The perspective of a THB destination and transit country within the context of sexual exploitation: aligning national criminal law to better meet current challenges

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OVERVIEW

- Austria
- Legal Framework
- Prostitution: Facts & Figures
- Trafficking: Facts & Figures
- Task Force Trafficking in Human Beings
- Support System for Victims of Trafficking
- Why Regulation and Main Arguments
- Questions
FEDERAL REPUBLIC OF AUSTRIA

- 8.7 MIO inhabitants: 1.8 MIO in Vienna
- Part of EU since 1995
- 9 federal provinces
Prostitution in Austria is legal and regulated

- **Regional Law** (differing province by province)
  - prostitution specific regulations as to who, where, when

- **Federal Law**
  - general regulations: immigration law, tax law, social security law,…
  - special regulations in criminal law and health law;
REGIONAL LAW

- **9 Prostitution Laws – all different in detail**

  ✓ **Who:** age limit 18 or 19 years and mentally healthy; registration: directly with the police (Vienna) or municipality or via brothel-owner;

  ✓ **Where:** licensed brothels; some allow also visits at the home of the customer; (very) restricted street prostitution only in Vienna

  ✓ **When:** regulated individually

- **Implementation**

  ✓ **From liberal to restrictive:** Vienna - Vorarlberg
Definition of Prostitution: commercial sexual acts involving body-contact

Where: licenced brothels; at the clients place; soliciting in denominated streets (allowance zone)

Brothel-licensing - with involvement of police

- reliability check: brothel owner, responsible persons
- safety regulations: e.g. emergency button
- hygienic standards: toilets, showers, ...
- commodities: lockers for SW, cooking facilities, ...
REGIONAL LAW – VIENNA II

- **Sexworkers:** registration with the police and counselling by NGO
- **Clients:** fined if they approach SW in an unlicenced brothel or outside an allowance zone

**Police Control**
- check any place, if justified suspicion that illegal prostitution
- check undercover, if justified suspicion
- check compliance any time
- close down on the spot, if severe violation
FEDERAL LAW: CRIMINAL LAW

- **Trafficking in human beings (Section 104a CC):**
  - Recruitment, harbouring or reception, transportation, transfer of control or offering of an **adult person** by use of unfair means with the purpose of exploitation is punishable by a **prison sentence from 6 months to 5 years**.
  - **Unfair means:** use of force or severe threat, deception, abuse of power, of mental illness or of a position of vulnerability, intimidation, giving or receiving payments or benefits for the transfer of control over a person.
  - **Exploitation includes** sexual exploitation, exploitation of the removal of organs, of forced labour, begging or punishable acts.
  - **Aggravating circumstances:** trafficking in the framework of a criminal association, by using severe violence, by deliberately or grossly negligently putting the life of a person at risk is punishable by a prison sentence from **1 to 10 years**.
  - **Trafficking in children** (under the age of 18) is punishable by a sentence from **1 to 10 years**. Unfair means are not elements of the offence in case of child trafficking.

- Acc. to **Section 12 CC** a **person directing or contributing** in any other way to the commission of a crime will be treated as equally guilty as the immediate perpetrator.
New Provision under the Criminal Amendment Act 2015:

- Violation of the right to sexual self-determination (Section 205a CC)

  ✓ Engaging in sexual intercourse by taking advantage of a predicament

  ✓ When customer **knows** that a sex worker is a **victim of trafficking in human beings** and **despite this knowledge** sexual interference still happens

  ✓ Sentence: up to 2 years
FEDERAL LAW: CRIMINAL LAW

- **Transnational trade of prostitution (Section 217 CC)**
  - ✓ Transnational recruitment or transfer of prostitutes punishable by sentence from 6 months to 5 years.
  - ✓ aggravating circumstances:
    - ✓ professional business: 1 to 10 years.
    - ✓ deception, use of force or severe threat, abuse of misapprehension: 1 to 10 years

- **Pimping**: intention to gain an income and exploit: up to 2 years or up to 3 years in more severe cases; aggravating circumstances (a.c.)

- **Sexual Violence against Minors (under 18)**
  - ✓ customer: up to 3 years of imprisonment
  - ✓ Procurament: 6 months to 5 years
DATA ON PROSTITUTION – LEGAL MARKET

- About **50%** in *Vienna*

- **Registered Sexworkers:**
  - 8,000, only 2% male
  - 95% *migrant Sexworkers*, mostly from Eastern European countries (mainly Romania, Hungary, Bulgaria)

- **Licensed Brothels:**
  - 800
  - Trend goes from Sexclub with bar to Apartmenthouses without bar
DATA ON PROSTITUTION – ILLEGAL MARKET

- **Non-registered Sexworkers:**
  - 3.000-4.000
  - higher amount of Austrians

- **Main locations:**
  - Go-Go-Bars (Vorarlberg), massage salons
  - private flats, hotels: contact via escort-services and internet

- **Reasons:** anonymity, avoidance of health checks, taxation,..
DATA ON TRAFFICKING (2015)

Police

- 98 investigations on trafficking (§ 104a: 62; § 217: 57)
- 132 suspects (§ 104a: 74; § 217: 58)
- 119 Victims (§ 104a: 62; § 217: 57), 87 from EU countries;
- 73% of all investigation cases on sexual exploitation

Intervention Center for Trafficked Women (LEFÖ-IBF)

- 226 women (sexual exploitation 146, household 44, marriage 3, others 33)
- Main nationalities: Romania, Hungary, Philippines
TASK FORCE ON COMBATING HUMAN TRAFFICKING

- **Chair**: Federal Ministry for Europe, Integration and Foreign Affairs (since 2004)

- **Members**: relevant ministries (10), federal provinces (9), NGOs (4), social partners

- **Tasks**:
  - Structured cooperation and dialogue
  - Support of implementation of NAP
SUPPORT SYSTEM

- **Intervention Center for Trafficked Women (LEFÖ-IBF):**

- **Center for Male Victims (MEN-VIA):**
WHY REGULATION?

- Criminalisation of clients hits sexworkers most
- Sexual exploitation vs. legal prostitution
- Criminalisation of clients does not result in sympathy for sexworkers
- Economic concept of supply and demand not adequate to prevent THB and protect victims: Demand reduction does not mean trafficking reduction
CRIMINALISATION OF CLIENTS HITS SEX WORKERS MOST

- Sex workers go underground – do they? (next slide)
- Higher dependence of sex workers on middlemen
- No state influence on working conditions
- Police: loss in control, insight and trust (Vienna)
- NGOs: loss in counselling abilities (contact, budget, task)
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Sweden - escorts - backpage.com

Sweden escorts, female models, independent escorts and adult services with photos. Post ads with pics.

Escort-Sweden.com | #1 For Escorts, Massage & Domination in Sweden

This Category lists all Escorts from Sweden at HappyEscorts - Europe's biggest escorts search engine.

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RealEscort.se - Eskort och massage Tjejer/flickor från Sverige

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Convention on Action Against Trafficking in Human Beings

- Article 19 – Criminalisation of the use of services of a victim
- discouragement of sexual exploitation in the context of human trafficking
- Use of services of prostitution are not concerned as such
- no effect on domestic law dealing with prostitution

Prostitution ≠ sexual exploitation

-> not every sex worker is a victim
CRIMINALISATION DOES NOT RESULT IN SYMPATHY FOR SEX WORKERS

- Victim-Concept = Minority Concept in Austria

- Studies on Sweden:
  - indicate grown support for criminalisation of clients
  - but also indicate grown support for criminalising sexworkers!
CONCEPT OF SUPPLY AND DEMAND

- **Supply and demand** constitute the **economical market**

- With the sexual exploitation “market”, it’s more **complicated**:
  - it **exists regardless of prohibition** by the state -> prohibition will make the market illegal, but not necessarily disappear
  - sex workers are exploited by traffickers, not by market pressure
  - the force/compulsion used against victims cannot simply be described by the concept of supply and demand
DEMAND REDUCTION = TRAFFICKING REDUCTION?

- Criminalisation *might* result in a smaller prostitution market

**BUT**

- Criminalisation *results in* a bigger hidden market:
  - less insight, control and contact
  - low numbers of identification *don’t mean* low numbers in *trafficking* – necessity for careful interpretation of existing data

**NO CLEAR ANSWER POSSIBLE!**
QUESTIONS?