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Interdisciplinary View on State Regulation of Prostitution: Issues of Legal Liability and Liberalization*

Visión Interdisciplinaria Sobre la Regulación Legal de la Prostitución: Cuestiones de Responsabilidad Legal y Liberalización

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Abstract

Objective: To determine the current issues and prospects of legal liability for prostitution and the role of public administrations in its regulation. **Methodology:** By using the dialectical method, the current issues of prostitution conceptual understanding, types of legal liability for it in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea, and Ukraine were analyzed. **Results:** A modern prostitution policy in the countries under consideration requires its official liberalization. The role of public administrations should be constructively changed to provide socially needed programs for systematic health screening and protection of prostitutes, positive ideological and cultural influence on their consciousness, and practical implementation of the legal conceptual framework for their integration in social inclusion. **Conclusions:** The constructive character of the prostitution policy essence should remove the stigmatization of sex-workers and their activity to provide common social respect to any human as the highest value and potentially constructive element of the present and future.


Keywords: Administrative liability, decriminalization of prostitution, legalization of prostitution, prostitution, public administration.

*A modern prostitution policy research in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea and Ukraine substantiates its official liberalization.


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Resumen

Objetivo: Determinar la problemática actual y las perspectivas de la responsabilidad legal de la prostitución así como el papel de las administraciones públicas en su regulación. **Metodología:** Mediante el método dialéctico, se analizaron aspectos actuales sobre la comprensión conceptual de los tipos de responsabilidad legal de la prostitución en Malasia, Indonesia, Singapur, Filipinas, Tailandia, Brunei Darussalam, Nueva Guinea Occidental y Ucrania. **Resultados:** Una política moderna sobre la prostitución en los países analizados requiere su liberalización oficial. El papel de las administraciones públicas debe cambiar de forma constructiva para ofrecer programas socialmente necesarios para la detección sistemática de la salud y la protección de las prostitutas, una influencia ideológica y cultural positiva en su conciencia, y la aplicación práctica del marco conceptual legal para su integración en la inclusión social. **Conclusiones:** El carácter constructivo de la esencia política de la prostitución debería eliminar la estigmatización de las trabajadoras sexuales y de su actividad para proporcionar un respeto social común a cualquier ser humano como valor supremo y elemento potencialmente constructivo del presente y del futuro.

Palabras clave: Responsabilidad administrativa, despenalización de la prostitución, legalización de la prostitución, prostitución, administración pública.

Introduction

In times of the world's global changes and social transformations that are widely supported by informational improvement, there are well-known phenomena originated historically and culturally with their further development under modern conditions. Today's rather high technically developed social reality requires new possibilities and is capable to give its strong response to complicated challenges for its own progress and well-being. At the same time, the mentioned change in the society and informational skills not always generates its positive internal evolution on the level of moral values to grow highly developed personalities as new qualified members of the society.

In the modern era, technology in general influence on society, maintaining its stable position, and society also affects both science and technology. The rapid development of science and technology and increased societal complexities also confirm the importance of moral, values and ethics and their benefits to society (Chowdhury, 2016).

Modern development of society, technology and science determines not only the need for human rights, but also becomes the basis for the emergence of new rights that are directly related to the progressive development of mankind (Titko et al., 2020, p. 50).

The technical, economic and political improvement of nowadays societies that are commonly called civil from a juridical point of view, unfortunately, cannot be called as those that are developed inside in own cultural and moral level. There is a tendency that evolves rather rapidly according to which the economic progress directly or indirectly in one or another form supports and generates moral regress in societies even if they are religious or so-called modern in their atheistic positions within the concept of human rights respect. One of such a phenomenon, which despite its economic profit is still strong in its destructive effect both on a separate involved person and a whole society, is represented by prostitution.

Any analysis of prostitution should take into account the social, cultural and economic circumstances specific to a country (Mensendiek, 1997, p. 163). Thus, it is quite important to investigate the state's legislation that regulates prostitution in order to understand the current issues and predict possible legal direction and perspectives to reduce and remove them from a state. The neo-liberal agenda divides control by offering social inclusion to those who responsibly exit and "resume" normal lifestyle and continue to exclude those who remain involved in street sex work, and who are established and reproduced in law as anti-social (Scoular and O'Neill, 2007, p. 765). The proliferation of localised models of governance within countries may not reflect the overarching laws to govern prostitution through criminalisation, and that with continued partnerships between sex workers, allies and practitioners (including researchers), policy and policing can work in the interest and safety of sex workers rather than against them (Sanders and Campbell, 2014, p. 544).

Taking into account a deviational character of this phenomenon that allows one to classify it as an offence, research on legal liability for it is needed. At the same time, understanding the prevailing position of a state in the so-called "prostitution policy" in every country, in this concern, the role of public administrations should be analyzed and determined. Therefore, current issues and perspectives of legal liability for prostitution and the role of public administrations in regulations are quite important and relevant aim of the article. Therefore, the following tasks should be completed: 1) to determine a conceptual framework and current problematic aspects in the common understanding of the prostitution and legal liability for this activity in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea and Ukraine; 2) to analyze the current issue of the role public administrations in the mentioned states in providing their prostitution policy to find out the direction of its constructive change for the protection of human rights of the involved people; 3) to conduct research and represent the perspectives of sex-service regulation according to modern social needs and requirement to remove the stigmatization of prostitutes and provide a juridical framework for their advancing social inclusion. The mentioned tasks are to investigate a subject of the paper that is current issues and prospects of legal liability and the role of public administrations in legal regulation of prostitution.

Legal regulation of prostitution: current state and issues

Theoretical investigation of prostitution practice paying attention to its different reasons, conditions and consequences is always needed in the reality, where that activity does not have the same influence on its participants due to the different understanding of its legal nature. It is considered that solving of practical issues of this phenomenon is directly connected not just with the presence of legal mechanisms of its juridical regulation in one or another country, but with the common and unified conceptual understanding of its nature from the legal point of view.

Regardless of the contrasting body of works between macro and micro level theories, theoretical advancements play an important role in understanding sexual exploitation and sex work among females as well as the policies, services, and interventions available to them in present day (Gerassi, 2015).

The totally opposite attitude to even, for example, the legalization of prostitution in secular and religious countries is clearly understood. At the same time, it should be noted that despite positive or negative social-cultural attitude to this issue, prostitution excises being officially accepted or not in the states of both approaches. In fact, current secular and religious countries include prostitution in their reality. At the same time, it is not always included to their juridical part that is legally supported reality. Apart from negative cultural and religious points of view in relation to prostitution existence and legalization, it should be mentioned that law in a secular country makes a cultural function too. Jurisprudence is more additional instrument of the social activity for believers because their legal behavior is mostly formed on the base of their religious, moral principles and norms that do not contradict with the official law. Thus, it is possible to say that for the people with atheistic views legal rules in some way replace the mentioned above. That is why, if a state does not have its own response to excised phenomena in present reality in a form of one or another legal regulation mechanism, a binary attitude to such complicated issues as prostitution will be always present in this society. At the same time, on the level of a separate secular country or a group of counties united by one or another common attribute, the answer on such questions should be given on the level of a secular state power to provide human rights standard for the whole society regardless of whether all its members support it or not.

In such countries, a theoretical understanding of prostitution originates from its conceptual determination in official regulatory documents. For example, according to the Thai Prevention and Suppression of Prostitution Act B.E. No. 2539 of 1996, prostitution means sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not (Thai Prevention and Suppression of Prostitution Act, 1996). It is possible to find the similar definition in (Philippines, 2003, section 3). In this country the men-

tioned concept refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

Conceptual understanding of prostitution is connected with so-called “intimate service for money benefit or other things/activity”. Being clear in its social vision, this phenomenon remains to be not always and not in every country legally defined. At the same time, the importance of this is directly connected with the classification of legal liability for prostitution that in its negative perception can be understood as a crime or an administrative misconduct defining criminal or just administrative limitations and consequences for subjects of the mentioned offence.

Current issues and nature of legal liability for prostitution

In terms of the retrospective type of legal liability, jurisprudence understands it as a duty to be responsible for a subject’s act that contradicts to the law. Within the negative type or legal liability, it is possible to distinguish several subtypes such as criminal, administrative, civil, constitutional, etc. The main common attributive feature for them is negative consequences that a subject of an offence gets, limits and forms of which depend on the field of law to which the offence contradicts to. At the same time, due to the different historical, socio-cultural and economic-political conditions that originated relations to be regulated by various social regulators, among which law is represented as a system of formally fixed rules, the same relations can be regulated by not the same branches of law in different countries. One has no intention to analyze the reasons for this phenomenon, and attention is paid to the fact that it defines not just a type of an offence in such a case to be determined as a crime or a misconduct but a type of legal liability for it as well. In such a case, being understood by society as administrative misconduct, prostitution is considered to be an offence that generates no danger, but just some harm for this society. Vice versa, if a society has the vision of this phenomenon as a crime, so in such a society prostitution nature is dangerous with all of the predictable essence of similar offences that destroy the whole community and every person involved. Thus, negative consequences for its subjects cannot be the same in states that use different legal systems.

Due to the mentioned issue, the nature of legal liability for such an action as prostitution can also be different. It is possible to make such a conclusion if the legislation concerning the research topic is compared among Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea and Ukraine. On the basis of the comparison, it is possible to distinguish several approaches to understand prostitution whether as a non-legalized commercial activity, an offence, misconduct or even as a crime.

For example, prostitution is not defined as a criminal offence in criminal or penalty law of Singapore and Indonesia. Due to its practical social existence under the absence of official

legislative regulators and procedures as a type of commercial activity, it is possible to conclude that its status is “non-legalized commercial activity”.

As a counter to the above mentioned, prostitution is illegal in the Philippines, Thailand, Brunei Darussalam, Western New Guinea, Malaysia and Ukraine.

In the Philippines, according to article 202 of the Act decriminalizing vagrancy, amending for this purpose article 202 of Act No. 3815, as amended and known as the revised Criminal Code No. 10158 of March 27, 2012, prostitution is illegal. Moreover,

Any person found guilty of any of the offenses covered by this article shall be punished by arrest or fine not exceeding 200 pesos, and in case of recidivism, by mayor arrest in its medium period to prison correctional in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court (Criminal Code of the Philippines, 2012).

In Thailand, according to the Thai “Prevention and Suppression of Prostitution Act” B.E. No. 2539 of 1996 and the Thai Criminal Code B.E. 2499 of 1956, prostitution is illegal. In accordance with section 286 of the mentioned Thai Criminal Code, any person over sixteen, who subsists on the earning of a prostitute, even if it is some part of her incomes, s/he shall be punished with imprisonment of seven to twenty years and pay a fine between fourteen thousand and forty thousand Baht, or imprisonment for life (Criminal Code of Thailand, 1956).

According to Article 294 A of the Criminal Code of Brunei Darussalam No. 16 of 1951, whoever engages in, offers or agrees to engage in sexual services with another person for consideration, or loiters or solicits in any place for the purpose of prostitution or for any other immoral purpose, shall be punished with imprisonment for a term not exceeding one year and a fine of not less than \$500 and not more than \$5,000, and in the case of a second or subsequent conviction, imprisonment for a term not exceeding 3 years and with a fine of not less than \$1,000 and not more than \$10,000 (Criminal Code of Brunei Darussalam, 1951).

There are articles in the Criminal Code Act 1974 Papua New Guinean concerning negative state’s attitude to prostitution, especially with the involvement of children. For example, in accordance with the article 231 of the mentioned code, a person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution is guilty of a misdemeanor, penalty for which is imprisonment for a term not exceeding three years (1974). Thus, even if we are talking not about keeping or owning a brothel but sex-service in private apartments by separate prostitutes, this activity is criminal from legal point of view of Papua New Guinean.

The status of sex-service in Malaysia is specific due to the prostitution prohibition on its territory according to the Syariah Criminal Offences (Federal Territories Act) of 1997, on the one hand, and absence of direct prohibition for sex-service in accordance with the Malaysian Criminal Code No. 574 of 1 February, 2015. There is not such an offence in this legal document, thus, prostitution cannot be determined as an illegal activity in this country. At the same time, under the article 372 B of the mentioned Criminal Code, whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both (Criminal Code of Malaysia, 2015). Thus, “solicits or importunes for the purpose of prostitution” seems to be a crime in this country.

An attention should be paid to the binary prostitution implementation in Malaysia that is based on the above mentioned secular official code and religious Federal Territories Act that contains crimes according to the Syariah vision. The article 21 of this act is not applied in relation to non-Muslims and determines that 1) any woman who is engaged in prostitution is considered as guilty one and can be convicted to pay a fine not exceeding five thousand ringgit or to be imprisoned for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof; 2) any person who prostitutes his wife or a female child under his care; or causes or allows his wife or a female child under his care to prostitute herself, is considered to be guilty in offence and shall be convicted to pay a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof (Syariah Criminal Offences (Federal Territories Act), 1997).

Nowadays, the Ukrainian understanding on prostitution is focused on its vision as an administrative offence. According to article 181-1 of the Code of Ukraine on Administrative Offences, prostitution entails a warning or imposition of a fine of five to ten non-taxable minimum incomes; the same actions committed repeatedly within a year after the imposition of an administrative penalty entail the imposition of a fine of eight to fifteen non-taxable minimum incomes (Code of Ukraine on Administrative Offences, 1984). Until the end of 2005, “systematic prostitution, that is providing sexual services for income” was a crime according to the article 303 of the Criminal Code of Ukraine, and the punishment could be “a fine of fifty to five hundred non-taxable minimum incomes of citizens or public works for up to one hundred and twenty hours” (The Criminal Code of Ukraine, 2001). From the beginning of 2006 the mentioned article was changed, and prostitution was decriminalized in Ukraine. To make a procedure for prostitution legalization, on the 17th of September in 2015, the Draft Law on Regulation of Prostitution and Sex-establishments Activities No. 3139 was represented for the parliament of Ukraine but it was withdrawn on the 12th of October in 2015. Thus, at the present stage sex-service in Ukraine is an offence, and the issue of its legalization is still debatable.

Sex work law is contentious internationally due to a long history of criminalization, which has positioned prostitution as deviant and dangerous. In most countries, the sex industry re-

mains either fully or partially criminalized (Armstrong, 2021). Thus, in most of the mentioned countries prostitution is considered to be an offence that generates legal liability in its criminal or administrative types. Even if some of the mentioned states made some steps to its liberalizations, the legal mechanism of this state's response still needs its stabilization and improvement.

Current issues of the role of public administrations in providing “prostitution policy”

In many European countries, the question of prostitution regulation is decided by their officially supported programs concerning the so-called “prostitution policy”. If there is a regulation of this issue, it has a positive influence in make cases not only on budgets but on the state of human rights involved in such an activity. State's policy about prostitution is connected with decriminalization and even legalization of prostitution tendencies. In general, in most secular countries prostitution is accepted as a commercial activity on the level of the law that generates the need to make the proper legislation and procedures of its proper functioning and control by such states.

At the same time, officials provide and support a proper policy in the mentioned sphere and it requires an appropriate attitude of state power to give an official answer to the question of its nature and essence. Moreover, in most of the cases prevailing role in such a process is given to public administration that is to rule and what is even more important concerning “prostitution policy” protect the human right of sex-workers. The reason for the protective measures is originated by a fundament element for all states' policies that “human life, his/her health, honor and dignity are main values in every democratic state”. That is why the prostitution question is not just a local one that is concentrated on one or another territory and has to be answered for by involved participants. It is considered that an appropriate states' response on the mentioned issue is dictated not by prostitution itself as a social phenomenon accepted by many people historically but the urgent requirement to regulate this issue officially by states to be democratic not at the level of just being declaratively proclaimed but by their internal essence.

It should be noted that the main reason of public administration's negative attitude to provide a modern and needed policy concerning prostitution can be explained by the traditionally accepted negative attitude to this phenomenon from the side of a society according to its members believes and religious rules. Thus, such a society, being characterized with a strong religious basis, builds its culture and common understanding of “normality” according to which a sex-worker is not a worker but a distractive social element from the beginning. Thus, on the one hand, such a society never generates a question of her/his rights protection. On the other hand, such a society never sees the daily professional activity of such a sex-worker as labour that has to be performed under regulation and protection by the law. In fact, governing systems of the mentioned societies stay “blind” from the juridical point of view in relation to rights' protection of people involved in prostitution and to the urgent need of official regulation of “the giving specific service for money” that is commercial by its nature as well. But the main

issue in the above mentioned is not being regulated legally that is not existing officially and in fact prostitution exists in the reality of the mentioned countries as a needed service for the members of their societies. The main issue of prostitution is not in its potentially destructive nature not to be regulated to prevent further societies' descent. It is considered that the fact of its existence is an ordinary social reaction on the social demand in its presence. The nature of this demand describes the essence of the society that is already culturally and morally destructive, injured by different social traumas and generates its descent.

However, the character of the role of public administrations in the mentioned society is more in external ordering and suppression without constructive socially needed changes and reforms. It is possible to conclude that in such countries the state power and public administration prefer to follow a punitive prostitution policy by shifting the responsibility for its social demand to its participants. Thus, sex-working continues its functioning with its progression and involvement of more and more people. In fact, state power in such countries, from a psychological point of view, does not know how to remove a prostitution demand from their societies' consciousness and, from an economic point of view, does not represent an alternative for the professional activity of such worker. The first one fully describes the weakness of such countries' public administrations to change their societies internally in its constructive and progressive direction. A constant economic crisis, on the one hand, and the absence of a proper ideologically-moral education beginning from early childhood, on the other hand, generates social acceptance of a human in such countries as a tool for somebody's sexual satisfaction and supports this vision by the state power under its ignoring prostitution regulation officially. Thus, staying not accepted officially, "prostitution policy" in the mentioned states in its negative understanding is made by methods of coercion and punishment. The role of public administrations in this process is limited by reaction measures on the consequences of the internally socially needed activity of sex-workers and their clients. Thus, being visible externally the role of public administrations stays unconstructive and does not achieve its goal.

There is a growing body of material on demand that has begun to map out various aspects of motivation, attitudes and practices of purchasers. However, a number of unanswered questions about how demand can be effectively addressed and reduced are still remained open. Reducing demand and making actual and prospective purchasers responsible are not mutually exclusive objectives, but two sides of the same coin. While formal measures to criminalize purchasers can be effective if rigorously enforced, but one also needs to know more about the different levels of motivation of those who purchase sex in order to tailor responses. Likewise, there is a need to address social norms and public attitudes, particularly of adolescents, in order to maximize the effectiveness of formal interventions and to increase public awareness (Matthews, 2018, p.7).

Methodological Framework

This study used normative or doctrinal legal research methodology is used in the research. To achieve the aim of the paper general scientific and special legal methods of cognition were used.

By using the dialectical method, the current issues of prostitution theoretical and legal understanding, types of legal liability for this activity, and policy of its regulation in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea, and Ukraine were analyzed and formulated.

The formal-dogmatic method contributed to the development of the authors' explanation of the current issue of the role of public administrations in the mentioned states in providing their prostitution policy to find out the direction of its constructive change for the protection of human rights of the people involved.

Formal legal and comparative methods gave the opportunity to suggest the directions of the perspective prostitution service regulation according to modern social needs and requirements to remove the stigmatization of sex-workers' social and legal status and provide a juridical framework for their advancing social inclusion.

Deep analysis of foreign and domestic scholars' research as well as legislation of Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea, and Ukraine concerning the prostitution policy issues and legal liability for such an activity contributed to the development of the present article.

The mentioned above has been conducted within the frameworks of state budgetary scientific and research projects on the topics "Citizens", "Constitutional rights ensuring in a context of Ukraine's convention obligations" and "Legal awareness and legal culture in civil society formation conditions" at the School of Law, as well as current scientific interests of the paper authors concerning human rights protection under the modern challenges and prospects.

Analysis And Discussion

This part analyses the future development and improvement of legal regulation of prostitution in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea, and Ukraine. It comprehensively analyzes the modern challenges to legal regulation of prostitution under modern conditions. This analysis is very important to understand and suggest prospective directions and the role of public administrations in the legal regulation of prostitution in the mentioned states.

Legal regulation of prostitution: future development and improvement

Based on the analysis mentioned above, the final conclusion is rather visible and expresses the social need to provide decriminalization and legalization of prostitution policy. Thus, the juridical regulation of such processes should be organized in the direction of evolutionary progress to accept this vision by public authorities of countries that support the suppressive prostitution policy on the current stage of their development.

For the states that criminalized sex-working in their legislations, such as the Philippines and Thailand, the prostitution issue solution may be represented by the gradual rejection of criminal legal liability for this activity with the further development of the national legislation to legalize sex-service as a commercial activity. For the counties that decriminalized prostitution, such as Indonesia and Ukraine, the legalization step is quite important and requires appropriate legislation and procedures according to which sex-service may be provided. On the one hand, this will transfer so-called prostitution profit from its shadow to the official budget, ensure taxation from an officially invisible activity, which is commercial by its nature. On the other hand, it will create a strong legal platform for the protection of human rights of the people involved in this activity.

At the same time, we have to stress that official decriminalization or even legalization of prostitution does not transfer this destructive and conformal social phenomenon from being internally negative consequence of socialites' development to socially positive and constructive. A status of prostitution cannot be changed by state policy, if it considers this phenomenon as negative by its nature. But a status of the prostitute as a human that needs his/her rights protection may be changed totally under the human protective sex-working policy of countries that have this activity in their reality. In our point of view, the future development of prostitution has to be directed to the liberalization of the public power attitude to it and the provision of the appropriate policy to remove social stigmatization of this issue and people involved in such activity.

For example, in the Netherlands the attitude of the legislative power towards prostitution resulted in its legalization and the abolition of moralistic criminal intervention in it, which had made the running of a brothel officially illegal up until that time. This change of mindset, however, did not mean that the legislator placed no obstacles for those, involved in this activity. The legislator holds that prostitution is a special profession with high risks with regard to both prostitutes and public order. Therefore, the recognition of prostitution as legal work was accompanied by stringent administrative regulation of prostitution at the local level, with the aim of protecting prostitutes as well as the society from harm. To summarize, the liberalization of the prostitution sector resulted at the same time in a far-reaching restriction of the freedom of the sector's key actors, since they could no longer use their own discretion but were forced to observe strict administrative regulations to protect others from harm (Post, et al., 2018,

pp.114-115). Legal prostitution is not a catalyst for destructive processes in society. Instead, its criminalization does not affect the social and economic background of the existence of prostitution, it does not fight the reasons that actually force people to choose this type of activity, and only deepen social stratification (Kurmaiev,2017, p. 90).

From our point of view, by providing and supporting criminalized prostitution policy, states do not solve this social problem, but promote its further evolution. The attitude of legislators of the mentioned states regarding prostitution that is legally, culturally, and socially understood as an action that causes danger for society is described. Also, in such a situation, every separate prostitute, despite reasons to be involved in such an activity, faces the issue not to be protected in her/his human rights, but to be rejected and neglected in her/his human rights. From a juridical point of view, in most cases, countries with criminalized prostitution make prostitutes responsible for this offence, but with time, prostitutes themselves become victims of their countries' systems that use their service without an intention to protect their rights due to illegality of their activity.

Representatives of the most lenient attitude to the mentioned phenomena such as Singapore and Indonesia do not criminalize providing sexual service in exchange for money. Thus, this phenomenon may be wrongfully understood as legalized commercial activity allowed by the government. Besides, from a legal point of view, it is not correct, because being non-criminalized does not always mean being legalized. In some way, the so-called policy of decriminalization is just the first step in liberalization policy of a certain social phenomenon. Moreover, the official change of legal status from being removed from Criminal or Penalty Codes to being legalized as the commercial activity may take a lot of time or even may remain in this "between" or "middle" status for many decades. Even taking into account some positive moments in this regard, in general, the latter is even worse than the first one, because in such a case, being a commercial activity, prostitution is not subject to juridical regulation, and there is no state protection of prostitutes' human rights as they are considered to be nonexistent workers whose health and life are out of official interests of their own countries. In the mentioned states prostitution is still not acknowledged neither by governments nor by societies officially as a job or individual commercial activity, although it practically existed as a separate daily job of real different-aged workers. Those countries with decriminalized prostitution, on the one hand, showed their tolerant attitude to this activity. Furthermore, without making the next step to transferring prostitution from shadow to official light of legalization, besides letting hide real profit from taxation, governments prefer to stay "blind" to the protection of the real human rights of prostitutes that continue to be moral, social, and even physical victims of such a policy and its consequences. In such countries, there is always a possibility for prostitution to be interpreted as a crime against decency/morality by officials if it is needed in one or another case. Thus, it is possible to conclude that such attitude of a state to the investigated phenomenon is not positive for the real defense of sex-workers. So, the role of public administrations

is limited by the official position and does not have its practical reflection in proper human rights representation and protection. Prevention of human rights violations is a key part of the protective policy of every country in the world (Myronets *et al.*, 2019, p.585). Thus, even the prostitution policy has to be changed in order to be progressive and human rights-oriented.

Modern challenges to legal regulation of prostitution under modern conditions

Modern conditions of the global context and social transformation dictate to change the traditionally unacceptable attitude to prostitution legalization. This hypothesis is based on today's requirement to transfer the stress of public attention from non-controversial social negative nature of prostitution to the real protection of people involved in this social phenomenon. It is wrong that sex workers, who are predominantly women, should be criminalized, and therefore stigmatized and penalized (House of Commons Home Affairs Committee, 2016, p.21). In times of pandemic, the global community has one more reason to implement different changes to provide a rather quick reaction for its further existence and development under the conditions of the fight against COVID-2019 (Myronets *et al.*, 2020, p.439).

The question of the subject for legal liability for sex-work is rather debatable, and countries do not follow a common approach concerning this issue. In most of them, the main attention is focused on a prostitute as a party who is potentially ready for this kind of relations. That is why societies even having prostitution in their reality traditionally formed a negative attitude to sex-workers more than to clients of such a service, considering the first ones as initiators and the second ones as their random victims. But, in fact, the mentioned relations are usually initiated by clients that are potentially inclined to take such a service, and moreover, in some cases prostitutes become victims of socially dangerous clients with deviant behavior and psychological issues. Unfortunately, the mentioned social position, even in case of a sex-worker dignity humiliation or body injury and any other crime in relation to her/him, in most cases generates not empathy or at least understanding, but expresses social revenge and blocks any debates concerning the protection of such victim rights. Sex-workers, being equal with other members of society, in fact, cannot use and implement many legal possibilities in practice. A bright example is the social rejection to assume them as workers of an intimate sphere, who, as ordinary employees, have labor rights and have to be protected by the state on the territory, where they perform their working duties, even against their abusive clients or employers. In fact, prostitutes perform their labor activity without being protected by their countries. The latter cannot remove the social demand on prostitution. However, in case of risk to health and life of a prostitute, he/she cannot count even on states' protection of their rights being workers of officially non-existent activity. Even in case of real danger for their life, they seem to be always guilty in fact and in law. Thus, they are just used by their societies to satisfy the social internal demand in sex-service under social condemnation, common rejection of their

activities, their personality, rights, choice and lack of any social guarantees, assistance and protection from the side of their own societies and states.

The mentioned situation is a direct result of the common social stigma that allows distinguishing fewer equal people for service provision among more equal people for service use. Thus, states that have prostitution in their reality without any wish to regulate it by legal instruments, unofficially provide and support a social policy of inequality and segregation. The moral engineering of advanced liberal governance has co-opted radical feminist concerns into techniques of governance and control. By prioritizing “exiting” as means of facilitating social inclusion, rather than offering recognition, rights or redistribution to sex workers as a group in a way that supports their citizenship, inclusion becomes a tool of individualized risk assessment facilitating “rehabilitation” (and inclusion) or indeed segregation (Scoular and O’Neill, 2007, p. 774).

The mentioned position concerning eternal guilt of sex-workers in the humiliation of their dignity, honor and illegal acts in relation to them cannot be accepted and explained just by the fact of their socially unaccepted activity. First of all, not all of them made such a choice on their own because of a certain reason. Secondly, it is a rather debatable issue to determine prostitution as somebody’s internally desired and conscious choice. Sex positivists would suggest that these theoretical explanations for prostitution remove the possibility of full personal agency and that a woman could make her own choice to do sex work. Neo-abolitionists would argue that sex work is chosen only because of the complete lack of other options and therefore can never truly be described as a “choice” (Gerassi, 2015).

At the same time, we think that the real challenge to the prostitution issue is not even in its final decriminalization or legalization that may be understood as a measure of an acceptable level. In our opinion, by providing liberal policy concerning the mentioned issues, every country accepts the impossibility to take them away from the reality. Due to the fact that prostitution demand cannot be removed from secular societies, public administration of such states has to provide constant ideological and moral measures to increase moral and cultural values of their population. They have to be provided gradually and systematically to raise common social respect to any human as the highest value and potentially constructive element of their present and future.

As an option, effective religious education and counselling are not only expected to develop a healthy personality but also to promote healthy family and healthy social environment, provide the right sex education, promote positive activities, make a person become closer to God, establish intimate relationships between parents and children, monitor the association and choose a positive environment and synergy of the government’s decisive role in making policies (Suzanalisa, 2018, p. 158). A linear narrative of the prostitute as a victim of violence, drug abuse and poverty constructs the “prostitute” as a partial subject/object who has limited

agency and could (should) therefore be subject to welfare treatment rather than criminal enforcement (Scoular and O'Neill, 2007, p. 774).

Prospective directions and the role of public administration in legal regulation of prostitution

From our point of view, secular countries should provide a policy of social inclusion in which prostitutes be accepted as workers in a specific intimate sphere of social reality due to the real nature of the internal demand of such societies. In such a case, on the one hand, public administration will be obliged to provide and control an ordered policy to involve prostitutes in the states' regulations concerning systematical support and check of their health and performing of their service on defined territorial zones within the age legislative requirements. On the other hand, the same public administration could be actively involved in generally preventive prostitution policy, working according to social programs with socially conformal and marginal persons. In both cases, the role of public administrations changes from passive suppressive one to active preventive and educative. Thus, reforming in the prostitution issue includes gradual decriminalization and legalization but is not limited only to these. The mentioned processes are called not to allow and accept sex-working as socially positive but to break the social negative stigma and integrate the broken society for its further constructive development and improvement.

Liberal democracy can only flourish if the citizens hold certain moral and civic values, and manifest certain virtues (Althof and Berkowitz, 2006). Any policy or legal system attempting to curb social actors' participation in the sex trade needs to focus on the quality of the participants' self-described changes and the long-term processes of quitting rather than on creating dangerous, punitive or stigmatizing approaches (Horning, 2019, p. 537). Thus, prostitution reform could be informed by a holistic model of social justice that includes the importance and interrelation of cultural, distributive, associational aspects in order to provide a more sophisticated conceptual framework for advancing social inclusion (Scoular and O'Neill, 2007, p. 774). There is some correlation between local law and peoples' judgment of whether prostitution legality is desirable (Roth and Wang, 2020, p.19796).

Due to the mentioned position, it is obvious that societies with prostitution demand in their reality to prevent their own physical destruction have to provide liberal measures to sex-workers, not with the aim to promote prostitution progressive increase as a social phenomenon, but to regulate this specific service. The main attention has to be paid to the medical side of the issue by providing systematical health screening according to health-check programs, access to health-care, hygiene, training to use personal contraception to prevent HIV and sexually transmitted diseases. However, the doctrinal basis for determining the principles of the proper procedure for the provision of administrative services in the field of health care is the principles of the functioning of public authorities in providing administrative services (Sopilko *et al.*, 2021, p.410).

At the same time, the policy of territorial zoning does not lose its constructivism, but still needs active public administration's participation in this process. Under the global context of the world's changes and social transformations that are differently reasoned but in many cases connected with innovation and informational progress, the rapid states' reaction on challenges of different nature, for example, such non-traditional but at the same time possible from the technological point of view phenomena such as cyber humans or persons with integrated implants involvement in prostitution, has to be the prevailing in their existence and further prosperous development (Kuzmenko *et al.*, 2021). In this regard, we have to mention that an appropriate state prostitution policy in digital times is and will be connected to state information policy and the supportive information legislation. Thus, information policy is formalized in the rules of information legislation and is implemented in the enforcement activities of public authorities and other entities in the field related to the physical flow of information. Therefore, it is important to think that in a democratic, law-governed state, information legislation should be the only product of information policy (Kuniev *et al.*, 2020, p.32).

Regarding prostitution prevention, joint and continuous efforts are needed to increase support from families, schools, religious institutions, communities, and the government to prevent the practice of child prostitution as early as possible. The family's excellent parenting skills must be the first step to prevent children from slipping into the prostitution business (Suyanto *et al.*, 2020, p.143).

A more complex analysis and account of subjecthood should produce a more complex understanding and, together with the more holistic accounts of social justice and cultural citizenship, a better set of resources could be developed in collaboration with women and young people. The latter might include legislative reform, welfare support, exiting and enforcement alongside rights, recognition and increased resources to target structural and social inequalities. Thus, engaging an expanded understanding of social justice via social inclusion and cultural citizenship could provide the leverage for a radical democratic approach to prostitution reform (Scoular and O'Neill, 2007, p. 775). Further studies should be transdisciplinary in nature, linking the discursive construction of identity with a critical examination of the law. Such studies may contribute to a better understanding of the ways victims of sex trade can be provided access to social justice and human rights (Suppiah *et al.*, 2019, p.148). Additionally, a measure on the perception of prostitutes as transgressors of moral standards, norms and values should be included in future research (Bonache *et al.*, 2021, p.2003). Finally, we propose that the discourse about resident intimacy and sexuality needs to move beyond needs and rights, and towards a person-centred, salutogenic approach: the key question needs to consider how to provide the best person-centred care that will allow a resident to thrive for their entire life (Henrickson *et al.*, 2021). In our point of view, the mentioned discussions similar to the prostitution issue are capable of representing the theoretically reasonable and practically effective policy, which is oriented towards human rights protection under current and changeable conditions of new times.

Conclusion

Under conditions of global changes and social transformations of the modern challenges of reality, the role of constructive prostitution policy in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea and Ukraine under the efficient public administration regulatory and protective activity in this concern is quite significant. The perspective directions of its future development and improvement are based on the following results.

Firstly, the conceptual framework of prostitution definition has to be focused on its understanding as a destructive and conformal social phenomenon that is generated by internal social demand and reflexes the level of moral-culture decay of the researched countries. At the same time, secular countries providing regulative and protective policies, including sex-service policies, have to use current socially needed legislation to provide such policies concerning all members of their societies, according to real needs and requirements under the protection of human rights, removing social stigmas concerning separate members due to their working activity or social positions.

Secondly, the modern “prostitution policy” in Malaysia, Indonesia, Singapore, the Philippines, Thailand, Brunei Darussalam, Western New Guinea, and Ukraine requires its official liberalization in a direction of prostitution legalization with its previous decriminalization for those that understand this activity as an offence. At the same time, reforming in the prostitution issue includes gradual decriminalization and legalization, among other processes, which are not meant to allow and accept sex-working as socially positive but to break the social negative stigma and integrate the broken society for its further constructive development and improvement. It will remove criminal or administrative liability for such an activity and provide a state procedural regulation of sex-service for its ordering and rights protection of its participant.

Thirdly, even official decriminalization or even legalization of prostitution does not transfer this social phenomenon from being an internally negative consequence of socialites’ development to socially positive and constructive. The status of prostitution cannot be changed by state policy, if it considers this phenomenon negative by its nature. But a status of a prostitute as a human that needs his/her rights protection may be changed totally under a human protective sex-working policy of countries that have this activity in their reality. Thus, the role of public administrations in the mentioned states has to be constructively changed from a passive punitive one to an active regulative and protective one with the aim to find out the direction of their “prostitution policy” constructive change for the protection of human rights of the people involved.

Lastly, the prospect of prostitution regulation has been focused on the protection of prostitutes’ human rights to provide socially needed programs for their systematical health screening

and protection, positive ideological and cultural influence on their consciousness, and practical implementation of the legal conceptual framework for their advancing social inclusion. The mentioned constructive character of the prostitution policy essence has to remove the stigmatization of sex-workers and their activity, to increase common social respect to any human as the highest value and potentially constructive element of their present and future.

References

- Act Syariah Criminal Offences (Federal Territories) [559 of 1997]. <https://prostitution.procon.org/wp-content/uploads/sites/50/malaysiasyariah1997.pdf>
- Althof, W., & Berkowitz*, M. W. (2006). Moral education and character education: Their relationship and roles in citizenship education. *Journal of Moral Education*, 35(4), 495-518. <https://doi.org/10.1080/03057240601012204>
- Armstrong, L. (2021). I can lead the life that i want to lead: Social harm, human needs and the decriminalisation of sex work in aotearoa/new zealand. *Sexuality Research and Social Policy*. <https://doi.org/10.1007/s13178-021-00605-7>
- Bonache, H., Delgado, N., Pina, A., & Hernández-Cabrera, J. A. (2021). Prostitution policies and attitudes toward prostitutes. *Archives of Sexual Behavior*, 50(5), 1991-2006. <https://doi.org/10.1007/s10508-020-01891-9>
- Chowdhury, M. (2016). Emphasizing Morals, Values, Ethics and Character Education in Science Education and Science Teaching. *The Malaysian Online Journal of Educational Science*, 4(2), 1-16. <https://files.eric.ed.gov/fulltext/EJ1095995.pdf>
- Gerassi, L. (2015). A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work. *J Sociol SocWelf*, 42(4), 79-100. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730391/>
- Henrickson, M., Cook, C. M., MacDonald, S., Atefi, N., & Schouten, V. (2021). Not in the brochure: Pornia and residential aged care. *Sexuality Research and Social Policy*. <https://doi.org/10.1007/s13178-021-00573-y>
- Horning, A. (2019). Quitting the Sex Trade: Keeping Narratives inside the Debates on Prostitution Policy and Legislation. *Victims & Offenders*, 14(5), 533-539. <https://doi.org/10.1080/15564886.2019.1628149>
- House of Commons Home Affairs Committee. (2016). *Prostitution*. Third Report of Session 2016-2017. (pp. 1-57). <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf>
- Kuniev, Y., Sopilko, I., Kolpakov, V. (2020). Object and Subject of Information Law. *Journal of Law and Political Science*, 23(2), 9-40.

- Kurmaiev, P.Y. (2017). Prostitution: choose effective model of state regulation. *Scientific Bulletin of Polissia*, 1(4(12)), 86-92. [https://doi.org/10.25140/2410-9576-2017-1-4\(12\)-86-92](https://doi.org/10.25140/2410-9576-2017-1-4(12)-86-92).
- Kuzmenko, O., Pyvovar, Y., Lyskov, M., Kropyvna, K., Taldonova, K. (2021) Digitalization in an innovative society and public administrative: prospects for implementation and development in Ukraine. *Journal of Law and Political Sciences (JLPS)*, 29(4), 122-138.
- Matthews, R. (2018). Regulating the Demand for Commercialized Sexual Services. *Women's Studies International Forum*, 69(7-8), 1-8. <https://doi.org/10.1016/j.wsif.2018.03.007>
- Mensendiek, M. (1997). Women, migration and prostitution in Thailand. *International Social Work*, 40(2), 163-176. <https://doi.org/10.1177/002087289704000204>
- Myronets, O.M., Burdin, M., Tsukan, O., Nesteriak, Yu. (2019). Prevention of human rights violation. *Asia Life Sciences*, 21(2), 577-591.
- Myronets, O. M., Danyliuk, I.V., Dembytska, N. M., Frantsuz-Yakovets, T.A., & Dei, M. O. (2020). Current issues and prospects of modern higher legal education in conditions of the fight against covid-19. *Cuestiones Políticas*, 37(65), 438-456. <https://doi.org/10.46398/cuestpol.3865.29>
- Criminal Code of Brunei Darussalam [Code No. 16] (1951). https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78238&p_classification=01
- Philippines, Congress of the Philippines (2003, may 23). Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes N^o. 9208 <https://thecorpusjuris.com/legislative/republic-acts/ra-no-9208.php>
- Post, C., Brouwer, G. J. & Vols, M. (2018). Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression? *European Journal on Criminal Policy and Research*, 25(2), 99-118. <https://doi.org/10.1007/s10610-018-9371-8>
- Roth, A.E., Wang, S.W., (2020). Popular repugnance contrasts with legal bans on controversial markets. *Proceedings of the National Academy of Sciences*, 117, 19792–19798. <https://doi.org/10.1073/pnas.200582811>
- Sanders, T. and Campbell, R. (2014). Criminalisation, Protection and Rights: Global Tensions in the Governance of Commercial Sex. *Criminology and Criminal Justice*, 14(5), 535-548. <https://doi.org/10.1177/1748895814543536>
- Scoular, J., & O'Neill, M. (2007). Regulating prostitution: Social inclusion, responsabilization and the politics of prostitution reform. *British Journal of Criminology*, 47(5), 764-778. <https://doi.org/10.1093/bjc/azm014>
- Sopilko, I., Vinetska, R., Novytska, N., Lyubchik, O. (2021). Principles of Proper Procedure Formation for the Provision of Administrative Services in the Field of Health Care. *Cues-*

- tiones Politicas*, 39(68), 399-414. <https://doi.org/10.46398/cuestpol.3968.25>
- Suppiah, P.C, Kaur, S., Arumugam, N. & Shanthi, A. (2019). News Coverage of Foreign Sex Workers in Malaysia: A Critical Analysis. *GEMA Online® Journal of Language Studies*, 19, 136–152. <https://doi.org/10.17576/gema-2019-1901-08>
- Suyanto, B., Hidayat, M.A., Wadipalapa, R.P. (2020). Sexual exploitation and violence of prostituted children. *Masyarakat, Kebudayaan dan Politik*, 33(2), 134. <https://doi.org/10.20473/mkp.V33I22020.134-145>
- Suzanalisa. (2018). The policy of criminal law in eradicating online prostitution in Indonesia. [conference]. *The European Proceedings of Social & Behavioural Sciences. UUMILC 2017 9th UUM International Legal Conference*, 147-158. <https://dx.doi.org/10.15405/epsbs.2018.12.03.13>
- Thailand, Office of the Council of State (1996). Prevention and Suppression of Prostitution Act B.E. 2539 of 1996. <https://ilo-phuket.com/legal-documents/prostitution.html>
- Code of Ukraine on Administrative Offences. [Code N°. 8073-X]. (1984, December, 7). The Bulletin of the Verkhovna Rada of the Ukrainian SSR. Supplement to N°. 51. Art. 1122.
- Criminal Code Act of Papua New Guinean [Code]. (1974). http://www.paclii.org/pg/legis/consol_act/cca1974115.pdf
- Criminal Code of Thailand [Code No. 10158 B.E. 2499] (1956). http://www.thailaws.com/index_thai_laws.htm
- Criminal Code of Ukraine: Law of Ukraine [No. 2341-III.] (2001, April, 5). The Bulletin of the Verkhovna Rada of Ukraine, 2001, N°. 25-26, p.131
- Draft Law on Regulation of Prostitution and Sex-establishments Activities [No. 3139]. (2015, Sept.18).
- Criminal Code of Malaysia [Act. 574] (2015, Jan. 01) <https://www.rcrc-resilience-southeast-asia.org/wp-content/uploads/2017/12/Penal-Code-Act-574.pdf>
- Criminal Code of the Philippines [Code No. 10158] (2012, march 27). <https://prostitution.procon.org/wp-content/uploads/sites/50/philippinesrevisedpenalcode.pdf>
- Titko, E., Dei, M., Smalii, O., & Yuldashev, S. (2020). Impact of palliative care/medicine on realization of «right to life» and «right to dignity» in the context of human rights protection. *Journal of History Culture and Art Research*, 9(1), 49. <https://doi.org/10.7596/taksad.v9i1.2534>