

## LEGAL REGIME OF PROSTITUTION IN THE FAR EAST

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### Abstract

*"Specific for Asia is the blatant discrepancy between the national legal rules and the factual situations applied in practice."<sup>3</sup> This phenomenon is more evident in the northern, eastern and southern Europe. For example, in Thailand, this profession is forbidden, but the practice is almost totally tolerated by the society and authorities, and in China, the prostitution, although prohibited by law, is ubiquitous in the big cities.*

**Key words:** prostitution, Far East, tolerance, social phenomena

**JEL Classification:** E01, E20, Y20

The rule of law in Asia is the criminal punishment of prostitution. Exceptions: Kazakhstan, Kyrgyzstan, Israel, Singapore, Hong Kong, Turkey, Lebanon, Bangladesh. In the last three countries, the prostitution is regulated as method of development. Other states moderately sanction some unacceptable forms of this practice (such as India, where the prostitution is legal within certain limits), and in other countries, although the phenomena is outside law, is often tolerated by authorities (such as, Thailand or the PR of China).

Pandering, the establishment of brothels, child prostitution and human trafficking for sexual exploitation, although are prohibited by law and criminally punished, frequently occur as social crimes.

As a rule, for prostitution, the applicable sanctions are of criminal kind, but some states apply a more tolerant legal regime, instituting sanctions for some forms of manifestation of the prostitution phenomena, when they are not

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<sup>3</sup> [Http://www.wikipedia.en\\_prostitution and the law](http://www.wikipedia.en_prostitution and the law).

involving criminal groups or children. The provisions from the Asian regulations may seem the opposite of the laws from Northern Europe. Specific for Asia is the legal and moral discrimination between man and woman, the man having the right to use the services of the prostitutes, but the women practicing this are subjected to legal sanctions and public opprobrium.

A serious issue raised by the Asian prostitution a phenomenon is represented by the high number of children prostitutes, developing this activity especially in countries from the southern and eastern parts of the continent. The most worrying issue appears in the South-East Asia, "*where the children prostitution phenomenon reaches high levels (e.g. in Mekong Area 35% from the total number of prostitutes has an age between 12 and 17 years)*"<sup>4</sup>

In Japan, the legislation has a narrowed vision on the practice when it defines it in order to criminally sanction it. According to this, the prostitution is "*the act of sexual intercourse with any person in return for payment*".<sup>5</sup> The object of the offence is represented only by the normal sexual relations.

Although criminally punished, the prostitution develops in Japan as a major social phenomenon, often disguised in different practices. One of the features of the social phenomenon is that in the practice of prostitution, although performed by many Japanese women, is included an intense contribution of the women came from abroad, part of them victims of human trafficking for sexual exploitation, and other practicing willingly this profession.

The Japanese State Police appreciated that from over 250.000 prostitutes in Japan, more than 150.000 are from abroad. For example, in 2007, from the total number of retained and registered prostitutes from Japan, 43.5% are from China and 15.3% from Thailand, 7.2 from Taiwan and 7% from the South Korea. It should be mentioned that Japan "*is one of the main countries of destination for women trafficking for sexual exploitation. The trafficking victims are from various states of the world: East Asia (China, South Korea), South-East Asia (Thailand, Taiwan, Bangladesh, and Vietnam), South and North America (Brazil, Mexico) and East and North Europe (Russia, Ukraine, Belarus Republic, Poland, Romania, Bulgaria, and others)*".<sup>6</sup>

<sup>4</sup> Deena, Guzder, **UNICEF: Protecting Children from Commercial Sexual Exploitation**, Pulitzer Center on Crisis Reporting.

<sup>5</sup> [Http://www.search.japantimes.co.jp/cgi.bin/](http://www.search.japantimes.co.jp/cgi.bin/).

<sup>6</sup> **United Nations High Commissioner for Refugees, Report 2009**, on [http://www.wikipedia\\_Prostitution\\_in\\_Japan](http://www.wikipedia_Prostitution_in_Japan).

In Japan, the legislation has a narrowed vision on the practice when it defines it in order to criminally sanction it. According to this, the prostitution is *"the act of sexual intercourse with any person in return for payment"*.<sup>7</sup> The object of the offence is represented only by the normal sexual relations. Although criminally punished, the prostitution develops in Japan as a major social phenomenon, often disguised in different practices. One of the features of the social phenomenon is that in the practice of prostitution, although performed by many Japanese women, is included an intense contribution of the women came from abroad, part of them victims of human trafficking for sexual exploitation, and other practicing willingly this profession.

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According to the National Police Agency, in year 2000 there were authorized *"908 massage and fashion salons, 5425 Spa Centers, according to the Law on the regulation of entertainment centers for adults."* In such places, *"it is frequently practiced oral and anal sex and other types of abnormal sexual services that are not subjected to the provisions that incriminate prostitution,"*<sup>9</sup> seen by the legislator as a normal remunerated normal relation. In the same year, 1225 people were arrested or retained for prostitution acts or for some related acts. *"But this is only the top of the iceberg. The studies conducted by Yokohama Bank on the state of the underground economy in Japan, for the tax year 1998, found the existence of incomes resulted from prostitution, estimated to around 945 milliards Japanese Yens"*.<sup>10</sup>

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<sup>7</sup> [Http://www.search.japantimes.co.jp./cgi.bin/](http://www.search.japantimes.co.jp./cgi.bin/).

<sup>8</sup> **United Nations High Commissioner for Refugees, Report 2009**, [pehttp://www.wikipedia\\_Prostitution\\_in\\_Japan](http://www.wikipedia_Prostitution_in_Japan).

<sup>9</sup> Hiroshi, Matsubara, **Prostitution Testing Bounds of Culture, Business**, Japan Times, Mar. 16, 2002.

<sup>10</sup> Hiroshi, Matsubara, **Prostitution Testing Bounds of Culture, Business**, Japan Times, Mar. 16, 2002.

Thailand does not allow the practice of prostitution, but the Thai laws, due to the manner of drafting the law texts, implying numerous interpretations and half measures, allows its practice in numerous cases. Although at the beginning of the 20<sup>th</sup> century, the prostitution was allowed, this “*was taken outside law by successive regulations in 1928, 1960 and 1996*”.<sup>11</sup>

The law regulating prostitution in Thailand (no. 2539 issued in 1996) defines prostitution as being “*any act made for satisfying the sexual need of a person, in return for money or other material benefits, if made in a promiscuous manner*”.<sup>12</sup> The Thai legislator has not followed the Japanese model of regulating, choosing to sanction also the remunerated abnormal sexual relations. It should be also noticed that the Thai law for the regulation does not define what it is understood by “*promiscuity*”.

The sexual services are explicitly illegal, but the punishment of the fact is left to the appreciation of the public order authority, called to appreciate the “*promiscuity*” of the fact”. The application area of the legal definition is narrow and tributary to the appreciation made by the police agent, and, in my opinion, this might lead to encouraging the lack of uniformity in appreciating the situations, in litigations and even corruption. For maintaining this evasive regulation is contributing also the existence in the Thai society, in the last 10 years of some proposals for the permissive regulation of this activity.

Establishing or holding a prostitution house, the street pandering and women and children trafficking for sex exploitation, are punished with imprisonment. The prostitution is “*a ubiquitous part of the Thai society, mutually tolerated and accepted. It can be met in brothels, in the rural area, in (...) massage salons. The industry of paid sex is assessed (in 2003) to 3 percent from the economy of Thailand or to 4.3 milliards US dollars per year*”<sup>13</sup> Socially, the country is characterized by the large number of reported practitioners (from the '60) considering the population size. As evolution, the situation presented by some local sources offer the maximum data (officially considered exaggerated by the administration).

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<sup>11</sup> [Http://www/prostitution.pro.con.org/sourcefiles/Thailand](http://www/prostitution.pro.con.org/sourcefiles/Thailand).

<sup>12</sup> Fox Jon, **Sex Laws in Thailand Part 2: Laws Regulating Commercial Sex and Entertainment Places**, Thailand Law Forum, Nov.2009.

<sup>13</sup>\*\*\***Thailand Holds Debate On Legalizing Prostitution**, Taipei Times, Bangkok Nov. 28, 2003 address <http://www.taipetimes.com/News/world/archives/2003/11/28/2003077555>.

According to the estimations of the Thai police, in the last years it has increased the phenomenon of women trafficking for sexual exploitation, and more and more foreign prostitutes are identified. In 1996, there were identified over 5 thousand prostitutes from the Russian Federation, trafficked by the Russian criminal organizations. The criminal groups are an extension of the mafia structures from Vietnam.

*Most of the Russian criminal organizations use former KGB agents, as paid assassins (...). Following the collapse of the communism in the Soviet Union in 1991, the former KGB was replaced by a new professional agency, called RVS or the State Intelligence Office. RVS was modeled based on its occidental equivalents, CIA and MI-6 (...). But, home, in Russia, this reorganization meant that over 200.000 workers lost their working places. They are the people used by the Russian Mafia anywhere in the world, for "special missions" (...). Through the Vietnamese branch, in Thailand entered the underworld and ten of thousands of prostitutes, the number of the Russian visitors growing in this country from 3-4 hundreds in 1989, to 24.000 in 1993, 31.000 in 1994 and over 50.000 in the following years. (...) The Russian Mafia from Vietnam collects millions of dollars each month for protection for their compatriots that want to open a business in this area from the Far East, where the Russian had a power of influence for years.*<sup>14</sup>

After 2000, thousands of prostitutes were brought in the ex-Soviet area, China, Korean Peninsula and South-East Asia, through the Chinese criminal organizations, the prostitutes being placed in brothels, hotels, massage salons, saunas, beauty centers, clubs, casinos, and others. Once placed, the prostitutes are involved also in the drug trafficking and placement, these triads asking protection taxes from the owners of such business.

To the extremely interpretable legal regulation there are added many accusations from the NGOs and unfavorable reports of the US State Department concerning the tolerance, inefficiency, protection and abuses of some Thai Police agents. For example, "in 2008, 459 people died in detention or arrest (the authority invoking natural causes), other 34 being killed in police actions. (...) The corruption of the Royal Police of Thailand remained widely spread among the police agents. Sources from the police suggested that the low salaries determined the bribes. Some people complained that the police tortured, beat them

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<sup>14</sup> Bertil, Lintner, **The Russian Mafia in Asia**, Rev.Tokio, 3 February, 1996.

*and some women, detained or arrested, were sexually abused. There were also, reports that some police officers were involved in the facilitation and protection of prostitution and women and children trafficking.*"<sup>15</sup>

In Indonesia, the prostitution and the acts of organizing, facilitating and obtaining material benefits from this practice, if committed in certain conditions and places, are not sanctioned by law, at the national level. The deliberative competence concerning the legal regime applicable for prostitution and its organization is held by the local authorities. *"In most of the administrative-territorial units it is approved and regulated the functioning of brothels, the so-called "lokalisasi".*<sup>16</sup>

The poverty, lack of education and social perspectives, the legal tolerance and also the sexual tourism lead to the wide practice of prostitution into the Indonesian practice, despite breaching the local religious rules. The economy of this country is dependant on tourism and the sexual tourism has a significant share on market. This form of tourism developed especially in the big cities and in Batam and Karimun Islands. Worse is that *"around 30% of the practitioners are under 18 years old, and this is a specific feature for South-East Asia".*<sup>17</sup> *"Child prostitution reaches high levels (over 1/3 of the market) in Bali and Batam regions".*<sup>18</sup> The exact number of child prostitutes is not known, an estimation being difficult to be made, but it is appreciated by all sources that the phenomena of child prostitution and children trafficking for sexual exploitation are extremely wide. Many girls are forced to practice prostitution, following kidnapping or treats, or after they, personally, or a member of their family contracted a usurious loan that they will never be able to pay, the amount resulted from interests being daily increased. The Indonesian social landscape of the prostitution phenomena is grim, being well highlighted in a report of the US State Department:

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<sup>15</sup> **United States, Department of State, Bureau of Democracy, Human Rights, and Labor**, 2008 Country Reports on Human Rights Practices, 2008 Human Rights Report: Thailand, <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119058.htm>, 2009.

<sup>16</sup> Journeyman Pictures **Paedophile's Paradise - Indonesia** [http://www.youtube.com/watch?v=Iw\\_e-E00e-8&feature=related](http://www.youtube.com/watch?v=Iw_e-E00e-8&feature=related).

<sup>17</sup> According to UNICEF estimations. See <http://www.humantrafficking.org/countries/indonesia>.

<sup>18</sup> <http://www.indonesiamatters.com/1464/bali-sex-tourism/>.

*"-marriages of girls with the age between 10-14 years old, marriages that further lead to the introduction of the young girls on the prostitution market, the underage married girl being assimilated as an adult person;*

*- the state bodies (police, justice) treat the victims of prostitution, normally, as people that committed a crime, not as victims of the organized crime;*

*- the corrupt public agents issue identity cards for the underage girls, facilitating their entry on the prostitution market as adult persons;*

*- there are recorded numerous cases of sexual exploitation of child boys; for many years, the foreign pedophile networks had the benefit, due to the poor control of public order, of the possibility of sexual abuse of minors, in Bali being recorded even the existence of some international networks of people that were performing or facilitating the commitment of the acts of pedophilia;"<sup>19</sup>*

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<sup>19</sup> **United States Department of State Bureau of Democracy, Human Rights, and Labor**, 2008 Human Rights Report: Indonesia, [www.state.gov](http://www.state.gov), Feb. 25, 2009.

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