sex tourism on the island is no longer relevant. However, one can wonder about the future of Britain, now surrounded by countries that have adopted the Nordic model. Would this not be an opportunity to adopt it in turn, so as not to become a destination for sex tourism in Western Europe?

Legal recourse was filed against the law in September 2016 by Laura Lee, who self-identifies as a “sex worker”. She believes the law violates human rights, especially the right to a private life and the right to not be a victim of discrimination, as well as increases the danger of her activity. However, the court dismissed the recourse in March 2018 following the death of the complainant, which resulted in the cessation of the main objections to the law (*Belfast Telegraph*, March 8, 2018).

The first sentence for purchasing sex acts, under Article 64A, wasn't given until the 22<sup>nd</sup> of June 2018 for a crime committed in 2016. Previously, 21 individuals had been arrested or were subject to a discretionary measure and 7 others had received warnings (CARE, June 22, 2018). The enforcement of the law is still limited, with some police personnel considering that the priority should be to target victims of human trafficking and sexual exploitation, with the penalization of sex buyers remaining secondary (*BBC News*, August 10, 2016).

### **A model that continues to spread**

While the Nordic model continues to be criticized by its opponents, new countries continue to be inspired by it.

For example, in France, the April 13, 2016 law number 2016-44 “to strengthen the fight against the system of prostitution” punishes with a fine of EUR 1,500

(USD 1,698) and additional penalties for 5<sup>th</sup> class contraventions the act of soliciting “relations of a sexual nature with a prostituted person, including on an occasional basis, in exchange for remuneration (...)” Repeat offences are punishable by a fine of EUR 3,750 (USD 4,245). The April 2016 reform created, in addition, a new penalty that obligates the offender to attend a workshop that raises awareness of the fight against the purchase of sexual services. This sentence is provided for in both contraventional and criminal materials. Attendance of this workshop can also be used as an alternative to prosecution. The law is intended to be more educational than repressive towards the sex buyer in order to prevent the risk of recurrence and reduce demand. At the same time, the offence of passive solicitation is repealed and a way out of prostitution is put in place, with prostituted persons being considered by law as vulnerable and needing protecting. In May 2018, 64 people had embarked on a journey out of prostitution. Section 11 of the law creates “an aggravating circumstance for violence, sexual assault and rape against a prostitute,” thus strengthening the protection of victims of prostitution. To complement the legislation, “public awareness and sexuality education programs for the youngest” were also established (*GRASCO Review*, November 2018).

Two years after the law came into effect, professionals denounced the insufficiency of the allocated resources to allow for its effectiveness, for example the lack of adequate space in accommodation centers. The enforcement of the law is also not homogeneous at the territorial level and very ad-hoc on the Internet, so it is difficult to assess its actual effectiveness. More importantly, some municipalities are breaking the law by issuing municipal by-

laws penalizing prostitution. Thus, 1 120 prostituted persons were written up between January and June 2017 in the 7<sup>th</sup> arrondissement of Lyon (GRASCO Review, November 2018).

Around 250 sex buyers have been fined by the police forces six months after the law came into effect (*Le Monde*, October 4, 2016). In September of 2018, nearly 2 800 sex buyers were fined, without any recorded recurrence to date. Indeed, 85% of sex buyers who attended an awareness workshop recognized its utility in reducing incidences of buying sexual services. Prostitution in the Fontainebleau forest has decreased by half between 2016 and 2018 (GRASCO Review, November 2018).

In the various countries where sex buyers are penalized, objections emphasize the precariousness and insecurity of prostituted persons in order to attack the law, particularly associations in favor of “sex work,” but also the NGO *Médecins du Monde-France*. The official evaluation of the law was delayed, and is expected to take place in the spring of 2019, allowing for a comprehensive review.

On November 14<sup>th</sup>, 2017, Ireland adopted the Nordic model. The Criminal Law (Sexual Offences) Act 2017 provides for the abolition of the offence of solicitation and penalizes the purchase of sex acts. Henceforth, the purchase or promise to purchase a sexual act from a prostituted person in Ireland will be liable to a fine of EUR 500 (USD 566) and EUR 1,000 (USD 1,132) in the case of recidivism (aggravated sentences if the prostituted person is a victim of human trafficking).

Finally, in October of 2018, the penalization of sex buyers came into force in Israel following the adoption of a draft bill by the government. Sex buyers will be liable to a fine of 1,500 shekels (ILS)

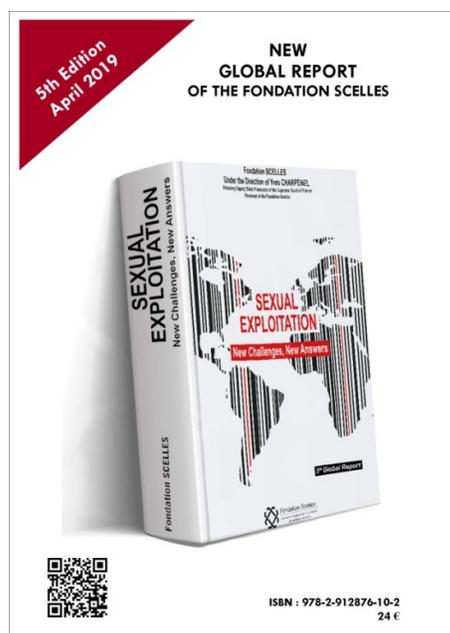
(USD 421) and ILS 3,000 (USD 842) in the case of recidivism.

Other countries are looking at the possibility of doing the same thing. The issue is critical as the fight against sexual exploitation can only be successful when the Nordic model has become an international standard.

## Sources

- « Five-Fold increase in escort ads », *Iceland Review*, 20 October 2016.
- « La Suède veut pénaliser les clients de la prostitution à l'étranger », *Euro-topics*, 9 December 2016.
- « New shadow report on Iceland's implementation of CEDAW », *Kvenréttindfélag Islands*, 3 February 2016.
- « Prosecutions for buying sex in Oslo plummet », *The Local*, 11 February 2015.
- Buzetti H., « Du goudron et des plumes pour les clients », *Le Devoir*, 23 July 2016.
- Buzetti H., « Québec laisse une chance à la nouvelle loi », *Le Devoir*, 19 December 2014.
- Buzetti H., « Une loi aux effets limités », *Le Devoir*, 23 July 2016.
- Chabot D.-M., « Peut-on contrecarrer les annonces de services de prostitution ? », *Radio-Canada*, 11 February 2016.
- Costello N., « Is Dublin about to become a hotspot for Northern Irish sex tourists? », *Vice*, 19 February 2015.
- Department of Health, Social Services and Public Safety, *Leaving Prostitution: A strategy for help and support – Strategy under Section 19 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, December 2015.
- Dupont G., « En six mois, 250 clients de prostituées verbalisés sur le territoire », *Le Monde*, 4 October 2016.
- Dyer J., « Les prostituées en Suède se servent d'Airbnb pour contourner la loi », *Vice News*, 15 February 2016.
- English E., « Online prostitution "soaring" here », *Irish Examiner*, 5 November 2015.
- Erwin A., « Laura Lee legal battle over prostitution laws formally withdrawn following her death », *Belfast Telegraph*, 8 March 2018.
- Fenton S., « Northern Ireland's prostitution laws to be reviewed after sex worker's legal challenge », *Independent*, 28 September 2016.
- Fondation Scelles, Charpenel Y. (under the direction of), *Prostitution. Exploitation, Persecution, Repression (4<sup>th</sup> Global Report)*, Ed. Economica, 2016.
- Goldmann C., Fondation Scelles, « Système prostitutionnel : Bilan de la loi française d'avril 2016 », *Revue du GRASCO*, n° 24, November 2018.
- Government Offices of Sweden, *Evaluation of the prohibition of the purchase of sexual services*, August 2015.
- Government Offices of Sweden, *Legislation on the purchase of sexual services*, 8 March 2011.
- GRETA (Group of Experts on Action against Trafficking in Human Beings), Council of Europe, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden, First evaluation round, GRETA(2014)11*, Strasbourg, 27 May 2014.
- Hafstad V., « Five-Fold Increase in Escort Ads », *Iceland Review*, 20 October 2016.
- House of Commons, Home Affairs Committee, *Prostitution – Third Report of Session 2016-17*, 15 June 2016.
- Huschke S. (Dr), Shirlow P. (Prof.), Schubotz D. (Dr), Ward E. (Dr), Probst U., Ni Dhónaill C. (Dr), *Research into prostitution in Northern Ireland*, Department of Justice, October 2014.

- Gonthier-Maurin B. (Présidente de la Délégation), *Rapport d'information fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes (1) sur la proposition de loi n° 207 (2013-2014) ; adoptée par l'Assemblée nationale, renforçant la lutte contre le système prostitutionnel, dont la délégation a été saisie par la commission spéciale*, French Senate, n.590 (2013-2014), 5 June 2014.
- Icelandic Human Rights Centre, Icelandic Women's Rights Association, *Icelandic Shadow Report for CEDAW*, 2016.
- Irigoyen W., « Prostitution : la guerre des modèles », *Le Monde diplomatique*, January 2017.
- Kitching C., « Airbnb hosts warned that pimps and prostitutes are renting apartments to use as temporary brothels », *Daily Mail*, 9 February 2016.
- Kline J., « Business as usual in the sex trade », *National Post*, 3 March 2015.
- Law Center NI, Northern Ireland, *A guide to Northern Ireland's Human Trafficking and Exploitation Act 2015 – Chapter 3*, 2015.
- McClafferty E., « "No prosecutions" for paying for sex in NI despite new law », *BBC News*, 10 August 2016.
- Ministère de la Justice Canada, Division de la recherche et de la statistique, *Consultation publique en ligne sur les infractions liées à la prostitution au Canada*, 2014.
- Ministère de la Justice canadien, *Projet de loi C-38 : Loi modifiant la Loi modifiant le Code criminel (exploitation et traite de personnes)*, déposé à la Chambre des communes, 9 February 2017.
- Mortimer C., « Amnesty International officially calls for complete decriminalisation of sex work », *Independent*, 26 May 2016.
- Mujaj E., Netscher A., *Prostitution in Sweden 2014: The extent and development of prostitution in Sweden*, 2015.
- Northern Ireland's first conviction under purchase of sex law, Christian Action Research and Education (CARE), 22 June 2018.
- Norway mission to the EU, *Evaluation of Norwegian legislation criminalising the buying of sexual services*, 25 August 2014.
- Rotenberg C., « Les infractions liées à la prostitution au Canada : tendances statistiques », *Statistique Canada, Juristat*, n.85-002, 10 November 2016.
- Soyez F., « Prostitution : ces pays qui pénalisent les clients », *Le Figaro*, 7 July 2012.
- US Department of State, *Trafficking in Persons Report*, June 2014.
- US Department of State, *Trafficking in Persons Report*, July 2015.
- US Department of State, *Trafficking in Persons Report*, June 2017.
- US Department of State, *Trafficking in Persons Report*, June 2018.



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The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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