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## CRIMINOLOGICAL AND VICTIMOLOGICAL DETERMINANTS OF PROSTITUTION – *DE LEGE FERENDA* PROPOSALS\*\*

**ABSTRACT:** Prostitution represents a complex social phenomenon, often integrating criminological and victimological perspectives. Positioned between the ideas of sexual freedom, the right to control one's own Pbody, and the obligation to protect morality, prostitution elicits various societal responses. Discussing the concepts of authentic and apparent prostitution, the authors aim to provide a conceptual analysis and a draft of a new legislative model for regulating this field. By integrating sociopsychological and health care tendencies, minimizing stigmatization and discrimination, the stratified societal response model is presented, which ultimately does not abandon the protection of morality as a legal and social category and a vital societal component.

**Keywords:** Prostitution, morality, social protection, sanctioning

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## INTRODUCTION

Frequent references to prostitution as “*the oldest profession*” create several negative implications.<sup>1</sup> Namely, the designation “*oldest*” often aligns with notions of inherent, innate, or predetermined phenomena, implying biological inferiority. Such a perspective on prostitution typically reflects a gendered view of it as a predominantly female-oriented activity.<sup>2</sup>

This stance of gender-based derogation is countered by feminist positions. Criticizing the oppression of women in patriarchally dictated societies, feminists often cite the unequal distribution of power, access to resources, and opportunities as explanations for various phenomena of women’s victimization, including prostitution.<sup>3</sup>

However, it appears that both views face significant criticism. While, statistically, most prostitutes are women, historical records indicate the existence of “institutionalized” male prostitution throughout history.<sup>4</sup> Moreover, just as rape cannot be deemed an inherently male crime because only a small percentage of men commit it, prostitution likewise involves only a fraction of women.

Highlighting existential vulnerability and the lack of appropriate services as drivers of prostitution, it is also important to note that a significant proportion of women, even in cases of extreme hardship, such as when their survival or the well-being of their children is at stake, refuse to engage in this form of “trade in services.”

On the other hand, modern societal trends provide evidence that prostitution persists even in countries that make maximum efforts to achieve gender equality and nondiscriminatory social assistance. Furthermore, the emergence of new terms, such as “elite prostitution,” tied to high living standards, social status, and media recognition, calls into question the hypothesis of patriarchal oppression.<sup>5</sup>

The previously mentioned gender non-exclusivity of prostitution, or the inclusion of men in these perspectives, though undeniable, unfortunately

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<sup>1</sup> Antoliš, L. M., Mihajlović, P., & Štrk, D. (2013). Prostitucija u hrvatskome prekršajnom i kaznenom pravu. *Policija i sigurnost*, 22 (2), 284–296.

<sup>2</sup> Torlak, N. (2011). Medijska slika žene u Srbiji. *CM Communication and Media*, 6 (19), 39–52.

<sup>3</sup> Timotijević, M. (2008). Prostitucija na feminističkoj političkoj agendi. In: *Neko je rekao feminizam? Kako je feminizam uticao na Žene XXI veka?*, 206–223. Sarajevo: Open Center.

<sup>4</sup> Kapparis, K. (2017). *Prostitution in the ancient Greek world*. Walter de Gruyter GmbH & Co KG.

<sup>5</sup> Mihaljevic, P., & Kalac, A.M.G. (2023). Some Phenomenological Aspects of Prostitution in Croatia. *Criminal Justice Issues*, 45–70.

introduces a highly complex level of debate that is often best avoided. For instance, biologically male individuals categorized as transvestites have gained media attention in Serbia, openly describing, promoting, and advertising their “business” activities. However, considering contemporary debates about gender, sexual identity, and sex, delving deeper into such topics risks entering a confusing and highly contentious realm that may hinder rather than clarify the issue.

In addition to historical sources pointing to categories of homosexuals available to wealthy, influential men and deriving certain social or material benefits from such arrangements, drawing parallels to modern Serbia is also undesirable. It is particularly challenging to discuss the scope or frequency of homosexuality, including bisexuality and different experimental practices. Moreover, positing the existence of a “homosexual circle” where socially influential men offer benefits to accessible young men of homosexual orientation raises issues of discrimination, homophobia, stigmatization, and even violence.

Returning to earlier observations emphasizing the inherent nature of prostitution suggests the impossibility of eradication, the ineffectiveness of prohibition, and the need for acceptance and potential protective regulation. This is especially crucial in the context of recent debates on whether prostitution should be legalized or more broadly prohibited. Whether sanctioning prostitution further endangers the rights of sex workers or whether, following the example of some European countries, this field should be legally regulated poses additional demands for clarification.

The essence of the previously outlined discussion focuses on attempting a closer conceptual and phenomenological definition of prostitution. This becomes particularly significant in the context of the term “the oldest profession,” where it is presented as an occupation.

Thus, various extreme forms of relationships involving women or men who appear sexually accessible in exchange for material compensation from so-called consumers may, in fact, only resemble prostitution.<sup>6</sup> In reality, such situations often involve serious criminal offenses such as human trafficking, sexual coercion, or the exploitation of vulnerable individuals, including children.<sup>7</sup> These distinctions are, therefore, of fundamental importance.

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<sup>6</sup> Tošić, D. (2018). Trgovina ženama kao jedan od oblika nasilja nad ženama. *Glasnik of the Bar Association of Vojvodina*, 90 (3–4), 170–182.

<sup>7</sup> Anđelković, M. (2003). Prostitution and (il)legal migration as possible hidden forms of trafficking in human beings: The analyses of the practice of the Magistrate Court in Belgrade. Available at <https://doiserbia.nb.rs/img/doi/1450-6637/2003/1450-66370304047A.pdf>. Accessed on May 22, 2024.

Given the above, the following text will focus on conceptual-phenomenological differentiation and clarification of the gender-social determinants of the phenomenon in question. Finally, presenting a moral and value-based critique of certain legal solutions in effect in EU countries, proposals *de lege ferenda* will be formulated for potential implementation in the Republic of Serbia. The ongoing amendments to the Criminal Code provide an opportune moment to consider the issues addressed in this paper, aiming to establish a comprehensive system of protection and support for individuals often caught in the vicious cycle of prostitution. Without societal assistance at all levels, finding the much-needed solution becomes difficult. Prostitution, as a behavior that strips away dignity, identity, and increases exposure to violence, is not a phenomenon to be ignored but rather one that demands a responsible and systemic approach.

## THE CONCEPT OF PROSTITUTION

The term “prostitution” originates from the Latin words *prostitutio* or *prostituere*, which mean to fornicate, to be at service, or to sell one’s body. Although identified as a constant throughout millennia of societal development, this phenomenon is often misrepresented in criminological sources.

Referring to historical perspectives, examples from ancient civilizations frequently show prostitution as a temple-based, institutionalized practice. In ancient Greece, diktariades served as slaves and were made sexually available in exchange for money, which was used to fund the construction and maintenance of temples. Similarly, during the Roman Empire, the number of prostitutes was estimated in the tens of thousands, divided into distinct social strata.<sup>8</sup>

Certain phenomenological and epidemiological explanations also suggest that prostitution is linked to societal events. Social turbulence, wars, societal anomie, and economic decline are associated with an increase in those engaged in prostitution.<sup>9</sup>

However, attempts to phenomenologically portray and conceptually define prostitution often result in ambiguity. In the first example, it is crucial to emphasize that temple prostitution involved a form of slavery, where women

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<sup>8</sup> Kovačević, D. (2017). *Kriminološki i istorijsko-pravni aspekti prostitucije*. Doctoral dissertation. University Business Academy in Novi Sad.

<sup>9</sup> Adžajlić-Dedović, A. (2003). Organized Crime-Prostitution in Bosnia and Herzegovina. *Criminal Justice Issues*, (3–4), 283–293.

were forced or sexually exploited. The sale of one's body and sexual relations as a matter of free choice were excluded, framed instead as existential alternatives.

The second scenario, involving societal deterioration, whether in the context of war or economic collapse, might superficially resemble prostitution but aligns more with coercion (a criminal offense). The absence of choice, lack of adequate support services, and real or potential threats to physical existence, often involving force and coercion, constitute a form of exploitation by those with access to resources and physical power.

For instance, consider a wartime scenario where a mother sees sexual exploitation (even by enemy soldiers) as the only means to feed her children. Society's response to such a phenomenon would not fall under the analysis of moral, misdemeanor, or criminal issues (from the perspective of prostitution) but rather humanitarian law. Prohibition or regulation of prostitution in such circumstances becomes irrelevant and is often beyond the reach of weakened or misdirected societal institutions.

Returning to earlier observations on gender-biased and phenomenologically imprecise definitions of prostitution, various definitions are found in the literature, some dating back to Roman law. For instance, prostitution has been described as “*a woman engaging in sexual relations with a partner without emotional connection—passion (sexual promiscuity) and the commercial sale of the body to satisfy the partner's sexual desire.*”

It is further noted that prostitution involves “*engaging in unlawful sexual relations by a female on a commercial basis, i.e., selling her body during random or occasional encounters with a partner, characterized by a sense of indifference.*”

According to Bošković's review, prostitution is also understood as “*using a woman's body as a commodity bought, sold, or exchanged, not always for money, including occasional prostitution, street prostitution, socially and culturally sanctioned prostitution, brothels, military prostitution, organized prostitution, pornography, sex tourism, and mail-order bride markets.*”<sup>10</sup>

In summary, the precise definition of prostitution can only occur when it explicitly correlates with the existence of free choice. Only when a woman or man freely and independently decides to engage in such a form of “trade” can we speak of the authentic concept of prostitution and the need to design an adequate societal response.

All other cases, where freedom of choice is excluded or objectively minimized, require societal reactions based on criminal law norms, which serve

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<sup>10</sup> Bošković, M. (2002). *Socijalna patologija*. Novi Sad: Faculty of Law, University of Novi Sad, 279–280.

as an *ultima ratio*. Consequently, these cases demand a different etiological analysis and conceptual definition.

While freedom of choice is a *sine qua non* criterion for prostitution, the complexity of sexual life, motives, and relationships demands further clarification. While it is relatively straightforward to recognize the phenomenon of prostitution in the absence of coercion and exploitation by pimps in cases where women or men indiscriminately engage with numerous sexual partners in direct exchange for money, other scenarios must also be considered.

For instance, various socio-pathological and criminologically oriented authors highlight the existence of prostitutes whose sexual activities are primarily driven by material interests but with significant selectivity in choosing partners. Colloquially termed “gold diggers,” women who make such choices target particularly successful and wealthy men, from whom they receive material and status benefits. Terms like *Sugar Daddy* or *Sugar Mommy* refer to men and women of higher financial status who allocate substantial, often significant, monetary resources to maintain a form of monogamous or polygamous relationship with an attractive partner of the same or opposite sex, who appears sexually available.<sup>11</sup>

This phenomenon frequently gains media attention, particularly in cases where age, vitality, or socially recognized aesthetic criteria are significantly different. Identifying material rather than emotional or sexual attraction motives for entering such relationships is often a subject of moral condemnation.

From a psychological and moral perspective, this framework is not far removed from the classical understanding of prostitution. This is especially evident in cases where women (or men) engage in multiple or short-term relationships motivated by material and status-related interests.

While the phenomenon could be debated from moral and value perspectives, in a strictly legal context, it poses significant challenges for regulation or prohibition. Issues of sexual freedom in choosing partners cannot be discriminated against based on “publicly obvious” motives or aesthetic discrepancies. Ultimately, the key distinction here lies in differentiating between public and private domains. Classical prostitution is openly promoted as a public activity, whereas the phenomenon under discussion carries the legally relevant guise of private life and choice.

Criteria distinguishing public from private life, within legal frameworks, are not always guided by a unified logic. The adaptation of legal logic, primarily driven by material interests, not only creates confusion in legal terms but also raises questions about moral and value perspectives.

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<sup>11</sup> Rakić, V. (2020). Prostitutes, sex surrogates and sugar babies. *Sexuality & Culture*, 24(5), 1207–1217.

For instance, in various U.S. states, such as California, classical prostitution is legally prohibited and punishable.<sup>12</sup> If we define the phenomenon as sexual relations with multiple partners in exchange for material or financial compensation, it is deemed punishable. However, if such relations involve multiple partners, possibly simultaneously and even dozens of them, recorded or photographed under prior contractual obligations for compensation, this is recognized as pornography, a legitimate business activity.<sup>13</sup>

One explanation for why pornography, which aligns with the psychological and sociopathological traits of prostitution, carries a different legal status lies in the fact that pornography is a public activity, whereas classical prostitution is private.

A detailed discussion of the significance and quality of the public *versus* private distinction, in this context, seems unnecessary. The shifting perceptions and interpretations may better be understood by considering the estimated annual revenue of the “adult industry,” measured globally in billions of dollars.<sup>14</sup>

The constant and growing demand for pornographic content motivates legislators to justify flexible and ambiguous legal frameworks (or their absence), primarily defending the phenomenon with material motives in mind.

The context of pornography in the Republic of Serbia is not without significance. In earlier times, Serbian pornography production had marginal reach, often symbolizing societal marginalization and moral degradation. However, new social standards have drastically increased this activity. This particularly applies to the promotion and distribution of pornographic content on social networks and specialized platforms like OnlyFans. These are often interactive models where “content creators” communicate with “customers,” offering customized pornographic content. Some even offer their “loyal followers” the opportunity to engage in sexual relations with the creator or participate in pornographic performances to be further distributed.

This is an extremely lucrative market. For example, the OnlyFans platform alone reported an annual revenue of \$5.5 billion in 2022. Simultaneously, certain content creators earned millions in U.S. dollars, making this “industry” particularly appealing to young men and women. Within such a lucrative

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<sup>12</sup> Rio, L.M. (1991). Psychological and sociological research and the decriminalization or legalization of prostitution. *Archives of Sexual Behavior*, 20, 205–218.

<sup>13</sup> Tyler, M. (2015). Harms of production: Theorizing pornography as a form of prostitution. In *Women's Studies International Forum* (Vol. 48, 114–123). Pergamon.

<sup>14</sup> Downloaded from <https://www.lifeplan.org/the-porn-pandemic/> Accessed on May 22, 2024.

context, moral and value judgments not only seem ignored but entirely marginalized and irrelevant.<sup>15</sup>

The field of sexual life and the commercialization of sexuality also has other questionable reflections. In recent years, Serbia has witnessed scandals involving state officials, consciously or unconsciously engaging in practices of abuse within the context of establishing or maintaining employment relationships. Coercing women into sexual availability tied to their employment status is undoubtedly punishable behavior that warrants both legal and broader societal condemnation.

However, in efforts to protect women and prevent victimization, attention must also be given to less popular or reluctantly discussed topics. For instance, despite the undeniable responsibility of (mostly) men who have committed or allegedly committed such abuses, it raises the question of whether women (or men) who agreed to such trade fall under the definition of prostitution.

Although unpopular from a victimological standpoint, the answer seems affirmative. The argument must align with earlier observations about the criteria of free will and the absence of existential endangerment. Here, existential endangerment does not imply a poor standard of living or desires for its improvement but rather real, unavoidable life-threatening conditions and the absence of all other assistance services or alternatives. Only the existence of other means of subsistence, including unpopular jobs, social welfare, soup kitchens, etc., relegates sexual trade to the realm of moral dilemmas, prostitution, and illegality.

Based on the above, prostitution can be defined as a gender-neutral sexual activity driven by lucrative motives, where such a form of trade represents a free, rather than a coerced choice of the individual under conditions of severe existential endangerment. This definition must also include pornographic production activities, regardless of whether they are legally regulated.

## **SOCIETAL RESPONSE AND PROSTITUTION**

The question of legal responses to prostitution necessitates not only adherence to the previously outlined phenomenological differentiation and conceptual explanation but also demands a clear definition of the primary and secondary objectives of the legislator.

In past decades, the protection of morality, or the proclaimed and accepted societal values, was an integral part of state intervention. The current

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<sup>15</sup> Downloaded from <https://www.upmarket.co/blog/onlyfans-official-revenue-profit-user-data-and-other-financials-updated-september-2023/> Accessed on May 22, 2024.

Criminal Code, in certain provisions, still emphasizes the need to “strengthen morality” (Article 42, paragraph 3).<sup>16</sup> However, decades of global societal changes, alongside numerous political implications, have radically relativized moral standards. Insistence on morality as a societal category now appears akin to interpretations of regressiveness, malicious and aggressive patriarchy, discrimination, or religious restrictions. On the other hand, efforts to restore the family and the universal values it embodies to their rightful place in society are evident.

Drawing from the experiences of other European countries, such as Germany, prostitution has found comprehensive legal regulation, pragmatically reduced to a business activity with associated rights and (tax) obligations for those involved. While this level of regulation has brought certain improvements in the status of men and women engaged in prostitution, it is worth noting that the German Chancellor, in 2024, publicly criticized the justification for prostitution, rejecting its normalization.<sup>17</sup>

Although tax-favorable models currently dominate in the aforementioned country, some additional phenomena present symbolically confusing perspectives. For example, in Stuttgart, in the very heart of the city, a unique architectural and urban ensemble includes a Christian church (*Leonhardskirche*), the Gustav Siegle House (used as a Philharmonic department for artistic and cultural representation and education), and just a few meters away, the start of a district with dozens of brothels, nightclubs, and strip bars, where women and men openly present and advertise prostitution.

While, from the perspective of German law, these three domains of life represent expressions of personal choice and freedom, it is certainly questionable whether they can be discussed on equal terms. This raises further questions about whether, in some future moral or amoral values of Serbian society, it is conceivable (still hypothetically) to expect a “magnificent building” of a luxury brothel to rise in Vračar, between the Temple of Saint Sava and the Faculty of Medicine. Judging by the German example, the legalization of prostitution, viewed indiscriminately by the law, could make Belgrade gain another “tourist attraction” as significant as a Christian temple.

The topic of legal protection of morality is, of course, very complex, as it raises the issue of the extent of the state’s right to intervene in freedom of choice and behavior, as well as the risk of intrusive regulation of relationships, which could ultimately lead to legal abuse.

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<sup>16</sup> Criminal Code. *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

<sup>17</sup> Downloaded from <https://www.dw.com/en/germanys-olaf-scholz-sex-work-is-not-acceptable/a-67409429> Accessed on May 22, 2024.

In this context, a legal approach to the issue of prostitution requires particular sensitivity, simultaneously achieving protection on social and health levels, as well as the moral-educational correction needed for specific or general societal prevention.

Respecting the specificities of prostitution, the legal response to this phenomenon cannot follow a simple dialectical perspective of whether to punish or not. Only through understanding all the particularities of each case can a sensitive, appropriate, and effective societal response be created. The necessity of a stratified range of responses, alongside greater engagement from judicial and social institutions, will provide an additional ability to differentiate victimization from moral degradation and the erosion of societal values.

One possible model envisions a scenario in which, in cases of the first arrest for prostitution-related activities, a Social Work Center is engaged. This institution would document the case and, based on identified needs, offer and provide a range of services to assist in leading a lawful and morally acceptable life.

This practically means that prostitution would not be punishable a priori. Instead, the state, through models of social intervention and assistance, would bring existing services closer and offer additional, more specialized forms of legal, psychological, economic, professional, or health assistance. For example, given that some individuals engaged in prostitution are addicts who view it as the easiest or quickest way to procure funds for purchasing drugs, a program similar to security measures for addiction treatment could find a place within a broader program.

This model of response would be conditionally binding. In cases where the practice of prostitution is identified, the involved individual could refuse the offered assistance. In such cases, an appropriate report would be submitted to the competent prosecutor's office, which would, in the envisioned future legal solution, propose the issuance of a warning (or sanction) for, for example, violating public order, along with a warning of stricter punishment for repeated offenses. Although not currently feasible, this has been recognized as a potential solution to this phenomenon.

This measure already exists in the context of criminal protection of minors and functions as an educational corrective measure. Considering the often poor socio-economic status of those involved in (street-level) prostitution, as well as the stigmatizing effects of imprisonment, a judicial warning as an initial measure appears to be a reasonable and proportionate way to emphasize the obligation to respect moral values.

Further legal elaboration on societal responses includes cases where individuals accept participation in the Social Work Center's treatment program but, despite participation, repeat the same actions. Serbian legislation already

provides similar models for other areas of life, making this idea in the context of prostitution worth discussing.

Such a situation is not unexpected. Multidisciplinary research on the life-course perspectives of women engaged in (street-level) prostitution identifies numerous life problems. Traumatic experiences of prostitutes, including those in childhood and intimate relationships, question their actual freedom of choice and raise issues of compromised psychological capacities. Educational neglect, psychological, physical, and sexual abuse, as well as issues like alcoholism and drug addiction, are associated with various psychological and psychiatric problems, which can lead to recidivism despite social intervention.

In this sense, it is conceivable to envision a legal framework where Social Work Centers have the authority to review cases in situations of repeated engagement in prostitution despite treatment program participation. This would involve identifying acute problems, adapting treatment programs, or, in cases of severe or repeated violations of agreed criteria and behavioral expectations, the right to file an appropriate report with the competent prosecutor's office.

### SANCTIONING PROSTITUTION

If comprehensive assistance services and effective models at Social Work Centers are established and operational as the initial step in societal response, the question arises about the further legal elaboration of sanctioning prostitution. This pertains to situations where freedom of choice and decision-making is not significantly compromised, or cases where rejection or non-compliance with the assistance and treatment program plan has been established. In this regard, it could be argued that prostitution represents a violation of morality and universally accepted societal values, thereby justifying its sanctioning.

The earlier mention of registering prostitutes by Social Work Centers and issuing judicial warnings for the first offense appears doubly acceptable. The first aspect of registration does not imply stigmatization or discrimination but primarily identifies an individual in social need to whom comprehensive assistance should be provided.

When it comes to a judicial warning as the initial form of societal sanctioning, this represents a minimal societal reaction with primarily educational character. It serves, among other things, to inform individuals involved in prostitution about the dangers and risks of such incriminating behavior. Thus, financial or imprisonment penalties are avoided, and the state cannot be accused of infringing on rights and freedoms, given the previously existing and offered model of assistance and support.

Assuming repeated instances of prostitution, with reports filed by the Social Work Center, one must consider the current solution in the Republic of Serbia, where prostitution is sanctioned as a misdemeanor under the Law on Public Order and Peace.<sup>18</sup> This law specifies that anyone engaged in prostitution, uses the services of prostitution, or provides premises for prostitution shall be fined between 50,000 and 150,000 dinars or sentenced to imprisonment for 30 to 60 days (Article 16, paragraph 1).

This misdemeanor framework for societal response indicates a milder form of legislative intervention. This is logical because, although prostitution compromises significant societal values, it cannot be equated with the degree of danger posed by criminal offenses. Thus, apart from presumed general societal impacts on morality, prostitution should ultimately be understood as an activity that carries pronounced risks primarily for the individual engaging in it.

Assuming legislative amendments, the aforementioned level of current misdemeanor sanctioning, within the previously described sequence of socio-legal activities, appears logical and proportional. Consequently, repeated engagement in prostitution by individuals who reject offered assistance or ignore judicial warnings ultimately necessitates sanctioning, either through fines or short-term imprisonment.

Revisiting the analysis of current solutions in the Republic of Serbia, the overall observed legal framework suffers additional criticism. Namely, the combined legal provision equates engagement in prostitution with the use of its services, despite the substantial difference between the two.

In this context, it is crucial to remember that the earlier remarks on the phenomenological semblance of prostitution cannot be considered a societal or individual unknown. Engagement in prostitution due to vulnerability, dependency, or coercion must, therefore, be a presumption in the awareness and intent of the service user, even in cases of “high-profile” prostitution.

Further assuming that a “consumer” with excess money is highly likely to exploit the psychological/psychiatric, social, or direct victimological characteristics of the prostitute/victim and is aware of this, the equal treatment of engagement and consumption categories becomes unjustifiable. The use of services, or support for prostitution, for personal sexual gratification should constitute a more severe form of societal value violation.

Referring to the Criminal Code, particularly Article 184, which pertains to inducing or encouraging another to engage in prostitution, a similar approach could be applied to men or women who engage in prostitution, equating it to incitement. Consequently, it is not difficult to imagine a special legal

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<sup>18</sup> Law on Public Order and Peace. *Official Gazette of the Republic of Serbia*, No. 6/2016 and 24/2018.

amendment where such exploitative behavior, by default, receives a criminal legal response proportional to the threat to societal values.

A similar level of critique applies to Article 16, paragraph 2, of the Law on Public Order and Peace, which stipulates that anyone providing premises for prostitution involving a minor shall be imprisoned for 30–60 days. This legal framework seems insufficiently sensitive to the nature of the offense. For instance, when an adult, legally or factually in control of a property, knowingly allows a minor to engage in morally degrading and health-risking behavior on the premises, they are complicit in exploitation.

The provision of premises to minors for prostitution often hides a difficult-to-prove lucrative interest or forms part of a broader social pathology, such as substance abuse.<sup>19</sup> In this context, the provision of premises for prostitution involving minors must fall under criminal, not misdemeanor, law with significantly stricter penalties.

One potential innovation in legal action concerning socio-health assistance and the sanctioning of prostitution should also address the health aspects of the behavior. Scientific conclusions on the risks of sexually transmitted diseases (STDs) and their higher prevalence among individuals engaged in prostitution necessitate intervention in this area.

Referring to comparative legal solutions, Germany's *Prostituiertenschutzgesetz* (Prostitution Protection Act) mandates annual health consultations on topics such as STDs and prevention.<sup>20</sup> However, the law leaves health testing optional, where refusal is a personal right.

If we accept the earlier thesis on the socio-psychological vulnerability of individuals engaged in prostitution, then health intervention must form part of the presumed future assistance in the Republic of Serbia.<sup>21</sup> In this regard, it is conceivable for Social Work Centers, after identifying individuals involved in prostitution through police intervention, to discreetly offer counseling and testing for sexually transmitted diseases (HIV, hepatitis, syphilis, etc.).<sup>22</sup>

The only meaningful distinction in this context, for instance in Germany, appears to be the relative obligatory nature of the process. Namely, modern tests for HIV, hepatitis, and syphilis today offer very quick and convenient options. These minimally invasive tests can yield highly reliable results on the

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<sup>19</sup> Đukanovic, B. (2007). Prostitution as a Social Pathology. *Criminal Justice Issues*, (1–2), 139–149.

<sup>20</sup> Downloaded from <https://www.gesetze-im-internet.de/prostschg/BJNR237210016.html> Accessed on May, 22, 2024.

<sup>21</sup> Leite, G.S., Murray, L., & Lenz, F. (2015). The Peer and Non-peer: the potential of risk management for HIV prevention in contexts of prostitution. *Revista brasileira de epidemiologia*, 18, 7–25.

<sup>22</sup> Such programs are already available for free in the Republic of Serbia, with respect of the right to discretion.

subject's serological status from just a drop of blood from a finger or saliva. Thus, physical discomfort is minimized.<sup>23</sup>

If the earlier thesis is accepted that (true) prostitution involves freedom of choice and decision-making, there is no reason why testing for these diseases should not be part of a relatively obligatory treatment program within the framework of Social Welfare Services (SWS). This practically means that an individual involved in prostitution could refuse testing but would then face legal consequences, such as a judicial warning or misdemeanor prosecution for violating public order and morality.

Imposing a conditional obligation for testing does not significantly deviate from the existing criminal provision contained in Article 250 of the Criminal Code, which prescribes imprisonment for individuals who knowingly expose others to the risk of HIV infection. Although the subject criminal offense carries a slightly different interpretation, the risk of sexual transmission of infectious diseases justifies a more restrictive state policy, primarily aimed at reducing the occurrence of such phenomena.

Beyond classically defined prostitution, a more complex issue pertains to the possibility, necessity, and justification of sanctioning lucrative pornography, including that promoted on popular internet platforms. This is not merely a theoretical dilemma but a very practical one. Supporting this is the fact that minors are highly active on social networks where such content is promoted. The attractiveness and manipulative nature of pornography creators target indiscriminately, without specific protections for the youngest audiences. Additionally, in some countries, criminal proceedings have been initiated against pornographic platforms requiring stricter protection of minors.<sup>24</sup>

Considering the earlier terminological remarks that lucrative pornography, assuming freedom of choice, fully corresponds to the concept of prostitution, there is no reason why it should not be treated under the same legal sanctioning framework.

It is important to note that the current Law on Public Order and Peace, Article 3, paragraph 15, defines prostitution as the provision of sexual services for money or other compensation. The concept of sexual services is not described as physical contact or sexual intercourse, whether oral, vaginal, or anal. In this sense, any sexual activity with a lucrative motive constitutes a violation of the law. Charging fees for memberships, selling photos and videos,

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<sup>23</sup> Rogulj, A.A., Hodak, I.B., & Mravak-Stipetić, M. (2011). Slina – dijagnostički medij za rano otkrivanje bolesti. *Medix*, XVII, no. 96, 218–221.

<sup>24</sup> Downloaded from <https://www.glas-javnosti.rs/vesti/svet/onlyfans-pod-istragom-zbog-pristupa-dece-pornografiji-kazna-za-popularnu-platformu-veca-od-18-miliona-funti>. Accessed on May 22, 2024.

video calls, and similar sexually explicit activities differ from classical prostitution only in the medium of expression.

It is emphasized that expanding the scope of the law in this manner does not intrude on the domain of sexual freedoms. All sexual behaviors that are part of private, intimate relationships and lack public promotion and a lucrative character remain an undisputed part of human rights and freedoms. However, a clear distinction must be made between sexual freedom and publicly promoted prostitution, with an appropriate societal response.

Unfortunately, it is difficult to expect that any new legal amendments would truly achieve this level of comprehensiveness. Ultimately, this would call into question the right to consume (lucrative) pornography, or its criminalization. Namely, adhering to the view that lucrative pornography is effectively prostitution, it would have to be argued that consuming pornography is equivalent to physically accessing a person engaged in prostitution.

Such a position is not legally indefensible, given the sustainability of the thesis regarding indirect victimization in the context of child pornography. However, considering the complexity of internet control, the scale of pornography access, and the volume of the market capital measured in billions of dollars annually, the idea of equivalent regulation in this area seems utopian.

## CONCLUSION

The issue of sexual rights and freedoms, as well as morality, represents a turbulent domain that has undergone significant changes in recent decades. The conflict between the moral and the legal/illegal has often rested on the divide between religious, civil, or traditional perspectives.

While the stance advocating for minimal state involvement in social relations can be accepted, cases of rights violations, discrimination, and stigmatization undoubtedly create the space and need for a certain level of legally regulated societal reaction.

Prostitution, as a complex phenomenon with frequent criminological and victimological dimensions, represents a striking example where state intervention achieves protective action on multiple levels. This applies both to direct victims of classical forms of crime and to the societal values and morality mentioned earlier.

Summarizing the elaborated *de lege ferenda* proposals, a hypothetically stratified legal response, with stricter sanctions targeting consumers, would shift the focus of restrictive societal reactions, thereby avoiding the problems

of double victimization and additional stigmatization of individuals involved in prostitution.

Furthermore, recognizing the victimological risks faced by individuals engaged in prostitution necessitates a legally regulated framework ensuring relatively obligatory protective measures, including effective provision of socio-psychological or health services to those involved in prostitution, with the goal of deterring such behavior.

Only when both categories are exhausted, when the state has done everything to deter individuals and when prostitution is solely an expression of free will without any form of coercion, do we reach the point where the state must impose stricter moral standards, the violation of which would be subject to sanction.

Issuing a judicial warning as a secondary reaction would represent a highly sensitive model that, despite the state's tolerance and efforts to provide assistance, seeks to empower and redirect those who enter prostitution freely and voluntarily despite the assistance offered.

Ultimately, repeated acts of prostitution, which ignore the entire social arrangement and judicial interventions, could be subject to conventional misdemeanor penalties. This final stage of repeated moral degradation and incorrigibility is necessary not only for the practical suppression of prostitution but also for sending a clear societal message regarding proclaimed values.

Efforts to combat prostitution also contribute to the fight against the growing commodification and commercialization of sexuality at a general level. This dangerous, expansive phenomenon must not be viewed solely in the context of moral degradation but also as directly promoting unacceptable forms of intergender relations, which are connected to other forms of violence. Violent hypersexualization and the exposure of children to such content and culture carry an unequivocally deteriorative perspective that must be prevented.

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