

Human Rights Violations against Sex Workers in Austria

Submitted by the following organizations:

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- 1 This submission is based on the long work experiences of several Austrian NGOs in the field of sex work. Due to their outreach work and counselling of sex workers these NGOs have a thorough insight into the working and living conditions of sex workers in Austria and the structural violence they are exposed to. Furthermore, the findings of a scientific research by the Institute of Conflict Research about the working conditions in the sex industry for which 82 sex workers were interviewed were used as another source for this submission. For the submission text itself, in a first step, each contributing organisation collected the topics which seemed the most pressing. These issues were merged in a second step and sent again to all contributors for purposes of review and editing.
- 2 Although in Austria sex work is legal and no longer called immoral, stigmatisation, discrimination and double morality still characterise the way in which it is dealt with in society and by politics. Sex work is still a taboo and many of its components are criminalised while at the same time reality proves that there exists a high demand for sexual services. This social reality is neither taken into account on the legal nor the socio-political levels by way of a comprehensive protection for providers of sexual services as it exists in other service sectors. A complex interdependence between double morality and taboo leads to numerous obligations being imposed on sex workers in Austria due to regulations by law. At the same time, their own rights are hardly taken into consideration, let alone strengthened.
- 3 There is no official, neutral central point to monitor the handling of sex work by authorities and the executive with regard to compliance to the law and to support sex workers in the assertion of their rights. The competences and resources of some counselling centres (NGOs) are not sufficient to fulfil that purpose and, moreover, these institutions do not exist in each province.
- 4 According to the Austrian National Constitution, sex work is an issue to be dealt with at the provincial level, with each province regulating the initiation and provision of sexual services through different laws. This results in a complexity of legislative regulations and executive practices and therefore hinders equal, fair and homogenous procedures in this context.

Obligatory Medical Examinations as Human Rights Violations

- 5 In all of Europe obligatory medical examinations for sex workers have by now been abolished. Only in Austria and Greece such examinations are still prescribed by law: In Austria, sex workers are required to undergo an examination for sexually transmitted diseases once a week, HIV-testing once every three months. In Austria the practice of these examinations is regulated in different ways. Obligatory weekly medical check-ups, which in some provinces have to be paid for, for example in the Tyrol and Upper Austria, are based on the image of sex workers being impure, thus representing a danger to the health of the rest of the population. Obligatory medical examinations are to protect the potential “victims” from infection with sexually transmitted diseases. If a sexually transmitted disease is

diagnosed, the permission to work is withdrawn from the sex workers concerned by confiscating their control cards. Also, lung X-rays are performed on sex workers completely arbitrarily. Although this examination is presented as obligatory by the authorities it is in fact not regulated by the respective federal law.

- 6 These obligatory medical check-ups, which sex workers often perceive as degrading, are discriminatory and incapacitating, because they deny sex workers' ability to responsibly deal with for their own bodies on the one hand and their possibility to freely choose their doctors on the other. Frequently sex workers report inhuman and degrading treatment during the procedure of these obligatory medical examinations, including physical injuries and false diagnoses. UNCAT has in its statement reprimanded these conditions. (cf.

http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUT/CAT_C_AUT_CO_4-5_Add-2_11608_E.pdf, Recommendation 22)

- 7 A comprehensive, low-level, anonymous and free provision of medical examination and treatment, as recommended by the WHO and the UN, would represent a dignified alternative serving the protection of sex workers.**

Violation of Privacy and Data:

- 8 Sex workers are obliged to register with the police (Vienna) or other authorities (other provinces). In the Netherlands the legislative proposal in favour of obligatory registration of sex workers was rejected for two reasons: on the one hand and according to legal experts, it contradicts Article 8 of the Data Protection Directive regarding a person's sex life. The European Court of Human Rights (ECrHR) has, in some cases, defined a person's sex life/sexuality as one of the most intimate aspects of her/his private life. It is considered inadmissible to distinguish between a person's private and professional life and therefore the registration of sex workers concerns the collection and processing of sensitive data. On the other hand, such data may only be collected if they are of substantial public interest and the protection of the people's private sphere is guaranteed. Also the means applied must be in proportion to the objectives (principle of proportionality).¹ In particular, the protection of data could not be guaranteed with regard to technological development and data exchange between the authorities.
- 9 In Austria, violations of data protection and of the private sphere do not only occur due to the obligatory registration but also in the course of police practices. The police takes photos of the sex

¹ With regard to the legislative proposal of an obligatory registration the Dutch CEDAW-Committee (2010) published the following statement: "30. *The Committee is concerned that the new bill on prostitution in the Netherlands making the registration of prostitutes compulsory may lead the majority of prostitutes to work illegally. Among those prostitutes are migrant women from third countries who will not have the possibility of registering. The Committee is therefore concerned that the law, rather than improving the situation of prostitutes, might on the contrary undermine efforts to combat the sexual exploitation of women and increase the vulnerability of prostitutes who are not able or not willing to register by worsening their working conditions and exacerbating their social exclusion. The Committee expresses concern that this new legislation may also create serious risks for registered prostitutes' privacy and safety.*

31. *The Committee urges the State Party to carefully conduct a risk assessment of the new law, including from the perspective of privacy, in consultation with concerned groups and relevant organizations before adopting it. The Committee also calls upon the Netherlands to provide more comprehensive and concrete information in its next periodic report on the measures taken to improve the working conditions of prostitutes and to enhance their autonomy, privacy and safety.*"

workers and passes them on to media without asking the sex workers' permission. Journalists are invited to accompany authorities when they undertake official acts. The presence of the media during police inspections of brothels is not only controversial but also degrading. Another problem is that sex workers' data are not deleted, or not deleted on time, after they have stopped working in this field as would be prescribed by law.

10 In Innsbruck there are indications that landlords/landladies or other licenced holders of accommodation (hotels) are urged by the authorities to terminate the rental contracts of so-called street prostitutes. Moreover, there exist reports about official acts having taken place before running cameras without providing the respective sex workers with the required information or without even asking her/him for permission.

11 We consider the abolition of sex workers' obligation to register with the police and other authorities and the observance and increased attention paid to data protection and the right to a private sphere as indispensable for the protection of the sex workers' private sphere and their de-stigmatisation.

Pregnant Sex Workers:

12 Although the legislative regulations concerning maternity protection lie in the competence of the federal government, the regional government of the province of Salzburg has decreed a prohibition of employment for pregnant sex workers; in Styria, such a prohibition of employment is contained in the "house regulations" of brothels due to orders of administrative bodies; this means that in Styria the employment of obviously pregnant women is not forbidden by law but part of the house regulations of brothels which leads to public health officers withdrawing the control card from sex workers in case of pregnancy.

13 In practice, the prohibition of employment for "obviously" pregnant women leads to gaps in social security protection for the women concerned, because there is a lack of clarity if and under which conditions a legal claim exists for premature maternity protection benefits. This exacerbates the precarious situation sex workers often find themselves in and makes their status illegal.

14 Health authorities carry out pregnancy tests without asking the sex workers' permission.

15 Instead of a prohibition of sex work, the Working Group "Regional Competences Prostitution" in its report of 2012 considers supportive measures such as guaranteed and sufficient insurance protection, the access to social security benefits comparable to other professional fields and counselling with regard to contraception, insurance protection and -possibilities necessary. (cf. https://www.bmbf.gv.at/frauen/prostitution/prostitution_01_26159.pdf?4dz8a1)

Lack of Respect, Arbitrary Actions on Behalf of Authorities:

16 In the field of sex work, where there is little or nothing at all to gain for politicians, the lack of consciousness for human rights violations becomes particularly obvious. The executive treats repeatedly sex work as a crime and denounces the women working in this field. Police controls take place up to five times a day, police officers are on first-name terms with the women working in this field and call them whores or bitches in a disrespectful way. At times, police interviews take place without interpreters being provided, which leads to sex workers often not understanding the information on legal remedies and the fines they are due to pay steadily rising. Women are urged to

sign protocols of official acts which they do or cannot understand because of their lack of knowledge of the foreign language.

- 17 Agents provocateurs are employed to detect illegal prostitution and for investigations in private apartments; this is a means which for administrative violations – and illegal prostitution is one of them (working without being registered and without a valid “health card”) – must be considered as absolutely disproportionate.
- 18 Moreover, condoms and wet tissues in a woman’s handbag are considered as proof for sex work. If a woman carries both on her during a police control, she is regarded as a sex worker.
- 19 In Salzburg, harassment by the regional authorities of sex workers claiming refunds of illegally demanded fees for the obligatory medical examination can be observed. The intention is to create “limitation cases” so that the authorities have to refund less money. At the same time women apply for the refunds, they have to sign that they will abstain from further legal action.

Migrant sex workers:

- 20 Migrant sex workers face additional discrimination apart from the social marginalisation and legal discrimination. They are also confronted with restrictive migration laws as well as racial discrimination. The right to work legally in sex work is strongly linked to the right to stay in the country legally. Only citizens from the European Union and asylum seekers are legally allowed to work in the sex work sector in Austria without restrictions. People from third countries (outside of the European Union) who have a residence permit from another EU country are not allowed to work as sex workers. This restrictive migration and labour law pushes sex workers coming from third countries into the illegalised sector.
- 21 If administrative fines for prostitution cannot be paid, sex workers are threatened with deportation, no matter if they are EU-citizens or not.

Missing Protection against Violence:

- 22 Reports about assaults on sex workers are numerous (e.g., the pouring of hot water on their heads from above, attacks involving torches), yet, these are neither taken seriously nor persecuted by the authorities (cf. on Vienna: SOPHIE, Final Report 2011) (Vienna, Salzburg).
- 23 Also, it can be observed that criminal acts against sex workers are often not noticed or persecuted when sex work is performed illegally.

Taxes:

- 24 Sex workers are obliged to pay taxes and charges. However, this obligation is executed in different ways in each province. There is no clear line and in addition to that, the respective brothel managers deal with this issue in different ways. This is a contradiction to equality laws.

Self-Determination:

- 25 In many provinces, the initiation of sexual contacts and the performance of sex work is permitted only in licensed establishments (walk-up rooms, saunas, nightclubs), which creates dependence of sex workers on the licenced managers and makes them subject to exploitation, because without a licenced manager they can only perform their work illegally. In many provinces, if licenced managers

do not register the sex workers, there are no appointments with the health authorities. As a consequence of these bonds to the licence-holders, sex workers are in fact subject to instructions as regards, for instance, the consumption of alcohol, the working times or the working clothes but also sexual practices, because in case of a refusal the probability of a loss of the possibility to work rises.

- 26 Moreover, licenced managers are addressed by authorities as contact partners for talks and negotiations regarding sex workers' taxes and refunds. In these negotiations the focus is not on the sex workers' interests, because the licenced managers only follow their own objectives.

Political Participation:

- 27 At Hohenthurn (province of Carinthia, regional district of Villach), the authorities attempted to exclude non-Austrian sex workers – who are EU-citizens – from their right to vote in municipal elections. (cf. kaernten.orf.at, 27 January 2015)