SEX-WORKER FORUM

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Concerning the **seventh and eighth periodic reports of Germany**

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Germany: Concerns about the mandatory registration of all women in sex work

Context: This report relates to issue no. 13 in the list of issues of 29.07.2016 (CEDAW/C/DEU/Q/7-8). This Committee asked the government "to provide an update on the status of the amendment to the Prostitution Law (2002), which provides for the need to obtain a licence for places of prostitution, a background check for those operating prostitution businesses, and minimum health and safety requirements for women engaged in prostitution." In the meantime, Germany has adopted a "Law for the Protection of Prostitutes" (Law Gazette I-2372 of 21.10.2016), becoming effective as of 01.07.2017. The law aims at providing authorities with means for the complete surveillance of all aspects of sex business. This includes on the one hand the licensing of brothels, but it includes also the mandatory registration of all women in sex work.

Critizism: This report critizises several shortcomings of that law. The mandatory registration jeopardizes the privacy of women in sex work, the mandatory "personal consultations" expose them to the risk of sexual humiliations, the lacking differentiation between brothels and independent sex-workers may push women into the hand of pimps, and the prohibition of unsafe sex is paternalistic and self-defeating.

1. Mandatory Registration

Section 3 of the considered law obliges women in sex work to register as a prostitute; they then have to re-register each second year.

Critizism: There is no scientific evidence that the mandatory registration of women in sex work would help to combat trafficking, sexual exploitation or other abuses. On the contrary, courts all over the world have begun to realize that the registration of prostitutes would discriminate against women (e.g. Constitutional Court of Hungary, judgment 28/C/2005 of 10.01.2011) and publications in leading peer-reviewed research journals (e.g. Decker et al., 2015, in: The Lancet, 385) have demonstrated that mandatory registration has been a cause for maltreatment and exploitation.

In particular, the mandatory registration of sex workers rises serious concerns with respect to possible violations of data protection and privacy legislation (please refer also to CEDAW/C/NLD/CO/5 of 05.02.2010 in §§ 30-31). For the law does not foresee adequate measures to protect the privacy of sex workers.

On the contrary, as authorities are obliged to mutual cooperation, the information about the registration as a sex worker will inevitably spread to other authorities, such as e.g. health authority, police, immigration authorities, tax authority, social welfare office, and e.g. youth welfare, if the sex worker is also a mother. Even long after a woman has left sex work, such data will remain for decades in the archives of these other authorities.

As regards the the possible spread of such data, the law imposes also on sex business operators the obligation (Section 28) to retain personal data of sex workers for two years and provide the data to authorities on request (e.g. trade office or again police, tax authority, etc.). Currently, brothel owners do not have access to such data, which is the best protection of the sex workers' privacy. However, under the new law they will gain access to the personal data, while there is no effective regulation to protect these data: Nothing would would hinder a brothel owner to distribute such data quietly and secretly to other interested persons (e.g. pimps).

There are also concerns about data theft (e.g. for blackmailing), as by lack of capacity the municipalities in charge of registration data and sex business operators can provide only low data security. Recall that even highly protected data of national security agencies could not be protected effectively.

Women in sex work will therefore live in the constant fear of data leakages and the resulting stigmatization, even that of their children (if e.g. youth welfare informs the school). In the case of data leakages, the concerned women receive no sufficient compensation, although they might no longer be able to find a decent job.

In view of the many venues for the international exchange of data between European authorities, such sensible data may even seep to authorities abroad and endanger migrant sex workers from countries where prostitution is a criminal offence.

2. Forced disclosure of intimate details

As part of the new legal obligations (sections 7 and 10), women are required to disclose their health status in "personal consultations" and to explain the most intimate reasons, why they wish to enter or remain in sex work. Thereby, Section 5 gives the (municipal) authority in charge a broad discretion to deny registration (prohibit prostitution) and by Section 11 the authority may impose injunctions and orders as it deems necessary.

Critizism: As authorities may wish to deter women from entering (or remaining in) sex work, the mandatory "personal consultations" are a cause for concern. For the regulation forces women in sex work to speak with state officials about the most intimate aspects of their sexual life and health, as otherwise that officials may deny them a registration. Many women fear that they will experience sexual humiliations, if such consultations are conducted in a hostile environment. This fear is also fed by Section 8 of that law that allows authorities to ban legal consultants of the concerned women from these "consultations".

Further, in "personal consultations" about health, the authority may order that a woman wishing to work as a prostitute has to undergo regular health checks and HIV tests as a precondition for registration. The authority cannot order similar injunctions for the male clients of prostitutes. This, too, is discriminatory against women (c.f. A/53/38/Rev.1 at § 65).

Further, although such obligations would contravene the right to health (§§ 40-41 of General Comment 22 of 2016 about Art. 12 CESCR and UNAIDS Guidelines on HIV/AIDS), in Germany the right to health cannot invoked at courts. Thus, the present law de facto reintroduces legal obligations for women in prostitution, which Anand Grover, then the United Nations Special Rapporteur for the right to health, has critizised as counterproductive (A/HRC/14/20 in § 39).

Authorities may also use their discretion and deny young women for pretended reasons a registration as a prostitute. Rather than barring them from entering sex work, this will push them into the illegal and unprotected sex sector and thus makes them more vulnerable and prevents them from seeking help when needed.

3. No consideration of self-employed sex workers

A large body of that law regulates the licensing of red-light business. However, these regulations do not distinguish between brothels and self-employed sex workers. Instead, the law subjects independent sex workers to the same rules and sanctions as brothels.

Criticism: This situation jeopardises sex workers who prefer to work independently of brothel operators, e.g. home-based sex workers and self-employed escorts, who wish to protect their privacy. Either they apply for a license and de facto loose privacy protection (with the danger of stigmatization), or authorities may consider their home as an unlicensed brothel (e.g. if they share it with another woman in sex work) that no longer enjoys full constitutional protection. Further, even if a woman would be willing to give up privacy and apply for a license, she may not receive one.

As a consequence, this law will make it almost impossible for sex workers to ward off interferences by licensed brothel keepers. For women in sex work there remain only the alternatives to either give up independency and work for a sex business operator at his conditions of business or to maintain independency with the risk of being prosecuted and punished. Historically, similar regulations have pushed women into sexual serfdom under the control of pimps (Danna, Ricerca sulle politiche sulla prostituzione in Europa, Univ. Milano, Italy, 2013).

Further, in view of the high penalities, once a woman has been fined, she will be forced to remain in sex work to earn enough to pay for the fine (up to 50,000 € by Section 33 of that law).

4. Paternalism with respect to core aspects of sexual life

Section 32 of the law prohibits sex without a condom.

Critizism: The choice of sexual practices is a core aspect of sexual life and the right over ones' own body. It is protected by the fundamental right to privacy. The present law interfers into this right under the pretense to protect public health.

Such an approach is paternalistic and it is self-defeating: Under the new law it would be an administrative offense (inciting prohibited sexual practices), if one publicly advises sex-workers on strategies to minimize their health risks in case that they agree to unsafe sex. However, nothing could hinder consenting adults to practice sex without a condom, whence it would be wise not to shut down health education channels that accept all sexual preferences. Internationally, best results for public health have been obtained from voluntary peer-to-peer programs to enforce women in sex work. As for a best practice example, the author refers to the SWOP initiative in Australia (www.swop.org.au/sites/default/files/stratPlan_2013_Web.pdf).

Further, the law discriminates against women, as it makes women in prostitution responsible for public health and penalizes them for offering or practizing unsafe sex, while de facto clients asking for unsafe sex are not penalized. This is demonstrated by experiences from the German province of Bavaria, where law enforcement officers routinely pose as clients and incite sex workers to agree to prohibited sexual practices. On the other hand, male custumers asking for prohibited practices de facto risk no fines. For, there exist no undercover stints to discover clients asking for prohibited practices. (A supervisor asking a female officer to pose as a prostitute would obviously violate the law.)

5. Conclusion

The new legislation violates the precarious right to privacy of sex workers and creates for them obstacles to work legally and safely. *The author therefore suggests that the registration of sex workers should be suspended till effective guarantees for the safety of the registration data have been developed.* Further, the law does not distinguish in sufficient clarity between brothels and self-employed sex workers. *The author therefore suggests that the government should take action to empower prostitutes and ensure that sex workers can work independently, without interferences of a sex business operators.*