

## Legal Aspects Concerning Prostitution

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**Abstract** - This research aims to draw attention to the phenomenon of prostitution both from a legal, social and economic point of view. The study first presents the contemporary social phenomenon, followed by a brief history and the current situation. Subsequently, the legal classification in the New Romanian Criminal Code is presented and two comparative studies of two states (Germany and the Kingdom of the Netherlands) are presented, where prostitution operates in legal forms, with a separate legal regime of application. In the last part of the research is presented the management of prostitution phenomenon in Romania and the conclusion.

**Keywords:** Prostitution, legal aspects, social aspects, economic aspects, examples.

### I. THE CONTEMPORARY SOCIAL PHENOMENON OF PROSTITUTION

#### 1.1. Brief introduction

Prostitution, by its definition, involves the sale of the sexual act itself. Money is the major motivation for people willing to practice this profession, as most come from low-income backgrounds. For people who practice this profession, prostitution is a potentially well-paid occupation, but depends very much on the practiced form. People who practice street prostitution hardly get rich from prostitution and suffer numerous problems, but prostitution still provides them with a source of income they are unlikely to receive through legal occupations because they have little commercial ability to sell (\*\*\*, 2015).

Despite this financial motivation, most people don't get to practice this job, and researchers have tried to understand why some people do this. Because the people in question are not eager to be studied, we do not yet have studies on different types of prostitution and will probably be missing for a while.

Most studies in this profession involve people who practice street prostitution, even though they make up only about 20% of all prostitution. Methodologically, the best way to clarify this causal question would be to randomly assign young people to practice or not to practice this profession and then study what happens to

their psychological health afterwards. For many reasons, this type of study would be extremely unethical and will not be possible, at least soon. In the absence of such studies, it is difficult to find out exactly what causes some people to practice prostitution, but it is considered that in many cases the poor economic situation is the answer (\*\*\*, 2015).

However, prostitution is extremely common in many developed countries as well: The United States of America, China, Japan, France, Germany, the Netherlands, Belgium, Spain, Canada, Austria, etc. But in most cases, those who practice this profession come from much poorer neighboring states. Foreigner prostitutions prostitution are more likely to pursue their activity in states where prostitution is legal, possibly encouraged, but above all well-paid (one of the best examples being Germany) (Zaharie, 2011).

The act of prostitution itself is a matter of the mentality and morality of the practitioner, and the regulation of occupation is related to the evolution of mentalities, social tolerance, pragmatism and the purposes of political power. In literature it is also stated that prostitution and perception of this phenomenon also belong to a certain cultural and historical specificity of each individual people.

To the greatest extent, in terms of social tolerance, we encounter approximately the same situation in some peoples for centuries to this day. In Western Europe and Latin America, the practice of prostitution has been and is generally tolerated by states (except for the period of historical experiments: Inquisition, Nazism, Communism), while in Asia and Islamic space, the act is punishable even by death in extreme situations.

If in Romania the main cause of prostitution is the precarious economic situation and the lack of well-defined professional perspectives, in the world the situation is more complex, the causality being much wider (Zaharie, 2011).

#### 1.2. Current situation

Even today, people who practice prostitution are often marginalized and stigmatized by society (Weitzer, 2013). In countries where prostitution operates in legal forms, in recent years parliaments

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have implemented various bills to protect people who practice prostitution legally by law. Among the main points of this type of projects are compulsory license - clubs, brothels and escort agencies will only be allowed to operate with a license from the competent authorities, unannounced controls, raising the minimum age from 18 to 21 for the people who practice prostitution.

Coming even closer to today, more exactly in 2020, the SARS-CoV-2 pandemic has had severe and immediate effects on people practicing prostitution. Because of social distancing, quarantine, neglect of governments towards low-income people, the ability of these people, already marginalized enough for their job, to secure the minimum income necessary for survival is threatened (Farley, 2020).

From a legal point of view, at European level, prostitution has been clearly recognized as a problem of gender equality and human rights by MEPs and even implicitly as a form of trafficking in human beings (PE, 2013), but the other institutions have not yet undertaken to legislate on it (Anouk, 2019).

This is certainly due to both the sensitivity of the subject and the fact that in practice it would be extremely difficult for EU Member States to agree on a change in their system regarding prostitution (Sanders et al., 2009).

### *1.3. Legal classification of prostitution*

In modern times, the term prostitution is often used when describing different types of sexual relationships that are provided at a set price, and in most cases, it is the direct contact of the practicing-client person, not a virtual contact. This term is therefore difficult to define and the definition depends largely on legislation (Grdan, 2017).

In the Romanian law system, if the old Criminal Code, in force until 2012, considers prostitution “The act of the person who procures his/her means of existence or the main means of existence, practicing for this purpose sexual relations with different persons, shall be punished by imprisonment from 3 months to 3 years.” (Romanian Parliament, 1968), the new Criminal Code no longer includes the criminalization of the act of practicing prostitution itself.

For better regulation, the High Court of Cassation and Justice published in 2016 a decision on the correlation of Article 213(1) of the Criminal Code and Article 213, paragraph 4 of the Criminal Code, it follows that the person determined to maintain sexual relations for the purpose of obtaining patrimonial benefits must be urged to have sexual relations with several persons, not with one. The maintenance of sexual relations with one person, even for the purpose of obtaining patrimonial benefits for himself/herself or another, is not considered prostitution. Nor is it regulated the situation in which a person causes several persons to have sexual relations with the same person, in exchange for obtaining patrimonial benefits, and unlike the old regulation, the new regulation of the crime of pimping criminalizes the determination to

practice prostitution, and not only the act of urging to practice prostitution (Craiova Court of Appeal, 2014).

Although prostitution itself has been decriminalized, there are still crimes related to it. Among the serious offences related to prostitution can be listed: pimping, bullying against good morals and trafficking in human beings.

Prostitution varies enormously in social forms and contexts. The personal health and safety of the people concerned depends to a considerable extent on the context and location where they offer their services and the intensity of their working life.

Almost everywhere there are laws designed to limit and control the prostitution industry, but it rarely succeeds. Prohibitive legal rules may temporarily limit the activity of prostitution but may also lead it to practice in more hidden forms (Neave, 1988).

Laws punishing people who practice prostitution only reduce their power to protect themselves and leave them vulnerable to officials and law enforcement. (Allen, 1990) Where prostitution is regulated by licensing, the persons concerned outside the system are twice compromised in terms of their health and safety, with potential danger to public health and large-scale effects (Moreton et al., 1999).

Regarding the measure of the economic basis of prostitution, public health outcomes are generally better where persons practicing prostitution have a higher status measured by both legislation and their ability to earn a satisfactory income, the persons concerned can be selective about their clients and services and be supported by health services with adequate resources and interest representation organizations.

## II. STUDY CASE: GERMANY

### *2.1. Presentation of the legal framework*

One of the legislative objectives of the Law on Prostitution (GLP) is to allow the persons concerned to conclude legally valid employment contracts by establishing an employment relationship subject to social security contributions, to give them access to social security and, in general, to improve their social protection. It is also necessary to exclude the previous consequences in accordance with the criminal law of the conclusion of such employment contracts. Punishing “promoting prostitution” would be replaced by punishing “exploitation of persons practicing prostitution”. The German Criminal Code should be reviewed and limited to cases involving the restriction of the personal or financial independence of the person practicing prostitution (Bundestag Printed Papers 14/5958).

However, the prostitution relationship gives rise, according to paragraph 3 of the GLP, to either a legal employment relationship or a legal relationship of provision of services, both of which have the particularity of giving rise only to a unilateral obligation to pay on the part of the

client/beneficiary/employer (German Federal Government, 2007). The latter is not entitled to the benefit. If the benefit has been fulfilled, only the person practicing prostitution is entitled to the agreed remuneration.

The client can only request, in accordance with the provisions of civil law, the refund of the remuneration if it has been paid in advance. The customer has no right in case of defective performance of the service/work. The GLP states that a legal obligation also arises when in the context of an employment relationship a person is available for such activities, which gives rise to a special employment relationship between brothel operators and the person practicing prostitution. He/she is therefore entitled to payment of the agreed salary if they are available for a specified period to perform sexual acts.

The unilateral nature of those legal relationships referred to above is such as to protect persons practicing prostitution, preventing them from being forced to perform sexual acts.

In order to qualify as an employment relationship subject to social security contributions, the statement of reasons for the GLP states that it is sufficient that the activity of the person practicing prostitution has the following characteristics: the employer's limited right to give instructions or orders of service, a very high level of responsibility of the person concerned, a certain period of integration into the workplace, the person concerned may not be obliged to perform that work (German Federal Government, 2007).

Legal employment relationships in brothel units must be balanced by appropriate monitoring mechanisms, as "entrepreneurs" are not expected to give up old routines, tried and tested in a grey legal area, without an external incentive, and then perform the legal duties of an employer (e.g., continued pay, paid leave, social security contributions) in the future (German Federal Government, 2007).

Prostitution and brothel operators consider financial losses linked to the establishment of an employment relationship subject to social security contributions to be a problem. Moreover, most sex workers solved the problem of social security coverage without having to be in a dependent job, and therefore the majority were not motivated to enter an employment contract.

The unions share this view. There have been several attempts to actively support the discussion process initiated by the Prostitution Act and some attempts to consider the interests of prostitutes. For example, the union VER.DI (United Services Trade Union) supported the development of prostitution employment contracts by drawing up a sample of the contract. However, VER.DI sees this sample of employment contract more as a basis for discussions on the preparation of prostitution standards. The union said it was important for the idea of employment contracts to gain a foothold in prostitution and the discussion of "prostitution as a job" to be conducted further (Behrens, 2002).

An empirical investigation by Soffi K I concludes that the possibility of dependent employment relationships should be continued in order to improve the social and financial security of sex workers, even though at present most of them prefer to work as freelance professionals. Most of these people want to maintain their independence (and self-determination) and this should be taken seriously. This desire is undoubtedly linked to the very specific nature of the workplace, which is very personal, very intimate and very physical.

In the view of the Federal Government, the further debate on the issues involved should include examining how to define prostitution in the legal context of self-employment and how, given the legal preconditions, self-employment could guarantee the social protection of persons practicing prostitution and how their working conditions as independent professionals could be improved (German Federal Government, 2007).

In addition, efforts should be made to improve the effective frequency of checks on compliance with social security and tax obligations in the field of prostitution, to induce those who de facto have the role of the employer to effectively assume their role in the legal sense.

Care must be taken in order not to allow legal (criminal) regulations (so-called owner's privilege) (German Federal Government, 2007) to give privileges to those employee/employer relationships in which the employer avoids assuming any functions of an employer. "Owner's privilege" means that exploitation by the owner of a home is punished more gently than committing the crime of pimping (German Criminal Code, Section 180a (2) No. 2, cf. Bundestag Printed Papers 14/5958). However, all forms of exploitation of sex workers from which the victim cannot extract themselves deserve the same punishment.

## 2.2. Social security of sex workers

In social security legislation, such insurance cannot be refused or reduced because of a profession, whether regarded as immoral if the legal framework for practicing it exists. To benefit from social security, it is sufficient to have an individual employment contract.

Even after the entry into force of the law, sex workers in some brothels did not have access to social security in practice, because a brothel owner for whom they worked under conditions constituting an employment relationship subject to social security could be punished in accordance with the old Section 180a (1) No 2 of the German Criminal Code. Therefore, to avoid the risk of prosecution, brothel operators have often chosen to hire these people in something like self-employment (*Scheinselbstständigkeit*); they also did not report existing de facto dependent employment relationships to the social security authorities. Therefore, the legislator also chose to repeal Section 180a(1) No 2 of the German Criminal Code in order to ensure that

persons practicing prostitution can enjoy social protection (German Federal Government, 2007).

The consequences of the Prostitution Act regarding the Social Insurance Act were the subject of a joint statement issued by the main social security organizations on 18 November 2002, in which they stressed in detail the impact of the Prostitution Act on insurance, contributions and registration issues.

The declaration also described the criteria applied to distinguish between self-employment and dependent employment in prostitution, which were amended with the entry into force of the Prostitution Act.

Consequently, since the entry into force of the law on prostitution, the criteria generally used to define the term 'sex worker' have been classified as meaning that the law provides that the employer's restricted right to issue instructions does not constitute an obstacle to the establishment of an employment contract.

The statement also makes clear that the obligation to be insured, to pay contributions and to be registered by persons engaged in prostitution dependent activity entered into force at the earliest from 1 January 2002.

The position of social security companies is consistent because the Prostitution Act created the possibility of establishing an employment relationship as a sex worker for which social security contributions must be paid.

It is welcome that this statement clarified an issue that was initially unclear after the entry into force of the law on prostitution, i.e., the dilemma of whether additional applications for insurance contributions could be made in the case of employment relationships that existed before the entry into force of the Prostitution Act. The problem was solved by entering a cut-off date: additional applications for insurance contributions due to dependent employment as a prostitute can therefore only be downgraded on 1 January 2002 (German Federal Government, 2007).

Consequently, concerns expressed by prostitution practitioners and brothel operators can be seen as unfounded. However, they play a rather important role in practice.

If the person concerned works independently, then all social security regulations applicable to other self-employed professionals also apply to him/her. Although some jobs might be subject to social security contributions, sex workers had the possibility, like any other freelancer, to pay voluntary contributions to the state pension scheme or to apply for treatment as a mandatory insured person and then to pay compulsory contributions. However, the latter presupposes that self-employment is not merely of a temporary nature and that the application to be treated as a compulsory insured person is submitted within five years of self-employment. The fact that the person is classified as an entrepreneur according to tax law is sufficient because the tax classification of a job is an important indication of the existence of a dependent or independent job. Those who pay voluntary state pension contributions, however, do not have access to other social security schemes. For persons practicing prostitution, the five-

year deadline for submitting applications for compulsory pension insurance on application shall start at the earliest on 1 January 2002 (German Social Security Code, Section 4 (2)).

Therefore, sex workers working on their own would, in principle, have had the possibility, prior to the entry into force of the Law on Prostitution, to pay voluntary contributions or, on request, compulsory contributions to the State pension scheme.

Access to statutory health, unemployment and pension insurance as a sex worker was legally guaranteed for these persons later with the entry into force of the Prostitution Act if it is established that he/she is in an employment relationship in a brothel or brothel-type establishment (German Federal Government, 2007).

### III. STUDY CASE: KINGDOM OF THE NETHERLANDS

#### *3.1. General presentation of the legal frameworks. Comparison study and debate*

The core of the current laws and policies on prostitution in the Kingdom of the Netherlands is to decriminalize those forms of prostitution in which adult persons engage on a voluntary and consensual basis, while any form of coercion, threat, violence, deception or abuse of authority in relation to the practice of prostitution by a person, as well as sexual abuse of minors, is strictly prohibited and sanctioned. The basic principle is to treat sex work as work, including the application of labor law to the sexual industry and labor rights attached to sex workers (Wijers, 2008).

This is achieved through a combination of administrative, labor, criminal and civil law: regulating sexual affairs through administrative law (licensing system) and labor law; preventing and combating trafficking in human beings and other forms of violence or abuse, prostitution of minors or operating by foreign citizens without the necessary work permit, through a combination of labor law, criminal law, administrative and economic law; improving the position and working conditions of the persons concerned by including requirements in the licensing system regarding working conditions, safety and health and prohibiting the use of coercion, deception or abuse (Wijers, 2008).

Those who choose to work as sex workers must be able to do this work healthy and safe. Prostitution is different from human exploitation or trafficking, but these and other abuses take place in the prostitution sector. Trafficking in human beings is a serious violation of human rights. An inadmissible violation of human dignity, integrity (physical and/or mental) and one's personal freedom. The legislatures of the Kingdom of the Netherlands are therefore doing their utmost to prevent and combat trafficking in human beings, including in sexual work, to protect and support



victims and to punish perpetrators (Dutch Parliament, 2021).

Obligations to this end are enshrined in both national and international regulations, such as the Criminal Code, human rights treaties, the UN Palermo Protocol (on the prevention, suppression and punishment of trafficking in human beings, especially women and children) (UN, 2000), the Warsaw Convention (anti-trafficking in human beings) (Council of Europe, 2005) and the EU Trafficking in Human Beings Directive (European Parliament, 2011).

Unlike Germany, prostitution in the Kingdom of the Netherlands is done based on a license received from the local authorities for the employer and a work permit for persons wishing to practice prostitution. Abuses occur much more often in the case of sex work than in other sectors, so the government of the kingdom must also prevent or reduce these abuses as much as possible based on its duty to protect the population. The government rightly sees a task for the sex services industry to reach an acceptable industry, in which men and women who are not obliged to do this work by third parties to ensure their livelihoods and especially safety (Dutch Parliament, 2021).

The purpose for which the sexual work license was designed and the inclusion of this license in a national register can help to combat abuse. For example, a better picture of the sector can be obtained, the system has a preventive effect, as an authorization can be refused if the operator or manager is subject to a circumstance in which it can be considered unfit for the proper functioning or management of such a business (e.g., a previous conviction for a crime of violence, sexual crime or trafficking in human beings) (Dutch Parliament, 2021).

As regards persons practicing prostitution, the permit applies both to self-employed persons and to those who work for or for an employer. It is a personal permit valid throughout the country. Authorization is requested by the local authorities of one of the municipalities designated by the Ministry of Justice and Security and is valid for two years.

A permit may be applied for if the applicant is at least 21 years old. The government believes that young adults between the ages of 18 and 21 should be kept out of prostitution because this protects their sexual integrity. A 21-year-old is better able to make an informed decision about sex worker work, is more resilient and less economically dependent on the sex worker profession.

If these conditions are met, the authorization interview with two specially trained civil servants will take place. A prostitution permit will be refused if the applicant is not autonomous enough to work as a sex worker or if the commission has serious suspicions that the applicant is obliged to practice prostitution. Approval criteria are included in the Ministerial Regulation (Dutch Parliament, 2021). After a positive assessment, the prostitution permit will be included in the national register. The register shall contain at least the social security number of the person concerned, the

telephone number at which he can be contacted for work activities and the unique number of the permit.

With the inclusion of the data of persons who have applied for a prostitution license in a national register, the personal data of such persons are processed. The fact that someone is a sex worker highlights the person's sexual behavior and the processing of special personal data is rightly necessary (European Parliament, 2016). In general, the processing of this special category of personal data is prohibited. The prohibition does not apply where processing is necessary for an important reason of public interest, in accordance with the law of the EU Member States. However, proportionality must be guaranteed and the essential content of the right to the protection of personal data must be respected. Appropriate and specific measures must also be taken to protect the fundamental rights and interests of the data subject (Dutch Parliament, 2021).

The explanation of this way of protecting personal data, in particular names, is that the social position of prostitution practitioners is vulnerable and that they often face stigmatization. Various associations believe that registration and the licensing requirement can have a stigmatizing effect on prostitution practitioners, from which other negative consequences may arise. The requirement of the permit and the registration are therefore also, in their view, a violation of the right to respect private life (Council of Europe, 1953).

In the light of these assertions, the Netherlands legislature concluded that the registered person can easily be tracked by municipal officials and supervisors based on a unique authorization number and telephone number, the name being necessary but remaining classified information. The inclusion of the data of the person concerned in the register must be considered necessary to combat abuses in the prostitution sector. Such a practice of processing personal data is justified and is necessary to protect prostitution persons from various abuses (Dutch Parliament, 2021).

### *3.2. Social security of sex workers*

With the implementation of the new law on prostitution in the Kingdom of the Netherlands, local authorities were delegated the social and health insurance responsibilities of prostitution persons, and sex workers became eligible for social rights as well as for the payment of taxes and social security (Outshoorn, 2012). There was a legal basis for the interviews to be conducted by local authorities and to renew the prostitution permits every two years.

The main aim is to pursue sex workers included in the municipal health services system (GGD, Gemeentelijke Gezondheidsdienst) to prevent abuse by different operators. Currently, there is no legal obligation for municipalities to provide accessible and anonymous assistance to sex workers free of charge through municipal health services, although there are many municipalities that have already set up some help points for people practicing prostitution at municipal

health services or another health organization (Dutch Parliament, 2021).

However, the law provides that a sex worker may receive information and care anonymously and free of charge, at least in municipalities where a prostitution permit may be applied for. The place where this happens is generally referred to as a “care post” and this may also include the municipal health service. With such a provision, various institutions, including the municipal health service, are already accessible to sex workers, and legal regulation now guarantees this possibility for them together with the government expressing the importance of adequate care (Dutch Parliament, 2021).

Holding a prostitution permit is not a condition for having a conversation with a specialist at a care post. According to specialists in the field, this would create additional barriers for the person practicing prostitution to have the courage to visit nursing homes, such as the municipal health service, which is not favorable for careful long-term supervision. When applying for a permit, the person concerned is aware of the opportunity he or she must have conversations with specialists at different health centres if he or she has problems in the future. Conversation can be a start for building a trusting relationship of the person practicing prostitution with state authorities. It is also essential that sex workers be able to talk about abuses in a care post without fear, with the prevention of abuse and forced prostitution being the main purpose of these centres (Dutch Parliament, 2021).

If the employee of a care post suspects that a mistake has been committed during the interview or subsequently, he may also refer the person to other forms of social assistance or even to the police. With this, conversations can also help identify abuses such as human trafficking. During the conversation, an attempt is made by providing information to put the person practicing prostitution in a position to take measures to protect his or her integrity. The information will never be shared with third parties without the person’s explicit consent (Dutch Parliament, 2021).

#### IV. PRELIMINARY CONCLUSIONS ON THE PRESENTED CASE STUDIES

As a short conclusion, here are two countries where prostitution is legal, but with distinct legal rules of application. In the case of Germany, prostitution is regarded almost as a profession like any other, people who practice prostitution are thus able to conclude legally valid employment contracts by establishing an employment relationship subject to social security contributions, to give them access to social security and, in general, to improve their social protection (German Federal Government, 2007).

However, there are certain specific rights and obligations to protect the dignity and bodily integrity of sex workers. This particularity only gives rise to a

unilateral payment obligation on the part of the customer/beneficiary/employer.

The latter is not entitled to the benefit. If the benefit has been fulfilled, only the person practicing prostitution is entitled to the agreed remuneration.

The client can only request, in accordance with the provisions of civil law, the refund of the remuneration if it has been paid in advance. The customer has no right in case of defective performance of the service/work. In the case of social security, the legislation provides that such insurance may not be refused or reduced because of a profession, whether regarded as immoral if the legal framework for practicing it exists. To benefit from social security, it is sufficient to have an individual employment contract (Dutch Parliament, 2021).

On the other hand, in the Kingdom of the Netherlands there is a different legal approach from Germany and much more inclusive to work in the sex industry. In the Kingdom of the Netherlands, prostitution is carried out based on a license received from the local authorities for the employer and a work permit for persons wishing to practice prostitution. The design of the sexual work license and the inclusion of this license in a national register can help to combat abuse.

For example, a better picture of the sector can be obtained, the system has a preventive effect, as an authorization can be refused if the operator or manager is subject to a circumstance in which it can be considered unfit for the proper functioning or management of such a business (e.g., a previous conviction for a crime of violence, sexual crime or trafficking in human beings) (German Federal Government, 2007).

Although the legal provisions of how prostitution is regulated are much different between the two countries, there is a common point: Counseling Centers. Through these centers, sex workers find extremely important help from the state. In these places, the people concerned can come and ask for the necessary help in case of abuse and forced prostitution.

In our opinion, if prostitution is legalized in Romania, this law is a combination of the two laws of the countries presented in the case studies. There is an employment contract whereby the persons concerned can benefit from various State insurance (German Federal Government, 2007), as in the case of Germany. But there should also be a system for granting revolving prostitution permits, as in the case of the Kingdom of the Netherlands; this makes it much easier for prostitution workers to be supervised by the authorities if they are subject to abuse by brothel operators. And as there are also in the two countries, there should be Counseling Centers in Romania, where the persons concerned should always find a large helping hand from the Romanian state.

## V. MANAGEMENT OF PROSTITUTION PHENOMENON IN ROMANIA

### *5.1. Public opinion studies on legalization of prostitution in Romania. Issues related to the draft of permissive regulation*

In Romania, the exact name of commercial sex practitioners is not known, prostitution being prohibited by law; police raids lead to fines for street sex workers, instead being tolerated erotic massage parlors that often hide the practice of prostitution. In 2003, the WHO estimated a number between 23,000 and 47,000, women and men who practice commercial sex in our country (Preda. 2009).

The public opinion in Romanian society regarding the acceptance of the legalization of the prostitution has changed with the passing of the years. Another survey, conducted in 2003 in collaboration between the Institute for Public Policy in Romania and Gallup Romania on a representative sample of 1500 people, showed that 52 % of the interviewees agreed to legalize the prostitution (IPP, 2003).

After the revolution of December 1989, in Romania, there were several failed attempts to regulate and legalize prostitution.

The most extensive and well-documented project was submitted to the Romanian Parliament in December 2010 by MP Silviu Prigoana, a project that was carried out with the inspiration of German regulations in the field. However, this legislative proposal failed to obtain the necessary support for its adoption, with only 30 votes in the Chamber of Deputies (Romanian Parliament, 2010).

The draft law proposed to amend the legislation so that an existing phenomenon such as prostitution, a reality that is demonstrated even now that it does not have a truly effective solution for the moment, can be treated legally. The conditions under which these activities can be carried out are provided by the draft law, the manifestation of activity in the public space being reduced to the extreme.

The draft law defined the notion of “authorized sexual activity” (legal abbreviation-ACSA) as “sexual activity carried out by the person holding the legal authorization, carried out on the basis of an agreement between the parties and rewarded with a pre-established payment”. Homosexual relations were excluded from the concept, but also abnormal sexual relations.

The common law applicable to that special law would have been laid down in Government Emergency Order No 44/2008 on the conduct of economic activities between authorized natural persons, individual businesses and family businesses.

The legislative proposal imposed several well-structured requirements regarding the legal framework for carrying out the activities of sexually authorized persons, the person providing and the beneficiary. Thus, sexual activities had to meet the following requirements (Zaharie, 2011):

- Be authorized in accordance with the procedure laid down in the special law supplemented by the ordinary law applicable to this field;

- Comply with rules of hygiene and discretion; persons practicing prostitution were required to undergo medical examination and to maintain confidentiality regarding the identity of clients;

- The services take place independently or in an organized setting, in tolerability houses or brothels;

- The building in which the activity is carried out must be intended exclusively for this purpose, and in its building, there are no minors.

Service providers needed to be at least 20 years old and operators at least 18 years old. The only minors that could occur in this situation are beneficiaries who must be only 16 years old. The question arises whether allowing the 16-year-old to benefit from sexual activity does not conflict with Article 1 of the “Convention on the Rights of the Child ratified by Law no. 18 of 1990 republished” (Zaharie, 2011).

According to Zaharie C.G., this situation is likely to be a physical or mental injury to the 16-year-old minor. Payment for sexual services, even if it is lawful and regulated by the state for various reasons, is not of its nature and can positively influence the education and ethical and moral development of the 16-year-old minor. Prostitution, even if it will at some point be accepted by the legislative power, cannot become a factor of education and morality for a minor. If the person providing the service is required of the age of 20 and the client, to ensure the moral form of the minors, the age of majority should be reached (Zaharie, 2011).

On the other hand, if the practice of prostitution is established as an economic activity in a legal context, then does not infringe the right to work of the 18-19-year-olds through this prohibition? Certainly, for the reasons set out in Article 1 of the Convention on the Rights of the Child, the practice of prostitution between persons under 18 could be prohibited, as in the Kingdom of the Netherlands the minimum age for the possibility of practicing prostitution under legal conditions is 21 years.

The legislative proposal also if persons practicing prostitution, in addition to meeting the age condition, must be medically fit, legally authorized and subject to the control of activity, medical and sanitary control, and administrative and public order control. (Romanian Parliament, 2010).

In carrying out a first form of control, the Ministry of State has authorized doctors who can ascertain whether a person is fit to practice sexually authorized activities. The central authority also issued legal rules on the conditions under which a person is considered fit to exercise that activity. It is also considered that the medical examination should have been monthly and should be highlighted in the ACSA Charter, held by prostitution practitioners, and in the “Confidential ACSA Register” of the inspecting physician. The medical examination would have been carried out for a fee; the funds intended for the Single National Fund for

Sa-Nation Insurance. The Ministry issued the minimum standards of hygiene and working conditions regarding toleration houses and brothels, and the public departments delegated specialized staff for this monthly control of the conditions in the premises where the activity in question is carried out. The results of the checks would have been highlighted in the “Register of Hygiene Conditions Recording” on permanent basis in the premises, but also in a register held by the Public Health Directorate (Zaharie, 2014).

The Ministry of Administration and Interior, through a specialized structure, would have kept a centralized record of the authorizations for the exercise of this activity issued at national level. The record was kept electronically and contained the authorization and the documents on which it was issued. If the authorization to exercise this activity had been cancelled three times, the accounting structure for the exercise of the ACSA would not have given a favorable opinion for a new authorization (Zaharie, 2014).

### 5.2. Economic and Tax Aspects of Legalization of Prostitution

Considering that in Romania there are 40,000 practicing persons, who have on average 2-4 clients per day, working 5 days a week and 11 months a year, which have an average tariff of 100 lei per “prestation”, results in an annual taxable income of 44,000 to 88,000 lei per sex worker, and the entire field would earn between 1,760,000,000 and 3,520,000,000 lei per year or between 410,000,000 and 820 million euros per year, bringing the budget between 65,600,000 and EUR 131,200,000 a year. The amount will also be added to this budget of social contributions, as well as any other fees charged to fund programmes such as counselling centres to help the people concerned with possible abuses. The question that raises controversy, however, is how many paid sex workers will choose to work legally, thus paying all their contributions. How many of these people will choose to pay these contributions and how many will continue to work illegally? Looking at this situation from the perspective of some states where prostitution is already legalized, it follows that many of these people will continue to work illegally, with no taxes and taxes, they will choose to pay these contributions in part, and they will choose to pay them in full. This location must be analyzed considering the high level of social contributions in our country (Zaharie, 2014).

The existence of such counselling centres is vital in the case of legalization of prostitution in Romania. With the help of these centres, people who choose to practice prostitution will be urged to choose work in legal forms, explaining in this way that by paying contributions to the state, they will be able to benefit from benefits such as social and health insurance, but above all from more security and much stronger protection from the state against possible abuses.

## CONCLUSIONS

Prostitution is a social phenomenon that has existed since ancient times. It's a phenomenon that can't be eradicated, but it can still be kept under control. The prohibition of the practice of prostitution does not lead to the disappearance of the phenomenon itself, evidence of prohibitive regimes in which, although prohibited by law, prostitution continued to exist illicitly, trafficking in human beings, pimping and sexually transmitted diseases being very difficult to control.

One of the possible solutions to control, prevent and reduce all risks related to prostitution is the legalization of commercial sex and not of sex intermediaries. But imposing such a measure in the absence of an analysis based on the experience of other states, but also depending on Romania's particularities, could generate undesirable effects.

In the contemporary period, in the countries where prostitution was legalized and regulated, this approach was carried out by political formations of liberal, Christian-democratic, social-democratic, generally under the conditions of societies based on democracy and tolerance. A top-ranking position occupied the neoliberal political current that feminist movements were joined by it. Prostitution was born, grace and cultural tradition, as a permanent and sometimes useful component of human society.

In countries where prostitution is legalized, the persons concerned who provide such services, on their own or in a brothel, but legally, and therefore pay taxes, benefit from social insurance, leave, pension, generally all rights under the labor law of the respective countries. Countries in which prostitution is legalized regard it as work, replacing prostitution with commercial sex work. No one in the world has legalized intermediation of sexual services (proxenetism). Efforts are also being made worldwide to reduce child sex tourism.

Even if commercial sex is illegal, public authorities will have to assume the consequences of this social phenomenon as: sexually transmitted diseases (including HIV), abandonment of children at birth, social exclusion of people practicing prostitution including from social and medical services.

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