

SHADOW REPORT TO THE UN CEDAW COMMITTEE SEVENTY-SECOND SESSION

2019 SERBIA

BY NGO “Equal Rights”

ABOUT US

We are the first sex workers’ led organization in Serbia, established in 2010 in Belgrade committed to decriminalization of sex work and decreasing the discrimination and stigma in Serbian society towards sex workers. This report is based on community data and recent researches, as well as focus groups conducted by NGO Equal Rights with 7 cisgender and 8 transgender sex workers, which were conducted in December 2018. Focus groups explored the main human rights issues that sex workers in Serbia face and established the direction of this report.

The aim of this report is to highlight how structural violence caused by inadequate and harsher laws and policies fuels prejudices and violence towards sex workers in Serbia. Recent changes of legislation towards abolitionists’ approach related to sex work is increasingly causing more harm.

INTRODUCTION

Two years ago, Serbia criminalized the purchase of sexual services through amendments to the Public Law and Order Act. The success of these amendments was influenced by the abolition-oriented feminist organizations. Advocacy to introduce the “Nordic model”, however, led to criminalization of **both** selling and purchase of sexual services.

Since February 2016, the beginning of implementation of the amended Public Law and Order Act, there has been no improvements to the position of sex workers regarding safety and legal protection. To the contrary, sex workers are now being sentenced to prison sentences that are twice as long and tenfold administrative fines of up to 1300 EUR. In order to be able to pay such huge fines and evade police, sex workers are forced to work with more clients, in secluded locations that are dangerous and where they are exposed to violence by many perpetrators. It is almost impossible for sex workers to get help from police in cases of violence, as this would lead to self-incrimination and the arrest of them and clients as well. Fearing the possibility of arrest, clients are moving towards contacting sex workers online and less on the streets. The

trend of online soliciting of services and indoor work, which reduces exposure to police, proves to be even more dangerous for sex workers.

Article 2: Policy Measures to Eliminate Discrimination

Selling and purchasing sexual service in Serbia is punishable under Public Law and Order Act, Article 16-Prostitution,¹ and under Article 184 of the Criminal Code of Serbia-Mediation in Prostitution². A series of new amendments to Article 16 of the Public Law and Order Act included much stricter fines of both sex workers and clients. Previous version of the Public Law and Order Act-Article 14 mandated prison sentence for selling services-of up to 30 days compared to up to 60 days under new amendments. Sex workers have to take more clients in order to make a living to make up for the lost revenues on paying the fines. Running into violent client happens more often:

A few weeks ago I arranged a job for three thousand... the man was kind to me on the phone...When I got there he closed the door and went to the kitchen. He came out carrying a hammer, I said to him, all at once, I don't know how I came up with this, that I needed to pay the fare to cab driver who's waiting outside with my ID... that it was the deal to pay me half the fare...and he let me out to pay...I ran out..³ (Roma trans sex worker, Belgrade)

As in other countries where client criminalization was introduced, the new legislation in Serbia has not improved safety of sex workers. Reporting violence committed by clients would lead to self-incrimination. This makes violence over sex workers almost invisible to the government and official statistics. Very few clients have been detained since the new legislation has been introduced, and they have received only monetary fines,⁴ compared to sex workers who are still being sentenced to prison if cannot pay the administrative fines. Accessibility of soliciting via social networks and fear of violence on the streets is driving sex workers towards indoor work, thus creating an illusion of lesser number of sex workers on the streets, and an erroneous notion that abolitionists' efforts for "ending prostitution" have been successful:

¹New amendments introduced punishment of clients, who are, along with sex workers, now liable for prison sentences of up to 60 days or administrative fines from 50000 to 150000 RSD (roughly 400-1300EUR). The new amendment to the Public Law and Order Act, Article16 introduced twice as long prison sentence-up to 60 days in prison,

<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2016/3710-15%20lat.pdf> p.5

²Criminal Code of Serbia, Article 184, Mediation in Prostitution, stipulates that "whoever abets or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with a fine and imprisonment from six months up to five years. If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with a fine and imprisonment from one to ten years" -https://www.paragraf.rs/propisi/krivicni_zakonik.html

³Documentation of NGO Equal Rights-focus groups 2018

⁴Sanja Pavlovic, Hristina Cvetincanin Knezevic, "U ime muskog naroda", (Belgrade, NGO Autonomous Women's Center, 2018):p.102, out of 107 convictions on Article 16, only 17 cases involved clients of sex workers and included administrative fines <https://www.womenngo.org.rs/publikacije/publikacije-onasilju/1225-u-ime-muskog-naroda>

***There are many ways how to reach girls, than before, via internet, social networks, in clubs, but much less on the streets, that's why it seem that there are lesser clients on the streets.*⁵ (Cisgender sex worker Belgrade)**

Article 5: Sex roles and stereotyping

Prejudices and cultural stereotypes in Serbian society that fuel the culture of violence towards sex workers result in high levels of self-stigmatization among sex workers, with 74% reporting negative impacts of stigma on their sense of self⁶. Street sex workers suffer constant oppression and are particularly at risk of violence from police, individuals posing as clients and passersby. Perpetrators of violence are mostly individuals posing as clients and policemen as well as passersby's on the streets. Following the criminalization of clients, the proportion of violence perpetrated by individuals acting as clients grew to surpass the portion of violence perpetrated by the police⁷. Roma sex workers, and especially Roma trans sex workers, are daily at risk of harassment and physical violence as they are largely treated in Serbian society as the "fair game" to all kinds of racial profiling and stereotyping. Even when these cases of violence documented and shared via social media, authorities have failed to respond.⁸

***They are taking money from us, only the larger banknotes and give us no receipt of seizure. We're going to pay everything we need to but not to the police to harass us here, both us and clients, threaten them (clients) that they are going to inform their wives and blackmail them to take money.....he (the policeman) stormed at me with a baton, threw me to the ground, I was begging him not to beat me to the stomach as I was pregnant but he kept on beating me...*⁹ (Roma sex worker, Belgrade)**

This situation is largely unacknowledged by the mainstream LGBT community. Trans sex workers in Serbia suffer disproportionately more violence than the rest of LGBT community. Three quarters of cases of violence towards trans people reported in the 2015 "ProTrans" survey report of NGO "Gayten LGBT" to "Trans Europe" were acts of physical violence that had been documented by NGO Equal Rights; more than 55% of these cases of violence were perpetrated against trans sex workers, and 60% of perpetrators were police officers.¹⁰ Violence towards them passes under radar of LGBT movement, although the level of violence towards

⁵ Documentation of NGO Equal Rights-focus groups 2018

⁶ Institute of Public Health of Serbia conducts regular bio-behavioral studies on HIV and STI's which include statistics on violence, stigma and discrimination. Available at: www.batut.org.rs/download/publikacije/2013HIVIstrazivanje.pdf pp.116 –121

⁷ Documentation of NGO Equal Rights-focus groups 2018

⁸ Video clip in following link is of graphic account of police harassment of trans sex worker who was former street child and with deaf-mute disability <https://www.youtube.com/watch?v=-IEUrnq36VE> [Accessed December 18th 2018]

⁹ The sex worker who gave this statement in the movie NGO Equal Rights made, "U bluru," overdosed shortly after filming this movie- documentation of NGO Equal Rights <https://www.youtube.com/watch?v=r7FUjGCG4Sw>

¹⁰ Gayten LGBT "Prekinimo cutanje" (Belgrade, 2015) p.34 <https://www.transserbia.org/resursi/biblioteka/991-prekinimo-cutanje-izvestaj-monitoringa-diskriminacije-i-zlocina-iz-mrznje-nad-trans-osobama>

them is matter of common knowledge. As a result, government policies and guidelines to advance the rights of LGBT individuals exclude sex workers, including transgender sex workers: there is no mention of sex work in governmental policies, with the exception of policies of the Ministry of Health. Prejudices towards trans and Roma sex workers are also very much present in the actions of government institutions. Most sex workers of Roma descent have no legal residency and thus no ID; in turn, many face discrimination and are often are arrested on the grounds of having no ID:

He (policeman) stopped the car and ordered me to come in and I refused....he came out and hit me to the head with a baton...he put me in the car and took me to the station...he ordered me to sign a statement and tomorrow he will let me go...tomorrow they took me to the judge (administrative court judge) and sentenced me to 'Padinjak' prison...¹¹ (Roma trans sex worker, Belgrade)

Most of street sex workers, both cis and transgender, face discrimination when trying to obtain personal documentation necessary to get social welfare and medical insurance. They cannot surpass numerous clerical obstacles. When arrested, they suffer uneven treatment under the law. Due process is often blatantly disregarded. Administrative court judges have strikingly different approaches when deciding on sentences; some make sentencing decisions based on social status and racial identity:

...there is quite a variety there, on the one hand you have those poor, should I say illiterate, uneducated young junkie prostitutes and on the other hand you have those highly educated women who work in their apartments, who are well-dressed, who... Well the law cannot be the same for one and the other, I mean...And then again, you cannot differentiate and have the well-off, educated ones pay a fine and have the others... go to jail. ¹²

Article 6: Suppressing all forms of traffic in women and exploitation of prostitution of women

Sex work in public sphere in Serbia is perceived as a setting in which women are abused and forced to “prostitution”. It is often conflated with trafficking in persons. This conflation is being aggravated by campaigns of abolition-oriented organizations to “end prostitution” by punishment of men who purchase sexual services. These activities attract media coverage that presents image of sex work not as one of free choice, but of servitude and sexual exploitation of women:

¹¹ Documentation of NGO Equal Rights-focus groups 2018

¹² Sladjana Baros et al. “Law Above All and Court Practices Impact of the criminalization of sex work on the human rights of sex workers and trafficked persons in Serbia”, (Belgrade,2016 Association Against AIDS-JAZAS) p.65, Available at: www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf

„I don't question rights of women to engage in prostitution, I question the right of men to sell and buy women”

Bobana Macanovic, activist of NGO Autonomous Women's Center ¹³

This statement exemplifies a fundamental misconception about sex work and trafficking in persons by the Serbian feminist movement. Attempts by sex workers in Serbia to inform the public of the harms that these outdated policies that invalidate the agency of women to choose her work are often met with little or no media coverage. Many sex workers fear publicly challenge feminist organizations, which benefit from full government support, for publicly advocating on the issue, and as a result, abolition-oriented feminists dominate conversations and silence sex workers.

Presenting sex work as forced sex is at the root of wrongful governmental policies and laws.

This misconception as to what exchange of sexual services without any coercion and trafficking in persons consists of causes the legal system of Serbia to conflate sex work and trafficking. Sentences for violation of Article 16 of Public Law and Order Act and Article 184 of Criminal Code of Serbia reflect this conflation¹⁴. Immediate effects of this conflation are that actual victims of trafficking in humans are stripped of available support options otherwise available. These sentences are a reflection of deep-rooted social constructs, one sided public campaigns¹⁵

and perpetuated by unfounded myths of sex workers as “criminals who spread diseases,”¹⁶ as well as uneven interpretation of the law by the public prosecutors and judges.

Very few cases of human trafficking in Serbia are prosecuted under Article 388-Trafficking in Persons, of Criminal Code of Serbia, in comparison to those prosecuted under Article 16 of Public Law and Order Act. Trials usually last several years and usually end up with charges

¹³Sanja Pavlovic, Hristina Cvetincanin Knezevic “*U ime muskog naroda*”, (Belgrade: NGO Autonomous Women's Center, 2018) p.124, <https://www.womenngo.org.rs/publikacije/publikacije-o-nasilju/1225-u-ime-muskog-naroda>

¹⁴ Sladjana Baros et al. “*Law Above All and Court Practices Impact of the criminalization of sex work on the human rights of sex workers and trafficked persons in Serbia*”, (Belgrade,2016 Association Against AIDS-JAZAS) p.11
www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf

¹⁵ NGO Orca, animal rights organization had campaign posters presenting animals as pimps and prostitutes with the message: “They didn't choose life on the wrong side of the law”, [Accessed December 20th 2018] Available at: <https://www.orca.rs/sr/sta-radimo/ustav-i-zivotinje/>

¹⁶Recent media frenzy about a migrant sex workers who supposedly infected “thousands of people” with HIV, turned out to be false as it turned out she was not HIV positive. As a consequence, she was deported from Serbia. Available at <https://www.blic.rs/vesti/hronika/fatima-ima-24-sata-da-napusti-srbiju-migrantkinja-za-koju-se-sumnjalo-da-siri-hiv-po/wmdds1w>

being reclassified from Act 388 to Act 184-Mediation in Prostitution. This practice prevents victims from accessing support services available to the victims of trafficking, and victims are usually prosecuted for prostitution¹⁷.

Reclassification of charges under Article 380 to 184 occurs either during court proceedings, where evidence fails to meet the threshold for prosecution under Article 380, in order to continue prosecution as a case of trafficking in persons, or where a case of trafficking is not recognized as such from the onset by the prosecutor and judges. This practice enables speedier completion of cases, regardless of the harm caused to the victims of trafficking in persons.

Article 184 is also used to target sex workers. Although Article 184 is intended to prosecute pimps, in practice, it is also used also to prosecute sex workers for mediation in prostitution. In order to address safety issues, sex workers usually work together and rent apartments together. However, doing so leaves them vulnerable to prosecution under Article 184 of Criminal Code-which provides long prison sentences and administrative fines under Public Law and Order Act. Court practice in most cases leads to one of the sex workers arrested being charged with pimping.¹⁸ Due to court precedent established in rulings on previous cases, indoor sex workers are exposed to severe penalties, should they report cases of violence.

Article 15: Equality before the Law

Equality before the law is a constitutional provision and obligation of court proceedings; however, in trials of sex workers, this constitutional right is widely overlooked. Most sentences for violation of Article 16 are based on arbitrary arrest, with loitering on specific hot spots, possession of condom, and coerced statements used as evidence. Out of 20 interviewed sex workers, 90% reported condom seizure and use of condoms as evidence. Being found with even one condom, and having an administrative “prostitute record” is viewed as sufficient evidence for detention and further prosecution. Use of condoms as evidence for convictions is harmful, as the Ministry of Health, in their strategies for HIV and STI prevention, has recognized condoms as essential to curbing infections. Having an administrative record that is, “being known to police” is excuse enough for police to arrest sex worker and taken as aggravating circumstance when passing administrative sentences:

“Police stop me and check me for my docs even when I’m not working. I feel like I have ‘hooker’ stamped on me.”¹⁹ (Cisgender woman street and indoor sex worker, Belgrade)

¹⁷ Sladjana Baros et al. “Law Above All and Court Practices Impact of the criminalization of sex work on the human rights of sex workers and trafficked persons in Serbia”, (Belgrade, 2016 Association Against AIDS-JAZAS) p.56

www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf

¹⁸ Ibid- p.41

¹⁹ Sex Work Advocacy Network -SWAN “FAILURES OF JUSTICE: State and Non-State Violence against Sex Workers and the Search for Safety and Redress”

Detained sex workers are often extorted and dictated statement of offering services:

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

They say they're calling the chief. OK, he says, it doesn't matter, you don't want to write a statement, it's OK and he lets me go to the judge. They write a statement and file it with the judge without my signature and when we get to the judge, I tell it as it is, meaning, I have given no statement or signed no statement and I do not wish to do so, so on what basis are you going to sentence me? He says, well, you were arrested down that way where acts of prostitution take place... so what does it matter that I was there, I admit it, I was there, I'm not saying I wasn't, but I had stopped working. And then I have to confront that police inspector. He comes, they call him to come down, and tell him, here, she didn't give any statement and he [the inspector] says she made a statement but she refused to sign it. So it turns out that their word carries more weight than mine. And then it happens.... The court sentences you; it now depends on the court.²⁰ (Cisgender sex worker, Belgrade)

RECOMENDATIONS:

It is imperative to recognize sex work as work and act on recommendations within the Amnesty International report on sex work.

In particular, we ask the CEDAW Committee to urge the Serbian government to:

-Repeal Article 16 of Public Law and Order Act in order to open discussion on reviewing other laws and policies related to sex work/trafficking in persons with the aim of full decriminalization of sex work.

(Budapest, 2015) p.49

<http://swannet.org/en/content/failures-justice-state-and-non-state-violence-against-sex-workers-and-search-safety-and-redr>

²⁰Sladjana Baros et al. "Law Above All and Court Practices Impact of the criminalization of sex work on the human rights of sex workers and trafficked persons in Serbia", (Belgrade,2016 Association Against AIDS-JAZAS)p.73

www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf

-Cease use of Article 184 of the Criminal Code, which criminalizes mediation for prostitution, to prosecute sex workers who associate to addresses safety and stop conflating cases of human trafficking with sex work.

-Ombudsmen and ombudswomen for human rights should urge the government and the LGBT community to include and support Roma trans sex workers and ensure government policy to advance the human rights of LGBT individuals are inclusive of Roma trans sex workers.

-Make sensitization training mandatory for members of the judiciary and other public officials working with vulnerable communities.

-Immediately cease police practices of:

1. Using seizure of condom as evidence,
2. Arbitrary detention based on attempt to engage in sex work, and
3. Arrests based on having an administrative record.

Submission available to the public: **Yes**

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