

# Trafficking in Women – an International Crime from a Danish Perspective

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## 1 Introduction

This article concerns the criminal regulation of trafficking in women.<sup>1</sup> The accurate legal term is trafficking in human beings or in persons, but due to the fact that most of the persons who are trafficked are women, I have to a great extent chosen to use the expression trafficking in women. By using this expression I also underline that the issue has a gender perspective and that the phenomenon – besides of the criminality development – tells us something about the power structure between men and women in society.

Women are trafficked for several kinds of exploitation, for instance domestic or industrial work, but the vast majority of trafficked women in Denmark are trafficked for prostitution. For that reason this article has its attention on trafficking for the purpose of prostitution.

When speaking of trafficking in women *for prostitution* it is of particular interest to notice that the product – the prostitution output – is offered on an open and profitable market and that the customer's act is not criminalized in Denmark. In this connection it may be remarked that far from every trafficked woman has a residence permit in the country where she is forced to deliver her services. These conditions entail peculiar problems of legal character because only two of the actors in the "tripartite-affair" are liable to punishment, and one of those liable is the victim of the gross indignity – the trafficking.<sup>2</sup>

Added to this, it can be very difficult to prove that the case actually is about trafficking – and not only about pimping – if the trafficked woman has been exploited for quite a long time by the trafficker and has not tried to escape from him, or if the trafficked woman, when she was trafficked, knew that she was going to work as a prostitute, but was not aware of the horrible conditions that the trafficker forced her to work under when she arrived to the land of destination. In this connection the judicial interpretation of a victim's "consent" must be very exact.

Because of the fact that most trafficked women are trafficked for the purpose of prostitution, it is not possible to deal with trafficking in women without including the phenomenon prostitution. Here it must be borne in mind that the crime trafficking in women for prostitution only exists because of the buyer's irresponsible desire for female bodies to use in whatever way he wants, and without any responsibility for the consequences for the prostitute. In other words, there would be no market for trafficked women for prostitution if there were no prostitution customers.

Neither trafficking nor slavery are post-modern phenomena, but have existed for several centuries. Nevertheless, trafficking in women has in recent years become a huge and increasing problem. Because of that trafficking in women is

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1 Special regulations of trafficking in children will not be discussed.

2 The European Commission's proposal for a new Framework Decision on trafficking in human beings of March 25th 2009 contains in article 6 a rule after which the member states shall provide for the possibility of not prosecuting or imposing penalties on victims for their involvement in unlawful activities as a direct consequence of being subjected to trafficking in human beings.

in focus both at the national level and at the international level – and both on the legal, the policing and the political scene.

As I will describe below, the United Nations in 2000 adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations' Convention against Transnational Organized Crime (the Palermo Protocol on Trafficking). On this background, and on the background of the European Commission's proposal for a Council Framework Decision on combating trafficking in human beings,<sup>3</sup> (of which there, at the time when the Danish bill was introduced, was achieved a political agreement in the EU), the Danish Parliament adopted a new section in the Danish Criminal Code, section 262 a, on trafficking in human beings. The provision came into force on 8<sup>th</sup> of June 2002 and states:

“§ 262 a

(1) Any person who recruits, transports, transfers, houses or subsequently receives a person, using or following the use of

- 1) unlawful coercion pursuant to Section 260 of this Act;
- 2) deprivation of liberty pursuant to Section 261 of this Act;
- 3) threats pursuant to Section 266 of this Act;
- 4) unlawful induction, corroboration or exploitation of a delusion; or
- 5) other unseemly conduct;

for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs, shall be guilty of trafficking in human beings and liable to imprisonment for any term not exceeding eight years.

(2) The same penalty shall apply to any person who, for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs,

- 1) recruits, transports, transfers, houses or subsequently receives a person under the age of 18 years, or
- 2) renders a payment or other favour to obtain consent to the exploitation from an individual who has guardianship over the victim, and any person who receives such payment or other favour.”

Since the provision came into force there have been surprisingly few convictions for trafficking in women. Danish police document that in the period 2003 till 2007 there have only been 21 damning decisions (including fines and discretion or waiver of prosecution, according to the circumstances on certain conditions (tiltalefråald)).<sup>4</sup> The reason for this low rate is, according to the police, that it is

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3 Proposal from the Commission for a Council Framework Decision on combating trafficking in human beings, COM(2000) 854 final /2. In 2002 the Council adopted the Framework Decision (Council Framework Decision 2002/629/JHA on combating trafficking in human beings (2002)).

4 Rigspolitiet, *Beskrivelse af politiets indsats mod prostitutionens bagmænd i 2007*, marts 2008 p. 18. Below I will examine some of the judgements where the perpetrator is convicted for trafficking in women.

often not possible to prove that the concrete women were trafficked, even though it is proved that they have been exploited by the kingpin.<sup>5</sup> Therefore, numerous cases end as pimping cases with a penalty far from the one which the kingpin would have got if he were convicted for trafficking in women.

The Danish provisions about pimping go as follow:

“§ 228

(1) Any person who

1) induces another to seek a profit by sexual immorality with others; or  
2) for the purpose of gain, induces another to indulge in sexual immorality with others or prevents another who engages in sexual immorality as a profession from giving it up; or  
3) keeps a brothel;  
shall be guilty of pimping and liable to imprisonment for any term not exceeding four years.

(2) The same penalty shall apply to any person who aids or abets a person under the age of 21 to engage in sexual immorality as a profession, or to any person who partakes in conveying some other person out of the country in order that the latter shall engage in sexual immorality as a profession abroad or shall be used for such immorality, where that person is under the age of 21 or is, at the time, ignorant of the purpose.

§ 229

(1) Any person who, for the purpose of gain or in frequently repeated cases, promotes sexual immorality by acting as an intermediary, or who derives profit from the activities of any person engaging in sexual immorality as a profession, shall be liable to imprisonment for any term not exceeding three years or, in mitigating circumstances, to a fine.

(2) Any person who lets out a room in a hotel or inn for the carrying on of prostitution as a profession shall be liable to imprisonment for any term not exceeding one year or, in mitigating circumstances, to a fine.”

In the following four paragraphs I will, in order to put the topic into its context, give a historical overview, outline the judicial process up to the adoption of section 262 a in the Danish Criminal Code, analyse the legislation in force and then look into the connection between trafficking in women and prostitution. Finally, I will draw some conclusions and put the topic into perspective.

## 2 Historical Overview

As mentioned above, trafficking in human beings, especially women and children, is not a new phenomenon, but has taken place for several centuries and in many different forms. However, the international community did not for real

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5 Rigspolitiet, *Strategi for en styrket politimæssig indsats mod prostitutionens bagmænd*, 29. september 2006 p. 9f.

go into action against this sort of human rights violation until the late nineteenth century when testimonies of the phenomenon “white slavery” began to appear.

During the twentieth century the international community has adopted several conventions and recommendations, etc. regarding the phenomenon, but it was not easy to combat these crimes since not every country in the world would let go of the convenience to have slaves do all the dirty and hazardous work. The slaves were, as well-known, very cheap and without any rights whatsoever. Thus, Mauritania did not legally abolish slavery until 1980.<sup>6</sup>

However, Denmark signed and ratified most of the international instruments and took appropriate steps to implement the international rules in Danish law or practise. The second part of section 228, paragraph 2, in the Danish Criminal Code, for instance, was inserted in order to bring the Danish regulation in accordance with the Geneva Convention<sup>7</sup> of 1921.<sup>8</sup>

It is not necessary for the purpose of this article to go into all these international instruments, but to prove the importance of the issue I will briefly mention two of the most fundamental instruments in protecting human rights and thus also people traded and exploited by others.<sup>9</sup>

On November 4<sup>th</sup> 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rom. The Convention came into force on September 3<sup>rd</sup> 1953 and was incorporated in Danish law in 1992.<sup>10</sup> As known, article 4 of the convention contains a prohibition on slavery and forced labour. Article 4, paragraphs 1 and 2 state:

“Article 4 – Prohibition of slavery and forced labour

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.”

It is worth noticing that even though article 4 does not exactly concern trafficking in human beings, the European Court of Human Rights in the case *Siliadin v. France* has maintained that the prohibition in article 4, together with articles 2 and 3, enshrines one of the basic values of the democratic societies<sup>11</sup> and that article 4 therefore implies positive obligations for the contracting states to adopt provisions which penalise the acts referred to in article 4 and to apply them in practice.<sup>12</sup> Having regard to the international instrument on suppression of slavery etc. the states can thus not be content to refrain from undertaking

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6 Silvia Scarpa, *Trafficking in Human Beings. Modern Slavery*, 2008 p. 4.

7 International Convention for the suppression of the Traffic in Women and Children. Adopted on September 30<sup>th</sup> 1921, entered into force on June 15<sup>th</sup> 1922.

8 Betænkning afgiven af Straffelovskommissionen af 9. November 1917, 1923, mot. 327.

9 Of Danish interest, see Trine Baumbach, *Kvindehandel. Et kommenteret litteraturstudium*, 2008 p. 6 ff.

10 Lov 285/1992. See now lbkg. 750/1998 med senere ændringer.

11 *Siliadin v. France*, Judgment of July 26 2005 pr. 82.

12 *Siliadin v. France*, Judgment of July 26 2005 pr. 89.

encroachments in contravention of article 4. The states have an outright obligation to criminalize such conduct as mentioned in the article. Furthermore, the states have an obligation to take legal proceedings against perpetrators. In that connection it is worth noticing that the European Court of Human Rights in the case *X and Y v. Netherlands*<sup>13</sup> has maintained that in principle it is a matter that falls within the contracting states' margin of appreciation to decide which judicial remedies (civil or criminal) that are required in order to protect the citizens.<sup>14</sup> On the other hand, if fundamental values and essential aspects are at stake, effective deterrence is indispensable and can only be achieved by criminal-law provisions.<sup>15</sup>

On December 18<sup>th</sup> 1979 the General Assembly of the United Nations in New York adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Denmark signed the convention on July 17<sup>th</sup> 1980 and ratified it on April 21<sup>st</sup> 1983.<sup>16</sup> Article 6 in the convention states:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

In the preamble to the convention the States Parties declared, *inter alia*, that the States Parties were:

“Concerned ... that despite [of the international conventions and other international instruments on promoting equality of rights of men and women] ... extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

Despite of the fact that section 228, paragraph 2 in the Danish Criminal Code is only applicable on a person who has partaken in “conveying some other person out of the country”, article 6 in the convention on Elimination of All Forms of Discrimination against Women did not give the Danish Parliament any reason to act.

In spite of these efforts, a “modern slavery” problem arose in the late twentieth century. Because of that the United Nations, the Council of Europe and the European Union put trafficking in human beings on top of the international agenda – again.

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13 *X and Y v. The Netherlands*, Judgment of Marts 26th 1985.

14 *X and Y v. The Netherlands*, Judgment of Marts 26th 1985 pr. 24.

15 *X and Y v. The Netherlands*, Judgment of Marts 26th 1985 pr. 27.

16 *Bekendtgørelse no. 83 af 9. september 1983*.

### 3 The Judicial Process up to the Adoption of Section 262 a in the Danish Criminal Code

In 1991 the Council of Europe, The Committee of Ministers to Member States, enacted Recommendation no. R (91) 11 “Concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults”, in which the states, inter alia, are urged to review their legislation and practice and make sure that they have efficient means to combat the phenomena in question.

In 1995 the member states of the European Union adopted the Europol-convention, which regulates the European police cooperation.<sup>17</sup> It follows from article 2 of the convention that the objective of Europol is to improve, by means of the measures referred to in the convention, the effectiveness and cooperation of the competent authorities in the member states in preventing and combating terrorism, unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in motor vehicle crime and *trafficking in human beings*.

The annex to the convention defines trafficking in human beings as follows:

“‘traffic in human beings’ means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.”

On February 24<sup>th</sup> 1997 the Council of the European Union adopted, on the basis of Article K.3 of the Treaty of the European Union, the “Joint Action to combat trafficking in human beings and sexual exploitation of children”. It appears from the document that by trafficking is meant “any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State, for the purposes set out in point B (b) and (d).<sup>18</sup> Point B states:

“B. In order to improve judicial cooperation in the context of combating trafficking in human beings and sexual exploitation of children, each Member State undertakes, while respecting the constitutional rules and legal traditions of each Member State, to review their relevant national laws concerning the measures set out in Titles II and III relating to the following intentional types of behaviour, in accordance with the procedure set out in Title IV:

- (a) Sexually exploiting a person other than a child for gainful purposes, where:
- use is made of coercion, in particular violence or threats, or
  - deceit is used, or
  - there is abuse of authority or other pressure, which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved;

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17 The convention is based on article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention). (No. C 316, 27/11/1995).

18 97/154/JHA, title I Aims, section A,i).

- (b) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation under the conditions set out in paragraph (a);
- (c) sexually exploiting or sexually abusing children;
- (d) trafficking in children with a view to their sexual exploitation or abuse.”

Further it appears from the Joint Action that the Member States shall review existing law and practice to ensure that the kinds of behaviour set out in Title I B are classified as criminal offences, when committed intentionally. Furthermore, the Member States shall ensure that participations in or attempt to commit the relevant offences are punishable. The Joint Action also features rules regarding the penalty level, confiscation, criminal proceedings, protection of witnesses, investigations, cooperation between Member States and so on.

In 2000 the Council of Europe, Committee of Ministers, adopted Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation. The instrument recommended, inter alia, the member states to guarantee the trafficked victims’ rights, to take legal proceedings against and to inflict a punishment on the perpetrators, to organize information campaigns with a gender perspective and to combat sex tourism.

In the Charter of Fundamental Rights of the European Union of 2000 it appears from article 5, paragraph 3 that “Trafficking in human beings is prohibited”. The Praesidium’s explanatory report states this concerning paragraph 3:

“Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks...”<sup>19</sup>

As mentioned above, 120 member states, among them Denmark, on December 15<sup>th</sup> 2000 signed the United Nations’ convention against Transnational Organized Crime (the Palermo Convention)<sup>20</sup> along with, inter alia, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol on trafficking).<sup>21</sup> Denmark ratified the convention and the protocol on September 30<sup>th</sup> 2003. The protocol went into force on December 25<sup>th</sup> 2003.

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19 Draft Charter of Fundamental Rights of the European Union of October 11th 2000 (Charter 4473/00, Convent 49). As pointed out by Ingeborg Gade et al, *Det politimæssige og strafferetlige samarbejde I Den Europæiske Union*, 2005 p. 245f., it is not questionable whether the remarks in the explanatory report refer to the phenomenon trafficking in human beings or the phenomenon smuggling of migrants.

20 Bekendtgørelse nr. 3 af 19. februar 2004 af FN-konvention af 15. november 2000 om bekæmpelse af grænseoverskridende organiseret kriminalitet.

21 Bekendtgørelse nr. 11 af 19. februar 2004 af FN-protokol af 15. november 2000 om forebyggelse, bekæmpelse og retsforfølgning af menneskehandel, særlig handel med kvinder og børn, til supplerung af De Forenede Nationers konvention af 15. november 2000 til bekæmpelse af grænseoverskridende organiseret kriminalitet.

According to article 1 of the protocol, it supplements the Palermo Convention and it shall therefore be interpreted together with the convention. According to article 2 the purposes of the protocol are to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist the victims of such trafficking, with full respect for their human rights, and to promote cooperation among States Parties in order to meet those objectives. Article 3 of the protocol contains the following definition of the phenomenon trafficking in persons:

“For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practise similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.”

Article 5 of the protocol maintains that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of the protocol, when committed intentionally. In the protocol a distinction is made between trafficking in persons who have reached the age of eighteen years and minors. According to article 4 the protocol only applies to prevention, investigation and prosecution of the offences established in accordance with article 5 so far as those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.<sup>22</sup>

As also mentioned above, the Commission of the European Communities on December 21<sup>st</sup> 2000 made a proposal for a Council Framework Decision on combating trafficking in human beings. In the introduction to the proposal the Commission stated:

“Trafficking in human beings and the sexual exploitation of children, including child pornography, are abhorrent and increasingly worrying phenomena.

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22 On the Palermo Protocol *see*, David McClean, *Transnational Organized Crime. A Commentary on the UN Convention and its Protocols*, 2007, p. 309 ff. and Silvia Scarpa, *Trafficking in Human Beings. Modern Slavery*, 2008 p. 59 ff.

Trafficking in human beings is not only an episodic phenomenon, affecting a few individuals, but of structural nature with extensive implications on the social, economic and organisational fabric of our societies. The phenomenon is facilitated by globalisation and by modern technologies. Globally, tens of thousands of human beings, especially women and children, are trafficked for exploitative purposes each year. Numerous cases of sexual exploitation of children and child pornography are reported. The Member States of the European Union and the candidate countries are much affected by these scourges to society. A variety of measures, including emphatic legal protection to all individuals, and preventive measures, as well as measures to ensure adequate protection of and assistance to the victims, are required. *Measures should address the whole trafficking chain of recruiters, transporters, exploiters and clients.* The underlying root causes of trafficking in human beings, such as poverty, including feminization of poverty, discrimination against women, unemployment and lack of education and access to resources must be addressed in order to establish and maintain a comprehensive policy. In particular, women and children are vulnerable to become victims of trafficking due to inter alia lack of education and professional opportunities. A comprehensive policy therefore needs to include a clear gender perspective.”<sup>23</sup>

The Council of the European Union adopted the Framework Decision on July 19<sup>th</sup> 2002.<sup>24</sup> It appears from the Framework Decision recital 3 that “Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.” The Framework Decision’s articles 1 and 2 state:

*“Article 1*

*Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation*

- 1 Each Member States shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
  - (a) use is made of coercion, force or threat, including abduction, or
  - (b) use is made of deceit or fraud, or
  - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
  - (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

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23 COM(2000) 854 final /2, p. 2 (my italics).

24 The Council Framework Decision of July 19th 2002 (2002/629/JHA).

- 2 The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
- 3 When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.
- 4 For the purpose of this Framework Decision, “child” shall mean any person below 18 years of age.

#### *Article 2*

##### *Instigation, aiding, abetting and attempt*

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.”

The definition of trafficking in human beings in the Framework Decision is almost identical with the definition in the UN Palermo Protocol, which is due to the consideration of the most effective combating of the phenomenon. On the other hand, the scope of the Framework Decision does not include trafficking in human beings for the purpose of removal of organs.

The scope of the Framework Decision is not limited (as the UN Palermo Protocol) to offences which are transnational in nature, but on the contrary requires that trafficking in human beings within the member state is punishable.

As it is seen, the definition of trafficking in human beings in the Framework Decision (as well as in the UN Palermo Protocol) sets out three conditions: The perpetrator must have committed an act (recruitment, transportation etc.), have made use of a coercive measure (coercion, force etc.), and these acts must have been committed for the purpose of exploitation of the victim (for instance for prostitution). If the victim is below 18 years of age, it is not a condition that the perpetrator has used one of the coercive measures.

Article 3 of the Framework Decision concerns penalties, including a request of not less than eight years imprisonment when the offence has been committed in aggravating circumstances, while articles 4 and 5 concern liability and sanctions of legal persons (including a provision about temporary or permanent closure of establishments which have been used for committing the offence).<sup>25</sup>

On May 2<sup>nd</sup> 2006 the Commission of the European Communities drew up a report to the Council and the European Parliament based on article 10 of the Framework Decision on combating trafficking in human beings.<sup>26</sup> In the report the Commission notices, inter alia, that certain Member States, among these Denmark, have no provision that comply explicitly with article 1, paragraph 2, regarding the irrelevance of a victim’s consent, intended or actual, if any of the means set forth in article 1, paragraph 1, have been used.

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25 On the Framework Decision *see*, Silvia Scarpa, *Trafficking in Human Beings. Modern Slavery*, 2008, p. 171ff. and Ingeborg gade et al. *Det politimæssige og strafferetlige samarbejde I Den Europæiske Union*, 2005 p.245 ff.

26 COM(2006) 187 final (SEC(2006) 525).

#### 4 The Legislation in Force

As described in the introduction, the Danish Parliament in 2002 adopted a new section in the Danish Criminal Code, section 262 a, on trafficking in human beings. Trafficking in human beings in section 262 a is a combination of ingredients which must all be present. In accordance with the Framework Decision and the UN Palermo Protocol, the section sets out three conditions: The perpetrator must have committed an act (recruitment, transportation etc.), have made use of a coercive measure (unlawful coercion, deprivation of liberty etc.), and these acts must have been committed for the purpose of exploitation of the victim (for instance for sexual immorality (prostitution)). The offence laid down in sections 262 a is constituted at an early stage (*fremrykket fuldbyrdelsesmoment*).<sup>27</sup> A woman does not have to have been exploited for prostitution for there to be trafficking in women. It is sufficient that she has been subjected to one of the acts (recruited etc.) by one of the means (unlawful coercion etc.) *for the purpose* of exploitation. In other words, there is trafficking in women before any actual exploitation has taken place, if the perpetrator's criminal intention goes as far as to have her exploited. On the other hand, it is not enough that the woman has been recruited or transported etc. by unlawful coercion etc. if these acts were not committed for the purpose of exploitation of the woman through prostitution (sexual immorality), forced labour, slavery or slavery-like conditions, or removal of organs. In that case the perpetrator is "only" guilty, for instance, of unlawful coercion.

The section is not limited to offences which are transnational in nature, and thus trafficking in human beings into and out of Denmark is punishable as well as trafficking in human beings within Denmark. As pointed out by the Ministry of Justice, when the section was adopted, the aim of the section prompts this effect because the trafficked woman is violated even though she is not trafficked across a border.<sup>28</sup>

When the section was adopted it was the Ministry of Justice's opinion that the Danish criminal law lived up to the material requests of the UN Palermo Protocol and the Framework Decision, but on the other hand did not live up to the request in the Framework Decision regarding eight years imprisonment when the offence has been committed in aggravating circumstances. In other words, there was no need of new material criminalization in Danish criminal law – only to adopt a maximum penalty (*strafferamme*) of minima eight years. The reason why the Danish criminal law lived up to the material requests of the international instruments was, according to the Ministry, that the offences laid down in the UN Palermo Protocol and the Framework Decision were already punishable according to other criminal regulations in the Criminal Code.

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27 Of a different opinion, see Vagn Greve et al., *Kommenteret straffelov. Speciel del, 9. omarbejdede udgave*, 2008 p. 408.

28 Almindelige bemærkninger, pkt. 7.5. Justitsministeriets overvejelser (law 380/2002).

Besides of the need to adopt a maximum penalty of minima eight years, the Ministry remarked that adopting a new section in the Criminal Code could have a “symbolic value”.<sup>29</sup>

When the section is to be applied in a pending case, it is, irrespective of the statement from the Ministry of Justice about the lacking need for new material criminalizations, important to bear in mind that the section came into existence on the basis of the UN Palermo Protocol and the Framework Decision and therefore has to be interpreted in accordance with these international instruments. Particularly with regard to the Framework Decision, it is noteworthy that the Danish courts of justice, to put it bluntly, have to interpret the Framework Decision in the same way as the Court of Justice of the European Communities.<sup>30</sup>

In this connection it is necessary to recall that The Court of Justice of the European Communities in the Pupino-case<sup>31</sup> has maintained that, even though a framework decision does not, contrary to Community directives, entail direct effect, an individual is entitled to invoke a framework decision in a pending criminal case before the national courts “in order to obtain a conforming interpretation of national law”.<sup>32</sup> Furthermore, the Court maintained that the principle of loyal cooperation is binding *also* in the area of police and judicial cooperation in criminal matters.<sup>33</sup> In that light, the Court concluded that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on the European Union. “When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.”<sup>34</sup> However, the maintained interpretation obligation is not unlimited. In the Court’s words:

“It should be noted, however, that the obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity.

In particular, those principles prevent that obligation from leading to the criminal liability of persons who contravene the provisions of a framework decision from being determined or aggravated on the basis of such a decision alone, independently of an implementing law...”<sup>35</sup>

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29 Almindelige bemærkninger, pkt. 7.5. Justitsministeriets overvejelser (law 380/2002).

30 See about the Court of Justice of the European Communities’ way of interpretation in criminal cases, Trine Baumbach, *Det strafferetlige legalitetsprincip. Hjemmel og fortolkning*, 2008 p. 274 ff. with references.

31 C-105/03, Pupino.

32 Pr. 38.

33 Pr. 42.

34 Pr. 43.

35 Pr. 44-45.

“... In other words, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court considers the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.”<sup>36</sup>

The formulation of the section “recruits, transports, transfers, houses or subsequently receives a person” makes it possible in many cases to convict not only the trafficker, who use for instance deprivation of liberty pursuant to section 261 of the Danish Criminal Code, but also those who have aided and abetted the trafficker. In other words, the wording of the section makes it possible frequently to pass sentence on the accessories to trafficking immediately for violation of section 262 a and not only pursuant to section 261. In this case it will be evident what type of criminal the accused is, and at the same time what kind of violation the woman in question has been exposed to.

It is said in the preparatory works of section 262 a (*forarbejderne*) that the coercive measures enumerated in section 262 a, paragraph 1, number 1-3 are to be interpreted in accordance with the stated sections (section 260, 261 and 266) in the Criminal Code.

As stated in section 262 a, paragraph 1, number 1, section 260 is named “unlawful coercion”. By unlawful coercion it meant that the perpetrator by means of violence or under threat of violence etc. forces any person to do, suffer or omit to do anything.

Section 260 protects the right of self-determination in relation to what the victim will do or not do. In other words, section 260 implies a right to act or to be idle (within the law) which must not be changed because of violence or any other coercive measures listed in the section. Deprivation of the victim’s power of resistance by hypnosis, doping or measures of a similar kind is covered by the section.<sup>37</sup> Some of the measures listed in the section are in themselves not unlawful, but when applied with an illegal purpose they become criminal pursuant to section 260 and thereby pursuant to section 262 a, if the other terms set out in section 262 a are fulfilled.

In section 262, paragraph 1, number 2, the coercive measure “deprivation of liberty pursuant to section 261” is stated. “Deprivation of liberty” is when a person is no longer free to go where the person wants. It does not matter whether the deprivation of liberty is caused by physical means (for instance by locking up the victim) or by guile etc. As long as the victim is not free to go because of the perpetrator’s conduct, the perpetrator has deprived the victim’s liberty. If the perpetrator deprives the liberty of the victim and for example transports the victim to a new destination with the purpose of exploitation of the victim through prostitution, the perpetrator is guilty of trafficking in human beings pursuant to section 262 a.

The last number of the three mentioned, number 3 in section 262, paragraph 1, regards threats pursuant to section 266. In everyday language the section is

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36 Pr. 47.

37 Vagn Greve, *Kommenteret straffelov. Speciel del*, 9. omarbejdede udgave, 2008 p. 398.

termed “threats to life” because only threats of a certain crassness are covered by the section. The section states that a perpetrator who, in a manner suited to provoke in some other person serious fear concerning the life, health or welfare of the person or of others, threatens to commit a punishable act, shall be liable to a punishment.

The threat must be “suited to” provoke fear, no matter whether the victim actually gets frightened. If the trafficker by such threats causes that the victim is recruited etc. for the purpose of prostitution, then the trafficker has committed the crime of trafficking in human beings.

As stated above, the fourth number in section 262 a, paragraph 1, regards the measure “unlawful induction, corroboration or exploitation of a delusion”. The preparatory works of section 262 a do not explain the meaning of that expression. It is only said that number four presumes a discrepancy between the perpetrator and the victim about the foundation of the victim’s decision and that this discrepancy must be inducted, corroborated or exploited by the perpetrator.<sup>38</sup> As it is noticed, number four does not refer to another section in the Criminal Code, like numbers 1-3, and the Criminal Code does not have a section which generally covers the conducts listed in number four.<sup>39</sup> The nearest is section 279 regarding fraud, but this section and number four in section 262 a, paragraph 1, are not quite similar. If section 262 a is supposed to implement the Framework Decision (and the UN Palermo Protocol) – and it is – the scope of number four must correspond with the Framework Decision, article 1 (1), point (b), regarding “deceit or fraud”. If “deceit” and “fraud” are not just a rhetorical repetition, number four in section 262 a must contain a new-criminalization going beyond section 279 – which is probably also the reason why number four does not refer directly to section 279. In Danish criminal law we do not have a concept of deceit. In other (Danish) legal areas “deceit” covers more than “fraud” does, but it is not possible to say how much more it covers. However number four is drawn up, both the police, the Public Prosecutor and the courts must interpret the provision in accordance with the underlying international instruments.

Number five in section 262 a, paragraph 1 – “other unseemly conduct” – is very indistinct or obscure. The preparatory works of section 262 a are quite inane about this expression. It is only said that it will depend on a concrete estimation whether this is the case or not, but it is presumed that the perpetrator has acted contrary to “honest conduct”.<sup>40</sup> As stated above in relation to number 4, section 262 a is supposed to implement the Framework Decision and therefore number five must correspond with the Framework Decision, article 1 (1) point (c) and (d). These points regard “an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved”, or the situation where “payments or

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38 Bemærkninger til lovforslagets enkelte bestemmelser. Til § 1. Til nr. 11 (law 380/2002).

39 See also Vagn Greve, *Kommenteret straffelov. Speciel del*, 9. omarbejdede udgave, 2008 p. 410.

40 Bemærkninger til lovforslagets enkelte bestemmelser. Til § 1. Til nr. 11 (law 380/2002).

benefits are given or received to achieve the consent of a person having control over another person”.

With reference to the general Danish law-making-concept the expression “other unseemly conduct” in its wording does not cover the acts lined up in the Framework Decision, article 1 (1) point (c) and (d) or, at any rate, only covers them in a very uncertain way. The implementation of the Framework Decision (and the UN Palermo Protocol) ought to have been accomplished in a more careful way and thus with greater respect for the rule of law. The consequence *might be* that a perpetrator who – according to the international instruments – is guilty of trafficking in women, is acquitted because of an insufficient Danish implementation. It is incomprehensible why the Ministry of Justice on the one hand says that section 262 a implements article 1 of the Framework Decision on combating trafficking in human beings and on the other hand underlines that the new section (262 a) is not meant to criminalize new conducts, when the whole description of the forbidden acts in the Framework Decision are not to be found in other sections in the Criminal Code or elsewhere, for that matter. In other words, section 262 a is not just a section of raising the punishment for other crimes committed with the purpose of exploitation of the victim in, for example, prostitution. Some of the acts punishable pursuant to section 262 a represent new criminalization.<sup>41</sup>

These remarks are to be seen in the light of the cause of the international community’s interest in the topic, namely that trafficking in women in recent years has become a huge and increasing problem. The reason for that is polynomial; and poverty – and the feminization of poverty – count among the most important ones. But another reason for the increasing problem is that national authorities have been very reluctant in recognizing the problem and in identifying the phenomenon when it manifests itself in practice. The UN Palermo Protocol and the EU Framework Decision were adopted to redress the latter problem. Such redress will only be successful if the adopted international instruments are allowed to be effective.

As quoted above, article 1 (2), in the Framework Decision states that the “consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.”

Section 262 a in the Danish Criminal Code has not repeated that paragraph. As far as can be told from the preparatory works of section 262 a, the lacking implementation of the consent-phrase is not explained.

It has been said that the consent-phrase tends to be meaningless, because the use of the forbidden means to achieve a consent will make the consent invalid, and that the reason why the phrase was put into (the UN Palermo Protocol and) the Framework Decision in the first place was to ensure that there is no trafficking in human beings if the trafficked person – without being exposed to the forbidden means – had given her consent to be transported to another country

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41 Which is recognised by the Danish Supreme Court in a judgement of March 23th 2009 in a trafficking case.

to work as a prostitute.<sup>42</sup> Of course, a case like that is not trafficking in human beings, but just to explain the consent-phrase in that way overlooks a very important reversal; the woman in question can for example have given her consent to the person that recruited her or transported her to another country to work as a prostitute, but the situation could turn out to be very much different from what was agreed upon when she gave her consent. If she at that point is exposed to the forbidden means, either from the person who transported her or from a person in the destination country, for the purpose of exploitation of her in prostitution, she has been exposed to trafficking in human beings and the kingpin can not invoke the initial consent. If the person who recruited her is in league with the person who exposed her to the forbidden means, the recruiter can be convicted of trafficking in women, too. The EU Commission has commented upon the consent-matter in these few words:

“Trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence though the trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery.”<sup>43</sup>

To give an impression of the very complicated facts in many of the cases, I will point to a case from the City Court of Copenhagen (2007)<sup>44</sup> about Nigerian women. It appears from the judgment that one of the Nigerian women borrowed money from a Nigerian man in Spain in order to travel to Denmark – on a false passport. The man in question accompanied the woman to Denmark. The woman was aware of the fact that she was going to work as a prostitute in Denmark. Upon her arrival she was deprived of the passport and harboured by a person called “T” (the defendant). Soon she began to work as a prostitute because she had to pay the money back. She paid the money to T. About the court’s estimation, the summary stated as follows:

“On the estimation of whether the case was covered by the Criminal Code, section 262 a, the court stressed the fact that the Nigerian women came from very poor conditions, that the only way for the women to move to another country were to borrow money for a flight ticket and get someone to help them. Furthermore, the court stressed that the women, upon their arrival to Denmark, were deprived of their passports and that the women, to be free of the debt bondage, had no alternative to become prostitutes. Finally, the court stressed that the women were subjected to control, among others from T, both during the journey and after they arrived in Denmark, and that they thus did not have full

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42 Ingeborg Gade et al., *Det politimæssige og strafferetlige samarbejde i Den Europæiske Union*, 2005 p. 264f.

43 Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, Brussels, 20.11.96, COM(96) 567 final p. 4.

44 Københavns Byrets dom af 2. juli 2007, reffered from Rigsadvokaten, *Oversigt over domspraksis i sager om overtrædelse af straffelovens § 262 a*, pkt. 2.5., maj 2008.

freedom of action and movement and thus were kept in prostitution-bondage until they had earned the money to the kingpins.

The court found that T was aware of the women's situation and that the conduct, the only aim of which was to exploit the women by prostitution, was unseemly."

The Danish police have several times stated that most of the foreign women, who act as prostitutes in Denmark, know very well that they are going to be prostitutes when they agree to come to Denmark, but that they do not know the humiliating and bulky conditions they are to work under. A lot of them have to pay a big sum of money back to the kingpin in travelling expenses and besides of that, the kingpin in Denmark collects most of the money the women earn by prostitution with the argument that the living costs in Denmark are very high, and so on. Some of the women are even deprived of the money they have saved if they are to leave the country or are sold to another perpetrator.<sup>45</sup> Nevertheless, many of these women are not identified as trafficked women.

It appears as if the Danish judicial system has not always distinguished between the phenomenon smuggling in human beings and trafficking in human beings. Jo Goodey has described the difference like this:

"Undeniably, some trafficked women are aware they are being recruited for prostitution and may initially consent to this. However, they are not fully prepared for the extent of abuse they are likely to receive from traffickers, pimps, brothel owners and clients, either in transit or at their destination. The issue, as both the EC communication from 1996 and the UN protocol on trafficking clearly illustrate, is not one of initial "consent". Rather, it is one of persistent exploitation. Smuggled persons may be exploited with regard to the amount they pay criminal organisations, and the abysmal means of transport used to get them, hopefully, to their desired destination. However, once at their final destination, smuggled persons are generally left to their own devices. In comparison, the trafficked woman is often held in slavery-like conditions of debt bondage, to the brothel owner or pimp who has paid for her delivery, which she has to re-pay through prostitution. In turn, the extent and nature of coercion and violence used against trafficked women, as a means of control and subjugation into a state of submission, tends to exceed the level of abuse received by smuggled persons. An industry which exists on the basis of sexual exploitation of women is, understandably, not shy when it comes to using violence against women."<sup>46</sup>

To highlight the fact that most of these women have been exposed to trafficking in women even though they gave a "consent" at the time when it all started, and thus not only have been exposed to (smuggling and/or) pimping and to highlight that consent can have an other character on the human trafficking field than in

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45 Rigspolitiet, *Strategi for en styrket politimæssig indsats mod prostitutionens bagmænd*, 2006 p. 4.

46 Jo Goodey, *Recognising organised crime's victims: the case of sex trafficking in the EU*, in Adam Edwards and Peter Gill, *Transnational Organised Crime, Perspectives on global security*, 2006 p. 159. See also Kim Haggren, *Menneskehandel – et menneskerettighedsproblem? Retshåndhævelse, forebyggelse og støtte til ofrene*, EU-ret & menneskeret, 2003, nr. 6 p. 264.

other criminal areas, it is essential that the Danish criminal legislation contains a consent-rule. Even though the Danish Criminal Code does not in general regulate the judicial concept “consent”,<sup>47</sup> a separate regulation of consent in section § 262 a will not be totally unfamiliar to the Criminal Code, because the Code also regulates the sense of a consent in relation to for instance theft (section 276). By incorporating a consent-rule in section 262 a the Danish criminal legislation can at the same time be said to mirror the international instruments, thereby taking the subject seriously.

On the other hand, it is also of essential significance that a perpetrator is only convicted for the crime he or she has committed. If the perpetrator is “only” a pimp, he must only be convicted as a pimp, and not for trafficking in human beings, even though the trafficking-topic is on the top of the political agenda. However, it is important to remember that the choice between the two criminal offences must be based on a correct legal judgment and thus not on a misunderstanding of the meaning of an initial consent. In that connection it is very important that the judicial system is able to identify a trafficked woman from a common prostitute (who “just” belongs to a pimp).

As mentioned in the introduction, there have only been few convictions in Denmark of kingpins for trafficking in women. One of the convictions is of particular interest, because the Danish High Court of the Eastern District convicted the defendants both for trafficking in women (section 262 a) and for pimping (section 228).<sup>48</sup> The High Court of the Eastern District quoted the preparatory works of section 262 a and then stated:

“According to the terms of the section [262 a] and its preparatory works, it is not excluded to punish for trafficking in human beings pursuant to section 262 a, where the trafficking in human beings are committed for the sake of profit or for the perpetrator’s own exploitation of the trafficked person, and at the same time to mete out punishment for subsequent pimping activities, in particular because the pimping-period lasted for a very long time.”

The court’s remarks and, of course, the sentence itself seem right, because trafficking in human beings is a crime which is committed at the very same time that the person is recruited, transported etc. in so far as there is made use of unlawful coercion, deprivation of liberty etc. for the purpose of exploitation of the trafficked woman through prostitution etc. As stated above, the offence laid down in section 262 a is constituted at an early stage and therefore the woman does not have to have been exploited for prostitution for there to be trafficking in women. And because it is a crime by itself to commit pimping activities, the perpetrator must also be convicted for this part of his criminal behaviour, in particular when the pimping activities were not a single occurrence.<sup>49</sup>

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47 Consent in Danish criminal law is regulated by a so-called unwritten basic legal principle.

48 TfK 2005.628/2 Ø.

49 This state of the law has been made a bit uncertain because of a judgement from the Danish Supreme Court of March 23rd 2009. The judgement is very concrete and not unanimous. See about the judgement, Trine Baumbach, *Menneskehandel – en ny forbrydelse under afklaring*, TfK 2009 p. 165 ff.

Trafficking in women is not a victimless crime, but on the other hand it is not just a “victim-crime”. Trafficking in women is namely also a crime against society because it “comprises serious violations of fundamental human rights and human dignity,”<sup>50</sup> and due to the fact that the phenomenon trafficking in women is so gender-stereotypic, it amounts to a serious gender equality-problem.

## 5 Trafficking in Women and Prostitution

For several years the international society and, among others, the European countries have tried to combat trafficking in women by means of legislation and by increased police investigation etc., but the problem has not been solved or not even reduced. On the contrary, the problem has enlarged. Besides of pinpointing the legal problems with the implementation of the UN Palermo Protocol and the EU Framework Decision into the Danish Criminal Code, the time has come to look into the reason why it is so profitable to traffic so many women in spite of the risk of up to eight years of imprisonment. As stated in the introduction, most of the trafficked women are trafficked for the purpose of prostitution and are, on their way to the destination country and/or after they have arrived, exploited as prostitutes. Some of the women up to 20 times pr. day. Because of the dreadful wrong that happens to these trafficked women there is a clear imperative to do everything possible to prevent it from happening.

It is a logical and well-known fact that there would be no market for prostitution and no prostitutes, if there were no buyers. Unfortunately, the buyers are not able to distinguish a so-called volunteered prostitute from a forced prostitute. The buyers buy what is on the market, among other things because they do not go on the market to examine the women and the lives they live, but to buy sex and have some fun. “It was like buying a pizza”, a young man said to a journalist when he was asked about his first experience with prostitution-purchase.<sup>51</sup> He chose the one who was the dishiest one, and to the journalist he called attention to the fact “that you can do with the prostitutes whatever you want as long as you pay for it”.

Because of such attitudes and because of the fact that the buyers are not able to distinguish between the trafficked prostitutes and the other prostitutes, the authorities will – if they want to combat trafficking in women – have to take necessary steps to stop the demand for prostitutes.

When thinking of stopping the demand for prostitutes, it is worth to consider, more generally, what prostitution do to the prostitutes, and what sort of phenomenon prostitution is and its significance to society.

In 1999 it was decriminalized to be a prostitute in Denmark, but prostitution was not made a legal occupation because it was established that prostitution is a

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50 Council Framework Decision 2002/629/JHA on combating trafficking in human beings, recital 3.

51 MetroXpress, 2008-08-14. See as well Trine Baumbach, “*Det var som at bestille en pizza*” – om prostitution og menneskeverdighed, Fred & frihed, nr. 2, 2008 p. 4 ff.

social problem and that it injures the prostitutes both physically and mentally. Almost nobody is in prostitution because of a truly free choice, and therefore prostitution is to be combated.<sup>52</sup> Added to this, it must be maintained that an accept of prostitution as a “natural” phenomenon in society – or at least a necessary evil – reflects a functionalistic view of prostitution and thereby reflects the unequal power and resource structure between men and women in society;<sup>53</sup> the one who pays is the one in charge. In other words, prostitution ruins the gender equality, and because prostitution turns the woman into a piece of merchandise – like a pizza – it also violates the human dignity.

Because of these monstrous consequences of prostitution, not only trafficking in women, but also prostitution as such must be combated. As said, in 1999 the Danish Parliament recognized that fact when it decriminalized the prostitutes – and did not decriminalize the pimps – but the Parliament thought that prostitution could be combated by social means only. Due to the fact that not only trafficking in women, but also the number of prostitutes has increased since 1999, it is about time to ponder other tools.

Since 1999 Sweden and, since 2008, Norway, have criminalized the buyers of prostitution services because Sweden looks upon prostitution from a gender perspective and as violence against women. As far as known, the criminalization has been a great success in the sense that it has reduced not only the number of women in prostitution, but also, and this is very important, the number of women trafficked for the purpose of prostitution. Add to this, that the phenomenon prostitution is no longer considered acceptable or even a necessary evil in society among the population in general. The Swedish government and the Swedish people have thus realised that men and women are equal and that it is a violation of the human dignity if one of the genders is allowed to buy the other. Perhaps the Danish government and the Danish people should show the same acumen. In this connection it may be noticed that research shows how the clients of prostitution are quite ordinary men, who are family fathers and so on – not lonely, disabled creatures who are unable to have their sexual desires fulfilled in an other way.<sup>54</sup>

## 6 Conclusions and Perspectives

A lot of women are still suffering and are still being exploited by kingpins and clients although we have known of the horrible crime trafficking in women for years. As explained above, there are a lot of conventions, recommendations, reports etc. in this field. Unfortunately, Denmark has not taken the subject matter

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52 Lovforslag 43/1998, Almindelige bemærkninger, pkt. 2.1.2.

53 Margaretha Järvinen, *Skal prostitution forebygges?*, Social kritik, nr. 15, 1991 p. 16 ff.

54 Claus Lautrup, *Det skal ikke bare være en krop mod krop-oplevelse. En sociologisk undersøgelse om prostitutionskunder*, Videns- og Formidlingscenter for Socialt Udsatte, 2005, p. 11f. and Kenneth Reinicke, *De usynlige prostitutionskunder* i Pia Deleuran et al (eds.), *Klienten i det omskiftelige samfund – En visuel antologi om advokatens udfordring*, 2007 p. 50f.

quite seriously and therefore Denmark's implementation of the international instruments is not completed. There is still criminal law-making for Denmark to do.

Besides of the legislative initiatives, there have, both internationally and in Denmark, been convened a great number of conferences, meetings etc. on the topic trafficking in human beings. All of these initiatives have been necessary in combating this tragic crime, but it has not been enough. All indications show that trafficking in women is an increasing problem in Europe and in Denmark, as well. The Danish police have strengthened their efforts in the field by establishing investigation taskforces in every police district in the country and on the national level, but they have not yet obtained a satisfactory result. This is, among other things, due to the fact that these crimes are hard to investigate, for one thing because a lot of the trafficked women out of deadly fear for retaliatory violence from the kingpins, fear of repatriation to their home country to poverty, mistrust of the police and the legal system and so on, are not very co-operative. The lacking success is at the same time also due to the fact that the whole "food chain" – contrary to the drug crime – is not criminalized.<sup>55</sup> Thus, neither the victim nor the client of a prostitute are criminalized. In so far as the victims go, it would be inconsistent with the Danish basic principles about victim protection and the Danish view on justice to criminalize a person who has been so awfully exploited and has suffered so much because of the acts of the trafficking kingpin and the clients. However, the same considerations do not exist when speaking of the client. If he uses the victim for sexual satisfaction, knowing that the woman is a victim of trafficking in human beings, he is no better than the trafficker. Even if he does not know that the prostitute is a victim of trafficking in human beings it can be said that he harms another person just to satisfy his own desires, irrespectively of the consequences for the prostitute.

In addition to this, it must be remembered that buying the right to another person's body, as if it was a piece of merchandise, is a violation of the basic values of gender equality and human dignity and therefore, as such, ought to be forbidden in a democratic society based on the rule of law. Only by combating *the idea* that it is acceptable to use other people the way you want – if only you pay a sum of money – will it be possible to prevent, at least some of, the dehumanization and thus some of the violations of humanity that take place in the world.

Denmark still lags behind in this field. Unlike Sweden and Norway, where the clients are criminalized and, in so far as Sweden goes, has been since 1999, Denmark has not yet realized that prostitution is a violation of women and precludes a growth of society to a more well-developed gender level. Since the nineteenseventies we have in Denmark had a wish to be emancipated in the sexual field, and in their blind search for the target some people have overlooked some of the basic human characteristics. On that account the dark side of the emancipation has been rejected and at best called "new-puritanical". In my opinion, the time has come to re-define emancipation in this area. Emancipation

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55 According to Le Lise Ravn, *Den danske strafferetlige værn mod handel med kvinder til prostitution*, Justitia nr. 6, 2007 p. 23 ff. the lacking success is also due to the fact that the Public Prosecutor's interpretation of section 262a is too narrow.

does not necessarily mean an access to do whatever you want without thinking about basic standards and the consequences for others. Emancipation should, on the contrary, be seen as a way to secure that both women and men are held in respect and as a way to have one's desire satisfied and at the same time be prepared to accept the responsibility for one's actions. By choosing that approach the society could reach a higher level of gender equality and at the same time reduce the impetus for the kingpin to exploit abused women – thereby putting an end to trafficking in women.