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Criminality of the Abuse of Prostitution: A Socio-Legal Study of Case Files in Slovenia

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Summary

The article is based on an empirical socio-legal analysis of criminal court case files concerning the abuse of prostitution in Slovenia. Based on the theoretical framework developed by Petra Östergren, the authors analyse whether the Slovenian regulatory system on sex work is repressive, restrictive or integrative. The paper explores how the courts define "abuse" and "exploitation" of prostitution,[1] how the participation of third parties in sex work activities is dealt with by the courts, how the vulnerability of sex workers is treated, and how the existence of consent is considered before the courts. The paper examines the files for moral arguments, stereotyping, and stigmatisation, as well as references to occupational risks in the field of sex work and sex workers' rights. In the conclusions the authors argue that in Slovenia the characteristics of the restrictive model, with elements of both repressive and integrative, prevail.

Keywords: Sex Work, Prostitution, Sexual Autonomy, Criminal Prosecution, Abuse

1. Theoretical Foundations

Sex work or prostitution remains a controversial area both in society and at the level of state policies. Theoretically, Petra Östergren (2017) argues that countries use three different approaches when addressing sex work: repressive, restrictive and integrative.[2] The **repressive** approach is characterised by the fact that it aims to eradi-

[1] The Slovenian Criminal Code prohibits exploitation of prostitution under Article 125 that reads "abuse of prostitution". The authors use both terms in the paper.

[2] In criminal law theory, a similar theoretical division into prohibition, regulation and abolitionism exists. See Filipčič, 2023, pp. 1330-1331.

cate sex work and protect society and/or those who sell sexual services from harm and treats this work primarily as a negative social phenomenon. The ideology of the repressive approach can be religious or moral, radical-feminist positions are common. In this approach, prostitution is addressed only by criminal law, which prohibits the sale and/or purchase of sexual services and the mediation of third parties. The goal of campaigns within the framework of a repressive approach is to discourage the sale and/or purchase of sexual services. Exit or behavioural rehabilitation programmes for those who sell and/or buy sex services predominate among the programmes, and the dominant discourse condemns sex work. Within this approach, sex workers have no access to labour rights and cannot access social security systems or have difficulties in accessing them, in seeking social and health assistance on their own terms, in self-organisation and in mutual cooperation and/or cooperation with non-governmental organisations, social services and state authorities.

The characteristic of the **restrictive** approach is that it seeks to limit the sex work sector to protect society and/or those who sell sexual services, treating sex work primarily as a negative social phenomenon, similar to the repressive model. This approach is also based on religious or moral ideology. The restrictive model differs from the repressive one in that it includes not only criminal regulations but also administrative regulations that determine under what conditions the sale of sexual services can be performed. Criminal regulations may still prohibit the involvement of third parties. In this approach, exit or behavioural rehabilitation programmes prevail, but various discourses on sex work can be detected, not only moralistic and condemning but also those highlighting aspects of social protection, labour rights, occupational risks, sexual self-determination, and self-organisation. In this model, sex workers have partial or no access to labour rights, may have difficulties accessing the social security system, seeking social and health assistance on their own terms, self-organising, cooperating with each other and/or with authorities. This approach also differs from the repressive model in that cooperation between sex workers, clients, and intermediaries and/or social services and agencies is possible, but in the restrictive model it is difficult to prevent and report criminal offences (*ibid.*).

The third, **integrative** approach, which treats prostitution as a multi-layered social phenomenon with negative elements, aims to include the sex work sector in the social, legal, and institutional framework to protect those who sell sexual services. It is an approach based on an ideology founded on the rights of sex workers. In the integrative model, there are regulations that govern the rights and obligations of sex workers in employment, regulations that protect them from exploitation, and implementing regulations for authorities, social services, and service providers. This approach is characterised by campaigns and initiatives to combat stigmatisation and violence and to promote cooperation among all stakeholders. The prevail-

ing discourse in this model is nuanced and multi-layered. In it, sex workers have full access to labour rights, can seek social and health assistance on their own terms, self-organise, cooperate with each other and with authorities, and influence self-regulation in the sector. The model also allows for the development and integration of codes of conduct and ethical standards for state agencies and services dealing with sex workers (*ibid*.).

In the article, we analyse how these three approaches – repressive, restrictive, and integrative – are reflected in the criminal law approach to criminal offences related to the exploitation of prostitution in Slovenia. To this end, a socio-legal analysis of court files was conducted to determine how relevant authorities – police, prosecutors, and courts – deal with the exploitation of prostitution, criminalised under Article 175 of the Criminal Code (*Kazenski zakonik* – KZ-1), within the criminal justice system. Most national and international regulations treat prostitution and other related behaviours (e.g., human trafficking) within the framework of criminal law. In Slovenia, the key regulatory change was implemented in 2003 with the amendment of the Protection of Public Order Act (*Zakon o varstvu javnega reda in miru* – ZJRM), by no longer defining prostitution as a minor offence and thus partially decriminalising it, moving from a repressive to a more integrative approach in this area. Prior to decriminalisation, prostitution was dealt with in minor offence proceedings based on the ZJRM, as Article 10 stipulated a penalty of up to 60 days imprisonment for those who "engaged" in prostitution. Prostitution as a threat to public order in the form of a minor offence remains prohibited under the current Protection of Public Order Act (*Zakon o varstvu javnega reda in miru* – ZJRM-1) if carried out in public places or if sexual services are offered intrusively, thus disturbing, upsetting, or causing outrage among people (Article 7 (3)).

Before the 2004 legislative change at the level of the Criminal Code, the following articles of the previously valid Criminal Code (*Kazenski zakonik* – KZ) also referred to prostitution: Article 185 (pimping), Article 186 (intermediation in prostitution) and Article 387 (enslavement). The use of prostitution services in Slovenia is not punishable except in cases where a person knows that they are using the services of a human trafficking victim. After 2004, only some aspects of prostitution remained defined as a criminal offence, specifically Article 175 of the KZ-1, which defines and prohibits the abuse of prostitution, such as when whoever "participates for exploitative purposes in the prostitution of another" or when whoever "instructs, obtains or encourages another to engage in prostitution by force, threats or deception". The value protected by the prohibition of exploitation of prostitution is sexual self-determination or sexual autonomy (Filipčič, 2023, p. 1331). In criminal law, the legislator deals only with a specific form of sex work, i.e. prostitution or those forms in which there is live sexual intercourse. KZ-1, similar to KZ, further refers to

prostitution in the case of some other incriminations, specifically in Article 112 (enslavement) and Article 113 (trafficking in human beings). Article 112 of the KZ-1 is partly related to sex work and prostitution, as in certain cases, it can be considered a form of violence in slave-like relationships. In 2021, after the passing of the KZ-1H amendment, which introduced the model known as "yes means yes", requiring explicit consent or permission for sexual acts, it has become necessary to pay attention to the distinction between the criminal offence of exploitation of prostitution and the criminal offence of participation in rape under Article 170 or sexual violence under Article 171 of the KZ-1.

In Slovenia, prostitution can be registered as an activity in accordance with the Standard Classification of Activities,[3] specifically as "body care activities" under code 96.040 and "other service activities not elsewhere classified" under code 96.090. The fact that these two activities allow for the registration of sexual services is mostly unknown in the public, for various reasons, and is rarely implemented. The reasons can be found in the unregulated and generally disorganised nature of this work area and in the stigmatisation of prostitution in society.

The analysis of previous research on prostitution in Slovenia has demonstrated that the most important fact for understanding the conditions in which sex workers work in Slovenia is that a large part of sex work is excluded from the laws in the field of employment relationships due to its non-regulation. This leads to the existence of various forms of employment and statuses of sex workers, among which non-standard forms of employment prevail, which bring forth numerous negative consequences for the social security of workers. As Šori and Markelj (2022, p. 22) find, there are no official professional standards or regulations in the field of health and safety at work that would systematically protect sex workers from occupational risks. This means that workers remain without labour, health, and social rights. The analysis of previous research has revealed many occupational risks in sex work. They are related to stigma, safety, policies and legislation, health, access to services, and risks associated with business and private life. Therefore, multiple studies propose legislative changes to ensure social and health protection for sex workers (Kuhar and Pajnik, 2019; Peršak, 2012) and labour rights for sex workers (Kuhar and Pajnik, 2019; Pajnik, 2008). Šori and Markelj (2022, p. 25) find that among the safety risks, the most frequently discussed are "violence and exploitation by third parties, such as pimps, organisers, and venue owners, indicating that research – such as policies or media – mainly focuses on the criminal aspects of sex work". Courts, due to the nature of their work, mostly deal with this aspect of prostitution and determine the boundaries between permitted and prohibited practices in the field of sex work, which is not criminalised but also not fully legalised.

[3] A list of all activities is available at: https://spot.gov.si/sl/dejavnosti-in-poklici/dejavnosti-skd.

In the area of criminal prosecution of exploitation of prostitution, previous research finds that there are several ambiguities in the definitions of criminal offences in this area (Ambrož, 2007; Korošec, 2008; Pajnik, 2017) and that the case law is not uniform (Ambrož, 2007; Levašič, 2020), with the most significant dilemma arising regarding the involvement of third parties in prostitution. Criminal legislation, based on the grammatical interpretation of Article 175 of the KZ-1, does not incriminate the involvement of third parties in prostitution *per se*, but only incriminates such involvement where there is an exploitation of a person providing sexual services (Filipčič, 2023, p. 1332). According to the current regulation in the KZ-1, it is not clear whether any involvement of third parties in prostitution is punishable (Levašič, 2020) or whether abuse of prostitution must be proven in court, for example, by considering the division of earnings (Ambrož, 2007; Korošec, 1998; Šošić and Korošec, 2019). The Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije* – VSRS), in its recent case law, follows the first position, i.e., that any involvement of third parties who are financially involved in earnings, constitutes exploitation of prostitution. Šošić and Korošec (2019) are critical of such a broad interpretation of the concept of exploitation, which no longer considers the percentage of earnings as relevant for determining exploitation, thereby opening up room for moralistic judgment of prostitution, without considering the existence of possible consent or agreement of the sex worker.

2. Method

Originally, we based the methodology of this socio-legal analysis on the idea of obtaining a list of all relevant court files in the Republic of Slovenia from 1991 onward from the Supreme Court and, based on the list, of selecting 20 files according to a key to ensure the representativeness of the sample. Inquiries at the Supreme Court showed that the planned method was not feasible, as the court files are stored by the individual courts that dealt with the cases. The Supreme Court also clarified that it could only provide a list of cases for the period from 1 January 2012, when the information system for monitoring criminal proceedings (i-K system) came into existence. This is the reason why it was not possible to include criminal prosecution cases under Article 186 of the Criminal Code (intermediation in prostitution), which was abolished with the 2004 amendment of the Criminal Code. The Supreme Court also warned that the list might be incomplete, as it only included finally resolved cases, and the finality was not consistently recorded in older cases. The Supreme Court also provided us with a list of minor offences cases, with the reminder that it only kept records of those minor offences cases in which the parties have filed a request for judicial review. Based on a query in the i-K system of 2 November 2021, the Supreme Court prepared a printout of the results list, which contained 59 crimi-

nal and 30 minor offences cases. The list of cases included information on the year of the final judgment issued in the case, the case number, and the competent district court that dealt with the case.

Based on the obtained list, we contacted the district courts with inquiries and a request to analyse the files. The request was designed in such a way as to allow for control of the accuracy of the Supreme Court list. Correspondence with the courts showed a problem with accessing files from the period before 2010, as these were not in the electronic database but in the physical archive. Due to the varying responsiveness of the courts, the initial plan to select files for analysis from the list by key proved to be unsuitable. Consequently, we decided to analyse all the files that could be retrieved. The courts provided us with lists of cases that had been finally resolved (*res iudicata*), based on which 20 files from district courts in Novo Mesto, Ptuj, Celje, Maribor, Koper, and Ljubljana were analysed. The analysis of case files at individual courts was carried out between March and July 2022. The case files included in the analysis are marked with the designation of the district court that dealt with them and the serial number of the analysed file.[4] The analysis of the case files was supplemented with a control review of the judgments of higher courts and the Supreme Court from the Slovenian judgments database "sodnapraksa.si" in the field of exploitation of prostitution.

The case files were analysed using a coding form – a form that contained instructions for completion. In addition to basic information about the case file, the research team entered substance data on various aspects of the criminal law treatment of the criminal offence of exploitation of prostitution that we were interested in. We focused primarily on data on whether the involvement of a third party in prostitution without payment was considered exploitation of prostitution; whether the distribution of even the smallest part of the earnings to a third party was considered exploitation of prostitution; and whether the percentage of earnings that the sex worker paid to a third party was relevant for defining the behaviour as exploitation of prostitution. We studied how the vulnerability of sex workers is addressed in the prosecution of abuse of prostitution and what is considered as vulnerability; whether a vulnerability is actually established or attributed; and how the voluntariness of performing sex work (the existence of consent or agreement) is dealt with in courts. Furthermore, we were interested in whether moral arguments could be identified from the case files, whether sex work was treated as a "sin" or "evil" that needs to be eradicated, and workers directed to a different professional path; and whether stereotyping, stigmatisation, belittling, insulting, or other similar derogatory attitudes by representatives of institutions towards sex workers could be seen

[4] The list of case numbers of the analysed files is kept by the research group.

in the case files. Finally, we were interested in whether the case files reveal the authorities' interest in the occupational risks of sex workers, i.e., their interest in how exposed they are to them and how they manage them, or how third parties involved in the activity reduce the risks. We were interested in the types of arguments used by prosecution authorities and courts when dealing with the exploitation of prostitution, particularly aspects of the rights of sex workers and how they are dealt with in courts. In this regard, the research team was particularly attentive to whether differences between the approaches of the police, prosecution, and courts to these issues can be discerned from the files. This is an important added value of studying entire case files compared to studying judgments, as insight into the entire file also offers insights into differences between their approaches. In conclusion, we determined whether their approaches could be categorised as repressive, restrictive, or integrative (cf. Östergren, 2017).

All this shows that this is not a classic legal analysis that would focus on identifying legal standards important for courts in determining which behaviours are considered prostitution and how prostitution is regulated *de lege lata,* and how it should be regulated *de lege ferenda*. Such analyses are contained in the contributions of other authors (Korošec, 1998; Ambrož, 2007; Korošec, 2008; Pajnik, 2017; Šošić and Korošec, 2019; Levašič, 2020; Filipčič, 2023). Also, the purpose of the analysis is not to capture all the complexities of questions of victimisation on one side and of the self-determination of sex workers on the other, as these questions have already been analysed elsewhere (e.g., Pajnik, 2017). This analysis focuses on the socio-legal aspects of the criminal prosecution of those aspects of prostitution that remain criminalised in Slovenia, insofar as these aspects can be seen in the specific analysed criminal files. Therefore, the analysis is distinctly interdisciplinary and is at the intersection of legal and sociological disciplines.

3. Results

As we have already indicated, so-called independent prostitution, based on the sexual autonomy of sex workers, has been decriminalised since 2003. This means that sex workers are not treated as offenders of minor offences, and criminal charges are not brought against them for providing sex work services. The legal order neither limits them nor regulates their position. As a result, the mere fact of prostitution is not problematised in the writings, which indicates a restrictive model. However, the abuse or exploitation of prostitution is still prosecuted, which encompasses the prohibition of *any kind* of exploitation of prostitution. The essence of the criminal law argumentation in the case files is centred on the question of what is covered by the concept of exploitation of prostitution. Case law shows that the exploitation of prostitution is not a clear-cut concept, and in practice, the statutory element of exploita-

tion most often manifests itself as the economic exploitation of a person engaging in prostitution (cf. judgment no. X Kp 26592/2017), alongside other interventions in the general freedom of choice and actions of sex workers (Filipčič, 2023: 1333).

Among the key arguments in the case files, we find **criminal law arguments** used by the police, prosecution, and courts. These arguments are related to recruitment, coercion, exploitation, threats and intimidation, deprivation of freedom and personal documents, enslavement, poor living conditions of victims, deprivation of earnings, inability to choose clients and determine one's own price for services, planned search and recruitment of women, in the case of the organised transport of foreign women, the request for reimbursement of travel costs, deception in the decision to travel, and in three cases also the intention to sell the women abroad. A common case of abuse of prostitution found in the case files is the employment of women in bars as waitresses or dancers, getting women addicted to drugs (e.g., case file NM5)[5] and consequently reducing their ability to make judgments and decisions about their actions.

Courts and law enforcement agencies, in determining the existence of abuse, also pay attention to the **organisational form** in which the activity is carried out, i.e., whether it is independent prostitution when a sex worker organises, performs the services themselves, and is not financially dependent on anyone; or whether there is the involvement of third parties who materially benefit from the provision of sexual services by sex workers. In this regard, a difference exists whether there is the involvement of third parties, where we cannot yet speak of the existence of a criminal association (e.g., a couple in which a partner encourages or forces the other partner into sex work), or whether it is the exploitation of prostitution within a criminal association, which carries out a so-called criminal plan, within which members of the association participate in the prostitution of other persons by generating profit, and the activity is performed continuously as a well-established and profitable business (case file CE4).[6] According to one of the analysed cases, the statutory elements of a criminal offence are already met if the perpetrator enables sexual intercourse or other sexual acts for payment, for example, by providing premises, giving rooms for use, running a brothel, or giving money to another person for sexual intercourse with sex workers (case file CE5).

In proving the exploitation of prostitution in criminal proceedings, the main focus is on proving the existence of sex work as **a well-established and profitable business** carried out by the defendants as third parties who do not perform sexual

[5] The mark NM5, e.g., shows that the finding is based on the fifth case file from Discrict court Novo mesto.

[6] According to the established case law. See the judgment of the Supreme Court of the Republic of Slovenia I Ips 58554/2012 of 17 December 2020.

services themselves, but exploit the prostitution of sex workers for their material gain. Although they find the existence of a well-established and profitable business, the courts reject the possibility that prostitution could be considered an economic activity:

> The interpretation [...] that the organisation of prostitution of others is considered an economic activity and the profit of the organisers of prostitution is assessed from an entrepreneurial perspective, has no basis in the positive legislation of our country. As far as the organisation of prostitution would be permissible and legally regulated, the performers of this activity (i.e., prostitutes) would be protected from exploitation by the employer by sectoral legislation. In the absence of legal regulation governing the relationship between the prostitute and the person responsible for her prostitution, prostitution in our country cannot be compared to other economic activities. (judgment no. I Ips 58554/2012)

Law enforcement agencies and courts further examine whether **sexual self-determination (sexual autonomy)** was exercised by the sex worker and stress that participation in the prostitution of others for profit is prohibited (e.g., case file MB1). Law enforcement agencies and then courts examine all the circumstances of the case, including how the **rights** of sex workers were cared for within the activity. They investigate and establish whether sex workers were offered security, for example, in the fields of healthcare, social protection, work conditions or payment for work, and whether they were provided with security of the employment relationship (e.g., case file KP1). Among the arguments of the law enforcement authorities and the courts in the field of women's rights, we find mainly attention to the dignity of exploited women, health arguments related to accommodation in poor living conditions and poor hygiene conditions, health problems, fairness of working conditions, an overabundance of work, whether women were forced to work in all conditions, whether they had unregulated health insurance and whether they were at the risk of sexually transmitted diseases (e.g., case file NM2). One can also notice **labour law arguments** related to financial sanctions for female workers in case of violation of the rules set by abusers, whether their employment contracts were fictitious, whether their movement and behaviour were under strict control and whether their payment failed to reach the minimum wage (e.g., case file LJ1). These arguments can be seen as falling in the sphere of the integrative model of regulation of prostitution.

In one case file analysed, the competent authorities dealt with the work of massage parlours. In these cases, the essence of the argumentation lies in **the differentiation between erotic massage and prostitution**. The trial court in the case LJ2 focused on the fact that the parlour performed the activity of erotic massage, which can be regularly registered, while the higher court took the position that offering massage services with the aim of satisfying the sexual needs of clients cor-

responds to the definition of prostitution. The definition of massage activity as a form of prostitution did not significantly affect the acquittal of the accused parties in this particular case. The essence of the acquittal was that the courts could not confirm the existence of economic enrichment by the massage company's management through the sex work of the employees. In these cases, it was not possible to confirm that women were forced to work; they had their own phones, participated in composing online advertisements, and testified that they could stop working whenever they wanted; the activity was organised like any other work, with regular pay, regardless of the number of clients, the workers had a possibility of refusing a client, and they had the option of interruption of work. In this case, it was crucial for the acquittal that the court could not confirm the existence of abuse and exploitation, while the court established the existence of elements of work (judgment no. X Kp 26592/2017).

In the analysis, we also examined whether **moral arguments** appear in court proceedings. The results show that they are rare, as we found them in only one case, namely on the side of the prosecution, which, regarding the victims of foreign nationality, wondered how it was possible that women could not be found in Slovenia to perform sex work, and then answered that undoubtedly, it was because such work contradicts human and personal dignity (case file LJ1). In the analysed files, the courts entirely distanced themselves from moral arguments and focused on criminal law aspects and values protected by criminal norms. In this context, they also mention the dignity of workers, which they link to various dimensions of human rights without devaluing the type of work itself. On the other hand, we also found a case where the prosecution based a significant part of its argumentation on the so-called radical-feminist or even biologistic argument, which is a type of moral argument, namely that prostitution can never be an activity that women would voluntarily choose. It pursued the position that prostitution is not a choice, but that the primary reason for the emergence of prostitution is biological, related to the sexual drive of prostitution users since they treat the body of the prostitution performer only as a means to achieve pleasure and benefits, and are not interested in the consequences that the performer suffers due to this (case file LJ2). Such arguments belong to the sphere of repressive and also restrictive models.

As indicated, we explored in our research how the courts would respond to an attempt by a group of autonomous individuals to engage in prostitution without coercion, consensually, as a business activity that is not prohibited, where they would divide the work, resulting in some of these individuals not actually performing sex work but performing other tasks necessary for the activity (e.g., organising the work process, providing security against problematic clients, etc.). In the files we analysed, there were no such cases (with the partial exception of a massage parlour case

where, however, sexual intercourse was explicitly forbidden under the threat of employment contract termination). In a few case files we found that courts dealt with the role of security guards, but these were hired by defendants who abused and exploited prostitution to limit freedom and exercise control over sex workers, so these were not security guards hired by sex workers for their own protection.

One of the most common aspects clarified in court judgments concerning the abuse of prostitution is the existence of **economic enrichment** and the question of how much of the sex workers' earnings are handed over to club owners or other intermediaries. In their indictments and charges, the police and prosecutor's office generally stress that the victims received half or less than half of the earnings, with the larger portion being handed over to the defendants, such as pimps or organisers of prostitution, club owners, or partners who forced them into prostitution (case files CE1, CE3). With the amount they retained, they supported themselves and/or their families, sometimes having to cover rental costs for apartments (case file NM1). In terms of the statutory elements of the criminal offence of exploitation of prostitution, the analysed case files showed that the statutory elements are fulfilled by any allocation of *any part* of the earnings deriving from client payments to a third party who does not perform sexual services (case files CE4, KP2). The judgments of the courts from the analysed case files are consistent in their position that it is not essential how the earnings are shared between the perpetrator and the sex worker as a victim, but that the perpetrators benefit from the prostitution of individuals. Therefore, based on the Slovenian case law, it is forbidden to obtain financial benefits from the prostitution of others, and the share of earnings that sex workers must allocate to other persons is not legally relevant to the assessment of whether the defendants exploited their prostitution. To confirm the existence of exploitation or abuse of prostitution, it is sufficient that a sex worker hands over part of her earnings to another person (case files LJ1, PT3). In determining whether there was economic exploitation in a case, the courts also examine other circumstances of the cases, such as the organisation of working hours, the voluntary nature of the work, the possibility for a sex worker to refuse a client, the possibility to set a price, the adequacy of the payment for the work, and other circumstances (case file LJ2).

We also examined the aspect of **the vulnerability** of sex workers in the files. We found that vulnerability is often attributed to them, and law enforcement agencies and courts associate it with the fact that the victims come from other, poorer countries and assume that they lived in poor living or social conditions there, which caused severe life distress and saw leaving their country as an opportunity for better earnings and consequently a better life (case file CE2). The fact that "girls" used for prostitution come from economically very weak countries was, according to statements in one of the files, generally known (case file LJ1). In some cases, the

social vulnerability of the victims is actually established or testified to by the victims themselves and is not attributed to them. They stated that they had been unemployed for several years in their country, that they were in debt, and that they could not support their families, children, parents, or relatives (case files CE3, CE5, CE6, KP1). Law enforcement agencies, in particular, base their criminal law conclusions on the existence of economic exploitation as a continuation of the previous social, economic, and financial distress of the victims, as the latter are willing or forced to survive in another country "in this way" due to this distress, and the defendants exploit their difficult social situation in the country of origin (case files KP2, CE3). From the files, it appears that law enforcement agencies and courts link the vulnerability of victims not only to the purpose of determining economic enrichment but also to the purpose of justifying the existence of a restriction of women's freedom and holding them in a dependent position. For example, courts and law enforcement agencies show the existence of vulnerability by finding that the relationship between the exploiters of prostitution and sex workers was aggressive, that they failed to pay for work, failed to allow other sources of income or otherwise prevented them from becoming independent, and on the other hand, they imposed financial obligations on them (e.g., the obligation to pay rent for housing), with which they tied them to themselves (case files PT3, LJ1). In one case, courts do not infer vulnerability only from financial difficulties and debts, but also from the low education of sex workers, which prevented them from finding other employment (case file LJ2), and in another case, from not knowing the Slovenian language (case file CE6). In the third case, the police inferred the vulnerability of the sex worker from her infatuation, as it was a case where the defendant had prepared the victim for sex work by deception, promising her that with the money she would earn, he would buy a house in which they would live together (case file NM5).

We were particularly interested in how law enforcement agencies and courts deal with the aspect of **voluntariness** in performing sex work on the part of victims in criminal proceedings, i.e., how the existence of consent of a sex worker affects the criminality of the act and how the existence of consent is proven. The voluntariness of workers participating in the exploitation of prostitution, even if it was confirmed in the procedure that it existed, does not relieve the defendants of guilt. Courts often find that the victims knew what activity they would engage in and that they sold sexual services voluntarily, that they could move freely and that they performed this work themselves for profit, but to confirm the existence of a criminal offence, it is essential to determine the economic enrichment of other persons by their work (e.g., case file KP1). As it appears from the files, the existence of the victims' consent does not in itself affect the existence of the criminal offence of exploitation of prostitution and does not relieve the defendants of criminal responsibility. Voluntariness in performing sex work is also not a sufficient reason for

the court not to find an exploitative relationship in some cases (case files CE4, LJ1, NM1, NM3). For the existence of a criminal offence, it is also irrelevant whether the worker wanted to have an intermediary in prostitution or consented to it (case file NM1). In one case, it was found, for example, that the defendants did not force women into prostitution and that the decision on whether to provide sexual services was left to the workers and the guests of the establishment. There was no need for physical and psychological coercion, as the payment for sexual services was the only source of income for the workers, from which they had to pay various fees and fines, and this way of organising and managing the prostitution activity forced the workers into prostitution due to their financial dependence on it, according to the court's opinion (case file LJ1). In cases where organised prostitution is carried out under the auspices of criminal organisations, non-voluntariness (in addition to other statutory elements of this and other criminal offences) is also proven by determining whether the victims' freedom of movement was restricted, whether they were imprisoned, monitored, or subjected to violence to subdue or punish them for refusing to work, whether they were required to repay travel costs, denied food, or had their documents confiscated to prevent them from escaping (case files CE1, CE2). In less extreme cases, non-voluntariness was confirmed based on the finding that sex workers had to report their departures to the city and inform who they were socialising with and were punished in case of violating these rules (case file CE6). In one case, the prosecution also stressed that in cases of exploitation of prostitution, there were often "modern forms of subordination [...] in the economic, personal dignity, and psychological sense, as the subordinated relationship with shackles no longer exists" (case file LJ1). In this regard, according to the prosecution, the lack of consent is related to other forms of social disadvantage that lead to prostitution. In the case of file LJ2, the voluntariness in choosing clients appears as an argument that the existence of economic enrichment and abuse of prostitution could not be confirmed in the case of a massage parlour activity, although the court also stated that the activity of erotic massage, which is carried out to satisfy the clients' sexual needs, is considered a form of prostitution.

The question of (in)voluntariness was also relevant in some of the analysed files to confirm the existence of the criminal offence of trafficking in human beings under Article 113 of the KZ-1, which in such criminal cases often appears in conjunction with the criminal offence of exploitation of prostitution. When it was not possible to prove coercion and if it turned out that the injured women worked voluntarily or had the opportunity to stop prostitution, charges of human trafficking were dismissed (case files KP1, LJ1).

In the next part of the analysis, we focused on how much institutions express interest in the **occupational risks** of sex workers and how these risks are dealt with

in the cases. The analysis reveals that there is a great interest in the occupational risks of workers both on the part of law enforcement agencies and courts, especially with regard to health examinations and health care (case files CE3, NM1, NM2, KP2, PT2, KP1). Courts considered health problems faced by sex workers due to excessive workload as an element of exploitation and abuse (case file NM1). Courts also justified the existence of abuse with the lack of health insurance for workers, as they considered them to be at risk due to the high risk of sexually transmitted diseases and exhaustion, as they provided sexual services all day (case files NM2, KP2). The latter clearly reflects the identification of specific occupational risks of sex workers on the part of the courts. The prosecution and the court mentioned in one case the risk arising from inadequate protection of sex workers from violent clients as an element of abuse (case file PT2). The police and prosecution cited the general lack of ensuring the safety of sex workers, including social, occupational, health, and other safety, as an argument for the existence of abuse in several cases (case files NM2, KP1). In one case, the court extensively dealt with the risk of unfair working conditions, exceeding the agreed working hours, modest pay, and violations of various other aspects of labour law (case file LJ1). These arguments fall within the integrative model sphere.

In the final part of the analysis, we focused on the issue of the stigma of sex work, which is manifested through the **stereotyping and (self)stigmatisation** of sex workers and sex work in general. We were interested in whether sex workers perceive themselves as victims when they are treated as victims in criminal proceedings due to the criminal offence of exploitation of prostitution, which someone else is accused of. In the highlighted relevant case, the testimony of one of the victims in the main hearing sounds as if she did not perceive herself as a victim:

> At the beginning, I said that I am not a victim, and it looks like I am suing him [...]. I have nothing against him. If the police hadn't caught me for the minor offence back then, I would never have gone to the police. [...] When the defence attorney reads to me from the indictment what [the defendant] is accused of in this procedure, namely that he allegedly deceived me into prostitution under the pretence that I would work as a dancer and waitress in Slovenia, I replied that I was desperate at the time, not deceived. Nobody told me that [I had to do this], I thought it myself and voluntarily decided on prostitution. (CE6)

In the analysed case files, the attitude towards sex workers is very respectful, which applies to all participating competent authorities, and the discourse is correct. It consciously distances itself from the stigmatisation of sex work and sex workers and does not reproduce it. There is no suggestion in the files that sex workers are to blame for their situation. In one of the cases, the institutions explicitly warned that when prosecuting criminal offences of exploitation of prostitution, the focus is on

the exploitation of labour and the exploitative, slave-owning attitude of the defendants towards sex workers, but not on the sex workers themselves (case file NM1). The discourse is morally neutral, and the arguments are designed in such a way that they could apply to any industry in which the exploitation of workers is a common occurrence:

> Everyone was promised a monthly salary of 200,000 SIT. Considering the mentioned amount, the court finds that payment in such an amount would be entirely appropriate for performing the work of a cleaner with more than a 12-hour working day and six working days a week. Therefore, there is no reason for the victims to doubt the truth and seriousness of the defendant's offer to work as a cleaner. (NM3)

The word "girls" is occasionally used in cases, which could indicate a patronising attitude of institutions towards sex workers as powerless victims, but the use of the term "girls" also varies between institutions themselves and from case to case. In one case, for example, the police used the word "girls", and the courts used the term "victims", except for the Supreme Court's decision, which in one case used the term "girls" again (case file MB1, also KP2).

The cases often refer to sex work as a stigmatised profession. From one analysed case, for example, it emerges that the victims denied providing sexual services to the clients of the establishment for payment, and the court explained this by stating that it accepts the fact that "it is still a profession that the victims are ashamed of and have denied prostituting themselves not only to protect the accused but also to protect themselves" (case file LJ1). The profession was most stigmatised by the prosecution in the case of LJ2, in which the prosecutor developed a comprehensive theory about how prostitution can never be a freely chosen profession and stated, among other things: "Prostitution in relation to another natural or legal person is not and cannot be the right to choose employment, which an individual can freely choose" (case file LJ2).

4. Discussion

In the analysed cases, the circumstances were mostly given when the criminal statutes were undoubtedly violated. The first important general conclusion of the analysis is that in Slovenia, under the incrimination of "exploitation of prostitution", the vast majority of acts of forced prostitution with elements of extreme violence are prosecuted. Therefore, it cannot be argued that individuals who wanted to organise the business activity of offering sexual services without coercion and abuse find themselves in criminal proceedings, and their participation in the activity through the organisation of services, offering security and the like was to be considered exploitation of prostitution. None of the cases that ended with a conviction is a borderline

case where we could talk about the legitimate performance of a business activity. Therefore, in these cases of convictions, elements of free work were not present at all.

Another significant general finding is that considering the analysed cases, any diversion of any part of the earnings of a sex worker to a third party is considered exploitation of prostitution. Courts have considered any involvement of a third party profiting from another person's prostitution as exploitation. Although case law initially indicated that the percentage of earnings that sex workers diverted to third parties was relevant (with exploitation considered when more than half of the earnings were diverted), in recent years, this view has been abandoned in the case law (Filipčič, 2023, p. 1334). As our analysis also showed, the percentage of diverted earnings is not essential to establish the criminal offence, as other circumstances of third-party behaviour with sex workers are also important. Determining all other circumstances (coercion, fraud, deception, restriction of freedom, confiscation of documents, violence) allows the court to decide whether there was abuse and exploitation. In the analysed cases, the main arguments of the defence or lawyers of the accused are that the situation should not be considered exploitation since the workers only diverted a small percentage of their earnings. These arguments are consistently dismissed in court, as they are not crucial for determining the existence of abuse, but the existence of exploitation.

In the case files, we did not find any confirmation that the involvement of a third party in prostitution without payment, without providing sexual services themselves, would be considered abuse. This finding coincides with the established view that confirmation of economic gain is an essential element of a criminal offence.

As mentioned, in our research we were interested in whether the focus of investigations and court proceedings shows that the management of occupational risks in physical or legal entities is criminalised (e.g., whether it is criminalised if a sex worker hires a security guard, assistant, promoter, or intermediary for their work or safety). It turned out that this issue did not appear as relevant in the criminal cases examined. The reasons for this are likely related to the fact that such cases, in which there is both complete autonomy and sexual self-determination, do not have criminal substance and are consequently not prosecuted in court. This is interesting considering the established case law that no one should benefit from another person's prostitution, even if sexual self-determination is present. The defendant, therefore, cannot absolve themselves of guilt by claiming that they provided security to the sex worker in exchange for part of the earnings. The involvement of third parties in the activity is thus considered pimping and profiting from another person's prostitution in the case law, regardless of whether elements of coercion are present or not.

The analysis results show that there are no cases in court where the state prosecutes an employer who provided sex workers with regulated employment rela-

tionships. However, it must be taken into account that legislation prevents such engagements from occurring in the first place since they are criminalised. This means workers themselves are responsible for occupational risks, as they are not protected by either an employer or a regulatory framework.

In addition, it can be noted that some borderline cases, such as the already mentioned case of the erotic massage parlour, also find themselves in criminal prosecution before the courts. It is precisely for these reasons that, in some cases, it is difficult to prove the criminal offence of exploitation and abuse of prostitution because, first of all, it is necessary to prove the existence of sex work as such. In these cases, there may also be acquittals since the work in parlours can be more transparent and better organised from the perspective of ensuring the rights of women workers, precisely because of the enabled registration of erotic massage activities, and this also weakens the possibility of economic exploitation and other exploitation of sex workers.

In the specific case of the erotic massage parlour (case file LJ2), two lines of argumentation emerged as essential. In the first line of argumentation, the higher court addressed the question of whether erotic massage constitutes prostitution. It followed the criminal law doctrine, according to which prostitution is the activity of persons who engage in sexual intercourse or perform other sexual acts with an indefinite number of persons to satisfy their sexual demands, in exchange for which they or third parties receive monetary or other material benefits (cf. Filipčič, 2023, p. 1330). Furthermore, the theory considers sexual acts to be those acts that involve satisfying sexual instincts on the body of another and do not imply sexual intercourse (e.g., touching genitals, masturbation) (judgment no. X Kp 26592/2017). In the specific case of the massage parlour, workers were expressly forbidden (in writing) from engaging in sexual intercourse under the penalty of termination of employment. Based on this doctrine, the higher court concluded that the workers in the parlours provided erotic massage services, during which they massaged the client's intimate body parts and manually brought them to climax or sexual satisfaction; they also performed body-to-body massages, where the masseuse massages with their naked body, also with the aim of the client's sexual satisfaction. The court, therefore, classified erotic massage and body-to-body massage as sexual acts and within the concept of prostitution. It concluded that the sexual demands of clients were satisfied with both types of massages (*ibid*.).

The court's positions raise interesting questions about the extent to which it is possible to distinguish between prostitution, on the one hand, and erotic massage as a regularised activity, which can be registered as a legal economic activity, on the other. These questions are increasingly relevant for online forms of sex work, where exploitation of prostitution may also be present. It seems that the higher court, in its judgment based on the common denominators of both types of behaviour, equated

these two activities. Thus, it seems that new definitions have been established with this ruling, according to which the participation of a third party in prostitution is permissible when the activity is regulated, and organised, when no coercion exists, employment relationships between the employer and the workers are regulated, the workers receive a salary to their bank account, where salary is not dependent on the number of clients, and the workers can refuse a client, and there is no oral, vaginal, or anal sexual intercourse. However, the question arises whether the court, by equating erotic massage and body-to-body massage to prostitution, has not blurred the distinction between erotic massage and prostitution as pursued at the level of activity regulation. In this context, the question also arises as to what role the fact that workers were expressly forbidden from engaging in sexual intercourse played in the case. It could be argued that this was a safeguard used by the company to justify the regularity of its operations. It is not entirely clear whether it was precisely because of this safeguard established by the company that the court was more lenient in its approach to the defendants (organisers of the activity).

In the second line of argumentation in the LJ2 case, the court addressed the question of the existence of economic exploitation. In this case, the court found it essential that the workers were not paid per individual service, but received payment in the form of regular personal income to their bank account. This is a different situation from when sex workers divert part of their earnings, which they receive for each individual client, to third parties. This difference between the two situations was, therefore, considered essential from the court's perspective. Concurrently, the court considered the organisation of all aspects of work, the presence of consent and autonomy of employees, and the absence of any coercion to be essential.

In the concluding part, we return to the introductory theoretical differentiation of approaches to sex work into repressive, restrictive and integrative (Östergren, 2017) and analyse which of the three approaches the Slovenian model could be classified into in terms of criminal prosecution of the abuse of prostitution.

We find that a restrictive approach prevails, but that there are some elements of both a repressive and an integrative approach. Prostitution is still perceived as a negative social phenomenon due to its dominant placement in the context of criminal law and the lack of other types of regulation. However, it is a fact that sex work itself is not criminalised, nor is the use of sexual services, but the involvement of third parties and their economic profiteering (as shown by the socio-legal analysis) is criminalised. Therefore, we cannot claim that the goal of the model is to eradicate sex work, which is the main characteristic of the repressive approach. The Slovenian model aims to limit sex work primarily by restricting the earning opportunities for organisers of prostitution without involving the providers and their clients in criminal proceedings. Simultaneously, we cannot talk about the Slovenian model attempting to integrate the sex work sector into the social, legal, and institutional framework

(which is the basic characteristic of the integrative approach), as evidenced by the prohibition of third-party involvement and their criminal prosecution, and ultimately by the Supreme Court's position that the organisation of sex work cannot be equated with other economic activities. The restrictive approach is also evidenced by the rules under which it is permissible to sell sexual services (e.g., the possibility of registering activities, the prohibition of performing sexual services in public or imposing services, as provided by the ZJRM-1), especially the characteristic prohibition of third-party involvement in the restrictive model, as demonstrated in the prohibition of abuse of prostitution and the criminal law interpretation of this concept.

At the level of instruments (i.e., the substance of regulatory acts) in Slovenia, we certainly cannot talk about a repressive model, as the sale and purchase of sexual services are also prohibited within the latter. Simultaneously, we cannot talk about an integrative model at the level of instruments, as the latter requires the existence of more detailed regulation of the actions of various state bodies, which does not exist in Slovenia.

There is also a noticeable absence of campaigns and initiatives to strengthen cross-sectoral cooperation and counter the stigmatisation of sex work and violence. More public discourse focuses on condemning sex work and exit strategies for sex workers, indicating the presence of repressive elements aimed at eradicating sex work. Elements of the repressive approach are also present within a criminal prosecution, as evidenced by the fact that the judicial branch denies the characteristics of economic activity to this industry.

On the other hand, in criminal proceedings concerning sex workers, there is a strong emphasis on their rights, especially personal (dignity, safety), labour, social, and health rights, and a strong emphasis on occupational risks. The accusation of not ensuring these rights by the organisers of prostitution appears in court proceedings as an argument aimed at determining the statutory elements of the existence of economic enrichment and other infringements on general freedom of choice and action, with the emphasis on rights being a characteristic that prevails in the integrative approach to prostitution.

Among the individual actors in the criminal process (police, prosecution, and court), there are no significant differences in terms of approaches, in the sense that one would be much more repressive, restrictive, or integrative than the others. A slightly more repressive approach might be shown by the prosecution through moralistic and radical-feminist arguments it used in one of the files. Ultimately, the expansion of the scope for moralistic arguments can also be observed in the fact that courts increasingly interpret exploitation more broadly, as evidenced by the disregard for the consent of sex workers and the denial of the existence of sex work as an actual economic activity.

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