

THE LEGAL REGIME OF PROSTITUTION OF THE NORTH AMERICAN CONTINENT

Cristian Giuseppe Zaharie¹

Abstract

The article studies the evolution of the prostitution phenomenon and the regulation thereof in the North American space.

Keywords: prostitution, legal and administrative regime.

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The North American space is generally intolerant with regard to the prostitution phenomenon.

The United States of America. At present, the practice of prostitution is not permissively regulated in any of the American states, except for the majority of the counties in the State of Nevada (and previously and partially with the temporary exception of Rhode Island, due to a defective regulation that was remedied in the year 2009).² Nevada is the only American state where prostitution is legal and regulated, it can be practiced in brothels, based on a license issued by the local administration and after passing the compulsory medical tests.

*"Street prostitution [solicitation] is prohibited everywhere in the United States. (...) In the other American states, prostitution is practiced within a disguised framework, such as massage parlors, spas, hotels, private buildings, saunas etc."*³

The content of the prohibitive norms differs from one state to another, with regard to the definition of the of the material object of the deed or with regard to the punishment of the participants in the deed, the punishment applied being usually a fine or imprisonment for a maximum period that does not exceed 5 years. The prohibitive norms are instituted both at the federal

¹ Lecturer dr. Romanian-American University

² **Rhode Island Prostitution Law (H 5044 / S 0596) of November 3, 2009.**

³ [Http://www.en.wikipedia.org/.../Prostitution_in_the_United_States](http://www.en.wikipedia.org/.../Prostitution_in_the_United_States).

level, and by the federate states. At the federal level the following deeds are prohibited:

- practicing prostitution in the USA, within 10 years from entering the American territory by a foreign citizen, punished by expulsion from the USA;
- bringing persons to the USA for prostitution purposes is punished with imprisonment for periods of up to 10 years and/or penal fine;
- practicing prostitution in the vicinity of terrestrial, air, naval military facilities is punished with imprisonment for periods of up to 1 year and/or penal fine;
- interstate promotion of prostitution is punished with imprisonment for periods of up to 5 years and/or penal fine;
- intentional transportation of persons that practice prostitution over the federal border or from one state to another is punished with imprisonment for periods of up to 10 years and/or penal fine;
- interstate traffic of persons for the purpose of sexual exploitation by coercion or luring is punished with imprisonment for periods of up to 20 years and/or penal fine.

The criminal regulation in the State of New York is extremely severe, as it punishes as well the offer of prostitution or the agreement between the practitioner and the client, while such deeds do not have criminal connotations, being minor offences. Article 230 of the Criminal Law of the State of New York stipulates that *“a person is guilty of prostitution when she engages, offers her consent or offers to engage in a sexual activity with another person in exchange of a sum of money.”* The prostitute is punished with imprisonment for periods of up to 3 months and/ or 500 dollars criminal fine (class B offences). The client risks 1 year of prison, while the pimp risks 7 years.

Section 653.20 of Chapter 2.5 of the Criminal Code of the State of California defines prostitution by expressly excluding artistic, erotic, or pornographic activities from the notion of prostitution. The latter represents *“engaging in a sexual activity in exchange of a sum of money or other benefits, without including therein a sexual behavior that is part of the interpretation of a show, theatrical piece, or other means of public entertainment.”* The deeds committed by the prostitute and her client are offences and may be punished with imprisonment for periods of up to 1 year and/or 1000 dollars criminal fine.

The Rhode Island Prostitution Law ⁴ of November 3, 2009 (H 5044 / S 0596) provides in its art.1 (1) that “*a person is guilty of prostitution when she engages or agrees to get engaged in a sexual behavior with another person in exchange of a fee.*” The deeds committed by the prostitute and her client are criminal offenses and may be punished with imprisonment for up to 6 months and/or criminal fine of up to 1000 dollars, while the pimp risks up to 10 years in prison and a fine of 10,000 dollars.

Almost all American states punish cumulatively or alternatively by imprisonment or fine the prostitutes, their clients, the pimps and the brothel holders, the quantum of such sanctions being varying from one state to the other.

In point of public order defense, the deeds of traffic of women and minors for the purpose of sexual exploitation and coercion for prostitution that involve interstate activities fall under the federal competence, of the Federal Bureau of Investigation (FBI), while the deeds of prostitution and procurement with exclusively local implications are in the charge of the local police of the state where such deeds take place.

The police structures constituted at the federal level started as early as from the first part of the 19th century to fight against the phenomena of trafficking and obligating women into practicing prostitution, but also against some sexual activities considered immoral. Thus, in the year 1908 there was created at the central level the Bureau of Investigation (BOI) – which became the Federal Bureau of Investigation (FBI) in 1935 – under whose competence fell the investigation of cases of traffic of women for the purpose of sexual exploitation and coercion thereof into prostitution (“*white slavery*”) based on a special federal law (Mann Act 1910). Such act punished trafficking, coercing or determining engagement in “*immoral*” sexual intercourse or determining someone to engage in sexual intercourse. *The practice of the Federal Bureau of Investigation* extended the notion of “*immoral*” sexual intercourse to other activities that exceed prostitution, such as sexual intercourse freely consented by spouses with other persons, adultery, and polygamy.

The practice led to disputes, one of jurisdictional importance being the case *United States v. Bitty*, 1911. John Bitty facilitated the arrival into the

⁴ **Rhode Island Prostitution Law (H 5044 / S 0596) of November 3, 2009.**

United States of his mistress, whom was a British subject. The Supreme Court established that the legal act does not limit the persons' freedom to travel. Nevertheless the law was modified subsequently in 1976 and 1986, to offer protection to the trafficked minors and replacing the phrase "*immoral sexual intercourse*" with "*sexual intercourse punished by the criminal law*" which restricts the sphere of application of this legal act.⁵

The federal Bureau agents developed an extensive work interviewing the brothel workers and other auxiliary employees, and succeeded in finding several cases of "*white slavery*". The results were not what had been expected, for example, in a big American city, "*out of 1106 prostitutes investigated, only in the case of 6 of them*"⁶ it was ascertained that there had been coercion involved. Nowadays, the Federal Bureau of Investigation is a governmental agency hierarchically subordinated to the State Department for Justice. The motto of the agency is "*Fidelity, Bravery, Integrity*". *FBI is based in Washington DC, it has 56 offices throughout the USA territory and over 400 resident agencies in cities and towns, and more than 60 international offices, attached to the American diplomatic missions.*⁷ Since August 2000, FBI has had an office in Romania, as well. On September 30, 2012 the office had 36,074 employees, whereof 13,913 special agents and 22161 professional technicians (analysts, technicians, linguists, computer specialists, intelligence specialists, and so on⁸. In the year 2012, the budget of FBI was of 8.1 billion dollars, including 119,200,000 dollars special funds for fighting against terrorism.

⁵ See **Mann Act – Federal Law no. 60 of June 25, 1910**, Chapter 395, Section 6, available on http://www.pbs.org/unforgivableblackness/knockout/mannact_text.html.

⁶ [Http://www.en.wikipedia.org/.../Prostitution_in_the_United_States](http://www.en.wikipedia.org/.../Prostitution_in_the_United_States)

⁷ [Http://en.wikipedia.org/wiki/FBI](http://en.wikipedia.org/wiki/FBI).

⁸ [Http://www.FBIJobs.gov](http://www.FBIJobs.gov).

The Federal Bureau of Investigation is habilitated to investigate over 200 offences, having the mission to protect and serve the United States against terrorist threats, to observe and to apply the criminal laws of the United States of America, and to ensure the coordination and support of the federal, state, and municipal criminal services, as well as of the foreign partner agencies.⁹ The FBI competencies related to prostitution deeds are those concerning fighting against national and transnational criminal organizations specialized in traffic of persons and materials related to the sexual exploitation of minors.

In the contemporary period, illegal prostitution in the United States has a tendency to concentrate in the large cities, being found in a couple of buildings in certain districts. Prostitutes are frequently arrested by the police, but as a rule they do not go as far as being sent to prison. Thus, according to a study,¹⁰ in Chicago city, on an average basis, a prostitute is taken into custody by the police only after having had 450 paid sexual intercourses and is condemned to a freedom deprivation punishment once every 10 arrests.¹¹

At present, Nevada is the only state within the Federation of the United States of America which accepts prostitution, in some counties and areas, within a legally regulated framework. Prostitution is allowed only in brothels, in an amply regulated framework, while street solicitation is punished, as the case may be, with imprisonment or fine, at a medium level of severity, as compared to the regulations of the other American states.

The deeds connected to prostitution are punished by the criminal law with up to 10 years of imprisonment, in case of traffic of minors for sexual exploitation purposes, the state legislation also provides very severe patrimonial sanctions to prevent the disguise sexual slavery in legally licensed brothels.

On the basis of a special criminal law, *"using a minor under the age of 14 years for prostitution, brings about for the patron a fine of up to 500,000 dollars,*

⁹ In this sense, see the official site of FBI at <http://www.fbi.gov/about-us/quick-facts/quickfacts>.

¹⁰ Steven, Levitt, and Sudhir Alladi, Venkatesh, An Empirical Analysis of Street-Level Prostitution, a study presented partially in the article "Trading Tricks, The Economics of Prostitution", Chicago Booth, University of Chicago, Chicago, April 2009 .

¹¹ Steven Levitt, Trading Tricks, The Economics of Prostitution, Chicago Booth, University of Chicago, Chicago, april.2009.

and of the trafficked person's age of between 14 and 17, the criminal fine may reach 100.000 dollars ".¹²

The idea of the existence of a state that regulates permissively this practice inside the United States is justified just to a small extent, considering that 75% of the population of the state of Nevada lives on the counties Clark, Washoe, Douglas, Lincoln, and Carson City.

Brothels *"function in a legal and regulated manner in 8 counties, while other 4 do not prohibit this practice."*¹³

The regulated permissive regime is nevertheless extremely controversial in the civil society of Nevada and of the neighboring American states. The competence to grant or refuse the authorization of brothels lies with the county authorities, some media perceiving such situation as specific to a medieval country or as a refuse of modernization and recognition of the women's rights. The American society in which the institution of marriage holds an extremely important place, is a lot less disposed to tolerate this practice than the collectivities in the space of the European Union, a proof in this sense being also the fact that, in the most of the American states, both the prostitute and her client are punished by the criminal law. Also, another aspect that attests the controversial status of prostitution in this federate state are the repeated contradictory judgments (1981, 2007, 2010) passed by the Supreme Court of Justice of the State of Nevada with regard to the advertising of brothels, initially prohibited by a law of the state of Nevada that came into force in 1979.

The permissive regime sustained for financial considerations and for reasons related to historical tradition by the county authorities (deliberative county councils) is not instituted and sustained buy the legislative authority of the State of Nevada. The legal entities that hold the brothels (approximately 30 are legally licensed throughout the state) pay special local taxes to the counties in which they operate and contribute with their taxes (assimilated to service supply activities) to the American federal budget.

With a few exceptions, the federal authorities do not prohibit the practice, leaving it at the discretion of the normative decision of the local authorities and

¹² See the **Assembly Bill 380**, in Pope Jeff, "New law levies harsher child prostitution punishment," Las Vegas Sun, 2009-06-22.

¹³ McKenna, Barrie, **Nevada brothel's 'shady' deal: Come often, get free gas,**" The San Francisco Chronicle, 2008-07-04.

taxing it as a profit making activity, as the case may be. *"There is a legislative initiative at the level of the state from the brothel owners with a view to regulate and tax the practice, which would be included among the entertainment activities (such as gambling, wrestling, and so on) which has not been accepted yet (a draft of state law in that sense was rejected in 2005).*¹⁴ The local regulations also allow male prostitution, which is new for the American space.

*"The State of Nevada grants the right of decision and licensing with regard to the setting up and management o brothels to counties whose population is less than 400,000 inhabitants."*¹⁵ Licensing involves, beside meeting certain conditions imposed, the payment of a license fee whose quantum is established in each county, on the grounds of the local autonomy. The quantum of the fees varies a lot: in Storey County it is of maximum 100,000. dollars, while in Lander County it is of maximum 200 dollars.

The brothel workers and service suppliers must meet the following requirements:

- to take periodical physical examinations and tests, some of them even on a weekly basis; weekly tests are made for *Chlamydia trachomatis* and *Neisseria gonorrhoeae* and monthly tests for HIV and *Treponema pallidum*; HIV twsting has been compulsory since 1986; male workers undergo urethral examinations;

- to be 21 years of age (18 years in Storey and Lyon Counties). The prostitutes and brothel managers are civilly and criminally liable in case of contamination of clients with sexually transmitted diseases. *"The use of condoms has been compulsory since 1988, irrespective of the type of sexual intercourse."*¹⁶

The illegal practice of prostitution is a criminal offence, and so is facilitating and determining it and obtaining material benefits from illegal prostitution. A legal act issued by the Legislative Assembly of the State of Nevada (a law that was declared unconstitutional in 2007) *"prohibits advertising for prostitution in the counties where it is not legal."*¹⁷ *"In Nevada there are*

¹⁴ Hennessy Kathleen, Kathleen, **Brothels want to be taxed; Legislature not that greedy**, Pahrump Valley Times, Mai, 2005-05.

¹⁵ NRS 244.345 **Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution,** Nevada Revised Statues, Las Vegas, 2005, pe <http://www.leg.state.nv.us/nrs/NRS-244.html#NRS244Sec345>;

¹⁶ Levitan, Corey, **Stark Raving Madam,** Las Vegas Review-Journal, Las Vegas, 2008-07-07.

¹⁷ **Chicken Ranch Brothel Finally to Advertise in Las Vegas**, LasVegasNow.com, 31 aug. 2007.

operating 8 more important brothels (where there work officially over 300 female and a few male prostitutes) and several of lesser importance".¹⁸

The procedure of contracting in view of sexual service supply is not similar to the one used in the European countries, the tariffs are not preset and posted by the brothel. The price is negotiated between the client and a free worker (chosen by the client) in the presence of the business manager of a representative thereof. *"50% of the fee is retained by the brothel, which covers only its own share of the related public taxes"* (unlike the way of the European countries that have regulated this practice, where as a rule the taxes and social insurance contributions are retained and paid by the employer.¹⁹ *"Tariffs range between 200 and 10,000 dollars an hour."*²⁰

The workers do not conclude an employment contract, but a form of collaboration contract, so they do not have social insurance; they pay the local and federal taxes based on the tax return form 1099-MISC. As far as social insurance is concerned, the workers may only use the private medical insurance and benefits system.

Canada. The unregulated permissive legal regime is found in most states of the region, namely: Canada, Guatemala, Dominican Republic, Salvador, Nicaragua, Honduras, Costa Rica etc.

In Canada, the legal regime applicable to prostitution allows its practice, but punishes with criminally sanctions most deeds associated therewith, implicitly restricting its development. The Canadian Criminal Code punishes the advertising of prostitution and taking a person to a brothel. Holding a *"licentious house"* is punished with imprisonment for up to 2 years. Also punished are deeds such as attracting clients in public places, prostitution may be practiced only in private spaces, but in no case in a brothel. Article 210 paragraph (1) of the Canadian Criminal Code punishes holding or using a licentious house with imprisonment for up to 2 years. Paragraph 2) letter c) of the same text of law incriminates toleration of such activity by various circumstantiated persons (the owner, lessor, lessee, occupant, agent that intermediates the lease), who willingly allow the operation of a brothel in an

¹⁸ [Http://en.wikipedia.org/wiki/Prostitution_in_Nevada](http://en.wikipedia.org/wiki/Prostitution_in_Nevada).

¹⁹ McKenna, Barrie, op.cit.apr.2008.

²⁰ Albert, Alexa, **Brothel, Mustang Ranch and its Women**, Random House, 2001.

entire building or a part thereof. Art.211 punishes with imprisonment for up to 2 years the deed of a person who willingly transports or offers to transport persons to licentious houses. Art.212 punishes procurement of prostitutes, under the form of purchasing sexual services for another person, or to ask a person to have paid sexual intercourse with someone else. The following article is dedicated to practitioners, punishing the manifestations related to this activity, that are socially disturbing. The deed is punished only if it takes place in a public place, which is open for public access, as well as in a place that can be entered based on an invitation. Such deeds are incriminated if committed in view of practicing prostitution: stopping or attempt to stop a vehicle, solicitation of persons in the street etc.²¹ By a decision of 1990, the Supreme Court of Canada found a lack of corroboration among the regulating norms. The general public opinion does not favor such a regulation:

" - 60% of the persons questioned feel that the Canadian Criminal Code only worsens the social situation of the persons who practice this occupation, as the interdiction of brothels forces them to work in the street, thereby exposing them to some dangers;

- 50% feel that freely consented paid sexual intercourse should not be punished;

- 67% of the men and 50% of the women questioned accept the setting up of brothels in view of protecting the practitioners."²²

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²¹ A se vedea, **Criminal Code**, Canada, R.S.C., 1985, c. C-46, publicat pe adresa <http://laws-lois.justice.gc.ca/eng/acts/C-46>.

²² Study made by Angus Reid Public Opinion available on [http:// www.wikimedia.org/wikipedia//Prostitution_in_Canada](http://www.wikimedia.org/wikipedia//Prostitution_in_Canada).

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*** *New Law Expands Crackdown on Child Prostitutes*," CBS Channel 8, 22 iun.2009, pe http://www.lasvegasnow.com.Global_story.asp.