

Regulation of prostitution in Croatia

The following activities have been conducted in the first year of the project (2 May 2019 to 1 May 2020):



- **Methodological trainings**

Principal investigator Dr Ivana Radačić and the PhD student Marija Antić participated in two methodological courses at the 14th ECPR Summer School in Methods and Techniques at the Central University in Budapest, held from 26 July to 8 August 2019: *Qualitative data analysis – concepts and approaches; Introduction to Nvivo*.

On 14 October 2020 they held a workshop for other research team members to transfer the knowledge.

- **Literature review**

In the first six months of the project team members reviewed relevant literature on prostitution. The focus of the analysis was on models and policies regulating prostitution, theoretical underpinnings and the current situation in Croatia. 114 bibliographic units were reviewed.

The dominant regulatory models Europe were analysed– the model of client criminalisation (first applied in Sweden), which defines women in prostitution as victims of sexual slavery and the model of legalisation (adopted, for example, in the Netherlands and Germany), which defines prostitution as work. **Human rights implications of the models were also reviewed,**

such as overregulation in Germany which has resulted in a strict control of sex workers, and pushing women deeper into the shadows in Sweden which has exposed them to greater risks of exploitation and violence. The literature review has shown that the model most conducive to human rights of sex workers is the model of full decriminalisation, adopted in the New Zealand.

An analysis of the literature on prostitution in Croatia has shown that prostitution is still a taboo topic, even in academia. Apart from several criminology and law studies (Kovčo Vukadin, 1998; Milivojević Antoliš et al., 2013; Kanduč and Grozdanić, 1998; Radačić 2017), social epidemiology studies (Štulhofer et al., 2009; Štulhofer et al., 2015, Štulhofer et al. al., 2016) and recent socio-legal analysis (Radačić and Pajnik, 2017), prostitution has not been a subject of scientific interest in Croatia. The analysis has shown that Croatia has a morality approach to prostitution (aimed at suppression or at least keeping it out of the public eye), with the focus on public good and public morality, not the rights and safety of women in prostitution.

- **Analysis of laws**

Dr Radačić conducted the analysis of the legal provisions which criminalise prostitution. **The Act on Misdemeanours against Public Order and Peace (AMPOP)** sanctions allowing for the use of one's premises for prostitution or enabling or helping a person to engage in prostitution (Article 7); and engaging in ('falling into') prostitution (Article 12). A fine ranging from 25 to 175 euros or imprisonment for up to 60 days for the Article 7 offence, and 25 to 100 euros or an imprisonment for up to 30 days for Article 12 offence, are foreseen. For Article 12 offence it is also possible to issue a protection order of compulsory treatment of STDs (Article 34), or expulsion from a certain area (Article 36).

The Criminal Code criminalises the offence of prostitution, defined as instigating or soliciting persons for offering sexual services, as well as organising or abetting prostitution. The imprisonment from 6 months to 5 years is prescribed for this basic form of offence. Consent of the person to engage in prostitution is irrelevant. The qualified offence presupposes some form of compulsion (force, threat, deceit, abuse of power), for which 1 to 10 years imprisonment is prescribed. The use of services of a person who has been compelled to sell sex is also criminalised with the same penalty (if a person knew or should have known that there was some form of compulsion), which is the biggest change in the 2013 Criminal Code. Up to 3 years imprisonment is foreseen for advertising prostitution.

Full criminalisation of clients has been proposed twice by the Ministry of Interior in their proposal of the AMPOP (in 2012 and 2016), which would also extend criminalisation of sex workers (to onetime offering of the services in the public spaces or ads and one-time giving of services in any place) and impose much heavier fines.

The analysis has shown that the **Croatian model of criminalisation is an outdated** model in Europe, where dominant discussion are centred around two models: criminalisation of clients, based on the perception of prostitution as a form of violence against women, and legalisation, based on the perception of prostitution as a form of work. The Croatian model is **based on a moralistic understanding of prostitution as a social evil, a threat to public order and security**, which, according to the judicial practice, is primarily suppressed through penalising sex workers and secondary organisers, while clients are generally exempt. The new proposals of the AMPOP impose full criminalisation of all parties, which would place Croatia even further from the dominant discussions in Europe concerning prostitution policies.

Criminalisation **has serious negative effects on health and safety of sex workers** and facilitates systemic violence against them, resulting in human rights violations (Radačić and Pajnik, 2017). As criminalisation of prostitution disproportionately impacts women, who predominantly engage in prostitution, **it is considered a form of gender-based discrimination** (UN Working Group on Discrimination against Women and Girls, Annual Report to the Human Rights Council, 2016). It is therefore recommended that **Croatia reform its legislation** in line with the international human rights standards, which require decriminalisation of sex workers and establishment of support programmes. In the reform process, sex workers should be included.



- **Analysis of public policy documents**

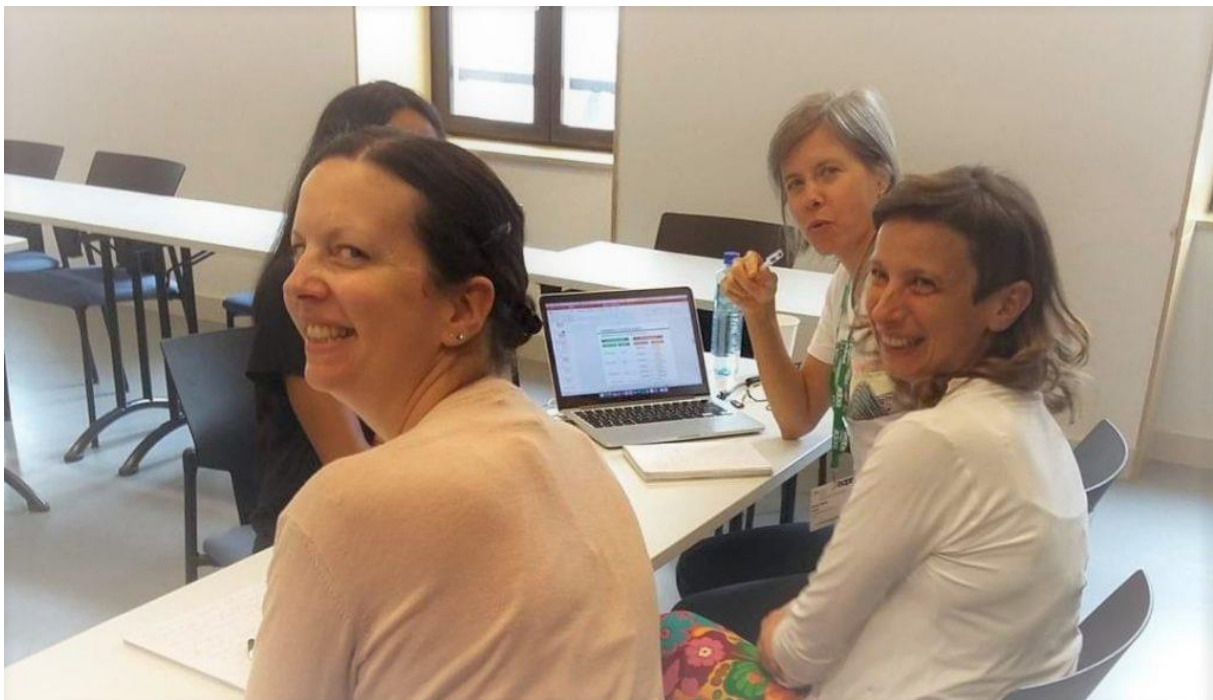
Dr Nikola Baketa and Josip Šipić analysed **69 public policy documents in Croatia, adopted in the period from 2005 to 2019, using a method of critical frame analysis** of gender policies (Verloo i Lombardo, 2007). The aim was to identify how the topic of prostitution and related topics and phenomena are framed by the different actors, whose voices are represented and what solutions are offered under which frame. The documents included are the documents of state and public institutions (ministries, agencies, Government offices): national strategies and plans concerning combating STDs, trafficking in persons, and in children; integration of Roma; gender equality; rights of children; as well as implementation action plans and the implementation reports. The annual reports of the Ombudsperson on Gender Equality and the documents of the selected NGOs – policy reports, studies, articles – are also included.

The analysis has shown that a very limited number of actors is concerned with prostitution, primarily indirectly, when dealing with the issues that relate to prostitution, such as HIV transmission and trafficking in human beings, which indicates that prostitution is considered **a social taboo**. The NGOs and the Ombudsperson for Gender Equality are the only actors who discuss prostitution in a more detail and propose reforms of laws and policies: the

Ombudsperson and the NGO networks on trafficking in human beings propose criminalisation of clients, while the harm reduction NGOs propose decriminalisation.

The analysis identified **four dominant policy frames**, in addition to the public order and security frame, present in legislation. These are: **threat to public health frame, sex work frame, violence against women frame, and frame which links prostitution to trafficking in human beings**. It is only the sex work frame which does not perceive prostitution as the problem which needs to be prevented. It is the most articulated frame and the only one which does not victimise sex workers and insists on the inclusion of their voices in the policy process.

The conclusion of the analysis is that the **dominant approach to prostitution as a social taboo maintains the status quo of criminalisation model**. Policy frames which advocate the reform of the current model (one advocates the criminalisation of clients, the other decriminalisation/legalisation) do not seem to be sufficiently strong to lead to change, primarily because they are not supported by a wider network of actors. However, widening of actors interested in policy on prostitution – the relatively recent interest of the Ombudsperson for Gender Equality and the articulation of sex work arguments by the harm reduction NGOs – contributes to opening of a more comprehensive discussion of prostitution and its regulation and potential changes of the status quo.



- **Analysis of the judicial practice**

Team members Marija Antić, Dr Rašeljka Krnić, Dr Ivana Radačić and Dr Antonija Petričušić collected data from the case files of the municipal criminal and misdemeanour courts in Zagreb and Split from July to September 2019. The analysis was conducted by Dr Ivana Radačić and Marija Antić.

Misdemeanour courts practice

There were 141 cases which ended with a final judgment in the period from 1 January 2015 to 31 December 2019 available at the courts at the time of data collection: 74 in Zagreb and 67 in Split. Out of these, 132 or **94% ended with a conviction**. Seven cases (four in Zagreb and three in Split) ended with an acquittal: in five (three from Zagreb and two from Split) because the elements of crimes were not present, and in two (one from Zagreb and one from Split) due to lack of evidence. In two (both from Split) indictments were rejected – in one because the defendant had already been convicted for the same act by the Criminal Court, and in the other due to procedural error. The penalties in all but four cases were **finest**, in Zagreb sample towards the legal minimum, and in Split sample towards the maximum. In three cases conditional imprisonment was ordered, in one protection order of expulsion (in three cases both fine and expulsion orders were issued).

The analysis has shown that **police practices differ in Zagreb and Split**: in Zagreb the police targets those working on the street and in Split those working in the apartments who advertise services on internet or in the newspapers. Police in Zagreb patrols the ‘suspect’ streets and police in Split conducts undercover operations. Only two cases from Zagreb concern prostitution in the apartment and the hotel and in both the police acted upon the complaint.

The vast majority of the defendants – 96%, are women. There were five men tried before the Split court and the two of them worked with the female partners. Defendants are persons in difficult socio-economic position, particularly in the Zagreb sample, with high school or primary school education (in the Zagreb sample 35% of women has only elementary education, compared to 16% in the Split sample). The defendants’ age range is from 21 to 62, with 40 as a median age, in the Zagreb sample, and 19 to 62, with 37 as a median age, in Split. In case files where the reason for engaging in prostitution is mentioned, it concerns difficult financial situation, while in two cases tried at the court in Split the search for sexual partners, and curiosity, are also mentioned. The analysis of socio-demographic characterises show that **criminalisation affects primarily women of a lower socio-economic strata, who engage in it because of the difficult financial situation**.

The police practices differ also in relation to arrests: they are more often in Zagreb – 20% compared to 9% in Split. The most commonly stated reason is the fear that the defendant will repeat the offence, based on the fact they are known to the police. This means that simply the occurrence of the offence (the nature of which is repeated selling of sexual services according to the dominant interpretation) seem to be sufficient for the arrest, which does not conform to the principles that restriction of freedom must be ultima ratio measure which has a concrete and a necessary reason. Moreover, there are cases where all three legally foreseen reasons for the arrest are stated even when it is clear that they are not all present (such as the collusion of witnesses, when there are no witnesses present), and sometimes none of the reasons, which also **puts into question the principles of the right to liberty and security of the person**.

The police in Zagreb and Split **have different interpretations of ‘falling into’ prostitution**. In cases from Zagreb most indictments state that a person familiar to police, or a person who had already been warned or sentenced before, was offering sexual services to unknown/passing

men. However, there are indictments which simply refer to offering of sexual services, without explaining whether the person has done it before. In cases from Split most indictments refer to giving of sexual services, mostly in the time period that starts some time before and ends with the indictment (sometimes the exact date is not stated). There are three indictments which refer only to advertising/covert advertising.

The judicial practice also differs. There is no consensus about what constitutes an offence even within one court, **inconsistent with the requirement of legal certainty**. In the practice of the Zagreb court, the most common interpretation of the offence is the repeated offering of sexual services. In the three cases in which the Court held that the elements of offence were not present it was stated that it must be shown that the defendant had been sentenced or caught before, or that s/he ‘has been permanently engaged’ in prostitution. However, there are ten convictions which do not contain one of the usual phrases ‘known to the police/previously warned/previously convicted’, as they are not present in the indictment, but in nine of these cases the files contain reports on previous convictions for prostitution. In the practice of the Court in Split the most common interpretation of the offence is giving of the sexual services in a certain period of time, but there are three convictions for advertising only. In the two cases where the indictment stated that the defendant gave sexual service/s (once; and 15 times), the Court held that it was not proved that she had been doing it as a ‘profession’, ‘a way of living and earning money’, which it considered to be an element of an offence.

Moreover, **the offering/giving of sexual services is not fully specified** with respect to timing (in some of the Split cases), a number of services given (in the Zagreb cases), and clients are never identified, unless they reported the offence (in both samples). The phrases ‘male passing persons, unknown male persons’ are used.

The convictions are predominantly based on confessions: 70% of Zagreb cases and 69% of Split cases. In none of the cases have the defendants had legal representation, and in some cases their liberty was restricted, while in three cases from Split they reported police mistreatment. When the defendant does not confess, the judges most often believe police officers. In addition, offering of sexual services is presumed when a person stands at a ‘suspect’ street, especially if she is already known to the police. This presumption, together with the lack of full specification of the offence, makes it a **status offence, which is not in line with the human rights standard that criminal acts must be foreseeable, as well as the presumption of innocence and the right to a fair trial.**

In three cases the judges held that the offence must be specified. This was explicitly mentioned in one case of the Split court which ended with an acquittal, as the police officers could not answer the judge’s question who the clients were, or how many there were, while the defendant did not confess. In another case from Zagreb the judge said that the fact that the defendant was known to the police did not constitute the evidence of offering the sexual service(s) in that specific case. As the police officer did not see her offering services, the judge acquitted the defendant. In two cases of acquittal by the Split court due to the lack of the element of repetition, the judge also mentioned that advertising did not constitute evidence of giving of sexual services. These are positive examples but seem to represent minority position.

In conclusion, police and judicial practice raise the questions regarding their compliance with the human rights standards. This needs to be addressed not only through the legal reform, but also training of police officers and judges.

Cases of the criminal courts

There were only four cases available at the time when we were at the courts, which ended with a final judgment in the period from 1 January 2015 to 31 December 2019: three at the Municipal Criminal Court in Split and one at the Municipal Criminal Court in Zagreb. This shows that **criminal justice agents are more focused on the sex workers than on the organisers**. In addition, **all criminal offences concern the basic form offence** – organising without any element of compulsion. In one case, the conviction included advertising, in addition to organising. No case concerns the qualified form where some form of compulsion is present, which should arguably be the focus of the criminal justice agents. However, one case contained elements of exploitation, as the victim was a mentally ill and in love with the defendant, who took all the money; still it was charged as a basic form of offence.

In two case defendants were women and in two men, aged 25 to 51 at the time of the commission of the offence. All ‘victims’ were women, aged 19 to 50. The place of commission were apartments and hotels in Zagreb and apartments and yachts in Split, as well as other cities in one case.

The acts of organising consisted of:

1. Contacting the ‘victim’, finding clients and apartments.
2. Making an agreement with the ‘victim’ to find clients, facilitating contact with clients, driving the ‘victim’.
3. Making an agreement with the victim, giving advice about advertising, driving, physical protection services.
4. Making an agreement with the ‘victim’, answering the phone, driving the ‘victim’.

The act of advertising consisted of publishing an advertisement on internet. The defendants took from half to all the money earned from the victims.

All defendants were convicted: penalties ranged from six months conditional prison sentence to one-and-a-half-year unconditional imprisonment. Mitigating circumstances were confession, repentance, no previous conviction, good behaviour during trial, bad health, family circumstances, motherhood of a minor, critical view of the crime, finding a job. Extenuating circumstances were social danger of the crime, previous convictions.

In two cases the mobile phones, as the means of committing the crime, were taken from the defendants and in three cases the proceeds of the crime were taken.

The limited number of cases do not allow for drawing any other conclusions about the criminal court practice, in addition to those noticed above concerning the focus of criminal justice agents.

- **Meeting with the consultants**

At the very end of the project year, and online meeting was held with the consultants on the project: Dr Rosie Campbell, Dr Jane Scoular, Dr Elis Ward, Dr Aleksandar Štulhofer and Dr Karin Doolan. The consultants shared with the team members their relevant experiences in

researching prostitution and gave feedback on the project activities and the guide for the interviews with the experts: representatives of the relevant ministries, independent institutions and NGOs; police officers, state attorneys and the judges.

- **After the meeting, Dr Ivana Radačić and Dr Mirjana Adamović finalised the interview guide.**