

Prostitution – Regulation versus Legal Ban (on the Purchase of Sexual Services) Position Paper of the Working Group on Prostitution

Reasons for a position paper: The Working Group on Prostitution believes it necessary to take seriously the possible dynamics of increasing abolitionist initiatives and legislative proposals within the European Union (e.g., appeal by Alice Schwarzer, Honeyball report, planned legislation in France), to hold a facts-based discussion at international (and particularly European) level, and to counter the many proposals influenced by moral judgments. This requires Austria to adopt a position reflecting its stance in relevant working groups, committees, etc. as well as the provision of targeted, factual information to EU and EC representatives. The Task Force on Human Trafficking, which is led by the Federal Ministry for Europe, Integration and Foreign Affairs, is seen as playing an important role in Austria's stance. This position paper is designed to provide initial expert information and encourage a more nuanced approach to this debate.

About the Working Group on Prostitution: The Working Group on Prostitution was created in 2009 and is chaired by the line ministry for Women (Federal Ministry for Education and Women's Affairs)¹. It currently comprises thirty experts who meet twice a year for two days. Most members are police officers with a focus on trafficking and prostitution and consultants from support agencies for sexworkers. Furthermore there are members from the health service, women's departments, legal departments responsible for prostitution laws, brothel licensing authorities and a researcher.

The Working Group pursues a broad range of goals: guaranteeing an exchange of opinions among experts; encouraging cooperation and networking; addressing current developments; drawing up recommendations on how to improve the living and employment situation of sex workers in order to combat exploitation, which remains a frequent problem; supporting the implementation of these recommendations and evaluating steps already taken. The first results were summarised in a report² from May 2012. The next report is scheduled to be published at the end of 2014.

Why regulation? Women and also men offering sexual services in return for remuneration should be able to do so within a protected legal framework which goes beyond the protection afforded to them by the Criminal Code. Many women and men are financially reliant on the income they generate through sexual services and take a conscious decision to work in this field rather than choosing alternatives, many of which offer poorer levels of remuneration.

Therefore, introducing a general ban on sexual services – or at least their purchase – does not cause supply and demand to disappear, as has been seen in countries which have introduced

¹ This is the second Working Group on Prostitution to be chaired by the line ministry for Women. While the first concentrated on national powers to regulate prostitution, this Working Group focuses on powers at provincial level. As the effects of individual regulatory measures influence each other, it is neither possible nor useful to draw a clear line between regulatory powers and aspects at national level and at provincial level. Therefore, both Working Groups address(ed) this issue from all perspectives. The report of the first Working Group can be downloaded using the following link:

https://www.bmbf.gv.at/frauen/prostitution/prostitution_02_26160.pdf?4dz8a1

² Available to download at: https://www.bmbf.gv.at/frauen/prostitution/prostitution_01_26159.pdf?4dz8a1

some form of prohibition. However, the market does react to these new conditions by going underground. The result is that the state loses the opportunity to influence and regulate this industry – in particular when it comes to working conditions and protective measures, but also regarding balancing the interests of all stakeholders – and (still) leaves the regulation of the market far more extensively to the free play of forces and the rules that exist within the scene.

As in many other fields of work in our society (e.g. agriculture, care industry, household services, etc.) the sex industry is also characterised by a particularly high risk of exploitation simply as a result of the precarious economic situation and lack of alternatives for persons working in this field. The less control there is over working conditions and pay, and the fewer rights those affected have, the more this risk of exploitation increases. On top of that, high levels of stigmatisation and discrimination mean that sex workers are often reluctant to report poor working conditions and exploitation to the authorities.

Based on its members' many years of experience and the intensive discussions held during its meetings, the Working Group on Prostitution therefore believes that there are more efficient ways of reducing exploitation in the sex industry and expanding the scope of options open to sex workers. These aims can be achieved by:

- continuing to regulate the market, taking into consideration the interests and protection of sex workers;
- offering sex workers independent information and advice (even before they start working in the industry);
- gradually reducing the stigma, taboos and double standards that exist in today's society surrounding the sex industry through fact-based discourses, reporting and information.

At the same time, the Working Group on Prostitution believes that it is essential that regulatory measures do not restrict the sexual integrity of sex workers. On the contrary, such measures should aim to protect these workers. Sex workers must at all times be free to decide whether they want to offer sexual services and which sexual services they wish to offer. This is a key difference to other services: under no circumstances must sex workers be told whether and how to conduct their core business.

In addition, clear legal protection of sexual integrity must be provided – and working in the sex industry must not result in a limitation of this (general) protection. This includes that clients are liable to prosecution if they accept sexual services despite being aware that the sex worker in question is being forced into providing these services.

Fact-based analysis of the arguments of the (Swedish) abolitionist movement³:

- **Sex workers are the victims of male sexual violence⁴:** There is no scientific proof for this claim, yet it is presented as being a fact – prostitution/sexual services are generally seen as a form of structural and individual sexual violence. However, patriarchal relationships and structures – and with them a gender-specific division of labour – affect the whole of society and other fields of work. The question of whether sex workers are actually victims of violence seems to depend very much on the conditions in which they work.⁵ Indeed, the idea that prostitution/sexual services are forms of male violence does not mean that sex workers are automatically seen as victims by the Swedish legal system and are therefore entitled to the associated compensation and victims' rights⁶.
- **In Sweden the ban on the purchase of sexual services (which entered into force in 1999) has reduced prostitution:** In order for something to be counted, it must be visible. In the case of sex work this is street prostitution, which has (understandably) decreased by around half. There is, however, no valid insight into indoor prostitution. This is, on the one hand, an acknowledged factor. Nevertheless, the reduction of prostitution is presented as a fact. But as a simple google research "Escort Sweden" reveals, there exists a broad and easily available offer of sexual services also in Sweden.
- **In Sweden the ban on the purchase of sexual services has reduced human trafficking:** There is no valid data to back up this claim. The most recent GRETA report on Sweden⁷ contains statistics on the number of victims identified from 2009 to 2013, which fluctuated between 11 and 74. Yet, a small number of identified victims does not indicate the actual number of people affected. What such numbers do indicate, however, is how effective mechanisms for identifying victims of human trafficking are: the fewer victims are identified, the less effective the mechanisms. In 2010, the year with the highest number of identified victims in Sweden, the number of victims compared to the population size was similar to that in Germany and Austria and significantly lower than that in the Netherlands⁸ – indicating that the Netherlands has particularly effective measures for

³ This section focuses on the "success stories" taken from the Swedish evaluation report published in 2010, cf. Swedish Institute (2010): "The Ban against the Purchase of Sexual Services. An evaluation 1999-2008" Selected extracts of the Swedish government report SOU 2010:49.

<http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf> (accessed on 30.06.2014)

⁴ This argument is also used by Mary Honeyball; cf. "Report on Prostitution and Sexual Exploitation and its Impact on Gender Equality" (2013/2103 (INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+VO//DE>. In Section B of the Honeyball report, a Resolution of the Committee on Equal Rights and Gender Equality from 4 February 2014, prostitution is even referred to as a "form of slavery".

⁵ Dodillet, Susanne/Östergren, Petra (2013): The Swedish Sex Purchase Act: Claimed Success and Documented Effects, in: Wagenaar, Hendrik /Altink, Sietske/Amesberger, Helga.: Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands, published by Platform 31, The Hague, pp. 107-127.

⁶ Florin, Ola: A Particular Kind of Violence: Swedish Social Policy Puzzles of a Multipurpose Criminal Law, in Sex Res Soc Policy (2012) 9:269–278

⁷ Council of Europe /GRETA (Group of Experts on Action against Trafficking in Human Beings) (2014): Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden. Adopted on 21 March 2014.

http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2014_11_FGR_SWE_en.pdf (accessed on 30.06.2014)

⁸ EUROSTAT (2013): Trafficking in human beings. Eurostat Methodologies and Working papers, 2013 edition. Luxembourg. http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf (accessed on 30.06.2014)

identifying victims of human trafficking. However, in Sweden the equation of prostitution/sexual services with violence and human trafficking has not led to any recognisable improvement in the identification of actual victims of human trafficking.

- ***Demand has decreased; public support for the new legislation has increased:*** This is a claim that is made without any evidence. A critical study published in Sweden⁹ counters this claim. Among other things, it mentions a fictitious advertisement for sexual services which received more than 1000 enquiries within one week. Moreover, it backs up claims of decreasing public support with several investigations and growing calls from politicians (in particular the youth branches of the country's political parties), researchers and society. There does, however, seem to be an increase in the proportion of people who believe that sex workers themselves should also be open to prosecution¹⁰.

Generally it can be seen that abolitionist movements place prostitution on the same level as sexual enslavement, presenting tragic individual cases as being representative of the overall situation. (Self-organised groups of) sex workers are not consulted as part of this debate; the idea of sex workers making a self-determined decision to work in this industry is dismissed as an exceptional occurrence¹¹. A conscious effort is made to ignore any differentiation between human trafficking for the purposes of sexual exploitation and a self-determined decision to work in the sex industry.

Furthermore, there is a careless use of numbers. For example, Alice Schwarzer estimates in her appeal against prostitution¹² that there are around 700,000 sex workers in Germany. At the same time, an article in the newspaper "Die Welt"¹³ criticising the German Prostitution Act reported around 200,000 sex workers in the country, while the Honeyball report uses a figure of 400,000¹⁴.

Often, reports on the success of the Swedish model are accepted without any critical analysis, as was recently the case in a Resolution passed by the Parliamentary Assembly of the Council of Europe¹⁵.

⁹ Dodillet/Östergren (2011), pp. 121-126.

¹⁰ cf. Florin, Ola (2012) 9:269–278

¹¹ This is currently the case in France, where numerous self-organised groups of sex workers have unsuccessfully attempted to counter the government's plans to prohibit prostitution.

¹² EMMA: Appeal Against Prostitution, November/December 2013, p. 22.

http://www.emma.de/sites/default/files/upload/pdf/appell_emma_6_2013.pdf (accessed on 30.06.2014)

¹³ Eigendorf, Jörg: Black Box Prostitution, in: Die Welt (4. November 2013),

<http://www.welt.de/politik/deutschland/article121480296/Augsburg-mit-hoechster-Dichte-von-Prostituierten.html> (accessed on 30.06.2014).

¹⁴ Honeyball report (2013/2103 (INI)), Section AA.

¹⁵ Resolution of the Parliamentary Assembly of the Council of Europe 1983: "Prostitution, trafficking and modern slavery in Europe" (2014) Section A.5.

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20716&Language=EN> (accessed on 30.06.2014)

Dangers for sex workers of abolitionist legislature¹⁶

- The general perception of sex workers as victims removes their power, yet it does not lead to them receiving victims' rights or a guaranteed income. As already mentioned, in Sweden there are only few identified victims of human trafficking; their victim status depends on whether or not they are willing to testify in criminal proceedings. Sweden's laws on residency also do not reflect this perception of sex workers as victims – earnings from prostitution are considered “dishonest income” and can lead to the termination of a sex worker's right to residence in the country. Therefore, there is the risk of sex workers being additionally stigmatised as being weak and unable to defend themselves without at the same time receiving genuine and comprehensive support¹⁷.
- Sex workers have become less accessible, both for police as well as for social programmes and healthcare measures¹⁸. This has led to criticism of the Swedish model by the Swedish “discrimination ombudsman” and UNAIDS.
- Street prostitution has decreased by between one half and one third, but this has led to an increase in the pressure on sex workers – with fewer clients on the streets, it is harder for sex workers to negotiate. Moreover, sex workers are forced to act quickly, giving them less time to judge clients. Clients know the position sex workers are in, making it easier for them to drive down prices and exert pressure concerning the location and nature of sexual services.
- When it comes to indoor prostitution, the working conditions are, ultimately, unknown – there is no insight into this area of the industry. Since renting a room for prostitution purposes can lead to the rental contract being terminated, so it seems logical that also new structures (e.g. sexual services offered on ferries) have been created, altogether resulting in an increase in the dependence of sex workers on middle men.

In summary, there is currently no scientific evidence that making it illegal for clients to pay for sexual services can provide effective protection for sex workers against exploitation or violence. The precarious economic situation of most sex workers is not improved by such a ban, meaning that in many cases working in the sex industry continues to offer a better way of earning money than working in other areas. At the same time, a ban increases the risk of sex workers becoming more dependent on middle men and being more afraid and reluctant to go to the police or an advice centre if they become the victim of violence or exploitation.

Even if every system can exert only limited influence on the industry, a system of legalisation and regulation offers better chances of influencing and shaping working conditions. **Provided that the interests and the protection of sex workers are (also) taken into consideration, regulating the sex industry can, therefore, lead to a real improvement in the living and working conditions of sex workers.**

¹⁶ See in particular the study by Wagenaar, Hendrik /Altink, Sietske/Amesberger, Helga (2013) already quoted in this report: “Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands”, published by Platform 31, The Hague

¹⁷ cf. Florin, Ola (2012) 9:269–278

¹⁸ cf. Wagenaar/Altink/Amesberger (2013), in particular p. 124 ff.