

TREATMENT OF OCCUPATIONAL HEALTH RISKS IN CRIMINAL PROSECUTION OF ABUSE OF PROSTITUTION IN SLOVENIA

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Abstract The paper explores how occupational and health rights of sex workers are dealt with by courts in criminal proceedings related to the crime of abuse of prostitution under Article 175 of the Slovenian Criminal Code. The authors find that judicial decisions on the crime of abuse of prostitution invariably include considerations regarding occupational health risks, access to health care, and the health rights of sex workers. The paper builds upon the authors' previous research publications, where they established that in Slovenia, while the restrictive approach to dealing with prostitution prevails, elements of both repressive and integrative approaches are present. Stressing the health rights of sex workers constitutes an integrative approach to prostitution.

Keywords

sex work,
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occupational risks,
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1 Introduction

State policy approaches towards prostitution in society vary significantly. Petra Östergren (Östergren, 2017) classified these approaches as repressive, restrictive, and integrative.¹ The *repressive approach* aims to entirely eradicate sex work and protect society and/or those who sell sexual services from harm, treating sex work primarily as a negative social phenomenon. The ideology underpinning the repressive approach to prostitution can be rooted in religious or moral beliefs, with radical-feminist positions frequently encountered. In this approach, prostitution is addressed only using criminal law, potentially criminalizing not only the involvement of third parties (such as pimps, brokers, and organizers) but also the act of selling and purchasing sexual services. Within the framework of a repressive approach, public campaigns aim to discourage the sale and/or purchase of sexual services and seek to abolish prostitution from society. 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. Under this approach, sex workers are denied access to labour rights and cannot access social security systems. They encounter difficulties in seeking social and health assistance on their terms, in self-organization, and in mutual cooperation and/or cooperation with non-governmental organizations, social services, and state authorities.

The characteristic feature 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, akin to the repressive model. This approach is further underpinned by religious or moral ideologies. The restrictive model differs from the repressive one because it includes not only criminal regulations but also administrative regulations that stipulate conditions under which the sale of sexual services may be performed. Criminal regulations might still prohibit the involvement of third parties. In this approach, exit or behavioural rehabilitation programmes prevail. However, a range of discourses on sex work emerge, not only moralistic and condemning but also encompassing aspects of social protection, labour rights, occupational risks, sexual self-determination, and self-organization. Within this model, sex workers have partial or no access to labour

¹ In criminal law theory, the approaches are classified similarly as prohibition, regulation, and abolitionism (Filipčić, 2023, p. 1330–1331). Another source classifies the approaches as prohibition, including the unique Swedish law criminalizing sex workers' clients, licensing; and decriminalization (Harcourt, 2005).

rights, may have difficulties accessing the social security system, seeking social and health assistance on their terms, self-organizing, and cooperating with each other and/or with authorities. This approach also differs from the repressive model by allowing, albeit with difficulty, cooperation between sex workers, clients, intermediaries, and/or social services and agencies (Östergren, 2017).

The *integrative approach* treats prostitution as a multi-layered social phenomenon with negative elements and aims to incorporate the sex work sector within the social, legal, and institutional framework to protect those selling sexual services. This approach is based in 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 and that protect them from exploitation, together with implementing regulations for authorities, social services, and service providers. This approach is characterized by campaigns and initiatives designed to combat stigmatization and violence, and to promote cooperation among all stakeholders. The prevailing discourse within this model is nuanced and multi-layered. Here, sex workers enjoy full access to labour rights, can seek social and health assistance on their terms, self-organize, cooperate with each other and with authorities, and influence self-regulation in the sector. Furthermore, the model allows for the development and integration of codes of conduct and ethical standards for state agencies and services dealing with sex workers (Östergren, 2017).

As identified in our earlier research (Kogovšek Šalamon et al., 2023a and 2023b),² while the restrictive approach to dealing with prostitution prevails in Slovenia, elements of both the repressive and the integrative model are present. In Slovenia, society still regards prostitution in a negative light, primarily “due to its dominant placement in the context of criminal law and the lack of other types of regulation” (Kogovšek Šalamon et al., 2023b, p. 78) in other fields (e.g., social, health, and employment law). Although neither the sex work itself nor the use of sexual services is criminalized, the involvement of third parties and their financial gain from others’ sex work is. Therefore, the goal of the state’s approach is not “to eradicate sex work, which is the main characteristic of the repressive approach[; it] aims to limit sex work

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primarily by restricting the earning opportunities for organizers of prostitution” (ibid.) without involving sex workers and their clients in criminal proceedings.

Simultaneously, the Slovenian model does not attempt to integrate the sex work sector within the social, legal, and institutional framework “which is the basic characteristic of the integrative approach” (ibid.). The restrictive approach is also evident in “the rules under which it is permissible to sell sexual services” (ibid.) (e.g., the possibility of registering activities, the prohibition of performing sexual services in public, and the prohibition of imposing services). Hence, the Slovenian model is not purely repressive, “as the sale and purchase of sexual services are also [fully] prohibited within the latter” (ibid., p. 79). The approach is not integrative, as the latter requires the actions of various state bodies to be more highly regulated, a framework currently absent in Slovenia.

“There is also a noticeable absence of campaigns and initiatives to strengthen cross-sectoral cooperation and counter the stigmatization’ (ibid.) stemming from sex work and related violence. A large scope of “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” (ibid, p. 79), as evidenced by the judiciary’s outright refusal to recognize the economic activity of this industry (ibid., p. 69).

Conversely, within criminal proceedings related to sex workers, there is a strong emphasis on their rights, particularly personal (such as dignity and safety), labour, social, and health rights, alongside a significant focus on occupational risks (ibid., p. 79). Courts justify their position concerning the existence of economic exploitation by reasoning that the defendants did not ensure these rights.

This article builds upon our previous research by focusing specifically on the occupational health risks in sex work and the questions of health rights of sex workers. A particular emphasis is on the question of how courts in criminal proceedings concerning the crime of abuse of prostitution deal with occupational health risks, access to health care, and health rights of sex workers. This approach addresses a notable research gap. Presently, there is a lack of literature that connects the issue of health occupational hazards with the issue regarding the criminal

prosecution of crimes related to the exploitation of prostitution. The article aims to bridge this gap and to pave new avenues for the exploration of both how to better regulate this field and to provide better protection for sex workers.

2 Background of the legal regulation prohibiting the crime of abuse of prostitution

The crime of abuse of prostitution is defined in Article 175 of the Slovenian Criminal Code (Kazenski zakonik – KZ-1).³ Most national and international regulations still treat prostitution within the framework of criminal law. However, there is an evident legislative trend to decriminalize prostitution. In Slovenia, the key regulatory change of decriminalization occurred in 2003 with the amendment to the Protection of Public Order Act (Zakon o varstvu javnega reda in miru – ZJRM).⁴ After this change, prostitution ceased to be classified even as a minor offence. Before decriminalization, prostitution in the sense of selling and purchasing sex services “was dealt with in minor offence proceedings” (Kogovšek Šalamon et. al, 2023b, p. 63) based on Article 10 of ZJRM which “stipulated a penalty of up to 60 days imprisonment for those who “engaged” in prostitution” (ibid.). The current Protection of Public Order Act (Zakon o varstvu javnega reda in miru – ZJRM-1)⁵ prohibits only types of prostitution that are a threat to public order. Included is prostitution that is carried out in public places and where sexual services are offered intrusively, thus disturbing, upsetting, or causing outrage among people (Article 7(3) of ZJRM-1).

Before the 2004 legislative change at the level of the Criminal Code, several articles of the previously valid Criminal Code (Kazenski zakonik – KZ)⁶ also referred to prostitution: Article 185 (pimping), Article 186 (intermediation in prostitution) and Article 387 (enslavement). 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”, which entails acts of a person who

³ Kazenski zakonik (KZ-1) (2021). Official Gazette of the RS, Nos. 50/12 – official consolidated version, 6/16 – corr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP and 16/23.

⁴ Zakon o varstvu javnega reda in miru (Protection of Public Order Act, ZJRM) (2003). Official Gazette of the RS, No. 110/03 – official consolidated version.

⁵ Zakon o varstvu javnega reda in miru (Protection of Public Order Act, ZJRM-1) (2006). Official Gazette of the RS, Nos. 70/06 and 139/20.

⁶ Kazenski zakonik (KZ) (1994). Official Gazette of the RS, Nos. 63/94 and 23/99.

“participates for exploitative purposes in the prostitution of another” or of a person who “instructs, obtains or encourages another to engage in prostitution by force, threats or deception.” “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” (Kogovšek Šalamon et. al, 2023b, p. 63).⁷

The new Criminal Code, KZ-1, similar to the old Criminal Code, KZ, further refers to “prostitution in the case of some other incriminations, specifically in Article 112 of the KZ-1 (enslavement) and Article 113 of the KZ-1 (trafficking in human beings). Article 112 of the KZ-1 on enslavement is partly related to sex work and prostitution, as it can, in certain cases, be considered as a form of violence in slave-like relationships.” (ibid, p. 64). Additionally, in 2021, after the passing of the KZ-1H⁸ amendment to KZ-1, “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” (ibid.).

The legal framework hence reveals that there are several incriminations under which prostitution could be dealt with in criminal proceedings. For our research, we have focused solely on the prosecution of the crime of abuse of prostitution as this is the principal legal provision through which courts engage in this sphere.

Apart from criminal law provisions, there are only a handful of administrative law provisions concerning the selling of sexual services. In Slovenia, “prostitution can be registered as an activity by the administrative regulations called the 'Standard Classification of Activities’” (ibid.). Namely, it can be registered “under the categories 'body care activities' under code 96.040 and 'other service activities not elsewhere classified' under code 96.090” (ibid.). 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 (Šori et al., 2018). The underlying reasons are attributable to the unregulated and generally disorganized nature of this work

⁷ The value protected by the prohibition of exploitation of prostitution is sexual self-determination or sexual autonomy (Filipčič, 2023, p. 1331).

⁸ Zakon o spremembah in dopolnitvah Kazenskega zakonika (Act Amending the Criminal Code, KZ-1H) (2021). Official Gazette of the RS, No. 95/21.

area, coupled with the societal stigma associated with prostitution (Kogovšek Šalamon et al., 2023b, p. 64).

3 Sex-work-related occupational risks in the field of health

In the field of health risks related to sex work, three main topics emerge in the relevant literature. The first encompasses direct health risks, such as sexual health linked to sexually transmitted diseases, and psychological risks related to the specific, often the stigmatized (McCray et al., 2011; Šori & Markelj, 2022) nature of sex work. The second main topic concerns health risks linked to drug and substance abuse. The third topic addresses violence from third persons, whether clients, police, or others.

While caution is needed not to reproduce the stigma associated with sex workers by underlining such findings, it is undeniable that the most apparent and thoroughly researched health risks in sex work are sexually transmitted diseases. Research shows that HIV is an occupational risk for sex workers globally (Parmley et al., 2020). However, the illegal nature of sex work and the resultant violence and intimidation create significant barriers to sex workers' participation in HIV programmes in the form of stigma, shame, and a desire to hide (Conn et al., 2017). Fearing that their HIV-positive status might be used by peers against them to take clients, sex workers frequently choose not to disclose their positive HIV status even to colleagues, exacerbating the health risks for everyone involved (Parmley et al., 2020). Primarily, the pressing need for income drives sex workers towards engaging in unhealthy work-related practices. As highlighted by Basu (Basu, 2010), sex workers with very low incomes, often correlated with their age, are increasingly susceptible to acceding to clients' demands for unprotected sex. Other studies associate unsafe sexual practices with client violence and higher financial gains, noting that clients are willing to pay more for sexual intercourse without condom use (Witte et al., 2010; Aunon et al., 2015; Parmley et al., 2020). Beyond the risk of sexually transmitted diseases, there is an elevated risk of unwanted pregnancies. A study from Tanzania, where induced abortions are still illegal, revealed a high unmet need for contraceptives among sex workers, as well as a high percentage of unsafe illegal abortions, a leading cause of maternal mortality (Faini et al., 2020). A similar study from Bangladesh shows that many pregnant sex workers work into their third trimester, use drugs and alcohol, are malnourished, and are infected with sexually transmitted infections, which increases the risk of complications among newborns (Willis et al., 2014).

In the realm of psychological health, research has identified a greater occurrence of anxiety among sex workers, arising from their inability to control various aspects of their work, such as financial burdens, unstable income, and the client's behaviour (Yuen et al., 2014; Zhang et al., 2015). An Israel study points out that the nature of sex work is even more emotionally taxing because of the social stigma. The constant fear of "being seen" and recognized by an acquaintance, creates emotional difficulties that facilitate burnout (Zarhin et al., 2017). Social stigma seems to have such an important impact on the lack of regulation of protection for sex workers that it has been suggested that prostitution stigmatization is a fundamental cause of social inequality (Benoit, 2017, p. 457). An interviewee from the study even stated that the emotional toll of worrying was more severe than the physical tolls, "as only the latter have remedies" (Benoit, 2017, p. 466). A similar study from Sydney found that sex workers often find themselves lonely, with low levels of self-esteem, which often led to long term depression (Jung et al., 2016).

Emotional hardship is often described as a cause of substance abuse among sex workers (Sallmann, 2010). Lavin found in her study that drug use is ubiquitous in strip clubs and bar spaces, where the purchase and consumption of alcohol are encouraged and unregulated (Lavin, 2014). In a study conducted in South Africa, sex workers reported drinking alcohol to cope with sex work, since alcohol made them feel more confident approaching clients and engaging in sex (Parmley et al., 2020). Sex workers also reported being introduced to drugs via clients and pimps. They also used drugs to cope with unmet mental health needs due to traumatic experiences before or during sex work (Parmley et al., 2020). However, as Gorry et al. (Gorry et al., 2010) point out in their study, drug, and alcohol abuse is not merely a consequence of sex work, but sometimes even a cause, since they found in their study that sex work was viewed as the easiest way to finance a drug addiction.

The prevalence of violence from third persons against sex workers is predominantly depicted in research as originating from clients. A study from China (Zhang et al., 2015) found that almost all female sex workers experienced abusive clients, taking the form of both verbal but also physical abuse. Regarding threats to physical health, it was common for sex workers to be asked or even forced by their clients to have unprotected sex. Occasionally, some clients remove the condom to ejaculate inside the sex workers (Yuen et al., 2014). Sex workers who refused engaging in unprotected sex sometimes faced verbal or physical abuse (Zhang et al., 2015;

Karunanayake et al., 2020), including harsh beatings and attacks with knives, axes, guns, and even hydrochloric acid (Zarhin et al., 2017). The isolation of sex work locations, combined with a lack of oversight, leaves sex workers vulnerable to being forced into unpaid sex by clients using a knife or other weapons, as well as being robbed or raped (Phrasisombath et al., 2012). Research showed that female street-based sex workers have been found to experience the highest rates of physical and sexual violence at the hands of clients, compared to sex workers in other settings (Gorry et al. 2010). Violence toward sex workers is often attributed to social stigma and the low reputation of the trade (Wong et al., 2011). Violent clients consider that prostitutes cannot be raped and that no harm could be done to them (Wong et al., 2011). But due to social stigma, even the sex workers themselves often perceive that they alone bear responsibility for minimizing the risk of client violence in each encounter, thus in a way taking the blame for violence on themselves (Leaker et al., 2011).

Building on this literature review, the research team conducted focus group discussions with sex workers, which corroborated the data from the literature review.⁹ But the outcomes also reveal new aspects of health protection in sex work. Participants in the focus groups discussed risks concerning incitement to drugs by pimps, the expectation from clients for sex workers to consume drugs with them, the risks of sexually transmitted diseases and the difficulty in avoiding them as the clients demand a broader range of services than they used to. They also discussed the danger of injuries due to violent sexual intercourse and rape, violence in general due to the clandestine and stigmatizing nature of the work, and also the dangers of infections due to poor hygienic conditions (Focus group I, Group 2, 11 November 2021. Focus group II, Group 1, 29 November 2021). Beyond these sex work-specific health risks, discussions also covered the hurdles and strategies in accessing health care, such as navigating intrusive questions from health care providers when seeking tests to verify health status, or to qualify for platforms offering escort services (Focus group I, Group 2, 11 November 2021). They mentioned the need for freely available testing for sexually transmitted diseases for women, akin to the services available for

⁹Two focus group discussions were conducted in November and December 2022, each spanning a duration of two to three hours. Informed consent was obtained from all the respondents before participation in the study. Eight sex workers between the ages of 22 and 61 participated, all female, including one transgender person. Most participants have a secondary education degree, and some have a university degree. All discussions were tape-recorded and transcribed verbatim, and participants were given pseudonyms to protect their privacy. Open coding was employed to generate a coding scheme inductively using qualitative data analysis software MAXQDA.

men who have sex with men (Focus group II, Group 1, 29 November 2021). The focus groups revealed that some sex workers establish rules to protect themselves from health risks, while some also share their experiences by publishing online posts on forums to protect others and raise their awareness (Focus group II, Group 1, 29 November 2021). Some interesting findings were shared also concerning the COVID-19 epidemic. Some sex workers indicated they required clients to provide evidence of vaccination, or a negative COVID-19 test (the so-called COVID certificate) (Focus group I, Group 1, 4 November 2021). Conversely, others expressed opposition to vaccination and COVID-19 testing, viewing these measures as barriers to resuming their profession, with one individual regarding sex work as a refuge from mandatory vaccination and testing protocols (Focus group I, Group 2, 11 November 2021).

The focus group outcomes reveal the need for sex workers operating in a restrictive model to rely on their ingenuity for health maintenance, a situation stemming from the lack of regulations in this field. Šori and Markelj (Šori & Markelj, 2022, p. 22) identify a significant gap in the field of occupational health and safety for sex workers, highlighting the lack of official professional standards or regulations designed to systematically shield them from occupational risks. Consequently, these workers are left “without labour, health, and social rights. The analysis of previous research has revealed numerous occupational risks in sex work, encompassing issues such as stigma, safety, policies and legislation, health, access to services, and risks associated with business and private life” (Kogovšek Šalamon et. al, 2023b, p. 64). Therefore, multiple studies call for legislative changes to secure social and health protection for sex workers (Kuhar and Pajnik, 2019; Peršak, 2012) and labour rights (Kuhar & Pajnik, 2019; Pajnik, 2008) for sex workers. Šori & Markelj (2022, p. 25) find that among the safety risks, the most frequently dealt with are “violence and exploitation by third parties, such as pimps, organizers, and venue owners, indicating that research - such as policies or media - mainly focuses on the criminal aspects of sex work.” The courts, due to the nature of their work, often focus on this aspect of prostitution, delineating “the boundaries between permitted and prohibited practices in the field of sex work” (Kogovšek Šalamon et. al, 2023b, p. 64), which remains in a grey area between criminalization and full legalization.

4 Methodology of the court case files analysis

While our research of court case files on the abuse of prostitution covered multiple thematic focuses, this article concentrates on the findings concerning how the occupational health risks faced by sex workers were addressed in criminal court proceedings. The aim of this particular focus of our research was, *inter alia*, to verify how the arguments presented by criminal courts were informed by considerations pertaining to the health status of sex workers and their access to health services.

To facilitate our findings, we approached the Supreme Court of the Republic of Slovenia to obtain a list of cases related to the crime of “abuse of prostitution” and the minor offences related to prostitution. The Supreme Court furnished a list comprising 59 criminal and 30 minor offence cases. “The list included details such as the year the final judgment was issued, the case number, and the competent district court that dealt with the cases” (Kogovšek Šalamon et. al, 2023b, p. 65). Based on the obtained list, we contacted the district courts with “inquiries and requests for file analysis, designing our inquiry to verify the accuracy of the Supreme Court’s list” (ibid.). Our correspondence with the courts unveiled “difficulties in accessing files dated before 2010 due to their storage in physical archives rather than in an electronic database” (ibid.). The varied responsiveness of the courts rendered our original strategy of selecting files based on key criteria impractical. Consequently, we opted to analyze any files we could access. The courts provided us with lists of cases that had been finally adjudicated (*res indicata*), enabling us to analyze 20 files from district courts in Novo Mesto, Ptuj, Celje, Maribor, Koper, and Ljubljana. This analysis took place between March and July 2022.¹⁰ Each case file included in the analysis is identified by the designation of the district court that dealt with it and the serial number of the file examined. We supplemented the analysis of the case files 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” (ibid.).

¹⁰ The list of case numbers of the analyzed files is kept by the research group.

5 Findings of the court case files analysis

As previously mentioned, the so-called independent prostitution, based on the sexual autonomy of sex workers, has been decriminalized since 2003. “This decriminalization 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” (Kogovšek Šalamon et. al, 2023b, p. 67). “The legal order neither limits them nor regulates their position” (ibid.). Consequently, the mere fact of prostitution is not viewed as problematic in the case files, which means that the Slovenian model indeed is a restrictive and not a repressive model.

However, the abuse or exploitation of prostitution by third parties (such as organizers and intermediaries) remains subject to prosecution. This ensures that a prohibition of *any form* of exploitation of prostitution is enforced. The essence of the criminal law argumentation in the case files centres on the definition of what constitutes the exploitation of prostitution. Case law demonstrates that the exploitation of prostitution is not a clear-cut concept. In practice, the statutory element of exploitation most often appears as the “economic exploitation of individuals engaging in prostitution” (ibid., p. 68; cf. judgment no. X Kp 26592/2017), alongside other encroachments upon the general freedom of choice and actions of sex workers (Filipčič, 2023, p. 1333).¹¹

This means the main question underpinning court proceedings concerns whether the sex worker was expected or obliged to surrender a part of their earnings to third persons (e.g., pimps, organizers, or other intermediaries who are the defendants in these court cases), whether they were subject to any form of coercion that restricted their freedom to work and freedom of choice, and how these third parties generally treated them, particularly in terms of securing their human rights, including health rights. In this sense, in the course of the criminal proceedings, the law enforcement agencies and courts examine whether the sex worker (e.g., case file MB1) exercised sexual self-determination (sexual autonomy), and how these third parties attended to the rights of sex workers. “They investigate and establish whether sex workers were offered security in healthcare, social protection, work conditions, or payment

¹¹ Broader and more general findings of our research are presented elsewhere (Kogovšek Šalamon et al., 2023a and 2023b) while in this article we are focusing solely on the findings related to occupational health risks and health rights of the sex workers and a role they have in the criminal court cases.

for work, and whether they were provided with security of the employment relationship (e.g., case file KP1)” (ibid., p. 69). Among the arguments of the law enforcement authorities and the courts in the field of women’s rights, there is a pronounced focus on the dignity of exploited women, health concerns arising from substandard living conditions and “poor hygiene conditions, health problems, fairness of working conditions, an overabundance of work, whether women were forced to work” (ibid.) under any circumstance, whether they had unregulated health insurance, and whether they were at risk for sexually transmitted diseases (e.g., case file NM2). These elements are scrutinized by the courts to determine whether there has been abuse of prostitution.

Based on these court arguments, one can conclude that the courts’ task of determining whether the crime of abuse of prostitution has occurred is facilitated if it is shown that the defendants generally ill-treated sex workers and denied them care that they would need and were entitled to, including protection from violence, protection from sexually transmitted diseases and securing access to health care. This shows that the courts’ interest in caring for the human rights of sex workers, including the right to health and the right to be free from violence, is at the heart of criminal prosecutions for prostitution abuse. This approach signifies a model that transcends a purely restrictive one but also incorporates significant integrative elements.

In the next part of the analysis, we focused on the extent to which criminal justice institutions express an interest in the occupational risks faced by 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 about health examinations and health care (case files CE3, NM1, NM2, KP2, PT2, KP1)” (ibid., p. 74). Courts identified health issues faced by sex workers due to excessive workload as indicative of exploitation and abuse (case file NM1). Additionally, the courts linked the absence of health insurance for workers, considering their high risk of sexually transmitted diseases and exhaustion from providing sexual services throughout the day, to evidence of abuse (case files NM2, KP2). This highlights the courts’ recognition of specific occupational hazards faced by sex workers. In one case, the prosecution and the court mentioned “the risk arising from inadequate protection of sex workers from violent clients” (ibid.) as an element of the crime of abuse (case file PT2). The police

and prosecution cited “the general lack of measures to ensure the safety of sex workers, including social, occupational, health, and other safety, as an argument for the existence of abuse in several cases” (ibid.) (case files NM2, KP1). These arguments fall within the integrative state model of dealing with prostitution within society.

From these findings, it is evident that the health-related arguments courts utilize to substantiate their conclusions that the crime of prostitution abuse has taken place are framed on three different levels: the human rights of sex workers, occupational risks related to the specificities of sex work, and the general lack of protection of well-being of sex workers by the defendants.

A unique situation arose in one case file (LJ2), which was notably distinct from other cases. This case involved criminal justice authorities addressing the situation of workers in an erotic massage parlour. The courts endeavoured to delineate the concept of an erotic massage from the concept of prostitution. The first instance court found that “the parlour performed the activity of erotic massage, which can be regularly registered” (Kogovšek Šalamon et. al, 2023b, p. 73) and hence cannot be equated to prostitution, while the court of appeals took the position that offering massage services to satisfy the sexual needs of clients corresponds to the definition of prostitution.¹² However, the definition of what constitutes an erotic massage and how it differs from prostitution did not significantly impact the outcome of the case which ended with defendants’ acquittal. The essence of the acquittal lay in the courts’ inability to ascertain economic exploitation by the massage company’s management through the work of the employees. In these cases, in the view of the court, it was “not possible to confirm that women were forced to work” (ibid., p. 70); they had their phones and testified that they could stop working whenever they wanted; the activity was “organized like any other work, with regular pay, regardless of the number of clients” (ibid.). The workers had “a possibility of refusing a client, and they had the option of interruption of work” (ibid.). In this case, it was crucial for the acquittal “that the court could not confirm the existence of abuse and exploitation, while the activity had elements of work” (ibid.) (judgment no. X Kp 26592/2017). Since the workers were regularly employed at the parlour, they also

¹² For a discussion on the aspects of whether such adjudication was appropriate see Kogovšek Šalamon et al. (2023b, p. 77).

had full health insurance coverage, which placed them in a completely different position concerning their health rights compared to women who are forced into prostitution (and even those women who are not forced into prostitution but are involved in it voluntarily) and are not secured with labour, social security, and healthcare-related rights.

6 Conclusions and discussion

As demonstrated in this article, our research indicates that criminal justice institutions, when dealing with the crimes of abuse of prostitution, consider factors such as working conditions, health risks, and the general well-being of sex workers. These institutions scrutinize the availability of healthcare for women, their vulnerability to or protection from violence, and their access to health-protective measures, including contraception, medical check-ups, tests, and treatments for health issues. The courts took note of the long working hours and the difficult working conditions of the women, utilizing this information to substantiate their findings that the acts of the defendants (pimps, organizers, intermediaries) constitute “abuse of prostitution”.

It should be underlined that the key element of the crime of abuse of prostitution is, as noted above, the fact that a sex worker was expected to or forced to share part of her income with a third person. However, in court proceedings, this key finding is always accompanied by other conclusions of the courts which are not only related to sex workers’ freedom (to move, choose clients, or refuse them) but also to their health, social security, and work conditions. This illustrates that the features of the integrative state approach towards addressing prostitution are strongly embedded in the criminal law proceedings in this field.

The analysis further reveals that, in the absence of specific administrative and employment regulations for sex work, courts do not hesitate to affirm that sex workers should have rights recognized in the same way as any other worker - in the field of health care, social security, and employment. Health risks and lack of access to health care were mentioned as relevant circumstances in ten out of the twenty cases analyzed, underscoring the importance of these factors in the adjudication of cases related to the abuse of prostitution. It can be inferred that the lack of health and other social and economic protections for sex workers exacerbates the

exploitation they endure, compounded by the obligation to relinquish a portion of their earnings.

On the other hand, despite the outcomes observed in the massage parlour case, it cannot be argued that full health and social protection of sex workers eliminates exploitation. It should be borne in mind that the key element of exploitation is still the fact that sex workers have to share their income with the third person. This implies that the crime of abuse of prostitution would still be established even in scenarios where the organizer of prostitution provided full protection in the field of health care, social and employment rights, and there was no coercion, but where the worker would still have to cede parts of their earnings.

These findings prompt the question: why is the absence of health and other forms of social protection provided by the defendants used as indicators of exploitation, yet these are not compelling reasons to implement policy measures supporting the rights of sex workers? Law enforcement institutions correctly identify the lack of health care and social protection of sex workers as problematic, yet take minimal action to ensure such protection is made available. As focus group participants testified in our research, they have to use various strategies to access the health care that they need and to ensure that they are protected from violence notwithstanding that legislation prohibits them from hiring security that would protect them against harm as security guards could be regarded as those profiting from prostitution. Furthermore, it appears that currently, law enforcement institutions are the sole entities addressing the occupational hazards of sex workers within the state institutional framework. This approach falls short of meeting the existing needs in this field. The main reason for this still seems to be the stigma that is associated with sex work, which hinders developing higher protection standards for sex workers.

It is indeed problematic that law enforcement institutions, in their role of adjudicating and addressing health hazards faced by sex workers, stand as the sole entities within state structures in countries like Slovenia addressing these concerns. Sex workers who are involved in these court proceedings are there in their capacity as victims of crimes, always after many years of abuse. It is troublesome that it is only through their testimonies that the state institutions hear messages about their lack of social, health, and economic protection. Should this issue be addressed by the state before, in stages where sex workers are not (yet) victims of such crimes, the

policy-making in this field would be quite different, but also the state institutions would have a different, probably much less stigmatizing and more empowering view of this form of economic activity.

As evident from the data gathered from court cases, focus group outcomes, and literature analysis, there is a pressing need for further policy design and regulation in this field, providing, among others, services that all sex workers would benefit from, regardless of whether they are voluntarily performing sex work or they are victims of the crime of prostitution abuse. These services could entail not only access to free and regular testing for sexually transmitted diseases and health insurance but also efforts towards the sensitization of medical staff. The goal would be to diminish stigma and reluctance to provide these services.

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Povzetek v slovenskem jeziku

Članek raziskuje, kako se v sodnih postopkih, povezanih s kaznivim dejanjem zlorabe prostitucije po 175. členu Kazenskega zakonika Republike Slovenije, obravnavajo poklicne in zdravstvene pravice spolnih delavk in delavcev. Avtorici ugotavljata, da sodne odločitve o kaznivem dejanju zlorabe prostitucije neizogibno vključujejo razmisleke o poklicnih zdravstvenih tveganjih, dostopu do zdravstvene oskrbe in zdravstvenih pravicah delavk in delavcev. Članek temelji na prejšnjih raziskovalnih delih avtoric, kjer sta zaključili, da so v Sloveniji, kljub prevladi restriktivnega pristopa k obravnavi prostitucije, prisotni elementi tako represivnega kot integrativnega pristopa. Poudarjanje zdravstvenih pravic spolnih delavk in delavcev predstavlja integrativni pristop k prostituciji.

