

Bijlage 4: English summary

On 10 November 2009 a legislative proposal was submitted on rules regulating prostitution and combatting abuse in the sex industry (Wrp) with the objective of reducing local and regional differences, gaining more insight into and control over the sex industry by regulating prostitution as a business and facilitating supervision and enforcement. Once the Wrp has been adopted all municipalities will have to introduce a licensing requirement for prostitution businesses, including escort businesses. Some municipalities have already been issuing licenses for escort businesses for many years. But this does not mean that all escort businesses and escorts working independently apply for a license. At the time of writing, the Wrp has not yet been adopted.

Assignment

At the request of the WODC (Research and Documentation Centre) and in collaboration with Intraval, Pro Facto conducted research into the supervision and enforcement of and compliance with (administrative) rules for escort businesses.

The core research question is:

What form of supervision and enforcement is applied to the escort branch, what were the results, problems and secondary effects, how can municipalities improve compliance within the escort branch and what good practices are there for supervision and enforcement in this field?

To answer this question we started with a document and literature study. In addition, in ten municipalities, selected in consultation with the supervisory committee, we made a detailed study of the local situation with regard to escort policy and the supervision and enforcement thereof. We also interviewed different people including municipality staff involved in escort policy, police officers, who implement the supervision of the escort branch, operators, interest groups' spokespersons and people from different organisations who are involved in making national policy. Finally, we had the opportunity to accompany prostitution management teams in three different municipalities to find out how these set about their work and we interviewed both the members of these teams and the escorts themselves.

Policy

All ten municipalities studied require a license for escort activities although they apply different definitions of what constitutes an escort business. The definition currently applied by six of the ten municipalities is based on the so called location criteria: it is assumed that the escort activities take place elsewhere, so not on the business premises. An important criterion at four of the ten municipalities concerns the 'mediation' between client and prostitute. However, exactly what should be understood by mediation is not always clear. All the municipalities studied included the concept 'commercial' in their definition, but here too the majority of municipalities have not defined what should be understood by this.

In the Wrp 'escort business' will be defined as follows: 'the activity constitutes providing the commercial opportunity for prostitution in the form of mediation between client and prostitute'. Almost all municipalities have announced their intention to adopt this definition, inasmuch as they have not already done so, in the General Municipal Byelaw (APV).

Legal implications

The criteria for escort activities are, based on the definition of an escort business, easy to enforce if the escort activities are carried out in a transparent manner. However, in practice there is a shift taking place from the traditional form of escort business to other forms, such as an escort working independently (with no mediator) and home prostitution. Municipalities deal with this in different ways.

The majority of the ten municipalities studied classify escorts working independently as an escort business. The municipalities argue that an escort can mediate on his or her own behalf and in such situations is therefore also subject to the licensing requirement. The fact that there is no mediator is, according to them, irrelevant. However, one municipality does not classify an escort working independently as an escort business. This municipality questions whether it is indeed at all possible to class this way of working under an existing definition. Municipalities also deal with home prostitution in different ways. When people offer their services as an escort and subsequently work at home some municipalities are uncertain about under which rule they fall.

Whether or not escort activities require a license partly depends on whether the activities have a commercial character. Most municipalities say that as soon as an advertisement is placed, in practice there is no doubt about the commercial character. Other municipalities say that although there is no doubt about the commercial character, the problem is establishing this. Parliamentary history provides a few factors that are decisive for establishing the commercial nature of activities, but these have never been set out in more detail.

In connection with the above it is relevant that the minister recently (mid 2016) announced that an individual prostitute can never be a business as referred to in the law. The license requirement under the Wrp only applies for the operator and not for home workers or prostitutes working independently.

Administrative and criminal supervision

In nine of the ten municipalities studied it is the police that are responsible for supervision on behalf of the municipalities. The police supervise wearing two hats. First they are the administrative supervisor but at the same time they are also responsible for criminal investigations.

Municipalities regulate specific activities, including escort activities, in the APV. Logically, the authority to lay down rules and apply a licensing policy does not extend beyond the municipal boundary within which the municipal body exercises its authority. So when a specific act results in a breach of the APV, that offense can only be sanctioned to the extent that the act was committed within the municipality's boundary.

In the case of escort activities this is complicated because the activities can be divided into two phases: the mediation phase (phase 1) and the actual performance of the 'agreement' (phase 2) that often takes place in a municipality other than that in which the escort business is established and where the mediation took place. This division gives rise to the question of who is responsible for enforcement. The text in the explanatory memorandum seems to suggest that only the municipality in which the escort business is established is responsible for enforcement. But there is not necessarily always an establishment, which complicates the question of who is responsible for enforcement.

Administrative reports

After a potential administrative violation comes to light the supervisor draws up an administrative report and enforcement can subsequently take place based on this. The explanatory memorandum indicates that this administrative report should be sent to the municipality in which the escort business is established and from which the mediation took place. In some municipalities this procedure is indeed followed while others send the administrative reports to the municipality in which the escort resides. This might be two different municipalities.

A municipal body's authority does not extend beyond its geographic boundary. In those cases where administrative reports are, however, sent to the municipality in which the escort business is established while the activities took place elsewhere, it is assumed that the place where the mediation takes place is relevant for the question of which municipality is responsible for enforcement. But is this correct? To find out a comparison was made with the 'Football Act' that entered into force in 2010. On grounds of the Football Act mayors of municipalities in which paid football is played can impose measures allowing them to take action against supporters from visiting teams who (generally) come from another municipality.

Enforcement is also an issue with regard to escorts working independently because an escort working without a license can work in many different locations. Here the question is which municipality is responsible for enforcement: the municipality where the escort resides, the municipality where the mediation takes place or the municipality in which the activities actually took place? There is no clear cut answer to this and neither is one to be found in the explanatory memorandum.

Changes under the Wrp

Under the Wrp it seems to be assumed that a license is only needed for the mediation and so not the resulting activity. Therefore the licensing requirement only applies in the municipality in which the agency is established. But, as explained earlier, the services might be offered across the municipal boundary. In that case the administrative report should be sent to the municipality in which the license is (of should be) issued. The provision of services can as such also be subject to a license under the Wrp pursuant to the definition of sex business set out in the Wrp: 'the activities constituting creating commercial opportunities for prostitution or to perform sexual acts for another person in return for payment'. In that case the municipality in which the sexual acts took place is responsible for enforcement.

The concept 'mediation' under the Wrp

In the Wrp the concept 'mediation' is included in the definition of escort business. However this does not seem logical because it only pertains to the situation in which there is an operator who effectively mediates between client and prostitute. But in practice it emerges that there are increasing numbers of escorts working independently while these escorts would in fact fall outside the target group of the licensing requirement. In light of the above it is relevant that the minister recently announced that a prostitute working independently does not fall under the licensing requirement under the Wrp because in conformity with the legislative proposal the licensing requirement only applies for the operator. This provides a loophole for avoiding the licensing requirement by presenting oneself as an independent worker.

Nature and scope

From recent nation-wide research into prostitution in the Netherlands it emerges that the number of licensed escort businesses, which are not location-bound, has risen. In the ten municipalities studied at the start of 2016 more than 60 licensed escort businesses were es-

tablished, almost half the total number of licensed escort businesses in the Netherlands. Licenses have been issued to escort businesses in five of the ten municipalities studied. By far the majority of escort businesses are established in the three major municipalities; Amsterdam, Rotterdam and The Hague. In two other municipalities there are only a few licensed escort businesses. In recent years, except in Amsterdam where there is a decline, the number of licensed businesses has remained fairly stable. According to respondents the number of escorts has gone up particularly in the non-licensed sector of the industry. The extent of this increase is unclear. No up to date data is available about the number of active escorts.

Supervision

In nine of the ten municipalities studied the police are responsible for supervising compliance with the licensing requirement and the accompanying rules. To this end some municipalities have also designated special officers. Regular inspections are mainly conducted at licensed escort businesses, which operators find burdensome. The inspection of non-licensed businesses is in most municipalities left over to the police. The frequency of these inspections differs per municipality and they are not conducted everywhere in the same way. From the three escort inspections the researchers attended strong differences emerge in, for example, the applied work method. The chance of a non-licensed business being inspected is much smaller than that for a licensed business. Escort inspections are believed to be useful but given the frequency and scope of these inspections, these are insufficient to be truly effective. The inspections conducted by the police are mainly conducted with crime in mind. In the case of an administrative offense an administrative report is, however, often drawn up and sent to the relevant municipality with a request for enforcement.

Enforcement

In the ten municipalities studied administrative enforcement measures are applied in different ways. Only a few municipalities has defined their prostitution policy in practice and included enforcement protocols in this. Interviewees indicated that municipalities' policy is not always coordinated and this leads to lack of clarity with regard to enforcement responsibilities. Interviewees also say that the administrative reports are certainly not always followed up. Sanctions differ for licensed and non-licensed escort businesses.

Enforcement is difficult to implement in the non-licensed sector. This is partly because escorts easily disappear into anonymity and are often not registered in the Register of Persons. This makes it hard to collect fines. It is also striking that in the majority of municipalities no specific inspections are conducted further to an established violation.

Compliance

According to interviewees, amongst some operators and escorts working independently in the non-licensed sector there is a clear need to work legally and there are several other barriers that do not allow them to work under a license as yet.

Opportunities for violations in the escort industry have a negative impact on compliance. In municipalities where inspections are conducted it emerges that these inspections are labour intensive and often not very effective. A major factor that in practice mainly has a negative influence on compliance is the cost-benefit analysis. Three aspects play an important role in this: anonymity, safety and financial and administrative burdens.

The existing enforcement has a limited positive affect on compliance. The chance that a violation is observed and reported by others is not high for the escort because escort activities do not cause nuisance. Members of the inspection teams also estimate the chance of being

inspected as being relatively low. After all, during each inspection round not more than six to eight escorts can be inspected. It also emerges that the chance of detection is high but establishing human trafficking is hard and the chance of being inspected is higher in the licensed sector.

It is also apparent that the amount of a fine generally has a positive effect on compliance. Municipalities say that compliance is improved by the high impact of fines on the business, the amount and kind of fine linked to the violation and the additional disadvantages of a sanction being imposed.

Finally, municipalities have come up with several other ways to both discourage non-licensed work and encourage licensed work.