



Det Juridiske Fakultet



Prostitution and Trafficking in Human Beings

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Criminal Law and Human Rights

The Human Rights concept is based on
The Principle of Human Dignity



Illustrative examples

“The essentially debasing character of rape is so manifest that the result of the decisions of the Court of Appeal and the House of Lords – that the applicant could be convicted of attempted rape, irrespective of his relationship with the victim – cannot be said to be at variance with the object and purpose of Article 7 (art. 7) of the Convention, namely to ensure that no one should be subjected to arbitrary prosecution, conviction or punishment... What is more, the abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his wife was in conformity not only with a civilised concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is **respect for human dignity** and human freedom.”

(S.W. and C.R. v. UK, judgment of 22 November 1995)



Prostitution: Two legal perspectives

1) The victim perspective

2) The equal rights perspective



Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



CEDAW

Article 6

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



DIRECTIVE 2011/36/EU - preventing and combating trafficking in human beings and protecting its victims

Article 18 Prevention

4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, **Member States shall consider taking measures to establish as a criminal offence the use of services** which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.



Article 2 – Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.



Positive Obligation to Criminalise

“This is ... [the] case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable in this area and it can be achieved only by Criminal law provisions.”



Which Values must the Law Reflect?

Values of the patriarchal society?

Or

Gender equality?

