

LAW ABOVE ALL AND COURT PRACTICES



Impact of the criminalization
of sex work on the human rights
of sex workers and trafficked
persons in Serbia

Project: *Law Above All and Court Practices*

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&

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ABBREVIATIONS

Bio-BSS	bio-behavioral surveillance survey
CC	Criminal Code
ECDC	European Centre for Disease Prevention and Control
ECHR	European Convention on Human Rights
ECrHR	European Court on Human Rights
FRY	Federal Republic of Yugoslavia
HIV	Human Immunodeficiency Virus
LF	Law on Foreigners
LPOP	Law on Public Order and Peace
NGO	non-governmental organization
NSWP	Global Network of Sex Work Projects
NZPC	The New Zealand Prostitutes' Collective
STI	sexually transmitted infections
SW	sex workers
SWAN	Sex Workers' Advocacy Network for Central and Eastern Europe and Central Asia
TIP	Trafficking in Persons Report issued by the U.S. State Department
TVSW	trafficking victims forced to engage in sex work
UNAIDS	the Joint United Nations Program on HIV/AIDS
UNGASS	The United Nations General Assembly Special Session



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INTRODUCTION

This report is the result of a research carried out by JAZAS, Association Against AIDS, and ASTRA, Anti-Trafficking Action, with the support of the sex workers' rights organization Sloboda Prava (Equal Rights). The research looks into the impact of the laws in Serbia that criminalize sex work on the protection of the human rights of both sex workers and trafficked persons.

For the research use was made of the Right Guide, a tool to assess the human rights impact of anti-trafficking laws and policies. It presents a step-by-step method to investigate and analyze the human rights effects of a law, policy or measure, link these to the human rights obligations of the government, and use the outcomes to more effectively advocate for rights-based and evidence-led policy reforms. The tool is built on a number of key principles:

- **State accountability:** States have undertaken binding human rights commitments by ratifying human rights treaties. Governments can be held accountable for living up to their human rights promises.
- **Knowledge/evidence based action:** the tool aims to go beyond ideological debates. It requires rigorous data-collection as a basis for analyzing and understanding the actual impact of laws and policies on the human rights of those affected by them.
- **Participation:** the tool requires the participation of groups affected by the policies concerned. This is a fundamental principle and an essential element in the process of collecting evidence and understanding the impact of a policy.
- **Bridging movements and building alliances:** in many countries anti-trafficking organizations, sex workers' rights, migrants' rights and human rights organizations do not work together. The tool aims to facilitate bridging these divisions by presenting human rights as applying to all these different groups and movements in specific, yet universal, ways.

In this case the focus was not on specific anti-trafficking laws and policies, but on the laws that criminalize sex workers and sex work. Yet, these have far reaching consequences for the protection of the human rights of both sex workers and trafficked persons, in particular their right to protection against violence, discrimination and arbitrary arrest and detention and the right to health, as well as on their access to justice.

Although from the perspective of the universality of human rights, it may seem logical that anti-trafficking and sex workers' rights organizations work together, in practice this rarely happens. One of the reasons is that anti-trafficking measures too often have been used to harm the human rights of sex workers. That makes this research, based on the joint efforts of JAZAS, ASTRA and Sloboda Prava, very special. I would like to praise them for their courageous initiative and sincerely hope that the research will help to bridge the gap between the two movements. Because in the end defending rights and combating violence and abuse are two sides of the same coin.

Marjan Wijers, Rights4Change

February 2016



1. About this project

Elena Drezga, JAZAS

The project *Law Above All and Court Practices* was financed by the Royal Netherlands Embassy in Belgrade and supported by the Open Society Foundation New York. The project was implemented by JAZAS (Association Against AIDS) and ASTRA, Anti-Trafficking Action, with the support of Sloboda Prava/Equal Rights in the period 2012–2014 in Belgrade.

JAZAS was founded in 1991 and is the first NGO which was active in the field of AIDS prevention in the territory of the former Yugoslavia (then the Yugoslav Association Against AIDS). It has numerous years of experience in the development and implementation of HIV/STI prevention programs among various population groups, but especially among sex workers. It is also the first organization in Serbia that developed a special program for sex workers, tailored to their particular needs.

ASTRA was founded in 2000 and is the first organization which addressed the problem of trafficking in human beings in Serbia. As the leader in the field of prevention of human trafficking in our country, since then ASTRA has dealt with the issue comprehensively, addressing the different kinds of trafficking as well as different groups of victims, including women, men and children. Next to prevention, their work includes education and raising public awareness, providing direct assistance and reintegration services to victims, research and reporting, advocacy and supporting the development of a functional and effective system for combating human trafficking which fully respects the human rights of victims.

Sloboda Prava/Equal Rights was founded in 2011 by sex workers in Belgrade. The primary goal of the organization is to protect the human rights of male, female and transgender sex workers. This is the first organization in the Republic of Serbia which is entirely led by sex workers.

The overall goal of the project “Law Above all and Court Practices” is to contribute to policies and practices which respect the human rights of both victims of human trafficking and sex workers in Serbia.

The conflation of human trafficking and sex work leads to the development and implementation of laws and policies which negatively affect sex workers. At the same time, the implementation of anti-prostitution policies is an obstacle to successfully combating human trafficking. The criminalization and penalization of sex work provides an excellent basis for human rights abuses of sex workers all over the world. Through the creation and implementation of restrictive laws on sex work, governments in effect create a legitimate framework to control and punish sex workers.

In order to better understand the consequences of the existing laws relating to sex work, the project team carried out an analysis of the judicial practice in regard to the prosecution of sex work and human trafficking under the Law on Public Peace and Order and the Criminal Code. The emphasis was put on potential failures of the system to identify and recognize victims of trafficking, as well as on the (dis)respect for the human rights of sex workers and trafficked persons. The effects of the judicial practice are analyzed from the perspective of both trafficking victims and sex workers.

The research was carried out with the help of the Right Guide, a tool to assess the impact of anti-trafficking laws and policies on the human rights of trafficked persons, sex workers and other groups affected. The outcomes of the project form the basis for a concerted advocacy of various NGOs to distinct between the concepts of human trafficking and sex work in the media, the law and judicial practice.

A detailed study was made in 2013 of all cases related to sex work which had been processed by the Magistrates Court in Belgrade, as well as by the first instance and appellate courts in Serbia during the period 2011-2012. In addition, the research involved interviews with victims of human trafficking who had been forced to engage in sex work, as well as interviews with individuals who were voluntarily engaged in sex work. We also conducted interviews with the judges of the Magistrates Court in Belgrade in order to cover all viewpoints on the problem of the (non)fulfillment of sex workers' human rights and the distinction between consensual and forced sex work. The project was carried out in Belgrade, but the research included all cases related to sex work which were processed under the Criminal Code throughout Serbia.

The first stage of the project included a training on the use of the Right Guide by Rights4Change, specifying work protocols and research instruments, the training of field teams for data collection and the establishment of cooperation with relevant partners. During the implementation phase, we collected the quantitative and qualitative data necessary for the analysis. The third phase consisted of an analysis of the collected data and the presentation of the preliminary results to the public at a Round Table in Belgrade, in December 2013. During 2014 and 2015, we conducted a more in-depth analysis of the data and wrote the final report.

The roles and responsibilities within the project were clearly defined and coordinated. Representatives of JAZAS, ASTRA and Rights4Change were delegated for the project coordination and a Memorandum of Understanding was signed between the organizations involved which stipulated any legal issues of the project. Field research teams were formed, as well as the team for data processing and analysis. The field research team was divided into those in charge of the collection of quantitative data and others in charge of the collection of qualitative data. The team for data processing and analysis processed the collected data in accordance with a defined methodology.

One particular success of the project was the active participation of the sex work community in Belgrade in the research. The research also increased the level of awareness of sex workers about the possibilities to exercise their human rights, which are guaranteed by the international conventions that Serbia ratified.

2 Existing legislation on sex work and human rights

Milena Vasic, YUCOM - Lawyers' Committee for Human Rights

This introduction includes an overview of the constitutional and legal status of sex workers in the legal system of the Republic of Serbia and of the basic human rights which apply in legal proceedings against sex workers as they do to other citizens, in particular the right to a fair trial. The latter is particularly important as sex work is criminalized in Article 14 of the Law on Public Order and Peace (LPOP), which reads as follows:

„Whoever engages in prostitution or provides premises for prostitution shall be punished by imprisonment not exceeding 30 days“¹

This means that sex workers themselves are punishable under Serbian law.

The Constitution of the Republic of Serbia is based on the principle of the rule of law and the inalienability of human rights.² Therefore, all citizens of Serbia, including sex workers, are entitled to the protection of their fundamental human rights. When we talk about the legal status of any social group, basic human rights should be a starting point in any consideration.

The rule of law provides a legal, political and institutional framework which guarantees respect for fundamental human rights and freedoms within a community. Therefore, the protection of human rights and fundamental freedoms is the foundation of the rule of law. That is why the Constitution guarantees the immediate application of these rights, which are prescribed by the Constitution as well as by broadly accepted rules of international law, international treaties ratified by Serbia and domestic laws (Article 16:1). This means that even without specialized laws, the Constitution obliges the courts and other state authorities to respect fundamental human rights.

As stipulated by the Constitution, the constitutional guarantees of human rights have the purpose of preserving human dignity (Article 19:1). This makes clear that human dignity is inviolable under the Constitution and that everyone is obliged to respect and protect it. The importance of human dignity in domestic law is reflected in the fact that human dignity as a fundamental value is stressed in no less than four articles of the Constitution (Articles 19, 23, 28 and 202). In addition to the purposes of the constitutional guarantees in Section 19, there is a special right to **dignity and the free development of personality** in Section 23, as well as the obligation to treat a person deprived of his or her liberty humanely and with respect for their personal dignity in Section 28. The latter is extremely important bearing in mind the delicacy of the situation when someone is deprived of his or her liberty. Finally, Section 202 of the Constitution excludes the possibility of derogations from certain rights, including the right to human dignity, in times of war or state of emergency, which only confirms what is already stated in several documents - that human dignity is a fully protected human right.

Of great importance for the topic of the study is the constitutional **prohibition of discrimination on any grounds**(Article 21:1), which, due to the importance of the principle of equality of

¹ Law on Public Order and Peace. Official Gazette Republic of Serbia. No. 51/92, 53/93, 67/93, 48/94, 101/2005 – as amended 85/2005 – as amended.

² Constitution of the Republic of Serbia. Official Gazette Republic of Serbia. No. 98/06. Available at: http://paragraf.rs/propisi/ustav_republike_srbije.html.

all individuals in the legal system, guarantees equal treatment before the state authorities to any individual. The purpose of this provision is to ensure that all the rights guaranteed by the Constitution are enjoyed on equal terms by all citizens.

Furthermore, the **prohibition of slavery, servitude and forced labor** (Article 26:1) as a constitutional guarantee is very important in the context of sex work, as it addresses the question of human trafficking for sexual exploitation. The Constitution explicitly prohibits human trafficking and holding a person in slavery: *“Each individual shall be guaranteed the right to liberty and personal security”* (Article 27:1).

According to the Constitution personal freedom may only be restricted when prescribed by law and can be imposed only by the court, while putting special emphasis on those rights of individuals (e.g. the right to appeal) which are absolute, even when they are deprived of their personal freedom or when their freedom is limited. The specific rights all persons enjoy in the case of deprivation of their freedom include:

- the right to an urgent procedure (“immediate”, as stated in the Constitution);
- the right to be informed of the reasons for their arrest;
- the right to be informed of the offense they are charged with;
- the right to have the reasons for their apprehension and the accusations they are charged with communicated in a language they understand;
- the right to inform a person of their choice about the deprivation of their freedom;
- the right to be informed of their rights;
- the right to appeal to a court against the deprivation of their liberty;
- moreover, the court must decide on the appeal in an urgent procedure.

The exceptions to the rule that deprivation of liberty can be ordered only by the court are contained in a separate article of the Constitution. They refer to the situation in which another governmental body (e.g. the police) can immediately restrict the personal freedom of an individual. In this case, a person deprived of his or her liberty shall have additional rights, including:

- the right to remain silent (para. 1);
- the right to be interrogated in the presence of a defense counsel (para. 1);
- the right to an individual choice of an attorney (para. 1);
- the right to be brought before the competent court without delay and no later than 48 hours (para. 2);
- the right to be released if a competent court does not order a custody measure (para. 2).

The right to a fair trial is among the rights that are absolute and cannot be derogated from under any circumstances, including in times of war or a state of emergency. This principle includes a set of rights which aim to guarantee each individual a fair trial:

“Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law, within reasonable time, which shall pronounce judgment on their rights and obligations, the grounds for suspicion resulting in the initiated procedure and the accusations brought against them...” (Article 32:1)

The independence and impartiality of the court are elaborated in more detailed provisions on the status of courts and judges in special laws (the Law on Judges, the Law on the Organization of the Courts, and other laws).³ Furthermore, the Constitution regulates the right to public proceedings, as well as the conditions for its limitation which are itemized, as well as the right to free assistance of an interpreter when a person does not speak or understand Serbian.

The right to a fair trial is also guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), which is ratified by Serbia and is, according to our Constitution, directly applicable.⁴ Article 6 of the ECHR guarantees the right to a fair trial in civil and criminal proceedings. However, since in the Law on Public Order and Peace prostitution is a misdemeanor (and not a crime), the guarantees contained in Article 6 of the European Convention do not automatically apply.

In the case of *Engel and Others v. the Netherlands*,⁵ the European Court of Human Rights established three criteria for determining whether proceedings are 'criminal' within the meaning of Article 6 of the Convention, namely (a) the domestic classification, (b) the nature of the offence, and (c) the severity of the potential penalty which the defendant risks incurring. Deprivation of liberty is a penalty that usually makes a provision 'criminal' within the meaning of article 6(1), rather than disciplinary. In the case of *Engel and Others v. the Netherlands*, the Court concluded that

"in a society that subscribes to the rule of law, deprivation of liberty which is imposed as a penalty falls within the "criminal" sphere, except for those deprivations of liberty, which, by their nature, duration or manner of execution are not significantly harmful. The gravity of the offence in a given case, the traditions of the Contracting States and the emphasis which the Convention gives to respect for the physical liberty of persons, require it to be so"(para 82).

Thus, although the Convention allows states as guardians of the public interest to distinguish between criminal law and disciplinary law, it is the substance of the proceedings that determine whether a given charge counts as 'criminal' in the meaning of article 6, regardless of how the offence is classified in the internal law of the Member State. As stated by the Court:

"If the Contracting States were able at their discretion to classify an offence as disciplinary instead of criminal [...] the operation of the fundamental clauses of Articles 6 and 7 would be subordinated to their sovereign will. A latitude extending thus far might lead to results incompatible with the purpose and object of the Convention" (para 81).

This was, amongst others, confirmed in the case of *Deweere v. Belgium*,⁶ where the Court considered the case to be of a criminal character, as the charge could be defined as *"an official notification which the state gives to the individual on allegations that this person has committed a criminal*

³ The Law on Judges. Official Gazette Republic of Serbia. No. 116/2008, 58/2009 - decision of the Constitutional Court, 104/2009, 101/2010, 8/2012 - decision of the Constitutional Court, 121/2012, 124/2012 - decision of the Constitutional Court, 101/2013, 111/2014 - decision of the Constitutional Court, 117/2014, 40/2015 i 63/2015 - decision of the Constitutional Court; The Law on Organization of Courts. Official Gazette Republic of Serbia. No. 116/2008, 104/2009, 101/2010, 31/2011 - as amended, 78/2011 – as amended, 101/2011 and 101/2013.

⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms. Official Gazette Republic of Serbia and Montenegro – International Agreements, no. 9/2003.

⁵ ECtHR, *Engel and Others v. the Netherlands*, 8 June 1976, Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, series A, no 22.

⁶ ECtHR, *Deweere v. Belgium*, 27 February 1980, Application no 6903/75, para. 42, 44 and 46.

offense", while referring to the closely related test, namely whether *"there is a situation that significantly affects the suspect due to the very existence of the suspicion"* (para 46).

In view of the case law of the European Court of Human Rights, we can therefore conclude that Article 14 of the Law on Public Order and Peace which criminalizes prostitution, should be interpreted as a provision of criminal, rather than misdemeanor law, given the nature of the sanction (imprisonment), its gravity and its range. This implies that the guarantees of a fair trial under the European Convention apply to proceedings against sex workers, regardless of the offence being qualified as a misdemeanor under national law and not as a criminal offence.

The aforementioned rights certainly do not represent an exhaustive legal analysis of this topic, but understanding them is necessary in order to deal with the legal position of any citizen or citizens in Serbia, including the position of sex workers. Thereby we should particularly bear in mind the importance that our Constitution gives to human dignity, which is in these procedures in the most vulnerable and the most sensitive situation.

3 The distinction between sex work and trafficking

Elena Drezga, JAZAS

For years, the term 'prostitution' has been identified with the term 'human trafficking for sexual exploitation'. For us who conduct intervention and prevention programs among populations at increased risk of HIV, particularly programs for sex workers, it was crucial to understand the concept of voluntariness in the context of providing services in sex work.

Sex work is the consensual provision of sexual services among adults under conditions which are settled between the provider of services and the customer. By definition, sex work means that an adult male, female or transgender person who participates in the exchange of these services, has agreed to it (voluntarily), which distinguishes it from human trafficking.⁷ (1, 2)

Human trafficking (or trafficking in persons), according to the UN Trafficking Protocol (also mentioned Palermo Protocol⁸) is defined as

"the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs".

The Serbian Criminal Code defines trafficking as follows:

Article 388 CC - Human trafficking

(1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person aimed at exploiting such person's labor, forced labor, commission of offenses, prostitution, other forms of sexual exploitation, begging, pornography, establishing slavery or slavery-like relation, the removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years.

(2) When the offense specified in Paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offense even if there was no use of force, threat or any of the other mentioned methods of perpetration.

(3) If the offense specified in Paragraph 1 of this Article is committed against a minor, the offender shall be punished by imprisonment of not less than five years.

(4) If the offense specified in Paragraphs 1 and 3 of this Article resulted in grave bodily injury of a person, the offender shall be punished by imprisonment of five to fifteen years.

⁷ UNAIDS Guidance Note on HIV and Sex Work. Geneva, UNAIDS, April 2012. [Acceded on Aug, 20 2015]. Available at: http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf;

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

(5) If the offense specified in Paragraphs 1 and 3 of this Article resulted in death of one or more persons, the offender shall be punished by imprisonment of not less than ten years.

(6) Whoever habitually engages in offenses specified in Paragraphs 1 to 3 of this Article or if the offense is committed by a group, shall be punished by imprisonment of not less than five years.

(7) If the offense specified in Paragraphs 1 to 3 of this Article is committed by an organized group, the offender shall be punished by imprisonment of not less than ten years.

(8) Whoever knew or could have known that a person is the victim of trafficking, but nevertheless made use of her/his position or facilitated another person to make use of her/his position for the purpose of exploitation referred to in Paragraph 1 of this Article, shall be punished by imprisonment of six months to five years.

(9) If the offense referred to in Paragraph 8 of this Article was committed against a minor of which fact the offender was or could have been aware, such offender shall be punished by imprisonment of one to eight years.

(10) The consent to exploitation or to the establishment of slavery or slavery-like relation referred to in paragraph 1 of this Article has no bearing on the existence of criminal offense referred to in Paragraphs 1, 2 and 6 of this Article.

In order to better understand the two complex problems in the territory of Serbia which are the focus of our research - the unclear interpretation of the distinction between sex work and human trafficking in the framework of the relevant institutions and the enforcement of laws relating to sex work - we have put them in the context of the working documents of the Global Network of Sex Workers (hereinafter: NSWP).

The NSWP was established in 1990 by sex workers' rights activists worldwide. Although the expert community had been refusing to recognize the existence of active and politically engaged people in the sex work community for years, NSWP has managed to provide a significant contribution to the global response to HIV/AIDS. It also managed to fight for the institutionalization of the term "sex worker" instead of the widespread term "prostitute". The importance of replacing one word with another goes far beyond political correctness, because it introduces the concept of labor and labor rights, positioning it as a central problem which the community of sex workers faces.

The questions that the NSWP raised at the beginning of the '90s, when it opened a political dialogue with UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria - which were presented at international conferences, starting with the UNGASS in 1995 - are still essential for the sex workers' community. They are related to the causes of stigmatization of sex work, the protection of the human rights of sex workers and the strict separation of the concepts of human trafficking and sex work. As the UNAIDS "Guidance Note on HIV and Sex Work", revised in April 2012, states:

"Sex workers are often victimized by violence, including gender-based violence, perpetrated by clients, controllers, managers of sex work establishments, law enforcement officers and other government officials. Sex workers may also experience violence and discrimination from intimate partners, families, neighbors, partners and work colleagues. They are sometimes coerced into providing sex to police in exchange for freedom from detainment, arrest and fines. Experience teaches that violence towards sex workers can be reduced when law enforcement

*agencies, the judiciary, health services, and other arms of government are engaged and cooperate fully with sex worker organizations and other civil society groups.*⁹

UNAIDS recognizes the criminalization of sex work as a major structural obstacle to the systematic implementation of HIV prevention programs and to facilitating universal access to medical treatment and care, as among others stated in the 2014 report on the consultancy meeting on the prevention of STIs among sex workers of the European Centre for Disease Prevention and Control (ECDC) in Stockholm.¹⁰

Sex work is regulated in different ways in the territory of Europe and the world. Roughly, we can distinguish between criminalization vs. decriminalization; penalization vs. depenalization and consequently the legalization of sex work; and the Swedish or Nordic model.¹¹

Criminalization vs. Decriminalization of Sex Work

Laws that criminalize sex work (prostitution) can be directed towards the punishment of sex workers, customers, third parties, colleagues, families and friends of sex workers. When referring to the punishment of sex workers, it can be related to the offering of sexual services, advertising, the sale of sexual services (in the street or in the premises) and sex workers' unions. The rationale for criminalization of sex work usually states "protecting society from public menace". These laws reinforce the stigma on sex work and people engaged in sex work, are usually carried out in a discriminatory manner and endanger the health and privacy of sex workers.

Decriminalization of sex work means the absence of laws regulating sex work, including both individual sex workers and sex workers who work together, as well as sex businesses or brothels. That includes impunity for all parties, from sex workers through managers in sex work to third parties, clients, family and partners.

Penalization vs. Depenalization of Sex Work

Penalization of sex work refers to laws on the violation of public peace and order. Sex work in this case falls under administrative penalties that may be imposed in the form of a fine or imprisonment. Although it is one of the "minor offenses" compared to other criminal activities, it still exposes sex workers to abusive behavior of law enforcement officers and other parties.

Depenalization is often associated with the decriminalization of sex work, but these terms are not synonymous. Depenalization refers to the removal of those provisions of the relevant laws

⁹ UNAIDS Guidance Note on HIV and Sex Work. Geneva, UNAIDS, April 2012. [Acceded on Aug, 20 2015]. Available at: http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.

¹⁰ Meeting Report: Expert consultation meeting: sexually transmitted infections among sex workers 21-22 October 2014, Stockholm, Sweden. Stockholm, European Centre for Disease Prevention and Control (ECDC). [Acceded on July, 19 2015]. Available at: http://www.nswp.org/sites/nswp.org/files/Sex%20Work%20Expert%20Consultation%20Meeting%20Report_brief_v4.pdf.

¹¹ Briefing paper 07: *Sex Work and the Law – Understanding Legal Frameworks and the Struggle for the Sex Work Law Reforms*. Edinburgh, NSWP. [Acceded on July, 19 2015]. Available at: <http://www.nswp.org/sites/nswp.org/files/Sex%20Work%20&%20The%20Law.pdf>.

relating to administrative penalties for sex work, whilst decriminalization means removing all provisions from the Criminal Code related to sex work.

Legalization

Legalization of sex work allows engaging in sex work in a particular territory with the obligation of complying with specific regulations which are a prerequisite for legal engagement in sex work. The legalization of sex work, in practice, might bear heavy restrictions relating to the place and manner of conduct of sex work, and potentially allows extensive control by the police and the state over persons engaged in sex work.

The Swedish Model

In 1999, Sweden passed a law criminalizing the purchase of sex services with the intention that the law should repeal the demand for sexual services and thereby allegedly prevent human trafficking. As justification, the then Minister for Integration and Gender Equality stated that *“prostitution and human trafficking for the purpose of providing sexual services is a serious obstacle to both social and gender equality”*.¹²

In Sweden, sex work is considered as violence against women and oneself; it is also believed that sex work is inevitably and immutably linked with violence, abuse and the exploitation of women. It is believed that all sex workers are female, that the clients of sex workers are men and that sex workers are their victims. This argument is based on a wider international perspective of a specific part of the feminist movement, referred to with different terms like “radical feminism” and “(neo)abolitionist feminism”, including several variations and combinations such as “radical abolitionist feminism” and so on. NSWP uses the term “fundamentalist feminism” although it is not used in the general Swedish discourse.

“Reducing demand” for sexual services by punishing the clients as a means to prevent human trafficking, became known as the Swedish model, which was very intensively promoted by the Swedish government and the United States. An example is the 2011 “Report of the Ministry of Foreign Affairs of the United States on human trafficking” (TIP-report), which states that “if no one paid for sexual services, human trafficking would not exist.” The global sex work community disputes this model. It does not consider it to be based on evidence and finds no basis for the assertion that the accessibility of sex services leads to an increase in human trafficking.

Recommendations and Conclusions

On 17 December 2013, NSWP announced the results of a global consultation entitled “Consensus Statement on Sex Work, Human Rights and Law”.¹³ During 2012 and early 2013 an extensive

¹² *The Real Impact of the Swedish Model on Sex Workers: #4 Impact of Other Legislation and Policy – The Danger of Seeing the Swedish Model*. Edinburgh, NSWP. [Acceded on July, 19 2015]. Available at: <http://www.nswp.org/sites/nswp.org/files/Advocacy%20Toolkit%204.pdf>

¹³ *Consensus Statement On Sex Work, Human Rights and the Law*. Edinburgh, NSWP. [Acceded on Aug, 19 2015]. Available at: <http://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

research was conducted which involved 160 sex work organizations from more than 60 countries worldwide, representing a global advocacy platform for sex work, human rights and the law and including sex workers of all genders, class, race, ethnicity, health status, age, nationality, citizenship, language, education levels, disabilities, and many other factors. One of the greatest assets of this research was the joint work of sex workers from around the world on the task of deliberating and establishing priorities in the legal regulation of sex work (given the fact that local laws on sex work vary widely). Based on the findings, eight fundamental rights were formulated which the sex workers community advocates to be respected in their entirety:

1. Right to associate and organize
2. Right to be protected by the law
3. Right to be free from violence
4. Right to be free from discrimination
5. Right to privacy and freedom from arbitrary interference:
6. Right to health
7. Right to move and to migrate
8. Right to work and free choice of employment.

All these rights have been recognized and ratified by most countries as fundamental human rights.

Taking into account the accumulated evidence on the legal frameworks in which sex work is being performed and how it reflects on the community of sex workers across the globe, NSWP emphasized the core values on which laws which regulate sex work should be based:

1. Acceptance of sex work as work
2. Opposition to all forms of criminalization and other legal oppression of sex work (including sex workers, clients, third parties¹⁴, families, partners and friends)
3. Supporting self-organization and self-determination of sex workers.

As stated in its briefing paper on Sex Work and the Law:¹⁵

“Sex work should be treated like any other work; sex workers should be provided with the same level of legal protection enjoyed by any other employee and entrepreneur. Sex work should be subject to the same labor laws, health and safety at work, as well as taxation and public health provisions. Sex workers should enjoy equal protection from state authorities (police, administration, judiciary) as all other citizens, but with the necessary existence of a law that prohibits discrimination on the basis of occupational choices. The law prohibiting discrimination on the basis of occupational choices does not necessarily refer only to sex workers, but can also be applied to police officers, nuns, civil servants and so on.” (NZPC, New Zealand)”

¹⁴ The term ‘third parties’ includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.

¹⁵ Briefing paper 07: *Sex Work and the Law – Understanding Legal Frameworks and the Struggle for the Sex Work Law Reforms*. Edinburgh, NSWP, p. 14. Available at: <http://www.nswp.org/sites/nswp.org/files/Sex%20Work%20&%20The%20Law.pdf> [Acceded on July, 19 2015].

4 Violations of human rights against sex workers

Sladana Baroš, Institute of Public Health 'Dr Milan Jovanović Batut' and *Elena Santovac*, JAZAS

During 2007-2009, SWAN (Sex Workers' Advocacy Network for Central and Eastern Europe and Central Asia), a network representing sex workers in Central and Eastern Europe and Central Asia, conducted a research on violations of the human rights of sex workers¹⁶. The study provided an insight into the high level of violence against sex workers in the territory of Central and Eastern Europe and Central Asia and emphasized the need for systematic documentation of human rights violations in this population. Consequently, four countries were chosen to carry out this pioneering research. Apart from Serbia, Macedonia was the first to start documenting cases, the Kyrgyz Republic and Ukraine followed.

In the beginning of 2011, JAZAS received financial support from the Open Society Foundation New York after which the documenting of cases of violation of sex workers' human rights in Serbia commenced. For this purpose, special procedures and forms were developed and the Macedonian database was adapted, in order to allow easier processing and comparing of data. JAZAS's team trained four representatives from the community of sex workers to work on documenting cases. The procedure of documenting included conducting an individual interview with the person who reported the violence/ discrimination /abuse. With the consent of the person, a special form (questionnaire) was filled out with information on the specific reported case. The form would then be handed over to the person in charge of data management for reviewing and entering the information into the database. Upon the completion of the interview, the person who had experienced violence in the past was provided with support (psychological or legal), according to their needs.

For the purposes of the project, violence was defined as a violation of personal integrity and classified according to the type of violation as physical (any violation of the physical integrity of persons), psychological (any violation of the psychological integrity of persons, including verbal, emotional, and similar forms of violence), sexual (sexual abuse, rape and harassment) and economic (economic violation of the integrity of persons, i.e. seizure, usurpation and destruction of property and goods, as well as blackmail and extortion).

Analysis of cases of human rights violations

In the period from 2011 to 2013, a total of 23 people reported various human rights violations to JAZAS, which were further documented and processed. All persons in this period worked in the territory of Belgrade. In relation to sex, predominantly males reported experiencing violence (Chart 1). In relation to gender, transgender persons (transwomen) formed the majority (Chart 2). Of the total number of persons, 4.3% of persons did not report sex and/or gender.

¹⁶ *Arrest the Violence: Human Rights Violations Against Sex Workers in 11 Countries in Central and Eastern Europe and Central Asia*. Budapest: SWAN, December 15 2009. [Accessed on August 1, 2015]. Available at: <http://swannet.org/node/1639>.

Figure 1. Sex of persons who reported experiencing violence

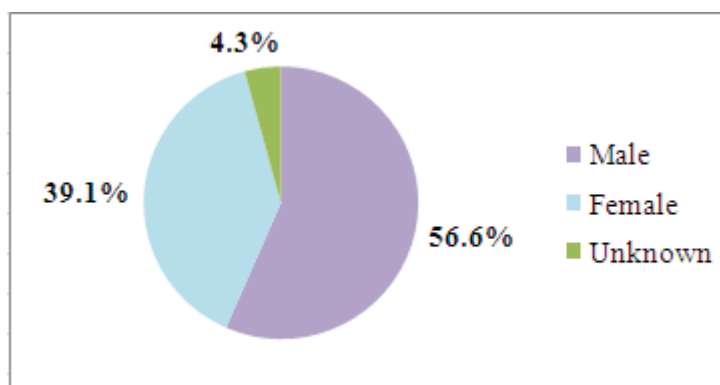
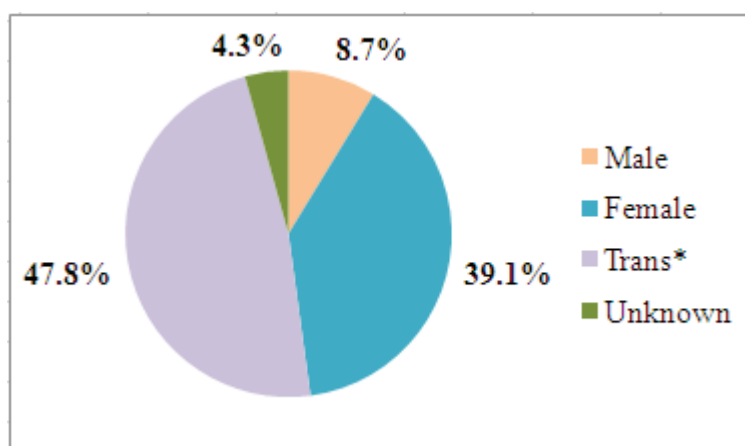


Figure 2. Gender of persons who reported experiencing violence



The average age of persons who reported some form of violation of human rights was 33.2 (ranging from 21 to 50). With regard to education, the majority had completed primary or secondary education, a minor number were without any education. Approximately 22% did not report their educational level (Figure 3). In terms of ethnicity, most common are persons of Serbian and Roma ethnicity (Figure 4). In regard to marital status the majority reported to be single (Figure 5).

Figure 3 Education of persons who reported violation of human rights

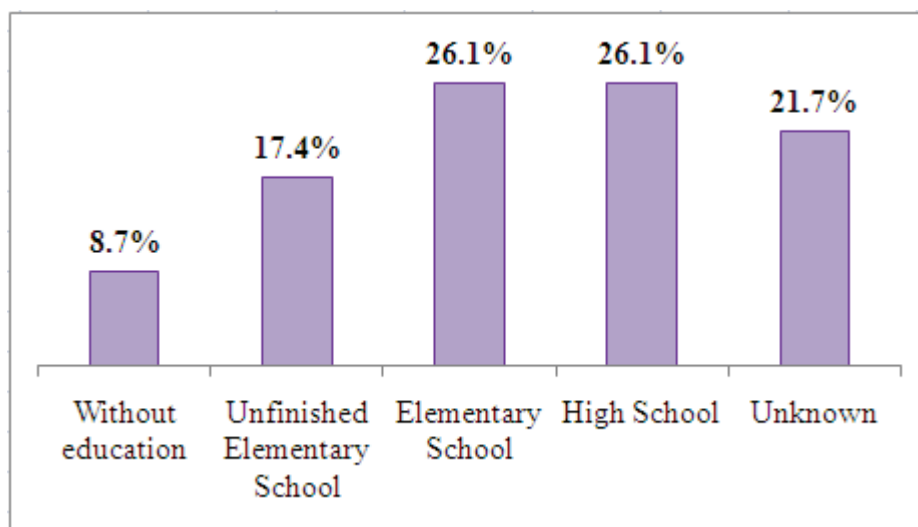


Figure 4 Ethnic identities of persons who reported violation of human rights

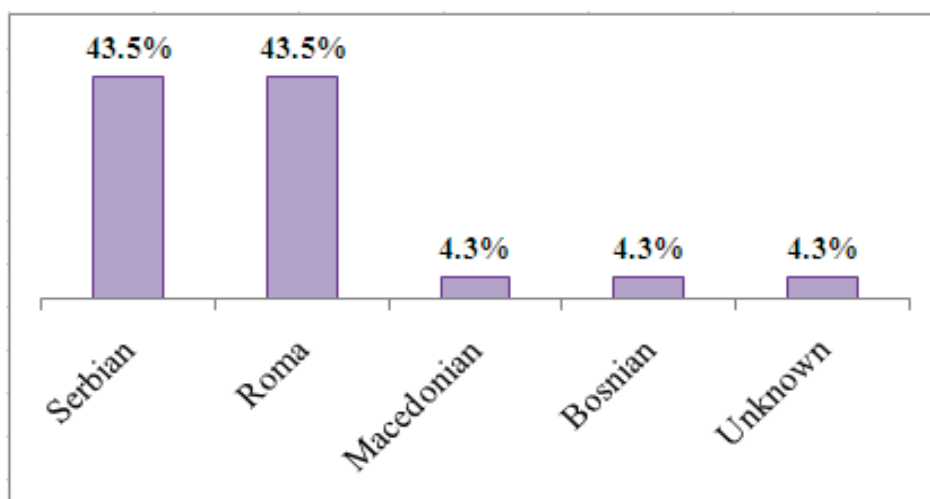
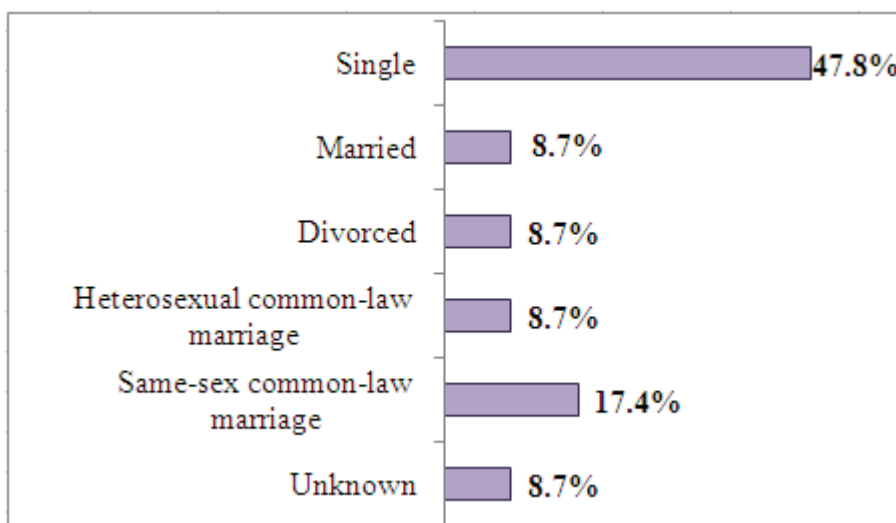
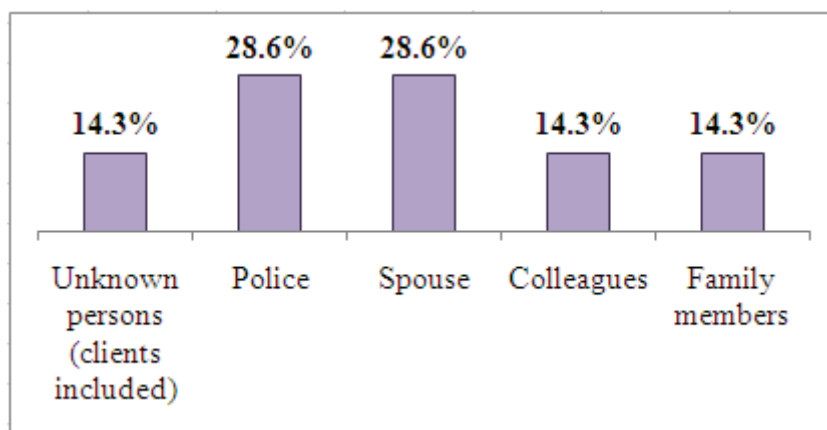


Figure 5 Marital statuses of persons who reported violation of human rights



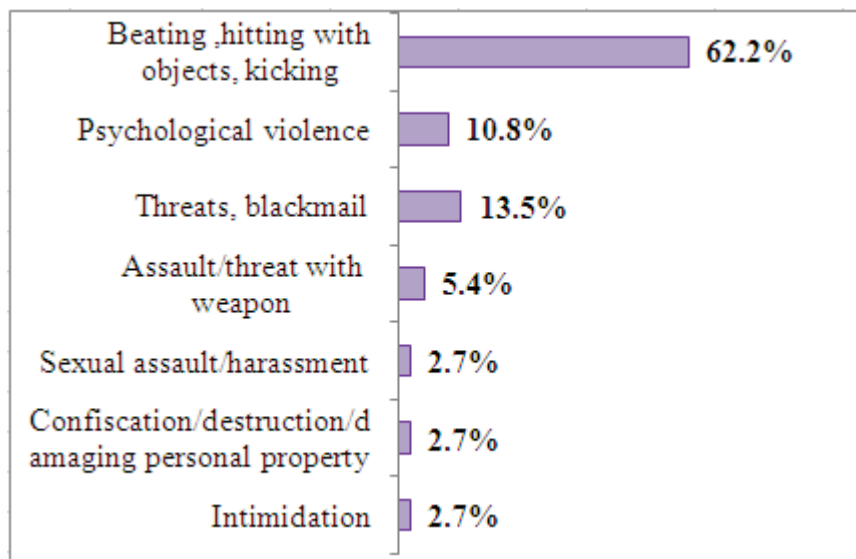
The total number of reported cases of human rights violations was 74 in the observed period of two years. The average number of human rights violations is 3.21 per person, with a minimum of 1 case to a maximum of 12 cases per person. In the majority of cases the perpetrator of violence was either a police representative or a spouse/domestic partner. Also, an equal number reported that they had suffered violence from colleagues, family members and unknown persons (including clients) whom they had encountered in the workplace (Figure 6).

Figure 6. Distribution of cases of discrimination according to the perpetrator



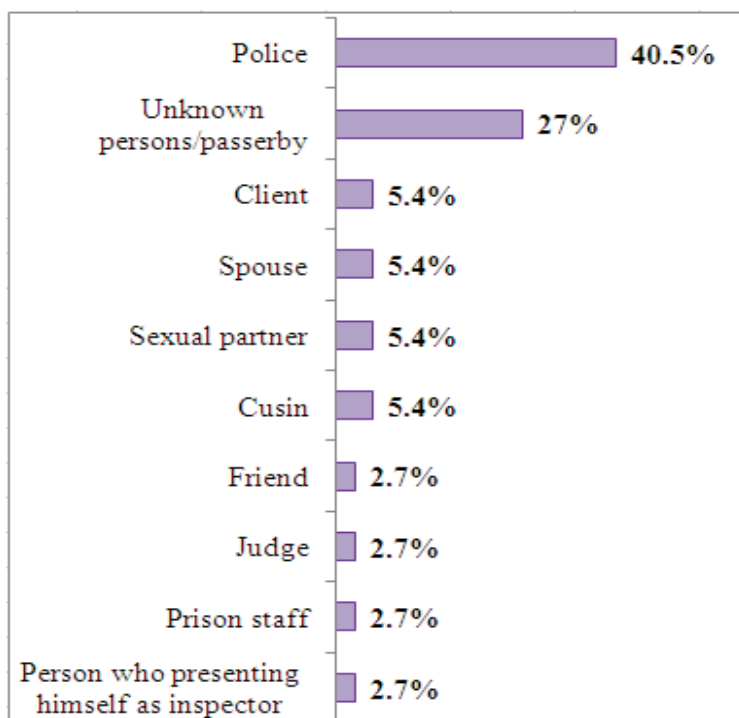
Various forms of violence were reported. The most common was physical violence. A smaller number of sex workers reported psychological violence (incl. verbal abuse), economic violence, i.e. seizure or damage of personal property, sexual violence, exposure to various forms of extortion, attacks or threats with weapons, and intimidation (Figure 7).

Figure 7. Distribution of reported cases of violence



The offenders were most often representatives of the police and unidentified persons, like passersby. But also there are people who were part of their close environment (relatives, partners, friends, and such) and persons who were representatives of the system (judges, prison staff) or persons who paid for their services (clients) (Figure 8).

Figure 8: Distribution of reported perpetrators of different forms of violence against sex workers



According to the reports from sex workers, police in most cases violate the human rights of sex workers during the enforcement of police procedures. The most commonly reported violations committed by the police are illegal arrests, violations during background checks, denial of the

right to free movement, the use of condoms for evidence of sex work and the illegal seizure of money (Figure 9).

Figure 9. Distribution of cases of human rights violations in relation to breach of procedure by the police, according to the type of violation



Conclusions

The sex workers who reported human rights violations were mostly males (by sex) (56.6%). Most of them were transwomen (47.8). According to the recent bio-behavioral research among sex workers in Belgrade and Novi Sad, which was conducted in 2013 by the Institute of Public Health of Serbia "Dr Milan Jovanovic Batut" (hereinafter referred to as bio-BSS: behavioral surveillance survey), the majority of sex workers in Belgrade are women (68%).¹⁷ From this, we can conclude that cases of violence are more likely to be reported by males and in relation to gender by transwomen. This is supported by the fact that within the bio-BSS studies in Belgrade and Novi Sad, females were significantly more likely to report violence suffered by different perpetrators, while males mostly reported violence perpetrated by the police. Women, however, reported experiencing violence from clients and pimps more often than men.¹⁸ This may to some extent explain why among our cases, the registered human rights violations by the police are predominant, given that males were more likely to report incidences of violence suffered.

The number of reported cases of some form of violation of human rights over the period of two years of documenting these cases is relatively low compared to the actual experiences of sex workers which we witnessed through the implementation of prevention programs in the field. A higher number of actual experiences with various forms of violence was also confirmed by the results of the bio-BSS research.¹⁹ One explanation is that sex workers perceive and accept different forms of stigma and discrimination as something 'normal', because they are aware that

¹⁷ *Research among population most at risk on HIV and among people living with HIV*. Ilic D (editor), Institute of Public Health of Serbia 'Dr Milan Jovanović Batut'. Belgrade, 2014. (Serbian).

¹⁸ Ibid.

¹⁹ Ibid.

they are engaged in illegal business and do not always recognize the different forms of abuse or accept it as something regular and an integral part of the job. This is particularly common for women. According to the results of the bio-BSS studies, they report significantly more often experiences of stigmatization and auto-stigmatization for engaging in sex work (74% women compared to 37% men).²⁰

Furthermore, sex workers do not report cases of human rights violations, despite programs for psychosocial support (self-help groups, counseling with a social worker). The question is whether sex workers of both sexes are equally empowered, as well as whether they are informed enough to recognize different forms of violence, especially the more clandestine and subtle forms which are often perceived as being an integral part of their work.

²⁰ Ibid.

5 Methodology

Sladana Baroš, Institute of Public Health of Serbia “Dr Milan Jovanović Batut”

The project included extensive research of the judicial practice in relation to sex workers (hereafter: SW), as well as victims of human trafficking who have been forced to engage in sex work (hereinafter referred to as: TVSW).

The main objective of the project was to carry out an assessment of judicial practices in regard to cases under Article 14 of the Law on Public Order and Peace (hereinafter: LPOP) and Article 184 of the Criminal Code of Serbia (hereinafter: CC) with an eye to:

- Possible failure to detect human trafficking offenses
- Respect and protection of human rights of sex workers.

In accordance with the set objectives, we tried to provide answers to the following research questions:

1. Assessment of the number of (potential) victims of trafficking among cases processed under Article 14 LPOP;
2. Assessment of the number of arbitrary arrests among cases processed under Article 14 LPOP;
3. Assessment of the number of identified cases of trafficking among cases processed under Articles 14 and 184 LPOP and establishing the main reasons for the failure to correctly identify (potential) victims of trafficking;
4. Identification of the socio-demographic profiles of persons prosecuted under Article 14 LPOP;
5. The perception and experience of sex workers and victims of human trafficking for the purpose of sex work in relation to the relevant LPOP and CC articles;
6. The perception of judges and other relevant persons involved in the processing of cases under the LPOP and CC in regard to law enforcement and the protection of human rights, as well as in regard to their ability of identifying victims of trafficking and distinguishing victims of trafficking for the purpose of sex work from sex workers.

Methodology

Bearing in mind the objectives of the project and in order to successfully answer the questions, we designed and implemented a descriptive qualitative study. The study used different data sources, including both primary sources (interviews with respondents) and secondary sources (analysis of existing documents produced within the framework of judicial proceedings). The study was conducted from November 2012 to November 2013 in Belgrade and included additional data from the Serbian courts in regard to the relevant articles of the CC.

The study consisted of three stages:

1. The planning stage, during which we conducted the preparation of research: development of a detailed research protocol and research documentation, training of all team members

and securing the necessary permits for the realization of the research (November-December 2012);

2. The field research stage, within which we collected field data (December 2012 - July 2013);
3. Processing, interpretation and analysis of data and dissemination of the preliminary research findings in the form of a Round Table (August - November 2013); in-depth analysis of the data and writing of the report (2014-2015).

The study was multi-complex; therefore, in addition to the use of different data sources, the study incorporated different populations. The sampling population of the study is comprised of:

- Adults of both sexes who were engaged in sex work in the period from January 1, 2011 to December 31, 2012 in the territory of Belgrade;
- Adult victims of human trafficking who were forced to engage in sex work.

Additionally, in order to answer the research questions, the sampling population also included magistrate judges who had processed at least one case under Article 14 of the Law on Public Order and Peace (LPOP) in the period from January 1, 2011 to December 31, 2012 in Belgrade. With the same objective, we tried to include representatives of the police. However, they unfortunately did not respond to our request.

Methods and data sources

The method of data collection was adapted to the type and source of information. The study used two types of sources: primary and secondary. Primary sources were the interview respondents (SW, TVSW, magistrate judges). Secondary sources were documents produced during court proceedings (misdemeanor judgments pursuant to Article 14 LPOP rendered by the Magistrate Court in Belgrade and criminal verdicts under Article 184 CC rendered by the basic, higher and appellate courts in the territory of Serbia).

Primary data sources

Primary data sources within the study were the respondents from the previously defined target groups, i.e.:

- Adults of both sexes and all genders engaged in sex work in the defined period of time;
- Adult victims of human trafficking who were forced to engage in sex work;
- Magistrate judges who had processed at least one case under Article 14 LPOP in Belgrade in the defined period of time.

Respondents were recruited using methods of targeted sampling. In this way we were looking to ensure a sample representativeness and fulfillment of basic criteria for participation in the study. For data collection method, we used in-depth interviewing, whereby for each category of respondents we created a special thematic guide, relevant to the population, and defined research questions. The plan was to conduct a focus group with representatives from the police, in order to complement the information obtained by the SW, TVSW and the judges with additional data from the police. However, police representatives did not respond to the request for participation in the study.

Sex workers

The study protocol foresaw including 20 sex workers through targeted sampling. Of the planned 20, the research included 9 SW who met the basic criteria:

- they had engaged in sex work in the period from January 1, 2011 to December 31, 2012 in the territory of Belgrade;
- they were detained by the police under Article 14 LPOP and/or prosecuted in court on the same ground in 2011 and/or 2012;
- they agreed to participate in the study, which was confirmed by giving written informed consent.

Recruitment was conducted at a slow pace, and consequently the projected sample size wasn't reached (more in the section: Implementation in the Field). However, their experiences with police arrests as well as prosecution before the court were very similar.

Persons who had been victims of trafficking and were forced to engage in sex work

The study protocol foresaw including 20 persons through targeted sampling - victims of human trafficking who were forced to do sex work during the defined time span. Recruitment was conducted at a slow pace, and the study ultimately included 10 people who met the following criteria:

- they were forced to engage in sex work;
- they came in contact with the police during forced engagement in sex work;
- they agreed to participate in the study, which was confirmed by giving written informed consent.

At the beginning of the study, the research protocol intended to cover persons who were victims of trafficking and were forced to engage in sex work in the period from January 1, 2011 to December 31, 2012 in Belgrade. However, this framework was modified according to the situation on the field, therefore the study included persons who were victims of trafficking and forced to engage in sex work in the period from 2000 to 2012. Respecting the basic ethical principles of voluntary participation in the study, as well as the principle that the welfare and recovery of the respective persons is a priority - which also represents a basic principle of ASTRA - various persons who met the basic criteria for participation in the study did not feel strong enough to talk about their relatively recent traumatic experiences. Therefore, the study included only 10 victims of trafficking instead of the envisaged 20.

Magistrates

Magistrate judges were recruited by targeted sampling. The final sample included seven judges out of the planned ten. The offenses referred to in Article 14 LPOP (engagement in sex work) are most often prosecuted by summary proceedings (within 24 hours), and for such cases the competent judges are delegated from the Duty Service. As a rule, there are three judges on duty. Of these, two were active in the investigation period, the third one had not yet been appointed after the retirement of the previous judge who conducted this duty. In the reporting period (from January 1, 2011 to December 31, 2012) the third, retired judge was alternately replaced by other judges. For the purpose of the study, we first contacted the judges according to the frequency

of replacing the third permanent judge, but also included those who had previously agreed to participate in the study, i.e. three of them. The sample thus included two permanent judges and three others who were replacing the retired permanent judge in most cases. The study additionally included the president of the Magistrates Court in Belgrade and the President of the Higher Misdemeanor Court. In this way, the study included a total of seven judges, who agreed to participate in the study and gave written informed consent. Comparing the processed cases in the reporting period, the two permanent judges handled 69.5% of the total number of cases in the period from January 1, 2012 to December 31, 2012.

Secondary data sources:

Secondary sources were documents produced during the trial, namely:

- Court cases processed under Article 14 LPOP (engaging in prostitution²¹) in the period from January 1, 2011 to December 31, 2012 in Belgrade.
- Criminal judgments delivered under Article 184 CC (mediation in prostitution²²) in the period from January 1, 2011 to December 31, 2012 in the territory of the Republic of Serbia.

Secondary data related to cases processed under Article 14 LPOP were collected as a result of the cooperation of the Magistrates Court in Belgrade, which provided the case files to the trained interviewers, who, on the basis of these cases, filled out a questionnaire specifically designed for this purpose. Secondary data in connection with judgments rendered under Article 184 CC were collected as a result of the cooperation of the courts in the Republic of Serbia which provided copies of judgments in accordance with the Law on Free Access to Information of Public Importance.²³ Based on these judgments, the interviewers filled in a specific questionnaire designed for this purpose.

The sample included all submitted judgments which were disclosed to the interviewers. The total number of cases under Article 14 of LPOP included in the study was 213, as well as 40 cases processed under Article 184 CC.

Instruments

As stated in "Methods and sources" special instruments were designed, which enabled data collection. For the collection of secondary data, special structured semi-open questionnaires were designed. The questionnaire for collecting data on cases processed under Article 14 LPOP contained 8 thematic sections:

- General information on the case and its contents;
- Information on the case;

²¹ Art. 14 LPOP: (1) Whoever engages in prostitution or provides premises for the purpose of prostitution shall be sentenced to imprisonment up to 30 days. (2) Whoever provides premises to a minor for the purpose of prostitution shall be sentenced to imprisonment up to 60 days.

²² Art. 184 CC: (1) Whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with a fine or imprisonment up to three years. (2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years.

²³ Law on Access to Public Information „Official Gazette of the Republic of Serbia”, no. 120/2004, 54/2007, 104/2009 and 36/2010.

- Information about the defendant (socio-demographic data and information on previous convictions);
- Data on the initiation of proceedings;
- Information about the process of apprehension and interrogation of the defendant by the police;
- Data on the trial process/main hearing;
- Information on filed appeals;
- Enforcement of legal sanctions and information on the return of seized property.

The questionnaire for collecting data on cases processed under Article 184 CC contained 5 thematic sections:

- General information on the case;
- Information about the defendant and offence(s) s/he was charged with;
- Basic socio-demographic data about the defendant and information on previous criminal offences;
- Information about the case (description of the offence, description of the procedure and the judgment);
- Information on filed appeals against the rendered judgments.

The thematic guides were adapted to each particular group of respondents. The Guide for the in-depth interviews with SWs contained 11 thematic units, which focused on their experiences with the police, arrests, judges, prosecution, sanctions, violence, existence of forced sex work, as well as on health, social and economic effects of processing/sanctioning, the perception of risks in relation to the arrest and judicial process, and questions to test their knowledge and attitudes about their rights, human trafficking, as well as to the misdemeanor proceedings against them or their colleagues.

The thematic guide for interviews with victims of trafficking who were forced to engage in sex work included 10 areas, which focused on their experiences with the police, arrests, trials, prosecution, sanctioning, on their perception of the existing practice in regard to trafficking victims in purpose of sexual exploitation, as well as on their perception and attitudes in regard to the consequences of their experiences on their health and on their social and economic situation and on their understanding of the difference between human trafficking and sex work, and their knowledge and attitudes in regard to their rights, human trafficking, and sex work.

The interviews with judges were conducted on 5 thematic units related to their experiences in the handling of cases under Article 14 LPOP, their perceptions and attitudes toward sex work, human trafficking and the distinction between consensual and forced sex work, the rendering of judgments, their adequacy and justification, as well as their understanding and attitudes in regard to the legal proceedings against SW and TVSW, and their recommendations in regard to the improvement of the handling of offences under Article 14 LPOP.

Data processing and analysis

The completed semi-structured questionnaires which were used for the collection of secondary data from court judgments rendered under Article 14 LPOP were first reviewed in order to check the quality of the data before the encryption of the narrative information. Data from these questionnaires was entered into statistical data analysis software (SPSS). Descriptive statistics were performed (description of data using mean, median, frequencies, percentage) and data was disaggregated by sex and age where it was suitable. The processing of data obtained from the court judgments rendered under Article 184 CC was, to some extent, different. Since the number of judgments was smaller and the data involved was much more heterogeneous and predominantly narrative, some data were quantified and analyzed statistically, while other data were analyzed using the analysis of the narratives.²⁴

The interviews with respondents were recorded using a digital voice recorder. Audio recordings were transcribed verbatim upon completion of the interviews. The recorded qualitative data was, compared to a group of interviews, separately encoded according to the respective encryption key. Encoded material was further analyzed and processed by using the analysis of narratives and the interpretative method.²⁵

Ethical principles of the research

During the course of the research, special attention was paid to ethical issues in regard to the procedure of research. While conducting the research, the following basic ethical principles were respected:

- Confidentiality and anonymity of participation in the research (avoiding the use of respondents' identifying personal data, preserving the confidentiality of conversations between the respondents and the interviewers);
- Voluntary participation (based on information about the research, the respondent decided on whether they wanted to participate in the research or not; if they decided to participate, they gave oral consent and a consent form was signed by the interviewer to whom the respondent gave the oral consent; signed forms were kept separately in a secure place and unconnected with the research data);
- Respect for the personal autonomy of the respondents (respondents kept the right to decide to terminate participation in the research at any given time, or to refuse to talk about certain subjects; this decision was fully respected by the interviewer and other members of the field team, without asking questions about the reasons of withdrawal or refusal to discuss certain subjects further);
- Full respect and appreciation for the respondents' personality (without any form of condemnation, discrimination or disrespect against the respondents);
- Provision of minimum risk and maximum benefit for the respondents (participation in the research did not bear any individual risk for the respondents in relation to their environment

²⁴ Milić V. *Sociološki metod*. Zavod za udžbenike i nastavna sredstva. Beograd, 1996; Miles MB, Huberman MA. *Qualitative data analysis*. Sage: London; 1994.

²⁵ Milić V. *Sociološki metod*. Zavod za udžbenike i nastavna sredstva. Beograd, 1996; Miles MB, Huberman MA. *Qualitative data analysis*. Sage: London; 1994; *Metodologija empirijskog naučnog istraživanja*. Ur. Pejčić, B. Defektološki fakultet Univerziteta u Beogradu. Beograd, 1995.

or the environment in which they were being interviewed; the benefits are realized indirectly and are based on achieving the objectives set by the research);

- Safety of participation in the research for both the respondents as well as the interviewers (interviews were conducted in conditions which the respondent perceived as safe, and which were also safe for the interviewer, in line with the agreement reached between the respondent and the interviewer);
- Transcription of qualitative data obtained through in-depth audio interviews, was subjected to the rules of non-disclosure of personal names or identifying data; instead of personal names the transcription entries were marked by X for female names and Y for male; transcripts were kept under a special code for participation in the research which did not contain personal names of the respondents; upon transcription, the audio recording was destroyed.

Implementation in the field

The field research lasted from December 2012 to July 2013. During this period interviews were conducted with persons engaged in sex work as well as with trafficked persons who had been forced to engage in sex work, and the questionnaires related to the court cases under the Article 14 LPOP and the criminal court verdicts under Article 184 CC were filled out. The data collection was conducted by previously trained interviewers. The members of field teams were also members of JAZAS, ASTRA and Equal Rights. All team members had undergone a special training of three days, where they were closely acquainted with the objectives of the research, the specifics of violations of human rights in relation to the defined population of the study, and the research instruments and procedures. During the training, the roles and responsibilities of all team members as well as the management of data during the field research were further defined.

Sex workers

Interviews with sex workers were conducted from January to June 2013. The interviews were held in the drop-in center of JAZAS and were conducted by trained interviewers: representatives of JAZAS, trained sex workers and activists of the organization Equal Rights. This was a great benefit for Equal Rights and for the first time our in-depth interviews with sex workers were conducted by sex workers themselves. The interviews lasted approximately 90 minutes. The recruitment of participants was slow-paced. The primary reason for the low response was the amount of time needed for the conversation and for coming to the premises. As the research was carried out at the drop-in center of JAZAS, the recruited respondents were mainly chosen among the clients of the drop-in center. During working hours of the drop-in center, it was not possible to provide a separate room for conducting the interviews, hence the interviews were conducted after-hours, and the request for potential respondents to come again at the agreed time prompted a lower response rate. The participation in the study was discussed with potential respondents during their visits to the drop-in center and, if they met the criteria for inclusion in the study, it was agreed for them to come to the drop-in center during the non-working hours. However, these agreements were not always kept, due to the time they needed to spare for getting to the drop-in center and the interview itself. This resulted in a low turnout. For future studies it is important to ensure the possibility of participation immediately after the initial contact is made.

Also, not all sex workers had been arrested within the defined period of time, although during the specified period they had come into contact with the police. Also, in accordance with the basic ethical principles and principles of JAZAS, we respected the personal autonomy of each person and did not pressuring them to engage in the research.

The recruitment was conducted in accordance with the ethical principles of the study. Before inclusion in the study, sex workers who used the services of the drop-in center were asked if they would like to participate in the study. Through an informal discussion it was assessed whether they were eligible to participate in the study, and if so, information was given about the study, its objectives and ways of implementation, as well as on the rights of the participants in a more formal discussion. On the basis of this information, the sex workers were asked whether they wanted to participate in the study. The ones interested would then agree with the interviewer on the preferred time to come back to the drop-in center in order to conduct the interview. All potential respondents were clearly informed that they had no obligation, being users of JAZAS services, to participate in the study and that their decision would in no way affect their receiving of services at the drop-in center. In addition to the drop-in center, recruitment was also carried out in the field. In that case the initial conversation was conducted at the place where the sex workers made their first contact with clients and a date was negotiated on which they would be able to come to the drop-in center and have a conversation with the interviewer. The recruitment of participants in the field was performed by trained interviewers from Equal Rights. All ethical principles relating to participation in the study and treatment of the respondents and the collected data were fully complied with during the course of the study.

Persons who had been victims of trafficking and forced to engage in sex work

Interviews with female victims of human trafficking for sexual exploitation were carried out in the period from 26 January to 30 May 2013. Potential respondents were selected in consultation with ASTRA's case supervisors, taking into account their psychological status, participation in legal proceedings and/or other circumstances, and whether the evocation of past traumatic experiences might negatively affect their mental stability. The latter was particularly important as all clients considered for participation in the study had been forced to engage in sex work, and recalling the events of that period could have triggered re-traumatization.

All interviews lasted approximately 60 minutes. On an average the respondents were starting to lose interest in the conversation after 45 minutes. This was manifested by asking questions about how many more questions were left till the end of the interview, by giving short answers, by frequent interruptions of the interview by exiting the room for a few minutes and so on. In two cases the respondents stressed at the very beginning of the interview that due to other commitments they had about an hour at their disposal. The situation was similar with the respondents that the interviewers visited in their home, who were also due to family obligations available for a limited time.

Clients of ASTRA who were assessed to be able to be interviewed, were, in accordance with the principle of informed consent, informed about the purpose of the research and the ways to participate in it. Before starting the interview, it was explained that they did not have any obligation to ASTRA to participate in the interviews and that, if they found it hard to talk about their experiences, they should not agree to do the interview out of a sense of duty or gratitude towards

ASTRA. In addition, it was emphasized that they were free to refuse to answer questions which they perceived as disturbing, and to terminate the interview at any given time.

It was noted that all respondents during the interview had the need to give details of everything that happened from the moment of their recruitment until exiting the trafficking chain, even though this was not requested, and despite the fact that the interviewers, who were employed at ASTRA's SOS Hotline and Direct Assistance to Victims program, in most cases were already acquainted with their experiences in the trafficking chain. Without being asked questions that were directly related to it, the respondents talked about the details of the period of exploitation, as well as their relationships with the traffickers. One respondent was very shaken and cried during the interview when she was retelling the story of humiliations she was exposed to during the exploitation.

During the study all ethical principles relating to participation in the study and treatment of subjects and collected data were fully complied with. The trained interviewers of ASTRA had sufficient skills and experience to help the respondents relive the painful experiences in the least painful way.

Magistrates

Magistrates were contacted in May 2013 and the interviews with them were conducted in July 2013. This was also the period of annual leaves, so the scheduling and conducting of the interviews required customization to the work duties of the judges. The interviews were scheduled over the telephone and the time and place of interviews was decided upon by the judges themselves. The interviews lasted one hour on average. Nearly all interviews were conducted at the judges' offices, with the exception of one case where the interview was conducted after hours at a bar. The interviews were conducted by two trained interviewers. All judges had been informed about the study over the phone. Additionally, before the official start of the interview, they were once again informed about the study and its objectives with the emphasis on the right of respondents to terminate the interview at any given time or to refuse to talk on certain topics. Upon receiving this information, the judges gave written consent.

Secondary data sources

The cases prosecuted under Article 14 LPOP were made available to the members of the team thanks to the cooperation of the Magistrates Court in Belgrade. Representatives of the Magistrate's Court provided a space where the interviewers could work, i.e. enter the data into structured questionnaires. In this way the existing 213 cases were processed in the period from 6 December 2012 to 22 March 2013.

Owing to the positive response of the Basic, Higher and Appellate courts of the Republic of Serbia to our written request to submit photocopied verdicts rendered under Article 184 of CCS, 40 verdicts were obtained for review. After receiving the verdicts, the team entered the data from the verdicts in structured questionnaires in the period from May to June 2013.

Data protection

Upon execution of the study, all data are archived and kept at JAZAS. The audio records of interviews are erased and anonymized transcripts and anonymized received photocopied verdicts are archived.

6 Analysis of judgments under Article 14 of the Law on Public Peace and Order: engaging in prostitution

Slađana Baroš, Institute of Public Health of Serbia "Dr Milan Jovanović Batut"

The Law on Public Order and Peace (LPOP) regulates the scope of infringements and criminal offences which violate and disturb public peace and order.²⁶ The LPOP defines public peace and order in Article 2 as:

"the concerted state of mutual relations between citizens and their behavior in public places and the functioning of the authorities and organizations in the public life in order to provide equal conditions for exercising the right of citizens to individual and property safety, peace and tranquility, privacy, freedom of movement, preservation of public morality and human dignity, and the right of minors to be protected."

Article 14 LPOP penalizes prostitution and is used to detain and prosecute sex workers.

Article 14 LPOP

Persons who engage in prostitution or provide premises for prostitution - shall be punished with imprisonment for up to 30 days.

Persons who provide premises for prostitution to a minor - shall be punished with imprisonment up to 60 days.

Overview of the results of the analysis of cases prosecuted under Article 14 LPOP

The analysis of cases prosecuted under Article 14 LPOP aimed to assess the number of (potential) victims of trafficking among the persons prosecuted under this article and the number of arbitrary arrests, as well as to present an overview of the jurisprudence under Article 14 LPOP. These data were used to complement and elaborate the results from the interviews.

General overview of cases

As part of our research we analyzed 213 court judgments of the Magistrates Court in Belgrade passed in the period from January 1, 2011 until December 31, 2012. All cases were primarily instituted under Article 14 LPOP; 58.7% (125) cases were processed in 2011 and 41.3% (88) in 2012.

In these 213 cases, in total 125 persons were prosecuted under Article 14 LPOP for engaging in prostitution. On average, one person was prosecuted 1.7 times within the course of 2 years. The number of court proceedings ranged from 1 to 9 per person.

²⁶ Law on Public Peace and Order. Official Gazette of the Republic of Serbia. no. 51/92, 53/93, 67/93, 48/94, 101/2005 - other law and 85/2005 - other law.

Most of the 125 persons prosecuted were women (89.6%), or for one prosecuted male there were approximately 9 prosecuted females. In relation to gender, 5.6% of the total number of persons prosecuted can be defined as transgender, or 53.8% of the males were transgender (transwomen). However, only for 2 persons was it explicitly stated that they were transgender (transwomen) (1.6% of the total number of persons, or 15.4% of the males). Therefore, for 5 people (4% of the total number of persons or 38.5% of the total number of males) it was stated that they were transwomen (based either on witness statements or on other information contained in the case file).

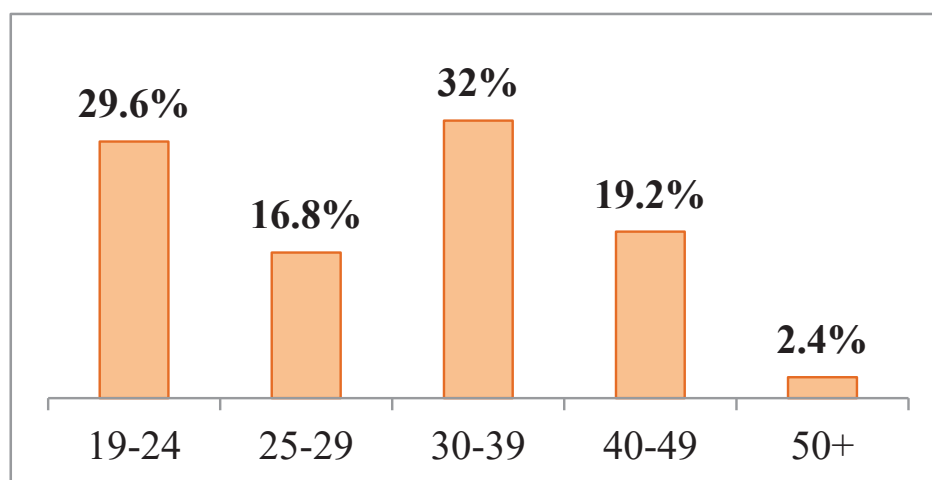
The average number of cases within two years per female was 1.7 and ranged from 1 to 6 of prosecutions per person. The majority of females were prosecuted one time (63.4%), only one female was prosecuted six times in two years (0.9% of the total number of females). On average, males were prosecuted two times within two years, ranging from 1 to 9 times. The majority of males were prosecuted one time (69.2%), while one male was prosecuted nine times (7.7% of the total number of males) (table 1).

Table 1. Distribution of prosecutions by the person

No. of cases per person	Male		Female	
	Number of persons	%	Number of persons	%
1	9	69.2	71	63.4
2	1	7.7	22	19.6
3	2	15.4	9	8.0
4	0	0	6	5.4
5	0	0	3	2.7
6	0	0	1	0.9
9	1	7.7	0	0
Total	13	100.0	112	100.0

As for the age of the persons prosecuted, on average age of the persons prosecuted was 32 (SD = 9.5) (with a median of 31), with ages ranging from 19 to 62. The majority of prosecuted persons were aged between 19 and 29 or youth (46.4%), the least represented were persons aged 50 or higher (2.4%) (figure 1).

Figure 1. Percentage of persons prosecuted under Article 14 LPOP in 2011 and 2012 in respect of age groups



In almost all cases, they were citizens of the Republic of Serbia (98.1%), whereas four cases were conducted against persons registered as foreign nationals (citizens of Montenegro, Bosnia and Herzegovina and Romania). Furthermore, the case files stated that only one of these persons had illegally entered Serbia from Montenegro, while there is no such data for the other persons. In addition to prosecution under Article 14 LPOP, they were all prosecuted under the Law on Foreigners, except the person who came from Bosnia and Herzegovina and who was also the only one affirmed to have been married. Persons who were identified as citizens of Montenegro were prosecuted under Article 84 of the Law on Foreigners (LF), which criminalizes the failure to leave the Republic of Serbia within the set deadline, or to leaving the place of residence determined by the competent authority.²⁷ Both of these persons were not prosecuted before the court for the first time. For one person is stated that she is prosecuted (beside Art. 14 LPOP) under Art. 84 para 1(2) of LF, and for other there is only stated that she is prosecuted under Art. 84 LF (beside Art. 14 LPOP). The person who came from Romania was, in addition to Article 14 LPOP, also prosecuted under the Article 86 para 1(6) LF, which refers to the failure to report the place of residence or a change of the place of residence to the competent authority within 24 hours. Only for this person it was stated that she had not been previously convicted and that she did not organize her sex work independently, but through her boyfriend. The boyfriend is stated to be the contractor of the work activities through means of advertising (as she herself does not speak Serbian) and according to her statement she retained all of her earnings for herself. She also stated that she engaged in sex work voluntarily, on her own initiative, without the intervention of the boyfriend. She came to Serbia to start a relationship with her boyfriend, whom she had previously met via the Internet. She pleaded guilty and was punished with a fine and imprisonment. From the case file it is not clear whether she had an interpreter (considering her statement of not speaking Serbian).

In 4.7% of all cases (213) (regardless of number of prosecuted persons) the place of residence was not indicated, i.e. remained unknown. In 78.8% of the case files where the place of residence is specified Belgrade is stated as the place of residence. Among the other cities, the most common are Pančevo (5.4%), Mladenovac (2%), Novi Sad and Bojnik (both 1.5%) etc.

²⁷ Law on Foreigners. Official Gazette of the Republic of Serbia. no. 97/2008.

In most cases the defendants either had no schooling whatsoever or had incomplete primary education (39.4%), followed by those with a high school education (31%), completed elementary school (24.9%) and those with college or university degree (2.3%). In 2.3% there was no information on education.

As for marital status, in 4.7% of the cases no data on marital status was given, while in 42.7% of the cases the defendant was single/unmarried; followed by defendants who were married (23%), divorced (18.8%), living in a common law marriage (8%), and widows (2.8%). In 63.8% of the cases it is stated that the defendant/s have children, ranging from 1 to 7 children, with an average of two children per defendant.

Only in one fifth of the cases the defendant was prosecuted for a misdemeanor for the first time; in 74.2% of the cases the defendants had been convicted before. In 32.4% of these cases it is not indicated on what grounds the defendant was convicted, for the remaining 41.8% that information is provided. From the latter group 96.6% were previously prosecuted under Article 14 LPOP; In addition, in 18% of the total number of cases (where is indicated on what grounds is previously convicted) the defendants were previously convicted for violation of the Law on Identity Cards²⁸ and 14.6% for violation of the Law on Temporary and Permanent Residence.²⁹

Analysis of the data on cases prosecuted under Article 14 LPOP

In the majority of cases processed in 2011 and 2012, proceedings were not only instituted under Article 14 of LPOP, but also on other grounds. Of the total number of cases, 40.4% were processed only on the grounds of violation of Article 14 LPOP; 59.6% were instituted on other grounds as well: under the Law on Identity Card (44.6% of total number of cases), the Law on Temporary and Permanent Residency (29.6%) or under other laws (1.9 %).

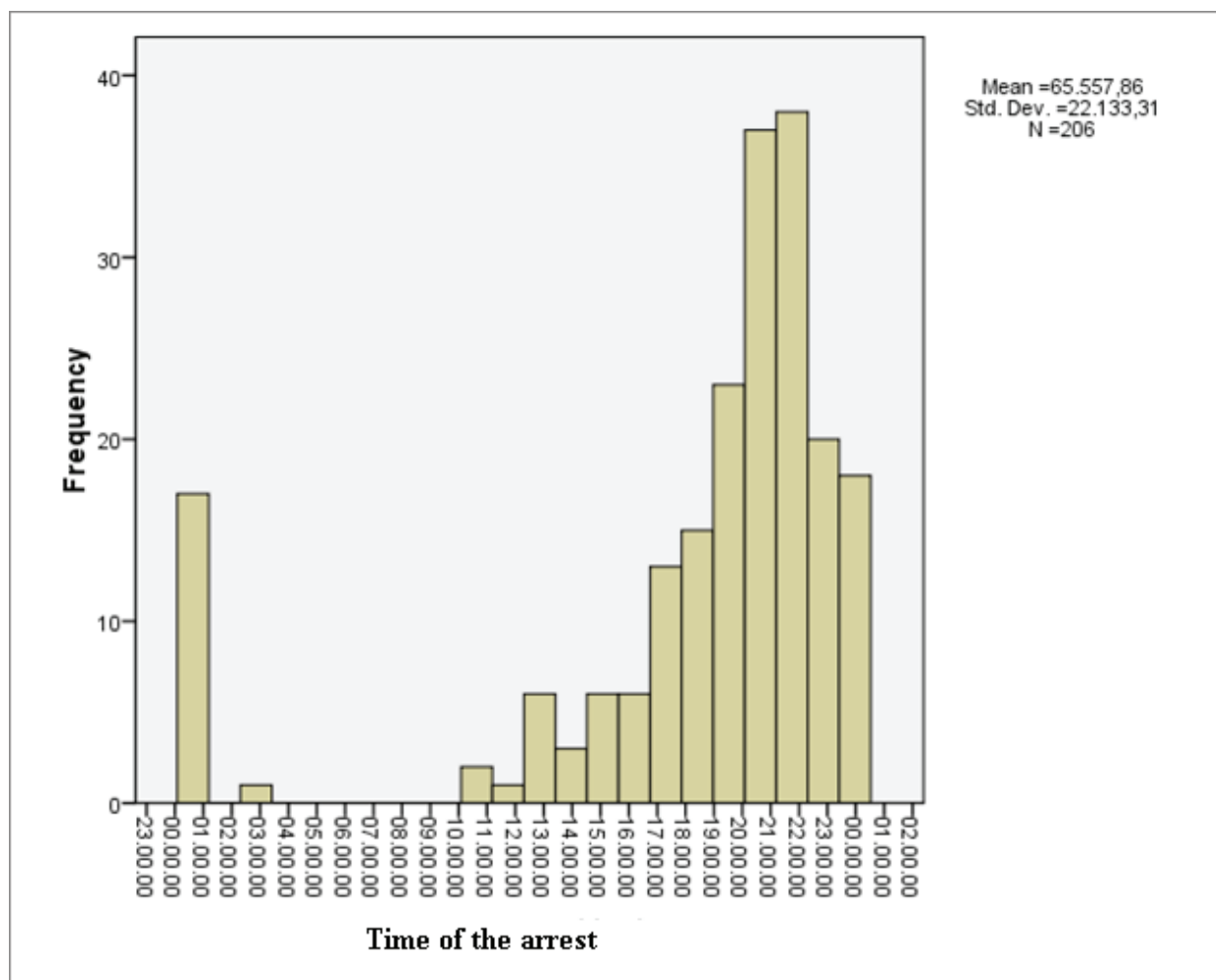
According to the court files, in 43.7% of the cases the defendant possessed an identification document at the time of arrest (identity card or other identification documents); in 46% of cases the defendant had no documents; 9.4% of case files do not contain any information on the possession of documents. Of those who did not possess identification documents at the time of the arrest, 20.4% was prosecuted under both Article 14 LPOP and the Law on Identity Cards.

Most of the defendants had been arrested by the police throughout the day. The smallest number was arrested between 2am and 10am (1 person). The maximum number of arrests took place between 7pm and 1am (72.8%). The highest frequency of arrests was recorded in the period between 9pm and 10pm (20.4%) (figure 2).

²⁸ Law on Identity Card. Official Gazette of the Republic of Serbia. no. 62/2006 and 36/2011.

²⁹ Law on Permanent and Temporary Residence. Official Gazette of the Republic of Serbia. no. 87/2011.

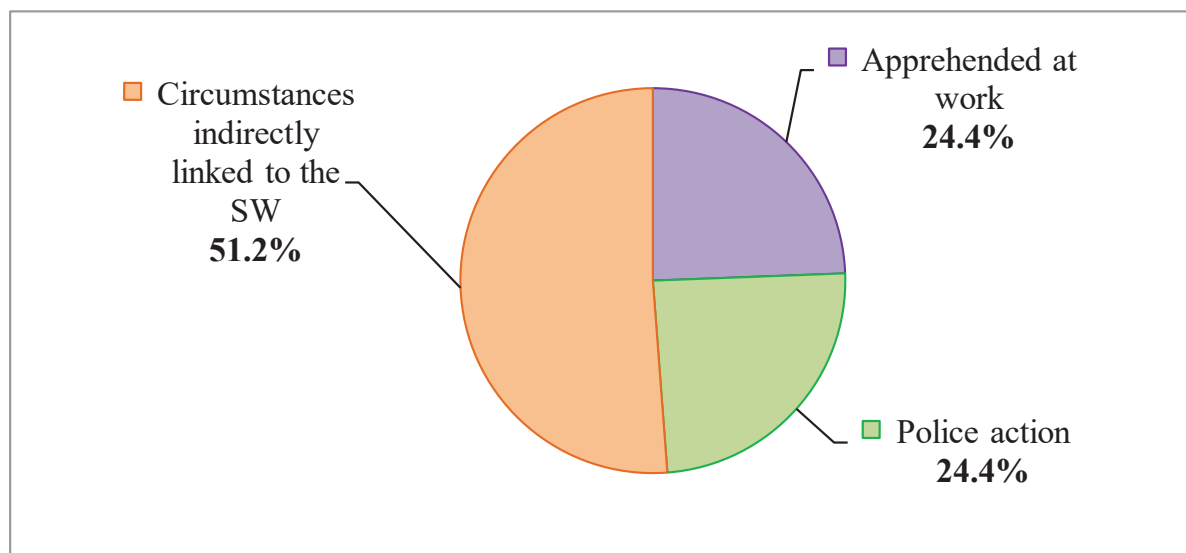
Figure 2: Frequency of the number of persons arrested in respect to the time of the arrest



Upon bringing in the apprehended persons to the police station, in 90.6% of cases they gave and signed a statement; in 6.1% they neither gave nor signed a statement, while in 3.3% the apprehended persons gave a statement but didn't signed it.

In most cases accused were arrested in the street and outdoor spaces (88.7%); far fewer were arrested at other locations, such as apartments or hotels (11.3%). The circumstances surrounding the encounters with the police and the arrests can be grouped into three categories. The first category, which accounts for approximately one-quarter of the total number of cases, includes police targeting, i.e. police action conducted after the arrested person offered sexual services in exchange for money to the police officer (on the street, through an ad, etc.). The second category, which accounts for approximately one-quarter of cases, includes cases where the arrested persons were apprehended at work (while providing services or making arrangements with clients, etc.). The third category, which accounts for the largest part of the cases, approximately 50%, refers to activities indirectly linked to sex work (loitering at the site where sex workers are usually offering their services, offering services to passers-by, waiting for a client, etc.) (figure 3).

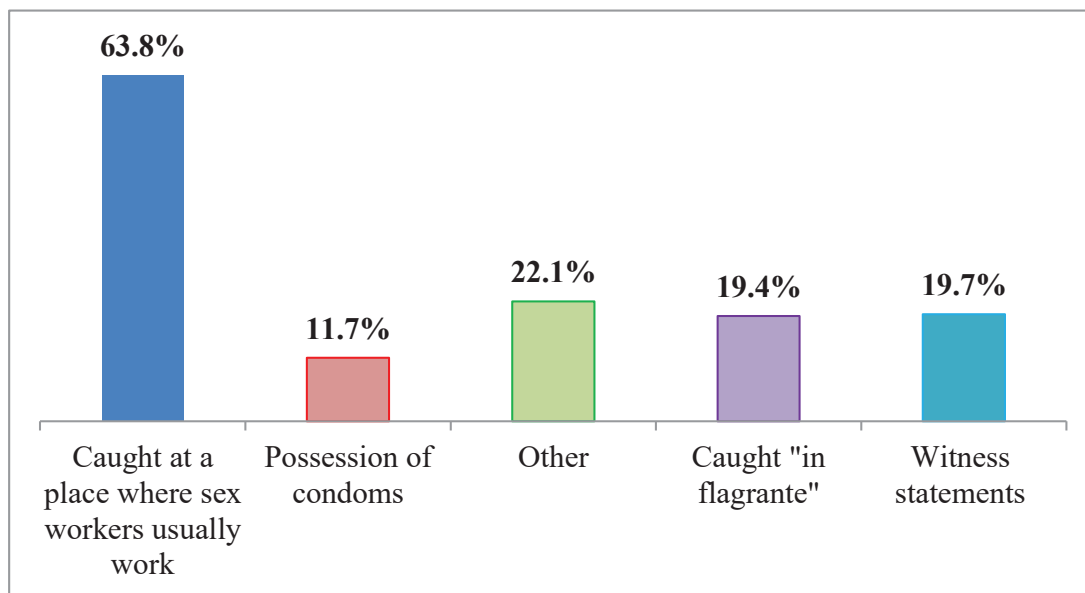
Figure 3. The percentage of persons prosecuted under Article 14 of LPOP in relation to the circumstances of apprehension by the police



In 23.5% of the cases the prosecuted were apprehended in the company of a client, which corresponds to the data on the percentage of cases in which it is stated that the defendant/s were caught *in flagrante*. In 70.9% of cases they were caught alone, without the presence of other persons; in 3.8% of cases they were in the company of colleagues, 1% was in the company of a close person (brother, friend) and in 0.9% of cases it is not stated whether the person was alone or in someone's company.

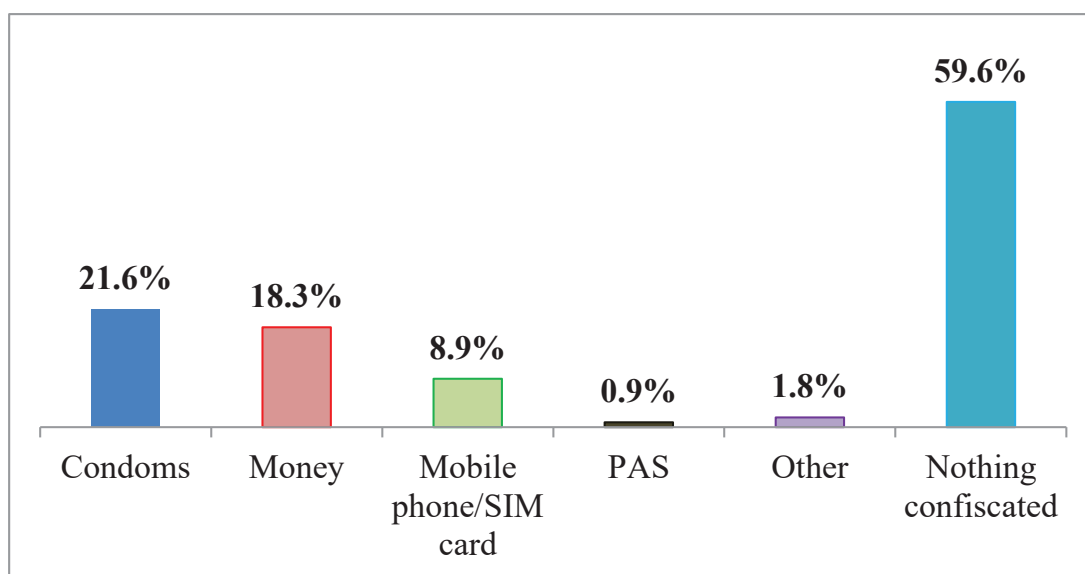
Evidence on the offence specified in the case files differs, and there may have been more than one piece of evidence within a case. The most frequent evidence appearing in the case files is that the person was caught in a place where sex workers usually engage in sex work. Among other evidence, with equal frequency but to a lesser extent than the first one, are the police statements that the person arrested possessed condoms at the time of apprehension, that they were caught *in flagrante*, as well as witness statements and other evidence (advertisements, possession of a mobile phone and a phone number, assets seized upon apprehension, possession of cash money, etc.) (figure 4).

Figure 4. Percentage of cases under Article 14 LPOP in relation to the evidence on the existence of the offence cited upon detention and interrogation by the police



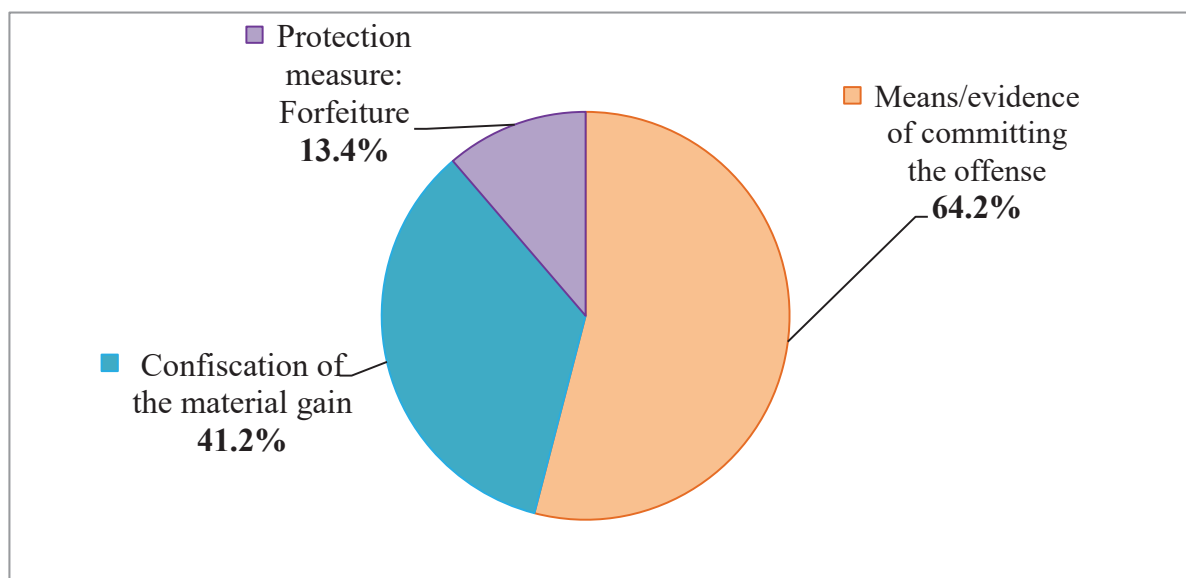
In the majority of case files it is not stated that any items were confiscated following the arrest (59.6%). In other cases, the seized belongings were listed. Among the seized items, the most common were condoms, then money (figure 5). Neither condoms nor money were returned upon the completion of the court proceedings. Where data are available, it was stated that the money was submitted to the budget of the Republic of Serbia and that condoms were destroyed after being identified as a means for committing the offence. Beside the condoms, where there were data on the treatment of the confiscated belongings, mobile phones and phone cards identified as a means of committing the offence were destroyed as well. In one case, according to the documents of returned belongings, the certificate was issued on behalf of the defendant's partner.

Figure 5. Frequency (in %) of reported items seized from the arrested persons prosecuted under Article 14 LPOP



The reasons for confiscation of property were indicated in 77.9% of cases, usually it was not only one reason. In almost two-thirds of the cases the reason stated was that the property was seized as a means/evidence of committing the offense and in two-fifths of the cases it stated that it concerned the confiscation of the material gain acquired by perpetration of the criminal offence (figure 6).

Figure 6. Representation (in percentage) of the reasons stated in the cases processed under the Article 14 of LPOP for the confiscation of personal property

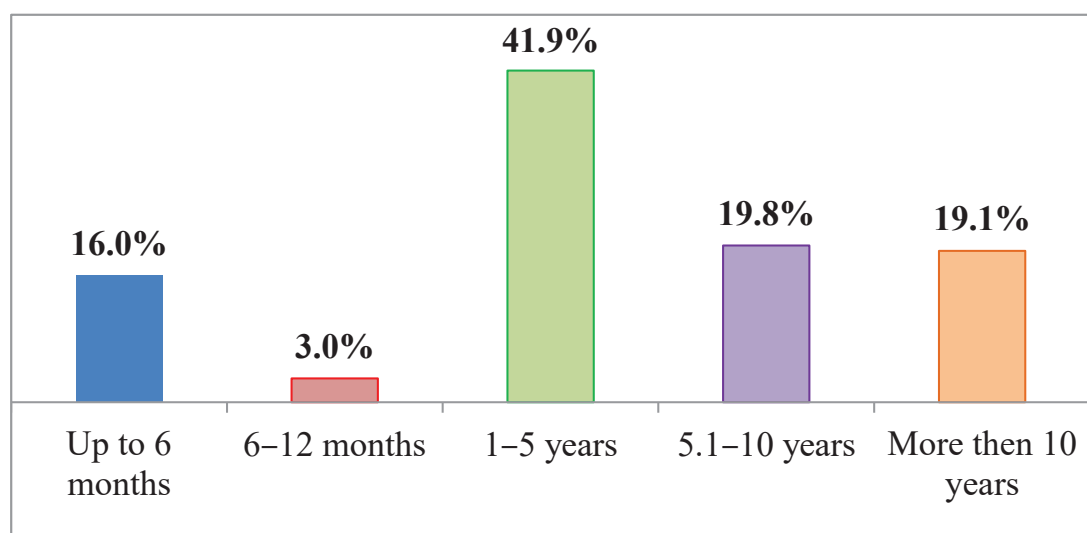


Almost all detained persons gave and signed statements after interrogation at the police station (90.6%), while in 3.3% the detained person gave a statement but did not sign it. In 6.1% the detained persons neither made nor signed a statement at the police station. Out of the 51.2% of the cases where the arrests were conducted due to indirect connection with sex work, in 94.5% the detained persons confessed, while 5.5% did not confess the perpetration of the offence to the police.

In 50.2% of the case files the reasons were stated which the detained person reported for engaging in sex work. In most cases material and existential reasons were given, including child support (97.2%). Other reasons given were that it was an occasional, part-time job (1.9%) and addiction to psychoactive substances (0.9%). In most cases, it was stated that the defendant/s declared that they were performing sex work independently, by negotiating directly with clients on the street (78.9%) or through advertisements or telephone (10.8%), while in only a few cases they reported that the sex work was contracted through the mediation of a third party (0.9%). The rest of the case files (9.4%) contain no data on the organization of the work. In cases where it was stated that the defendants had contracted sex work through a third party (two cases/persons), the reasons stated for engaging in sex work were of existential nature. One person who contracted work through third party was a citizen of Romania, the other of the Republic of Serbia. These persons were prosecuted, as can be concluded from the data in the case files, in the same way as the other indicted persons, and the entire process (from the arrest to sentencing) lasted one day.

In 61.5% the time period for which the defendants reported to be engaged in sex work is stated. This ranges from four days to over ten years. The most frequent is one to five years, the least frequent is six months to one year (figure 7).

Figure 7. Representation of cases (%) according to the declared time of being engaged in sex work (among cases with reported time of being engaged in sex work)



Data on the length of detention are given in 165 cases (77.5%). The length of detention, according to these data, was never over 24 hours and on average approximately 10 hours. In most cases (96.7%) it was not specified what the health/physical/psychological condition of the detained persons was at the time of the arrest. In cases where the health/psychological/physical condition was indicated, two persons were stated to have been under the influence of psychoactive substances at the time of arrest, one was previously treated in the Specialized Clinic for Addiction Diseases in Belgrade, one was pregnant, and two had given birth in the period up to 6 months prior to the arrest, while one was stated to be physically injured. Only the latter person was provided with medical assistance, stating that she received "medical treatment from a specialist at the Emergency Department". Upon the completion of the process, of the women who had given birth in the period up to 6 months prior to arrest one received an acquittal, and the other suspension of the proceedings. The woman who was pregnant was sentenced to imprisonment under Article 14 LPOP and a fine on other grounds.

In the course of the trial, i.e. the main hearing, the majority of defendants pleaded guilty to the offense by Article 14 LPOP (96.2%). In the other cases, there was no admission of guilt. However, despite the admission of guilt, 6.1% of the defendants changed their statements in court in comparison to the statement given to the police, whereas three defendants changed their statement from admission of guilt to the police during the interrogation to a plea of 'not guilty' in the court proceedings.

During the trials, most case files did not indicate the existence of a witness (72.8%), while in the cases where it was stated that there was a witness present, the reading of the statement took precedence over bringing the witnesses to give a testimony in court. In 24.4% of the cases the witness' (mainly clients) statements were read, while in 2.8% witnesses testified in court, where the witnesses were mostly police officers.

According to date of arrest and date of verdict, in most cases (97.7%) the entire process lasted no more than one day. For the rest of cases – there are no complete/clear data on the beginning of the process (arrest), so it's unknown are they last more than one day or not. In this short period were not only those cases adjudicated where the defendants were prosecuted under the Law on Identity Cards and/or under the Law on Temporary and Permanent Residence, but also those who were prosecuted exclusively under Article 14 LPOP (40, 4%). In 44% of the cases of persons who were prosecuted only under Article 14 LPOP and where the process lasted one day or less, the defendants had already previously been punished for offenses under Article 14 LPOP.

From the cases processed within one day or less and only under Article 14 LPOP, only in 34.6% the case files it is explicitly stated that the person had an ID card or other identification document at the time of arrest. The procedure also lasted a day or less for those persons who had foreign citizenship, as well as for those who reported that they had contracted work through a third person.

The majority of the prosecuted persons pleaded guilty to the offenses (96.2%); 3.8% of the accused persons denied the offense in court. Of the persons who were arrested for being indirectly associated with sex work (51.2%), 93.6% pleaded guilty in the court; 6.4% denied the offense. However, in the majority of the cases admission of guilt was not explicitly cited as a mitigating factor in the adjudication of the judgment.

As for mitigating and aggravating circumstances, in most cases it is not specified which exact circumstances were taken into account. Aggravating circumstances were taken into account in 94.4% of cases, mostly without further specification. Where they were specified they mainly referred to the previous convictions of the defendant and/or the lack of an identity card or other identification documents. Mitigating circumstances were taken into account in 76.6% of the cases. In 93.1%, however, they were not further specified. Where they are specified, they refer mainly to the defendant being mother of a minor or an infant or a single mother, specific personal or family circumstances, pregnancy at the time of the court proceedings, no prior convictions, admission of guilt, unemployment or declarative efforts to obtain an ID card.

Upon the hearing, 2.8% of the cases resulted in a (conditional) discharge: release without conditions (for one of the women who gave birth in the period up to 6 months prior to the trial), a court warning, alteration of the prison sentence to fine, or suspension of proceedings (for the defendant who had a child younger than one year).

Imprisonment was adjudicated in 97.2% of cases, varying from the minimum period of 4 days to the maximum of 30 days. The average was 12 days (with a median of 10 days). As to the length of the prison sentence, there was no difference between those who were prosecuted for the first time under Article 14 LPOP and those who had previously been convicted. There was also no difference between those who did not own an ID card or other identification document at the time of arrest and those who did. Also, the health/physical/psychological conditions of the accused had no impact on the average length of the prison sentences. Although the cases included persons identified to be under the influence of psychoactive substances, in non of the cases compulsory treatment of addiction was ordered; nor was any other measure ordered in respect of any of the persons prosecuted. In addition, fines were imposed in 52.6% of cases ranging from 1,000 RSD to 20,000 RSD, with an average of 5723.21 RSD. The most common was the imposition of a fine for the offenses under the Law on Identity Cards (68.5% of the cases where the fine was imposed), followed by offenses under the Law on Temporary and Permanent Residence (62%).

Of the total of 213 cases, not a single court judgment was appealed by the defendants. Execution of judgment started the same day when the verdict is given in the 98.6% of cases. Only in three cases (1.4% of cases), the execution of judgment take place from 1 day to 2 weeks after the verdict is given.

Summary and conclusions

According to the analyzed case files on Article 14 LPOP, the prosecuted sex workers were on average 32 years old, predominantly females, the majority of them with lower levels of education or no education whatsoever. Most of them were unmarried with on an average two children. Over the course of two years, they were on average prosecuted 1.7 times under Article 14 of LPOP. Approximately 4/5 of them had been previously prosecuted. In regard to half of the latter group it is explicitly stated they were prosecuted under Article 14 LPOP, while for the other half the reasons for previous prosecutions are unknown. Nearly 40% of them were prosecuted solely under Article 14 of LPOP, the majority was also prosecuted on other grounds, mainly for violations of the Law on Identity Card and/or the Law on Permanent and Temporary Residence. This indicates that a large part of the prosecuted sex workers had difficulties with obtaining personal documentation.

Only four cases involved persons who were not Serbian citizens. However, none of these cases state whether (there were indications that) the person in question was a victim of human trafficking or not. All persons were prosecuted under the LPOP as well as the Aliens Act and sentenced to imprisonment and an additional fine. In the case of the Romanian citizen, it is not stated whether she was provided with an interpreter or not, although it was mentioned in the case file that she didn't speak Serbian and that she acquired clients through a third party. All arrested persons who were identified by the police as persons engaged in sex work were tried by judges who were not specialized in human trafficking.

As many as half of the cases concerned arbitrary arrests. This means that the arrests were solely based on activities associated with sex work, such as loitering at locations where sex workers usually solicit clients, "offering" services to passers-by, "waiting" for clients etc., without any further substantiation, except for the police officers' interpretation of these activities. According to the case files 70% of the prosecuted persons were arrested at the scene. The evidence used for proving sex work is quite arbitrary: the most prominent proof is the fact that the person was loitering at a location where sex workers usually gather, followed by the possession of condoms. There is also more grounded evidence, e.g. when a person was caught in the act or when there was a witness testimony, witnesses usually being clients or police officers. Based on this data, we can conclude that there is a relatively high level of arbitrariness among the arrests and the further processing of the cases when it comes to sex work.

The treatment of the possession of condoms as evidence is a separate issue. Although condoms are proven to be the most reliable form of protection against STI's, they are used as evidence of a sexual offense and are confiscated and consequently destroyed as 'means' of committing the offense. This is particularly harmful from the perspective of prevention in the field of sexual and reproductive health and rights. It discourages sex workers to use condoms for fear of police actions and this puts both the health of sex workers and their clients at risk.

In most cases the entire procedure, from arrest to sentencing, lasted no longer than 24 hours. The use of this accelerated procedure included not only persons with problematic personal documentation, but all persons detained on the basis of violation of Article 14 LPOP. Judgments were generally uniform: there is no difference in the average length of prison sentence (12 days/median; 10 days on average) in relation to previous arrests or convictions, the possession of identification documents or medical condition. Only two women who had children younger than 6 months at the time of arrest were exempt, i.e. their proceedings were suspended. For other persons whose health status was recorded (i.e. abuse of psychoactive substances, pregnancy or physical injury), this condition did not affect the verdict or the length of the sentence. Not a single person who was identified as user of psychoactive substances was imposed a measure of compulsory treatment of their addiction. Also, although the case files state that a number of persons pleaded not guilty to the police and during the court hearings, this did not affect the judgment, i.e. punishment with imprisonment and an additional fine if there were additional charges of violation of any other law.

In none of the cases the verdict was appealed. It is assumed that the convicted persons weren't familiar with the procedures for filing an appeal and/or had no time (or money) to consult a lawyer or write an appeal, because they were promptly sent off to Požarevac prison to serve their sentence.

Recommendations

- Abolition of Art.14 of the Public Peace and Order Law in order to ensure the basic human rights of sex workers
- Development of mechanisms to ensure respect for the fundamental human rights of sex workers, in particular the right to life, liberty and security, including protection against arbitrary arrest, detention or deportation, the right to a fair trial, the right to non-discrimination, equality before the law and equal protection by the law, the right to health, right on work, to free choice of employment, and satisfying working conditions, the right to own property and not to be deprived of their property, as the rights stated under United Nations' *Universal Declaration of Human Rights*.³⁰
- Abolishment of the practice of using condoms as evidence for sex work as well as of the destruction of condoms as a 'means' of committing the offense. This is both in the interest of the health of sex workers and public health efforts to protect sexual and reproductive health and rights of people.
- Capacity building of sex workers to understand their legal and human rights, the situations in which these rights are violated and ways in which they can react to protect themselves against violations of their rights.
- Capacity building of sex workers to understand legal procedures and how they can use these to protect their integrity and their rights.
- Sensitization of judges and police to the human rights of sex workers.

³⁰ *The Universal Declaration of Human Rights*. [Internet]. Geneva: United Nations. 10. December 1948. [Acceded on November, 11 2013]. Available at: <http://www.un.org/en/documents/udhr/>

7 Analysis of judgments under Article 184 CC: mediation in prostitution

Ivana Radović, ASTRA

The objective of the analysis was to explore the manner in which Article 184 of the Criminal Code of the Republic of Serbia (hereinafter: CC) 'Mediation in Prostitution'³¹ is implemented in the legal practice in our country.

Article 184 CC - Mediation for Prostitution

(1) Whoever abets or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with a fine and imprisonment from six months up to five years.

(2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with a fine and imprisonment from one to ten years.

Although the Article intends to suppress sex work by punishing the procurer, i.e. pimp, in reality it is often used to prosecute sex workers themselves who group together in order to provide safer and more convenient working conditions for themselves, or to prosecute the criminal offence of human trafficking for sexual exploitation. The latter happens in two cases: when the offence of trafficking is not recognized as such from the very beginning or when the case begins as a human trafficking case but during the process is reclassified to mediation in prostitution. The reasons can be twofold: either the prosecutors and judges fail to recognize the criminal offence of human trafficking or they recognize it as a case of human trafficking but do not have enough evidence to prosecute, and consequently resort to reclassification of the case to mediation in prostitution, with the justification that the most important outcome is for the perpetrators to be punished.

The analysis is based on 40 judgments on the criminal offence of mediation in prostitution provided by the basic courts, higher courts and courts of appeal from the entire territory of the Republic of Serbia. The basic courts in the following towns informed us that they had had no cases on mediation in prostitution during the period 2011-2012: Čačak, Kruševac, Požega, Vranje, Paraćin, Užice, Loznica, Kikinda, Prokuplje, Sombor, Niš, Novi Pazar, Požarevac, Pirot, Prijepolje, Zaječar, Valjevo, Zrenjanin and Kosovska Mitrovica. The same goes for the higher courts in the following towns: Leskovac, Subotica, Požarevac, Pirot, Sremska Mitrovica, Kruševac, Šabac, Pančevo, Sombor, Kragujevac, Smederevo, Kosovska Mitrovica, Užice, Novi Pazar, Jagodina, Kraljevo, Niš, Zrenjanin, Čačak.

While legal proceedings under Article 184 CC do not fall within the jurisdiction of the higher courts, these courts adjudicate when cases which started as human trafficking (Article 388 CC) are reclassified as mediation in prostitution (Article 184 CC). Therefore, the judgments and feedback provided by the higher courts are of great importance.

³¹ Criminal Code of the Republic of Serbia. Official Gazette RS, no. 85/2005, 88/2005 – rev. 107/2005 - rev. 72/2009, 111/2009, 121/2012 and 104/2013.

All courts of appeal provided judgments and feedback. While the Court of Appeal in Niš did not provide copies of the judgments, but allowed access to the court register, the Court of Appeal in Novi Sad informed us only on the number of conducted proceedings, but referred the researchers to the Acting President of the Court who can provide special authorization for getting access to the judgments. Interestingly, in the initial phase of the research, the Court of Appeal in Novi Sad provided anonymised judgments without additional conditions.

Thirteen judgments from the courts of appeal were excluded from the analysis because it was not possible to connect them with the first-instance judgments; in other words, it was not possible to extract the data required for the study from the second-instance judgments, since they only specified the substantial violations of the criminal proceedings, the decision on penal sanctions, criminal law violations, etc. Of these judgments seven confirmed the first-instance judgment, four annulled the first-instance court judgment and one modified the first-instance court judgment.

Type of cases

Article	Nr. cases	Crime	No& gender defendants	No& gender injured parties	Court
184 (1)	4	Mediation for prostitution resp. advertising for prostitution	4 female sex workers	4 female 1 male	Basic Court Novi Sad (3); First Basic Court Belgrade (1)
184(2)/251 CC FRY	4	Mediation for prostitution of a minor	Male 3 Female 4	4 female (15 yr: 2; 17 yr:1; unknown:1)	Basic Court Novi Sad (2); Basic Court Bor (1); First Basic Court Belgrade (1).
184 (1)	3	Reclassification of trafficking (388 CC) to mediation for prostitution. In appeal 1 case reclassified from mediation to child abuse (180 CC)	Male: 4	Female: 6, of whom 4 minors	Basic Court in Negotin, Zajačear and Šabac
184 (1)	2	Mediation for prostitution with the use of coercion	Male: 3	Female: 4	First Basic Court Belgrade (1); Basic Court Subotica (1)
184 (1)	14	Organising the prostitution of another person	Male: 18 Female: 3	Female: 21	Basic Courts in Belgrade (6), Kragujevac (3), Novi Sad (2), Subotica (1), Leskovac (1) and Vršac (1).
Total	27				

Conviction of sex workers for mediation for prostitution

In four judgments – three from the Basic Court in Novi Sad and one from the Basic Court in Belgrade – sex workers were convicted for mediation for prostitution. In all four cases, the

defendants were women, while among the “injured parties” (five persons) there was one male. In one case, there was no injured party. Only one of the cases presented witnesses, notably two (out of three) “injured parties” and the defendant’s client. In one case the criminal offence was discovered when a police inspector posed as client, the other cases lacked an explanation on how the offence was discovered.

All cases concerned female sex workers who lived and/or worked together with the “injured party”. All defendants advertised their services through the media or the internet. Besides advertising, two defendants had rented an apartment where they practiced sex work, looked for clients and made deals with them, not only for themselves but also for the “injured parties”, and in return demanded a certain percentage of the profit (50%). In one case, the defendant lived in a common-law marriage with the injured party, who also engaged in sex work, and the supposed solicitation for prostitution was actually a situation where the defendant ceded a client in favour of the injured party without compensation. In the fourth case there was no injured party, i.e. the sex worker was accused of solicitation of herself, by putting out ads which advertised prostitution. The rationale behind the judgment states:

„The action of committing the basic criminal offence of mediation in prostitution under Article 184 para. 1 of the Criminal Code was prescribed alternatively. In the aforementioned article, it was foremost stipulated which actions are considered to be solicitation of prostitution, and those actions are specified as abetment or solicitation of others to commit the act of prostitution. Subsequently, the action of committing the basic criminal act is being prescribed for principal in the second degree and is specified as engaging in handing over one individual to another for the purpose of prostitution, and lastly, the final prescribed alternative action of committing the basic criminal act is promoting and advertising of prostitution through the means of mass communication and other similar methods”.³²

This is rather unusual, because the criminal offence of Article 184 CC is called mediation for prostitution, and, although one of its elements concerns the advertising of prostitution, its objective is to punish procurers and pimps, rather than sex workers. This interpretation arises from the fact that Article 14 of the Law on Public Peace and Order (LPOP)³³ is intended for the suppression of sex work, i.e. engagement in prostitution. According to the interviewed magistrate judges, engagement in prostitution in this article is interpreted as a profession, as an intent to engage in prostitution and covering any action which indicates the intent of engaging in prostitution, including the advertising of one’s own sex work. In other words, it is unclear what the criteria were behind the decision to prosecute a sex worker who conducts sex work independently, for the criminal offence of Article 184 CC and not for the misdemeanor of Article 14 LPOP.

The evidence (beside the confessions of the defendants) that was used in these cases included published ads, mobile phones and SIM cards, as well as text messages. In only one case, the mobile phone and SIM card were confiscated as a security measure. As the judgment states:

“Bearing in mind that the defendant was using the specified mobile device to connect with other persons with an intent to conduct a criminal offence, and that there was a danger that

³² Basic Court in Novi Sad K–3368/2011.

³³ Law on Public Peace and Order. Official Gazette RS, no. 51/92, 53/93, 67/93, 48/94, 101/2005 - other law and 85/2005 - other law.

*the specified device might be used again for the same purposes, it was necessary to impose the security measure of confiscation of the item.*³⁴

Condoms were not cited as evidence or confiscated as a security measure, which represents a significant difference in comparison with earlier practices of magistrates' courts with respect to the prosecution of sex workers.

All four defendants pleaded guilty; one sex worker signed a plea bargain with the prosecutor. Two defendants were sentenced to suspended sentences (resp. four and six months suspended sentence for two years), and two defendants were sentenced to resp. five and eight months of prison, along with fines ranging from 30,000 to 50,000 dinars (EUR 270-450)). Prison sentences were mainly below the legal minimum.

As mitigating circumstances, the courts took the following factors into account: no prior criminal convictions (3), admission of guilt (3), the fact that the defendant is a family woman and/or mother of minors (2), the young age of the defendant (1), and remorse and regret over the offence (2). Only one defendant had prior convictions taken as an aggravating circumstance.

Examination of the judgments of the Magistrates' Court in Belgrade learned that the "injured parties" who were engaged in sex work and who were reportedly mediated by the defendants in the proceedings held before the First Basic Court in Belgrade under Article 184 CC, were not simultaneously prosecuted for the misdemeanor of engaging in prostitution under Article 14 LPOP.

Mediation for prostitution of a minor

Four judgments referred to mediation for prostitution of a minor under Article 184, paragraph 2 of the Criminal Code. Although the study does not deal with sex work of minors, it must be pointed out that sex work involving persons under the age of 18 cannot be voluntary, even if a minor states so.³⁵ However, these four cases are intriguing enough to focus on because they contain significant elements of involuntariness and human trafficking, that is, beyond the fact that there were minors involved.

The judgments were reached by the Basic Court in Novi Sad (2), the Basic Court in Bor (1) and the First Basic Court in Belgrade (1). Although the judgments were rendered in the period 2011-2012, two of them refer to acts committed during the time when the Criminal Code of FRY was still in effect (Article 251, paragraph 2): one act was committed in 1997 and the other in the period 2002-2004. One of these judgments is not yet final and enforceable.

In two cases the defendants were men, in one case a man and a woman, and in one case the defendants were three women who themselves were engaged in sex work. The injured parties were four teenage girls, aged 15 (2) and 17 (1); for one injured party the age wasn't stated. In one case there were originally six adult injured parties, who were later excluded due to the fact that the part of the indictment relating to them became subject of the statute of limitations.

In the context of human trafficking, the most interesting case is the one from the Municipal Court in Novi Sad³⁶, which stems from 1997 and has not yet reached its final decision. Accord-

³⁴ Appellate Court in Novi Sad Kž 1-3930/2011.

³⁵ According to the definition of trafficking, any recruitment or mediation for prostitution of minors is considered to be trafficking, independent of the use of coercive or deceptive means.

³⁶ The Basic Court in Novi Sad K-24457/2010.

ing to the indictment the first defendant brought girls from Ukraine and Moldova to Serbia and forced them to engage in prostitution at a place owned by the second defendant by seizing their documents and restricting their freedom of movement, while the defendants took all the money that the girls earned. The case was detected in a police raid. One can argue that at that particular moment the offence of human trafficking was not a criminal offence (although there was an offence of enslaving and transportation of enslaved persons - Article 155 CC FRY) and therefore could not be prosecuted as such, but it is hard to justify the sentences in the first instance judgments, respectively two years, and one year and two months' imprisonment.

Furthermore, the standpoint of the Court of Appeal in Novi Sad³⁷ is questionable as well, as it overturned the judgments (and this took place in 2011, at a time when the judiciary should have been well aware and sensitized to the issues of human trafficking), accepting the argument of the defense that the first-instance court had had to make sure that the victims and the witnesses were present at the court hearing, and not read their statement given to the police. We should bear in mind two facts: first, the victim and the witnesses had given their testimonies in 1997, after which they were deported from the country with an exclusion order for the period of one year, and the Court of Appeal is expecting that they appear and testify 13 years later. Secondly, the entire process lasted thirteen years due to the fact that the first defendant was a fugitive for years and did not respond to court summons, and was eventually extradited from Bosnia and Herzegovina as a defendant in two proceedings for mediation in prostitution.

Also the second case contains unambiguous elements of the criminal offence of human trafficking, although the proceeding was conducted for the criminal offence of mediation for prostitution. This is supported by the fact that, according to the case file, the defendant had deceived the victim by taking her to another city, where she agreed to go believing she would be introduced to a popular singer, without any intention or notion that she would engage in sex work. There are also statements of witnesses stating that "the defendant said that he was planning to sell the victim". The above cases raise the serious question what human trafficking is and why it is incriminated in Serbian legislation at all, when the acts of recruitment, deception, violence and threats (which are irrelevant because the victims are minors) and (attempted) sexual exploitation - which represent the essence of the crime of human trafficking - are treated as mediation for prostitution.

In the other two cases with minor victims, the victims initially consented to sex work - if we can talk about consent of a fifteen-year old for this type of work - while their continued engagement in prostitution was secured through physical and psychological violence and threats (as stated in the verdict: "you're dead", "take care of mum", "if she does not continue to work, she will end up dead"³⁸).

In one case the defendant was a fictitious employer, in the other the common-law husband, and in two cases an acquaintance. One case was discovered in a police raid. Two cases were reported by the victims themselves, i.e. the mother of one of the victims and a man who was allegedly supposed to buy the girl reported the case to the police. In one case there is no information on how the trafficking chain was broken.

As for the penalties for the two cases prosecuted under Article 251 of the previous Criminal Code of FRY, they range from one to two years' imprisonment, with the Court of Appeal mitigating

³⁷ The Appellate Court in Novi Sad, Kž 1 1392/11.

³⁸ First Basic Court in Belgrade 4K-2/2012.

one of the sentences from one year imprisonment to ten months suspended sentence. For the two cases prosecuted under Article 184(2) CC the penalties were 3, 6, and 7 months in prison with a fine of 10,000 RSD (around EUR 90) per person in one judgment, and one year imprisonment in the other judgment.

Reclassification from trafficking to mediation for prostitution

Three judgments for mediation in prostitution under Article 184 CC were rendered after the initial indictment had been reclassified from the criminal offence of human trafficking (Article 388 CC), whereas one of these judgments was modified by the Court of Appeal and reclassified from mediation for prostitution to sexual abuse of a child (Article 180 CC). These judgments were rendered by the Basic Court in Negotin, the Basic Court in Zajačear and the Basic Court in Šabac.

The defendants in all cases are males - four of them, while all victims are females, namely two adults and five minors (including two persons under 14 years old).

The offences were perpetrated between 2008 - 2009, in 2009, and between 2005- 2007, spanning a period from a few months up to two years. The accused were sentenced to resp. imprisonment of 2.5 years and a fine of 100,000 dinars (around EUR 900), and a fine of 100,000 dinars, while in the third case the Court of Appeal reclassified the crime to abuse of a child and lowered the original sentence of 6 years imprisonment and a fine of 150,000 to 2 years and 3 months in prison.

The first case concerned the sexual exploitation of a woman who worked as a waitress in a bar owned by the defendant and who engaged in sex work consensually, but remained to do so only because of her heroin addiction. The defendant did not give her the money that she earned by engaging in sex work, but instead paid her in heroin. The defendant had already previously been convicted for mediation in prostitution.

In the second case, the defendant paid the trip of the foreign victim to Serbia and informed her only upon her arrival that she would engage in sex work. In this case it is particularly interesting that the defendants denied the crime, and then proposed themselves to reclassify the offence from human trafficking to mediation in prostitution. The fact that the victim was identified as victim of trafficking and placed in a safe house – which is stated in the judgment - was not taken into account in the reclassification of the offence.

In the third case all victims were minors, two of them below the age of 14, for which reason they are not the subject of this survey, but they are mentioned because the judgment is very interesting. Among other things, the Court of Appeal held that the defendant could not be convicted for mediation in prostitution, because two of the five minor victims had already engaged in prostitution before. Therefore, according to the court, the defendant could not have solicited them for prostitution. The judgment of both the first instance court and the court of appeal contain a detailed explanation why the offence cannot be qualified as human trafficking, without questioning the legal validity of voluntariness or consent in the case of minors. Also heroin addiction is not recognized as taking advantage of the victims' difficult circumstances and/or abuse of dependency. It is particularly emphasized that all victims are well-off for their age and that they engaged in prostitution in order to buy heroin, although they were not designated as addicts but as users.

The judgment is problematic for more than one reason: most importantly, consent is not relevant in the case of 16-year-old girls. Moreover, even if they had been adults, the fact that a person was previously engaged in prostitution and/or consented to prostitution (or domestic labour or construction work, etc.) is not relevant for the crime of trafficking once the use of deception, coercion, force or any of the other listed means is established.

All above judgments indicate the lack of awareness among judges and prosecutors on the issue of human trafficking, as well as ignorance and lack of understanding of this criminal offence, despite numerous training courses that were organized on the subject.

Mediation for prostitution with the use of coercion

In two judgments, rendered by the First Basic Court in Belgrade and the Basic Court in Subotica, the offence concerned mediation for prostitution with clear elements of coercion. One of the offences was committed in the period 2008 - 2009 by a group consisting of two members, the other between 2004 and 2006. The victims were four sex workers, two in each case. In both cases, the defendants recruited clients through ads and provided working space and/or transportation. In one case they would charge the client for the provided service and split the profits, in the other case the defendant confiscated all the money the victim earned. One of the cases was discovered when a police officer posed as client. Two defendants were sentenced to fines, each for the amount of 300,000 dinars (around EUR 2650), with one of the defendants also being charged with the infliction of minor bodily injuries; the third defendant was sentenced to 6 months suspended sentence for 2 years.

In both cases clear elements of coercion can be found in the testimonies of victims as cited in the judgments, e.g. in the Belgrade case³⁹:

"When [the victim] got out of prison, she decided to stop doing this, but [the defendant] said she owed him 1200 Euros and that she can leave once she pays him back, so she had to return to prostitution."; "She paid back the debt of 1200 Euros, and then he continued to come up with new ones".

And in the Subotica case⁴⁰:

"If they did not want to work for him, he was yelling at them, telling them that they must do it so while [name of the victim] was threatened to get beaten up if she refused to work for him"; "From [name of the victim] he took the whole amount, and when [name of the victim] refused to work for him, he threatened her with a knife, saying that he would cut off her lips and ears"; "When she wanted to get out, there was no chance, [the first defendant] would threatened to drown her, insult her, yell at her, and she was afraid that he would harm her child"; "... that he threatened the [name of the victim] that he was going to cut her up, kill her, mutilate her because it was her fault that they had nothing to eat".

Two of the victims altered their statements they had previously given before the judge, after they had previously stated that they had been threatened by the defendants. As cited in the Belgrade judgment: "... adding that he met her and [name of the other victim] in the hallway before the hearing and told them not to tell the truth, but to say they were working by themselves and

³⁹ First Basic Court in Belgrade 33K-4519/10.

⁴⁰ Basic Court in Subotica 4K-663/10.

that he was driving them that day, but did not know where to".⁴¹ And in the Subotica judgment: "... that he threatened [name of the victim] to cut her child and she would be forced to watch."⁴²

Again the qualification of the offence in both judgments is problematic. The purpose of the criminal offence of mediation for prostitution is to sanction any intermediary activity in regard to the prostitution of another person. If the offender uses coercion for the purpose of exploiting the victims, there are no elements of voluntariness, and the crime should be qualified as human trafficking in accordance with the national and international definition of trafficking.

Organizing the prostitution of another person

Fourteen judgments were rendered against persons who can be classified as pimps or organizers of sex work. These judgments were rendered by the Basic Courts in Belgrade (6), Kragujevac (3), Novi Sad (2), Subotica (1), Leskovac (1) and Vršac (1). In two cases the act of mediation was perpetrated in 2006, two in 2007, three in 2008, four in 2009, and in three cases in 2010. The judgments were rendered in 2011 and 2012.

In these proceedings 21 people appeared as defendants: 18 men and 3 women. In none of the cases the female defendant acted independently, it was always together with one or more of the male defendants. In eight cases the defendants were individuals, in six cases it concerned a group of two people and in one case three people. In three cases the accused had an intimate relationship with the victim; in one case the victim had a relationship with the cousin of the accused. In four of the cases where the relationship between the defendant and the sex worker was strictly professional, the defendants recruited clients through advertisements, provided working space, and split the profits. In two cases, the defendants did not have a permanent cooperation with the sex workers, but would call them when they came across a person who was willing and interested to pay for sex. In two cases, the defendants were helping friends: in one case, the defendant introduced the sex worker to the client - his cousin - on a non-commercial basis, while he didn't engage in pimping as a trade; in the other case, the defendant was arrested while he sat in the car waiting for his friend to get out of the client's apartment, also on a non-commercial basis. In two cases the defendants provided physical protection to the sex worker concerned and/or they "rented" them a part of the sidewalk where they would stand and offer their services, with an obligation to pay for "protection" on a daily basis.

In seven cases the sex work took place in an apartment rented for this purpose; in six cases on the street (in two cases at locations known for sex work) and in one case in a bar owned by the defendant. In three cases, the offence was discovered by a police officer posing as client.

In total 21 sex workers appeared as "injured parties" - in ten cases only one per case, in two cases two, in one case three, and in one case four. Three of the judgments revealed that the sex workers concerned had simultaneously been penalized for the misdemeanor of engaging in prostitution - all three times in Belgrade.

The largest number of defendants was sentenced to suspended sentences, whether independently (6) or in combination with fines (2). The most common penalty is six months' suspended sentence for one (1), two (2), or three years (3). The harshest sentence was 12 months'

⁴¹ First Basic Court in Belgrade 33K-4519/10.

⁴² Basic Court in Subotica 4K-663/10.

imprisonment suspended for three years. In the two cases where both a suspended prison sentence and a fine were imposed, the amount was 10,000 and 20,000 dinars. These figures are only a fraction compared to the two cases where only a fine was imposed, notably 200,000 to 250,000 dinars. As a reminder, for the misdemeanor of engaging in prostitution it is not possible to impose suspended sentences or fines. Six people were sentenced to prison terms ranging from two months to one year, on average slightly more than seven months. In three cases four defendants were acquitted. It is interesting to point out that, although it is only four persons and a relatively short period of time, one defendant was acquitted twice for mediation in prostitution. This is also the only defendant in the cases covered by the analysis who appears in more than one case.

When comparing the verdicts of the Magistrates' Court in Belgrade and the First Basic Court in Belgrade, we did not find a correlation. This would indicate that the misdemeanor proceedings against sex workers for engaging in prostitution and the criminal proceedings for mediation in prostitution against the organizers/pimps are being conducted in parallel. However, one cannot really draw conclusions from this because sex work as a misdemeanor is processed in summary proceedings immediately after the arrest, while mediation for prostitution is dealt with in (lengthy) criminal proceedings which can take several years.

Although we analyzed both administrative and criminal judgments rendered in the period 2011 to 2012, none of the criminal convictions applied to offences committed after 2010. On the other hand, if we compare the number of misdemeanor judgments (213, Magistrates' Court in Belgrade, 2011-2012) and criminal convictions (7, First and Second Basic Court in Belgrade, 2011-2012) rendered over a two-year period - even when the offences took place in different periods - it is clear that there is a far larger number of misdemeanor judgments, i.e. proceedings against sex workers, than criminal proceedings against pimps, although in qualifying mediation in prostitution as a criminal offence, the legislator recognizes the latter to be a greater social danger than the offence of engaging in prostitution, which is defined as a misdemeanor.

In most cases, the court based its decision on the testimony of witnesses or of the sex workers concerned. In other cases, the evidence was an advertisement (1), a medical report (1), a statement of a police officer (1), a call log from the mobile phone (1). In one case an expert opinion was required, in three cases the sex workers' judgments for the misdemeanor of engaging in prostitution was annexed, and in six cases the file contained a declaration of seized objects, usually mobile phones. If we make a comparison with the misdemeanor proceedings for prostitution, we may conclude that in the criminal proceedings against the organizers/pimps the evidence is much more scrutinized and the witnesses are always interrogated, whether directly or their statements are being read, which is rare in misdemeanor proceedings. In five cases the defendants confessed.

Mitigating circumstances that the court took into account when sentencing, included: remorse for the committed offence (6), proper conduct in court (6), confession of the offence (5), no prior convictions (4), the fact that the defendant was a family man and a father, i.e. a family woman and a mother (4), the fact that the defendant was unemployed and without income (2), the family circumstances of the defendant (2), the fact that the defendants were relatively young people (2) and the fact that the defendant was an older man (1). In one case, the court found no mitigating circumstances. Similar mitigating circumstances are listed in misdemeanor judgments for engaging in prostitution.

Summary and conclusions

More than half of the analyzed judgments rendered under Article 184 CC in the period 2011 - 2012, did not concern *actual* cases of mediation for prostitution (which would imply the organization of the prostitution of adults who are voluntarily engaged in sex work), but concerned convictions against sex workers for advertising their services, against persons who exploited sex workers with the use of violence or threats of violence, against persons who sexually exploited underage girls, as well as cases which were initially classified as trafficking, but in some stage of the court proceedings were reclassified as mediation in prostitution.

This practice has multiple negative consequences:

- The failure to properly identify victims of trafficking and instead treating them as victims of 'mediation for prostitution', deprives them from access to the various types of assistance programs and all other rights granted to trafficking victims. This not only negatively impacts their recovery but also, more importantly, exposes them to a high risk of becoming victims of trafficking again. Moreover, they risk being prosecuted themselves for prostitution.
- The use of Article 184 CC to prosecute cases of forced prostitution is contrary to its purpose, i.e. sanctioning mediation in voluntary sex work. If we exclude the element of voluntariness from the basic form of this offence, it transforms the case into human trafficking for sexual exploitation, which is regulated by Article 388 CC.
- Even more poignant is the situation in relation to minor victims. Minors who appear as victims of 'mediation for prostitution' are often labeled as prostitutes and are also deprived of the protection and assistance they require as victims of sexual exploitation. Persons under 18 years of age are considered a child according to the UN Convention on the Rights of the Child and children cannot legally valid consent to prostitution. Moreover, the UN Trafficking Protocol, the CoE Convention on Trafficking and the domestic legislation are clear that any exploitation of minors in prostitution should be considered trafficking. Therefore, Article 184(2) is in contradiction with both domestic and international law and should be abolished.
- The prosecution of sex workers under article 184 CC for advertising their services or forming associations with other sex workers – activities which are essentially performed for the purpose of prostitution - puts them at a disadvantage in relation to their primary offence, i.e. engaging in prostitution itself, which is a misdemeanor sanctioned by more moderate punishments.

8 Interviews with magistrates

Staša Plećaš, JAZAS

In the framework of the qualitative study conducted among Misdemeanor Judges (magistrates), interviews were conducted with 7 judges, including two judges who were permanent judges of the on-call court. The on-call (on-duty) court service normally consists of 3 permanent judges, however the third judge was not yet appointed after the former retired. The on-call court therefore had 2 permanent on-duty judges with several other judges rotating to replace the third position. The interviews with the selected judges cover two thirds of the cases dealt with under Article 14 of the Public Peace and Order Law (LPOP) in Belgrade.

Definition

Sex work is regulated by Article 14 of the Public Peace and Order Law, which states:

Whoever engages in prostitution or provides premises for the purposes of prostitution shall be punished by imprisonment by up to 30 days.

This article was first formulated in 1967, or maybe even earlier, and according to all interviewed judges it is an outdated/obsolete article which by no means fulfills its goal, whatever that goal was. However, even though most judges think that the article is outdated and that it is not in accordance with the current socio-cultural context, the position that people who engage in sex work should be 'removed from the streets' is still dominant. According to the judges, there is a need for legal provisions, which either regulate prostitution or suppress it, that is prevent this type of behavior.

"Well, the goal... There probably is a general goal, a general societal goal. But I look at a different one, I look at it differently. I always strive ... for us to remove them from the streets, at least for a while. But then on the other hand, you send them to jail at the expense of the state, and then after 30 days, or 15 days they get out and they do it again. So, I strive to remove them, so they can rest, get a hold of themselves.... In terms of prevention, and all its protections."

In making their judgments, judges first start with the general meaning of the law:

"Laws with legal provisions are meant to act both in a repressive and a preventive manner."

Whatever the goal of the law is or should be according to the interviewed judges, be it repressive, preventive or regulatory, the weight and the problem of this particular article lies in its complicated definition. That is to say, the original socio-cultural and moral reasons for this law, as outdated as they are to the judges themselves, is still in effect in its original wording. It is this wording, or the definition, that opens the door for personal interpretations of what constitutes 'prostitution' or a punishable act.

For misdemeanor judges, the definition and interpretation of the term 'engaging in' or 'giving oneself to'⁴³ (or Art. 14 itself) ranges from offering sexual services to either a law enforcement officer or a civilian through an advertisement to the intent to sell sexual services (defined as

⁴³ The Serbian term 'odavanje' used in this Article is ill-translated to 'engaging' in English. There is no English term that is synonymous with 'odavanje'. This term is best described as 'giving oneself' to something.

standing on the street and stopping vehicles or standing at a location known for prostitution) and finally to a judge identifying someone as a sex worker.

“What does it mean ‘in the act’? Because in the Public Peace and Order Law the formulation is ‘whoever engages in prostitution’ - this means, she doesn’t need to have been caught at that moment, it is possible for [her to have worked] two days ago or I don’t know, three hours ago or something like that. She doesn’t need to have clients at that moment or to be negotiating with a client. This is not at all a characteristic of the misdemeanor.”

“We merely consider the facts. It is generally clear that in that moment they wanted to commit the misdemeanor act. The location is characteristic. I mean, they are always in the same spot, known for it...”

“Engaging in prostitution, it is exactly ...the legislator understands this act to be your profession, you know, you have the intent to earn money through sexual services.”

“The act is exactly that... it is the intent to stop the car and offer sexual services for money. There is always premeditation, there is always premeditation, do you understand?”

Some of the consequences of this kind of formulation are clear from the following answer to the question: What if the detainee claims not to have been caught in the act, whose statement is then more valid, the statements of the sex worker or the arresting officer?

“I mean, look, it can lead to doubt, but it is a matter of proof, and thank God, it will remain so... it is not up to the judge, the judge is there to consider the evidence. If the police... I won’t say that this happens, but if the police comes and says, yes she gave us a price, and she says she didn’t, and the police officer [the undercover police officer] still claims that she did (tell him a price for services) ...In some way we are bound by the law, it’s not like we believe the plaintiff, like it is presented in public, but the accused has the right to lie. We’re not saying that the assumption is correct, but the accused has the right to lie. The witness is obligated to tell the truth, if she or he doesn’t, that is a criminal act. So if he claims, insists that it was so, especially if he is a [law enforcement] official, then he risks committing a crime. Just taking that into consideration, his statement should weigh more ... it doesn’t mean it is a hundred percent [true], but this gray zone is the most common... and it depends on this gray zone what level of doubt has remained with the judge.”

This kind of broad interpretation of the term ‘engaging’ doesn’t leave a lot of room for the accused to prove that at the moment of apprehension they were not ‘engaging in prostitution’.

Evidence and facts

Determining the facts, which entails consideration of evidence and establishing guilt, is done on the basis of the statements given to police, statements by witnesses when needed and statements made by sex workers in court, or on the basis of one or more of the following factors: time and location of arrest, the manner of detaining a sex worker, criminal and misdemeanor records, ‘knowing someone from before’, clothing, that is ‘looks’, other people who might have been at the same location or detained at the same time as well as the request of police.

Statements are taken from sex workers when they are apprehended and brought into the police station, although according to the judges this is not necessary as court proceedings are initiated at the official request of the police. The police request contains an official note stating the reasons and circumstances of the arrest.

It is very difficult to deny that the act has been committed. Statements made in the police station can rarely be changed in front of the judge due to the fact that there are multiple other factors that weigh against the sex worker at that moment. For example, in cases where a sex worker denies that she was working and claims that the statement made at the police station is not true, the arresting police officer may be called as a witness. As explained by the judge in the above quotation, since the witness is bound by law to tell the truth and the defendant has the right to lie, that is to defend her/himself, there is no reason not to believe the police officer as witnesses may lie. Therefore, testimonies made by police and sex workers cannot be viewed objectively since police testimonies are on forehand viewed to be true and thereby valid.

Also, calling the arresting police officers as witnesses can be used as a threat:

"Yes, because I usually say, OK, you'll sit here until the officer who caught you in the act comes. He will come here and the two of you will have to face each other, look each other in the eye. And then it is finished."

Even though sex workers are also permitted to call witnesses, this rarely occurs. The question arises as to whom they could actually call in as a witness. However, a witness testimony by the arresting officer might not even be necessary, as the judges 'know' that the sex worker is in fact lying:

"Yesterday, the person who I know is absolutely into prostitution, told me for example that she had gone to Plavi Most [SP: a well-known location for acts of prostitution] at one o'clock at night to buy fruit juice! I mean, what can one say! What should I say, really!"

In addition, evidence of prior engagement in sex work, that is records of arrests, is treated as evidence of the offence having been committed at the time of arrest:

"As for those (sex workers) who frequently engage, or constantly engage in this, should I say as a profession, for them, when they are apprehended, it is not a question of whether they did or didn't do it, they confess immediately and only want to know how many days they'll get [in prison]."

If a police action results in multiple arrests, a sex worker is by default considered to be guilty of committing the offense, as she was caught in a group with other sex workers who do not deny the charges. Therefore, she is *de facto* guilty because she was caught at the same place and time as other sex workers.

In the majority of cases, however, establishing the facts is usually based on the confession of the sex worker. One judge claims that he insists on 'evidence':

"But we ask, at least I always do, for additional evidence, I want to know what car exactly she stopped..."

Other judges, however, explain that in cases such as this evidence is not needed because the situation itself does not require it:

"Recently, one [sex worker] was out, and when she was caught at one or two o'clock at night, she claimed she was at the store to buy juice for her child. I said, Oh come on, do you think I'm totally...and how come it was you, how come he didn't stop me, would I be buying juice at that time, why didn't he catch me, I said. Do you see how you're dressed? She was wearing fishnet stockings and a short short skirt right up to here. I mean it just catches your eye, and so, through a conversation (...), through those two-three sentences, I have a confession."

"...if you come to a place where people are engaged in prostitution, engaging in prostitution, this act is understood by legislation to be your profession, you know, showing you have the intention of, of, of earning money by offering sexual services."

Asked if the detainee could invite the alleged client as a witness on her behalf to declare in her defense that she was not working, i.e. that there was no exchange of money for sex, the response was:

"But no, the point is that it is absolutely not about the client, the act is not a person, do you understand, the act is all about the process of you stopping a car, and offering sexual services, but I don't know any more which part of the act [laughter] you think there should be testimony about?"

All of the above mentioned factors that are taken into consideration by judges when making judgments against sex workers are only in part what makes this law imprecise. The term 'odavanje' not only makes it possible to define the article in different ways, it also enables judges and law enforcement to enforce at all cost. Whether someone was actually standing at a known sex work hot spot or whether one was caught in the act, is irrelevant when there are many 'factors' that you can arrest someone for. This raises the question of having committed the offence vs. having the intent to commit the offense and then being trapped into committing it. It begs the question of what procedures and rules are in place, e.g.in regard to incitement by the police, and what the purpose of the law is.

Mitigating circumstances – do they exist?

"And then her behavior, mind you, if it is indisputable that she has done it but she denies it, does not accept and so on, this is not a mitigating factor, I won't say it makes it more serious, but it is mitigating when after the act and the misdemeanor she comes and says, yes, I did it, what could I do, I regret it and so on ... this is a mitigating factor".

From the previous quotes we can see that the undefined and imprecise legal definition of 'engaging in prostitution' means that a person can be arrested or detained on the basis of a subjective judgment because of her/his clothes or looks, that one's denial of the act not only carries no weight against the claims of a police inspector in court, but also that this can lead to a lengthier jail sentence, and that the time and place (locations of prostitution) represent sufficient evidence in court.

Statements/confessions

When rendering a judgment, a crucial role is played by "judicial discretion" which should be formed on the basis of the evidence that is presented. However, as the evidence mentioned by

the judges is very wide and colored by subjectivity, social norms and moral categories set the framework and parameters of this 'judicial discretion'.

If the term 'odavanje' implies a person's identity or profession - what a person 'is'-, rather than the actual act of selling sexual services - what a person 'does' -, then sex workers are *de facto* in a constant state of being punishable for the very fact of being a sex worker. In other words, they are kept in the *status quo* whatever they do. This allows for a high extent of arbitrariness in passing judgment.

Positions and attitudes towards sex work and sex workers

The arbitrariness resulting from imprecise legal terms is reflected in the different positions taken by the judges. This is evident when defining the 'causes' for prostitution, in particular the distinction between 'unhygienic street prostitutes' and 'elite prostitutes' at the one hand and those who engage in prostitution 'because they have to' (e.g. unemployed nurses, students) at the other hand.

On the one hand, so-called 'street prostitutes' are perceived as being poor, uneducated, having poor hygienic habits and predominantly being drug users. These sex workers are also identified as repeat offenders and are described as having prostitution as 'their profession'. On the other hand, categories such as unemployed nurses or students and women who have a higher level of education than 'street sex workers' are viewed as 'not having a choice'. They are seen as being in a difficult situation, where they had to engage in sex work because they could not make ends meet and provide for themselves and their children in any another way. One judge believes there should be no difference in punishment between these two groups, while three other judges feel compassion towards 'those who had no other choice at that particular time' and, when passing judgment, take into consideration the consequences that these women's records might have for their future:

...there is quite a variety there, on the one hand you have those poor, should I say illiterate, uneducated young junkie prostitutes and on the other hand you have those highly educated women who work in their apartments, who are well-dressed, who... Well the law cannot be the same for one and the other, I mean... And then again, you cannot differentiate and have the well-off, educated ones pay a fine and have the others... go to jail.

Although the judges do their jobs by following the law that states that prostitution is punishable, opinions vary about the purpose of the punishment, partly due to the outdated character of the law. If the purpose of punishment is rehabilitation, then obviously the punishment has no effect in view of the fact that the sex workers with whom the judges have to deal are mostly repeat offenders. If this is the case, then the punishment serves only as a repressive measure, or its purpose is merely to punish for the sake of punishing, as stated by one of the judges.

There are opposing ideas as to how to change the law: while three judges would opt for the legalization of prostitution in the interest of the protection of public health, four other judges would only support a change in punishment, in terms of introducing the payment of fines as the only sanction. It is interesting that even those judges who want prostitution to continue being punishable, view it as work or as a profession. In this case, it might be said that what we

are talking about is an unacceptable profession (in moral and legal sense), and if this is so, then judges are the moral guardians of society.

... we have so many sick people engaged in this work, do you follow me, and now you take a kid, someone born in 1988 who is a client, who has sex with someone who has hepatitis A,B, or C, she is covered in scabs, he has not seen her properly, and they are HIV infected, it's terrible. I really find this terrible, I mean from the aspect of health.

Among the judges who believe that sex work should continue to be punishable because it is morally unacceptable, two views on punishment can be discerned in their explanation. The first view takes a paternalistic attitude towards sex workers.

"In order for her to have some time off, to take a rest and a break from the street, so she need not do that work. She can stay in jail, have a lie down and rest, so to say."

Explanations for the other view are based on empathy and understanding for the life circumstances of sex workers, and for this reason they believe their punishment (the number of days in jail) is just and fair.

"I give fewer days in prison for humanitarian (compassionate) reasons when someone, for example, comes and says that her mother is coming from abroad or a child's birthday is coming up, I really try to be compassionate and give them fewer days in jail."

"As I am very fair, I give them minimum sentences, I give them ten days, I have no problem with them."

Health

Despite the fact that the health aspect of sex work is always highlighted and sex workers are frequently cited as the source of a variety of communicable diseases, condoms are frequently confiscated, either for preventive reasons - in order not to repeat the act (despite the fact that judges speak about repeat offenders) - or because it is a means (tool) for performing the act. The ambivalence of judges shows mostly over health issues; sex workers are treated as a source of infection but at the same time their only means of prevention is confiscated.

"We have a big problem here, and that is, I don't know why the state prosecution does not react, everyone knows who is HIV positive... and they are actively engaged in prostitution, why aren't they following the law on communicable diseases...because their clients are young people... and hepatitis is just as bad or worse.... They are generally serious drug addicts, some 70% are serious drug addicts, sick, very sick people...."

Some of these controversies exceed individual judges' moral judgments and discretion because they refer to a systemic lack of logic. Opposing strategies are at play: the strategies of the Ministry of Internal Affairs and the Ministry of Justice on the one hand, and the strategies of the Health Ministry and the National Strategy for on HIV/AIDS on the other.

Trafficking

All magistrate judges who were interviewed were aware of the problem of human trafficking and how it differs from voluntary sex work. Also, every one of them was familiar with trainings

and educational materials that the Magistrates' Association organized in recent years. However, from the responses or questions of some of the respondents it was clear that they essentially did not understand the issue of human trafficking (*"You mean those Russians and Ukrainians?"*).

Additionally, because of the nature of the summary procedure under which "engaging in prostitution" is prosecuted, they are not in a position to scrutinize the cases with which they are presented and investigate the potential existence of coercion and exploitation, unless the person prosecuted makes such statement. This is probably the reason why none of them had had such cases in the defined period.

Conclusion

Sex work is consensual sex between two adults. While on the one hand the judges themselves validate this definition by maintaining that it is a profession and a choice, sex workers on the other hand are constantly kept in a 'misdemeanor status' through the action of the police and the courts. Sex work is declared to be the choice of sex workers, but court practice does not validate this choice. Every imprecise (vague) formulation opens possibilities for arbitrary action, thus making it possible for the ambivalent position of judges to be reflected in their actions and the allotting of punishment. The definition under Article 14, combined with judicial discretion, facilitates the possibility of the judges' personal stand on sex workers to prevail and become a key factor in passing judgment.

9 Interviews with sex workers

Stasa Plecas, JAZAS

In-depth interviews were conducted with a total of 9 persons. All interviews were held by colleague sex workers. In terms of gender, 4 of the interviewees were female and five were transgender. The youngest interviewee was 27 years old and the oldest 53. The average age was 35. The majority worked on the street (7/9), while a lesser number worked in an apartment (1/9) or both on the street and in an apartment (1/9). The majority had graduated from high school (4/9), three had finished elementary school and two had not finished elementary school. None of the interviewed sex workers were married. Three were divorced and the others had not married. Nevertheless, the majority did not live alone but had permanent partners (7/9). Four of the interviewees had children, the number of children varying from one to six (with an average of 2 or 3 children). The majority were Serbian (5/9), the others were Romany (2/9), Albanian (1/9), and Bosnian(1/9).

The median time spent by the interviewees as sex workers was 15 years. Because of the legal and social ramifications for sex work to be accepted as a profession, they had a variety of different experiences in their family environments. A number of interviewees had been successful in keeping their sex work a secret from their families. The families of the others knew what they do, but not all family members accepted this fact in the same way. Only 2 of the interviewees had the support of their families, while the other families either rejected them or were divided over the fact that a family member was engaged in this kind of work. In these families, the relationships with our interviewees were relatively bad.

Some report having been kicked out of their home by their families, while others hide the fact that they do sex work. Aside from hiding what they do for a living, most have to construct elaborate stories when imprisoned, such as that they are away on a trip or that they are picking seasonal fruit in nearby towns. They say that the reality of what they do, or where they are at the time would cause pain to their families. Lying about being in prison and saying that they are doing seasonal work, however, puts an even greater economic burden on their shoulders, as they are expected to bring home the earnings.

Working conditions, pimps, boyfriends, protection and safety

One of the goals of the research study was to distinguish between experiences of trafficking and exploitation in sex work and sex work itself. Sex workers were asked about the organization of their work and their experiences of working for or with others (managers, 'pimps', husbands) in order to explore their relationship with third parties, its economic effects and how they relate to safety and protection.

When speaking of safety and location of work, the interviewed sex workers have different opinions, depending on their personal preference and experience, the risk of arrest and the risk of violent clients (clients who are drunk or on drugs). While some say that there is less chance of being arrested when working indoors (apartments), others claim that indoor sex work is only safe if you know the client from before. An advantage of indoor working is that you are not exposed to weather conditions and 'hooligans'. Outdoor sex work is deemed safer by others,

because clients may ask for more than they are willing to pay for in indoor locations. On the other hand, there are those who say that no location is safe: in essence wherever you work you are at risk. The choice for the place of work is dependent on the risk assessment and the possibility of higher earnings.

It is understood that the police will not provide protection.

"I'm simply not in a situation to be able to seek police protection. First, the police would not give me protection. Their response would be: wait a minute, you got what you asked for. You were running after the money. Perhaps they would also punish me – hey, admit it, you were in it for the money, so off to jail. And the client is free to go and find other victims."

Whether on the street or indoors, none of the sex workers interviewed claim to have ever had a 'pimp' or to have paid for protection. 'Pimp' is the most common term used by sex workers, denoting both relationships that are unfair/unequal or exploitative and business relationships that are considered fair, as between a sex worker and 'manager' or a sex worker and her husband/boyfriend. However, they know of cases of both situations among their colleagues.

The definitions to describe the type of relationship are ambiguous and complex. There are various forms of protection which are more or less 'formal', which in some way or another describe the relationship between the sex worker and a person who provides or purports to provide some sort of protection. Those are husbands, boyfriends, 'racqueteers' and 'pimps'. However, the definition of who is in what kind of relation to the sex workers, as well as personal attitudes and opinions towards these persons differ. Talking about 'managers', 'pimps' and other third parties is difficult, even when the interviews were conducted by sex workers. Third parties, or 'pimping' is punishable under Article 184 CC, which makes it dangerous for sex workers to talk about third parties for fear of their husbands or boyfriends being arrested, or themselves being arrested.

Whether or not one pays for protection, the consensus is that protection is needed: either one protects oneself or one obtains protection from someone else. As sex work and locations where sex work occurs is deemed risky, protection is needed from violent clients, aggressors and the police.

Husbands differ from pimps in that:

"A husband protects you, you don't work for him, but for yourself... for him and for yourself. There is no 'you work for him' and nothing for you. That sucks. And a pimp: you work for him and give him all your money."

Others are more cynical:

"You're not paying for protection, but sort of like 'we're boyfriend and girlfriend', that is to say I have a boyfriend and he goes with me down there and 'like' protects me. Get it?"

Raqueeteering is understood to be payment for the location, standing on someone's 'territory', but also includes a certain degree of protection. This though, according to one sex worker is merely the entry point for 'pimping', which is a more exploitative relationship.

"So, if I have a problem, I can turn to anyone, even the police...OK, perhaps not the police, you understand why, but, I can, for example, call the man I live with and say I have a problem..."

One sex worker points out that boyfriends, husbands, pimps or whoever is 'providing protection' cannot go with you to a room when you are working, and cannot protect you once you

have entered into a car with a client and driven off. In essence, a sex worker is never completely protected against violence.

Pimps, in a broad sense of the word, are also used by the police as leverage against sex workers: when caught on the street, sex workers can avoid arrest if they 'snitch' on pimps, that is providing information to police officers about workers who work for pimps. Sex workers claim that it is a tactic used by police but that it rarely happens, as providing information on pimps could result in harm to the sex worker. 'Snitching' also occurs in cases of sex workers who use drugs or sex workers who have gone to work at a known location and time and can be 'caught in the act'. Snitching is dangerous for sex workers on several levels: it reduces the number of friendly colleagues and thereby safety, it increases their vulnerability as they will be ostracized by others and it does not guarantee that those same police officers will provide protection.

The term pimp can have various meanings for various sex workers; some consider splitting money with someone who protects you to be exploitation by a pimp, others say that pimps are those who sell and buy 'girls' and take all their earnings. The definitions of these terms are complex and varied and beyond the scope of this paper. However, whatever term is used and however that relationship is classified, it is clear that third parties, those considered 'pimps' or managers are meant to provide security and safety which is not provided by law enforcement.

Encounters with the police

According to the interviews with the sex workers, encounters with the police in the course of only one night are extremely frequent: from 3 - 6 times in the course of one evening. At those times, according to the sex workers, the police mostly chase them away from their place of work or threaten to arrest them or actually do so.

The experiences of sex workers in being caught in the act and in terms of evidence vary depending on the circumstances of the arrest. Arrests are made in different ways, ranging from situations in which the roles are clearly defined and no explanations are required:

"They open the [car] door and tell me to get in... and I have to"

to offering services to police officers in civilian clothes and being taken into custody for not having an ID card or a valid address, to which charges of prostitution are then added based on the fact that she was standing in the street.

What some sex workers call 'providing services to the police' is in most cases forced sex under the threat of arrest:

"That happened to me a month ago... I had to service a police inspector to avoid being arrested. And I had no choice, I had to 'service' him."

Sex workers have different explanations of what they believe to be illegal or irregular:

"It makes no difference whether he's my friend and I just went for a walk with him or something, they just see you with a man – for them that's the offence [SP: being caught in the act]. So, it's not important whether he paid me, it's not important whether or not I do anything with him as a client".

"If you are caught in the act, it's irrelevant whether you have condoms with you or not, they only care about taking you into custody. Because they get paid for that arrest ... they get a percentage or something like that. Only they get a slightly higher percentage than all of us, damn it".

When they are arrested, evidence for the arrest may be whether the sex worker had condoms in their possession and the amount of money she had on her person. Frequently just standing in the street is deemed to be evidence. The sex workers claim that in these situations they are not told why they are being taken into custody. It is self-understood:

"Without evidence! I mean, with ab-so-lute-ly no evidence!" Just come on! he says. I asked where? Come on, come on, get in, he says, or else I'll bash your head in, get in! And what can you do, you must get in."

When being arrested, sex workers are often exposed to physical violence.

"Well, if you resist being taken into custody, they will, of course, be rough with you. They might hit you or kick you or physically force you to get into the car and so on. And even if you don't resist, it has happened on a number of occasions, if you're hiding something, keeping quiet, they slap you or kick you, as I said, or take out their baton and hit you with it. That is so very... terrible."

Knowledge of the Law

The interpretations of what exactly is punishable under Article 14 vary depending on who is interpreting it (whether they be judges, the police, us or sex workers). However, even though sex workers accept that they have no legal possibility of resisting arrest, they believe that they are being rendered an injustice and that they have the right to equal treatment. Regardless of their knowledge of the law (or lack of it), bearing in mind the circumstances in which they work, the constant risk and the incessant, repeated arrests, sex workers demand a more just attitude towards them.

"And where is it written in the law, I once asked that (policeman), who said: 'You cannot stand there!' Where is the law that states that I cannot just stand [in the street] - there is no such law anywhere in the world, I mean I am STANDING here as a citizen of this country, I have the right to stand where I wish in my own country, if I want to stand here like the Statue of Liberty for 24 hours a day, I have the right to do so. I asked where is that law written down? He said: 'It's written right here, in my head'."

"Well, you have to defend yourself, I mean... If a statement was made in that precinct, then they cannot let you go, but if not, if nothing was signed and no statements were made, well, they have no right to arrest you. And they have no right to take you before a judge. Isn't that right? That's just so."

On the other hand, some sex workers do not resist the situation; they believe that by being sex workers the only right they have is to be arrested.

"Well, currently I haven't got a single right, literally."

Police presence and police help

Sex workers describe the street as a dangerous place where you never know what might happen. The police are perceived as one of those constant dangers. In cases when sex workers report street violence to the police, the police not only do not intervene, but with their attitude confirm that the sex workers themselves are to blame for the violence they experience because they are sex workers:

"Yes, says the police officer, how can I help you when you are a whore?"

"I had a problem with a client... when I went there [in order to file a complaint], he said: 'Did I make you go and work in the street? No, I didn't. I keep chasing you away, you stand there, you are a whore, and you, you alone are to blame.' This is what they usually say. Or 'What do you whores want? You whores are such a nuisance'."

The absence of a police reaction to reported violence sends a clear message to potential attackers/aggressors/bullies that violence against sex workers is permissible and will go unpunished. In other words, anybody (including, in some instances, members of the police force) can do anything to them and there will be no consequences.

Insults

When talking about the insults that sex workers are subjected to by the police, sex workers talk about feeling helpless.

"Well, you know, when they say 'Get lost' or something to that effect, that is insulting, you go crazy just listening to that. Isn't that insult after insult? It's not just once, it happens all the time. Or suddenly they hit you or kick you ... I mean, that's terrible."

"Well, I can't do anything about it. After all, he's a police officer and I cannot sue him for insulting me. I can't do anything about it."

"Well, these are usually insults that seem to befit us, like, you fag or I don't know - you queer, or something, usually these are insults that do not... that are inappropriate for people who do that kind of work..."

Avoiding arrest

The ways in which sex workers avoid getting arrested are vary from providing sexual services to the officer who is threatening with imprisonment, giving money to the police officer on demand, 'setting up' others i.e. giving information to the police about sex workers who have gone off with a client in order to have them get caught in the act, to giving information about sex workers who use drugs or giving information about pimps. Sex workers also attest to arrests being virtually certain if they 'do not behave' in accordance with whatever it is the police officers expect from them at that moment. On the other hand, police officers' moods are sometimes also attributed to avoiding arrest; sometimes it is not clear if they will be making arrests, sometimes they check personal documents and threaten with arrests later if the sex workers don't move from that location:

"Sometimes it depends on their mood, if they're in a good mood they don't bother us. They see us and move on. But sometimes they stop and then the chase begins."

Statements

Sex workers have different experiences of giving statements in a police station, ranging from having their statement taken down and then sign it, to refusing to write or sign any kind of statement. When a sex worker refuses to sign a statement claiming she never committed the act, her refusal, or rather her not-guilty statement, is not taken into consideration and in the next stage, when the sex worker and police officer are giving their statements before the judge, the sex worker is found guilty. In some cases, the police officer himself signs the statement on behalf of the sex worker. Some sex workers reported being mistreated because they refused to sign a statement:

"I write whatever he is dictating for the statement, to the effect that I (insert name and surname) on that particular day (enter date), engaged in prostitution by stopping a client to offer oral, classic, whatever sex, who knows what else they write there, for a particular price, and he says you have to, I said I don't. ... I used to write them in the beginning when I didn't know, when I was stupid. ... it means they have no evidence, but it happened sometimes that I didn't want to sign any statement, or give a statement and they would mistreat me, they wanted to. ... never mind they would say, you're going to Pozarevac [prison] whether you do or don't."

"They say they're calling the chief. OK, he says, it doesn't matter, you don't want to write a statement, it's OK and he lets me go to the judge. They write a statement and file it with the judge without my signature and when we get to the judge, I tell it as it is, meaning, I have given no statement or signed no statement and I do not wish to do so, so on what basis are you going to sentence me? He says, well, you were arrested down that way where acts of prostitution take place. ... so what does it matter that I was there, I admit it, I was there, I'm not saying I wasn't, but I had stopped working. And then I have to confront that police inspector. He comes, they call him to come down, and tell him, here, she didn't give any statement and he [the inspector] says she made a statement but she refused to sign it. So it turns out that their word carries more weight than mine. And then it happens. ... the court sentences you, it now depends on the court."

Even when some sex workers outright refuse to sign any statements when in police custody, especially when they are not written by them but either dictated or written by police officers, the result is the same: they are found guilty of prostitution:

"Naturally, I never signed, but it makes no difference. It's all the same. A few times I refused to even write a statement. I said: Wait, am I supposed to write my statement or your statement? ... He cannot force me to do something I don't want to. Because who knows what is written there, and what I'm signing, they can frame me for all kinds of stuff. And when I sign that, then I'm done for..."

Even though not signing the statement is seen by sex workers as their right, as something that might give them the possibility to tell their side of the story to the judge, or might provide a way out of the arrest, it usually does not help them in any way, as the judges will question the arresting officer and take their statement as fact.

Court proceedings

When detained and arrested, sex workers usually spend the night waiting for the on-call judge to appear in court. The procedure of being questioned, giving a statement or signing a statement and waiting for the judge are the longest part of the process, sometimes taking more than 12 hours. Once the sex worker appears in court, the court proceedings take no longer than 15-20 minutes. Usually, the statement taken in police custody is read, a few questions are asked about the accused such as marital status and whether or not she or he has children and then some questions are asked about the case at hand, if at all. Then the sex worker waits outside for the judgment. Usually, there is no reason given for how much jail time is ordered, but most sex workers claim that this is entirely dependent on the judges' mood.

One sex worker recalls not having signed the police statement and admitting to the judge that she used to work and then she was apprehended by the police at a known location for sex work, but she had stopped working and told the judge that she was merely there, walking. The arresting inspector was called into the judge's chamber as a witness. Ultimately, the sex worker was given a 7-day sentence for not updating her address on her identification card and another 7 days for prostitution, because she had a few condoms on her:

"I said, OK, I agree about the fact that I hadn't updated my address, but why these other seven days – because I hadn't signed anything, I'm not working ... and he says if you're not working, what were you doing there? Do you think a normal woman would be going there for a walk?"

Some sex workers report that there used to be 'good judges', judges who 'understood them' and didn't necessarily want to send them to jail, but had no option as the law had been changed to not allow for fines. One judge had told a sex worker to go to the doctor, as she was beaten by the police and had entered the court room covered in blood. The judge had advised her to get the evidence of the injuries and sue the police officer.

Others say that the judgment will depend on your behavior and 'the way you look'. If you are polite, you will get less jail time. Some even say that if you are always polite to the same judge, and you become 'almost as friends' you will likely get less jail time. But at the same time, you shouldn't change the statement you gave to the police or signed, because this will negatively affect you in front of the judge.

Punitive measures

In addition to reporting unhygienic and poor conditions in jail, sex workers mostly report that on being released from jail, they had to return to work in a very short time period, sometimes on that very same day, because spending time in prison increases their financial burden:

"Well, [staying in prison] had a financially adverse effect, because during those twenty days I had no income, nothing, and then I had a lot of expenses after getting out. ... It depends, I mean, previously I didn't have so many expenses, so in one evening I could get back to normal, but now it would be much more difficult because I have to pay the rent, and have other obligations, and..."

"Well, it's simply a state of being isolated from life, uhm, from your family and what not. Someone in your family might be ill, none of us is alone, you have a mother, this person, that, a child,

someone is ill, someone has this problem or that... at least that's what I think, uhm, and if you don't call it jail, if you're isolated in any room, let's say, and have no contact with your family and friends and so on, it's difficult... and let alone if you do call this jail, then you are out of touch, disconnected, you're not taking part in life, you are simply isolated from everything during that period, and that's that!

In addition to imprisonment as prescribed by law for a misdemeanor violation under Article 14,⁴⁴ additional punishments are frequently imposed for violations of the law on identity cards or for not having updated the information on their current address or domicile. This can be in the form of imprisonment or fines which are counted as 'payment' for a certain number of days in jail. Regardless of whether the punishment is a fine or a jail term, the financial burden it causes contributes to the repetition of the offence. This casts a light on a problem of the law itself: if the aim is to repress prostitution or prevent sex workers from repeating the same offense, it is clear that imprisonment prevents them from earning money. For this very reason, on being released they have to go back to work or work even more, so the law itself helps perpetuating the very thing it is supposed to prevent – thus rendering it meaningless.

Sex workers also report differences in sentencing depending on the judges. Some judges, e.g., take into consideration that sex workers have children at home. Some sex workers make a distinction between male and female judges. Others report that the punishment often depends on the mood of the judge on call. Also, it was noted that the judges treat transgender sex workers and female sex workers differently.

Appeals

The punishment goes into effect directly after the sentence is given and before the deadline for appeal has expired, which is 8 days after the judgment has passed. Sex workers, however, see no point in writing an appeal. The reasons they state are that no one will believe that the act did not take place or that their appeals will not be taken into consideration because they are sex workers:

"Who the hell should I appeal to? When no one will believe you."

Furthermore, they lack the technical means, since, as they already in jail, they see no way how they could write an appeal:

"It seems that when you get your judgment you have the right to appeal within 8 days. And yet you have no paper, no money, no pen or envelope to write and send this appeal; and if you do ask, it is for... forgotten, and off to Pozarevac.... Give me paper, a pen and an envelope. And then, you have to write in the canteen. I told them I have no money. By the time my money arrives it's passed. My deadline for an appeal has passed. Because I have spent already two days travelling – here, there, two days are up. And I didn't get it."

Another reason given is that they have no basis for an appeal, because they confessed to the act before the police and the judge. These confessions, however, must be questioned because, as stated previously, the statements are sometimes dictated to them and sometimes they are signed under duress. Under the excuse of "we all know each other so well" the very detainment

⁴⁴ At the time when the interviews were held in 2013, only jail sentences were prescribed by law for misdemeanors under Article 14 LPOP.

of the sex worker is taken to be a confession, just because the police officers and the judges know her from before. This makes the act of lodging an appeal totally meaningless in the eyes of the sex workers.

Conclusion

Imprecise legal regulations put sex workers in a situation in which they are permanently in violation of the law, which strongly impacts their lives and has dire psychological, economic and social consequences. Moreover, the law itself exposes them to psychological, physical, sexual and economic violence. All these factors together cause sex workers to be a continually marginalized and vulnerable group.

If sex work is to be considered a profession, as it is defined by the judges, then it is a high-risk profession and our task should be to alleviate the risk or eliminate it. In addition to all the social reasons that pertain to sex work in our society, the question remains whether an adult has the right to his or her own choice and not be punished or persecuted for it.

Recommendations

The interviews with sex workers about their experiences with arrests, encounters with the police and judges and their experiences in navigating and understanding the laws that are used against them, show that sex workers are aware of their rights and demand equal treatment before the law.

Unfortunately, the law, or the article most frequently used against them, notably Article 14 of the Public Peace and Order Law, is not only outdated but also so loosely defined that it can be interpreted as judges (and police) see fit, which renders its application highly arbitrarily. Moreover, as the law defines prostitution as a misdemeanor, guarantees for a fair trial are largely lacking. In view of the case law of the European Court of Human Rights, however, it can be argued that Article 14 LPOP should be qualified as a provision of criminal, rather than misdemeanor law, given the nature of the sanction (imprisonment), its gravity and its range, implying that all the guarantees of a fair trial as laid down in Article 6 of the European Convention on Human Rights should apply.⁴⁵

While we could argue that the article and 'judicial discretion' should be more precisely defined in order to provide clarity for sex workers, police officers and judges the like of what exactly is punishable and to avoid its arbitrary application, the analysis makes clear that the current article neither suppresses nor prevents prostitution, but rather has a series of adverse effects, both for sex workers and their families.

Sex work, that is, sex between two consenting adults for exchange of money or goods, should therefore, both on practical and principled arguments, be treated as work and fully decriminalized. Only full decriminalization can create the conditions for health programs to be rights-based and only with full decriminalization equal protection of sex workers before the law can be achieved. We therefore urge the government of the Republic of Serbia to stop punishing sex

⁴⁵ See Chapter 2.

workers, stop arbitrarily arresting sex workers, stop incarcerating sex workers as criminals and remove all punitive laws against sex workers and third parties.

10 Victims of trafficking for sexual exploitation

Ivana Radović, ASTRA

The aim of the interviews with victims of trafficking for sexual exploitation was to investigate, from the perspective of the women who experienced this form of violence, how trafficking in Serbia looks like today, in what way victims are recruited and whether the relevant institutions are able to recognize sexual exploitation and provide victims with appropriate care and protect their human rights. We also wanted to find out whether the approach and treatment by the police and the courts differs when they are arrested and prosecuted for engaging in sex work and whether they are recognized as victims of trafficking. However, due to the fact that only one of the respondents had experience with voluntary sex work, it was not possible to make this kind of comparison based on the statements of the respondents. All respondents were clients of ASTRA.

The content of the interviews, as well as the reasons for which half of the planned number of interviews could not be conducted, indicate that victims, after leaving the trafficking chain, face many problems even when they receive support through programs designed to help them rebuild their lives. Most of them have a problematic relation with their family, which is why some of them were explicit about not wanting to share any information on this topic. Psychotherapeutic help was accepted by around 30% of the clients who participated or were initially seen as participants in this research. Most clients did not think they needed this kind of help for their recovery. However, their willingness to talk about how they were recruited and exploited, to recall the details, even when it was clearly said that it wasn't necessary for the research purposes, as well as their emphasis on the psychological and physical violence they endured, indicate that the past events are still very alive in their everyday life and that the suffered traumas are not yet healed.

We conducted interviews with ten women who were exploited between 2000 and 2012. Five of them were exploited before 2010 and five after 2010. Although the answers from the first group are not relevant to this study in terms of recruitment methods, work organization and the response from the police and judiciary, they are still interesting because they allow us insight in possible changes in the mode of operation of traffickers, as well as the progress made by the police in regard to the treatment of victims of human trafficking and their willingness to accept that they are victims of a serious form of violence. What's interesting is that both groups did not differ much in regard to their socio-demographic characteristics, nor in regard to the reactions of their environment to what they had gone through.

All ten respondents were females, at the time of the interview aged between 21 and 40. At the time of exploitation their age varied from 14 to 34 (on average 25.2 for women exploited after 2010, and 17 for women exploited before 2010). At least three of the respondents were repeatedly re-trafficked, including two exploited before 2010 and one exploited after 2010. In the latter case, the first exploitation occurred before 2010, when she was a minor and lived in Bosnia and Herzegovina.

Two of the five respondents who were exploited after 2010, were exploited abroad, so their experience is to a large extent related to the conduct of the police and/or judicial authorities in these countries, which does not fall under the scope of this research. The other eight respondents were exploited in Serbia. Only one of the respondents who was exploited after 2010 worked as sex worker when she became victim of trafficking. As at that time the police in Serbia weren't

sufficiently sensitized to identify cases of human trafficking, we were not able to answer part of our questions, particularly those relating to encounters with the police and the prosecution in regard to the trafficking of sex workers.

All respondents, but one, were Serbian citizens, one woman is a citizen of Ukraine. The Serbian citizens have the Serbian (7) or Hungarian (2) nationality. Four respondents completed elementary school (one exploited after, and three exploited before 2010), two respondents didn't finish elementary school (both exploited after 2010), while four completed a vocational education or a high school-gymnasium (two exploited after and other two before 2010).

At the time of the interview, three respondents were married, four were divorced, and three were unmarried; two had no children, five had one child, two had two children and one had four children. Four respondents lived with their husband/partner and their children, two with their husband/partner, while the others lived alone, with their parents, with a child or with both their parents and a child.

All respondents report that they are unemployed or that they only periodically have a job; four receive some type of welfare, two state that their fiancé supports them financially, while one is supported by her father.

Recruitment, working place, working conditions and control

The first group of questions related to their experience in sex work, i.e. the way it was organised, the availability of medical care, experiences of violence, either by customers or pimps/traffickers, and the circumstances under which they managed to get out of the trafficking chain. The respondents were the most extensive in answering the questions about the circumstances under which they first engaged in sex work, i.e. the manner in which they were recruited into the trafficking chain.

Three of the women exploited after 2010 were recruited through job offers (care for the elderly, babysitting abroad, waitressing jobs), one was blackmailed by a video footage of sexual intercourse with her then boyfriend-later trafficker and another man, while the woman who had been trafficked three times, ended up in the chain of sexual exploitation because of her heroin addiction; previously, she had been recruited through a job offer abroad and had been sold by her partner to a club abroad. The recruiters were a faux uncle (1), a female acquaintance (2) and a boyfriend (2).

Only one of the respondents had prior experience with sex work; the others knew nothing about it before they became trafficked. The one respondent who previously had voluntarily worked as sex worker, had worked in a small town in Serbia, where she also lived, finding clients through her day job as waitress in a bar, and never had had any unpleasant experiences.

All respondents in this group were exploited in a different way. One was held captive by the trafficker in his home, who brought her clients he himself had recruited; he once took her to a bar with the intent to solicit her there and there was a plan to sell her further abroad. The second respondent was exploited in a bar/club abroad. One of the waitresses in the club lived with the girls and was responsible for them. She would offer guests drinks as well as girls, who, from time to time, had to come down from their rooms to the backroom of the premises and present themselves. The price was determined by the boss and the clients would pay him when leaving.

The girls had to work every day, were not entitled to a day off and lived in a separate apartment, where the aforementioned waitress 'looked after' them. Beside the respondent there was one other woman working at the club.

"There was this girl, a waitress, when guests arrived, she would regularly approach them, asked them what they wanted to drink and whether they would like company. And if they would respond that they wanted company, they were offered to choose between us, because I had dark hair and the other girl was blonde. And the chosen one would then join them for a drink."

The third respondent was exploited by the woman from whom she bought heroin. They lived in the same apartment; every day the woman would drive her to the street where she worked and occasionally control her by checking whether she was there and if she worked or not. She had to work every day. There were no other girls. The previous two times, this respondent had been exploited in clubs abroad.

The fourth respondent was exploited abroad and offered her sexual services on the street in an area where sex workers gathered. She usually worked on the street, and occasionally on call or with clients in their home. She had to work every day, except when she was in prison, and wasn't allowed to decide anything at all. The persons who exploited her determined the price; she was only allowed to negotiate with clients if she could negotiate a higher price. That same criminal group exploited several women.

The fifth respondent provided sexual services in clients' homes. She was exploited by her boyfriend and two other persons, one of whom was the driver who also served as a kind of protection, while the other was primarily responsible for recruiting clients. The 'boss' would determine the price and the money was either collected by the one who drove her to the client or she would take it herself but had to hand it over to the person who picked her up immediately. She had no say in either the price or the working conditions. She had to work every day, except when she had her period. Each day she had one to seven clients. The same trafficker had more girls whom he 'worked with', but she never saw any of them. When not working, she lived with her family, who were unaware of her ordeal.

The fact that all women were exploited in a different way only confirms that trafficking for sexual exploitation nowadays occurs in many different forms and that the victims have a different degree of illusory freedom, while in reality they don't have a say in anything. None of them could influence the price or was allowed to turn down a client. If they tried to refuse to work, in most cases they would have been beaten. However, the threats and the control the traffickers had over them were often enough so they hadn't even attempted to revolt. Usually they did not get any of the money they earned. Two respondents had not received any money at all, one respondent received some money on a couple of occasions when she explicitly requested it from the trafficker, one was given ten Euros per day for food and other necessities, while one received one-third of the earnings plus the extras clients would pay her in the room for additional services.

As for the women exploited before 2010, none of them had previous experience or knowledge of sex work. Three of them were deceived by a job offer, one was sold by her husband for gambling debts and one was recruited for voluntary sex work by an acquaintance who introduced her to the woman who would later forcibly exploit her. Two respondents were exploited both in Serbia and abroad. They worked on the streets, in private apartments, clients' flats, hotels or restaurants.

The women who worked on the streets recruited clients by themselves, those who worked in bars/nightclubs were picked up by guests, and the clients of those who worked in apartments and hotels were recruited by their exploiters. The bars/clubs usually engaged more girls, some of whom worked voluntarily. In this case, the clients would have to give money directly to the 'boss' or 'matron' prior to the service. In other cases, the women charged their services at a price set by the procurer, but had to hand over all the money, and then received smaller sums to buy the things they needed for the job. In one case, their 'portion' was reduced by the alleged debt to the 'boss' which was actually the amount spent for their purchase. One respondent stated that the girls had a quota they had to meet, regardless of the circumstances:

"If you do not make the quota, you're staying on the street until the morning. (...) If the police catch you and you get a month, after you come out you'll have to make up for the time you hadn't worked."

Most respondents worked every day, except one who worked three times a week on average.

None of the women could decide on any aspect of their life and work, from the price to the refusal of clients, or whether they would work or not. Some of them tried to escape but these attempts failed and they would end up with serious physical injuries. Those who never tried to flee state that the girls who tried to escape or said they did not want to work any longer, disappeared, were killed or heavily beaten, often in front of other girls as a warning. In one case, voluntary sex work evolved into trafficking when she announced she wanted to stop working. One respondent tells that whenever any of the women had tried to escape, she would be returned within a day. Some respondents also mention the connection between the local police and the traffickers/proprietors.

"Would the same thing happen, like you said, you would die, if you tried to escape? I tried to. And what happened? They found me, they beat me, they were burning me with cigarettes and I had nowhere to run, someone was always nearby."

As we can conclude, the work methods of traffickers have not changed much in the last few years as far as the organization of work is concerned. Both then and today, the women work on the street, in bars and nightclubs abroad or in private apartments, while a single trafficker or a trafficking group controls one or several girls. Although it is now more common that they are not held under permanent control but have more 'freedom', in reality it only means that the mechanisms of control have become more subtle, while even the slightest disobedience is still punished with severe physical violence.

Health

None of the respondents had serious health problems during the period they were exploited, not considering the physical injuries as a result of the violence suffered:

And when he beat me, because he would punch me right here in head (pointing to the back of the head) and here (pointing to her neck and her back). So it won't show. For there, where he lives, there's (pointing in front of her) a pond, Danube, a fish pond, I don't know what it is. And

he said: I couldn't care less if you're sick. He said, nobody knows you around here anyway. If you get sick and die, I'm going to throw you in there."

When they were not feeling well, they had to work regardless.

"Was there ever a situation when you were feeling sick and you still had to work? What was their reaction to it, in general... Of course, it happened ... When you get sick. Sure, but no one asks you if you can or can't."

"It did happen, for example, that I had a fever, sneeze, cough, have a hoarse voice, but (name of the trafficker) never really cared."

In case of flu or similar health problems, they were left to their own devices.

"No medication, no nothing, so I tried to take care of myself as best as I could."

One respondent exploited before 2010, states that the traffickers had a deal with a private clinic which carried out medical check-ups. Another respondent states that the girls were tested for HIV and hepatitis regularly, but were never sent to a gynecologist. In one case, their female proprietor organized a gynecological examination for the girls, but only when it was necessary to perform an abortion.

All but one respondent state that drugs were always present: "any girl who wanted the drugs would easily get it". One respondent states that she was beaten because she refused to take drugs. One respondent entered the trafficking chain as a heroin addict. In all cases, the drugs were provided by the trafficker as it was in his best interest for a girl to use drugs in order to be able to serve more clients, but also to make them more dependant on him.

"At that time, when all of this was starting to happen, generally speaking I am not an alcoholic or a drug addict or use any of these things, I normally drink alcohol when I go out or something, but at that time, I generally would not order a soda or something, but alcohol or I would simply accept the cocaine he'd offered me. "

"I didn't want to, so I got a good beating. Because you did not want to use it? Yes. Was it in the boss's interest for you to be using? Well, why not? When you get high and you can serve from 30 to 40 clients in one day. You can't feel anything."

It can be concluded that traffickers are exploiting women mercilessly while they are under their control, aiming to make as much profit in the shortest period of time, not taking care at all of their health.

Violence

All respondents suffered violence at the hands of their exploiters. Half of them also experienced violence from clients. Some spoke of clients who paid for sexual services only for the purpose of molesting them and nothing else. When a client was violent or refused to pay, the women had no protection and no one to turn to for help. Two respondents, who were working on the streets, say that in such situations the only option was to run away:

"When you're on the street there's no such thing as sexual abuse; it's your job."

This respondent also experienced violence from her colleagues on the street because she was seen as competition. Owners of bars/girls were condoning clients for being violent to the

women. One of the women who was exploited abroad states that the client could be reported to the police, but that that was futile, because the police would just make a report and leave it at that.

The traffickers/exploiters were always violent, resorting to physical and psychological violence, verbal abuse and intimidation. Only one respondent stated that the violence was not frequent, but only because the rules were clear and they obeyed:

"Well, ok, it wasn't that often. Once she had told us what's what, you know, what we're allowed to ask what not, then we did not ask anymore."

The most common provocation of violence were attempts to escape, which were brutally punished, followed by attempts to cease to work, to withdraw from the job, or rejection of certain clients. In some cases, the threats were directed to the respondents' families and social network, making them particularly motivated to remain obedient:

"Don't you dare calling the home phone, any phone, because, he said, then I am really going to hurt you. And then he showed me the weapon. "

"Oh, she and her threats. It was like: I'll burn your house, I'll track your kid, I'll murder your kid. "

"Yes, he once shoved me into a Rottweiler kennel for it to bite me, it was a bloodthirsty one, foam coming out of its mouth and everything, it was atrocious. Luckily, as he pushed and pushed, I kept screaming: Don't, don't, don't! And then she [the women who also took part in the exploitation] was like: Don't, leave her alone. And then he let me go."

"I then, in that mansion, she whipped me with a thick cord, folded in four, she really beat the crap out of me."

The period of exploitation of the respondents ranged from three weeks to three years with an average of nine months (about six months for respondents exploited after 2010 and about ten months for respondents exploited before 2010).

Breaking Away

All respondents exploited after 2010 escaped the situation due to their own initiative: all of them either managed to inform their relatives, who then contacted the police, or they contacted the police themselves. In one case, the direct motivation to seek help was her overhearing that the trafficker intended to sell her abroad. Another respondent tells that she decided to seek help after a violent incident with the trafficker, after which she decided that she could no longer go on like this. In all trafficking cases between 2010-2012 the police never once called in question the respondent's statement that she was a victim of trafficking and from the first contact they were treated as victims.

Of the respondents exploited before 2010, two were rescued with the help of the police, one by being a suspected victim of another offense (her mother reported kidnapping) and a police officer who inspected the site identified her as a victim of trafficking. In another case, the woman approached the police officers who sat in the bar where she worked:

"Anyhow, in all that hell, there was one man who also worked and cooperated with the police. He worked as an undercover (...) They have ranks (...) There were not many of those, but they

were present at the arrests. And this man came up to me, he was young, well, younger, back then. He came to me as a client, to expose me. He did not ask for anything but he paid me only to warn me and so that I would take him on that journey, to tell him how it was. I have never told everything there was, even to him."

One respondent escaped with the help of a client who fell in love with her. After a first failed attempt - the traffickers were able to locate her and she suffered terrible beatings – the second one succeeded.

Two other women also escaped from their traffickers, one of which also cites the plans to sell her further to be her main motive. After she escaped, she approached passers-by for help, while another respondent paid a smuggler to illegally transfer her across the river to the country where she had previously lived.

Contacts with the police while working

The next group of questions referred to the experience in contacts with the police outside the police station, i.e. on places where sex work and sexual exploitation took place. The respondents talked about their encounters with the police, the possibilities to obtain police protection from violence and possible arrests.

None of respondents who had been sexually exploited in Serbia after 2010 had had contact with the police before being recognized as trafficked person. On the other hand the two respondents who had been exploited abroad had had contacts with the police. One would often recognize police officers among the clients of the club where she was exploited, and even the owner of the club was a former police officer. She believed that everyone in that place, including the police, knew what was going on in the club. Also the other, who had worked on the street, had regular encounters with the police during the time she was exploited abroad. She had been arrested on several occasions during police raids aimed at prosecuting the pimps (the women were allowed to work on the street, but pimping was prohibited) or at combating drugs trafficking. The police usually tried to find out the situation at the beginning when the girl just came in - for whom she worked and whether she worked voluntarily or not - but they quickly gave up when the women refused to talk, because they were not familiar with the methods of control used by the traffickers to prevent them from cooperating with the police:

"At one moment there was even a situation that I was with [another victim and the trafficker] and all three of us were arrested. It was the only critical point where I no longer knew what to do, like, you know, not to strangle him, to shout, He's the one!, or what do I do, I thought to myself. And, literally, the fear prevailed and I was afraid to say anything."

As for the five women who were exploited in Serbia before 2010, three of them reported encounters with the police during the period they were forced to work. In some cases, police officers would come into the bars as guests, in some cases it concerned raids, which were frequent at that time. In the latter case, someone would have tipped off the boss so that he could get everything in order, so the police officers came to the club to party and in their report they wrote they had conducted a raid. According to the statements of the respondents, it was not uncommon for the police to help club owners bring back the girls who tried to escape:

“So they were all in touch. The taxi driver calls the police, the police calls the boss, the boss waits until the girl returns and voila, do what you want with her.”

One respondent stated that the police never came to the bar, but the owner bragged about - and threatened the girls with - her good connections with the police:

“Don’t mess around. Police too knows what we’re running here.”

The respondent who had been exploited on the streets in Belgrade before 2010, says she had had frequent encounters with the police: the police appeared either as clients or as officials in order to combat sex work. These encounters were violent, the police never asked the girls whether they were there voluntarily and nobody ever offered them any help.

None of the respondents who came in contact with the police during the period they were exploited - whether in Serbia or abroad - perceived the police as an institution that could release them and protect them from violence, primarily owing to the fact that the police officers were among their clients and within the circle of the people who exploited them. Only one respondent directly addressed the police officer whom she had seen in the bar, and they rescued her from the trafficking chain. The others who managed to get out of the trafficking situation, had not addressed the police:

“You knew they were cops? Well, no, I found out afterwards, because once there were two of them, so we both went for a drink with them, we talked and then we were told that they were police officers. And then, when we went up to the room, before we went up, the owner told us to watch our mouths. And then we went up there and they inquired whether we were there voluntarily. You were asked that by the police? Yes. We were afraid to say anything. How could we have known that they wouldn’t tell the owner. We were scared, so I said to my grandmother when I was writing her a message that she tells the cops not to talk about anything over the phone and not to call either, because the owner was a former captain, a former police officer, I mean. So that’s why.”

Arrest and imprisonment for sex work

Only one respondent exploited before 2010, had the experience of being arrested and sentenced for sex work (which was not voluntarily, although she was never officially identified as a victim). When talking about the arrests for sex work, she referred to the period before 2005, when she worked on one of the streets in Belgrade known for prostitution. Although this falls outside the period covered by this study, we decided to include her experiences to see if there have been changes in the way the police or the justice system operates.

According to the testimony of this respondent, during police raids the police would arrest all the girls who had not managed to flee in time - and it never happened that any of them was released:

“They won’t listen to you; they are not capable of listening. You are like a piece of garbage to them. They won’t interrogate you out of pure spite and nothing else, because you are not perceived as a woman, as a person, they treat you like an object. Because if it weren’t so, they would not have beaten those women, they wouldn’t act that way.”

Since she also had police officers as clients, from time to time they would tip her off about an upcoming raid. The police would usually request to see the ID cards from the sex workers. Their money wasn't confiscated on the spot, but later, at the police station. Although they would sign the certificate of seized property, they never received such certificate. Smaller amounts of money would be returned to them, but the bigger amounts were kept. Each raid was extremely violent:

"Those who got caught, they got beaten and taken in. So there was violence? Naturally. There was always violence."

Prior to being brought before the Magistrate and serving the sentence, the women were kept in very poor conditions, in a small and crowded room, 15 to 20 of them together. The police used violence during the interrogation of the women in order to get information about their pimps. They never asked whether the women were willingly engaged in sex work or not.

"When they brought the girls in, each who would report the person in charge knew what was waiting for her when she got out, so ... "

Also, the police did not check whether women were injured or if they had small children. They were particularly violent towards addicts and transgenders. Detained women weren't informed about their rights, they were not entitled to make a phone call and they would be provided a lawyer by the pimp who knew that the raid occurred because he or his men were always in the vicinity of the working women.

The respondent served a one-month prison sentence four or five times. After her release from prison she always had to compensate her pimps for the lost time and money, which wouldn't take her long to do, because she had regular customers. In prison she did not have anyone to complain to that she was not voluntarily engaged in sex work and none of the prison employees ever asked her that question - all the other prisoners were treated the same way.

She did not get any medical examination: only women who are serving longer prison sentences are entitled to medical examinations, but not those to come in for a month. When she was in prison, there were no sick women and the drug addicts received medication. It was possible to secretly smuggle drugs into jail.

While in prison she knew that after her release she would have to return to the street and continue to work:

"... I knew that when I'm done with the prison I will have to work again. And it wasn't news to me, it wasn't something unexpected, it wasn't something completely different. I knew what to expect."

However, her stay in prison contributed to the traffickers gaining confidence in her and delegating her some organizational tasks, because she didn't rat them out.

Identification of trafficking victims by the police

All respondents who were exploited after 2010 were rescued from the trafficking chain by the police after they themselves or their families had reported the crime, directly or indirectly. Two respondents were exploited, and thus discovered, abroad, so their experience will not be the subject of this analysis. Since in each of these cases the women themselves asked for help, the police practically came by invitation and accepted their self-identification without question.

None of the respondents was identified as victims of trafficking on the initiative of the police, the police merely responded to the reports. However, in all cases when they received a report and got out to the scene, the police officers, without any additional checks, accepted the testimony of the victims that they were there against their will and treated them as victims, regardless of whether the perpetrators might be charged or prosecuted.

All respondents had to give statements several times, often at the same day that they were rescued. However, all respondents were very satisfied with how the police had treated them:

"... But they were really nice and polite."

"They were quite nice."

"They asked me if I was cold, if I was hungry, thirsty, that was really cool."

One respondent particularly emphasizes that the police officers didn't changed their attitude towards her even after she told them she was a heroin addict:

"You had a lot of confidence in them? Yes, yes. They didn't even want to tell my husband that I was addicted to drugs. They wanted to put me in a safe house or an institution specialized for addicts, while the situation resolves."

"So, basically, when you first met they practically already knew that you were a victim of trafficking, so they probably acted accordingly. They were ok, it is not often nowadays that you see a police officer bust a drug addict and talk to them politely. Here, they snatch a drug addict and first beat the crap out of him, and then they ask questions. (...)"

"Everyone should have one [name of the police inspector] in their life. The whole team that worked on this case has helped me a lot and helped restore my confidence in the police, and that there is still somebody who can protect you left in this world."

Such police behavior also influenced those respondents who initially did not have confidence in the police:

"Truth be told, I was a little difficult for cooperation because of my lack of confidence towards them, I mean, how could I have known that they weren't sent by (trafficker's name)?"

However, although the police officers treated them fairly, all respondents emphasize that it was exhausting to repeat their statements, especially in front of a large number of anonymous people:

"It was hard for me to talk to that first investigator, let alone the increasing number of unknown people to whom I needed to talk about it."

"When I was taken before the investigating judge, I swear that woman asked me the same thing literally five times. So, I'm talking and talking and thinking to myself, They'll think that I learned it by heart because I keep repeating it word by word."

All three respondents exploited in Serbia after 2010 were interrogated in police stations. In one case, the respondent was driven to the station together with the trafficker in the same vehicle. Two of them had signed their statement, one had refused and asked (and was granted) to give an informal statement, fearing the trafficker. Two respondents who signed the statement were not sure if they had read it first, because at the time of giving the testimony they weren't in a physical or mental state that would enable them to understand what they read:

"Well, even if I had read it, I was under so much stress that I ... and plus when I heard that they brought him to [name of the city], I was finished."

All respondents were satisfied with the treatment by the police. The only criticism is related to the fact that they had to repeat their statement many times, often several times during the same day, each time before some new unknown persons, which made the traumatic experience worse.

Three of the respondents exploited before 2010 had contact with the police as victims of trafficking, but in none of these cases criminal charges for trafficking were brought and the case never went to court. In one case, an investigator from the Belgrade Police Department, working on another case, recognized that it was a case of human trafficking. He tried in every way to support and assist the respondent and referred her to a support organization, although the case was never prosecuted as trafficking. One respondent was never identified as a victim of human trafficking, but managed to get out due to the assistance of two policemen who visited the bar where she worked and from whom she sought help. What's interesting is that she sought help from the police even though the owner of the bar boasted that she had good connections with the police. Due to the fact that the police captain led the whole process of her giving testimony, she felt safe, even though she could not know which of the police officers worked for her boss. One respondent came in contact with the police after she managed to escape from the trafficking chain on her own, when she sought help from an NGO she was already acquainted with. A representative of the NGO took the girl to the ER for a check-up and the staff at the Emergency Center notified the police. Although the respondent was partially satisfied with the police interview, she had to spend the night in solitary confinement, although the representative of the NGO offered an alternative accommodation.

One of the respondents stated that, although the police had promised her that her statement would remain confidential, a person from the trafficker's circle came in the possession of both her statement and the testimonies of the suspects.

One respondent gave her statement twice, the other two only once. The latter two were never contacted regarding their statement nor were there any legal proceedings. None of them signed the statement or received their statements.

Justice System

As stated above, only one respondent, who was exploited before 2010, had the experience of being arrested and sentenced for sex work (which was not voluntary). She was arrested 4 or 5 times. According to her testimony, when she and the other women were brought before a magistrate judge, he or she would only read when and where they were detained for prostitution and would not ask them any questions or call witnesses. The entire process would take no more than two minutes, since they usually arrested many women at once, and there was not enough time for a detailed procedure:

"There were really too many of us there, they called us 'Women in Black'. Because, there at the Blue Bridge, we would all dress mostly in black, you know, cat suits, leotards 'n all. And the cops, when they see us in that, they wanna kill us."

There was a lawyer who defended all women, employed by the person for whom they worked. According to the respondent, the lawyer is never present during the trial, but later attempts to get the women out of prison:

"No. There's no lawyer. The lawyer doesn't appear until afterward".

She never appealed the verdict because she felt that it could only worsen her situation and that it had no use.

"Let me tell you, it never crossed my mind to appeal because I watched the girls go through all kinds of things and I did not want to take any chances. I got burned a couple of times. I was looking to focus on myself: ok, well, maybe I need to do this or that, come on, it will get better. I'll get through. And I had to be really persistent in order to get myself out of it."

Five respondents testified as victim-witnesses in a court case against the traffickers: four respondents testified in Serbia, one abroad. In the court case that took place abroad the respondent gave testimony before the public prosecutor (in the absence of the defendants) and the court in the presence of a person from the shelter whom she trusted. Her feeling of security at the hearing was positively influenced by a good relationship with the prosecutor (*"If you're scared, just look at me"*) and the fact that the staff from the shelter had prepared her on what to expect.

Out of the four respondents who testified in Serbia one of them did not feel safe; the other three felt safe and were satisfied about their treatment. Their sense of security was primarily influenced by the presence of a lawyer (hired by ASTRA) and a sympathetic judge. This was especially so in the case that was conducted before the Special Court, where the respondent got the status of particularly vulnerable witness, as well as police escort:

"It was all safe because I had police security. Simply, they guaranteed that nothing was going to happen to me."

The respondent who did not feel safe during the trial says that she was particularly uncomfortable before the investigating judge when she had to talk about her traumatic experience in front of a large number of strangers (5-6 defense lawyers) that were known to be hostile, although the judges and the prosecutor were polite. At the main hearing, she felt that the judge favored the defendants and their lawyers, even though he was courteous when she gave her testimony.

"Every time I had to go to trial it was really traumatic for me, because I knew there was no one there who would ... basically, I felt as if I went into a lion's den"

This process has been going on for years, with numerous delays.

Only one case of exploitation before 2010 led to a court case, but not for trafficking but for mediation in prostitution. In this case, the respondent, as injured party, was summoned to repeat her statement, eight years after the exploitation took place, because of the repeated trial.

Another respondent exploited before 2010, testified only during the investigation. She did not feel safe, especially due to the fact that she had to wait to give her testimony in the same corridor as the man who had raped her and that she was threatened after giving testimony. This case never went to court:

"So after about five months, or something like that, now, it's a totally absurd thing, only then I had experienced stress, so 5 months ago and then again, they scheduled the trial for me and this man at the same time. "

One respondent exploited before 2010, whose case was never dealt with in Serbia, now regrets that the traffickers were never brought to court. She emphasizes the importance of providing the victim sufficient time to recover and regain control over her life when prosecuting traffickers, considering that victims are expected to corroborate the indictments with their testimonies:

“Did I sue them for anything? No, no. And I wish I did, but I didn’t. Now that I am freed from fear, I could do anything and everything.”

Voluntary sex work and human trafficking for sexual exploitation

Through the interviews with victims of human trafficking, we also wanted to find out whether they themselves distinguish between sex workers and victims of human trafficking. All respondents view the difference primarily in the fact that trafficking victims do not provide sexual services voluntarily but are forced to do it: they have no freedom to decide anything for themselves and the people who exploit them take away the money they earn:

“That’s a sex worker who simply may not have the opportunity for another job and who wants easy money. The one who simply says, yes, I’m alone, I come to work and I consciously go into it and accept the risk because I decided for myself that I wanted this job. And then, the victim, that’s something else. The victim simply ... I don’t know. For one thing, the victim was forced into it. Secondly, she is cornered from all sides. Number three, she is financially dependant and cut off from all that.”

“Well, I was initially, let’s say, a voluntary sex worker. And then I became a victim. I see a difference between those who do it against their will, they are victims, and those who do it voluntary.”

“So if you say a sex worker or a prostitute does what she does on a voluntary basis, then victims of human trafficking, or any other, can not be prostitutes. Prostitution is a matter of choice.”

“If any of those who are not victims of human trafficking, a sex worker that is, if she wants to do it and if she likes doing it, so to speak, and if that is her way of making money, if there is no other way but to earn enough to survive, only to survive and nothing else, and when I say to survive, that doesn’t mean to buy drugs.”

One respondent emphasizes that often at first glance one can not assess whether a person who provides sexual services is a sex worker or a victim of human trafficking, because victims in order to earn as much as they are expected to by their traffickers and to avoid violence also have to behave actively and pretend that they want to do the work they are in reality forced to do:

“At first glance you cannot really tell the difference. Because the victims have to appear as if they want to do it, they must not tell a client that they are afraid or that they don’t want to work, because then they suffer the beatings by their torturers, so to speak.”

Two respondents did not know how to distinguish between sex work and human trafficking for sexual exploitation.

One respondent also makes a distinction between a ‘whore’ and a prostitute.

“It’s not the same. A whore is a woman who works, in order to perhaps feed her family, her children, perhaps for her own reasons, maybe for medicines, maybe, I don’t know, she might have

sick parents. And prostitutes, if you ask me, do it more out of habit. Gold-diggers and hookers, so to speak."

Most respondents express their understanding for voluntary sex work, although some point out that they themselves could never work voluntarily. Three respondents are very judgmental towards sex workers:

"You never had contact with someone who was ... God forbid. With those diseases and all..."

"We don't talk with those people."

"The majority of them go into it on a whim. I wouldn't support it; I cannot support it. I can (...) support only those girls who are forced to work. A girl who works on a whim, without a real necessity, who has all the conditions she needs, well then it is just impudence."

Of the women exploited after 2010, only one responded to the question about the relation between sex workers and persons forced into sex work when they are at the same location, as well as on the readiness of sex workers to help victims of trafficking. This can be explained by the fact that three of the respondents were the sole victims of their trafficker at the time or that during the exploitation they didn't have contact with other girls. The respondent who answered this question was exploited in street prostitution abroad. According to her, both victims and sex workers share a work location. One sex worker offered her help to report the people who exploited her to the police and suggested that she should then engage in sex work on her own, but she assessed that this was not a real desire to help her, but an attempt to change the exploiter but keep the exploited in the same position.

Of the women exploited before 2010, four responded to the question. One respondent stated that the relations with women engaged in voluntary sex work were good. One said the time she spent there had been too short for her to be able to assess which of the women were there voluntarily and which ones were coerced, while every attempt to talk to her and offer her help (especially for the escape) she had dismissed with suspicion, because she did not know whether it was away of the 'boss' of testing her. Two respondents talked about the bad relations between sex workers, both in clubs and on the street. They claimed there was no solidarity whatsoever, that the sex workers acted as the 'upper class' because, unlike the women who were there under compulsion, they were earning money, and that sex workers had no motive to help victims because it might reduce their profits:

"We never had good relations with them. We couldn't stand them and the feeling was mutual."

Two respondents (one exploited after and other before 2010) also spoke about the difference in treatment by the police and the judiciary of victims of trafficking and the sex workers. The respondent who was exploited abroad states that the police initially sought to help the girls and to obtain information on who they work for, but when they don't get the desired feedback because the girls are afraid to talk, they treated the girls as accomplices. She believes that in the country where she was exploited, victims have much more rights, better status and treatment, while the situation in Serbia is completely different:

"In Serbia, you cannot say that you were a victim of circumstance because no one will understand it that way."

Another respondent, a foreign citizen, faced numerous prejudices because of her nationality, which is commonly associated with prostitution, so the question of coercion never came on the agenda:

"You know what, it is enough to say that I am Ukrainian, they don't ask more questions, whether I'm a victim of human trafficking or a prostitute ..."

"Let's say that I finished college and came here as a physician, I was Ukrainian and that's it. No one asks you about profession, the nationality is what matters."

Protection and access to justice

Of the five respondents exploited after 2010, three believe that the law is on their side, i.e. that the law is devised to protect them. They especially stress their satisfaction with the protection the police had provided them:

"(...) the police did their job flawlessly."

One respondent states that she originally did not have confidence in the judge who led her case, because she had googled him and found out that he was corrupt and linked with the Zemun Clan, and at the hearings she attended, she felt that he favored the accused. However, she was satisfied with the way he had reacted to the attacks of the defense counsel at the hearing where she testified. Another respondent said she was not sure that the law could protect her, especially when the person that had lured and sold her had moved to her city, while another believes that the law is lenient toward perpetrators, unlike in some other countries, that people in Serbia have prejudices and that they are overall indifferent to this matter.

Of the women exploited before 2010, two responded to this question. None of them had felt protected, but one pointed out that this was not so much a question of the law, but of the practice: the law provides protection which is not applied in practice. They also pointed out that both victims of trafficking and sex workers believe they don't have anyone they can turn to for help and that because of their status they are distrustful towards the institutions.

In general, respondents did not know their rights and where and how they can seek legal assistance. When they got help, they obtained it in unconventional ways. Notably, all respondents exploited after 2010 were provided with legal aid by ASTRA. Two respondents were referred to ASTRA by the Agency for Coordination of Assistance to Victims, in three cases relatives (father, husband, i.e. sister) had called ASTRA SOS Hotline to inquire about assistance programs, which includes legal aid. All five respondents participate (d) as witnesses/victims in court proceedings in Serbia or abroad. If they hadn't obtained legal aid in this way, respondents say, they wouldn't have known which forms of assistance were available to them and what their rights were. In that case they would have sought help from the police (4), the center for social work (1) or they would have hired lawyers themselves (1).

None of the trafficking cases stemming from before 2010 made it to court. As far as respondents know the case got no further than the stage of investigation or did not go beyond them giving testimony to the police. Three respondents did not have legal assistance and two had a lawyer provided by ASTRA. At the time they got out of the trafficking chain, they were not aware that they were entitled to legal assistance nor to whom they could turn for help. They did not know how and where to submit a complaint, but also did not feel the need to do so. Even if they had

reasons to complain, they did not do so because they believed that that would be useless or would put them in an even more difficult situation:

"(...) I wanted to, you know, let the sleeping dogs lie. I mean, you never know..."

As for the reactions of family, friends and the immediate environment to what happened to them, respondents have different experiences, regardless of the time when the exploitation occurred.

Life after leaving the trafficking chain

Respondents have different experiences with the reactions of their family, friends and the environment to what had happened to them, regardless of the period in which the exploitation took place.

According to the women who were married or got married after their trafficking experience, their husbands always expressed sympathy for what had happened to them and the ordeals they were forced to undergo. However, one respondent states that her husband doesn't judge her, but that their relationship has changed:

"I have a good life with him, but it's not what it used to be."

Another states that her husband is not judging her, but blames her for not approaching him for help. Both respondents were exploited while they were married and, although they state that the relationship with their partner is harmonious, in both cases there were indications of domestic violence during the assistance process. Of the women who got married after leaving the human trafficking chain, one states that while her husband is sympathetic to her experiences because one of his relatives had a similar experience, this does not apply to her extended family, which still denounces her to this day:

"They're all, like, if something..., if you don't want to do something, nobody can force you into it."

The husband of another respondent was initially understanding but later resorted to violence:

"But it started progressing with time, well, you were already abused by others, now I get a go."

Their (immediate) families usually show understanding and give them support during recovery, but they, too, are faced with the problems of how to cope with the knowledge of what happened to their daughters or sisters and questions of how something like that can happen to anyone:

"(...) they simply could not believe that one person can have so much power over a human being."

"It's all black and white with him. He just cannot see the shades of gray, which could help him to accept and understand those situations. For him, it's all like, ok, someone is harassing you, well, just leave them, go report them to the police, end of story. So it cannot be explained to him, really."

Most respondents believe that they should not keep their experiences a secret for their families, and cite a variety of reasons:

"I think it needs to be told so that not one of your family members wouldn't go through the same thing."

"There's no point in hiding. If you're hiding it, you're hiding it from yourself, you'll never manage to keep it a secret from them. "

"I can't lie, it's part of my life and I have nothing to hide. It's better to say it than to hide it and then, for example when I'm about to marry someone and they would find out somehow, God forbid, that would be a disaster."

Some respondents, however, do not want to go into details with their families about the things they survived because they feel uncomfortable and are afraid of condemnation.

Usually families do not condemn the victim, their only complaint is that they haven't said anything earlier. Only one respondent tells that she has zero understanding from her family:

"He's like to rub it in from time to time: it's your own fault you got involved with it, nobody forced you to do it."

As for the parents of respondents who were exploited at a very young age, there is also a strong feeling of guilt for failing to protect their children.

Only three respondents talked about the reactions of their social environment. Two of them who live in small towns, believe that their fellow citizens have no knowledge of what happened to them, that they can "sense the looks", but that no one has ever approached them or said anything in public, and that they have not faced public condemnation. One of them says - although she had no personal experience - that the environment is sympathetic towards victims, but not towards sex workers:

"For example, when they pass by, they'd be like, 'How can this whore do this 'n' that, and than for these other ones they'd be like: Oh, poor thing, how could anyone do something like that, and what not."

One respondent particularly stresses that the prejudice and ignorance of people in Serbia are responsible for them not expressing sympathy for the victims and for what happened to them, and that they think the victims are to blame for putting themselves in a situation to be exploited in the first place. She believes that this kind of prejudice exists at all levels, as well as within the victims' families, where it quickly comes to the surface after the initial enthusiasm that the victim returned home safe and sound has faded away.

Access to health care

When talking about health care, respondents were mainly focused on testing for HIV, hepatitis and other diseases, as well as gynecological examinations. The two women who were exploited after 2010 and identified in a foreign country were taken to a gynecologist by the shelter, one did an HIV test, the other didn't. The latter did not do any testing, but planned to do so with the support of ASTRA. One respondent states that she did a HIV test in Serbia, but did not receive any pre- and post-testing counseling, while the other did all the tests and received pre-testing consultation in Serbia as well. All women who were exploited before 2010 were tested for HIV and hepatitis, for which they usually had sought support and assistance from ASTRA.

The experiences of respondents seem to indicate that access to health care and testing is dependent on the support of non-governmental organizations which provide assistance to victims. Moreover, it seems that there is no standard procedure, but that the testing procedure solely depends on the institution where it is carried out.

Summary and conclusions

There is not one 'standard story': each of the respondents was exploited in different ways, with different levels of apparent freedom and different strategies of their recruiters and exploiters to keep them under control. It is important that the agencies responsible for detecting human trafficking and providing assistance to its victims are aware of this fact.

All respondents exploited after 2010 managed to exit the trafficking chain only because of the steps they themselves took, despite the risks they ran. On the one hand, the police, when addressed for assistance, never put the statement of the respondents that they were a victim of trafficking/exploitation into question: they accepted their testimony and treated them as victims, regardless of whether they might later be charged or prosecuted for prostitution. On the other hand, the detection of trafficking victims as such mostly wasn't the result of any pro-active police work.

Combating human trafficking falls under the authority of the Border Police Department, i.e. the units for combating human trafficking and illegal migration within the special police forces. However, bearing in mind that human trafficking and exploitation occur in different forms and are often intertwined with other forms of criminality, the involvement of other police departments is necessary to fully understand the problem and to be able to identify victims and provide them with adequate assistance. Also, the police should invest more in proactive investigations, aiming at better and faster identification of (possible) victims and the dismantling of trafficking networks before the exploitation occurs or before they can make more victims. This would also avoid putting the entire burden of evidence on the shoulders of the victims and increase the chances for successful prosecution.

Although all respondents were satisfied with their treatment by the police after they had identified themselves as victims, none of them who came into contact with the police during the period they were exploited - in Serbia or abroad - saw the police as an authority that could release them and protect them from violence. This was primarily due to the fact that they had many police officers among their clients and/or that police officers belonged to the circle of associates of the persons who exploited them. This was the reason why, when they would dare to approach the police, they never approached the local police in the place where they were exploited. If this shows anything, it is that, in order to combat human trafficking, but also to improve the general security of citizens, the Ministry of Interior should be more vigorously devoted to the detection and eradication of corruption and the active or passive (by tolerating such cases) involvement of police officers in various forms of crime.

When the respondents spoke about the communication with the police during and after exiting the trafficking chain, their main critique concerned the exhausting interrogations and the conditions under which the interrogations took place. Most of them had to give their statement several times, often on the same day that they were rescued, and had to speak (repeatedly) in front of a number of unknown people, which was especially uncomfortable for them. This makes it the

more important to consistently apply standards of communication from the very first contact with victims of human trafficking in order to prevent their further traumatization. Exhaustion of victims through repeated and premature interrogations not only has a negative impact on their recovery, but may also have negative consequences for the prosecution, because testimonies given in these circumstances are often unclear, contradictory and confusing. This often leads to the disqualification of their statements as evidence, often in situations where the victim's testimony is the only hard evidence against the traffickers.



RECOMMENDATIONS

1. Sex workers should be decriminalized to enable the protection of their human rights, to ensure that victims of trafficking and sex workers who become victim of violence can safely report to the police without the risk of being punished themselves, to combat discrimination, violence, extortion and abuse of sex workers and, not in the least, to combat corruption and the involvement of the police in the exploitation of sex workers.
2. While decriminalization of sex workers themselves is a first step, aim should be to decriminalize sex work entirely. This would be in line with the call of Amnesty International⁴⁶ for the decriminalization of all aspects of consensual adult sex work, that is, sex work that does not involve coercion, exploitation or abuse, based on evidence and the experience of sex workers themselves that criminalization makes them less safe. The current research only underlines the evidence collected by Amnesty International. Following up the call of Amnesty International and the findings of this research would also be in line with the Constitution of Serbia which guarantees the human rights of its citizens and the obligation of Serbia to respect, protect and fulfill the human rights of all its citizens, including sex workers.
3. Article 184 of the Criminal Code, which criminalizes mediation for prostitution, should not be used to prosecute sex workers who work together or form associations in order to provide for safer work conditions.
4. Additional training and professional support should be provided for judges and prosecutors at all levels in order to increase their capacity to identify cases of human trafficking and to ensure that Article 184 CC (mediation in prostitution) is not used against trafficking victims.
5. The practice that condoms are used as evidence for sex work or are appropriated as a means of committing the offence should be abolished immediately and a concerted and unified approach to prevent HIV and other STDs should be developed by the relevant ministries, including the Ministry of Justice and the Ministry of Health.
6. Mechanisms should be put in place to protect sex workers from discrimination, arbitrary arrest and detention, violence and other human rights violations carried out by the police services, the public and the media. This includes appropriate complaint mechanisms.
7. In line with the human rights principle of participation, further policies on sex work and trafficking for the purpose of sexual exploitation should be developed with the participation and cooperation of all stakeholders. These are sex workers, legislators, law enforcement authorities, the responsible ministries and civil society organizations.

⁴⁶ See <https://www.amnesty.org/en/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers/>

