

# THE PROSTITUTION FROM OFFENSE TO DECRIMINALIZATION

**Aurora-Elena Gavriș**

Senior lecturer PHD., University of Oradea  
auroragavris@yahoo.com

**Viorica Banciu**

Senior lecturer PHD., University of Oradea  
banciu\_vio@hotmail.com

## **Abstract**

*This paper aims to develop an overview of the many facets of prostitution from different perspectives - sociological, psychological, legal and from different geographical areas, historical periods, social or religious attitudes are also interesting supporters, by contrast, opponents of prostitution in the time when it was tolerated or even encouraged prohibited, without claiming to say that those people with social statuses and roles of the various have led to a general social attitudes, they influenced, however during the ascending or descending course of the phenomenon.*

**Keywords:** *prostitution, incrimination, encouragement, history, religion*

The prostitution may be a way of committing the crime of pimping, but it is conditioned by the existence of a pimp, which does not mean that prostitution, as an independent act, is not damned, itself as a crime, distinct from the crime of pimping. We also emphasize a close connection with the crime of human trafficking, many prostitutes fall into the trap of traffickers.

From the different sociological definitions which were developed we choose the one which considers prostitution<sup>1</sup> as "a relationship between a woman socially devalued and a «respectable» customer, conducted within an economic arrangement for sexual activity"<sup>2</sup> as it reflects both aspects psychosocial - by assessing the role of women in society both legal and economic - by quantifying the ratio male/female for the purposes of contract with commercial/financial matters and secondly folds Romanian legal definition in terms regarding prostitution.

If trafficking is nowadays ubiquitous and unanimously considered deviant in all its forms of manifestation, along the human history it has been assessed differently, depending on the ages, cultures and the manner of manifestation, especially with regard to sexual exploitation, slavery and subjection to forced labor. Always, however, sexual exploitation – forced sexual intercourse - has brought into question, at least in terms of differences the prostitution.

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1 Rădulescu, S., M., *Sociologia și istoria comportamentului sexual "deviant"*, Editura Nemira & Co, București, 1996, p. 67

2 Dinitz, S., Dynes, R., R. and Clarke, Alfred, C. (editors), *Deviance. Studies in the Process of Stigmatization and Societal Reaction*, 1969, p. 384 *apud* Rădulescu, S., M., 1996, p. 68.

In this regard, the specialized literature stated that "[p]ersons known to have practiced prostitution are recruited [...]"<sup>3</sup> for trafficking, through various methods - this would be one element of the link between prostitution and trafficking. Human trafficking as a form of manifestation in the human history had so many forms that currently there were no ways, of course, for the removal of organs and modern technical ways of marketing or distribution of illegal pornography.

For example, during the Roman emperor Constantine the Great, with the Christianization of the Roman Empire and the Romanization of the Christian church although prostitution was religiously tolerated despite, "[it] has developed a special regulation that senior people who had children with prostitutes were stripped of all honors and dignity."<sup>4</sup>

On the other hand, while condemning prostitution Emperor Constantine the Great "[...] showed his tolerance for «the lost women», who, he appreciated, should be spared of more severe punishments because the wretchedness of the life they lead sanctioned them in a greater extent than the law."<sup>5</sup> An assessment of the existence of prostitution along the existence of Eastern Roman Empire concludes that official position was tolerant for the prostitutes, but in terms of morality of such practices, it was regarded as a reprehensible activity.

Compared to forced prostitution, in the sense of human trafficking for the purposes of sexual exploitation were reported in the literature<sup>6</sup> measures taken by the Roman emperor Theodosius II (408-450) and Leo I (457-474) who both ruled the Eastern Roman Empire in "support to improve the situation of women forced to prostitute themselves [in order to prohibit] the slave merchants and parents to force young girls to engage in prostitution."<sup>7</sup> In the Western Empire in the fifth century, St. Augustine condemned any form of illicit sexuality, among which we consider and the one of forced prostitution, especially since "[...] and he brought the principles of a tolerant religious policy towards prostitution, which he appreciated as a «necessary evil», caused by unbridled carnal appetites, and in the absence of which the social order would be disrupted. Unlike St. Augustine, the other church fathers show less indulgent, condemning any sexual relationship outside of marriage."<sup>8</sup>

Assessing the attitude towards prostitution and forced prostitution in both empires, the East and the West we consider that it was fair and modern, if we consider modern scientific studies; so we consider not forcing the young girls who were sold by their parents or had the status of slaves, the emperors of those times promoted the functionalist concept on prostitution, that "[...] engaging in prostitution is not a motivation coercive pressure imposed by the factors, but a voluntary option, an «exchange» commercially acceptable both sides, which helps to achieve customer and prostitute necessity, contributing at the

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3 *Report on the situation of trafficking in Romania - 2006* (eds. Licsandru, D.). (The report was approved by the Romanian Government meeting of August 7, 2007), Ministry of Interior and Administrative Reform, National Agency Against Trafficking in Persons, Bucharest, 2007, p. 30.

4 Rădulescu, S., M., 1996, p. 76.

5 *Ibidem*, p. 76.

6 *Ibidem*, p. 76.

7 *Ibidem*, p. 76.

8 Brundage, J., A., *Law, Sex and Christian Society in Medieval Europe*, University of Chicago Press, Chicago, 1987, p. 105, *apud* Rădulescu, S., M., 1996, p. 76.

same time, stability and social order.”<sup>9</sup>. The Emperor Constantine the Great had the merit to discern between mature women who can opt for prostitution and illicit coercing young girls to sexual intercourse. Such understandings and their grasp of the West Empire through the voices of clergy, namely the attitude expressed by St. Augustine, said the absence of prostitution as a socially disruptive, generating social anomie, according durkheimian spirit further thought, considering it as the “[...] a form of deviance character «with universal character»[...]”<sup>10</sup>; “considering it «[...] a normal phenomenon, i.e. the French sociologist Émile Durkheim said: is as it should be”<sup>11</sup> according to “the consistent pressures exerted by society or subculture to which the person.”<sup>12</sup>.

As evolving over time, the attitudes towards prostitution ranged from prohibition, abolitionism and tolerance, attitudes that are currently contained in the policies of various states.

Thus, *prohibitionist legal systems* are those that criminalize prostitution, pimps and prostitutes there - as it is the case in Romania. As a unique fact in this matter we should mention the Swedish policy, a country where prostitution is not criminalized, but since 1999 sanctioned the commercial sex customers, the Swedish law provides that “any person who buys sexual services from another person, will be punishable by up to 6 months imprisonment.”<sup>13</sup> The consumers of commercial sex are causing the demand of service on the market, they offer without having any purpose.

The measure introduced in Sweden from 1 January 1999 aimed not punishing prostitutes, which instead should be helped to abandon that lifestyle, it is also the Swedish Government's position that also wants the phenomenon of trafficking in persons to be eradicated: “[...] the Law and other legislation establish a zero tolerance policy for prostitution and trafficking in human beings. When the buyers risk punishment, the number of men who buy prostituted persons decreases, and the local prostitution markets become less lucrative. Traffickers will then choose other and more profitable destinations [...]”<sup>14</sup>. Reglementarist legal systems tolerate prostitution, but under the strict control exercised. “In some systems, brothels are legal status functioning, others are illegal, but prostitutes are officially registered and regularly inspected by police and medical bodies...”<sup>15</sup>.

In the reglementarist systems we think there are some differences of degree in terms of freedom of prostitution. Thus, there can be seen countries where prostitution and pimping are practiced freely, like the Netherlands, where prostitution is under the control of local government which exercises effective control over the health of prostitutes, pimping, being liberalized in 2000 and found entrepreneurship work through which the sex work prostitutes were held in, except the use of minors – deed which constitutes a criminal

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9. Brinkerhoff, D., B. and White, L., K., *Sociology*, West Publishing Company, St. Paul, New York, Los Angeles, San Francisco, 1985, p. 20, Henslin, J., M., *Social Problems*, second edition, Prentice-Hall, Englewood Cliffs, New Jersey, 1990, p. 69-70 *apud* Rădulescu, S., M., 1996, pp.98-99.

10 Rădulescu, S., M., 1996, p. 64

11 Durkheim, É., *About Suicide*, (trad.), Institutul European, Iași, 1993, p. 97

12 Rădulescu, S., M., 1996, p. 64.

13 Vădineanu, G., A., *The Infraction of Prostitution in Compared Law* according to <http://fs.legaladviser.ro/37b31f4eff9c393ee6061c27da7fd9bf.pdf>, consulted on 11.10.2009.

<http://vaw.sagepub.com/cgi/content/abstract/10/10/1187>, consulted on 11.10.2009.

14 Ekberg, G., *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, in “*Violence Against Women*”, Vol. 10, no. 10, 1187-1218 (2004) DOI: 10.1177/1077801204268647

15. *cf.* Rădulescu, S., M., 1996, p. 86

offense, the legal penalty being a maximum of 8 years imprisonment.<sup>16</sup>

Unlike the Dutch, the Spanish Penal Code does not punish the act of prostitution - only some related activities, such as determination of minor or incapacitated persons to engage in prostitution or the use of certain qualities to determine to engage in prostitution, as the public official or guardian, custodian or caretaker - and subject to human trafficking has no separate provision being criminalized prostitution related crimes<sup>17</sup>, possibly in the form of aggravated pimping.

In France, the law is sympathetic with people in prostitution, on the contrary "[...] a tendency to strengthen the repression against pimping [...]"<sup>18</sup>. The acts of human trafficking are punishable by terms of procuring the local supply (the French law distinguishes between two categories of acts of pimping: the classical sense and that of the provision of rental or sale of a place in order to practice prostitution).

"The Chinese Criminal Code prostitution is not criminalized, it is freely practiced as a profession. Pimping, however, is provided, as contained in Chapter IV «*Crimes of violation of individual rights and democratic rights of citizens*», which is part of the Special Part. Article 169 provides that «any person who, in order to reap benefits women in prostitution lures or offer shelter, will be punished no more than five years imprisonment if aggravating circumstances the penalty is at least five years in prison and the offender will receive a fine or confiscation of property». According to the Art. 140: «any person who forces a woman into prostitution will be punished»."<sup>19</sup>.

"Trafficking of women for marriage is recognized as a modern-day slave trade, although it has a long history in China. The reasons for its resurgence in China include, but are not limited to, patriarchal values, state-tolerated sex discrimination, vulnerability of women and the transformation of socio-economic situations. Accordingly, the task of eradicating the trafficking in women involves combating feudal and patriarchal assumptions about male dominance and male supremacy; building up the confidence and dignity of the gender of female; systematic governmental and international support of issues of importance to women; restructuring legal systems where they are still imperfect; adjusting economic systems so that women are never exploited economically; strengthening fundamental and higher education of women; regulating objectifying and pornographic media images of women; and developing ways in which men and women can relate without either dependency or dominance. The author examines and evaluates both the strengths and weaknesses of the current criminal justice policy of the Chinese government against trafficking practices. She then argues that the existing policy against trafficking is insufficient and ineffective and needs to be reformed in a number of aspects as suggested."<sup>20</sup>.

The existence of human trafficking is reported in other geographical areas where the tourism industry offers services of sexual exploitation as a result of the existence of

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16 Vădineanu, G., A., cf. <http://fs.legaladviser.ro/37b31f4eff9c393ee6061c27da7fd9bf.pdf>, consulted on 11.10.2009

17 *Ibidem*, consulted on 11.10.2009

18 *Ibidem*, consulted on 11.10.2009.

19 *The criminal law and the criminal procedure law of China*, Ed. Foreign Languages Press, Beijing, p.53 *apud* Vădineanu, G., A., cf. <http://fs.legaladviser.ro/37b31f4eff9c393ee6061c27da7fd9bf.pdf>, consulted on 12.10.2009

20 Zhao, G., M., *Trafficking of women for marriage in China: Policy and practice*, in *Criminology and Criminal Justice*, vol. 3, No. 1, 83-102 (2003), DOI: 10.1177/1466802503003001457 *cf.* <http://crj.sagepub.com/cgi/content/abstract/3/1/83>, consulted on 12.10.2009.

trafficking in persons in this state of affairs existing exhibit and reported in the Caribbean: "Encouraged by the US, the Caribbean is being drawn into a global panic over human trafficking, leading to greater policing and surveillance of migrant women and the sex trade. Drawing on colonial precedents, the moral outrage about women trafficked into prostitution, embodied in legislation such as the US Trafficking Victims Protection Act, obscures the deeper causes of exploitation and oppression and leads to the demonisation of those in undocumented, hyper-exploited labor forces. Moreover, the false equation of trafficking with prostitution renders sexual labor as coerced labor and, as such, misrepresents sexual agency."<sup>21</sup>.

*Abolitionist legal systems* are not in any way tolerating prostitution, pimping or recruiting customers. "This does not mean that in these systems is suppressed or abolished prostitution and pimping eradicated, statistics showing that only half of the pimps come to be identified and punished."<sup>22</sup>. The abolitionism gave rise to abolitionist movements, where the sex trade, is against any regulatory measures, considering that seriously undermine human rights. Feminist movements in the spirit of nihilism character considers that prostitution "[...] any regulation of prostitution is «immoral» and ineffective in terms of control of that institution, because it will not solve the problem of health of prostitutes, given that there will always an important «clandestine prostitution»."<sup>23</sup>.

We talk about trafficking in persons - made sexual exploitation, prostitution and pimping as are actions that have certain common features, as follows:

- From the standpoint of *compliance with legal rules*, if legalized, some legal systems, there are situations in which exercise is regarded legal pimping, is a way that sorts and organizes the first, but if prostitution is only tolerated being considered an expression of personal freedom to choose to provide sexual services, pimping is usually prohibited; to these situations, trafficking in persons (regardless of the operation: labor, begging etc.) beyond any limits of legality as regarding prostitution and pimping in terms;

- Another point of view, however, that of seeking *material benefits*, the three forms are designed to nurture their achievable aspect, but violating certain rights and freedoms. We explain in purely hypothetical certain differences between these types of human actions, where prostitution (legal or illegal), *exercised on their own, the person who sells sex* in possession of material benefits of any nature, without total loss of fundamental rights, right to liberty or the right to life, if practiced prostitution by a pimp, if exercised didn't matter if it is legally exercised and the prostitute and the pimp both share the benefits (do not import their ratio), without any of them to lose all of the fundamental rights, in opposition, but by human trafficking, sexual exploitation made, the pimp place is taken by the trafficker, and that of the prostitute, the victim and natural dignity and fundamental rights of victims are seriously affected by the means of action of the trafficker; for trafficking victims do not receive any material benefit, which, theoretically, if it had prostitution, but rather they are suppressed and any rights and freedoms, risking their lives or lost loved ones or even members family.

Trafficking is one which violates the absolute measure is part of human beings and human actions strongly deviant, deliquentional respectively. Private explanatory factors of

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21. Kempadoo, K., *The war on human trafficking in the Caribbean*, in *Race & Class*, vol. 49, No. 2, 79-85 (2007), DOI: 10.1177/03063968070490020602 cf. <http://rac.sagepub.com/cgi/content/abstract/49/2/79> consulted on 12.10.2009

22 Rădulescu, S., M., 1996, p. 86

23 *Journal de Genève*, 8 iulie, 1994 *apud* Rădulescu, S., M., 1996, p. 87.

human trafficking and the classical theories of deviance leading to a complete understanding of trafficking and exploitation of others, but not to find excuses to human behavior, but a fair assessment of the seriousness of the facts.

As for the crime of pandering, we consider the crime of prostitution also chronologically, by reference to the same period (since 1968), so that prostitution was criminalized and is currently under investigation in art. 328 Criminal Code prostitution marginal name as "[f]it person to procure their main means of subsistence and livelihood, practicing for the purpose of sexual relationships with different people, [and] shall be punished with imprisonment for 3 months three years"<sup>24</sup>. This definition, is constant over time and in two different political regimes before 1989 and after 1989, we are referring both to the year 1988<sup>25</sup>, as well as at the year 1994<sup>26</sup> (for example randomly) and the present, did not support changes, either in content or in terms of the applicable penalty amount or kind, can extract some aspects of social meanings in terms of this act.

The specialized literature assessed prostitution before 1989, which although being criminalized, continues to be practiced "[...] *in various forms of organized or unorganized, concealed or open [...] many women [practicing] especially prostitution with foreigners, in restaurants, bars and luxury hotels, foreign tourists seeing only men able to provide substantial material gains and benefits, if an offer of marriage. Sometimes even the organs of repression stimulated prostitution, using it for political purposes, "cooperating" with professionals to get different information about foreigners. According to some unverified information, were in Romania during communism, especially for prostitution establishments with foreigners or representatives of the nomenclature. The fact is that, beyond the apparent measures of repression, widespread prostitution exists in communist Romania, which is known to the public.*"<sup>27</sup>

With the revolution of December 1989 and the establishment of the democratic regime, "prostitution got out of her relative anonymity and in (semi) clandestinity to experience a large expansion [...], there was a real «sex industry» circumscribed in most cases, in the network of the Romanian hotels. Prostitution was practiced and practiced in the big hotel units located in areas with high tourist traffic such as Constanta, Timisoara, Braila, Galati, Oradea, Baia Mare, Suceava, Brasov, Predeal and, of course, in Bucharest, its main hotels or entertainment establishments, as is the case of «Club Sexy»"<sup>28</sup>.

These are just some aspects of the history of prostitution, it resisted the political regimes that have succeeded. Therefore we agree with the view that prostitution is rewarded, often as a form of deviance "universal, character it [complying with] However, in many respects, models of sexual dominance and mechanisms socialization or social learning exist in a given society."<sup>29</sup>.

Exacerbation of prostitution, resulting in a growing and diverse number of prostitutes was that "now [reference year 1997] the big pimps use to recruit more and more couples and even small changes in the Commonwealth of Independent States (Russia, Belarus, Ukraine, Moldova, Georgia etc.), but also in other former communist countries

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24 Antoniu, G., Popa, M., Daneş, Ş., *The Legal Code on Everyone's Understanding*, the IV th edition, reviewed. Political Printinghouse, Bucureşti, 1988, p. 468.

25 *Ibidem*, p. 468

26 Art. 329 *Cod Penal*, 1994, p. 136.

27 Rădulescu, S., M., 1996, p. 112.

28 *Ibidem*, p. 112.

29 Mahoney, E., R., *Human Sexuality*, New York, McGraw-Hill, Inc., 1983, p. 487 *apud* Rădulescu, S., M., 1996, p. 64.

(Romania, Hungary, Yugoslavia, Slovakia, Poland), which are taken to the West under the guise of the provision of various services, especially as a ballerina, waitresses, housekeepers, child caretakers etc."<sup>30</sup>.

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30 *Ibidem*, p. 52.