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SEX-WORKER FORUM OF VIENNA, AUSTRIA

Austria: No rights for loose women?

Report of the Sex-Worker Forum of Vienna, Austria, to the United Nations Human Rights Committee for the examination of the State party report of Austria under the Covenant of Civil and Political Rights (CCPR) at the 115th Session in October 2015.

ABSTRACT: This report informs about the situation of adults in voluntary sex work. The focus is on the following themes from the list of issues (document CCPR/C/AUT/Q/5) for the 115th session:

- 1) ***With respect to non-discrimination*** (§§ 3-8), Austrian laws make sex workers responsible for issues of public health, immigration and public order. However, there is no scientific evidence about the need for such specific provisions that discriminate against sex workers, most of them migrant women. Such laws and policies are associated with racial discrimination and discrimination against women.
- 2) ***With respect to the prohibition of degrading treatment*** (§§ 9-12), the weekly mandatory health checks of sex workers are implemented under humiliating circumstances. Further, prostitution laws are enforced by means of systematic police harassment, even of children. United Nations Treaty Bodies have repeatedly requested better governance, but to no avail.
- 3) ***With respect to the eradication of servitude*** (§ 13), authorities are preoccupied with identifying unregistered ('illegal') prostitutes and thereby they ignore the possible victim status of trafficked persons that have been forced to officially register and work as prostitutes.

EXTENDED GERMAN ABSTRACT

Dieser Schattenbericht an den UNO Menschenrechtsausschuss informiert zur freiwilligen Sexarbeit in Österreich in Bezug auf drei Schwerpunktthemen der 115. Session:

1) **Diskriminierung gegen Frauen und Rassismus:** Die österreichischen Prostitutionsgesetze diskriminieren Sexarbeiter, indem sie diese alleine für Fragen der öffentlichen Gesundheit, der Einwanderung und der öffentlichen Ordnung verantwortlich machen, ohne dass es eine wissenschaftliche Grundlage zur Begründung solcher Regelungen gäbe. Gleichzeitig wird Sexarbeitern aufgrund der rechtlichen Fiktion, dass sie selbstständig erwerbstätig seien, der Schutz des Arbeits- und Sozialrechts entzogen. Die Diskriminierung reicht auch in Bereiche des Zivilrechts (z.B. gesetzlich normierte Erbnwürdigkeit) und des Strafrechts (mangelnder Schutz von Sexarbeitern vor Vergewaltigung und sexueller Ausbeutung). Da vorwiegend Frauen mit Migrationshintergrund in der Sexarbeit tätig sind, läuft dies alles auf eine Diskriminierung gegen Frauen und aufgrund der Herkunft hinaus.

2) **Verbot der erniedrigenden Behandlung:** Die Behördenwillkür bei der Anwendung der Prostitutionsgesetze hat den Schutz vor erniedrigender Behandlung und die Achtung des Privatlebens ausgehöhlt. Trotz parlamentarischer Anfragen (2010), trotz der Kritik des UNO Fachausschusses gegen Folter (2010) und trotz der Kritik des UNO Fachausschusses gegen Frauendiskriminierung (2013) finden die wöchentlichen Pflichtuntersuchung weiterhin unter unhaltbaren Umständen statt, wo Sexarbeiter, denen die freie Arztwahl verweigert wird, sogar hilflos Sadisten ausgesetzt werden,

die sie mit Absicht im Genitalbereich verletzen. Trotz der Kritik des Menschenrechtsbeirats (2012) an erniedrigender Behandlung von Sexarbeitern bei Polizeiaktionen zur Ausforschung und Bekämpfung „illegaler Prostitution“ werden weiterhin Frauen und sogar Kindern systematisch gedemütigt, wobei verdeckte Ermittler auch gesetzlos in Privatwohnungen eindringen.

3) **Ausrottung von Zwangsarbeit:** Der Schutz der Opfer von Menschenhandel und sexueller Ausbeutung wird durch die Prostitutionsgesetze und ihre praktische Umsetzung ausgehöhlt, weil die Behörden mehr damit beschäftigt sind, „illegale Prostituierte“ zu bestrafen und als „illegale Immigranten“ auszuweisen. Deswegen sind sie unzureichend vorbereitet, um Opfer solcher Verbrechen zu erkennen. Insbesondere gehen die Behörden fälschlicherweise bei registrierten Prostituierten mit legalem Aufenthaltsstatus davon aus, dass sie keine Opfer seien. Gleichzeitig schreckt der oben dargelegte, von systematischer Demütigung geprägte, Umgang von Behörden mit Sexarbeitern allfällige Opfer davon ab, sich Behörden anzuvertrauen.

Das Sexworker Forum empfiehlt der Regierung, die gesetzlichen Regelungen und deren Implementierung unter einem konsequenten Menschenrechtsansatz zu überprüfen und dabei einschlägige internationale Richtlinien (UNAIDS) zu beachten.

Das Sexworker-Forum, ist ein internationaler Verein mit Sitz und Registrierung in Wien, der sich für die Achtung der Menschenrechte der erwachsenen Frauen, Männer und transsexuellen Personen im Umfeld der freiwilligen und selbstbestimmten Sexarbeit einsetzt.

Submission from
Sex-Worker Forum of Vienna
to the United Nations
Human Rights Committee

pertaining to Austria's periodic report at the 115th session

Sex-Worker Forum is an international incorporated non-governmental not-for-profit organization, chartered at Vienna under registration number 699583522. The Forum works to protect and promote the human rights of adult women, men and transgender persons in voluntary sex work.



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PART 1: BACKGROUND ON THE SOCIO-ECONOMIC SITUATION

For this submission, *sex work* refers to voluntary sexual behavior of consenting adults involving physical contacts in exchange for monetary gains. Service providers are termed sex workers. The national statistics office classifies voluntary sex work as ‘*other occupations in the field of service provision to persons*’ (note 1).

To a large extent sex work is driven by poverty (note 2): Working fulltime (8 hours for five days per week), a sex worker could expect in the long run not more than three clients per day (note 3), which at current market prices in street prostitution (15 € per job, note 4) corresponds to an average pre-tax income of 900 € per month (note 5). This estimate is consistent with an average income of

¹ The classification of sex work by Statistik Austria uses the job designator 5169 of ÖISCO-08. That sex work is classified as labor is based on a judgment by European Court of Justice, *Jany et al v Justitie*, C-268/99 of 20.11.2001.

² For more information see the resources of TAMPEP, an EC-supported research project about sex work in Europe.

³ Estimate for the USA: *Brewer et al.*, Proceedings National Academy of Sciences USA, 97/2000, pp 12385 ff. Estimate for Germany: *Kleiber/Velten*, Prostitutionskunden: Eine Untersuchung über soziale und psychologische Charakteristika von Besuchern weiblicher Prostituiertes in Zeiten von AIDS, German Federal Ministry for Health, 1994. Both sources support 3 clients per average working day.

⁴ The price of sexual intercourse is 20 € blow jobs and masturbation cost significantly less, resulting in 15 € average (Supreme Administrative Court, judgment 2011/01/0006 of 31.05.2012).

⁵ Single mothers in sex work may earn less, as their precarious social situation may not allow them working fulltime, if e.g. their children are not admitted to kindergarten in view of the ‘immorality’ of the mother.

1,192 € per month, based on estimates of total domestic prostitution income (note 6). Thereby the poverty line is defined by a monthly per capita income of about 1,100 € for a single-person household (note 7).

Academic studies estimate that in Europe about 1.4 percent of the adult female population in the reproductive age is engaged in some form of voluntary sex work; for Austria this results in the estimate of about 30,000 women in sex work (note 8). In addition, there are men and transgender persons in sex work. As to the status of sex workers (note 9), the following are common estimates:

- *Legal sex work* means commercial sex work by persons registered as prostitutes, who obey the regulations of prostitution. About 5,000-6,000 women in sex work are registered as prostitutes (note 10). Of them, 95% are immigrants (note 11).
- *Illegal prostitution* means voluntary commercial sex work of persons earning their living by providing direct, formal, and open

⁶ *Statistik Austria*, Volkswirtschaftliche Gesamtrechnungen, Wien 2009, p 15: 429 million Euros total prostitution incomes over 30,000 persons = 1,192 €/month average income (Statistik Austria counts income of brothels under a different heading of ‘legal economy’).

⁷ *Statistik Austria* (www.statistik.at), topic Armutsgefährdung; or *Gächter*, Handbuch Armut in Österreich, Vienna 2009.

⁸ *Vandepitte et al*, Sexually Transmitted Infections, 82/2006, Suppl 3, pp 18 ff. 30,000 women in sex work = 1.4% of women 18 to 60, i.e. 50% of female population, who in turn is 50% of the population of Austria.

⁹ Other classifications distinguish 45 forms of sex work: *Harcourt/Donovan*, Sexually Transmitted Infections, 81/2005, pp 201 ff.

¹⁰ *Office of the Federal Chancellor*, Task Force Menschenhandel, Prostitution in Österreich, Vienna, 2008.

¹¹ *Office of the Federal Chancellor*, Task Force Menschenhandel, Regelung der Prostitution in Österreich, Vienna, 2012.

sexual services to their clients, but who did not register as prostitutes, or who registered, but violated other regulations.

- *Indirect sex work* (note 12) refers to persons, who do not rely on sex work as primary source of income, and who may work under a legal fiction that they receive money not for sex, but for other services (e.g. massage). About 5,000 to 10,000 women in commercial sex work are not registered; this estimate includes illegal prostitution and indirect sex work (note 13).
- *Other (private) sex work* means certain forms of private sex life, which may have a commercial appearance, but no commercial substance, as occasional sex work is rather a vehicle to explore the sexual self (note 14). From the above estimates, of 30,000 women there remain 15,000 with this unconventional sexual lifestyle.

It follows that in terms of their socio-economic situation at least 50% of sex workers are in a vulnerable situation, namely those in legal, illegal and indirect commercial sex work (amongst them ca. 15,000 women).

¹² UNDP, *Sex Work and the Law in Asia and the Pacific*, New York, 2012. Joint publication with UNAIDS and UNFPA.

¹³ The above report (*loc cit*) estimates 3,000 illegal prostitutes for Vienna (other estimates: 6,000, compared to between 1,500 and 2,500 registered prostitutes, depending on the reference year), which extrapolates to 5,000 to 10,000 illegal prostitutes in Austria.

¹⁴ A well-known example is late *Alexandra Sprüngli*, who after the death of her husband, from whom she inherited 4 million Euro, developed her sexual self in sex work, till she married a chocolate industrialist (sources: obituaries in 'Bild' and 'Spiegel online' of 06.07.2012, also *Lüchinger: Kampf um Sprüngli*, Zürich 1993).

PART 2: DISCRIMINATORY REGULATIONS OF PROSTITUTION

The well-being and health of sex workers is largely affected by government policies (note 15). In Austria, voluntary commercial sex work is legal and there exists a high demand for sexual services. However, policies do not take into account this social reality and tolerate sex work only as a 'necessary evil'. Regulations at three administrative levels (national, provincial and communal) aim at restricting sex work, while they do not foresee a comprehensive protection for service providers, which exists for other service sectors. Austria thereby makes sex workers solely responsible for problems of public health, immigration and public order, although there is no scientific evidence about the needs for such specific provisions. Other than for the 'legal economy', police is responsible for the enforcement of these laws, whence sex workers are treated like criminals. Thus, rather than protecting and empowering a vulnerable group, laws and policies discriminate against sex workers as women, as immigrants, and for their perceived immorality, stigmatizing them as risk factor for the health of the population at large.

2.1. Sex workers do not enjoy full protection of their civil rights

Key issues are stigmatizing regulations and court judgments.

- Based on a judicial interpretation of section 879 Civil Code, in 1989 Supreme Court of Justice declared contracts between sex workers and clients as void for reasons of immorality. As sexually active women would lack 'sexual honor', they were also denied

¹⁵ *Della Giusta/Di Tommaso/Stroem*, J. Population Economics, 22/2009, pp 501 ff.

compensation under section 1328 Civil Code (essentially rape by deceit). Thus, there has been no legal option to negotiate contracts based on sex work, sex work was not recognized as a trade, a profession, or another gainful occupation and sex workers did not have a legal remedy, if clients denied them the payment of their services. In 2012, Supreme Court partially revoked this ruling (note 16). However, there has been no case in Austria, where a sex worker successfully sued a customer for payment.

- The allegedly ‘anti-social behavior’ of sex workers (note 17) still is a legal reason to exclude sex workers from their legal rights to inheritance (section 768 Civil Code), it is a legal reason for divorce, and authorities may remove children from a sex worker and place them under foster care. Further, the province of Carinthia discusses to deny registered prostitutes the right to vote (note 18).
- Landlords may evict persons from their apartment for immoral conduct, if they suspect them to engage in sex work. Thus in 2010 the city of Vienna asked a female tenant to prove conclusively that (unproven) allegations about her prostitution were false, as otherwise the city would terminate the rental agreement. The

¹⁶ Supreme Court of Justice, judgment 5Ob385/60 of 03.11.1960 about lacking ‘sexual honor’, and 3Ob516/89 of 28.06.1989 declaring immorality of prostitution; see also 3Ob45/12g of 18.04.2012 and 6Ob124/12x of 13.09.2012, partially revoking this judgment.

¹⁷ Supreme Court of Justice, 1Ob728/85 of 15.01.1986 about the anti-social character of sex work, confirmed in 2Ob23/03a of 12.06.2003.

¹⁸ Source: ‘Kleine Zeitung’ of 27.01.2015.

woman could retain her apartment only because her case stirred public controversy (note 19).

- Austria prohibits social contacts of civil servants to sex workers by section 10 Law on the Conduct of Civil Servants. For instance, in 2006, Vienna police fired a police apprentice for socializing with a woman in sex work. This decision was only quashed, as the woman left sex work and married the apprentice (note 20).

2.2. Sex workers are not fully protected under criminal law

Key issues are the insufficient protection of the sexual integrity of sex workers, whereby often there are also hidden sexist and racist aspects.

- Corrupt police officers expect that pimps arrange for them free sex with prostitutes (note 21). Thus, in 2011 a leading police officer from Vienna was dismissed from office; for many years he has been publicly criticized as corrupt (note 22). Another police officer was sentenced in 2012 for abuse of office; over many years he has demanded free sex from prostitutes (note 23).
- Supreme Court of Justice denied sex workers insofar protection against sexual exploitation, as the manager of a brothel may determine the conditions of sex work (note 24), e.g. how to dress,

¹⁹ Sources: ‘Kurier’ of 03.08.2010 and ‘Der Standard’ of 03.08.2010.

²⁰ Supreme Administrative Court, 2006/12/0169 of 14.06.2007.

²¹ This is an international practice (*United Nations Office on Drugs and Crime, The Role of Corruption in Trafficking in Persons, Vienna, 2011*) and 8.9% of sexually exploited women report police as clients (*Di Tommaso/Shima/Strom/Bettio, European J. Political Economy, 25/2009, pp 143 ff*).

²² Source: ‘News’ of 21.03.2007, ‘Österreich’ of 19.03.2010, ‘News’ of 18.05.2011.

²³ Source: ‘Der Standard’ of 20.02.2012.

²⁴ Supreme Court of Justice, 4Ob78/93 of 29.09.1993

what fee goes with what service, should alcohol be consumed, should sex without a condom be practiced. Pressure towards consumption of alcohol or unsafe practices may make a brothel a substantial health risk for sex workers, but in six of nine provinces sex work outside brothels is illegal. This makes sex workers dependent on the brothel managers.

- When a sex worker from Rumania repeatedly complained about threats by a pimp, police and public prosecutor remained inactive, until in May 2010 she was almost burned to death (note 25). Reports about other assaults on sex workers are numerous (pouring hot water on their heads, attacks with torches), but these are neither taken seriously nor persecuted. Negligence by authorities has also been observed in two cases of murder of immigrant women; in 2011 the Inter-American Court of Human Rights cited them as exemplary for institutional failure (note 26).
- When in 2005 a pimp and rapist claimed that a registered prostitute could not be raped, the public prosecutor supported this, as prostitutes, unlike virgins, would not suffer much from rape. The rapist received a lenient sentence (note 27). In another case of 2005, an asylum seeking woman was raped by a security guard of her refugee camp. The guard was acquitted, as the judge took the woman for a prostitute, who could not be raped (note 28).

²⁵ Source: 'Der Standard' of 05.08.2011.

²⁶ United Nations Committee on the Elimination of Discrimination against Women, *Akbak v Austria* of 01.10.2007 and *Goekce v Austria* of 06.08.2007; Inter-American Court of Human Rights, *Jessica Lenahan v USA* of 21.07.2011

²⁷ Source: 'Wiener Zeitung' of 06.07.2005.

²⁸ *Altinisik*, *Zivilrechtliche Aspekte der Flüchtlingsbetreuung*, doctoral thesis, Univ. Innsbruck, 2010. According to this thesis, for women in refugee camps rape by

- Supreme Court of Justice took criminal responsibility away from customers, who did not pay sex workers for their services, whereas under international case law such conduct would qualify as sexual violence (note 29).

2.3. Sex workers are barely protected under labor and social laws

Austria assumes the legal fiction that sex workers are self-employed, but does not apply this fiction consistently.

- Asylum seekers are only permitted to have self-employed income (section 7 Federal Support to Asylum Seekers Act); this restricts their viable options to begging and sex work.
- Being self-employed, sex workers have to pay income tax and sales tax one year in advance, also if they work in a brothel. However, tax authorities presume that the same sex workers are 'de facto employed', when they assess the income of the brothel.
- Authorities apply this ambiguity against sex workers, as in the case of a woman from Russia, who applied for visa to work in a brothel in Salzburg. Visa was denied, as sex work in a brothel would not be self-employed; an employment permit would be needed. When the sex worker applied for that permit, it was

security guards, police and other officers is a permanent threat and perpetrators enjoy impunity.

²⁹ Supreme Court of Justice, 10Os182/84 of 07.11.1984; by contrast, in Italy, the Corte Suprema di Cassazione confirmed (3rd Chamber, case 8286 of 17.12.2009) that the consumption of sexual services by a sex worker without paying her is a criminal act of sexual violence.

denied, as sex work would be self-employed; in 2011 this was confirmed at court (note 30).

- Being self-employed, sex workers are not entitled to paid vacations. They are not protected against arbitrary dismissal from a brothel and receive no severance pay. In general they are not insured for unemployment, even if they work in brothels or other forms of *de facto* employment. As sex workers are not entitled to vocational training, their skills are outdated, when they wish to leave sex work; instead of qualified jobs, for them there remain only low-paying, low-prestige dead end jobs without prospects for a better life (note 31).
- Sex workers are required to pay social insurance, but insurance coverage of women in sex work is insufficient in the case of pregnancy: They cannot afford to take maternity leave. Moreover, in view of their income from sex work they are not eligible to receive social assistance during early pregnancy, even if the actual income is small and provincial laws prohibit them sex work.

2.4. Sex workers suffer from obligations that stigmatize them

Sex workers have to obey manifold obligations from prostitution laws that restrict their wanted sexuality; there are no similar obligations (e.g. registration) for their clients. *The very existence of such legal*

regulations causes stigmatization (note 32): ‘Indeed, because there are special laws, this seems to result in prostitutes being categorized as different from other women and men, less worthy of protection by the police, and a general attitude that they are second-class citizens.’

- Sex workers are required to register as prostitutes with the local authorities (police department or municipal authority, depending on the province). However, as confirmed for Hungary by Constitutional Court, a mandatory registrations of sex workers is incompatible with the dignity of the concerned persons (note 33). Registration may result in stigmatization (e.g. risk to become homeless and socially isolated, children of prostitutes may be bullied in school, or authorities may take them away) and therefore registered sex workers may be targeted for extortion and exploitation, as the protection by penal law is deficient.
- Further, through registration authorities obtain access to sensitive data, including on health. Authorities may retain unlawfully acquired information indefinitely and by established case law, Data Protection Authority has no mandate to enforce deletion of such data, if filed on paper (note 34). Thus, data leakage is a realistic risk and may cause stigmatization. This is aggravated in Salzburg, where sex workers need a brothel as intermediary, whence the brothel owner gains access to the sensible data that go with the ‘control card’. Police even takes photos of nude sex

³⁰ Supreme Administrative Court, 2008/21/0515 of 30.08.2011

³¹ Similar experiences have been made internationally (e.g. Thailand: *Shih*, Humanitarian Work: The Production and Consumption of Jewelry Made by Trafficked Women. MA thesis, UCLA, Los Angeles, 2009).

³² The citation is from the analysis of prostitution laws by the 1985 *Fraser Report*, whose criticism applies to the situation of Austria due to similar legislative intentions (*Committee on Pornography and Prostitution*. Pornography and prostitution in Canada, Dept. of Justice Canada, 1985).

³³ Hungarian Constitutional Court, judgment 28/C/2005 of 10.01.2011

³⁴ Constitutional Court, B1187/2013 of 10.12.2014

workers without asking for permission (there is no remedy: note 35), passes them on to journalists and invites television crews to accompany authorities when they inspect brothels. (Such presence of the media during official acts is humiliating.) All this puts registered sex workers in a state of lifelong anxiety about possible blackmailing.

- As part of the registration, sex workers are obliged to attend weekly mandatory vaginal inspections for sexually transmitted diseases (STIs). Such regulations depersonalize sex workers as vectors of disease (note 36) and reduce them to a commodity, whose health is only of interest through the perspective of consumers. Thereby, over many years Graz and Salzburg charged sex workers for the health checks, although this was unlawful (note 37). Now they obstruct court-ordered repayment (note 38).
- Further, sex workers are obliged to attend quarterly mandatory tests for HIV, even though UNAIDS guidelines (note 39) voice serious concerns that obligatory testing of vulnerable groups is counterproductive and contravenes human rights (note 40). In 2013, the United Nations Committee on the Elimination of

Discrimination against Women asked the Austrian government to implement the UNAIDS guidelines, but to no avail (note 41).

- Three provinces prohibit sex work outside of designated tolerance zones (Burgenland, Lower Austria, and Vienna) and the other six provinces confine sex work to licensed brothels. Policies prefer large brothels, as they generate more tax revenues; dangers of organized crime and trafficking are ignored (note 42). Sex workers in brothels may generate higher income than in street prostitution, but they have higher economic risks and most of the additional income goes to the brothel owners (note 43). Vorarlberg (no licenses) and Tyrol restrict sex work most, pressuring sex workers into illegality (note 44).
- It follows that sex workers cannot register in Vorarlberg, as there are no licensed brothels. Hence sex workers are *de facto* criminalized, as illegal prostitution is their only available option. In illegality they come under the control of pimps. Authorities

³⁵ Data Protection Authority, K121.256/0004-DSK/2007 of 27.04.2007

³⁶ That sex workers are not vectors for infections was confirmed by empirical studies in Spain and the United Kingdom (*Ward/Day/Weber*, Sexually Transmitted Infections, 75/1999, pp 340 ff).

³⁷ *Office of the Federal Chancellor*, document IV-51.749/2-1/81 of 16.04.1981

³⁸ Source: 'Der Standard' of 06.02.2015

³⁹ UNAIDS, International Guidelines on HIV/AIDS and Human Rights, Geneva, 2006; UNAIDS, Guidance Note on HIV and Sex Work, Geneva, 2009.

⁴⁰ These concerns were shared by UNDP, *supra* note 12; and ILO, HIV & AIDS Recommendation R200 of 18.06.2010.

⁴¹ United Nations Committee on the Elimination of Discrimination against Women, CEDAW/C/AUT/CO7-8 of 01.03.2013 at § 29.

⁴² For Vienna, police admitted that pimps have factual control over the largest brothels, but there would be no way to stop them (source: 'Der Standard' of 31.10.2012). Literature confirms criticism of large brothels (*Langley*, Encyclopedia of human rights issues since 1945, Greenwood Press, 1999, p 66).

⁴³ Working in brothels, women may earn 60 € per job, but they need to pay the room rent in advance; at minimum 2,500 € for one month (ca. 80 € per calendar day). Thus, with in average 3 clients per workday, their estimated income after deduction of the room rent would be 1,100 €/month.

⁴⁴ The factual restriction of legal sex work in Tyrol is demonstrated by the following figures: In 2009, in Tyrol with a population of 0.7 Mio there were eight brothels and legal sex work was confined to these brothels, while in Salzburg with a smaller population of 0.5 Mio there were 37 brothels.

ignored this, as otherwise, by provincial law, brothel licenses have to be issued as a means to fight illegal prostitution (note 45).

- Municipalities aim at barring sex work altogether. As sweeping prohibitions are unconstitutional (note 46), municipalities utilize the combined effect of different legal regulations to maximally restrict sex work. Thus, in 2012 Vienna pushed street prostitution to the outskirts confining it to unsafe places without infrastructure (no light, toilets) and shut down several hundred small premises.
- Further, nowhere in Austria may women offer sex work in their own premises, although sex work of a few women in their own premises would be a safe and crime-free form of pay sex with barely any nuisance (note 47).

There is no scientific basis for Austria's prostitution laws: Rather than protecting public health, the health of sex workers is jeopardized:

- Government reports acknowledge that customers ask for sex without a condom, as they do not fear infections from sex workers

with health checks, and that owners of brothels pressure them to obey, as they fear for their business (note 48).

- As a consequence, in 2009 in Vienna the incidence of Syphilis became higher than in German cities, where there are no compulsory health checks. This experience contrasts with evidence from New Zealand and New South Wales (Australia), where sex work was decriminalized. According to UNDP, this *'increases their access to HIV and sexual health services and is associated with very high condom use rates'* (note 49).

It is therefore not surprising that ***the Austrian system of prostitution control is ineffective***, with most sex workers not being registered. However, while for the typical migrant woman in sex work the regulations of prostitution are strictly enforced, if police discovers her, for her typically male clients there are no similar restrictions or they are not enforced or the fines are not so high; this amounts to racial discrimination and discrimination against women (notes 50, 51).

⁴⁵ Constitutional Court described this mechanism in VfSlg. 19.798 of 01.10.2013.

⁴⁶ Constitutional Court judgment VfSlg 19.159 of 23.09.2010 declared the provincial prohibition of advertisements for brothels in Tyrol as unconstitutional. VfSlg 18.023 of 04.12.2006 declared the municipal prohibition of prostitution within the city boundaries of Oberwart, Burgenland, as unlawful.

⁴⁷ As expert testimonies confirmed, sex work is safer indoors, than outdoors (Superior Court of Ontario, *Bedford v Canada*, 2010 ONSC 4264 of 28.09.2010). Further, where sex work is not spatially concentrated, it is less controlled by pimps, as the ratio of income to efforts is unfavorable to them. Moreover, it causes fewer nuisances. Thus sex work of one or few women in their own premises would be socially optimal. This is recognized in New Zealand, where since 2003 small owner-operator brothels comprising four or fewer sex workers do not need a license (see UNDP, *supra note 12*).

⁴⁸ *Supra note 10*, p 35. Actually, without such pressures sex workers out of self-interest would educate their customers in safer sex practices (*Sanders*, *Social Science & Medicine*, 62/2006, pp 2434 ff).

⁴⁹ Syphilis statistics: *Robert Koch Institut Berlin*, *Epidemiologisches Bulletin* 49/2009: Information about New Zealand and Australia: UNDP, *supra note 12*.

⁵⁰ *United Nations Committee on the Elimination of Discrimination against Women*, Background paper concerning article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, document CEDAW/2003/II/WP.2 of 13.05.2003.

⁵¹ On 06.11.2009 the Supreme Court of Taiwan confirmed that a different treatment of female sex workers, who were criminalized, and their male clients, who *de facto* were not, was a discrimination against women. This argument is also developed by *Kantola/Squires*, *European J Women's Studies*, 11/2004, pp 77 ff.

PART 3: HUMILIATING IMPLEMENTATION OF PROSTITUTION LAWS

In the enforcement of prostitution laws, Austria denies sex workers the protection against degrading treatment and respect for private life. The report demonstrates this a) with respect to the weekly mandatory health checks and b) with respect to police harassment of sex workers.

3.1. Untenable situation for the mandatory health checks

In 2010, the United Nations Committee against Torture was concerned about the implementation of the compulsory health checks for sex workers (note 52). In 2013, the United Nations Committee voiced the same concerns (note 53). *Also Austrian Parliament requested improvements; however, in response government declared no interest* (note 54). Sex workers cannot avoid this situation, as most provinces require that they are checked at certain health offices; they do not accept certificates from local doctors.

- When journalists visited the Vienna Communal Health Office Vienna, they were appalled by the unsanitary conditions (note 55). They reported about lacking hygiene, use of non sterile instruments, and they interviewed sex workers, who suffered from physical injuries and pain as a result of the medical inspection.

⁵² United Nations Committee against Torture, CAT/C/AUT/CO/4-5 of 20.05.2010 at § 22.

⁵³ United Nations Committee on the Elimination of Discrimination against Women, CEDAW/C/AUT/CO7-8 of 01.03.2013 at § 28.

⁵⁴ Interpellation by *Schwentner et al.* to the Federal Minister of Women's Affairs, 5874/J XXIV. GP of 24.06.2010.

⁵⁵ Sources: 'Kurier' of 20.05.2010, 'Falter' of 09.06.2010.

Also the above mentioned treaty bodies characterized the mandatory vaginal inspections by a *'lack of privacy and humiliating circumstances amounting to degrading treatment during medical examinations'*. This situation has not improved, as doctors still have to handle each gynecological examination in about 1 to 2 minutes. Clearly, this is not enough time to inform properly about the medical interventions (as would be required e.g. under the right to health).

- The situation is not better in other Austrian cities (note 56). For instance, a public health officer of Klagenfurt, Carinthia, requested sex workers to line up naked in rows of 40 women, so that he could complete the 'health checks' in an hour or less. In Salzburg, a health officer deliberately injured the vagina of sex workers checked by her, but the health office ignored complaints. Further, in provinces, where sex work of pregnant women is prohibited, health officials carry out pregnancy tests without the consent of the women. Sex workers were also pressured to undergo lung X-ray screens, although there is no legal regulation authorizing this.

3.2. Systematic police harassment

Law enforcement of prostitution laws is excessive. Thereby, police shows no respect for the dignity of persons, whom they suspect of illegal prostitution: They enter their private homes, subject them to sexual humiliations and even apply brute force. Austrian courts

⁵⁶ Information from the author's homepage.

tolerate this practice and admit so obtained evidence as proof for illegal prostitution.

- Sex workers are obliged to always carry a control card (it confirms registration and health checks) and show it to police. In the case of an infection, authorities confiscate it until about three weeks after the completion of treatment. Failure to register, to attend the mandatory vaginal inspections and HIV tests, or to obey provincial regulations, is a misdemeanor that is penalized under the Administrative Penal Act with fines of 20,000 EUR or prison terms.
- Migrant sex workers risk deportation, if they do not register as prostitutes. This is illustrated by the deportation of a woman to Nigeria due to illegal prostitution (note 57), whereas without a working permit she had no legal means to secure her livelihood in dignity; there are concerns about racial discrimination (note 58).
- Provincial laws foresee also fines for children. In order to prevent their sexual exploitation, they set a minimum age for prostitution. However, in the case of violations they penalize the children for illegal prostitution, rather than supporting them (note 59). In line with such legal traditions, Regional Criminal Court of Innsbruck sentenced a boy for child pornography, as he has made nude pictures of himself (note 60).

⁵⁷ Supreme Administrative Court, 2007/18/0610 of 30.04.2010

⁵⁸ United Nations Committee against Racial Discrimination, General Comment 31 of 17.08.2005

⁵⁹ Committee on the Right of the Child, CRC/C/AUT/CO/3-4 of 05.10.2012 at § 64, CRC/C/OPSC/AUT/CO/1 of 03.10.2008 at §§ 29 and 31.

⁶⁰ Source: 'Kurier' of 23.04.2015

- In September 2011, members of the National Human Rights Advisory Board observed police measures against illegal street prostitution in Vienna and reported (note 61): *'The observed interaction between the officers and the sex workers is not only an example of the degrading treatment of sex workers. It illustrates as well a lack of awareness on the part of officials in dealing with potential victims of trafficking [...] In this situation, the privacy of women was violated by the circumstances and nature of the questioning. Therefore, there is little opportunity that victims of trafficking would identify themselves as such.'* Generally, police officers show open disrespect for sex workers; they are on first-name terms with them and call them whores or bitches. Police interviews take place without interpreters, no information on legal remedies is provided, and sex workers are urged to sign protocols, which they do not understand.
- The enforcement of prostitution laws is also insofar excessive, as persons may be penalized, who have no legal obligation to register as a prostitute, as they merely explore their sexuality in a way that is recommended in guidebooks for better sex (note 62), without commercial character (note 63). Thus, authorities may impose

⁶¹ National Human Rights Advisory Board, Bericht des Menschenrechtsbeirates zu Identifizierung und Schutz von Opfern des Menschenhandels, Vienna, 2012, citation from p 27.

⁶² For example, *Easton/Liszt*, The Ethical Slut: A Guide to Infinite Sexual Possibilities, 1997; *LeMonchek*, Loose Women, Lecherous Men: A Feminist Philosophy of Sex, London, 1997; *Vance*, Pleasure and Danger. Exploring Female Sexuality, 1993; more references: *Tyler*, Women's Studies International Forum, 31/2008, pp 368 ff.

⁶³ Where sexual behavior is not commercial, e.g. not visible in the public, it is private life. This has been confirmed by Constitutional Court (VfSlg 8.272 of 1978,

finer for illegal prostitution, even if they are merely of the opinion that the sexual life would be prostitution; no proofs are needed (note 64).

- Vienna Prostitution Law of 2011 authorizes police to forcefully enter a private home, if a tenant is suspected to wear sexy lingerie (note 65). Further, Vienna police regularly intimidated a mother and her eight years old daughter by nightly visits that were caused by a false suspicion of the woman's illegal prostitution; this police conduct traumatized the child (note 66).
- There are multiple violations of private homes by undercover officers: In Vienna a woman invited an undercover officer to her apartment, where they had a sexually explicit conversation. Later the officer charged the woman with illegal prostitution. Although he confirmed his intrusion into a private home, courts ignored this (note 67). The case of an Innsbruck woman with a swingers' lifestyle is similar (note 68). Another woman in Innsbruck invited an undercover officer to her apartment, where he used his cell

8.907, 10.363, 11.926, 15.632 of 14.10.1999) and Supreme Administrative Court (2004/09/0219 of 20.11.2008, 2009/13/0011 of 25.01.2012; related 2005/09/0181 of 22.11.2007).

⁶⁴ In Tyrol women with swingers' lifestyle, who placed advertisements seeking fellow swingers, were fined for soliciting illegal prostitution. Supreme Administrative Court confirmed the fines, admitting that prostitution was not proven (2011/01/0209 of 19.09.2012, 2010/01/0062 of 19.04.2012).

⁶⁵ Section 15.4 Vienna Prostitution Law authorizes police to enter a private home, if there are reasons to believe that a tenant is dressed 'like a prostitute' (section 2.5).

⁶⁶ *Austrian Ombudsman Board*, Bericht an den Wiener Landtag, Vienna 2005, p 31 (VA W/666-POL/04, BPDion P92/f/05). A related case is Constitutional Court, VfSlg 18.302 of 05.12.2007.

⁶⁷ Supreme Administrative Court, 2004/09/0219 of 20.11.2008

⁶⁸ Supreme Administrative Court, 2005/09/0181 of 22.11.2007

phone to let his colleagues intercept the sex talk. Subsequently, he let them enter the apartment against the will of the woman. Courts declared the interception as unlawful, but ignored other human rights aspects (note 69).

- There are also reports that undercover officers use sexual humiliations to obtain evidence for illegal prostitution: In Linz a woman invited an undercover officer to her apartment and she was deceived to be nude, when they entered her sleeping room. The woman was fined for illegal prostitution and courts confirmed this fine, ignoring the unlawful intrusion into the private home and the sexual humiliation; rather, courts used this as evidence against the woman (note 70). In Tulln, a woman complained about the intrusion of an undercover officer into her private home, private life violations, and degrading treatment by forced nudity. The so obtained information was then used by Tax Authority to assess income from alleged prostitution. Courts ignored the unlawful intrusion of police and the sexual humiliations (note 71).
- As journalists observed at the Vienna Communal Health Office, police accompanied handcuffed women to forced gynecological examinations against their will (note 72). International jurisprudence qualifies involuntary gynecological examinations as degrading treatment (note 73).

⁶⁹ Supreme Administrative Court, 2005/01/0039 of 26.03.2007

⁷⁰ Supreme Administrative Court, 2005/09/0033 of 29.05.2006

⁷¹ Supreme Administrative Court, 2009/13/0011 of 25.01.2012

⁷² Source: 'Kurier' of 20.05.2010 and 'Falter' of 09.06.2010.

⁷³ The European Court of Human Rights qualified forced medical investigations of the intimate sphere as degrading treatment (*Yazgül Ilmaz v Turkey* of 01.02.2011,

- In Innsbruck a woman invited an undercover officer to her house, where he used force, leaving her handcuffed, with bare breasts, and bruised. Courts confirmed, that the police intrusion into a private home was unlawful, but ignored the violence, which left the woman seriously traumatized (note 74).

It follows that ***Austrian authorities treat sex workers like criminals***, as police routinely uses against them instruments that are reserved for the fight of crimes. The legally prescribed safeguards to prevent this are ineffective and there is no regulatory framework to enforce them. Further, criminal complaints about police misconduct are investigated by serving, seconded or retired police officers, who may not be impartial (note 75): They know of the systematic abuse of criminal law instruments and therefore cannot find a criminal intent in continuing such practice. Thus, ***police officers are rarely brought to court for misconduct***; instead witnesses of police brutality regularly face defamation charges (note 76).

Duval v France of 26.05.2011), and as violation of the private life (*Y.F. v Turkey* of 22.10.2003, *Juhnke v Turkey* of 13.05.2008).

⁷⁴ Administrative Panel of Tyrol, case 2005/22/1335-23 of 29.12.2005; about the circumstances of her death: 'News' of 29.03.2012.

⁷⁵ *Smith*, Internat. J Law, Crime & Justice, 38/2010, pp 59 ff; *Thomas Hammarberg*, European Commissioner for Human Rights, Report on the visit to Austria (21 to 25 May 2007).

⁷⁶ *Federal Ministry of the Interior*, Security police report to the Parliament of 02.03.2009, p 479; *Amnesty International*, Austria: Victim or suspect, a question of color, London, 2009; Committee against Torture, CAT/C/AUT/CO/4-5 of 20.05.2010 at § 20; Committee on the Elimination of Racial Discrimination, CERD/C/AUT/CO/18-20 of 31.08.2012 at § 13

PART 4: INSUFFICIENT PROTECTION AGAINST EXPLOITATION

Lacking protection by criminal law, discriminatory regulations of prostitution, and unlawful implementation practices have negative repercussions on victims of human trafficking or sexual exploitation (note 77). On the one hand, authorities are so preoccupied with the hunt for illegal prostitutes and illegal immigrants that they do not care about these victims, if only they are registered as prostitutes with a lawful immigration status. On the other, these victims have firsthand experience with the unlawful conduct of police, both in Austria and in the countries of their origin (note 78), whence for good reasons they fear authorities and may not ask police for protection.

4.1. Data

Criminal statistics alone are insufficient to estimate the extent of trafficking and sexual exploitation. For instance, such statistics do not inform about human rights violations that domestic law does not recognize as a crime, such as trafficking within the State Party territory. This is ignored by Austrian legal system, although it is a human rights violation (note 79).

⁷⁷ This report does not consider the situation of trafficked women, who are exploited in other ways, as housemaids, in agriculture or in arranged marriages. Neither does this report consider the situation of sexually abused children. All these cruelties need to be clearly distinguished from voluntary sex work, also in terminology.

⁷⁸ A comparison of the human rights situation of sex workers across Europe found that the situation in Austria is amongst the worst (*Brunner/Tschohl*, Jusletter-IT of 20.02.2014 and of 11.12.2014).

⁷⁹ This Committee, General Comment 28 of 27.03.2000 at § 12

- By estimates for 2012 by International Labor Organization (ILO) in Austria there are about 2,200 sexually exploited and/or trafficked women: ILO estimates 1.5 persons in forced labor per 1,000 inhabitants in the European Union (note 80). For a population of 8.4 million this amounts to 12,600 persons. Further, 22% of forced laborers are sexually exploited, 79% of them adults, mostly women, which results in 2,200 sexually exploited adult women; i.e. 15% of 15,000 women in commercial sex work (legal, illegal or indirect). As Austria is affected by human trafficking as both a transit and destination country due to its geographical location at the centre of Europe, the actual number of victims may even be higher.
- However, there is a discrepancy to law enforcement data: In 2011 Austrian police suspected 123 crimes of sexual exploitation and/or trafficking (187 in 2007) and courts sentenced 20 perpetrators (note 81). The 123 suspected perpetrators identified by police in 2011 were: 52 cases of trafficking for sexual exploitation under section 217 Penal Code, 20 cases of trafficking also for other purposes under section 104a Penal Code, and 51 cases of pimping under section 216 Penal Code; the number of victims (cases) was about the same as the number of identified perpetrators. The 20 criminal convictions were: 8 cases of trafficking for sexual exploitation under section 217 Penal Code, 1 case of trafficking also for other purposes under section 104a Penal Code, 2 cases of

slavery under section 104 Penal Code, 9 cases of pimping under section 216 Penal Code.

4.2. Issues

While the author acknowledges that the state party pays lip service to a better treatment of victims of trafficking and sexual exploitation, there remains the concern that too often victims of crimes are not recognized (first two examples below). Further (last two examples) there is the concern that more vigilance is needed in protecting women against criminal exploitation. Even if women registered as prostitutes, they may be too terrorized to ask police for help or they may distrust police officers, whose corrupt conduct is evident, when they regularly inspect official brothels.

- In January 2011, a woman was deported to Nigeria. She allegedly was a victim of trafficking and sexually exploited by pimps in Vienna. She witnessed against the traffickers and pimps, but her complaints about her situation had no consequences, except for putting her under considerable risk of retaliation by pimps. Austrian authorities did not protect her as a possible victim of an international crime, but treated her as an illegal immigrant and prostitute (note 82).
- In 2007, journalists visited the office for the registration of prostitutes in Graz, Styria. A 19 year old woman from Rumania showed signs of anxiety, whence there arose the suspicion that a pimp forced her to register as a prostitute. The officer noted this

⁸⁰ ILO, *Global Estimate of Forced Labor, SAP-FL*, Geneva, 2012.

⁸¹ The criminal statistics is from *Federal Ministry of the Interior, Crime Report 2011 to the Parliament* (homepage of Parliament) and from Statistik Austria (court cases).

⁸² Source: 'News' of 20.01.2012

but did not take appropriate action, as for the officer only the registration mattered (note 83).

- In 2010 Hungarian police discovered a brutal gang of Vienna based pimps (note 84). For over a decade the gang kidnapped women in Hungary and tortured them. When their resistance was broken, they were trafficked to Austria, where the gang operated several official brothels in Vienna. Austrian police considered these brothels as excellent, as all women registered as prostitutes and regularly attended the health checks. Finally, in 2010 a 19 year old woman managed to escape. She fled from Austria, as she distrusted Austrian police, and instead informed Hungarian police about this crime; subsequently 13 more women were freed from brothels in Vienna.

Traffickers use such state party policies to their advantage (note 85): In the first step, traffickers promise women a better life in Austria. Next, women accept debt servitude to cover the travel costs, or their relatives pay. Upon arrival in Austria, the job market is closed for them and in order to remit travel costs they work in illegal prostitution. When they have earned travel costs, police discovers them (e.g. hint by the trafficker) and they are sent back to Nigeria. Now the circle closes; their places are taken by the next group of trafficked women. Further, after deportation victims are no longer available to testify against the traffickers.

⁸³ Source: 'Falter' of 27.06.2007

⁸⁴ Source: 'News' of 20.11.2010

⁸⁵ Cited from *Sibylle Hamann* in 'Die Presse' of 31.10.2012

PART 5: CONCLUSION

As has been demonstrated above, Austrian policies stigmatize sex workers in multiple ways. The author therefore recommends that Austrian policies should change in agreement with the international consensus that sex workers and other marginalized populations ought not to be denied the protection of the law. To safeguard this, ***Austria should implement the United Nations Human Rights Based Approach*** (note 86) and revise at all levels the legal regulations related to sex work, based on the relevant UNAIDS guidelines (*supra note 39*). Respect for the human rights of sex workers shall become a founding principle of Austrian prostitution policies.

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⁸⁶ New Zealand applied this approach with Prostitution Reform Act 2003/28. The law was positively reviewed in 2008 and *UNDP*, *supra note 12*, commended this positive development.