

# Opinions of jurists on prostitution in Spain: Regulate or ban prostitution?

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## Abstract

This study gathers the opinions of judges and public prosecutors on the distinction between prostitution and trafficking for the purpose of sexual exploitation, the most suitable legal treatment of prostitution, and the possibility of penalising clients of prostitution for the purpose of improving the prosecution of the crime of trafficking. A survey of 71 Spanish judges and 19 interviews with judges and prosecutors were carried out. Fifty-three percent of judges agreed with regulating prostitution, and the majority believe that clients of prostitution could collaborate in the detection of trafficking victims. Four opinion groups were identified: the *Doubters* (41%); those *Ambiguous* about their positions (15.5%); the *Pragmatic* (21%), who consider that prostitution should be regulated but do not see it as a normal job; and the *pro-Sex Work* (22.5%), who agree with regulating prostitution and view it as a job like any other. Judges need clarity on legislation and policy on prostitution in order to be able to prosecute pimping offences. An appropriate regulation of prostitution is necessary to end its extralegality and the lack of regulation creates a vacuum that is left to the interpretation of the judicial system.

**Keywords:** prostitution; sexual work; sex trafficking; judges; magistrates; sexual policy

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**Resumen.** *Opiniones de juristas sobre la prostitución en España: ¿regular o prohibir la prostitución?*

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Este estudio recoge las opiniones de jueces y fiscales sobre la distinción entre prostitución y trata de personas con fines de explotación sexual, sobre el tratamiento jurídico de la prostitución más adecuado y sobre la posibilidad de penalizar a los clientes de la prostitución con el fin de mejorar la persecución del delito de trata de personas. Se realiza una encuesta a 71 jueces españoles y 19 entrevistas a jueces y fiscales. El 53% de los jueces está de acuerdo con regular la prostitución, y la mayoría cree que los clientes de la prostitución podrían colaborar en la detección de víctimas de trata de seres humanos. Se encontraron cuatro grupos de opinión: los *Dudosos* (41%), los *Indecisos* sobre sus posturas (15,5%), los *Pragmáticos* (21%), que consideran que debe regularse, pero no ven la prostitución como un trabajo normal, y los *Pro-trabajo sexual* (22,5%), que están de acuerdo con regularla y la valoran como un trabajo como cualquier otro. Los jueces necesitan claridad sobre la legislación y la política en materia de prostitución para poder perseguir los delitos de proxenetismo. Es necesaria una regulación adecuada de la prostitución para acabar con su extralegalidad y la falta de regulación genera un vacío que queda a la interpretación del sistema judicial.

**Palabras claves:** prostitución; trabajo sexual; trata sexual; jueces; magistrados; política sexual

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### Summary

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## 1. Background

Prostitution in Spain is extralegal, that is, there is neither regulation nor prohibition. However, this is only apparent because, as we will explain below, there exists a concealed prohibitionist model. In the penal code, the trafficking of human beings for the purpose of sexual exploitation, forced prostitution, and sexual exploitation are considered to be significant crimes, and they are aggravated if the victim is a minor. Article 187 of the Spanish penal code punishes coercive prostitution and profiting from the prostitution of adults (pimping), while Article 188 further punishes inducing, promoting, or facilitating the prostitution of minors or disabled persons in need of special protection and also punishes clients of prostitution of minors and disabled persons in need of special protection. Furthermore, international media have pointed at Spain as the country with the most prostitution in the world, with the existence of macro-brothels, and have called it a sexual paradise (Dayle, 2012). Within this context, this study explores the opinion of jurists on the legal treatment of prostitution as it is a sector that is confronted with related crimes in an extra-legal framework and results in great debates (with regard to adult prostitution, there is an open debate on the need to abolish it, including by punishing the client, or to legalise it—punishing only the conduct involving the forced pro-

titution of others). Studies have been carried out to collect the opinion of the general public, young people, and the male population (Calvo and Penadés de la Cruz, 2015; Torrado Martin-Palomino et al., 2018; Meneses et al., 2018), and they reveal a clear position in favour of the legalisation and regulation of prostitution.

It should be noted that Spanish judges are the ones who have determined that hostessing is a labour activity and sex workers should therefore be registered with social security. This has been demonstrated by some court judgements that have ruled that the owners of these types of businesses must give women contracts for their hostess work with clients, as they take a commission through the consumption of alcoholic drinks (Sentencia [Judgement] 00185/2019 Pontevedra). In Europe, there are two different procedural models (Gascón, 2009): the Anglo-Saxon model, in which investigations are carried out by the police and the public prosecutor without court proceedings; and the mixed model, with a phase of court investigation that oversees the police investigation. In both cases, once the investigation is over, the judge who tries the criminal case is different. Spain has a mixed procedural model, in which it is a judge who oversees and instructs in order to ensure the legal guarantees of the investigative phase. The role of judges in investigating crimes of trafficking, forced prostitution, or sexual exploitation is crucial, yet they face obstacles in distinguishing between these crimes (Meneses-Falcón et al., 2022).

### *1.1. Debates and positions on prostitution*

The debate on the treatment of prostitution in Spain is neither new nor different to other countries, but rather a reflection of the debates that have previously taken place in the USA and in various European countries. There are two political trends among the ideologies defended: those who aim to eradicate prostitution and, in many cases, ban it; and those who aim to regulate prostitution as a labour activity for those who choose to take part in it freely (Di Nicola et al., 2005). In what follows, we will discuss each of these trends.

First, there are ideological standpoints that maintain that prostitution is one more form of gender violence, inequality, and exploitation originating in the capitalist patriarchy and in the centrality of male sexuality (Farley, 2003; Doezema, 2010; de Miguel, 2012; Cobo Bedia, 2019). This model defends prohibitionist abolitionism, which criminalises the actors involved or a part of them, mainly the purchaser. This last case is known as the Swedish model, as Sweden was pioneer in setting it up and whose objective is to extinguish demand (Krüsi et al., 2014; Matthews, 2015; Vanewsenbeeck, 2017). However, in Spain, without directly adopting this model, between 2005 and 2015, administrative punishments were established in more than 50 Spanish municipalities to penalise street prostitution (Villacampa & Torres, 2015; Meneses-Falcón, 2019). Subsequently, with the emergence of the 2015 Citizen Safety Law, which aims to regulate rights and freedoms on public roadways, among other aspects, the possibility of fining both the buyer and seller of sexual ser-

vices extended to the entire Spanish state. In Article 36, point 11, the demand for paid sexual services on public roadways is considered a serious infringement, which carries a sanction of €601 to €30,000. Seen from this ideological position, both the trafficking of human beings for the purpose of sexual exploitation and prostitution are considered equivalent; therefore, the existence of prostitution by free choice is inconceivable. Rather, it is considered that the vulnerability of the victim drives her into selling sexual services.

Second, prostitution can be understood as a form of survival for many women, particularly those from economically disadvantaged or vulnerable populations—though they are not the only ones—who choose to engage in prostitution due to the significant earnings they can gain from it. In this regard, it has been interpreted as defiance of the rules that women have to follow in the patriarchy, being seen as a redistributive strategy of the economic inequalities between men and women (Juliano, 2002). It has also been seen as an option for many migrant women in the current processes of globalisation, which is formed as a different cultural conception of sex that is more structural than individual (Agustín, 2005; Weitzer, 2009; Krüsi et al., 2014; Vanwesenbeeck, 2017; Benoit et al., 2018). In view of these standpoints, the regulation of prostitution and the sex industry make it possible to recognise rights and improve the prosecution of the crime of trafficking. In some cases, the starting position is that of abolishing prostitution; however, from a pragmatic view, regulation is advocated, given that prostitution has existed in all societies and not one has succeeded in eradicating it. Consequently, it would be utopian to think that prohibition would eliminate prostitution, and the consequences of such a measure would have negative repercussions for the women who are the principal sellers of these services (Hayes-Smith and Shekarkhar, 2010; Shannon et al., 2014). However, it has been pointed out that women's greatest power lies in their erotic and sexual capital. The patriarchal strategy is to devalue, control, and reduce this capital. Therefore, the sex market could be an opportunity for women to reduce the disadvantage they have with respect to men and make profit (Hakim, 2010).

Hostessing is associated with prostitution and sexual trafficking. According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, trafficking involves three basic elements (Molland, 2011): a) an *action*, which involves the recruitment of a person who is offered a job or activity in another place and is moved across territory within or across borders; b) a *method*, which entails deception, because what is promised to the victim is not real or they do not receive all the information necessary for their decision and coercion, threats, or violence will be present at some point in the process if not from the outset; and c) a *purpose*, which is to exploit that person when they arrive at the destination for the profit of a third party (sexual, labour, forced marriages, criminal acts, etc.). Trafficking for the purpose of exploitation is set out in Article 177bis of the Spanish penal code. However, as Anderson and Andrijašević (2008) argued, the definition of trafficking entails the development and positioning of countries in sexual policy. Attitudes and positions on prostitu-

tion include labour policies—mainly concerning migrant workers' rights, forced labour or labour exploitation—and citizenship rights—focusing on migration laws that determine the rights of foreign nationals. On the other hand, as Stoynova (2017) pointed out, this provides a platform for international cooperation against transnational organised crime, in which illegal immigration plays a very relevant role. The approach to and policies towards prostitution are influenced by campaigns on trafficking for sexual exploitation, which do not distinguish between forced and voluntary prostitution. (Weitzer, 2009, 2014).

Another aspect that has been studied is the influence of legislation on prostitution or on sex trafficking, since a clear and regulated legislation might help judges apply the law without ambiguities. The degree to which the regulation or prohibition of prostitution has an impact on the greater number of trafficking cases has been widely researched. Based on the quantitative analysis of 150 countries and the study of cases in Germany, Sweden, and Denmark, Cho et al. (2013) showed that the legalisation of prostitution increases human trafficking. Jakobsson and Kotsadam (2013) observed that a punitive and criminalising policy reduces trafficking; in other words, tolerant laws make human trafficking more profitable. Di Nicola et al. (2005) also related the number of victims of trafficking to sexual exploitation and the policy type or model on prostitution in each country of the EU. These authors are of the view that in all models there is a significant number of trafficking victims in the hidden sector of prostitution (apartments, commercial establishments, etc.), and the model that seems to produce fewer victims is the prohibitionist model. In the case of Cyprus, however, prohibition hindered the capacity of police to detect trafficking situations (Constantinou, 2016). Nonetheless, these results, as their authors state, should be taken with caution, as there are many limitations in obtaining data. In fact, no existing model has brought an end to the trafficking of women carried out for the purpose of sexual exploitation (Di Nicola et al., 2005). Hence, learning the opinion and experience of judges on the investigation and trials of the crime of trafficking and prostitution will enable a better handling of the factors involved and thus increase effectiveness (Lourenço et al., 2019).

Impartiality and independence are two characteristics of judicial and prosecutorial systems, which must remain untainted by political or social pressures and opinions on the matters they investigate or judge. However, judges and prosecutors do not live in isolation and have their own opinions and perceptions of social events and facts and influence the way they conceive social problems. Not only do legislators set social norms, but judges, through their judgments, generate implementing regulations (Chaves García, 2021). Therefore, considering their positions on prostitution could help to interpret the content of many of their judgments, as well as to improve the legislation of this activity.

The aim of this study is to analyse the opinions of judges and public prosecutors that investigate and pass judgements on the crimes of trafficking, forced prostitution, and sexual exploitation regarding the legal treatment of

prostitution in Spain. More specifically, we aim to explore judges' opinions regarding: 1) the distinction between prostitution and trafficking for the purpose of sexual exploitation; 2) the legal treatment they consider most suitable for regulating prostitution; and 3) whether or not to punish the clients of prostitution. Knowledge of these issues can facilitate the prosecution of the crime of trafficking and forced prostitution.

## 2. Methods

We carried out exploratory research with data collection methods and mixed analysis (Bericat Alastuey, 1998; Bryman, 2006). On the one hand, the quantitative approach makes it possible to gain access to a higher number of judges, as well as to quantify questions of great interest. On the other hand, the qualitative methodology provides a closer examination of the discourses and internal perspective of the subjects of study, allowing us to delve more deeply into the views the judges themselves have on human trafficking and their experience.

### 2.1. Data Collection

The study began with a survey of investigative and trial judges in three Spanish provinces: Barcelona (32.4%,  $n = 23$ ), Malaga (7%,  $n = 5$ ) and Madrid (60.6%,  $n = 43$ ). The criterion for selecting these provinces was that they had the highest levels of prostitution in that year (2017) and a larger number of premises where sexual services are offered (brothels).<sup>1</sup> The population of judges at the time of the survey was 673 (296 in Madrid, 269 in Barcelona, and 108 in Malaga). The questionnaire was sent in paper format in Spanish in January 2016 to all the judges and was accompanied by a letter of support from the General Council of the Judiciary and a return envelope.

The questionnaire comprised 26 questions divided into four sections: knowledge of the crime of trafficking, experience of the crime of trafficking, opinions, and socio-demographic data. The variables of opinion and experience were collected on a scale ranging from 1 (*completely disagree or infrequent*) to 4 (*completely agree or very frequent*). We intentionally chose not to use a neutral point as we considered that the judges had evident capacity for discernment and would be able to lean one way or the other, thus avoiding a neutral or indifferent standpoint. The questionnaire was developed by the authors based on previous interviews of experts and the advice of some judges and takes ten minutes to complete. Once devised, it underwent expert review by an investigative judge from a Madrid court, who made certain corrections and suggestions, which were incorporated into the definitive version of the ques-

1. In a previous study, we counted 1114 brothels in Spain. The autonomous communities with the highest number of brothels were Andalusia (147), Catalonia (146), Galicia (121), and Madrid (116). The cities where the judges were interviewed were selected based on these data.

tionnaire. Given the limited initial response after sending the questionnaires, once the four months allowed for their completion had passed, a reminder was sent via the General Council of the Judiciary. Finally, 71 judges responded to the questionnaire; a response rate of 10.5%. This is standard for postal surveys, which have low response rates, but they have the advantage of being able to reach the whole population under study.

At the end of the questionnaire, there was a request for a voluntary interview in order to expand on the information given if the judge had tried or presided over the investigation of a trafficking case. This constituted the second phase where the judges' views on crime were explored using a qualitative approach. The interviews took place in June and July 2016. Eleven of the judges who completed the questionnaire were receptive to in-depth interviews, but it was only possible to interview nine of them (4 in Madrid, 2 in Andalusia, and 3 in Catalonia). The interview script was designed following the questionnaire and focused mainly on their difficulties and needs. For confidentiality reasons, we do not provide many details of the interviewees, as they could be identified.

The judges were provided a confidentiality agreement guaranteeing their anonymity and voluntary participation and informed consent was obtained. We followed the recommendations of the University Ethics Committee upon approving the project.

We also analysed the opinion of ten public prosecutors from ten Spanish provinces who were specialists in trafficking and immigration (2 Andalusia, 1 Asturias, 1 Canary Islands, 1 Catalonia, 1 Galicia, 1 Madrid, 1 Basque Country, 1 Valencia and 1 member of the prosecutor general's office). The data was gathered in 2016 as part of another study (Meneses-Falcón et al., 2016). Among all the questions raised in this work, we focus on the following three: what system of legal treatment did the judges consider the most suitable for addressing prostitution in Spain, whether they believed that demand should be penalised as in the Swedish model, and whether prostitution clients could be key informants for the detection of trafficking victims.

However, it is important to note that, firstly, the sample of judges and public prosecutors is not representative and limits the generalisation of the results obtained. Secondly, in the case of public prosecutors, only the interviews were available but no survey, whereas both were obtained for the judges. This was because the data came from two different studies. The interviews provide insight into their possible opinions and attitudes, although more in-depth examination is required.

## *2.2. Data Analysis*

We have mainly analysed the variables of the questionnaire which focused on the study objectives, specifically addressing the degree of agreement with the following propositions: "Regulation of prostitution is necessary to end the crime of trafficking"; "Most brothel owners are involved in trafficking";



“The crime of pimping/procuring has been overly decriminalised”; “Most victims know what they are coming to”; “Prostitution is a job like any other and should be regulated”. The possible answers were codified as: 0 (*I don’t know*), 1 (*Strongly disagree*), 2 (*Slightly disagree*), 3 (*Agree*), and 4 (*Strongly agree*). Moreover, the question regarding the collaboration of clients of prostitution in the detection of victims was analysed: 1 (*No, under no circumstances*), 2 (*Occasionally*), and 3 (*Yes, it is possible*). A more detailed description of the rest of the analysis of the questionnaire can be found in the paper of Meneses-Falcón et al. (2022).

Once the quantitative data collection was finalised, the dataset was cleaned and prepared for analysis. First, a descriptive analysis was undertaken for all the variables, followed by bivariate analyses to achieve the objectives of the study. More specifically, we verified whether there were significant differences (applying the Mann–Whitney or Kruskal–Wallis nonparametric the tests) for different variables, such as sex and type of court (see Table 2). Chi-square tests were also performed to analyse the possible association between qualitative variables or to determine whether their distribution was uniform. In the case of the variables that addressed the opinion or experience of the judges in different aspects, we checked if indifference existed or not (see Table 3). Lastly, a cluster analysis was carried out in order to divide the judges into segments according to the two variables directly related with the objective of this study, which were “Regulation of prostitution is necessary to end the crime of trafficking” and “Prostitution is a job like any other and should be regulated”. IBM SPSS v. 24 for Windows was used for the statistical analysis.

Once transcribed, all the information obtained from the interviews was subjected to analysis and uploaded into the NVivo v.11 qualitative analysis software. Some basic categories were drawn up based on the literature review, the aims of the research, and the interview script and used to codify all the transcripts obtained. This first coding was subsequently refined; we reworked it as the analysis progressed and as relationships between categories and informants appeared. Therefore, the content analysis that began in an exploratory way by inspecting the words and phrases of the transcripts continued with a first identification of codes and categories of analysis (Charmaz, 2006).

### 3. Results

#### 3.1. Description of the Sample of Judges

The sample was described according to the age and experience of the judges, and we have verified whether there were significant differences by age and type of court (Table 1). Thus, at the time of the survey, the average age of the judges was 50 years in an interval of 28 to 68 years of age. On average, they had 20 years of experience as judges or magistrates in an interval of 2 to 38 years, with an average of 7 years at the court they were appointed to at the time of the survey in an interval of 1 to 26 years, and had served in almost 4



**Table 1.** Test of equality of age and experience as magistrate according to sex and type of court

Variable	Sex m (SD, n) <sup>1</sup>			MW Test <sup>2</sup> ( <i>p</i> -value)	Type of court m (SD, n)				KW Test <sup>3</sup> ( <i>p</i> -value)
	Male Judge	Female Judge	All		Investigation	Criminal	Provincial Court	All	
Age	52.3 (9.5; 33)	48.4 (10.0; 34)	50.3 (9.9; 67)	0.055	42.6 (10.3; 23)	47.2 (5.4; 11)	57.5 (3.7; 32)	50.6 (9.7; 66)	0.000
Years working in current court	8.1 (6.6; 32)	6.4 (6.4; 31)	7.3 (6.6; 63)	0.157	6.2 (6.1; 22)	4.1 (2.6; 12)	9.7 (7.4; 28)	7.4 (6.6; 62)	0.053
Years as judge	23.3 (9.9; 33)	17.4 (10.6; 32)	20.4 (10.6; 65)	0.032	14.0 (9.4; 23)	14.4 (9.1; 12)	28.6 (5.1; 29)	20.7 (10.5; 64)	0.000
No. of courts worked in	3.8 (1.5; 31)	3.6 (1.5; 30)	3.7 (1.5; 61)	0.596	3.4 (1.7; 2 1)	4.0 (1.5; 12)	4.0 (1.2; 27)	3.8 (1.5; 60)	0.169

  

Variable	Sex m (SD, n) <sup>1</sup>			Chi-squared test ( <i>p</i> -value) <sup>4</sup>	Type of court m (SD, n)				Chi-squared test ( <i>p</i> -value) <sup>5</sup>
	Male Judge	Female Judge	All		Investigation	Criminal	Provincial Court	All	
n	33	35	68	0.808	23	12	35	69	0.03
%	48.5	51.5	100		32.4	16.9	49.3	100	

<sup>1</sup> m (SD, n): mean (standard deviation, sample size).

<sup>2</sup> Mann–Whitney test for the difference between men and women.

<sup>3</sup> Kruskal–Wallis test for the difference between type of court.

<sup>4</sup> Chi-squared test to check whether the sex distribution is uniform.

<sup>5</sup> Chi-squared test to check whether the type of court distribution is uniform.

Source: Own elaboration

courts on average in an interval of 1 to 8 courts. Women accounted for 48% of all judges compared to 52% men, with no significant differences according to their distribution by sex. A total of 66% were trial judges (provincial and criminal court) while 33% were investigative (“Instrucción”), thus presenting a significant non-uniform distribution. This is, therefore, a very heterogeneous sample, with many years of experience on average and is balanced with regard to sex.

On average, the men had been working as judges for longer than the women, with no significant differences between them in terms of the years they had been working in their current court and the number of courts they had previously held a post at. Older female and male judges had been working for more years in their present court and for more time in the provincial court than in the other two types of courts (investigation and criminal). There were no differences in the number of courts where they had worked according to the type of court.

We also detected an association between sex and type of court (chi-squared = 7.682; Cramér’s  $V = 0.343$ ;  $p = 0.020$ ): between being a man and working in the provincial court and being a woman and working in the investigative court or provincial court. The criminal courts presented lower figures compared to the rest, but the presence of female judges in them stands out, being double that of male judges.

### 3.2. *Distinguishing Between Trafficking and Prostitution*

On the basis of the information offered, it was not easy to distinguish one crime from the other at the start of an investigation undertaken by the magistrate or public prosecutor.<sup>2</sup> Among those interviewed, seven of the eleven judges thought that there was only prostitution or immigration, and the investigation process subsequently showed evidence, which led to the crime of trafficking.

The second problem, apart from invisibility, is the police tensions that occur when faced with a suspected victim of trafficking, because sure, you know better than me that between being an immigrant in an illegal situation and being a possible victim of trafficking, there's a distance like night and day. So all those [police] who are in the immigration groups and who essentially what they want is to give themselves ticks in terms of deportations, they don't tend to see that person as a trafficking victim but as a subject liable to being deported. (Male public prosecutor, Malaga)

This type of crime, there's no private accusation and it depends on the public prosecutor's office, who are the ones acting here. A not very sensitive public prosecutor and a not very sensitive judge is clear acquittal, above all if it's also a question of prostitution, which is taboo. (E8, female investigative magistrate, Barcelona)

In the case of the prosecutors, three of them pointed out to us that the investigation had begun with the legal categorisation of trafficking crime, and as it proceeded, it was reduced to the crime of coercive prostitution, sexual exploitation, or illegal immigration.

Of six cases, there are four from Nigeria, one of Paraguayans, and another of Venezuelans. The Paraguayans and Venezuelans knew very well that they were coming to be prostitutes. So the issue of trafficking came in one of the cases; in the end, I categorised it and I decided not to take it for trafficking but only for immigration. Although there is the possibility that there is trafficking even though you know that you've come to be a prostitute, but sure, the conditions were not those of trafficking once it was investigated. Four of the women came to be prostitutes and furthermore, they ignored the trafficker in the sense of saying, "I'll be a prostitute in the way I want and I'll soon start paying you. But let me control my hours and my clients." (Public prosecutor, Bilbao)

However, two prosecutors also considered these crimes to be highly related and that the treatment should therefore be the same.

2. Prostitution and trafficking are not synonymous. While trafficking is a crime because there is recruitment, deception, transfer, threats, coercion, and exploitation for profit, prostitution is not a crime in Spain because it can be a person's choice. Prostitution can also be without choice by coercion, and there can be exploitation. However, these two circumstances associated with prostitution are not trafficking.

I am saying that prostitution is one topic and the trafficking of human beings for the purpose of sexual exploitation is a consequence; it's the same, they are the same things dressed up differently. Prostitution in this country was not taken seriously. (State public prosecutor)

Lastly, along with the crime of trafficking, all the interviewed investigative judges and prosecutors mentioned that other related crimes were discovered in the investigation, such as fraud, theft, or participation in illegal drug distribution with the involvement of the victims, who participated in some of these crimes.

The victims, as participants in fraud, they are victims of the crime of human trafficking, but then they participate in the profits that defrauding clients gave them. As well as working as a prostitute, they are charged with this ... because every time they handed over credit cards, they earned 500 euros. (E6, Male investigative magistrate, Madrid)

### *3.3. Opinions on the Political and Legal Treatment of Prostitution*

We will now bring together the opinions of all the judges concerning the crime of trafficking and prostitution and verify whether there are differences or associations between variables (Table 2) after dividing the analysis into segments according to sex and the type of court. There were four variables in the judges' opinions as shown in Table 2.

Regarding the regulation of prostitution to put an end to trafficking crime, 53.5% agreed, although 35.2% were not sure. The majority (57.7%) thought that brothel owners were involved in trafficking crime, although almost a third did not know. There was no agreement with regard to whether the crime of procurement/pimping had been excessively decriminalised with the changes in the Spanish penal code, although almost 20% did not know. Most of the judges considered that the women did not know that they were coming to Spain to work as prostitutes. Lastly, almost 60% of the judges did not consider prostitution to be a job like any other.

The differences between these questions according to sex and type of court are shown in Table 2.

### *3.4. Groups of Opinion Among the Judges*

Starting with the two main variables related to the regulation of prostitution ("Regulation of prostitution is necessary to end the crime of trafficking" and "Prostitution is a job like any other and should be regulated"), a typology of positions among the judges was established through a K-means cluster analysis on the two variables.

Four clusters or different types of behaviour of the judges were obtained. The most relevant statistics for the two variables employed for the segmentation appear for each pattern in Table 3.

**Table 2.** Opinions on aspects related to the crime of trafficking and prostitution<sup>1</sup>

Opinions	Opinion in three categories			Opinion from 1 to 4 (without “I don’t know”)				
	Don’t know % (n)	Disagree % (n)	Agree % (n)	<i>m</i>	<i>SD</i>	<i>ME</i>	<i>p-value</i> <sup>4</sup>	
<b>All</b>								
Regulation of prostitution is necessary to end the crime of trafficking	35.2 (25)	11.3 (8)	53.5 (38)	3.24	0.95	3.5	0.000	
Most brothel owners are involved in trafficking	29.6% (21)	12.7 (9)	57.7 (41)	2.98	0.59	3.0	0.000	
The crime of pimping/procuring has been overly decriminalised	19.7 (14)	39.4 (28)	40.8 (29)	2.72	0.92	3.0	0.078	
Most victims know what they are coming to		78.9 (56)	21.1 (15)	1.89	0.84	2.0	0.000	
Prostitution is a job like any other and should be regulated	9.9 (7)	59.2 (42)	31.0 (22)	2.02	1.12	2.0	0.001	
<b>Men</b>				<i>p-value</i> <sup>2</sup>	<i>m</i>	<i>SD</i>	<i>ME</i>	<i>p-value</i> <sup>4</sup>
Regulation of prostitution is necessary to end the crime of trafficking	33.3 (11)	12.1 (4)	54.5 (18)	0.977/0.892	3.00	0.98	3	0.026
Most brothel owners are involved in trafficking	18.2 (6)	15.2 (5)	66.7 (22)	0.143/0.963	2.93	0.55	3	0.000
The crime of pimping/procuring has been overly decriminalised	18.2 (6)	45.5 (15)	36.4 (12)	0.639/0.414	2.59	0.75	2	0.093
Most victims know what they are coming to		72.7 (24)	27.3 (9)	0.314/0.314	2.00		2	0.003
Prostitution is a job like any other and should be regulated	9.1 (3)	63.6 (21)	27.3 (9)	0.594/0.332	1.93		2	0.006
<b>Women</b>					<i>m</i>	<i>SD</i>	<i>ME</i>	<i>p-value</i> <sup>4</sup>
Regulation of prostitution is necessary to end the crime of trafficking	31.4 (11)	11.4 (4)	57.1 (20)		3.46	0.88	4	0.000
Most brothel owners are involved in trafficking	40 (14)	11.4 (4)	48.6 (17)		3.05	0.67	3	0.001
The crime of pimping/procuring has been overly decriminalised	22.9 (8)	34.3 (12)	42.9 (15)		2.78	1.05	3	0.181
Most victims know what they are coming to		82.9 (29)	17.1 (6)		1.86	0.77	2	0.000
Prostitution is a job like any other and should be regulated	11.4 (4)	51.4 (18)	27.3 (9)		2.19	1.19	2	0.164

**Table 2.** Opinions on aspects related to the crime of trafficking and prostitution<sup>1</sup> (*continuation*)

Opinions	Opinion in three categories			Opinion from 1 to 4 (without “I don’t know”)				
	Don’t know % (n)	Disagree % (n)	Agree % (n)	<i>p</i> -value <sup>3</sup>	<i>m</i>	<i>SD</i>	<i>ME</i>	<i>p</i> -value <sup>4</sup>
<b>Trial Judges</b>								
Regulation of prostitution is necessary to end the crime of trafficking	46.8 (22)	8.5 (4)	44.7 (21)	0.020/0.727	3.20	0.91	3	0.001
Most brothel owners are involved in trafficking	27.7 (13)	14.9 (7)	57.4 (27)	0.696/0.546	2.85	0.50	3	0.000
The crime of pimping/procuring has been overly decriminalised	21.3 (10)	46.8 (22)	31.9 (15)	0.128/0.048	2.57	0.76	2	0.595
Most victims know what they are coming to		83.0 (39)	17.0 (8)	0.373/0.373	1.74	0.79	2	0.000
Prostitution is a job like any other and should be regulated	8.5 (4)	63.8 (30)	27.7 (13)	0.629/0.444	1.93	1.12	1	0.002
<b>Investigative</b>	<b>Don’t know % (n)</b>	<b>Disagree % (n)</b>	<b>Agree % (n)</b>		<b><i>m</i></b>	<b><i>SD</i></b>	<b><i>ME</i></b>	<b><i>p</i>-value<sup>4</sup></b>
Regulation of prostitution is necessary to end the crime of trafficking	13.0 (3)	17.4 (4)	69.6 (16)		3.25	1.02	4	0.004
Most brothel owners are involved in trafficking	34.8 (8)	8.7 (2)	56.5 (13)		3.27	0.70	3	0.001
The crime of pimping/procuring has been overly decriminalised	17.4 (4)	26.1 (6)	56.5 (13)		3.0	1.16	3	0.075
Most victims know what they are coming to		73.9 (17)	26.1 (6)		2.13	0.87	2	0.054
Prostitution is a job like any other and should be regulated	13.0 (3)	52.2 (12)	34.8 (8)		2.10	1.07	2	0.111

<sup>1</sup> The mean, SD, and ME were calculated on each variable removing the category “Don’t know”.

<sup>2</sup> Chi-squared association between the degree of agreement with the three categories (“Don’t know”, “Disagree”, “Agree”) and sex/Chi-squared association between the degree of agreement with the two categories (“Disagree”, “Agree”) and sex.

<sup>3</sup> Chi-squared association between the degree of agreement with the three categories (“Don’t know”, “Disagree”, “Agree”) and type of court/Chi-squared association between the degree of agreement with the two categories (“Disagree”, “Agree”) and type of court.

<sup>4</sup> Ho = Global Average = 2.5; H1: Average is different from 2.5, or Ho: Indifference; H1: No Indifference).

Source: Own elaboration

Cluster 1 (C1): “The Doubters” (41% of the total sample). In this group, 86% stated that they did not know whether the “Regulation of prostitution is necessary to end the crime of trafficking”, although 86% strongly disagreed with the statement that “Prostitution is a job like any other and should be regulated”. It is also the group with the highest percentage of judges (37.9%) who responded “Don’t know” to the statement “The crime of pimping/procuring has been overly decriminalized”. Thus, the judges in this group are

**Table 3.** Frequency distributions, means, and standard deviations of the different variables

		All (% <i>(n)</i> )	C1 (% <i>(n)</i> )	C2 (% <i>(n)</i> )	C3 (% <i>(n)</i> )	C4 (% <i>(n)</i> )	<i>p</i> -value <sup>1</sup>
Regulation of prostitution is necessary to end the crime of trafficking	Don't know (0)	35.2 (25)	86.2 (25)	0	0	0	0.000
	Strongly disagree (1)	5.6 (4)	13.8 (4)	0	0	0	
	Slightly disagree (2)	5.6 (4)	0	0	26.7 (4)	0	
	Agree (3)	21.1 (15)	0	27.3 (3)	73.3 (11)	6.3 (1)	
	Slightly agree (4)	32.4 (23)	0	72.7 (8)	0	93.8 (15)	
	<i>m</i>	2.1	.14	3.73	2.73	3.94	
	<i>SD</i>	1.73	.351	.467	.458	.250	
Prostitution is a job like any other and should be regulated	Don't know (0)	9.9 (7)	10.3 (3)	36.4 (4)	0	0	0.000
	Strongly disagree (1)	42.3 (30)	86.2 (25)	36.4 (4)	6.7 (1)	0	
	Slightly disagree (2)	16.9 (12)	3.4 (1)	27.3 (3)	53.3 (8)	0	
	Agree (3)	18.3 (13)	0	0	40.0 (6)	43.8 (7)	
	Slightly agree (4)	12.7 (9)	0	0	0	56.3 (9)	
	<i>m</i>	1.82	.93	.91	2.33	3.56	
	<i>SD</i>	1.22	.371	.831	.617	.512	
Size	<i>n</i> (%)	71 (100%)	29 (41%)	11 (15.55)	15 (21.15)	16 (22.55)	
Men	<i>n</i> (%)	33 (48.5%)	14 (53.8%)	4 (36.4%)	10 (66.7)	5 (31.3)	0.191
Investigative magistrates	<i>n</i> (%)	23 (32.4%)	5 (17.2%)	6 (54.5%)	5 (33.3%)	7 (46.7%)	0.077
Age	<i>m</i>	50.3	54.1	48.7	50.3	44.9	0.030
	<i>SD</i>	9.9	7.9	10.7	11.9	7.9	
Years working at current court	<i>m</i>	7.3	8.5	7	7	5.8	0.662
	<i>SD</i>	6.6	6.4	7.6	7.0	5.9	
Years as judge	<i>m</i>	20.4	24.8	18.4	22.9	13.2	0.004
	<i>SD</i>	10.6	8.1	9.7	11.9	9.7	
No. of courts worked at	<i>m</i>	3.7	4	4.7	3.6	2.9	0.017
	<i>SD</i>	1.5	1.2	2.3	1.2	1.1	
Most brothel owners are involved in trafficking	Don't know (0)	29.6 (21)	37.9 (11)	27.3 (3)	20.0 (3)	25.0 (4)	0.642
	Strongly disagree (1)	0	0	0	0	0	
	Slightly disagree (2)	12.7 (9)	10.3 (3)	9.1 (1)	20.0 (3)	12.5 (2)	
	Agree (3)	46.5 (33)	37.9 (11)	27.3 (3)	60.0 (9)	62.5 (10)	
	Slightly agree (4)	11.3 (8)	13.8 (4)	36.4 (4)	0	0	
	<i>m</i>	2.10	1.90	2.45	2.20	2.13	
	<i>SD</i>	1.46	1.59	1.69	1.21	1.31	
The crime of pimping/procuring has been overly decriminalized	Don't know (0)	19.7 (14)	37.9 (11)	9.1 (1)	6.7 (1)	6.3 (1)	0.004
	Strongly disagree (1)	4.2 (3)	3.4 (1)	9.1 (1)	0	6.3 (1)	
	Slightly disagree (2)	35.2 (25)	41.4 (12)	0	60.0 (9)	25.0 (4)	
	Agree (3)	19.7 (14)	3.4 (1)	36.4 (4)	13.3 (2)	43.8 (7)	
	Slightly agree (4)	21.1 (15)	13.8 (4)	45.5 (5)	20.0 (3)	18.8 (3)	
	<i>m</i>	2.18	1.52	3.00	2.40	2.63	
	<i>SD</i>	1.37	1.40	1.34	1.06	1.09	

**Table 3.** Frequency distributions, means, and standard deviations of the different variables (*continuation*)

		All (% <i>(n)</i> )	C1 (% <i>(n)</i> )	C2 (% <i>(n)</i> )	C3 (% <i>(n)</i> )	C4 (% <i>(n)</i> )	<i>p-value</i> <sup>1</sup>
Most victims know what they are coming to	Don't know (0)	0	0	0	0	0	0.140
	Strongly disagree (1)	36.6 (26)	62.1 (18)	27.3 (3)	0	31.3 (5)	
	Slightly disagree (2)	42.3 (30)	10.3 (3)	63.6 (7)	86.7 (13)	43.8 (7)	
	Agree (3)	16.9 (12)	20.7 (6)	9.1 (1)	13.3 (2)	18.8 (3)	
	Slightly agree (4)	4.2 (3)	6.9 (2)	0	0	6.3 (1)	
	<i>m</i>	1.89	1.72	1.82	2.13	2	
	<i>SD</i>	0.84	1.03	0.60	0.35	0.89	
Do you believe that the collaboration of the clients of prostitution in the detection of victims is possible?	No, under no circumstances (1)	1.5 (1)	3.7 (1)	0	0	0	0.345
	Occasionally (2)	65.7 (44)	66.7 (18)	72.7 (8)	46.2 (6)	75.0 (12)	
	Yes, it is possible (3)	32.8 (22)	29.6 (8)	27.3 (3)	53.8 (7)	25.0 (4)	
	<i>m</i>	2.31	2.26	2.27	2.54	2.25	
	<i>SD</i>	0.49	0.53	0.47	0.52	0.48	

<sup>1</sup> KW comparison of homogeneity between groups.

Source: Own elaboration

very clear that they do not want prostitution to be regulated, but they are less clear about whether regulation would help them to better prosecute trafficking offences, which makes their position unclear and makes them hesitant.

Cluster 2 (C2): “The Ambiguous” (15.5% of the total sample). The judges in this group either agreed (27.3%) or strongly agreed (72.7%) with the statement that the “Regulation of prostitution is necessary to end the crime of trafficking”. They slightly disagreed (27.3%) and strongly disagreed (36.4%) or did not have an opinion (36.4%) with the statement that “Prostitution is a job like any other and should be regulated”. Of these, 36% were men and 54.5% investigative magistrates with a mean age of almost 49 years, had worked for 7 years at their current court, 18 years as a judge, and in 5 courts on average. The majority were women and with higher mobility in the court system.

Following this idea, we have called cluster 1 “The Doubters” because in the variable “Regulation of prostitution is necessary to end the crime of trafficking” 86.2% of the sample stated that they “Don’t know”, although the most appropriate term would have been “the ignorant”, but this last label seemed inappropriate. On the other hand, we have called cluster 2 “The Ambiguous”, because on the one hand they slightly agree or agree that the “Regulation of prostitution is necessary to end the crime of trafficking”, but on the other hand strongly disagree that “Prostitution is a job like any other and should be regulated”. This may seem to be a contradiction, which is why we have called this grouped “The Ambiguous”, although perhaps a better label would have been “the incoherent”, but we have also found the latter to be less appropriate.



Cluster 3 (C3): “The Pragmatic” (21% of the total sample). In this group, 73% agreed with the statement that the “Regulation of prostitution is necessary to end the crime of trafficking” and the rest slightly disagree. However, 40% agreed with the second statement that “Prostitution is a job like any other and should be regulated” and 60% slightly disagreed or strongly disagreed. In other words, they did not consider prostitution to be a labour activity. Of these, 67% are men, 33% investigative magistrates, with a mean age of 50, 7 years in the current court, almost 23 years as judges and having passed through 3.6 courts. In summary, this is a group made up mostly of men, the second group in terms of years working as a judge, the second oldest and the group mostly made up of trial judges.

Cluster 4 (C4): “Pro-Sex Work” (22.5% of the total sample). Almost 94% of those in this group strongly agreed with the statement that the “Regulation of prostitution is necessary to end the crime of trafficking”, while 56% strongly agreed and the rest agreed with the second statement. Therefore, this is the group that most strongly agreed with the two statements. Of those in this group, 31% are men and almost 47% are investigative magistrates with a mean age of 45 with 7 years in the current court, 13 years working as judges, and having previously passed through 2.9 courts on average. To summarise, this is a group made up mostly of women who had been working as judges for the least amount of time, were the youngest, and had changed courts the least.

Regarding the other opinions, the statement that “The crime of pimping/procuring has been overly decriminalised” presents significant differences between the groups. Thus, Group 3 disagreed the most, followed by Group 1 in which the highest percentage responded “I don’t know”. Those that agreed the most were in Group 2.

For the other variables, no significant differences were found between the four patterns or types of behaviour found among the judges.

In the interviews of judges and public prosecutors, a majority consensus was not obtained. While the judges did declare their positions more clearly, when the question was raised with the public prosecutors, they did not give direct answers, as only three of them gave their opinion, that is, they were reluctant to reveal their view on the matter.

In reality, moral issues are mixed in there with legal ones... It’s a complicated and different topic. No...no, here we talk of human dignity and of exploitation of the conditions of people who come... that of it being voluntary is so... because it’s difficult to think... this already maybe enters into a moral concept, but it’s difficult to think that someone would prostitute themselves voluntarily. That’s to say... it’s difficult. (Male public prosecutor, A Coruña)

We find three positions in the judge and public prosecutor interviews.

First, one of the 11 judges interviewed stated that prostitution should be prohibited, particularly in the street, because that is where there is greater

vulnerability and organised crime, and it gives people a view that is scandalous and far from educational.

Look, there is, close to a very large brothel there is a shopping centre, and it's not normal; it's that you go around there and you come across a load of naked women in the street. That should be regulated, it should be prohibited. Because to see half-naked girls in winter with a fire drum... And every morning the minivans and gangsters turn up and they start putting the girls in their spots. And that's in sight of anyone who passes by. I'm not against prostitution, but this extralegal situation can't go on. (E1, male investigative magistrate, Malaga)

One of the judges interviewed noted that if prostitution is regulated, things will be made easier for traffickers, pimps, and exploiters for their lucrative businesses. "My opinion has changed over time on the subject of prostitution, of seeing it as an option... I can't see it anymore. Not to make things easy, at least. (E8, female investigative magistrate, Barcelona)"

Second, five of the judges interviewed defended regulating the activity because in this way one might know what a crime was and what it was not. Furthermore, they considered that with regulation, prostitutes' rights would be better protected, and it would put an end to a "black money market".

It all comes from a legal vacuum as well. Prostitution, at least, should be given some regulation in this country... it needs regulating, and those people must have some social security rights, and then labour inspection controls like the workers they are, freelance, salaried, whatever... there is a high percentage of girls who do this work voluntarily. And it's clear and they tell you this when they come to trial. "I was there because I earn more doing this than doing anything else." Within the meaning of freedom, you can do whatever. But this activity has to be regulated. Because we can't look the other way, when that is a serious black money market. (E3, male trial judge, Malaga)

A second important issue is the lack of a perspective on how to tackle the phenomenon connected with trafficking, which is the issue of prostitution, which needs to have some regulation. (Male public prosecutor, Malaga)

This means that there is a distinction being made between freely chosen and forced prostitution.

Lastly, four of the judges interviewed were not sure because they considered that legislation would not have an effect on trafficking. They did not believe that if it was regulated, it could put an end to trafficking and exploitation; this would only dress it up in legality.

They would dress it up as a legal activity, but there would still be exploitation. Supposedly they would be registered in social security, but that doesn't remove the fact that they are being coerced, that they are manipulating her to carry on

working in that activity. Legally, she will be registered with social security and getting a payslip, but she'll still be there working against her own will because they are threatening her. I don't think so. I don't think that it would have any effect. (E2, female investigative magistrate, Madrid)

Two female judges were of the view that it could not be regulated entirely, or that prostitution should be considered according to the person engaged in it, whether they were a national citizen or a foreigner, because the conditions of vulnerability were different.

This is extralegal... I know what it is, what it's not. But there are many things that we can't regulate, we can't regulate everything entirely. I don't have a clear opinion. (E4, female trial judge, Madrid)

I very much doubt that a person who comes from the third world and who doesn't have options for surviving is doing this voluntarily. We would have to make a distinction between the prostitute from the first world and the one from the third world, which are completely different. (E8, female investigative magistrate, Barcelona)

### *3.5. Clients of Prostitution: Collaborators of Justice or Punishment?*

The judges were asked whether these clients could be collaborators against trafficking because they could detect victims, as they are the first people to meet them.

On this point, 66% of the judges considered that the assistance of clients could take place occasionally, 33% thought it possible, and 1.5% (n = 1) deemed it impossible (Table 4). The judges, albeit not a majority, thought that client collaboration could be possible in the detection of victims of trafficking, independent of sex differences or type of court (Table 4).

In the interviews, we also obtained diverse opinions. One standpoint gave consideration to this type of collaboration, since they had experiences in some cases, where it was the clients who had reported the situation of coercion or trafficking of women who were working as prostitutes.

It's not a hare-brained idea. We go back to the same thing. It must be forced... If you regulate and say what is legal and what is not. An ordinary person who's gone there, I paid and what not... you are getting another evidential area which you can access. This type of witness, if I tell you that they come, they are located, and if they don't come, they are brought... And if not, they receive a fine. (E3, male trial judge, Malaga,)

It was curious because those who I think got in contact with the police were clients who went to that area frequently; it was the Marconi industrial estate. They went there often and, so, well, they befriended four women. (E4, female trial judge, Madrid)

**Table 4.** Opinions on aspects related to the crime of trafficking and prostitution<sup>1</sup>

Do you believe that the collaboration of the clients of prostitution in the detection of victims is possible?	Opinion in three categories			Opinion from 1 to 3			
	No, under no circumstances (%(n))	Occasionally (%(n))	Yes, it's possible (%(n))	<i>m</i>	<i>SD</i>	<i>ME</i>	<i>p-value</i> <sup>2</sup>
All	1.5 (1)	65.7 (44)	32.8 (22)	2.31	0.50	2	0.000
Men	3.1 (1)	65.6 (21)	31.3 (10)	2.28	0.52	2	0.005
Women	0 (0)	65.6 (21)	34.4 (11)	2.34	0.48	2	0.000
Chi squared (p-value) <sup>2</sup>			1.048 (0.592)				
Trial judge	2.3 (1)	63.6 (28)	34.1 (15)	2.32	0.52	2	
Investigative magistrate		68.2 (15)	31.8 (7)	2.32	0.47	2	0.005
Chi squared (p-value) <sup>3</sup>			0.569 (0.752)				0.000

<sup>1</sup> Ho = global average = 2; H1: Average is different from 2, or Ho: Occasionally; H1: Either no, under no circumstances, or yes, it is possible).

<sup>2</sup> Comparison of association between opinion and sex.

<sup>3</sup> Comparison of association between opinion and type of court.

Source: Own elaboration

I'm, at least, I'm not in favour, far from it, of punishing the client, but moreover, I'm not in favour from the practical point of view, because if you punish the client, it's the same as what happens with drugs; in the end you go for what's easy and you ignore what's difficult. And as the police have very limited means and everything's—because we're all human—about achieving statistics, so they might arrest twenty clients a month and it'll be said that the fight is effective. (Male public prosecutor, Malaga)

A third of the judges and prosecutors interviewed, applying the Swedish model, were in favour of the collaboration of consumers of sexual services with the police, public prosecutors, and judges, inhibiting their willingness to report. But another third of professionals, public prosecutors and judges did not believe that that they would be able to collaborate because they only went to purchase a product and did not care about conditions.

That there is someone who maybe is moved by finding someone under those conditions and reports it, well I'm sure that, surely there are people like that, among those people who consume, it can happen. I don't believe the solution lies with the clients, I think that the solution to punish this lies in the penal code. (E7, female investigative judge, Madrid)

No, straightaway, no. The client who goes to buy a sexual service wants sex plain and simple, he doesn't want anything else whatsoever. (Male public prosecutor, Canary Islands)

None of the judges and public prosecutors interviewed showed a clear position on the punishment of the demand for these services, that is, they did not demonstrate their wish to punish the clients of prostitution.

#### 4. Discussion

This study provides opinions from a sector of Spanish professionals on sex-work policy. It helps to clarify the legal ground, particularly when it is jurists who have given their viewpoints. It is generally difficult to obtain the collaboration of judges and public prosecutors for social studies, and this study, albeit with some obstacles, has managed to gather their opinions on a highly controversial topic in Spain and in Europe. It has been suggested that in the debates on prostitution, sociocultural values have an influence on judicial decisions, for they are neither produced in a vacuum nor aseptically (Constantinou, 2013). The polarisation in two approaches dealing with the legal treatment of prostitution—regulate it or criminalise it—were not prominent in the interviews, although they are present in the Spanish society. The judges were almost divided in their positions, while the prosecutors did not want to pronounce themselves, with only one third showing their opinion. We consider that opinions on prostitution policy are as divided as other sectors of society (Ayuso Sánchez & García Faroldi, 2014; Calvo & Penadés de la Cruz, 2015).

Many authors have asserted that from abolitionist and criminalising positions, prostitution and trafficking for the purpose of sexual exploitation are understood as one single fact (Weitzer, 2019). In the case of the judges and public prosecutors interviewed, they made a clear distinction between trafficking, smuggling, and coercive prostitution, even though at the beginning of the investigation of the crimes, it was not so. Subsequently, an intersection occurred between illegal immigration, forced prostitution, and trafficking, and the research process was the one that facilitated the distinction. Therefore, depending on the case, the women involved could be victims of a serious crime or of a minor crime, as has been shown in other studies (Constantinou, 2013). This difference was related to the concepts of vulnerability and the consent of women to work as prostitutes, which were key to distinguishing the crimes. The judges and public prosecutors who made a distinction between voluntary and forced prostitution were those who stated that they were in favour of regulation and had been involved in more proceedings of the crime of trafficking and others related to prostitution. Matos et al. (2019) pointed out how judges and prosecutors do not act aseptically but that their personal opinions also influence their ideas and actions; something similar can be said of the professionals interviewed.

Having clear legislation with regard to prostitution in Spain could help distinguish and better prosecute the crimes of trafficking carried out for the purpose of sexual exploitation. However, when some prostitution crimes are investigated or tried, there are many legal vacuums that compel the judges to interpret them, as Skilbrei (2010) has shown for Norway. This vacuum that ought to be dealt with by legislation is covered from the judicial sphere. This lack of legal determination is what causes the judges interviewed and surveyed to opt for the regulation of prostitution as a way of distinguishing the offences involved.

As in all European legal systems, the Spanish penal code punishes “proxenetismo” (procurement/pimping), although such a term does not appear in the code. Some have pointed out that the reforms to the penal code have produced greater tolerance toward the figure of third parties in the business of sexual services (Guardia Civil, 2002), leading to a certain unease due to this lack of precision and laxity. However, this does not seem to be the perception of the judges according to their answers obtained in the questionnaire. Therefore, we could suggest that a toughening of the sentences for the involvement of third parties when they make a profit or exploit prostitutes would not be necessary, given that the said crime does not go unpunished. Another party involved in prostitution is found in the considerable sector of businesspeople whose business is based on the activity of sexual services. In this regard, we also collected the opinion of judges and public prosecutors concerning the participation of these owners in the crimes of trafficking. Although there are studies that have shown that this involvement is a mere perception and that the reality is that those involved are a minority (Casey et al., 2017; Weitzer, 2009), Spain there are no studies for Spain that might reveal the truth or falsehood of the owners of prostitution businesses being involved in the crime of trafficking.

Another question that has been demonstrated in different studies is the definition of ‘victim of trafficking’, particularly in order to distinguish it from the women who are in a position of irregular immigration (Surtees, 2008). Based on the Palermo Protocol, one important element in the definition is the deception of the victim for their relocation to another place where the exploitation takes place. In Spain, as with most European countries, the large majority of women who practice prostitution come from developing countries, with Spanish nationals constituting between 10% and 20% who are engaged mainly in indoor prostitution (Juliano, 2002; Villacampa, 2017). It has been shown that the victim’s awareness of the activity she will undertake at the destination of the trafficking process is irrelevant for her condition as a victim. This fact creates some controversy in the distinction between forced victims and prostitutes. Judging by the answers obtained in our study, the experience of the judges surveyed is that the trafficking victims knew that they were going to work as prostitutes upon their arrival. The existence of consent can mean opting to a greater extent for the crime of immigration rather than trafficking, and this is how it has been established in the discourses of judges and public prosecutors, as other studies have also revealed (Benoit et al., 2018; Vanwesenbeeck, 2017). Notwithstanding, it is interesting that in Spain, it is the immigration units, both of the police and the public prosecutor’s office, that investigate the crimes of prostitution and trafficking.

The issue of legislation on prostitution is currently part of a wide debate in Spain. On the one hand, there is the argument for the Swedish abolitionist model, which promulgates the criminalisation of the client to put an end to demand. However, more than abolitionism, it can be encompassed in a form of prohibition of prostitution. Nevertheless, greater violence toward the women who practise prostitution, less protection in sexual acts, and worse

access to public health resources have all been associated with countries with prohibitionist systems (Shannon et al., 2014; Harcourt et al., 2010; Krüsi et al., 2014). If the consumer of sexual services is criminalised, it will prevent him from alerting the police of any situation of exploitation of the women with whom he has contact (Meneses et al., 2018), and this has been pointed out by some of the jurists interviewed. Some investigative judges were able to investigate trafficking crime thanks to the declarations of clients. Prohibition entails clandestinity and concealment that would prevent any collaboration with judges and public prosecutors (Krüsi et al., 2014; Vanwesenbeeck, 2017). In this regard, we have not identified a blaming and heated position against the consumers of prostitution that is found among other social and academic actors (de Miguel, 2012; Cobo Bedia, 2019). It is possible that the practice of judges and public prosecutors in investigations and trials provides them with a very diverse and different experience of the clients of prostitution, and they do not internalise the persecution of them shown by some activists who blame them for the crime of trafficking (Farrell et al., 2015).

Along with the position on regulation, we gathered opinions on prostitution as an activity. The majority thought that prostitution should be regulated, but they did not consider it to be a job in line with one of the positions in the debate (de Miguel, 2012; Cobo Bedia, 2019). Only one of the groups that we established, which we called *Pro-Sex Work*, agreed on both issues. Lastly, in the discourses show, there was a certain scepticism that legislation on prostitution—whatever form it might take—would lead to the elimination of trafficking for the purpose of sexual exploitation. As different studies have shown, this crime is present in all countries regardless of the sex-work policies they have in place (Di Nicola et al., 2005; Cho et al., 2013; Jakobsson and Kotsadam, 2013).

Most of the judges interviewed considered that some type of regulation of prostitution was needed in Spain, as it would enable them to distinguish and prosecute crimes of trafficking, illegal immigration, forced prostitution, or sexual exploitation with greater clarity. That is to say, they would be able to demarcate the crimes better, since the lack of regulation produces a vacuum that is left to the interpretation of the judicial system. Legislation is not the task of judges, yet they are the ones who are currently taking on that duty in Spain with regards to prostitution. Conflicting positions that are subject of the debates on prostitution by activists, academics, and intellectuals cannot be perceived in the way judges and public prosecutors express their views when interviewed. While there seems to be greater adherence to criminalising policies in European societies (Vanwesenbeeck, 2017), from the results we have obtained, Spanish judges and public prosecutors do not appear to align themselves in the same way. Social and moral problems should not have criminalising responses, as the penal code is not the solution to individual behaviours and decisions that are not considered acceptable by society. The judicial system should pursue crimes and should clearly distinguish women's decisions. The results obtained do not show a formed and clear position among the judges



and prosecutors interviewed, and it is possible that they are not the actors and social partners to reflect on and propose legislative measures on sex work.

The recommendations that follow from the data obtained lead us to advocate the need for legislating on prostitution and sex work in Spain. This would provide the professionals, who work in the sectors related to these activities, with a clear framework for action, making it possible to determine abuse or crime against women and make it known to the appropriate authorities. In this sense, judges and public prosecutors need clear and effective legislation without having to legislate indirectly through judicial judgements.

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### Ethical requirements

This research project was approved by the Ethical Committee of the Comillas University of Madrid on 15th September 2014.

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