MASTER´S THESIS IN INTERNATIONAL LAW AND HUMAN RIGHTS

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ECONOMIC AND SOCIAL HUMAN RIGHTS OF SEX WORKERS IN INTERNATIONAL HUMAN RIGHTS LAW AND RESTRICTIVE LEGISLATION ON SEX WORK

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ABSTRACT

Subject: International Human Rights Law, Master´s Degree Programme in International Human Rights Law

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Title of the Thesis: Economic and Social Human Rights of Sex Workers in International Human Rights Law and Restrictive Legislation on Sex Work

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Abstract: The present research will examine how sex work is regulated in international human rights treaties. Approaching the question whether any international norms specifically restrict sex work as a form of labour, the research thus explores the scope and content of sex workers' socio-economic rights in international human rights framework, identifying the existing instruments of protection of the rights of sex workers under international law. Further, this research sought to determine if consensual sex work sex work falls into the scope of the right to work in international human rights law, and which conditions should exist to bring sex work into compliance with international human rights law. With regards to restrictive models of regulation of sex work on the national legislation of Russia and Sweden, it is argued that restrictive models of regulation of sex work conflicts with obligations of the States under relevant international treaties in the field of economic and social rights. Sex workers should be protected and benefit from international instruments just as any other category of workers. From the analysis of domestic law in Russia and Sweden, it can be seen, that the criminalisation model and the partial criminalisation model fail to protect sex workers' rights.

Key words: International Human Rights Law, Economic and Social Rights, Sex Work

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EPIGRAPH

'An examination of international human rights and labour standards reveals that most issues of concern to sex workers could be subject to the international instruments already developed to protect the rights of others.

Bindman, Jo and Jo Doezema, "Redefining prostitution as sex work on the international agenda"

'And yet, in certain circles, they keep on saying that the challenge is not to remove prostitution from rough areas 'where prostitutes are heavily exposed to all kinds of assault (in which conditions, even selling bread would qualify as a dangerous sport), nor to create the legal work environments that sex workers are calling for, but to ban prostitution'.

Virginie Despentes, 'King Kong Theory'.

TABLE OF ABBREVIATIONS

CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
ESC	European Social Charter, European Social Charter (Revised)
EU	European Union
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
NGO	Non-governmental Organization
STDs	Sexually Transmitted Diseases
THB	Trafficking in human beings
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV (human immunodeficiency virus) and AIDS (acquired immune deficiency syndrome)
UNODC	United Nations Office on Drugs and Crime
URSSAF	Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales, meaning the Organisations for the Collection of Social Security and Family Benefit Contributions
WHO	World Health Organisation

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1. INTRODUCTION

1.1. Background

The issue of economic and social human rights of sex workers is often largely overlooked. Notably, in international human rights law there is the lack of attention to human rights of sex workers that go beyong protection from human trafficking. International human rights treaties and ILO conventions do not address sex work explicitly. Treaty bodies' practice, e.g. general comments and general recommendations which concern sex workers' human rights, is fragmentary. Little can be found in case law. Academic sources exploring sex workers' economic and social human rights are also limited. Thus, from the point of international human rights law sex workers rights are still insufficiently researched. Meanwhile, many researchers underline the importance of a labour approach to people working in the sex industry, and refer to the lack of international and domestic instruments of providing such protection, while 'the lack of international and local protection renders sex workers vulnerable to exploitation in the workplace, and to harassment or violence at the hands of employers, law enforcement officials, clients and the public[1]'.

In the context of sex work, the focus of international law is mostly on protection of the rights of persons subjected to involuntary sex work which may be seen as forced labour, slavery, 'exploitation of prostitution[2]', and trafficking[3]. However, seeing sex work only through anti-trafficking framework leads to overlooking sex workers labour rights and other economic and

[1] Bindman, Jo, Doezema, Jo, "Redefining prostitution as sex work on the international agenda", London: Anti-Slavery International, 1997, p.1

[2] The term "exploitation of prostitution" is set in Article 6 CEDAW: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

[3] The Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol), adopted by General Assembly (2000) is the world-recognised instrument against trafficking. The Council of Europe Convention on Action against Trafficking in Human Beings (2005) is a regional instrument. Protocol on the African Charter on Human and Peoples Rights on the Rights of Women in Africa, art 4 (2) (g) says about obligations of member states to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk". International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states, that "appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights".

social rights[4]. An importance of socio-economic rights approach can be not only in these rights themselves, but also is a way for improvement for other human rights of sex workers: "By looking at commercial sex as work, and at the conditions under which that work is performed, sex workers can be included and protected under the existing instruments which aim to protect all workers in a general way, all persons from violence, children from sexual exploitation, and women from discrimination"[5].

There are other reasons for sex workers' rights being neglected. One of the problems with the valid approach to sex workers' rights is the problem of the so-called victim narrative[6], when "the identity of international human rights lawyers relies on constructing others as victims. Sex workers being constructed as victims is a part of wider international human rights law discourse, the 'victim narrative'[7], where gender is organised as a hierarchy, and the masculinity is on the position of authority."[8] A woman sex worker in this discourse tends always to be perceived as a victim of trafficking or exploitation of prostitution. Meanwhile, if a woman expresses her will to work in sex industry, she is 'at best invisible, at worst deserving of abuse'[9]. Thus, "two 'classes' of sex workers are effectively created: one that 'deserves' legal protection because they were duped, tricked or forced into sex work, and another that does not, because they are sexually fallen and have chosen this work"[10].

The existence of these two categories can justify the absence of attention to sex workers' rights in international human rights law outside trafficking victims' rights. Such dualism not only replaces legal issue with vague moral norms[11], but also oversimplifies the problem[12]. The international human rights law conceptualisation is often reflected in domestic legal systems. For example, in the USA (where sex work is criminalised) "rather than recognize sex work as a form

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[4] Roth, Venla, "Defining Human Trafficking and Identifying Its Victims. A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings", Martinus Nijhoff Publishers, 2011, p.27-30.
[5] *Supra note* 1: Bindman, Doezema (2007).
[6] On the concept of 'victimhood' in international human rights law and international humanitarian law, also see Huckerby, Jayne, Feminism and International Law in the Post 9/11 Era, in *Fordham International Law Journal,* Vol. 39, 2016, pp. 547-558.
[7] Otto, Diane, Disconcerting "Masculinities", in Buss, Doris E, Manji, Ambreena (eds) *International Law: Modern Feminist Approaches,* Oxford and Portland, Oregon, 2005, p. 106.
[8] *ibid.*
[9] Brysk, Alison, Globalization and Human Rights, University of California Press, 2002, p. 46
[10] Framework on Rights of Sex Workers and CEDAW. IWRAW-AP, NSWP, 2018 https://www.nswp.org/resource/framework-rights-sex-workers-and-cedaw#:~:text=It%20is%20intended%20to%20be,Discrimination%20Against%20Women%20(CEDAW).last approached 19.11.2019.
[11] Hua, Julietta. "Trafficking Women's Human Rights", University of Minnesota Press, 2011, p. 24, 25, 37.
[12] *Ibid*, p. 37, 38.

of legitimate labor and exchange"[13], domestic legislation "takes a prohibitionist stance that links prostitution to trafficking"[14].

Second, the colonial aspect of human rights law, with the white masculine image as universal subject as protector, civiliser and white saviour[15] is also a discourse with no place for sex workers as active agents. Here an 'exotic other' concept takes over[16]. Victim subject constructs a binary structure, a balance between the 'victim' and the 'saviour', the latter represents 'civilisation' and saves the 'good' woman from 'bad native men'.[17] Women from the Global South are seen as the victims of oppression, opposite to Western women who are 'free'[18]. Moreover, since the effects of globalisation[19] make sex work at large an immigrant women's industry[20], colonial view on sex workers occupies the public discourse[21].

The third factor contributing to disregard of the sex workers human rights is stigma, which surrounds[22] sex workers.

Thus, the 'victim approach' fails to provide the necessary minimum of rights and lacks the agency of the people subjected to trafficking[23]. Therefore, some scholars state, the human rights approach to trafficking should be replaced with labour approach to address the needs of trafficked persons[24].

The ILO has a set of conventions aimed at special categories of workers, many of them often are in informal economy[25], such as Domestic Workers Convention, 2011 (No 189), Safety and Health in Agriculture Convention, 2001 (No 184) Home Work Convention, 1996 (No 177),

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[13] *Ibid*, p. 38.
[14] *Ibid.*
[15] Simms, Rupe, "Controlling Images and the Gender Construction of Enslaved African Women", in *Gender and Society,* Vol. 15, No. 6 (2001), pp. 879-897
[16] Engle, Karen, International Human Rights and Feminism: When Discourses Keep Meeting, in *International Law: Modern Feminist Approaches*, Oxford and Portland, Oregon, 2005, p. 57.
[17] *Ibid*, p. 106.
[18] *Ibid*, p. 52.
[19] Chinkin, Christine, Wright, Shelley, Charlesworth, Hillary, "Feminist Approaches to International Law: Reflections from Another Century", in in Buss, Doris E, Manji, Ambreena (eds) *International Law: Modern Feminist Approaches,* Oxford and Portland, Oregon, 2005, p. 30-31.
[20] See, for example: Ehrenreich, Barbara, Hochschild, Arlie Russel (eds),"Global Woman. Nannies, Maids and Sex Workers in the New Economy", Granta Books, London, 2003.
[21] Meanwhile, according to Otto, sex workers resistance in India show that sex work outside legal frames is a way to avoid oppressive policies and both victim narrative and colonial narrative. *Supra note* 7, p. 127
[22] *Supra note* 1: Bindman, Doezema (2007).
[23] Shamir, Hila, "A Labor Paradigm for Human Trafficking", *in UCLA Law Review*, Vol. 60, No. 1, 2012, pp. 76-136.
[24] *Ibid.*
[25] The definition of the "informal economy" was given by International Labour Conference: "all economic activities by workers and economic units that are - in law or in practice - not covered or insufficiently covered by formal arrangements", in Resolution concerning decent work and the informal economy, General Conference of the International Labour Organization, 90th session, ILC90-PR25-292, para. 3.

Nursing Personnel Convention, 1977 (No 149). However, a sex workers convention setting minimum standards for member States in sex workers treatment, is absent. Stigma, ongoing discussion about sex work and the lack of common ground towards sex work (which will be seen further in different models of regulation of sex work on domestic level) are probably the reasons that the group in need of international human rights protection, in fact, has none.

Even the feminist approaches to sex work vary.[26] Many argue that under no conditions may sex work be seen as voluntary work[27]. This argument is not within the scope of this research. The starting point of this research is the assumption, that sex workers is a group of people in the need of protecting their rights. Clearly, criminal law is needed to suppress trafficking and forced labour, and to punish the persons involved, but it is not the aim of criminal justice to address economic and social rights of persons.

Socio-economic framework focuses on the right to work, on working conditions in sex work, the right to health and other socio-economic rights, which returns the discussion into the legal field, not debates on moral issues on the question whether the persons occupied in sex work have the agency to freely choose the occupation or that poverty, physiological traumas and other circumstances coerce any sex worker to sell sex. However, the question whether sex work can be treated as work under international human rights law, in the framework of the right to work and other socio-economic rights; and the question on the border between consensual sex work and forced labour lies, will be addressed.

For this research, various definitions of sex work and sex workers may be helpful. In short, sex workers are defined as those who engage in voluntary, consensual commercial sex[28]. Bindman and Doezema propose the following definition of sex work:

'Negotiation and performance of sexual services for remuneration

i. with or without intervention by a third party

ii. where those services are advertised or generally recognised as available from a specific location

iii. where the price of services reflects the pressures of supply and demand.'[29]

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[26] See, for example: Sutherland, Kate, "Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade", in *Osgoode Hall Law Journal*, Vol. 42, pp. 139-167, 2004.

[27] See, for example: Vid. Schultze-Florey, S.F. "Prostitution and the free will – a critical view on consent in prostitution", University of Bergen, 2011 (p.95). Available at : https://bora.uib.no/handle/1956/5502, last approached 12.12.2019, Erika Schulze, Sandra Isabel Novo Canto, Peter Mason, Maria Skalin, E, "Sexual exploitation and prostitution and its impact on gender equality. Study.", European Parliament, 2014, Availiable at http://www.europarl.europa.eu/studies, last approached 02.06.2020.

[28] Marshall, Rachel, "Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work", *in 23 Wm. & Mary J. Women & L.*, 47, 2016.

[29] *Supra note* 1: Bindman, Doezema (2007), p.

UNAIDS also gives a working definition of sex workers. Sex workers, according to UNAIDS guidelines, are "consenting female, male and transgender adults—as well as young people over the age of 18 years—who regularly or occasionally receive money or goods in exchange for sexual services"[30]. UNAIDS highlights, that the term is intended to be non-judgmental and neutral, meanwhile, according to the same guideline, term 'prostitution' should not be in use due to the humiliating meaning which this word bears. The World Health Organisation (WHO) gives a largely similar definition[31]. CEDAW Committee, however, continues to refer to sex work as 'prostitution' up to this days[32]: after all, Article 6 of CEDAW refers to 'exploitation of prostitution'. In this research, the term 'prostitution' is used in direct citations of legal and academic sources, or in the discussion around Article 6 of the CEDAW.

The focus of the research would be on finding the existing instruments of protection of the rights of sex workers, exploring the scope and content of sex workers' socio-economic rights both in international human rights law and in national models of regulation of sex work, in the countries where sex work is restricted, namely Russia and Sweden.

1.2. Research problem

The research question is set as follows: to explore the scope and content of economic and social rights of sex workers in international human rights law, and to examine how these rights are realised in restrictive models of regulation of sex work, in the countries where sex workers or third parties in sex work are criminalised.

The argument, that from the labour perspective, the law 'recognises that there is nothing inherently violent or exploitative about sex work but that violence and exploitation are a result of bad laws, policies and labour practices'[33] should be grounded on relevant international human rights law instruments. The border between forced and free labour would be explored to find out whether sex work falls into the scope of the right to work in international human rights law, and

[30] UNAIDS Terminology Guidelines, 2015, available at https://www.unaids.org/en/resources/documents/2015/2015_terminology_guidelines, last approached 15.11.2019

[31] Overs, Cheryl, "Sex workers: part of the solution. An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries", 2002 http://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf, approached on 15.11.2019

[32] See, for example, CEDAW Committee, Concluding observations on the fourth periodic report of Andorra, UN Doc. CEDAW/C/AND/CO/4, 13 November 2019, para 27(d).

[33] *Supra note* 10.

which conditions should exist to bring sex work into compliance with international human rights law.

Exploring sex work from an economic and social rights angle seems important, because it is often forgotten, that sex work is sometimes the only or the best way for an individual to earn a living. Brining up economic and social rights in this context works destigmatising and reminds of people in sex work are not the objects of State's care, but first of all the bearers of economic and social rights.

International human rights law lays out the States' obligations. However, all states have their national approach, or 'model' of sex work legislation. Various sources recognise from four to five[34] basic national legislative models of sex work, most identify four[35] of them. They differ by the level of state interference into sex work, and by different political and social aims if the sphere of regulation of sex work. It should be noted, that different models are not isolated, and in practice the models intersect and the regulation model has the features of several models.

The first legislative model is criminalisation[36] (sometimes called: prohibition, abolition, and in cases where sex work is an administrative offence against public morals or against public order, this model is sometimes referred as 'penalisation'). In this model sex work itself is a criminal offence or an administrative offence, and the sex work itself ('prostitution'). Third parties activities such as pimping, procuring, soliciting brothel-keeping, recruitment into sex work, advertising of sexual services and renting the premises to perform sex work are usually criminalised too. Countries that use criminalisation, for example, are: the US, Russia, Belarus, Ukraine, the Republic of South Africa, India, China.

The second model is partial criminalisation[37] (sometimes called: abolition, neo-abolition, 'Nordic Model', 'Swedish Model'). Under partial criminalisation, the sex worker itself is not punished, but buying sex services and abovementioned third-parties activities are criminalised. Countries that use partial criminalisation, for example, are: Sweden, Norway, Iceland, Ireland, Canada, partially Finland.

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[34] For example, in Smith, Molly, Mac, Juno "Revolting Prostitutes: The Fight for Sex Workers' Rights" Verso Books, 2018.
[35] For example, as in Mgbako, Chi, The Mainstreaming of Sex Workers' Rights as Human Rights in *Harvard Journal of Law and Gender*, Vol. 43, pp. 120-121.
[36] *Ibid*, p. 120.
[37] *Ibid*, p. 121

Legalisation[38] (also referred to as regulation) means that sex work is permitted under strict state regulations. The corpus of licensing, taxation and migration legislation can be extensive. Countries that use legalisation are, for instance: The Netherlands, Germany, Switzerland.

Decriminalisation[39] model implies that sex work and all the aspects of it are decriminalised, and the state interference into sex workers' performance is minimal. Instead of special regulation of sex work, the state applies to sex workers general norms on labour, healthcare, taxation, employment, maternity leave benefits, etc, treating sex workers as self-employed workers or employed workers depending on the form of the chosen work. The most notable example of decriminalization can be seen in New Zealand.

The initial intent of the research was to explore all the models of regulation of sex work on the incompatibility with economic and social rights set in international human rights treaty.

In the process of work it became evident, that, first, economic and social rights approach to sex workers requires more deep insights, and more material is requires to cover international legal aspects of sex workers' rights. Second, domestic legislation is often wider than a single domestic law often representing the model. For example, Swedish model represents all countries who prohibit the purchase of sexual services, but even within the Nordic countries other domestic legislation that sets economic and social rights may vary[40]. In this respect Östergren proposes three groups of domestic sex work policies based on the overall assessment of legislation with regard to sex work: integrative (New Zealand), regulative (Germany) and restrictive (Sweden)[41]. For this reason, it is more or less useless to try to make the conclusions on certain economic and social rights in the 'model' as a whole while researching the law of one particular country as 'representing' the model. At the same time, the 'restrictive' models seem to be most hostile with regard to sex workers' economic and social rights. Thus, only two 'models' been considered in this research: criminalisation and partial criminalisation, which are, in Östergren classification, 'restrictive'. Östergren's approach to classification of the models of regulation of sex work was used by other researchers as well.[42]

However, the name of the model is not definitive or limiting for the purpose of this research. What is more important is to explore, how criminalisation of sex work itself or 'third-party'

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[38] *Ibid.*
[39] *Ibid.*
[40] Östergren, Petra, "From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies", DemandAT Working Paper No. 10, 2017, available at http://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies, last approached 01.06.2020.
[41] *Ibid.*
[42] Benoit, Cecilia, Smith, Michaela, Jansson, Mikael, Healey, Priscilla, Magnuson, Doug. "The Prostitution Problem": Claims, Evidence, and Policy Outcomes." in *Archives of Sexual Behavior.* 48(3), 2018.

criminalisation influences the economic and social rights of sex workers and respective obligations of the States.

1.3. Methodology, structure and limitations

The legal dogmatic method is used in this research. The relevant international human rights law norms are identified and analysed with regard to the research question; and thereafter the compliance of the relevant domestic legal norms with these human rights law norms is established. The aim is not to identify the model of regulation which is 'best' at complying with international human rights law, but rather to see how what is the right to work and work-related socio-economic rights with regard to sex workers, and to explore how these rights are realised or not realised under 'restrictive' domestic legislation systems.

Thus, to get a proper approach to the research, first it will be assessed if international human rights law proposes that sex work constitutes work in the meaning of international human rights law and thus enjoy the same level of protection of any other types of work. Then, the economic and social rights of sex workers should be identified in international human rights law framework. Further, the corresponding obligations of the States would be assessed. Finally, all the economic and social rights in questions would be assessed in national legislation which criminalises sex workers or third parties involved in sex work.

The structure of the thesis will be the following: after the introduction, the second chapter will investigate relevant international human rights law. The first subchapter will explore how sex work is regulated in international human rights treaties and treaty body interpretations, and whether any international norms specifically restrict sex work as a form of labour.

The second subchapter will look into what is work in international human rights law, what is the content of the right to work, where is the line between voluntary work and forced labour, what are the corresponding obligations of the States, what are the limitations of the right to work in relevant human rights treaties. This analysis is needed to find out if – and when – sex work can be seen as labour and explore how States should treat sex workers.

Finally, there will be subchapters on the right to just and favourable conditions of work, on the right to form a union bargain collectively and the right to social security. These socio-economic human rights are selected for various reasons: not only because they are themselves important and often mentioned as being severely violated with regard to sex workers[43], but also

[43] *supra note* 34: Smith, Mac, 2018, pp. 38-67.

because they are closely connected to the right to work and the research on these rights provides an understanding of how crucial is recognition of sex work as a form of labour.

The following chapters would respectively look at the mentioned rights through the domestic legal systems in which sex work or sex work-related activities are criminalised.

In conclusion, the main results and outcomes of the research will be submitted and discussed, as well as the answer to the research question.

The research is limited to the right to work and work-related economic and social rights. The right to work is central, as the main identifying feature of the group in question is the type of work performed. Also, the right to work is a core economic right, a basis for dignified economic independence and living, while other socio-economics rights are interconnected with the right to work, or even founded at the right to work[44].

The human trafficking issue will not be the subject of the thesis. It is a well-researched topic, as was mentioned above[45]. However, certain attention will be given to the distinction between forced and voluntary sex work, and to an obligation of the States to protect from forced labour since such protection is one of the dimensions of the right to work.

The countries representing sex work regulation domestic models are chosen for various reasons. Russia for criminalisation is among the minority of European countries which maintain criminalisation model. Sex workers' rights in Russia have not been sufficiently researched. However, there is certain accessibility of legislation and other sources. Sweden for partial criminalisation model is chosen as the first country which adopted legislation criminalising the purchase of sexual services. It was Sweden who introduced the whole concept behind the partial criminalisation model, as well as first developed its implementation by the courts. From Sweden, partial criminalisation was exported to other countries.

Both Russia and Sweden are the parties to relevant UN and Council of Europe treaties, which provide similar economic and social rights to the individuals under their jurisdiction. Sweden, however, is also a subject to the EU treaties and legislation, which are the additional instruments for human rights protection. These two countries represent two opposite poles of human rights compliance: Russia, with the largest amount of violations of the ECHR[46], and Sweden with its reputation of pioneering human rights and gender equality. In this polarity of the

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[44] Para 8 of the CESCR General Comment No 18 state, that "Articles 6, 7 and 8 of the Covenant are interdependent. The characterisation of work as decent presupposes that it respects the fundamental rights of the worker".

[45] See, for example: *Supra note* 4: Roth, Venla, 2011.

[46] See ECtHR Statistics by the year 2019. Violations by Article and by State 2019. Russia has the highest amount of violations (186), followed by Ukraine (109) and Turkey (96), while Sweden has 0. Available at https://www.echr.coe.int/Pages/home.aspx?p=reports, last approached 01.06.2020.

chosen countries restrictive regulation models it would be better seen how the model itself (rather than the countries' human rights commitments) influences sex workers' socio-economic rights.

It must be noted, that sex workers are a diverse group. There are female, male, transgender sex workers, migrant and nationals of the countries they work, single mothers, students, indoor-based, street-based, self-occupied and those working in brothels, massage parlours, those wishing to exit sex work and those satisfied with it. The important pattern in common is that only adult persons are taken, and only those working voluntarily according to human rights law.

1.4. Sources

The main sources are the relevant provisions in the relevant treaties, both the UN treaties and regional ones. The ICESCR is used as a basic international instrument setting the obligation of the States in the economic and social human rights. The CEDAW is chosen for its gender-focused human rights approach. Other treaties are used where relevant.

The International Labour Organisation various conventions are taken as a source because of the unique role of the ILO to labour rights[47]. The ILO is an organization specifically created for working out labour standards for national legislation and promoting labour rights. At the same time, the ILO role should not be overestimated, as not all aspects of the ILO activities are directly linked with human rights law and only a limited number of ILO conventions are human rights conventions.[48]

The regional conventions are the ESC and Revised ESC (hereinafter – the ESC); The Charter of Fundamental Rights of the European Union (the Charter), ECHR. The ESC is commonly referred to as a 'social constitution of Europe'. It provides for detailed regulation of economic and social rights to all 47 Council of Europe member States.

The ECHR as a source is taken due to its increasing role in labour rights protection. Although directly the ECHR protects the right to work only through the prohibition of forced

[47] More on the role of the ILO see i.g.: Lee Swepston. Closing the gap between International Law and U.S. Labor Law. Workers' Rights as Human Rights, James A. Gross (Ed.). ILR Press 2003 p. 53 – 77.
[48] Craig, Scott, "Multinational Enterprises and Emergent Jurisprudence on Violations of Economic, Social and Cultural Rights". in *Economic, Social and Cultural Rights: A Textbook, 2nd Edition. Dordrecht, ND: Martinus Nijhoff Publishers, 2001.* p. 569.

labour, ECtHR case law developed a complex approach to protecting work-related rights and social rights[49].

The Charter of Fundamental Rights of the European Union intersects with the ESC and the ECHR, and serves to ensure that both the EU legislation and the EU member States legislation are bound by the human rights standards set in the Charter. This source is important for the present research for the reason that the countries using partial criminalisation are mostly belong to the EU.

Much attention will be given to general comments or general recommendations of the treaty bodies, as they have an interpretive role and observational role with regard to respective treaties, communications of the treaty bodies, case law of international courts.

States periodic reports to relevant treaty bodies and the treaty bodies concluding observations are also used as a source: the former, as information resource on the measures implementing by the State, the latter to see how the treaty bodies evaluate the member state progress in the fields of economic and social rights and what recommendations are given to the State to provide the compliance of the State with a relevant treaty. These reports and observations also are useful for tracking history of changes in domestic legislation of the States and other measures the States implement to meet their obligations under human rights treaties. Where relevant, the UN Special Rapporteurs' reports would be used as a source of information on human rights violations.

Domestic legislation would be referred to where relevant for the research.

Secondary sources are academic sources: literature and other. First, those which explore sex work in international human rights law, and second, those on economic and social rights and international labour law. These sources are used for present research as they provide a view on relevant legal norms, provide the history of drafting of the relevant treaties and domestic legislation, and the ways of interpretations of these norms. Where appropriate, social studies, primarily sociological. would be used, because they provide an information on how sex workers are treated and which human rights violations can be found in the countries representing the models of regulation of sex work.

Internet sources will be used in a limited way. The WHO, the European Parliament, the Council of Europe, UNAIDS, UNODC, ILO studies and statistics would be used where appropriate. These studies, as they are conducted within the competence of mentioned agencies,

[49] See, for example, Mantouvalou, Virginia, "Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation", in *Human Rights Law Review,* Volume 13, Issue 3, pp. 529–555, 2013.

organisations and bodies provide relevant information on human rights situation in certain countries, regions or worldwide, as well as the expert opinions on essential human rights issues.

2. INTERNATIONAL FRAMEWORK OF ECONOMIC AND SOCIAL RIGHTS OF SEX WORKERS

2.1 Sex work in international human rights law

Researchers examining human rights of sex workers in Africa state: "international human rights system creates a foundation for the realization of sex workers' rights in Africa. Many African nations have ratified treaties in the international human rights corpus that set forth rights that relate to sex work including the right to the free choice of work".[50]

In the meantime, the 'neo-abolition' approach is gaining ground[51], and the right to choose sex work as work is being questioned. In this discourse, the consent to sex work and a choice of sex work is considered non-existent. Hence, the sex workers' human rights, such as the rights to work, the right to just and favourable conditions of work and the right to form trade unions are being neglected by the neo-abolitionist[52].

Human rights scholars' often ignore sex work as labour, or classify sex work as inherently 'bad' and 'undesireble' work. For example, Mundlak deliberates the consent of 'a woman's 'choice' to prostitute herself', putting sex work in the list of jobs incompatible with human dignity and hence with the right to work. The answer is, says Mundlak further, that some choices are morally justifiable and others are not[53].

Another argument of the neo-abolitionist approach is that "weakness of sex work position is that it may often be difficult to draw the line between voluntary and forced prostitution"[54]. The sex workers are often particularly marginalised. Persons in sex work often have less choice and therefore it is hard to estimate, where consent to sex work ends and sex work becomes forced[55].

The critics of the right to work with regard to sex work also underline, that it should be considered 'what kind of society do we want to build and maintain: do we want brothels and other

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[50] Mgbako, Chi, Smith, Laura A, "Sex Work and Human Rights in Africa", in *Fordham International Law Journal*, Volume 33, Issue 4, 2011, p. 1186.
[51] See, for example: Ahmed, Aziza and Seshu, Meena, "We Have the Right Not to Be 'Rescued'...": When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers" in *Anti-Trafficking Review*, Issue 1, pp. 149-168, 2012.
[52] *Supra note 4:* Roth, Venla, 2010, p. 35
[53] Mundlak, G. "The Right to Work – The Value of Work", in Barak-Erez, Daphne and Gross, Aeyal M (Eds.). *Exploring Social Rights Between Theory and Practice,* Oxford and Portland. Oregon, 2007, p. 342
[54] *Supra note 4:* Roth, Venla, 2010, p. 36
[55] *Ibid.*

premises of that kind to be a part of the street scene?'[56]. The question that should be answered here is who are 'we'? Why sex workers are not included in the group who want to build a certain society without brothels? Why the legal approach sometimes loses its neutrality and speaks about morally unacceptable choices of 'prostitution' or picturing street scenes with brothels as if the human rights law only protects people working in less appalling premises?[57]

Considering the critique, it is, therefore, necessary to be established, whether sex work can be considered as a freely-chosen work under international human rights law, and under what conditions can sex work overcome the barrier when a person is forced to 'prostitute oneself' to the point where a person, among other available jobs, or even in absence of any other jobs, chooses sex work?

Another argument of the opponents of labour approach to sex work is that it is often hard to distinguish freely-chosen sex work from forced sex work[58]. However, the issue of the distinction between the crime of forced labour and lawful free labour is an issue of proper investigation. The purpose of the criminal justice system is to discover and investigate crimes, and any problems with finding the difference between forced labour and voluntary labour mean that the state should introduce a better investigation of such crimes, rather than automatically consider all sex work forced or rejecting sex work as a form of labour. For other categories of work, for example for domestic work, the line between forced and voluntary work can be vague, too[59], but work-related human rights of domestic workers are recognised worldwide. On international level domestic workers are protected with the ILO Domestic workers Convention No 189 (2011) and other instruments, e.g. the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and there are no voices for the abolition of domestic labour because of the abuse of rights domestic workers face.

As a starting point, it must be established, whether there are international human right instruments providing that sex work is incompatible with human dignity and human rights.

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[56] *Ibid.*

[57] The abolitionist approach to sex work in Sweden is heavily criticised by some scholars precisely because it involves social exclusion of sex workers on the grounds of morals, has a strong anti-immigrant and heteronormative context: "Sweden's contemporary aim to abolish prostitution through the criminalisation of the purchase of sex should be seen in the context of Swedish control and social exclusion of problematised facets of society through the nineteenth and twentieth centuries "…" Controls have historically concentrated on a policing and moralising of public space, as well as compulsory care and sterilisations, and have focused on groups considered to be deviant and disruptive to Sweden's aspirations to socially engineer a 'clean', rational and ordered *folkhemmet*." In Levy, Jay, "Criminalising the Purchase of Sex: Lessons from Sweden", Routledge, 2014.

[58] *Supra note 4*: Roth, Venla, 2010, p. 35.

[59] See, for example: "Some categories of persons are especially vulnerable to compulsion and exploitation, including children, migrants, domestic workers and indigenous and tribal peoples" – in Swepston, Lee, "Forced and compulsory labour in international human rights law", International Labour Office, Geneva, ILO, 2005.

The CEDAW in Article 6 states, that 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'. The term 'trafficking' has definitions in other international law instruments.[60] However, the concept of 'exploitation of prostitution' requires some additional clarification, including addressing Palermo Protocol interpretation.

The history of the drafting of Article 6 suggests[61] that there existed a proposal of the full prohibition of prostitution[62]. This suggestion was declined in the final version of the CEDAW. Thus, it is clear, that suppression of *all* sex work in the CEDAW is absent and 'exploitation of prostitution' means something else rather freely chosen sexual labour. What does it mean, then, 'exploitation of prostitution'?

The CEDAW Committee hitherto has avoided interpretation of Article 6 in the form of General Recommendation, and thus the issue of interpretation of the wording of Article 6 is still waiting to be addressed by the CEDAW Committee. However, the draft of General Recommendation on Article 6 has been published[63] and is waiting to be adopted by the end of 2020.[64]

The term 'exploitation of prostitution' has no clear definition in neither the CEDAW nor in its treaty body general recommendations. The main international treaty against trafficking in human beings, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) and other international treaties also do not provide the

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[60] E.g. Article 3(a) of the Palermo Protocol.

[61] Chuang, Janie. "Commentary on CEDAW Article 6." In Freeman, Marsha A, Chinkin, Christine, Rudolf Beate (eds.) *"The UN Convention on the Elimination of All Forms of Discrimination Against Women. A Commentary"*, New York: Oxford University Press, 2012, pp. 176-178

[62] Unsurprisingly, similar issues have been raised while drafting Palermo Protocol. Some States advocated to include the reference to prostitution suggesting prohibition of all prostitution. Others were defeding the position that Stated approach prostitution in different ways, and the Protocol should not interfere with these domestic matters. The final version "exploitation of the prostitution of others and other forms of sexual exploitation" has an Interpretative Note to it, clarifying that this relates only to trafficking in persons, and the States are free to address prostitution in other contexts on their discretion – See UNODC Issue Paper "The Concepts of 'Exploitation' in the Trafficking in Persons Protocol", 2005, p. 27 and *Travaux Préparatoires* for the Organized Crime Convention and Protocols, p. 347 (or Interpretative Notes A/55/383/Add.1, para. 64), cited via UNODC Issue Paper, "The Concepts of 'Exploitation' in the Trafficking in Persons Protocol", 2005.

[63] The CEDAW Committee Draft on General Recommendation on Trafficking of Women and Girls in the Context of Global Migration, available at https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx, last approached 18.04.2020.

[64] See the CEDAW Workplan for the CEDAW General Recommendation on Trafficking in the Context of Global Migration, as of 12 July 2019, subject to change, available at https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx, last approached 18.04.2020.

definition of 'exploitation of prostitution' even when the term is widely used in the treaty. Palermo Protocol, Article 3(a) provides for the following:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[65]

Thus, 'exploitation of prostitution' is separate from more general 'exploitation'.

International human rights law distinguishes also economic exploitation, for example, Article 32 (1) on the Convention on the Rights of the Child economic exploitation states that: 'States Parties recognize the right of the child to be protected from economic exploitation..'. ILO widely uses the concept of "labour exploitation".[66] But the latter is only prohibited in case of forced labour or trafficking (see Palermo Protocol Article 3 (a) cited above), while labour exploitation is not considered to be itself illegal[67]. Meanwhile, in accordance with Article 6 of CEDAW and Palermo Protocol Article 3(a), 'exploitation of prostitution' is to be suppressed regardless of coercion component.

UNODC Working Group on Trafficking in Persons proposes that '"exploitation of the prostitution of others' is generally understood as referring to profiting from the prostitution of another person."[68] Further, UNODC reminds, that exploitation "is not inevitably and universally seen as 'wrong'. For example, many States accept that it is both just and right for people to buy and sell labouring capacities at whatever prices the freemarket will bear."[69] However, UNODC interpretation concerns only the Organised Crime Convention and its Protocols (including Palermo Protocol), as it has the mandate to assist the States in implementing the abovementioned instruments[70]. Further the UNODC proposed the following definition, deriving from the "UNODC Model Law against Trafficking in Persons"[71]: "Exploitation of prostitution of others shall mean the unlawful obtaining of financial or other material benefit from the prostitution of another

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[65] Palermo Protocol, Article 3(a)
[66] UNODC Issue Paper, "The Concepts of 'Exploitation' in the Trafficking in Persons Protocol", 2005, p. 16
[67] *Ibid.*
[68] *Ibid*, p. 28.
[69] *Ibid.*
[70] *Ibid*
[71] Trafficking in Human Beings and Peace Support Operations: Trainers' Guide, United Nations Interregional Crime and Justice Research Institute, 2006, p. 153, cited via Working Group on Trafficking in Persons, 'Analysis of Key Concepts of the Trafficking in Persons Protocol' (9 December 2009) CTOC/COP/WG.4/2010/2 paras 9–12.

person[72]". The working group pays special attention to the term 'unlawful': States should define the unlawfulness of exploitation in domestic legislation[73].

Nor the UNDOC study, nor the working group materials are not a source of international law, as well as it does not interpret the CEDAW and other human rights treaties.

As there is no general understanding in international law which 'exploitation of prostitution' means, Member States can interpret the term differently. For example, as a prohibition to gain profit for the third parties from sex work[74].

However, interpretation 'exploitation of prostitution' as the prohibition of any profiting from women sex work does not follow from international human rights law.

Further, the CEDAW Committee is scarce in recognising sex workers rights, but at least it does not suggest that sex work itself is illegal. In General Recommendation No 19, the CEDAW Committee[75] stated, that "Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need equal protection of laws against rape and other forms of violence"[76]. Mgbako and Smith consider, that the former statement of CEDAW 'represents a shift from an emphasis on measures to eradicate prostitution to a view of sex workers as individuals who hold fundamental rights'[77].

However, General Recommendation No 35, updating the General Recommendation No 19, leaves out this paragraph. Prostitution is mentioned among factors of being vulnerable to violence, and also in General recommendation No 35 on gender-based violence against women[78], the Committee recommends the member states to refrain from legislation that criminalises women in prostitution. General Recommendation No 37[79] recommends equality and non-discrimination for

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[72] Working Group on Trafficking in Persons, 'Analysis of Key Concepts of the Trafficking in Persons Protocol' (9 December 2009) CTOC/COP/WG.4/2010/2 paras 9– 12.
[73] *Ibid.*
[74] For example, in the UK, the Crown Prosecution Service for the purpose of defining "exploitation of prostitution" cites the Sexual Offences Act 2003, Section 52: "Exploitation of Prostitution - Causing or Inciting Prostitution for Gain states the following: Under Section 52(1) a person commits an offence if: a) He intentionally causes or incites another person to become a prostitute in any part of the world, and b) He does so for or in the expectation of gain for himself or third party." Prosecution Legal Guidance. Sexual Offences, available at https://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution, last approached 26.09.2019
[75] See Doezema, Joe, "Forced to Choose: Beyond Voluntary v. Forced Prostitution Dichotomy", in Kempadoo, Kamala, Doezema, Jo *"Global sex workers: rights, resistance and redefinition*", Routledge, London, 1998

[76] UN CEDAW, General Recommendation No 19 "Violence against women", UN Doc. A/47/38, 1992, para 15.
[77] Supra note 50: Mgbako, Smith, 2010, p. 1199.
[78] CEDAW Committee, General recommendation No 35 "On gender-based violence against women, updating general recommendation No 19", UN Doc. CEDAW/C/GC/35, 2013, para 31.
[79] CEDAW Committee, General recommendation No. 37 "On gender-related dimensions of disaster risk reduction in the context of climate change", UN Doc. CEDAW/C/GC/37, 2018, para 26.

women in prostitution with regard to environmental issues. CEDAW General Recommendation on Women's Access to Justice also mentions that member States must ensure an equal access to justice for 'women in prostitution'.[80]

On the contrary, the CEDAW Committee hardly mentions sex workers it its General recommendation No 26 on women migrant workers, stating that 'trafficking' doesn't fall into "the work-related situation of women migrants"[81] and suggests to address the question through Article 6 of the CEDAW[82]. Sex workers not being the victims of trafficking are not mentioned.

The unclear position of the CEDAW Committee is sometimes explained by the lack of world consent on the issue of sex work[83]. While State Parties of the CEDAW have different approaches, the CEDAW Committee does not take a clear stance. The Concluding Observations on States' reports in recent years are targeting not only the exploitation of prostitution, but also recommend the States to implement measures to reduce 'the demand for prostitution'[84], without, however explicitly calling for criminalising the purchase. The measures to reduce demand are offered in at least the Concluding Observations on Lithuania[85] and Bosnia and Herzegovina[86], while for Andorra on the same plenary session the Committee only proposes to implement 'exit strategies'.[87]

Finally, with regard to CEDAW and sex work it should be noted that the CEDAW is an instrument aiming only on women. It does not address men or transgender or intersex sex work. Overall, CEDAW is being critiqued for its essentialist approach, centring around a mythical 'biological woman', lack of recognition of other genders and transgender people, strict binary, heteronormativity, focusing on 'white woman' as a 'woman in general'[88]. Of course, the CEDAW interpretation might change as it is a 'living instrument'.

For now the CEDAW is still sticking to trafficking approach and mostly ignores labour-based approach to sex work, while for voluntary sex worker the issue of their work-related rights

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[80] CEDAW Committee, General recommendation "On women's access to justice", UN Doc. CEDAW/C/GC/33, 2015, paras 9, 29.
[81] CEDAW Committee, General recommendation No. 26 "On women migrant workers", UN Doc. CEDAW/C/2009/WP.1/R, 2008, footnote 4.
[82] *Ibid.*
[83] *Supra note* 61: Chuang, 2010, p. 176-177.
[84] *Ibid.,* p. 173.
[85] CEDAW Committee, Concluding observations on the sixth periodic report of Lithuania, UN Doc. CEDAW/C/LTU/CO/6, 12 November 2019, para 26, 27.
[86] CEDAW Committee, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, UN Doc. CEDAW/C/BIH/CO/6, 8 November 2019, para 28.
[87] *Supra note* 32.
[88] Rosenblum, Darren "Unsex CEDAW, or What's Wrong With Women's Rights", in *Columbia Journal of Gender and Law*, Vol. 20, 2011, available at http://digitalcommons.pace.edu/lawfaculty/810, last approached 30.04. 2020.

protection is overlooked. As an outcome of this limited approach, the draft of General Recommendations on Article 6[89] has no term 'sex work', nor it addresses or gives any distinctions between trafficking and sex work. CEDAW in the abovementioned draft and Concept Note embraces criminal justice in addressing sex work, focuses on prevention and punishment, suppression and abolition[90]. Besides, the document addresses 'reducing demand', but at the same time is silent on helping exiting sex work. Thus, "the document relies on the assumption that a simplistic economic model of demand-led supply or supply-driven demand is applicable to transactional sexual activity and privileges an anti sex work narrative. What is silenced is the research evidence showing the economy of sex work to be more multifarious, encompassing complex feelings of fantasy and desire that are psychological and cultural. The narrative also silences the perspective(s) of sex workers and the presence of male sex workers and transgender people in sex work".[91]

However, the CEDAW Committee position does not reflect joint position of the UN. Other treaty bodies like CESCR, Human Rights Council independent experts, UN organisations like the WHO and the ILO, agencies like UNAIDS often demonstrate different stance. For example, the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2010) brings out the conclusion on the legality of consensual sex work in international human rights law in the context of the right to work and states the following:

> "Alongside the right to health, the International Covenant on Economic, Social and Cultural Rights protects the right to freely chosen, gainful work (art. 6), which the State must take steps to safeguard. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women does not require States to suppress consensual, adult sex work. Rather, it calls for the suppression of 'all forms of traffic in women and exploitation of prostitution of women".[92]

The CESCR also uses the term 'sex work' when calling for decriminalisation.[93]

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[89] *Supra note* 63
[90] *ibid.*
[91] Brooks-Gordon, Melinda, Wijers, Marjan, Jobe, Alison, "Justice and Civil Liberties on Sex Work in Contemporary International Human Rights Law" in *Social Sciences*. *MDPI, Open Access Journal,* vol. 9(1), 2020, pages 1-12.
[92] UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/14/20, 27 April 2010, para 30.
[93] See, for example, CESCR Concluding observations on the sixth periodic report of the Russian Federation, UN Doc. E/C.12/RUS/CO/6, 16 October 2017, para 53.

In Europe, in the Council of Europe framework its Parliament Assembly non-biding report "Prostitution - which stance to take"[94], observes the legislative models existing in the 47 member States and calls for abolishing penalisation and criminalisation of 'prostitutes'.

The EU legislation does not bind its member states with any model, probably, considering the polarity in the approaches of member States to sex work. The non-binding European Parliament resolution, however, welcomes the partial criminalisation approach[95]. On the contrary, the ECJ case law on sex work sees sex work as an economic activity which should be regulated without discrimination[96].

Thus, international human rights treaties do not prohibit adult consensual sex work. By the CEDAW Article 6 'exploitation of prostitution' is prohibited. However, the meaning of exploitation is not defined in international law, leaving the discretion in a question of whether and which forms of sexual labour amount to 'exploitation of prostitution'. It can be interpreted as gaining any profit from the third person sex work (e. g. brothel-keeping), or pimping only, or neither, and sometimes interpreted as prohibition of performing any sex work as inherently violent to women. However, the CEDAW Committee does not support the latter interpretation, calling for States to abolish criminalising or penalising sex work itself. But while sex work itself in international human rights law is not prohibited, is there a right to work as a sex worker, and what are the corresponding obligations of the States?

2.2. Right to work

2.2.1. Background and sources

The right to work is a "core of not only socio-economic rights but also fundamental human rights"[97]. It is included in the Universal Declaration of Human Rights. Article 23(1) provides, that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'.

Further, in treaty law, the right to work is expressly set in the ICESCR. Article 6 provides that the right to work 'includes the right of everyone to the opportunity to gain his living by work

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[94] Council of Europe Parliamentary Assembly, Committee on Equal Opportunities for Women and Men Report "Prostitution - which stance to take", PA CoE No 11352, 09.07.2007.

[95] European Parliament resolution "On sexual exploitation and prostitution and its impact on gender equality", A7-0071/2014, 26 February 2014.

[96] See, for example, Judgment of the Court *Rezguia Adoui v Belgian State and City of Liège; Dominique Cornuaille v Belgian State*. Joined cases 115 and 116/81. European Court Reports 1982 -01665, 18 May 1982.

[97] Drzewizki, Krzysztof, The Right to Work and Rights in Work, in Eide Asbjorn, Krause Catarina, Rosas Allan (eds.), *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Berlin: Springer, 2001, p. 223.

which he freely chooses or accepts'. The CCPR in Article 8 provides the prohibition of forced and compulsory labour, as well as slavery. The CEDAW reaffirms the right to work as the core human right in Article 11 paragraphs (a) and (c) and sets the basis for women's economic empowerment.

The right to work is mentioned in the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5, paragraphs (e) and (i)), the Convention on the Rights of the Child (Article 32).

The right to work is also one of the core rights of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Thus, all main UN international human rights treaties establish the right to work.

The right to work provisions in the regional human rights treaties include: the ESC and the ESC (Revised) which provides detailed obligations in the field of the right to work and employment (Articles 1-10 of the ESC expressly set out the right to work and the rights in work, Articles 15, 18, 19 24-28 provide for various rights in work); the Charter of the Fundamental Rights of the European Union (Article 15 (1) 'Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation'); the African Charter on Human's and People's Rights (Article 15: Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work); the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Article 6 (1) 'Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity').

The ECHR does not expressly provide for the right to work, but protects some aspects of work[98], and Article 4 of the ECHR contains the prohibition of slavery and forced labour. Article 4(1). 'No one shall be held in slavery or servitude.', and 4(2) 'No one shall be required to perform forced or compulsory labour.' The right to form and join trade unions is protected by the freedom of associations, namely by Article 11 of the ECHR. This gives a possibility to protect this right in the ECtHR, which has extensive jurisprudence on the matter[99].

Finally, the ILO conventions intersect with economic and social human rights in the area of the right to work and work-related rights. The ILO recommendations and reports, although non-

[98] See, for example, O'Connell, Rory, "The right to work in the ECHR" in *European Human Rights Law Review, 2012,* pp. 176-190; Mantouvalou, Virginia, "Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation", in *Human Rights Law Review,* Volume 13, Issue 3, September 2013, pp. 529–555.

[99] See, for example: *National Union of Belgian Police v Belgium* (App. No 4464/70), 27 October 1975, *Danilenkov and others v Russia (*App. No 67336/01), 30 July 2009.

binding, acquired a certain legal weight through the ECtHR case law[100]: the ECtHR for example notably refers to the ILO Recommendation No 200 concerning HIV and AIDS and the World of Work, 2010[101]. Corresponding with the notion of decent work in CESCR[102] interpretation, the ILO promotes the 'decent work' agenda[103], which is crucial for contemporary understanding of the right to work.

The ICESCR Article 6 and the ESC Article 1 notably have a common approach to their interpretation. As Colm O'Cenneide notes, treaty bodies of the two most important treaties establishing socio-economic rights, the ICESCR and the ESC, have similar approach to the "scope and normative content of the right to work which draws upon the provisions of relevant ILO instruments and other international standards and reflects a shared understanding of the general substantive parameters of the right."[104]

Thus, the right to work has a strong position among other socio-economic rights. Moreover, it can be seen as a cornerstone for the existence of other socio-economic rights. In the ICESCR the right to work is listed first in Part III among other rights. The right to work has interconnections with other economic and social rights, while other rights are often built upon the right to work[105].

2.2.2. What is work? Concepts and critique of work as a right

In international human rights law work has more than one dimensions. First, work in international human rights law is perceived as labour in its economical sense, as a 'means of earning a living[106]'. As the CESCR General Comment on Article 6 of the ICESCR states, work is

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[100]Ebert, Franz Christian, Oelz, Martin, "Bridging the gap between labour rights and human rights: The role of ILO law in regional human rights courts", working paper, International Institute for Labour Studies, 2012, avaliable at https://www.ilo.org/inst/publication/discussion-papers/WCMS_192786/lang--en/index.htm, last approached 01.06.2020.

[101] See in *Kiyutin v. Russia* (App.No 2700/10), 10 March 2011.

[102] General Comment No 18 defines decent work as "work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment". - UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the Covenant), UN Doc. E/C.12/GC/18, 6 February 2006, para 7.

[103] *Supra note* 53: Mundlak (2007) p. 349.

[104] O'Cinneide, Colm, The Right to Work in International Human Rights Law, in Mantouvalou, Virginia (ed.), *The Right to Work: Legal and Philosophical Perspectives*, London: Hart Publishing, 2014, p. 102.

[105] *Ibid*, p.104.

[106] *Supra note* 97: Drzewicki (2001) p. 223

a means of living in dignity and means of survival. In this sense work as a human right is also a basis 'essential for realizing other human rights'[107].

However, the economical content of work is a traditional approach to labour, but not the only one[108]. The labour for an individual has social content. Work gives a perspective of the fulfilment of human life and personal realisation[109], 'development and recognition within the community'[110].

Another approach to work is seeing work as an activity that has no value for an individual[111]. This discussion is especially important for the research of the right to work with regard to sex work. It puts the discussion on sex work in a broader context of the nature of labour. In this critical discourse, it is claimed, that work itself has little value, and it is 'not something human rights should strive for[112]', but rather an instrument of earning. In this approach, social and self-realisation value of work is denied as a myth created by capitalism. In its need of exploitation of human labour, of making profits by using other people work, the labour has started to be seen as an inevitable part of being, while, say the critics, it is hardly so. Self-realisation and socialising may be achieved without work but with acts of creation, community service, craft, etc[113]. Hugh Collins names this phenomenon an 'incoherent value of the right'[114]

According to these views, work can make obstacles on the way of self-realisation: many jobs are considered of having less social value, some are degrading, monotonous and makes individuals a mere function in a mechanism. Thus work has a dehumanising impact on the individuals, rather than a means to achieve human dignity and sense of self-worth.

Moreover, because of this exaggerated value of work as a universal social need of a person, 'existing systems overlook the human potential to reduce society's need to rely on work that people would prefer not to do if they had a choice[115]'.

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[107] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the Covenant), UN Doc. E/C.12/GC/18, 6 February 2006, para 1.
[108] *Supra note* 97: Drzewicki (2001) p. 223.
[109] *Ibid.*
[110] Supra note107.
[111] The critique of the right to work appeared as early as in 1883. Paul Lafrauge, a French Marxist political activist and socialist journalist of Cuban origin, in his work "The Right to Be Lazy" claims, that the right to work is "the right to misery", a right to be exploited, and it is not the right to work humans strive for, but the law absolutely restricting work to three hours a day. Citation by Lafargue, Paul, The Right to Be Lazy, Chicago: Charles Kerr and Co., Co-operative, 1883, available at https://www.marxists.org/archive/lafargue/1883/lazy/, last accessed 30.04 2020.
[112] *Supra note* 53: Mundlak (2007) p. 342.
[113] Bueno, Nicolas. "From the Right to Work to Freedom from Work", in *International Journal of Comparative Labour Law and Industrial Relations* 33 No 4, 2017, p. 464.
[114] Collins, Hugh, "Is There a Human Right to Work?", in Mantouvalou, Virginia (ed.), *The Right to Work: Legal and Philosophical Perspectives*, London: Hart Publishing, 2014, p. 20.
[115] *Supra note* 113: Bueno (2017), p. 464.

Thus, while sex work is considered in many discussion as indecent and degrading, however, it is important to keep in mind that some critics of the right to work consider *all* work exploitative and having no social value, and therefore, claiming that 'freedom from work' should replace the widely recognised right to work in human rights law[116].

However, the 'freedom from work', which can be useful in discussing, for example, the right to universal basic income, is not supported by human rights law. The mere existence of 'undesirable jobs[117]', is an insufficient ground for rejection of the right to work. The right to work is laid out in various legal instruments, briefly observed above. As the CESCR outlimes in its General Comment No 18, the definition of the right to work reflects "respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion."[118] Moreover, some aspects of the right to work, such as the prohibition of forced labour and prohibition of discrimination are powerful instruments for workers in 'undesirable jobs': the former provides for protection from being forced into such occupations, while the latter gives equal access to the labour market and so on. Therefore, acknowledging their right to work can guarantee sex workers the same level of protection as that accorded to other categories of workers.

Collins suggests, that self-realisation is the core interest of the right to work, that is why the right to work is not merely an instrumental right, needed for an individual to earn a living[119], In the view of Collins, the stress on self-realisation suggests the limits of this right: the concept of 'decent work' and fair and just conditions of work represent important, but separate interest, and therefore they constitute the separate rights in international human rights law[120].

Mundlak, on the contrary, agrees with the CESCR General Comment No 18 position that 'articles 6, 7 and 8 of the ICESCR (right to work, fair working condition and freedom of association) are interdependent.'[121] Thus, work has two dimensions: 1) to earn a living through it, and 2) to self-realisation through work. There are no grounds to suggest that sex work is somehow distinct and lacks both dimensions of work for an individual. Sex work undoubtedly may be seen as work in international human rights law.

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[116] *Ibid.*
[117] Mundlack outlines, that everyone has their own list of undesirable jobs, *Supra note* 53: Mundlak (2007) p. 360
[118] *Supra note* 107, para 4.
[119] *Supra note* 114: Collins (2014), p. 27.
[120] *Ibid,* p. 38
[121] *Supra note* 53: Mundlak (2007), p. 365.

2.2.3. The content of the right to work

The right to freely choose or accept work is an inseparable content of the right to work in international human rights law, which together with the prohibition of forced labour, non-discrimination and the concept of 'decent work' forms the right to work as one of the core socio-economic rights.

The discussion about the value of work for the individuals leads us to the concept of 'freely-chosen or accepted' work, which is considered to be the central element of the right to work. Can 'non-fulfilling' work be the subject of choice? Can the economic needs of the individual can be seen as 'forcing' of one to take a job? an individual be seen as circumstances 'forcing' one to take a job in the context of the prohibition of forced labour? Mundlak observes, that the General Comment No 18 "avoids the difficulty of identifying the narrow boundaries between fulfilling the right and coercing individuals."[122]

According to CESCR General Comment No 18, Article 6 of the ICESCR "encompasses all forms of work, whether independent work or dependent wage-paid work"[123]. CESCR equals these two forms of occupation. However, as Mundlak notes, non-wage labour is excluded from the scope of international human rights law. He provides two examples: caring reproductive labour and community service of retired persons[124]. On the other hand, in the CESCR General Comment No 23 "unpaid workers, such as workers in the home or family enterprises, volunteer workers and unpaid interns"[125] also are mentioned among the persons who have the right to just and favourable conditions of work and thus are not excluded from the scope of the ICESCR.

The right to freely choose or accept work constructs the main content of the right to work (however, there is no corresponding obligation to work).[126] For example, in the ICESCR, work should be 'freely chosen or accepted'. The protocol of San Salvador defines work as 'freely elected or accepted lawful activity'. Article 1 (2) of the ESC provides, that the States should 'protect effectively the right of the worker to earn his living in an occupation freely entered upon.' This

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[122] *Ibid.*
[123] *Supra note* 107, para 6.
[124] *Supra note* 53: Mundlak (2007) pp. 352-354.
[125] UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/23, 7 April 2016, para 47 (j).
[126] Ben Saul, David Kinley, Jaqueline Mowbray, "Article 6: The right to work.", in *The International Covenant on Economic, Social and Cultural Rights. Commentary, Cases, and Materials,* Oxford University Press, 2014, p. 280.

provision is interpreted similarly with the ICESCR Article 6[127]. Provision of Article 1 (2) overlaps with the provision of Article 20 of the ESC (the right to equal treatment) and is often used in the cases broader than those covered by Article 20[128]. Article 15 of the EU Fundamental Charter outlines, that occupation should be 'freely chosen or accepted..

It could be tricky to determine what is considered by the concept of free choice and (or) acceptance of work. While the concept of 'forced labour' is well established in international law and domestic legislation, with various treaties, comments and case law, the notion of 'free choice or acceptance' is insufficiently discussed.

For this reason, the critics of the right to work go as far as the conclusion, that "although the right to freely choose work is expressly stated in Article 6(1) ICESCR, this right has no content in international human rights law"[129] and simply replicates the prohibition of forced labour.

Commenting Article 1 (2) of the ESC Drzewicki concludes, that the meaning of this article which sets an obligation of the States 'to provide effectively the right of the worker to earn his living in an occupation freely entered upon' is prohibition of forced labour and protection from discrimination[130].

Admittedly, prohibition of forced labour is one of the core dimensions of the content of the right to freely choose work, but the latter is wider than only forced labour prohibition. Further developing the content of the right to work and the right of free choice of work as Drzewicki outlines[131], there is a positive aspect of the prohibition of the forced labour (the right not to be forced to work). It is defined as 'freedom to work'[132], so that a person has a right to choose an occupation and place of performance.

In this line, the CESCR in the General Comment No 18 emphasises, that in the ICESCR, the obligation of States parties is to provide for the individuals the right to freely chosen or accepted work, which includes the right not to be deprived of work unfairly[133]. Further, the Committee clarifies, that it "underlines the fact that respect for the individual and his dignity is

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[127] Similar approach to interpretation see in O'Cinneide, *supra note* 104: O'Cinneide (2014), p. 102, Deakin, Simon. "Article 1 "The right to work" in Brunn, Niklas, Lörcher, Klaus, Schömann, Isabelle, Clauwaert, Stefan (Eds.), *The European Social Charter and the Employment Relation.* Bloomsbery, 2017, pp. 152-153.
[128] *Supra note* 127: Deakin (2017), p. 157.
[129] *Supra note* 113: Bueno (2017), p. 469.
[130] Drzewicki Krzysztof. "The European Social Charter and Polish Legislation and Practice" in Drzewicki, Krzysztof, Krause, Catarina, Rosas, Allan (Eds.), in *Social Rights as Human Rights. A European Challenge*, Turku, Institute for Human Rights Åbo Akademi University, 1994, p. 225.
[131] *Supra note* 97: Drzewicki (2001), p. 233.
[132] *Ibid,* p. 233.
[133] *Supra note* 107, para 4.

expressed through the freedom of the individual regarding the choice to work, while emphasising the importance of work for personal development as well as for social and economic inclusion."[134]

The normative content of the freedom to choose or accept work as to the CESCR General Comment No 18 implies "1) not being forced in any way whatsoever to exercise or engage in employment and 2) the right of access to a system of protection guaranteeing each worker access to employment. It also implies 3) the right not to be unfairly deprived of employment."[135]

Not only anti-work scholars notice the uncertainty in the right to freely choose work. O'Cinneide claims, that "some element of choice in how one disposes of labour is generally assumed to be included within the scope of the right"[136], but there are questions of how far-reaching is this right, and what limits it has.

Deakin interprets Article 1 of the ESC as a whole as a "right to access labour market"[137], pointing out, that labour relations can be seen as essentially market relations. With regard to sex workers, since many of them are self-occupied, the approach to the right to work as deriving from market relations may be fruitful, as such an approach presumes choice and agency for sex workers without possible overregulation of the sphere of sex work. However, the right to work does not mean the obligation of the State to provide work for all, or obligation of the employer to hire a worker. The right to work "should not be understood as an absolute and unconditional right to obtain employment."[138]

Non-discrimination is the other essential element of the right to freely choose work. In the General Comment No 18, the CESCR underlines, that non-discrimination and equal protection of employment are the core obligations of the State under Article 6 of the ICESCR[139]. First, according to the CESCR, the States have to provide the "right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity."[140] Further, the Committee underlines, that the ICESCR prohibits measures resulting in discrimination, especially of disadvantaged and marginalised individuals and groups, or to weaken their protection.[141] Finally, the national employment strategy "should target disadvantaged and marginalized individuals and groups' and have the progress benchmarks to review and

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[134] *Ibid.*
[135] *Supra note* 107, para 6.
[136] *Supra note* 104: O'Cinneide (2014), p. 100.
[137] *Supra note* 127: Deakin (2017).
[138] *Supra note* 107, para 6
[139] *Ibid,* para 31
[140] *Ibid,* para 31 (a)
[141] *Ibid,* para 31 (b)

measure."[142] The ICESCR prohibits discrimination in "access to the labour market or to means and entitlements for obtaining employment"[143] if the purpose of such discrimination is weakening of the principle of equal enjoyment of socio-economic rights. Moreover, the right to non-discrimination in Article 2(2) of the ICESCR should be implemented by the States immediately and the principle of progressive implementation is not applicable.[144]

The European Court of Justice case law has a notable approach to non-discrimination of sex workers, who did not enjoy the same right of free movement as other persons of the EC (EU), or "Put simply, free movement of persons did not apply equally to all persons."[145]

In a key case on the matter, *Adoui and Cornuaille v Belgium*[146] (1982), the ECJ established, that the sex workers who are nationals of other member states have to be treated the same as the sex workers who are nationals of the state. Thus, "under Community law all EU nationals who are sex workers are to be accorded the same rights and social benefits as those of the host member state."[147] Further, in *Jany and Others vs. the Netherlands*[148], the ECJ reaffirmed this approach and also found prostitution as 'economic activity[149]', and refers to the women in sex work as 'self-employed'. It must be noted, that the freedom of movement is only applicable to sex workers – nationals of the EU member States and thus the ECJ decisions on sex work are not applicable to non-EU nationals. However, discrimination with regard to sex workers who are non-nationals in the Netherlands the State interferes on migrant persons' sex work: "prostitution is the only kind of work for which a legal prohibition on the issue of working permits exists."[150] Other violation of non-discrimination clause arouses when the legislation on sex work puts migrant sex workers in a disadvantageous position in comparison with sex workers who are nationals. For example, the CEDAW Committee in Concluding observation on the Netherlands (2010) expressed concers on the issue of sex work.[151] The CEDAW Committee pointed out, that the compulsory registration of

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[142] *Ibid,* para 31 (c)
[143] *Ibid,* para 33
[144] *Ibid,* para 33
[145] Chou, Meng-Hsuan, "The Free Movement of Sex Workers in the European Union: Excluding the Excluded", in Luedtke, Adam (Ed.), *Migrants and Minorities: the European Response*, Cambridge Scholars Press, 2010, p. 104
[146] *Rezguia Adoui v Belgian State and City of Liège; Dominique Cornuaille v Belgian State*. Joined cases 115 and 116/81. European Court Reports 1982 -01665, 18 May 1982.
[147] *Supra note* 145: Chou (2010), p. 112.
[148] *Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie.* Case C-268/99, European Court Reports 2001 I-08615, 20 November 2001.
[149] *Ibid,* para 50.
[150] Pitcher, Jane, Wijers, Marjan, "The impact of different regulatory models on the labour conditions, safety and welfare of indoor-based sex workers", in *Criminology and Criminal Justice,* 14 (5), 2014, p. 558.
[151] Concluding observations of the Committee on the Elimination of Discrimination against Women. The Netherlands, UN Doc. CEDAW/C/NLD/CO/5, 5 February 2010, paras 27-30

sex workers can increase vulnerability of sex workers "who are not able or not willing to register by worsening their working conditions and exacerbating their social exclusion"[152], especially of of *migrant* sex workers, and thus needs to be reassessed[153] . In the following Concluding observations on the Netherlands (2016), the Committee stresses out that the State should control "municipal authorities are closely monitored to ensure that they do not illegally enforce the registration of women in prostitution.[154]

The CESCR outlines various obligations of the State with the right to freely choose or accept work under Article 6 of the ICESCR. In the core of duty to *respect* the right to work lie prohibition of forced labour, prohibition of discrimination, and the refraining with the interfering into the individuals' free disposal of labour. Duty to *protect* the right to work is the protection of individuals from non-state actors' forced labour and discrimination. Duty to *fulfil* the right to work includes the implementation of progressive measures assisting the realisation of this right. *Inter alia*, the state should be aimed at *decent work* which is, among other things, means the fulfilment of the right to just and favourable conditions of work[155]. This is crucial for sex work and other jobs which are considered 'undesirable' because people who are economically pressed into stigmatised occupation need extra protection. At the same time, the State should provide vocational training and programmes aimed to change employment for those who wish to leave sex work[156].

Thus, the right to freely choose work is complex and cannot be seen as just the prohibition of forced labour. Its content is 1) prohibition of forced labour, 2) the free choice of an individual to dispose of one's labour, 3) free access to the employment system and labour market, 4) non-discrimination, 5) no unfair deprivation of work. Separately it should be noted that the State should aim to decent work and safe and favourable conditions of work.

2.2.4. Between freely-chosen work and forced labour

But which work is considered to be taken upon 'freely' and which is considered to be 'forced'? If work, including sex work, is taken under the economic pressure and need to earn a

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[152] *Ibid,* para 30.
[153] *Ibid.*
[154] CEDAW Committee Concluding observations on the sixth periodic report of the Netherlands, UN Doc. CEDAW/C/NLD/CO/6, 24 November 2016, para 30 (c).

[155] *Supra note* 107, para 7.
[156] *Supra note* 107, para 27: "The obligation to fulfil (facilitate) the right to work requires States parties, inter alia, to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment."

living, can it be considered forced and thus illegal under international human rights law? Under the ILO Forced Labour Convention No 29 (1930), Article 2(1), "forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The Protocol of 2014 to the Forced Labour Convention (1930) in its Preamble mentions, that forced and compulsory labour "violates the human rights and dignity of millions of women and men, girls and boys, contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all", and further states the obligations of Member States in combatting forced or compulsory labour, stressing out the vulnerable categories, like migrants, to be paid special attention to. Together with the ILO No 105 Abolition of Forced Labour Convention No 105 (1957) and other core ILO Conventions, the ILO has a strong normative basis with regards to forced labour. In the CCPR, ICESCR and the ESC forced labour is not expressly defined. The CESCR General Comment No 18 refers to the ILO forced and Compulsory Labour convention definition.[157] Article 4 (2) of the ECHR provides prohibition of forced and compulsory labour without giving a definition of such. The ECtHR in its case law with regard to Article 4(2) also refers to the ILO Conventions and extensive ILO practical guides, reports and other forms of ILO work on forced labour[158].

In the ILO Global Report on Forced Labour, the ILO states, that forced labour does not equate "simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives"[159].

Article 2(1) of the ILO Convention No 29 defines forced labour as follows: "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The 'penalty' in this definition, as the ILO itself comments in the ILO Global Report on Forced Labour [160], can exist not only in the direct form of penal sanctions but also includes loss of rights and privileges. Various forms may include physical violence, restraint, death threats. Physiological forms of menace like threats to denounce victims to the police and immigration authorities; to the village elders for the girls forced to prostitution in cities, confiscation of identity papers. Finally, financial penalties, debts, are also seen as covered by the Convention definition[161].

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[157] *Supra note* 107, para 9.
[158] See, for example, *C.N. and V. v. France,* (App. No 67724/09), *11.10.2010,* paras 52, 77.
[159] The cost of coercion. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference. 98th Session 2009, Geneva, ILO Publications, 2009, p. 5.
[160] *Ibid.*
[161] *Ibid.*

The second element of the definition of the forced labour in the ILO Convention No 29 is the absence of individual's free consent to the labour ('voluntary offer'). ILO notes, that entering the labour by choice is not itself a sign of voluntary labour[162]. The consent may be obtained by deception, fraud. The consent may be withdrawn later, with continuing coercion of legal, physical or psychological nature. Thus, economic factors, poor working conditions and other pressing factors taken alone do not constitute forced labour. The ECtHR jurisprudence goes in line with the ILO approach.

In the ECtHR case *V. T. v France*[163], the applicant addressed Paris social-security and family-allowance contributions agency (the URSSAF) to be registered as a self-employed decorator. It was a part of a scheme designed to enable her to leave sex work, and the applicant was assisted by an NGO 'campaigning to put an end to prostitution'[164]. As a result of a given statement, in which the applicant sad she was working in 'prostitution', due to the French social security law, the URSSAF then demanded the applicant as a person having an 'unspecified occupation' to pay the contributions for several years into the agency and charged her also for late payments, which amounted to more than 38 000 Euro. The applicant challenged the amount in domestic courts but failed, and addressed the ECtHR, implying that the demand of the payments required from her as a result of applicant's decision to exit sex work amounts to the violation by the State of Article 3 of the ECHR – Prohibition of inhuman or degrading treatment or punishment, and Article 4 - Prohibition of slavery and forced labour. Her argument was, that she was obviously unable to pay the requested amount earning a living by any other occupation than sex work, and thus the state was forcing her back to sex work in order to be able to cope with these payments, which resulted in the violation of Article 3 and Article 4 of the ECHR. The French authorities admitted, that the collection of such contributions is actually making reintegration more difficult. However, the conclusion of the ECtHR was the following:

'The Court has no doubt that the applicant's obligation to pay these recurring debts made it difficult to stop prostitution, from which she derived her only income, and hindered her reintegration project. The Court is also sensitive to the undeniable difficulties of the applicant's situation.

However, this is not enough to convince the Court that the applicant is justified in claiming that she is therefore forced to continue prostitution. First of all, it goes without saying that neither the URSSAF nor any other body or authority ever demanded that she finances the payment of the premiums and surcharges claimed for the pursuit by the means of prostitution. Next, the applicant does not provide any concrete

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[162] *Ibid.*
[163] *V. T. v France, (app. NO* 37194/02), 16 MAY 2006
[164] *ibid,* section A.

evidence which shows that she was unable to finance the payment of the surcharges and premiums by other means. Finally, even if the URSSAF has shown a lack of flexibility by systematically sending her payment orders until January 1999 - whereas her state of distress and her difficulties in fulfilling the payments were fairly clear from the fact that she, almost invariably, challenged the payment orders before the courts..'[165]

Thus, the ECtHR did not find the violation of the ECHR in economical pressure by the authorities on the person wishing to leave sex work, and no violations of neither Article 3, nor Article 4[166] of the ECHR, stating, that the actions of the State (demands of payments) do not constitute forced or compulsory labour in the sense of article 4 (2) of the ECHR[167]

In an inadmissibility decision, *Schuitemaker v the Netherlands* the ECtHR found that the threat of losing unemployment benefits also does not amount to the violation of Article 4 of the ECHR[168]. In the applicant's view, she was forced to look for employment and accept it if it is generally accepted rather than suitable for her, a philosopher by profession, "and that this may result in her having to accept employment unsuitable to her. She submits that the introduction of such a new requirement compels her to perform forced or compulsory labour."[169]

The ECtHR pointed out, that the State is entitled to lay down conditions within the system of social security and "a condition to the effect that a person must make demonstrable efforts in order to obtain and take up generally accepted employment cannot be considered unreasonable in this respect"[170] for the reason that the Dutch legislation provides for the recipient of unemployment benefits is not required to enter work "which is not generally socially accepted or in respect of which they have conscientious objections."[171] Thus, the ECtHR stated, that possible loss of unemployment benefits upon the refusal of an unsuitable job "cannot be equated with compelling a person to perform forced or compulsory labour within the meaning of Article 4 § 2 of the Convention."[172]

In the light of the above, it is hard to agree with the position, that no difference should be made between trafficking, forced prostitution and voluntary sex work, expressed by the European Parliament Committee on Women's Rights and Gender Equality. The Committee notes, that "financial desperation can also lead women into prostitution,"[173], and sees economic reasons for

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[165] *Ibid,* para 33. Translation from French ed. by Michel D. Rouleau.
[166] *Ibid,* paras 34, 35.
[167] *Ibid,* para 35.
[168] *Schuitemaker v the Netherlands* (App. No 15906/08), 04 May 2010, p. 4.
[169] *ibid.*
[170] *ibid.*
[171] *ibid.*
[172] *ibid.*
[173] *Supra note* 95, paras 47-49, explanatory statement.

sex work as 'economic coercion'[174] Hence, in the Committee's view, there is no difference between an economic reasoning of an individual working woman for sex work and 'coertion'. Thus the economic reasoning for sex work is seen rather as forced labour or exploitation of prostitution in the sense of Article 6 of CEDAW.

However, while freely-chosen sex work is not forced labour or exploitation of prostiturion itself, the percectution and punishment of the actual cases of forced labour is a positive obligation of the States. Under the ICESCR, the prohibition of forced labour is a fulfilment of the State duty to respect the right to freely choose work; and prohibition of forced and compulsory labour for non-state actors is a part of the State duty to protect this right.[175] Consequently, the failure of the State to meet both obligations can result in the violation of the right to work for the individuals. The ECSR, too, interprets Article 1(2) of the ESC as prohibition of forced labour in an extensive way, broadening the spectrum of the forced labour to precarious and exploitative jobs.[176] The ECtHR in the notable case of *Rantsev v Cyprus and Russia* states, that the failure of the State to address trafficking for the purposes of sexual exploitation is the violation of Article 4 of the ECHR[177]. Since the positive obligation of the State set in Article 4 of the ECHR (Prohibition of slavery and forced labour) is similar to the positive obligation of the State under Article 1(2) of the ESC and of Article 6 of the ICESCR, the failure to address trafficking in human beings thus violates the latter, too. Therefore, for research on the right to work under certain model of regulation of sex work, it is relevant to look ino the issue of how the model under question influences the obligations of the State with regard to human trafficking.

Thus, for sex workers' economic and social rights it is crucial to separate voluntary sexual labour from forced labour and human trafficking. Forced labour in international human rights law is a well-established concept, and if work is missing the features of forced labour as it is defined in the ILO conventions and trafficking conventions, it is is considered voluntary. However, prohibition of forced labour is a negative aspect of the right to freely choose work, and as such it is relevant to explore what impact the model of regulation of sex work has on the obligations of the States with regard to this aspect of the right to work.

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[174] *Ibid.*
[175] *Supra note* 107, paras 23, 24.
[176] *Supra note* 127: Deakin (2017), pp. 158-159.
[177] Among others, the Court stated, that "The absence of an express reference to trafficking in the Convention is unsurprising (...) in assessing the scope of Article 4 of the Convention, sight should not be lost of the Convention's special features of the fact that it is a living instrument which must be interpreted in the light of present-day conditions."*Rantsev v. Cyprus and Russia,* (App. No. 25965/04), 07 January 2010*,* para 277.

2.2.5. The concept of decent work

Work in the scope of the right to work must be 'decent work'. The ICESCR General Comment No 8, paragraph 7 defines it as 'work that respects the fundamental rights of the human person, as well as the right of workers in terms of conditions of work safety and remuneration'. Other requirements to 'decent work' include an income sufficient for the workers and their family members, and respect for the physical and mental integrity of the workers. The ILO outlines the following features of 'decent work':

> '"The concept is situated at the convergence of four fundamental principles and rights at work: freedom of association and collective bargaining; elimination of forced or compulsory labour; child labour[178]; and discrimination[179]. Decent Work also embodies a commitment to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equality, safety, fair income, and human dignity."[180]

Moreover, only 'decent work' in its broad sense is sufficient for the full realisation of the individuals right to choose work. Since one of the features of socio-economic rights is progressive realisation[181], the State should be aimed at providing decent work for all.

Using legal instruments, it is not possible to define sex work *per se* as decent or indecent. A lot depends on the efforts of the States within domestic legislation in creating legal instruments for protection and promotions of sex workers rights, elimination of violence, elimination of poverty so fewer sex workers could find themselves occupied at sex work as a 'measure of last resort'.

Also, the absence of 'perfect' work for an individual, which is yet not possible even in the developed and prosperous countries with great respect for human rights (for example, the Nordic countries), does not automatically construct all other work as forced, or somehow diminishes other work-related rights.

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[178] Prohibition of child labour.
[179] Prohibition of discrimination.
[180] ILO Summary Study Report: "Viet Nam's Sex Industry – A Labour Right Perspective", ILO publications, 16 September 2016, available at https://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_524918/lang--en/index.htm, last approached 05.05.2020, para 1.
[181] The CESCR descrives progressive realisation as follows: "The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights". CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), UN Doc. E/1991/23, 14 December 1990.

The ILO points out, that decent work, however, is hardly achievable without the States efforts, e. g. in the informal economy. In it's non-binding Recommendation "Transition from the Informal to the Formal Economy" No 204 (2015), the ILO calls for the States to make efforts in transferring informal economy to formal.[182] Based on the ILO assessment, it is evident that shifting sex work to 'decent work' can only happen when sex work will be recognised out of the informal economy.

This puts the criminalisation and partial criminalisation models in the position when the 'decent work' is not achievable. If the State criminalises sex workers for services, or all activities surrounding sex work, including the buyer, it squeezes sex workers into the informal sector instead of doing the opposite.

However, Articles 6, 7 and 8 of the ICESCR are interdependent, and, as mentioned above, the States obligation to fulfil in the context of the right to work implies promoting decent work and aiming for decent work; hence criminalising sex workers or purchasers means that the State does not meet the obligation to fulfil the right to work.

With sex work, the decent work agenda means the fulfilment of the right to just and favourable conditions of works.

Another crucial step of the State is providing sex workers opportunities and programmes for different occupation than sex work, so that sex work would actually become a chosen occupation rather the measure of last resort. Thus, same the State should provide vocational training and programmes aimed to change employment for those who find sex work undesirable.

2.2.6. The right to vocational training as an element of the right to work and freely choose work

There is an obligation of the State to implement employment policies and measures fighting unemployment. Technical and vocational training is a part of this obligation.

The right to work includes the right to choose (seek) another occupation, and the States are obliged to provide assistance in realising of this choice. CESCR General Comment No 18 underlines, that "national employment strategy must take particular account of the need to

[182] Although the Recommendation is non-binding, the certain legal weight to it is given by the CESCR pointing out that 'women are overrepresented in informal economy', refers to the abovementioned Recommendations: "See also the guidance to States on how to adopt measures to promote workers'rights and social protection in the informal economy while encouraging a transition to the formal economy, provided in the ILO Recommendation, Transition from the Informal to the Formal Economy No 204, 2015. "CESCR General comment No 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, 10 August 2017, footnote 27.

eliminate discrimination in access to employment. It must ensure equal access to economic resources and to technical and vocational training"[183]. The failure of the State to introduce vocational training is a violation of the duty to fulfil the rights provided in Article 6 ICESCR. CESCR General Comment No 18 names 'equal access to work and training' as one of the obligations of the State. [184]

In the ESC, the right to vocational guidance and vocational training are set in an extensive manner in Article 9 and 10.

In absence of international treaties or ILO Conventions setting specific obligations of the States with regard to sex workers, UNAIDS guidelines on sex workers can help to understand the content of the States' obligations covered in Articles 6 and 7 of the ICESCR towards sex workers. When the State provides employment for sex workers, they "should have access to a meaningful and comprehensive set of alternatives to sex work that respond to workers' individual circumstances. In devising meaningful alternatives to sex work, programmes should address drug dependency, family rejection, mental health and legal problems"[185]. Alternative employment and means of living should be brought to sex workers in a practical manner. The guideline sets such examples as jobs, cash grants, vocational and skills training.

2.2.7. Permissible limitations

The ICESCR Article 4 sets the possibility of "limitations determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". Under the ICESCR limitations are permitted for the sole purpose of 'general welfare'.

The Limburg Principles on Implementation of the ICESCR, an interpretative instrument of the Covenant[186] provide for the national laws limiting certain rights shall not be arbitrary or unreasonable or discriminatory[187].

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[183] *Supra note* 107, para 44.
[184] *Ibid.,* para 36.
[185] UNAIDS Guidance note on HIV and sex work (updated April 2012), UN Doc. UNAIDS/09.09E / JC1696E, 2012, available at https://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work, last approached 07.01.2020.
[186] UN Commission on Human Rights, Note verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles"), UN Doc. E/CN.4/1987/17, 8 January 1987.
[187] Ibid, para 49

The 'general welfare' as a legitimate aim of the restrictions should be seen as furthering the well-being of the people as a whole[188]. In comparison with the ESC, or with the ICCPR limitation clause, the 'legitimate aim' set in the ICESCR seems narrow. As Müller observes, when the ICESCR was drafted, restrictions on core socio-economic rights for the reasons of 'public morals' or 'public order' were left out as unjust.[189]

'Democratic society', in the ICESCR is commonly defined as a society meeting the human rights set in the UDHR[190]. Finally, "the restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned"[191]. Generally, the approach to Article 4 limitations is somewhat similar with the approach to the ECHR: limitations should be proportional to the legitimate aim of the restrictions[192], which includes the requirement of the adequacy of the measure to the aim perused and the implemented measures should be as lenient as they can be[193]. However, it is believed, that the States do not have the broad 'margin of appreciation' as in the ECtHR jurisprudence interpretations of limitations[194].

Article G of the ESC (Revised) has a broader limitation clause: limitations are possible if they 'are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.'

The example of implementation of the limitations of the right to work may be found in the European Committee of Social Rights approach. In Conclusions 2016 (Albania), the ECSR indicates, that the restriction on the right set out in Article 1(2) ESC should be "prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals." [195] Thus, the ban of non-nationals from the jobs may only be if the performing public authority at work is connected with national security and public interest.

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[188] Ibid, para 51
[189] Müller, Amrei, "Limitations to and Derogations from Economic, Social and Cultural Rights", *Human Rights Law Review*, Volume 9, Issue 4, 2009, p. 570.
[190] *Supra note* 186, para 55
[191] Ibid, para 56
[192] *Supra note* 126: Saul, Kinley, Mowbray (2014), pp. 253 – 256.
[193] *Supra note* 189: Müller (2009), p. 584.
[194] *Supra note* 126: Saul, Kinley, Mowbray (2014), p. 256.
[195] European Committee of Social Rights, Conclusions 2012 - Albania - Article 1-2 Doc. ID 2012/def/ALB/1/2/EN, para 1.

With regard to the right to work, namely to the freedom of choice of occupation, work and places of performance, Drzhewicki points out, that these freedoms are *already* construed with regard to the principle of proportionality and necessity, and therefore they may contain "certain restrictions or even aspects of compulsion"[196]. Among these restrictions are the 'inherent requirements' to the job itself or the States security concerns. Also, as Drzhewicki notes, the limitations with regard to the freedom of choice of occupation can be put in place for the purpose of protection of vulnerable categories of workers, e,g, children or, in certain jobs, women.[197]

However, restrictions discussed above, are applicable to negative obligations of the States not to interfere with the rights set out in respective treaties. The negative obligation of the State to respect free choice of occupation are set in the ICESCR and the ESC. The CESCR notes, that "The obligation to respect the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of that right."[198]

Since sex work now is a part of global economy - in other words, many of sex workers worldwide are migrants[199], and the approach that the jobs limitations described above in domestic legislation can exist only in the way the ECSR suggests, is important for sex work especially. In various countries sex work is only permitted for nationals, which sometimes is seen as an unjustified interference with the right to work and the violation of the non-discrimination in an access to labour market.

The mentioned conclusions of the ECSR contain an important argument in favour of the concept that the free choice of work is not merely the prohibition of forced labour, but a separate element of the right to work. When the unemployment benefits are paid under the condition to take up offered employment, "in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2."[200] Thus the interference of the State restricting free choice of sex work shoukd be carefully assessed on permissibility of such limitations according to the provisions of the respective treaties.

Finally, as Drzhewitski notes, "Human rights law and labour law have also dealt with other restrictions of enjoyment of freedom to work, predominantly in conjunction with discrimination

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[196] *Supra note* 97: Drzewicki (2001), p. 233-234.
[197] *Ibid,* p. 234.
[198] *Supra note* 107, para. 22.
[199] *Supra note* 97: Drzewicki (2001), p. 235.
[200] *Supra note* 195.

criteria."[201] Tharefore, states Drzewicki, the freedom of choice of work, occupation and the place of performance needs strengthened protection from the State by using the remedies which are available for civil rights and 'equal opportunities'[202]

With the respect of sex work, it is tempting to establish whether the States' limitations to the right to 'earn a living by a freely chosen work or occupation' directly by prohibiting (criminalising or penalising) sex work, or indirectly, by prohibiting purchase of sexual services or renting apartments to sex workers could be justified under the provisions of the ICECSR and the ESC. This will be assessed in the respective chapters on national models.

2.3. Right to just and favourable conditions of work

The right to work in Article 6 ICESCR is inseparable of Article 7 on the right of just and favourable conditions of work. As has been discussed earlier in this chapter, only work complying with Article 7 may be non-exploitative decent work. Drzewicki provides classification of the rights that constitute the normative content of the right to work and the rights in work[203]. According to this classification, some of the rights set in Article 7 are 'the rights derivative of employment relationship'[204]. The rights in Article 7 include the right to fair remuneration, safe and healthy conditions of work, equality in promotion, and the right to rest and leisure. The ESC provides a wider and more detailed list of rights and States' obligations. Articles 2, 3 and 4 set the rights on just conditions of work, fair remuneration, safe and healthy working conditions. Numerous ILO Conventions relate to the same matter[205].

In the CESCR General Comment No 23, the Committee outlines, that the right set in Article 7 concerns everyone, including self-employed workers, workers of informal sector in all settings.

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[201] *Supra note* 97: Drzewicki (2001), p. 235.
[202] *Ibid,* p 227.
[203] *Ibid.*
[204] *Ibid.*
[205] The CESCR General Comment No 23 identified the following ILO conventions as relevant: Hours of Work (Industry) Convention, 1919 (No. 1); Weekly Rest (Industry) Convention, 1921 (No. 14); Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47); Protection of Wages Convention, 1949 (No. 95); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Equal Remuneration Convention, 1951 (No. 100); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Wage Fixing Convention, 1970 (No. 131); Holidays with Pay Convention (Revised), 1970 (No. 132); Minimum Age Convention, 1973 (No. 138); Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153); Occupational Safety and Health Convention, 1981 (No. 155); Protocol of 2002 to the Occupational Safety and Health Convention, 1981; Workers with Family Responsibilities Convention, 1981 (No. 156); Night Work Convention, 1990 (No. 171); Part-Time Work Convention, 1994 (No. 175); Maternity Protection Convention, 2000 (No. 183); Convention concerning the Promotional Framework for Occupational Safety and Health, 2006 (No. 187); and Domestic Workers Convention, 2011 (No. 189).

[206] It also states, that the list of rights is non-exhaustive, and includes freedom from violence and harassment, including sexual harassment, paid maternity, paternity and parental leave (in the ESC these rights are set explicitly, as the revised ESC text is more recent). This approach is connected with the fact that labour has evolved since the time of drafting of the ICESCR, the new challenges are addressed.

The right to safe and healthy conditions of work when seen through sex work paradigm implies such safety of a worker from abuse, sanitary facilities, access to condoms, health and safety information and trainings[207]. The issue of a special importance for sex workers is the HIV prevention on the workplace. The ILO Recommendation No 200 on HIV and AIDS suggests that the States should adapt HIV-prevention programmes, which include accessible information on HIV, occupational health and safety, encouraging of voluntary HIV tests, access to means of prevention (condoms and post-exposure measures, and harm-reducing strategies.[208]

As for the workers in the informal economy, CESCR General Comment No 23 outlines, that they are often "excluded from (…) legal protection, support and safeguards"[209] while namely "women are often overrepresented in the informal economy, for example, as casual workers, home workers or own-account workers, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave."[210] States in general lack the system of monitoring and protection of informal economy workers' rights. Special legislative measures should exist also for migrant workers, who, due to possible undocumented status, lack of knowledge skills or information about their rights are "vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments".

The uncertainty in the notion of exploitation of prostitution which is prohibited in CEDAW (discussed above in chapter 2.1) creates the situation when national legislation may prohibit any employment of sex-workers apart from self-employment, under the threat of punishment to the employer if the latter employs sex workers, regardless of the conditions of work.

This is what happens under criminalisation and partial criminalisation models. Thus, often sex workers are pushed to be self-occupied. For self-employed workers it is crucial, as CESCR General Comment No 23 notes, that if the workers are "unable to earn a sufficient income, such

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[206] S*upra note* 125, para 2.
[207] Community Report by International Committee on the Rights of Sex Workers in Europe: Social and institutional oppression experienced by sex workers in Europe, available at http://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE%20CR%20StrctrlViolence-final.pdf, approached 02.01.2020.
[208] ILO Recommendation No 200 concerning HIV and AIDS and the World of Work, 2010.
[209] *Supra note* 125, para 47 (d)
[210] *Ibid,* para 47 (a).

workers should have access to appropriate support measures"[211]. Maternity insurance, occupational health and safety measures, awareness of the importance of rest and limitations on the working time should be also in place for self-employed workers.

Detailed obligations of the State on the right on safe and healthy conditions of work are provided by Article 7 of the ICESCR and the ESC Article 3. The State should adopt and implement a coherent national policy on heath and safety on workplace, working conditions, working environment, occupational health and safety. Such policies should be supervised and reviewed periodically. Special occupational work and health regulation should be adopted by the States and enforced. Finally, the State should promote the progressive realisation of health and safe working conditions.

The ECSR early connects the right to safe and healthy working conditions with the right to personal integrity, stating, that the right of everyone to a safe and healthy working environment is a "widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights"[212]. And "The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life. It applies to the whole economy, covering both the public and private sectors."[213]

However, under criminalisation and partial criminalisation models, as the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health notes, that sex work criminalisation interferes with the enjoyment of the right to health "by creating barriers to access by sex workers to health services and legal remedies. When sex workers are not recognized as engaging in legitimate work, they are not recognized by standard labour laws in many countries."[214]

In the content of the right to safe and healthy conditions of work, a special place is given to freedom from harassment, including sexual harassment, as the General Comment No 23 explains, is also covered by Article 7 of the ICESCR. "Legislation, .. should define harassment broadly, with explicit reference to sexual and other forms of harassment, such as on the basis of sex, disability, race, sexual orientation, gender identity and intersex status."[215] Sex workers, due to

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[211] *Ibid,* para 47 (g).
[212] European Committee of Social Rights, Conclusions I, Statement of interpretation – Article 3, No I_Ob_-11/Ob/EN, 31/05/1969.
[213] European Social Charter Governmental Committee, Report concerning Conclusions 2017 of the European Social Charter (Revised), No GC(2018)24, 31 January 2019, para 20.
[214] *Supra note* 92, para 43.
[215] *Supra note* 125, para 48

nature of work, are persons who have high risks of harassment at the workplace. The ILO Violence and Harassment Convention No 190 (2019)[216] introduces a list of measures needed from the States to eliminate workplace harassment. Among these are: legislative prohibition of violence and harassment, relevant policies, comprehensive strategy combatting violence and harassment, victim support, education and trainings, inspection and investigation of cases of violence and harassment[217].

Thus with respect to the right to just and favourable condirions of work for sex workers under the ICESCR and the ESC, the main obligations of the States are not to create obstacles, which would lead to decrease of safety at the workplace, and to introduce legislation and policies to maximise the well-being of sex workers.

2.4. Right to unionise and to bargain collectively

Among other work-related rights, the right to unionise with regard to sex workers seem to have a huge importance[218]. Due to the stigma and underrepresentation, sex workers are the ones to have the voice and agency to protect their rights. "The major 'problems' of prostitution for the workers are exploitation, stigma, abuse and criminalization. These are not unique to the industry, and can only be tackled effectively by the self-organization of sex workers into unions and rights groups, along with full decriminalization."[219]

The right to form or join a trade union to promote and protect economic and social interest is set in Article 8 of the ICESCR and Article 5 of the ESC. In the CESCR General Comments No 7, it is said, that "the right of everyone to form trade unions and join the trade union of his/her choice as well as the right of trade unions to function freely" is a collective dimension of the right to work.[220] Supposedly, sex workers unions efforts can be an effective way to reduce human trafficking.[221]

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[216] As of 08.06.2020 has not yet entered into force.
[217] C190 - Violence and Harassment Convention, 2019 (No. 190), Article 4 (2). As of 01.01.2020 has not yet been ratified and has not yet entered into force.
[218] See, for example: Jackson, Crystal A., "Sex Worker Rights Organizing as Social Movement Unionism: Responding to the Criminalization of Work" (2013). UNLV Theses, Dissertations, Professional Papers, and Capstones. 1844, available at https://digitalscholarship.unlv.edu/thesesdissertations/1844, last approached 13.01.2020.
[219] Kilvington, Judith, Day, Sophie, Ward, Helen, "Prostitution Policy in Europe: A Time of Change?", in *Feminist Review* No. 67 (1)., 2001, pp. 78-93.
[220] *Supra note* 107, para 2.
[221] Sharp, Corena, "Responding to Sex Workers' Rights as Workers' Rights: Reducing Sex Trafficking in the Dominican Republic" (2015).Western Libraries Undergraduate Research Award. 6, available at https://cedar.wwu.edu/library_researchaward/, last approached 20.03.2020.

Yet again, as the ILO points out in Recommendations No 204 that in the informal economy the right to form trade union is jeopardized for persons in the informal economy, meanwhile without a possibility of organisation and representation, workers from the informal economy generally suffer from a lack of access to various other rights at work. [222] The violation of the right to form or join a union leads to the situation, where the workers in the informal economy are unable "to pursue their employment interests through collective bargaining or to lobby policy-makers on issues such as access to infrastructure, property rights, taxation and social security."[223]

In the CESCR General Comment No 18 the obligations of the States' concerning the right to join trade union are clarified: "States parties should respect and protect the work of human rights defenders and other members of civil society, in particular the trade unions, who assist disadvantaged and marginalized individuals and groups in the realization of their right to work."[224]

Collective bargaining is an effective mechanism protecting labour rights. For example, abovementioned ILO Violence and Harassment Convention No 190 (2019), states, that

"with a view to preventing and eliminating violence and harassment in the world of work, each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining."

2.5. Right to social security

Article 8 of the ICESCR sets the right of everyone to social security. Scheinin notes, the term 'social security' often is used as covering both 'social insurance', a system when the benefits are 'earned' by the worker, and 'social assistance' that covers the needs of persons or groups from the public funds (general tax revenue).[225]

The CESCR General Comment No 7 clarifies, that this right is aimed to provide benefits for a person in need in the event of the lack of work-related income caused by "sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member"[226], or by an unaffordable healthcare system, or for minor and adult dependents – by an insufficient family support.[227] However, such instruments as the ESC, the ILO Social Security (Minimum Standards)

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[222] *Supra note* 182: ILO Recommendation No 204, (2015), para 17.
[223] *Ibid.*
[224] *Supra note* 107, para 51
[225] Scheinin, Martin, "The Right to Social Security", in Eide Asbjorn, Krause Catarina, Rosas Allan (eds.), *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Berlin: Springer, 2001, p. 211.
[226] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 19, The right to social security (art. 9), UN. Doc. E/C.12/GC/19, 2008, para 2.
[227] *Ibid.*

Convention No 102 (1952) have more detailed regulation of this right. Scheinin outlines, that with the ESC "the right to social assistance for those in need has developed into a genuine human right"[228] which is set Article 13(1) of the ESC, while earlier such support was seen mostly as 'charity'[229].

For sex workers subjest to various legislative national models of regulation of sex work the possibility to enjoy this right varies dramatically. In the countries where sex work as work is not recognised sex workers are excluded from both 'social security' schemes and 'social assistance' and in comparison with other categories of workers the right to social security for sex workers is limited. For example, NSWP states, that sex workers are generally excluded from housing, financial services, public services – from everything that can maintain independence and security. There is extensive discrimination with the right to housing and the right to property. Together with other workers from the informal economy, labour rights protection and social security benefits are practically absent while the right to associate and organize to protect such rights are often not recornised for sex workers in many countries. "Criminalisation, discrimination and stigma, and the failure to recognise sex work as work, compound sex workers' social exclusion and foster economic marginalisation."[230]

Meanwhile, according to the ILO Recommendations 204, the States in transitioning to the formal economy

> "should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country."[231]

In the respective chapters it would be seen, if the states using restrictive legislation models of the regulation of sex work are putting efforts into the obligations to specifically pay attention to such disadvantaged and marginalized group as sex workers.

Thus, social rights of sex workers will be touched upon mostly in comparison with domestic legislative approach to social security for other categories of workers, especially considering that this right has a non-discriminative dimension, since the obligation of the State is to ensure, that

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[228] *Supra note* 225: Scheinin (2001), p. 216.
[229] *Ibid.*
[230] NSWP Briefing Note. Social protection, 2019, available at https://www.nswp.org/resource/briefing-note-social-protection, last approached 20.04.2020.
[231] *Supra note* 182: ILO Recommendation No 204, (2015), Para 18.

"the social security system will be adequate, accessible for everyone and will cover social risks and contingencies"[232]

[232] *Supra note* 226, para 48.

3. CRIMINALISATION

3.1. **Overview of Russian legislation criminalising sex workers**

Criminalisation is the most hostile model of regulation towards sex workers. The interference with the right to work under this prohibitionist approach is direct: persons involved in sex work are to be penalised for performing work and other related activities.

Russia, where sex work is penalised in an administrative procedure[233], is one of the few Member States of the Council of Europe where this model still exists. The penalty for sex work is set in the article 6.11 of the Administrative Offence Code of Russian Federation (Administrative Code): Prostitution entails a fine from 1500 to 2000 Rubles[234]. Article 6.12 further sets a fine from 2000 to 2500 Rubles or administrative arrest from 10 to 15 days for having an income from prostitution, if this income is connected with prostitution of other person. The latter article is directed against pimping.

According to the official data of administrative cases[235], in the first six months of the year 2019, the administrative procedure for prostitution (article 6.11) was initiated for 3 287 persons, 2 527 of them were fined. However, for pimping (article 6.12) only 63 persons were brought to court, with 30 of them punished with a fine and 2 persons with administrative arrest. Both of these offences are offences against public health, sanitary and epidemiological well-being and public morals[236].

As it can be seen, penalising sex workers in Russia is widely in use. In the meantime, pimping is rarely punished (32 cases in the year 2019).

In addition, Article 240 of the Criminal Code of the Russian Federation (Criminal Code) provides for criminalisation of recruiting in prostitutution, and Article 241 criminalises organising

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[233] The difference between penalisation and criminalisation is explained in details in Chapter 1. In the current chapter both words are being used as synonyms.

[234] Approx. 21-28 Euro according to Bloomberg conversion course data on 28.11.2019 https://www.bloomberg.com/quote/EURRUB:CUR

[235] "Svodnyye statisticheskiye svedeniya o deyatel'nosti federal'nykh sudov obshchey yurisdiktsii i mirovykh sudey za 1 polugodiye 2019 goda" [Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for the 1st half of the 2019], available at http://www.cdep.ru/index.php?id=79&item=5083, last approached on 28.11.2019.

[236] Section 6 of the Administrative Code.

of others' prostitution, brothel-keeping and systematical providing of the premises for prostitution. These crimes are considered to be crimes against public health and public morals.

The definition of 'prostitution' is absent both in the Administrative Code and in the Criminal Code. Case law of Russian civil courts can offer the following definition: "According to the accepted doctrinal interpretation, prostitution is systematic sexual intercourse for compensation, which can be expressed not only monetary, but also in various objects of the material world."[237]

Both CEDAW Committee[238] and CESCR[239] call Russia for decriminalisation of sex workers. For example, in the latest concluding observations on Russia the CESCR states the following: "The Committee recommends that the State party consider decriminalizing sex workers, and ensure that they can fully access health-care services and information, including treatment and prevention of HIV/AIDS, without discrimination."[240] Russia itself in its Nineth CEDAW periodic report (2019) does not answer the CEDAW Concluding Observations on the question of lifting the criminalisation of sex work[241], recommended respectively by the Committee in its Concluding observations on the Eighth Periodic Report[242] of Russian Federation.[243]

3.2. The right to work for sex workers in Russia

3.2.1. Prohibition of forced labour

As described in the previous chapter, core content of the right to work is, among others, the prohibition of forced labour. With regard to sex work which is historically stigmatised and historically highly criminal-risk zone the duties of the State to respect and to protect have special importance.

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[237] Appeal ruling No. 33-21419/2014 33-828/2015 of January 28, 2015 in case No. 33-21419/2014 //sudact.ru/regular/doc/8EOryyhQRI18/, last approached 30.03.2020.
[238] Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of the Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 20 November 2015, para 26 (c).
[239] Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the Russian Federation, UN Doc. E/C.12/RUS/CO/6 , 16 October 2017, para 53.
[240] *ibid.*
[241] Committee on the Elimination of Discrimination against Women, Ninth periodic report submitted by the Russian Federation under article 18 of the CEDAW, due in 2019, UN Doc. CEDAW/C/RUS/9, 8 January 2020.
[242] Previously, in the year 2010, the CEDAW did not give direct recommendations to decriminalise sex work. See Concluding observations of the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh report of the Russian Federation, UN Doc. CEDAW/C/USR/7, 2010.
[243] *Supra note* 238

Upon the effectiveness of the State in combating forced labour and trafficking depend the rights of sex worker earn their living in an occupation freely entered into, and the safe and healthy working conditions which are inseparable from the 'decent work' paradigm.

With relate to the research question, the issue of forced labour and trafficking in human beings as well is not explored specifically. However, it is relevant to establish if the certain prohibionist model of regulation of sex work influences the effectiveness of prohibition of forced labour and human trafficking.

In Russia trafficking and slavery are criminalised respectively by Articles 127.1. and 127.2 of the Criminal Code. In addition, coercion into staying in prostitution is criminalised by Article 240 of the Criminal Code. The ECtHR in *Rantsev v Cyprus and Russia*[244] was satisfied with the legislation in place.

The CEDAW, however, in concluding observations notes, the absence of an action plan, a coordinating body, lack of information[245] and that

"the reports of widespread violence and discrimination against women in prostitution, enabled by the penalisation of prostitution as an administrative offence under article 6.11 of the Code of Administrative Offences, which results in various forms of abuse, including extortion, beatings, rape and even killing of women in prostitution, the limited assistance available to them and the absence of exit and reintegration programmes for women who wish to leave prostitution."[246]

Criminalisation thus appears not only harmful for sex workers themselves, but also as a violation of the State duty to protect from trafficking and forced labour in the sense of Article 6 of the ICESCR and Article 1(2) of the ESC. Criminalisation, surrounding stigma and police abuse arising from penalisation makes it more difficult to the victims of trafficking to report the crime or anyhow address the authorities.

3.2.2. The right to earn a living by an occupation freely entered into

As was established in Chapter 2, the right to freely choose work under the ICESCR and the ESC imposes a corresponding obligation of the State to refrain from interfering with the right to 'earn a living by an occupation freely entered into'. From this obligation follows, that the State should not intervene in the enjoyment of certain rights and take proactive measures to prevent the interference of state agents.

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[244] *Supra note* 177, paras 301-303.
[245] *Supra note* 238, para 25.
[246] *Ibid,* para 25 (c).

However, as was mentioned in the Chapter 2, the socio-economic rights can be a subject of certain limitations, both under the ICESCR and the ESC. Moreover, the prohibition of certain work is rarely met in domestic legislation.

The Constitution of Russian Federation, Article 37 sets the freedom of labour and prohibition of forced labour. The Labour Code of the Russian Federation, Article 2 provides for the 'freedom of work, including the right to work, which everyone freely chooses or who freely agrees to, the right to dispose of one's ability to work, to choose a profession and occupation.' One can ask, whether by making sex work punishable, does State interferes into the right to freely choose occupation and place of performance? The justification of this interference is a legitimate aim of protecting public morals[247]. However, these limitations are unlikely to pass a proportionality test (analysed in details in Chapter 2), when the aim should strike a balance between the restriction of the right and be 'necessary in democratic society' .

Another legal assessment of the prohibition of sex work be should be done from the point of the right to non-discrimination. The majority of sex workers are women.[248] Women are disproportionally affected by poverty, have less access to the resources and often have dependents.[249] The ILO recognises that women usually have to balance the responsibilities earning a living, domestic work and care work for the children and the elderly. Further, the ILO notes, that "women are also discriminated against in terms of access to education and training and other economic resources. Thus women are more likely than men to be in the informal economy."[250] Therefore, criminalisation of sex work influences women's right to earn a living disproportionally. Among Russian sex workers, according to the sociological research,[251] are, for example, single mothers, students, internal migrants. By punishing sex work on the grounds of jeopardising public morals the State limits the possibilities of women to earn a living by the only possible or preferable occupation and of economic independency.

As an example of non-discrimination assessment to the access to the labour market, we may see the example of so-called 'restricted jobs list'. Since the Soviet era, Russia held an extensive

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[247] Chapter 6 of the Code of Administrative Offences where Article 6.11. belongs, is entitled as "Offenses against health, sanitary-epidemiological well-being of population and public morals".

[248] See, for example, NSWP Policy Brief: Sex Work and Gender Equality, 2017, available at https://www.nswp.org/node/3512, last approached 15.05.2020.

[249] *Supra note* 182: ILO Recommendation No 204, (2015), para 11

[250] *Ibid,* para 20

[251] Romanova, Veronika. Transformatcia sotcialnogo prostranstva zhenskoi prostitutsii (na primere molodyh zhenschi, okazyvauschikh seksualnye uslugi v Sanct Pererburge). (The transformation of female prostitution's social space: the example of young commercial sex workers in St. Petersburg), in *Zhurnal Sotsiologii I Sotcialnoi Antrpologii* № 5, 2015, pp 128 – 142.

list of professions where women were restricted to work[252]. The justification of restrictions was the health (with the emphasis on reproduction health) of women. Among them were not only the jobs that could have impact reproductive health, but also such common professions as 'bus driver'[253], 'firefighter'[254], 'carpenter'[255]. CESCR Concluding Observations on Russia of 2017[256] provided an assessment[257] of the abovementioned list. The Committee noted, that there is a lack of scientific or medical grounds supporting the presumable damage to women's health and thus including these 456 professions in the List is not justified. The CESCR expressed its concern, that "in reality, these restrictions contribute to furthering inequalities between men and women."[258] Further, the Committee calls the State party to ensure that the list covers "only restrictions necessary for the protection of maternity and is based strictly on medical considerations"[259].

Finally, the States may use the clause of 'the protection of the rights of others' set in Article G of the ES (the ICESCR does not have this aim for general restrictions of rights, apart from the right to form a union). For example, Belarus[260] in its Seventh Periodic Report under the ICESCR claims[261], that 'In the process of suppressing the spread of prostitution (as one of the main factors of sexual exploitation), 8,011 people were brought to administrative responsibility for the provision of paid sexual services'[262]. Thus, Belarus justifies penalisation of sexual services on the ground that sexual services are the factor contribution in 'prostitution'. Since this statement is given in the context of the Palermo Protocol, the State justifies penalisation of women by the aim of suppressing human trafficking. However, this justification of limitations of rights clearly will not pass a proportionality test under the ESC, even if criminalising *could* help the suppression of trafficking, the one can not be achieved by abusing the rights of others.

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[252] Postanovleniye Pravitel'stva RF ot 25.02.2000 N 162 "Ob utverzhdenii perechnya tyazhelykh rabot i rabot s vrednymi ili opasnymi usloviyami truda, pri vypolnenii kotorykh zapreshchayetsya primeneniye truda zhenshchin" (Decree of the Government of the Russian Federation of February 25, 2000 N 162 "On approval of the list of heavy work and work with harmful or dangerous working conditions, the implementation of which prohibits the use of women's labor"), available at http://www.consultant.ru/document/cons_doc_LAW_26328/.
[253] *Ibid,* para 387.
[254] *Ibid,* para 431.
[255] *Ibid,* para 49.
[256] *Supra note* 238, para 28.
[257] Similar approach was demonstrated by the CEDAW Committee in an individual communication *Svetlana Medvedeva v Russian Federation*, application No 60/2013, 2016.
[258] *Supra note* 238, para 28.
[259] *Supra note* 238, para 29.
[260] Belarus is not a Member State of the Council of Europe and thus the ESC. However, the argument for criminalisation of sex workers for the aim of suppressing human trafficking deserves attention.
[261] CESCR Seventh periodic report of Belarus, UN Doc. E/C.12/BLR/7, 04.02.2020.
[262] *Ibid*, para 200

CEDAW in its General Recommendation No 35 on Gender-Based Violence explicitly states, that criminalizing of women in prostitution is among others "legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence",[263] and, on the view of the CEDAW Committee, such a provision should be immediately repealed[264].

As for the right to vocational guidance for women who would like to leave sex work, Russia is not meeting the conditions of fulfilment of this right. CEDAW Committee expressed concerns with non-existence of "exit programmes for women who wish to leave prostitution"[265]. Meanwhile, the equal to access opportunity to change of profession is an especially important part of the right to freely choose occupation and place of performance for sex workers because of the stigma and violence surrounding sex work. At the same time, Russian legislation, for example, the recent 'Order of the Ministry of Labor and Social Protection of the Russian Federation dated December 30, 2019 No 840 "On approval of recommendations on the formation of regional plans and managerial mechanisms aimed at improving the status of women"'[266] contains zero measures on vocational training or any other measures for women wishing to leave sex work.

3.3 The right to favourable and just conditions of work for sex workers

With regard to the right to safe and favourable conditions of work, one of the main concerns under the criminalisation model is the safety of the working conditions of sex workers. The criminalisation model makes sex work more dangerous. Sex workers suffer from police violence and, they have high risks of violence from the clients[267], since the State does not fulfil its duty to protect sex workers from violence. By considering selling sex as an offence in Russia, the State makes it harder for sex workers to report on offences against them to the authorities, under the threat of being punished.

As the CEDAW Committee notes in its Concluding observations on the eighth periodic report of the Russian Federation:

> "The reports of widespread violence and discrimination against women in prostitution, enabled by the penalization of prostitution as an administrative offence under article 6.11 of the Code of Administrative Offences, which results in various forms of abuse, including extortion, beatings, rape and even killing of women in prostitution.."[268]

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[263] *Supra note* 78, para 29 (c)(i)
[264] *Ibid,* para 29 (c)(i)
[265] *Supra note 238*, para 29.
[266] Order of the Ministry of Labor and Social Protection of the Russian Federation dated December 30, 2019 No 840 "On approval of recommendations on the formation of regional plans and managerial mechanisms aimed at improving the status of women"/ Bulletin of Labor and Social Legislation of the Russian Federation, 2020, No 3
[267] *Supra note* 238, para 25 (c)
[268] *Supra note* 238, para 25 (c)

In this manner, criminalisation creates unsafe working conditions. This is not a unique situation; the insecurity of persons in sex work under the criminalisation model exists in countries which are very distant in their geography, culture and development. In most African countries, sex workers suffer from criminalisation regime brining the very same incompatible with basic human rights conditions of work[269]. In the United States, "the criminalization of prostitution took sex work out of the debate over voluntary versus involuntary labor. Prostitutes, like others who labor in the illegal and informal economies, are instead blamed for the conditions of their labor."[270]

The right to healthy working conditions of sex workers under criminalisation model also is not protected or fulfilled. As noted in the Concluding observations on Russia by the CESCR, "sex workers face obstacles in accessing health-care services owing to the criminalisation of sex work, and are vulnerable to police violence, increased occupational risks, and HIV infection, among other diseases"[271]. Under Article 7 (b) of the ICESCR, the State is required to adopt a national policy, covering "all branches of economic activity, including the formal and informal sectors, and all categories of workers, including non-standard workers, apprentices and interns."[272] The policy has to provide for safety and protection of workers' health. Article 3 of the ESC also sets an obligation of the States to issue safety and health regulations.

These regulations and policies should cover all categories of sex workers, including street-based and indoor-based, those working in brothels and private apartments, and those performing escort services. The measures and steps taken should be specific, and it seems that the emphasis should be made on safety from violence, abuse and coercion from clients; safety measures from sexually-transmitted diseases; sanitary and hygiene conditions of work; length and time of working hours; mental health of sex workers.[273]

In the criminalisation model HIV is not addressed or it is addressed insufficiently. As UNAIDS notes, "Even where services are theoretically available, sex workers and their clients face substantial obstacles to accessing HIV prevention, treatment care and support, particularly where sex work is criminalized"[274]. The WHO, who also takes the labour rights approach to the right to safe and healthy working conditions, states, among other things, that criminalisation is damaging for sex workers health for the reason that sex workers may try to hide their occupation

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[269] *Supra note* 50: Mgbako, Smith, 2010, pp. 1178 -1183
[270] Hernández-Truyol, Berta E., Larson, Jane E.: "Sexual Labor and Human Rights." in *Columbia Human Rights Law Review,* Vol.37, No.2, 2006, p. 395
[271] *Supra note* 239 para 52
[272] *Supra note* 125, para 26.
[273] See, for example, *supra note* 185.
[274] *Ibid*.

from healthcare workers "for fear of being stigmatized, arrested and prosecuted."[275] Subsequently persons occupied in sex work may choose not to address health services which can result in damaging consequences for health, including untreated sexually transmitted infections and unsafe abortions. Moreover, UNAIDS states, that "in many circumstances, those who do access health services report discrimination and ill treatment by health-care providers."[276]

In Russia, the efforts of the State to fulfil its duties of HIV and other sexually transmitted infections prevention or treatment among sex workers are insufficient, if not absent, which is incompatible with Article 7 of the ICESCR providing occupational health and safety, and Article 3 of the ESC on safe and healthy conditions of work. There are no government legislation, policies or programmes targeted on sex workers.

The UN Special Rapporteur on the Right to Health concludes, that "Sex workers often cannot gain access to State benefits, and are not protected by occupational health and safety regulations that routinely protect employees in other industries."[277]

The main piece of legislation regulating work and work-related rights in Russia is the Labour Code of the Russian Federation (the Labour Code). In Article 11 it is stated, that 'Labour legislation and other acts containing labour law norms regulate labour relations …' Civil contract relations are not regulated by the Labour Code and other Labour Laws and Legislative Acts. Labour relations are defined in Article 15 of the Labour Code. To define if the person is in labour relations, which imply the high level of protection of labour laws, occupational safety regulations, paid annual leave, parental leave, etc., or in civil law contract relations, we have to approach Article 15 definition, which is as follows:

Labour relations - relations based on an agreement between the employee and the employer on the personal performance of the employee for a paid labour function (work in accordance with the staffing list, profession, specialty with qualifications; a specific type of work assigned to the employee) in the interests, under the supervision and control of the employer, subordination of the employee to the rules of the internal labour schedule when the employer provides the working conditions stipulated by labour legislation and other regulatory rights, acts containing labour law regulations, collective agreements and contracts, local normative acts, the employment contract.

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[275] WHO Publications: Sexual health, human rights and the law, 2015, available at https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/, last approached 09.04.2020.
[276] *Supra note* 185.
[277] *Supra note* 92, para 43.

Unlike civil law relations, where the parties are supposed to be equal according to the Civil Code of the Russian Federation, labour relations are considered subordinated, bound by employer's rules and regulations, supervision and so-called "working discipline". However, narrowing labour law in such a manner excludes civil contract workers and self-occupied persons from the whole scope of labour law protection.

Thus, Russian labour legislation together with existing administrative punishment prevents sex workers from enjoying the same level of protection of their rights in comparison with other categories of workers.

Hence, the rights to rest and leisure; to fair remuneration; to the wages providing decent standard of living, maternity leave and other rights protection and fulfilment of which are set in Article 7 of the ICESCR and Articles 2, 3 of the ESC along with relevant ILO conventions, Constitution of Russia, the Labour Code of Russian Federation, are not protected and fulfilled because Russian Federation does not recognise sex work as work. The right to safe and healthy conditions of work are not fulfilled by the State to any extent.

3.4 Right to form or join a trade union, and to bargain collectively

Currently, no trade unions of sex workers or other forms of organisation of sex workers exist in Russia. The non-governmental organisation "Silver Rose" ("Serebryannaya Rosa"), positioning itself as a self-advocating organisation of sex workers, has been denied registration by the Ministry of Justice of the Russian Federation twice, in 2013 and 2014.

The person who applied for the registration of the abovementioned NGO challenged both decisions in court of first instance and further in an appeal court.

These two resolutions of an appeal court clearly illustrate the position of Russian Federation towards sex workers. First, the St. Petersburg City Court Appeal Resolution No 33-19137/2013 dated 24.12.2013 stated that for the "Non-profit partnership of sex workers and those who support them to protect the health, dignity and human rights of sex workers 'Silver Rose' it is impossible to determine the nature of the partnership, which is against the law."[278] The court found, that "The current legislation, as well as the charter of the "Silver Rose" do not define the concept of "sex workers", the criteria for classifying people in this category, their scope of activity."[279]

[278] Appeal ruling No. 33-19137 / 2013 of December 24, 2013 in case No. 33-19137/2013 avaliable at //sudact.ru/regular/doc/MolhaaFyICLt/, approached 15.05.2020
[279] *Ibid.*

The court also alleged, that the aims of the organisation are in breach of the Russian laws, namely the norms of the Criminal Code (Article 241) and the Administrative Code (Article 6.11 and Article 6.12), which are precisely the norms criminalising sex work and 'third parties' in sex work.[280]

The applicant afterwards amended the Charter of the mentioned NGO to clarify the definitions and aims in a way the Ministry of Justice and the Courts of both instances referred to. However, the Ministry of Justice again declined the registration of the Silver Rose, the applicant challenged it in court and appealed the decision of the court.

In this second case, the Appeal Resolution of St Petersburg City Court (No 33-828 / 2015 dated 28.01.2015 Case No 2-2988/14) states, that the purpose of the 'Silver Rose' is to ensure the rights, freedoms and legitimate interests of 'such a category of citizens'[281] as sex workers. However, in the Russian law, the concept of "employee" is a subject of labour law. Further, the Court refers to the Decree of the Committee of the Russian Federation for Standardisation, Metrology and Certification dated December 26, 94 No 367 which contains the list of professions and as the 'sex worker' is not mentioned in the List, the Court makes a conclusion that protection of sex workers therefore *cannot* be the aim of an organisation.[282] Thus, in the interpretation of the Court, the organisation of sex workers cannot be registered specifically because Russian labour legislation does not recognise sex work as work.

Further, the Court assesses the Partnership from the point of criminalisation of sex work: "By virtue of Articles 6.11 and 6.12 of the Code of Administrative Offences, engaging in prostitution and obtaining income prostitution, if this income is related to engaging in another person's prostitution are administrative offences against public health and public morals."[283] Thus, the Court concluded that the activity of the organisation is unlawful.

The right to form a union is set in part 1 of Article 30 of the Constitution of Russia, and in Articles 1, 2 of the Labour Code. However, sex workers are not considered as workers under Russian law, and sex work is an 'unlawful activity', administrative offence. Therefore, sex workers are deprived of the possibility to form a trade union to represent themselves and protects their rights.

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[280] *Ibid.*
[281] *Supra note* 237.
[282] *Ibid.*
[283] *Ibid.*

3.5. Right to social security

Since sex workers are forced to work in the informal sector of economy, their access to social security may be very limited, especially for migrant workers.

Deprived of the ability to pay social security insurance and pension contributions, sex workers in case of disability, unemployment, sickness, old age can only have the benefits as unemployed persons, e.g. the basic social assistance.

In Russia for the purposes of taxation people can register as a 'self-employed person'[284]. However, sex work is not listed in occupations available for such registration, and considering the illegal status of sex work, the registration of a sex worker as a 'self-employed' would be denied by the authorities.

For example, both workers and self-employed persons who became unemployed or suffered a sufficient loss of income due to Covid-19 got the unemployment benefits from the State under a special governmental decree[285]. Sex workers, however, as they could not report their income to the tax authorities for the reason that sex work is criminalised, can only apply for the basic social unemployment assistance (approx.. 25 Euro a month)[286].

The CERCR also expressed concerns with regard to access of sex workers to the social seciúrity, noting that "the State party's social security system does not completely cover various population groups, in particular workers in the informal economy, sex workers.."[287]

Thus, criminalisation of sex work leads to exclusion of sex workers from social security system and the violation of the right to social security under the ICESCR and the ESC.

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[284] Federal Law of November 27, 2018 N 422-ФЗ (as amended on 04/01/2020)
"On the experiment to establish a special tax regime" Professional income tax ". From 1 July 2020 the Law would be in force in all regions of the Russian Federation, while at 08.06.2020 the Law is in force only in 23 regions.
[285] Decree of the Government of the Russian Federation of March 27, 2020 N 346 (as amended on April 12, 2020) "On the amount of the minimum and maximum unemployment benefits for 2020"
[286] *Ibid.*
[287] *Supra note* 238, para 36

4. PARTIAL CRIMINALISATION

4.1. Swedish legislation regulating sex work

"Distinctions between forced and free sex work are therefore dismissed in Sweden as dangerous and misleading, allowing for a conflation of consensual sex work and coerced human trafficking, which in turn has served to emotively inform Swedish legal debate in the context of panic surrounding in-migration and sex trafficking"[288]

Year 1998 became a turning point in sex work regulation. Sweden introduced the new law criminalising the purchase of sex (*sexköpslagen* in Sweden[289]). Since then, despite of the questionable outcome of this law, despite of the doubts and voices of sex workers, their organisations and human right lawyers, this model has been embraced in Europe and beyond, promoted by the European Parliament Gender Equality Committee[290]. To 2020, Norway, Iceland, Canada, Northern Ireland, France, Ireland and Israel have the laws criminalising purchase of sex, with more countries considering this approach as their legislative model.

Currently the law reads as follows:

"person who, in cases other than those previously referred to in this Chapter, obtains casual sexual relations in return for a payment, is guilty of purchase of sexual services and is sentenced to a fine or imprisonment for at most one year. The provision in the first paragraph also applies if the payment was promised or made by another person"[291]. Despite of being put under Chapter 6 of the Code 'On sexual offences', this crime is considered to be not a crime against a person, but a crime against public order[292]. The victim, here is not a sex worker, but rather general public[293]. Yttergren and Westerstrand note, that the partial criminalisation model in Sweden is based "on the perceived harm prostitution as a phenomenon, an existing market, causes society. Thus, the interest behind the law is a common societal interest.."[294]

In the light of the above, remains unclear why a crime of purchase of sexual services, in which victim could be so evidently established, is a crime against public order. Thus there is a parallel with the Russian criminalisation model, where sex worker's administrative offence is

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[288] *Supra note* 57: Levy (2010), p. 225.
[289] *Ibid.*
[290] *Supra note* 27: Schulze, Canto, Mason, Skalin (2014).
[291] Swedish Criminal Code, SFS 1962:700, Section 11.
[292] Waltman, Max, MacKinnon, Catharine A., "Suggestions to the Government's Review of the Sex Purchase Act (Sweden)" 2010,. Available at SSRN: https://ssrn.com/abstract=2416479, last approached 20.04.2020.
[293] *Supra note* 40: Östergren (2017).
[294] Yttergren, Åsa, Westerstrand, Jenny "The Swedish Legal Approach to Prostitution. Trends and Tendencies in the Prostitution Debate", in *NORA - Nordic Journal of Feminist and Gender Research*, vol. 24:1,2016, p. 47.

considered to be as offemce against public morals. From the legal point of view criminalisation of the buyer is closer to criminalisation of sex worker, than the States implementing the former are ready to admit. Florin, for example, states, that sex work is not only inherently violent for the sex worker, but that sex work is gender-based violence, which threatens gender equality by its existence[295]. Thus the refusal to give a sex worker a status of a victim leads to the conclusion that Sweden does not appeal to alleged inherit harm of sex work to a victim to justify the permissible restrictions of socio-economic rights of sex workers under the ICESCR and the ESC, but rather considers such a limitation based on the aim of public order (earlier it has been discussed that public order could serve a legitimate aim only by the ESC, while by the ICESCR it is 'general welfare'). The similarity between aims of restrictions of the right to work and work-related rights between the Russian criminalisation model and the Sweden partial criminalisation model is probably one of the main reasons why socio-ecomonic rights of sex workers are neglected in both countries; and such similarity is disturbing, since the partial criminalisation approach is considered to be 'progressive' and eliminating gender inequality, while the analysis of legal norms illustrates sex workers' human rights violations both in Russia and Sweden.

Further, the Swedish law criminalises the actions of third parties involved in sex work. The 'third-party' criminalising law is read as follows:

> person who promotes or, in an improper manner, financially exploits another person's engagement in casual sexual relations in return for payment is guilty of procuring and is sentenced to imprisonment for at most four years. If a person who has granted a right of use of a flat learns that the flat is used wholly or to a substantial extent for casual sexual relations in return for payment, and fails to do what can reasonably be required to terminate the right granted, they are, if the activity continues or is resumed in the flat, considered to have promoted the activity and are held responsible under the first paragraph.[296]

It has been noted, that the 'third-party criminalisation' can be interpreted in an extensive way. For instance, it may be applied to someone managing a brothel, advertising sexual services, to any partner regardless of martial status who lives off the earnings of a sex worker and to persons who rent their apartment to sex workers.[297]

It is important to mention, that apart from the law criminalising the buyer and 'third parties', there is also a Swedish Alien Act, who restricts sex workers from outside EEA to enter Sweden

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[295] Florin, Ola, "A Particular Kind of Violence: Swedish Social Policy Puzzles of a Multipurpose Criminal Law", in *Sexuality Research and Social Policy*, Volume 9, Issue 3, 2012, p 273.
[296] *Supra note* 291, Section 12.
[297] Danna, Daniela. Report on prostitution laws in the European Union. 2004, p. 18., available at http://lastradainternational.org/doc-center/3048/report-on-prostitution-laws-in-the-european-union, last approached 15.05.2020.

(namely, "if it can be assumed that during the stay in Sweden or in some other Nordic country he or she will not support himself or herself by honest means" [298].). These laws together create the 'partial criminalisation' model restrictive regime.

4.2. The Right to Work

4.2.1. Prohibition of forced labour

The Swedish partial criminalisation model influences the obligation of the State to prohibit forced labour and human trafficking under various treaties explored in Chapter 2. The criminalisation model in Russia is clearly an obstacle to an effective implementation of the prohibition of forced labour as was explored in Chapter 3. However, the Swedish partial criminalisation model has various assessments on its influence on reducing trafficking and forced labour of sex workers. Governmental[299] and other sources[300] state, that it only influences positively, reducing forced labour and trafficking; some of the researches deny the trafficking-reduce effect of the law.[301] The connection between the reduce of trafficking in human beings and restrictive legislation on sex work is indeed not straightforward. Probably, the 'suppression of demand' makes the country 'less interesting destination' for the traffickers'[302]. On the other hand, together with restrictions on sex work the Swedish authorities implemented more effective programmes targeting specifically human trafficking trafficking and forced labour, and this as well could be the reason of reducing trafficking crime. The number of street sex workers, however, has reduced[303]. At the same time, sex work became less visible. As a consequence researchers note, that "it is reasonable to believe that the prostitutes with less resources, or at least some of them, have been more closely linked to organised crime because of problems with languages; in addition not everybody can manage to administrate prostitution via the web."[304] Thus the State may unintentionally have created obstacles for trafficked persons to address for help; in addition, since the buyers are criminalised,

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[298] Swedish Alien Act (2005:716), section 2(2).
[299] Swedish Ministry of Justice Report: Prohibition of the purchase of sexual services. An evaluation 1999-2008 (SOU 2010:49) to the Government, 2010. Available at https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/ , last approached 07.03.2020.
[300] See, for example Ekberg, Gunilla S. et al, Brief: *Swedish Laws, Policies and Interventions on Prostitution and Trafficking in Human Beings: A Comprehensive Overview,* Stockholm, Sweden, 24 February 2018.
[301] For example:Kingston, Sarah., Thomas, Terry, "No model in practice: a 'Nordic model' to respond to prostitution?", in *Crime, Law and Social Change* 71, 2019, pp 429 - 433
[302] *Supra note 27*: European Parliament Study (2014)
[303] *Ibid.*
[304] *Supra note 305,* p. 102.

there are less chances that the latter will report to the authorities that the sex worker is a vicrim of trafficking because the buyer in this case would be afraid of their own criminal responsibility.

4.2.2. The right to freely choose work in its non-discrimination and other dimensions

Criminalisation of purchase of sex and the 'third-party' criminalisation is an interference in the right to earn a living by work or occupation freely enters into. As was analysed above, Swedish Criminal Code sets, that a sexual service purchase is a crime against public order. The limitations of the right to work in Article 6 of the ICESCR should comply with Article 4 of the Covenant. In Sweden, the limitations are determined by the Swedish Criminal Code, and have a purpose of 'promoting the general welfare' which in case of Sweden is the elimination of 'prostitution' as socially undesirable gender-based violence contributing to gender inequality[305] in the Swedish society. For example, in 2005 European Parliament study on sex work, Swedish law is described as follows:

> The ratio behind this law is that prostitution is regarded as an aspect of male violence against women and children. It is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful to not only the individual prostituted woman or child, but also to society.[306]

The legitimate aim of 'general welfare' is set out in the ICESCR, and gender equality indeed falls into general welfare definition, as well as it falls within the legitimate aim of 'protection of public morals' in the ESC.

The approach to limitations developed in the ECtHR jurisprudence, as the researchers state, can be applied to those set out in the ICESCR and the ESC[307]. If the limitation to be tested in a way the ECtHR provides, such aim would be indeed found as legitimate. For deeper understanding of the limitation for the aim of public morals, it could be helpful to look into the ECtHR decision in *A., B. and C v Ireland*[308], a notable case on the right to abortion[309]. The abortion restrictions and sex work restrictions have in common at least that in both cases a State interferes with the agency and control over individuals' bodies. In the mentioned case, the ECtHR found, that the restriction to abortion - which is a limitation of Article 8 of the ECHR 'pursued the legitimate aim of the

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[305] As it is stated, "gender equality will remain unattainable so long as men buy, sell and exploit women and children by prostituting them". *Supra note* 95, para 38:

[306] European Parliament Report: "National legislation on prostitution and the trafficking in women and children". Study",, 2005, p. 39, available at https://ec.europa.eu/anti-trafficking/publications/study-national-legislation-prostitution-and-trafficking-women-and-children_en, last approached 04.04.2020.

[307] *Supra note* 126: Saul, Kinley, Mowbray (2014),.p 256.

[308] *A., B. and C v Ireland (*App. No 25579/05), 16 December 2010

[309] As a sidenote, in the 2010 ECtHR judgement on *A., B. And C v Ireland the* Court found, that restriction to abortion in Ireland falls within the margin of appreciation of the State and reflects the will of the Irish people. In 2018 the will of Irish people changed to the opposite and under the Health (Regulation of Termination of Pregnancy) Act 2018 abortions are legal within first 12 weeks of pregnancy.

protection of morals of which the protection in Ireland of the right to life of the unborn was one aspect'.[310]

To see if interference of the right to work in Sweden meets the 'necessary in democratic society' clause of both the ESC Article G and the ICESCR Article 4, it should be analysed if the fair balance between a social interest - in this case it is the interest of Sweden to suppress sex work as an obstacle to gender equality in the society, and the competing interests of sex workers to be able to enjoy the right to freely choose work (and subsequently, as it been discussed earlier, to labour rights approach to regulation of sex work, to the right to fair conditions of work, and to the right to form a trade union).

In the *A., B. and C v Ireland* case, the ECtHR explored the question of whether the interference with the right was *necessary in a democratic society* and for the matter if it strikes a fair balance between a pressing social need - in this case it is *the interest of Irish people moral which protects the life of the unborn* - and competing interest of the applicants' rights to respect their private lives (access to abortion).

Then, the ECtHR resolved, that even if in the most States the legislation resolves conflicting interests in favour of permitting abortions, this consensus should not narrow the margin of appreciation of the State and thus "the Court does not consider that the prohibition in Ireland of abortion for health and well-being reasons, based as it is on the profound moral views of the Irish people as to the nature of life (…) exceeds the margin of appreciation accorded in that respect to the Irish State."[311] Thus, the ECtHR found, that the abortion restrictions in Ireland "struck a fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn."[312]

There is a little doubt, that the ECtHR if it ever would resolving a case based on a claim that the limitations of the right set out in Article 8 (respect for private lives) by the Swedish restrictions to sex work, it would find that since in sex work domestic legislation 'international consensus' is practically absent even within the Council of Europe contracting States - moreover, more and more States adopt the partial criminalisation model, and thus the interference with the right lies in the scope of margin of appreciation State enjoys.

On the other hand, in *Dudgeon v the UK* the ECtHR resolved, that with regard to consenting homosexual adults, criminalizing of consensual sexual behavior does violate the rights set in

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[310] *Supra note* 307, para 227.
[311] *Ibid,* para 241.
[312] *Ibid.*

Article 8 of the ECHR. Assessing if the justification of such limitation of rights as criminalisation of adult consensual behaviour is sufficient, the ECtHR stated, that

> "Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved."[313]

Although both *A, B and C v Ireland* case and *Dudgeon v the UK* case indeed have some common features with criminalising sex work – the former as criminalising one's decisions on body autonomy, the latter as criminalising consensual sexual behaviour, it is still hard to evaluate whether criminalisation of sex work (be it sex workers or third-party criminalisation) is in breach of the Article 8 of the ECHR[314]. However, there is a potential for protection the right to freely choose work for sex workers through Article 8 of the ECHR.

The limitations proportionality test with regard to restrictions to economic and social rights through the ICESCR and the ESC is not so straightforward. First, as has been discussed in Chapter 2, the concept of 'margin of appreciation' is not used in interpretation and application of the ICESCR and the ESC.[315] Second, the restriction of socio-economic rights under the ICESCR should be compatible with the nature of these rights in a way that the interpretation or application of the limitations should not jeopardise the essence of the right[316]. Third, limitations have to be proportionate to the aim such measures seek to pursue (i.e. general welfare).[317] Lastly, the aim of 'general welfare' does not include 'public morals' or 'public order' as legitimate aims. However, even considering these arguments, the conclusion that the law criminalising the buyer and 'third-parties' is a justifiable limitation of the right to freely choose work it is still too far-reaching.

The analysis of the Swedish partial criminalisation model from the point of non-discrimination is, however, trickier. The Criminal Code does not criminalise sex workers and does not prohibit sex work itself. Thus, sex workers may work freely? Yes, if they are Swedish nationals. The Swedish Alien Act (2005) is used applied with regard to non-EEA sex workers as

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[313] *Dudgeon v the UK* (app. No 7525/76), 24 February 1983, para 61.
[314] However, some researchers state that the ECtHR case law definitely proposes that criminalisation of sex work can amount to a violation of the right to private life in Article 8 of the ECHR: "All of this together means that when the State criminalizes a particular type of sexual behavior that is private, consensual, and between adults, it is important to be sure that the policy does not lead the State to fall short in its obligation to protect vulnerable people from discrimination". In Sex Workers, Unite! (Litigating for Sex Workers' Freedom of Association in Russia) in Arps, F. S. E. (Freddie), Golichenko, Mikhail, in *Health and Human Rights Journal,* 2(16), 2014, p. 26
[315] *Supra note* 126: Saul, Kinley, Mowbray (2014), p. 256.
[316] *Supra note* 189: Müller (2009), p 600.
[317] *Ibid.*

a ground for deportation and denial of entry[318.] if the person can not earn a living by 'honest means'. This treatment of non-national sex workers can amount to discrimination which, probably, does not strike a balance between a limitation of rights and legitimate aim pursued. Although this is not applied to the EEA nationals from 2014 (which is in line with the ECJ decisions on sex workers discussed above), it still targets non-EEA nationals.

Thus, the legislation of the partial criminalisation model disproportionally targets foreign (non-EEA) sex workers.[319] While for the Swedish nationals sex work is not recognised as work and undesirable but not expressly prohibited, to the foreign sex workers it amounts to 'dishonest means of support' in accordance to Swedish Alien Act (2005).[320] At closer look this may amount to an unjustified discrimination of foreign (non-EEA) sex workers in an access to the labour market - or, simply put, with regard to the right to work (Article 7 of the ECESCR, Article 1(2) of the ESC). Thus the Swedish Alien Act is one of the elements of the partial criminalisation model.

Notably, even the 'reintegration' policies of those who wish to exit sex work are not sufficient in Sweden. The CEDAW Committee in its Concluding observations on combined eighth and ninth periodic reports of Sweden (2016), expresses its concern

"at the lack of systematically organized protection, rehabilitation and reintegration measures for victims of trafficking as well as of disaggregated data to determine the scale of the phenomenon. It is also concerned at the limited availability of programmes for women who wish to leave prostitution."[321],

and further recommends to implement such, 'including by providing alternative income-generating opportunities.'[322] However, the restrictive nature of the partial criminalisation model in Sweden puts in the centre not a sex worker as a right bearer; as a person, who needs to earn a living, but *elimination* of sex work itself. Therefore, under the partial criminalisation model Sweden does not put sufficient effort for encouraging sex workers' exit from sex work.

Considering the CESCR concluding observations on Sixth periodic report of Sweden (2016) where it observes, that 'despite the progress achieved in the area of women's employment, a gender wage gap persists in the State party, notably as women are concentrated in low-paid jobs

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[318] "the border police use the Alien Act to target migrants and non-residents selling sex in Sweden" Holmström, Charlotta (Ed), Bjønness, Jeanett, Jensen, Mie Birk, Seikkula, Minna, Antonsdóttir, Hildur Fjóla, Len Skilbrei, May, Søderholm, Tara, Holmström, Charlotta, Grönvall,Ylva, "Young People, Vulnerabilities and Prostitution/Sex for Compensation in the Nordic Countries. A Study of Knowledge, Social Initiatives and Legal Measures, Nordic Council of Ministers, TemaNord 2019, p 191.

[319] *Supra note* 40: Östergren (2017).

[320] *Ibid.*

[321] Committee on the Elimination of Discrimination against Women Concluding observations on the combined eighth and ninth periodic reports of Sweden, UN Doc. CEDAW/C/SWE/CO/8-9, 10 March 2016, para 28.

[322] *Ibid*, para 29.

and remain overrepresented in part-time work arrangements (arts. 3 and 7)'[323], it may be seen, that Sweden, while imposing lots of efforts to suppress the demand for sex work, cannot yet sufficiently meet its obligation in giving sex workers the opportunity to earn a living in another freely chosen occupation. In the European Parliament study (2005), among the main factors contributing to trafficking in persons in Sweden according to national experts, are: the difference in level of welfare between the country of origin and Sweden; the feminisation of poverty and unemployment; gender inequality. And "this factor is very assertive in influencing THB[324], because without the acceptance of degrading women by forcing them into prostitution, there would not be any demand for this kind of prostitution."[325]

Here we see a logical loophole: women go to sex work because of gender inequality (feminisation of poverty, unequal access to labour market and education), we eliminate demand of sexual services, and gender inequality would disappear. It seems that this is not how non-discrimination in the right to earn a living by work or occupation freely entered into is supposed to work.

4.3. The right to just and favourable conditions of work

As has been discussed, the labour rights approach is not at all central to the partial criminalisation model in Sweden.

As the UN Special Rapporteur on the Right to Health states, *any* criminalisation surrounding sex work, inclusing the third-party criminalisation, has a negative impact on the right of health and safe working conditions:

"For instance, where laws exist prohibiting the running of a brothel, those who invariably subvert the law and run such a business can impose unsafe working conditions without difficulty, as sex workers themselves have no recourse to legal mechanisms through which they can demand safer working conditions."[326]

It is not evident, if the safety conditions of sex workers under the Swedish model worsened after adopting partial criminaliastion legislation or did not change. However, the CEDAW Committee expressed concern to France upon the introduction of criminalisation of purchase of sexual services: "The risk that the criminalization of clients may backfire and expose persons in

[323] Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Sweden, Un Doc. E/C.12/SWE/CO/6, 14 July 2016, para 25.

[324] Trafficking in Human Beings.
[325] *Supra note* 305, p. 102.
[326] *Supra note* 92, para 44.

prostitution to increased risks to their security and health without addressing the root causes of prostitution or diminishing its prevalence"[327]. At the same time, the CEDAW Committee has never expressed similar concerns with regard to Sweden after introducing similar legislation (however, the inconsistency of the CEDAW Committee position on sex work has been discussed in Chapter 2).

What is evident is that occupational health and safety for sex work has not been implemented in Sweden which is a violation of its duty to fulfil. Even if sex workers remain in informal economy due to 'purchase of sexual services ban', as the CESCR outlines, that even if the

> "overall objective should be to formalize work, laws and policies should explicitly extend to workers in the informal economy and States parties should take steps to gather relevant disaggregated data so as to include this category of workers in the progressive realization of the right to just and favourable conditions of work. For that purpose, the informal economy should be included in the mandate of the respective monitoring and enforcement mechanism."[328]

But since the governing law claims 'sell of sexual services' as an offence, Sweden simply refuses to recognise its obligation to fulfil the rights of sex workers. As Östergren concludes, "the ban added to far-reaching criminalisation of third parties (including collaborating sex workers) and wholesale rejection of the sex work sector, despite no elaborated strategy for implementing the policy."[329]

4.4. Right to unionise and bargain collectively

Gall in the research of Swedish sex workers' unions states, that Swedish suppressing approach to sex work leads to lack of recognition of sex workers' trade unions[330]. While there truly are sex workers' organisations, none of them are officially recognised as a trade union with subsequent collective rights immanent only to trade unions, for example, to join international trade unions associations. Nor are sex workers unions acknowledged by Swedish Trade Union Confederation LO, a national-level trade union association.[331] Meanwhile, in the Nordic countries including Sweden trade unions and collective bargaining legislation provides for the main

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[327] Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of France, UN Doc. CEDAW/C/FRA/CO/7-8, 25 July 2016, para 27 (f).
[328] *Supra note 125*, para 47 (d).
[329] Östergren, Petra,. "Sweden" - in *S*ynnøve Økland Jahnsen, Hendrik Wagenaar (eds). *"Assessing Prostitution Policies in Europe"*, London, Routledge, 2018, p 180.
[330] Gall, Gregor, "Sex Worker Unionization: Global Developments, Challenges and Possibilities",, Basingstoke: Palgrave Macmillan, 2016; pp. 115-144.
[331] *Ibid*.

mechanism of the protecting and promoting workers' rights and interests[332]. Deprivation of sex workers of the right to form trade union on the basis that sex work is not work seems to amount to discriminative treatment of sex workers in comparison with other categories of workers.

4.5. Right to social security

While 'it is not possible to legally engage in sex work in Sweden, all income deriving from sex sales must be taxed, and those who do so are entitled social insurance benefits.'[333]

However, the questionable status of sex work is seen in social security benefits access, too. While the social security services sometimes claim, that the Swedish tax system (F-tax) should apply just like in any other occupation[334], others express concern that sex workers cannot deduct their expenses for the reason that a sex worker cannot register as performing business activity, while working in the informal economy inflicts the risks that the tax authorities would tax the supposed income if sex work becomes known to the authorities[335]. Subsequently, if the reason for claiming benefits (i. e. illness) comes, it is not apparent, that the benefits would be paid if the claim contains false information.

This ambiguity in access to social services follows from the Swedish prohibitionist legislation on sex work, when the State's aim is not providing social security rights for sex workers, but to eliminate sex work. Thus,

> The overall purpose of social welfare schemes in the context of prostitution is to support and help both men and women to leave prostitution, whether they are the exploiters or the exploited. Most of the precautionary and caring measures aimed at women and men in prostitution are provided by the social welfare services of each municipality. The municipality has the responsibility to support and help people who are permanently, temporarily, legally, or illegally in its area[336]

In this regard there is a notable Dissenting Opinion of the Judge Juge Fura-Sandström on the ECtHR case *V. T. v France* discussed above[337]. The judge notes, that France has an abolitionist approach to sex work, where sex worker is perceived as a victim even if she is not forced to sex

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[332] *Ibid.*
[333] *Supra note* 328: Östergren (2018), p 178.

[334] See, for example, Björnbom, Jonna "Prostituerade får rätt till sjukpenning", in SVT, 5 JULI 2012, avaliabd https://www.svt.se/nyheter/nyhetstecken/prostituerade-far-ratt-till-sjukpenning, last approached 20.05.2020.
[335] Dodillet, Susanne, Östergren, Petra, "The Swedish Sex Purchase Act: Claimed Success and Documented Effects", Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, 2011, available at: https://gup.ub.gu.se/publication/140671, last approached 02.06.2020.
[336]Swedish Social Services Act 2001:453, chapter 2, section 1; supra note 294: Yttergren, Westerstrand, 2016, p. 46.
[337] *Supra note 163,* Descending opinion of the Judge Juge Fura-Sandström.

work, and where the fight against pimping and reintegration are a priority. However, the case, as the judge notes, illustrates the ambiguity of France's approach to sex work (and the approach of other States, too). On the one hand, sex workers are victims and the procuring (profiting from the prostitution of others) is repressed. On the other hand, sex workers' income is subject to tax and contribution to allowances for income.

If the non-EEA sex worker resides in Sweden without relevant documents or on a short-term visitor visa, the restrictive legislation on sex work plays a role, too: since it is impossible to obtain a residence permit for a sex worker, they are squeezed out the formal economy, together with the right to social security on the level people residing in Sweden lawfully posess. Aside of that, 'irregular migrants' fall in scope of the Swedish Social Services Act[338], as well as the 'victims of crimes'.

Thus, with regard to the right to social security for sex workers, the treatment of the latter can be seen as discrimination, especially with regard to non-EEA sex workers.

[338] *Supra note* 335.

5. CONCLUSIONS

International human rights law does not contain any prohibition of consensual adult sex work.

As a core socio-economic right, the right to freely work has the dimension of prohibition of forced labour and non-discrimination clause. The States should meet both obligations. The 'work' in question should be 'decent work', however, nothing can suggest that the fairly remunerated (and meeting the other conditions of fair conditions of work) sex work is indecent. To the contrary, a State's approach to sex work as work is beneficial to sex workers as right bearers and subsequently raise the 'decency' of work in question.

Vocational training should be available equally to all sex workers, as a part of the 'exit programmes'.

As noted in ICESCR Committee General Comment No 18, "Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work."[339]

Work in its two dimensions (as an earning instrument and as a value of self-fulfilment) is a subject of free choice. The right to freely choose work has positive and negative elements. In its' negative content in international human right law is the prohibition of forced labour and prohibition of discrimination in access to employment. The positive content is the free choice of occupation, equal access to the labour market, the right of not to be unfairly dismissed and the right to decent work and safe and just conditions of work.

The right to work is a basic human right strongly connected with other human rights, namely with the right to favourable and just conditions of work, the right to form or join a trade union and bargain collectively. The right to social security stands separately from the right to work, but the two are still connected.

In the countries where domestic legislation is restrictive towards sex workers, socio-economic rights of sex worker are not the states' priority or main concern. The criminalisation model and the partial criminalisation model appear to have common approach to protect the public morals or the public order rather than focus on sex workers' rights. Both countries limit sex workers' right to freely choose work and work-related rights, and justification of such limitations under the ICESCR and the ESC is probably insufficient. Under the ECHR there is a possibility to

339 *Supra note* 107, para 12 (c).

protect the right to work for sex workers on the grounds of the Article 8 of the ECHR, since the ECtHR has an extensive jurisprudence of protecting socio-economic rights.

In Russia, where sex workers are penalised under the Code of Administrative Offences the State interferes with the right to earn a living freely entered upon. The implementation of legislation prohibiting slavery, forced labour and trafficking in persons is weak within sex work sector because the repressive law inflicts fear of the authorities, stigma and police abuse towards sex workers. Programmes for exiting sex work in Russia are absent.

The right to safe conditions of work also suffers from criminalisation, because sex workers fear to report violence or other unsafe factors to the authorities. The right to safe and healthy conditions of work is violated by the lack of safety policies, especially in the sphere of prevention and treatment of HIV and other STD. The State interferes with the right to form a union for the reasons that sex work is not recognised as work in Russia. Social security is lacking for the same reasons: sex workers are entitled only to basic benefits.

In Sweden, where the law does not criminalise sex work, but criminalises the purchase of sexual services, brothels and even renting the apartments to sex workers, the model is less restrictive. However, because of the focus of Swedish law to eliminate sex work, economic and social rights of sex workers are overlooked. The law is also discriminatory towards non-EEA sex workers as sex work performed by non-EEA sex-workers, although not criminalised, puts them under threat of being expelled. Further, the punishing focus of the law prevents Sweden from recognising the right to fair and safe conditions of work for sex workers, and thus there are no policies or programmes aimed at creating fair and safe conditions of work, or the system of occupational healthcare. Sex workers under Swedish law cannot form trade unions or bargain collectively. Finally, the right to social security is uncertain for sex workers from Sweden and EEA countries, and, apart from probable basic assistance, is not in place for sex workers of non-EEA nationalities.

BIBLIOGRAPHY

Ahmed, Aziza , Seshu, Meena, "We Have the Right Not to Be 'Rescued'...": When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers (June 1, 2012), in *Anti-Trafficking Review,* Issue 1, pp. 149-168, June 2012; Northeastern University School of Law Research Paper No. 103-2012. Available at SSRN: https://ssrn.com/abstract=2126796 (last accessed on November 18, 2019).

Benoit, Cecilia, Smith, Michaela, Jansson, Mikael, Healey, Priscilla, Magnuson, Doug. "The Prostitution Problem": Claims, Evidence, and Policy Outcomes." in *Archives of Sexual Behavior.* 48(3), 2018.

Bindman, Jo, Doezema, Jo, *Redefining Prostitution as Sex Work on the International Agenda*, London: Anti-Slavery International, 1997.

Brysk, Alison (ed.), *Globalization and Human Rights*, University of California Press, 2002.

Bueno, Nicolas, "From the Right to Work to Freedom from Work" in *International Journal of Comparative Labour Law and Industrial Relations,* vol. 33 no 4, pp. 463 – 488, 2017.

Chinkin, Christine, Wright, Shelley, , Charlesworth, Hillary, "Feminist Approaches to International Law: Reflections from Another Century", in Buss, Doris , Manji, Ambreen (eds.), *International Law: Modern Feminist Approaches*, London: Hart Publishing, pp. 30-31, 2005.

Chou, Meng-Hsuan, The Free Movement of Sex Workers in the European Union: Excluding the Excluded, in Luedtke, Adam (ed.), *Migrants and Minorities: the European Response*, Cambridge: Scholars Press, 2010.

Chuang, Janie, Commentary on CEDAW Article 6, in Freeman, Marsha A. et al. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women. A Commentary*, New York: Oxford University Press, 2010.

Collins, Hugh, Is There a Human Right to Work? in Mantouvalou, V. (ed.). *The Right to Work: Legal and Philosophical Perspectives*, London: Hart Publishing, pp. 17-38, 2014.

Deakin, Simon. Article 1 'The right to work', in Brunn, Niklas, Lörcher, Klaus, Schömann, Isabelle , Clauwaert, Stefan (eds.), *The European Social Charter and the Employment Relation.* London: Hart Publishing, pp. 152-153, 2017.

Dodillet, Susanne, Östergren, Petra, "The Swedish Sex Purchase Act: Claimed Success and Documented Effects", Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, 2011, available at: https://gup.ub.gu.se/publication/140671, last approached 02.06.2020.

Doezema, Jo, Forced to Choose: Beyond Voluntary v. Forced Prostitution Dichotomy, in Kempadoo, Kamala , Doezema, Jo, *Global Sex Workers: Rights, Resistance, and Redefinition,* London: Routledge, pp.?, 2018.

Drzewicki, Krzysztof (a), The European Social Charter and Polish Legislation and Practice, in Drzewicki, K., Krause C. , Rosas, A. (eds.), *Social Rights as Human Rights. A European Challenge*, Turku: Institute for Human Rights Åbo Akademi University, p. 225, 1994.

Drzewicki, Krzysztof (b), The Right to Work and Rights in Work, in Eide A., Krause C. , Rosas A. (eds.), *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Berlin: Springer, p. 223, 2001.

Ehrenreich, Barbara , Hochschild, Arlie Russel (eds.), *Global Woman. Nannies, Maids and Sex Workers in the New Economy*, London: Granta Books, 2003.

Engle, Karen, International Human Rights and Feminism: When Discourses Keep Meeting, in Buss, Doris , Manji, Ambreen (eds.) *International Law: Modern Feminist Approaches*, London: Hart Publishing, pp. 47-66, 2005.

Florin, Ola, "A Particular Kind of Violence: Swedish Social Policy Puzzles of a Multipurpose Criminal Law", in *Sexuality Research and Social Policy*, Volume 9, Issue 3, 2012, p 273.

Gall, Gregor, "Sex Worker Unionization: Global Developments, Challenges and Possibilities",, Basingstoke: Palgrave Macmillan, 2016; pp. 115-144.

Heber, Anita, "The hunt for an elusive crime – an analysis of Swedish measures to combat sex trafficking", in *Journal of Scandinavian Studies in Criminology and Crime Prevention*, No. 19:1, pp. 3-21, 2018.

Hernández-Truyol, Berta E., Larson, Jane E.: "Sexual Labor and Human Rights." in *Columbia Human Rights Law Review,* Vol.37, No.2, 2006, pp. 305-267.

Holmström, Charlotta (Ed), Bjønness, Jeanett, Jensen, Mie Birk, Seikkula, Minna, Antonsdóttir, Hildur Fjóla, Len Skilbrei, May, Søderholm, Tara, Holmström, Charlotta, Grönvall,Ylva, "Young People, Vulnerabilities and Prostitution/Sex for Compensation in the Nordic Countries. A Study of Knowledge, Social Initiatives and Legal Measures, Nordic Council of Ministers, TemaNord 2019

Hua, Julietta, *Trafficking Women's Human Rights*, Minneapolis: University of Minnesota Press, pp. 24-25, 2011.

Huckerby, Jayne, "Feminism and International Law in the Post 9/11 Era", in *Fordham International Law Journal,* Vol. 39, 2016, pp. 547-558,

Kenner, Jeff, Economic and Social Rights in the EU Legal Order: The Mirage of Indivisibility, in Kenner, Jeff , Hervey, Tamara K (eds.), *Economic and Social Rights under the EU Charter of Fundamental Rights—A Legal Perspective*, London: Hart Publishing, pp. ?, 2003

Kilvington, Judith, Day, Sophie, Ward, Helen, "Prostitution Policy in Europe: A Time of Change?", in *Feminist Review* No. 67 (1)., , 2001, pp. 78-93.

Kingston, Sarah., Thomas, Terry, "No model in practice: a 'Nordic model' to respond to prostitution?", in *Crime, Law and Social Change* 71, 2019, pp 429 – 433.

Lafargue, Paul, *The Right to Be Lazy*, Chicago: Charles Kerr and Co., Co-operative, 1883, available at https://www.marxists.org/archive/lafargue/1883/lazy/ (last accessed on April 30, 2020).

Mantouvalou, Virginia, "Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation", in *Human Rights Law Review*, Volume 13, Issue 3, pp. 529–555, 2013, available at https://doi.org/10.1093/hrlr/ngt001 (last accessed on April 30, 2020).

Marshall, Rachel, "Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work", in *William , Mary Journal of Women and the Law* 23, no. 1, p. 47, 2016, available at http://scholarship.law.wm.edu/wmjowl/vol23/iss1/5 (last accessed on April 30, 2020).

Mgbako, Chi, The Mainstreaming of Sex Workers' Rights as Human Rights in *Harvard Journal of Law and Gender*, Vol. 43, pp. 110-154

Mgbako, Chi , Smith, Laura A., "Sex Work and Human Rights in Africa", in *Fordham International Law Journal*, Volume 33, Issue 4, 2011, available at https://ir.lawnet.fordham.edu/ilj/vol33/iss4/2 (last accessed on April 30, 2020).

Müller, Amrei, Limitations to and Derogations from Economic, Social and Cultural Rights, in *Human Rights Law Review*, Oxford University Press. p. 584, 2009.

Mundlak, Guy, The Right to Work – The Value of Work, in Barak-Erez, Daphne and Gross, Aeyal M. (eds.), *Exploring Social Rights Between Theory and Practice*, London: Hart Publishing, p. 342, 2007.

O'Cinneide, Colm, The Right to Work in International Human Rights Law, in Mantouvalou, Virginia (ed.), *The Right to Work: Legal and Philosophical Perspectives*, London: Hart Publishing, pp. 99-122, 2014.

O'Connell, Rory, "The right to work in the ECHR", in *European Human Rights Law Review*, No. 2, pp. 176-190, 2012.

Östergren, Petra, "From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies", DemandAT Working Paper No. 10, 2017, available at http://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies, last approached 01.06.2020.

Östergren, Petra, Sweden, in Jahnsen, Synnøve Økland, Wagenaar, Hendrik (eds.) *Assessing Prostitution Policies in Europe*, Abingdon-on-Thames: Routledge, pp 169-180, 2019.

Otto, Diane, Disconcerting "Masculinities", in Buss, Doris , Manji, Ambreen (eds.), *International Law: Modern Feminist Approaches*, London: Hart Publishing, p. 106, 2005.

Pitcher, Jane, , Wijers, Marjan, "The Impact of Different Regulatory Models on the Labour Conditions, Safety and Welfare of Indoor-Based Sex Workers", in *Criminology and Criminal Justice*, Volume 14, No. 5, pp. 549-564, 2014.

Romanova, Veronika. Transformatcia sotcialnogo prostranstva zhenskoi prostitutsii (na primere molodyh zhenschi, okazyvauschikh seksualnye uslugi v Sanct Pererburge). (The transformation of female prostitution's social space: the example of young commercial sex workers in St. Petersburg), in Zhurnal Sotsiologii I Sotcialnoi Antrpologii № 5, 2015, pp 128 – 142.

Rosenblum, Darren, "Unsex CEDAW, or What's Wrong With Women's Rights", in *Columbia Journal of Gender and Law*, Vol. 20, 2011, available at http://digitalcommons.pace.edu/lawfaculty/810 (last accessed on April 30, 2020)

Roth, Venla, Defining Human Trafficking and Identifying Its Victims. A Study on the Impact and Future Challenges of International, in *European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings*, Leiden: Martinus Nijhoff Publishers, 2011, pp.27-30.

Saul, Ben, Kinley, David , Mowbray, Jaqueline, Article 6: The right to work, in *The International Covenant on Economic, Social and Cultural Rights. Commentary, Cases, and Materials*, Oxford University Press, 2014, pp. 270-389.

Scott, Craig, Multinational Enterprises and Emergent Jurisprudence on Violations of Economic, Social and Cultural Rights, in Eide, A., Krause, C. , Rosas, A. (eds.), *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Berlin: Springer, 2001, pp. 569.

Shamir, Hila, "A Labor Paradigm for Human Trafficking", in *UCLA Law Review*, Vol. 60, No. 1, 2012, pp. 75-136

Scheinin, Martin, "The Right to Social Security", in Eide Asbjorn, Krause Catarina, Rosas Allan (eds.), *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Berlin: Springer, 2001, pp. 211-222.

Simms, Rupe, "Controlling Imnorages and the Gender Construction of Enslaved African Women", in *Gender and Society,* Vol. 15, No. 6, 2001, pp. 879-897.

Smith, Molly, Mac, Juno "Revolting Prostitutes: The Fight for Sex Workers' Rights" Verso Books, 2018.

Sutherland, Kate, "Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade", in *Osgoode Hall Law Journal*, Vol. 42, pp. 139-167, 2004.

Swepston, Lee, Closing the gap between International Law and U.S. Labor Law, in Gross, James A. (ed.), *Workers' Rights as Human Rights*, Ithaca: ILR Press, pp. 53 – 77, 2003.

Yttergren, Asa , Westerstrand, Jenny, "The Swedish Legal Approach to Prostitution. Trends and Tendencies in the Prostitution Debate", in NORA - Nordic Journal of Feminist and Gender Research, 24:1, 2016, pp. 45-55.

INTERNATIONAL TREATIES

2019 ILO 190 - Violence and Harassment Convention, 2019 (No. 190). Concluded 21 June 2019, As of 06.06.2020 has not entered into force.

2014 Protocol of 2014 to the Forced Labour Convention, 1930. Concluded: 11 June 2014, entered into force: 09 November 2016.

2011 Convention (No. 189) concerning decent work for domestic workers. Concluded: 16 June 2011, entered into force: 5 September 2013. UNTS 2955

2006 Convention (No. 184) concerning safety and health in agriculture. Concluded: 15 June 2006, entered into force: 20 February 2009. 2564 UNTS 291

2005 Council of Europe, Convention on Action against Trafficking in Human Beings. Concluded: 16 May 2005, entered into force: 1 February 2008. ETS 197

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Concluded: 15 November 2000, entered into force: 29 September 2003. 2225 UNTS 209.

1999 Convention (No. 182) concerning the prohibition and immediate action for the elimination of the worst forms of child labour. Concluded: 17 June1999, entered into force: 19 November 2000, 2133 UNTS 161.

1996 Council of Europe, European Social Charter (Revised). Concluded 3 May 1996, entered into force: 1 July 1999. ETS 163.

1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Concluded: 18 December 1990, entered into force: 1 July 2003. 2220 UNTS 3.

1989 Convention on the Rights of the Child. Concluded: 20 November 1989, entered into
force: 2 September 1990. 1577 UNTS 28

1979 Convention on the Elimination of all Forms of Discrimination against Women. Concluded:18 December 1979, entered into force: 3 September 1981. 1249 UNTS 13.

1976 International Covenant on Economic, Social and Cultural Rights. Concluded: 16 December 1966, entered into force: 3 January 1976. 993 UNTS 3.

1972 European Convention on Social Security and Supplementary Agreement as to its Application. Concluded: 14 December 1972, entered into force: 1 March 1977. ETS 78.

1964 European Code of Social Security. Concluded: 16 April 1964, entered into force: 17 March 1968. ETS 48.

1961 European Social Charter. Concluded: 18 October 1961, entered into force: 26 February 1965. ETS 35.

1958 Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation. Concluded: 25 June 1958, entered into force: 15 June 1960. 362 UNTS 31.

1957 Convention (No.105) concerning the Abolition of Forced Labour. Concluded: 25 June 1957, entered into force: 17 January 1959. 320 UNTS 291.

1952 Convention (No. 102) concerning Minimum Standards of Social Security. Concluded: 28 June 1952, entered into force: 27 April 1955. 210 UNTS 131.

1951 Convention (No. 100) concerning equal remuneration for men and women workers for work of equal value. Concluded: 29 June 1951, entered into force: 23 May 1953. 303 UNTS 165.

1951 Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively. Concluded: 1July 1949, entered into force: 18 July 1951. 96 UNTS 257.

1950 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, concluded 4 November 1950, entered into force 3 September 1953, ETS 5.

1930 Convention (No. 29) concerning Forced or Compulsory Labour. Concluded: 28 June
1930, entered into force: 1 May 1932. 39 UNTS 55.

INTERNATIONAL CASE LAW

2011 *Kiyutin v. Russia*, European Court of Human Rights, (App.No 2700/10), Judgement of 10 March 2011.

2010 *C.N. and V. v. France,* European Court of Human Rights (App. No 67724/09), Judgement of 11.10.2010.

2010 *Schuitemaker v the Netherlands,* European Court of Human Rights (App. No 15906/08), Decision of 04 May 2010.

2010 *Rantsev v. Cyprus and Russia,* European Court of Human Rights (App. No. 25965/04), Judgement of 07 January 2010

2010 *A., B. and C v Ireland,* European Court of Human Rights *(*App. No 25579/05), Judgement of 16 December 2010.

2009 *Danilenkov and others v Russia,* European Court of Human Rights, *(*App. No 67336/01), Judgement of 30 July 2009.

2006 *V. T. V FRANCE,* European Court of Human Rights *(APP. No* 37194/02), Judgement of 16 may 2006.

2001 *Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie.* . European Court of Justice Case C-268/99, Judgement of 20 November 2001, European Court Reports 2001 I-08615.

1983 *Dudgeon v the UK,* European Court of Human Rights , (App. No 7525/76), Judgement of 24 February 1983.

1982 *Rezguia Adoui v Belgian State and City of Liège; Dominique Cornuaille v Belgian State*. European Court of Justice, Joined cases 115 and 116/81. Judgement of 18 May 1982. . European Court Reports 1982 -01665.

1975 *National Union of Belgian Police v Belgium,* European Court of Human Rights, (App. No 4464/70), Judgement of 27 October 1975.

NATIONAL LAW AND CASE LAW

2020 Decree of the Government of the Russian Federation of March 27, 2020 N 346 (as amended on April 12, 2020) "On the amount of the minimum and maximum unemployment benefits for 2020"

2019 Resolution of the Plenum of the Supreme Court of the Russian Federation of December 24, 2019 N 58 "On judicial practice in cases of kidnapping, illegal deprivation of liberty and trafficking in persons"

2019 Prikaz Mintruda Rossii ot 18.07.2019 N 512n "Ob utverzhdenii perechnya proizvodstv, rabot i dolzhnostey s vrednymi i (ili) opasnymi usloviyami truda, na kotorykh ogranichivayetsya primeneniye truda zhenshchin" [Order of the Ministry of Labor of Russia of July 18, 2019 No. 512n "On approval of the list of companies, jobs and positions with harmful and (or) dangerous working conditions, for which the use of labor of women is limited"], available at http://www.consultant.ru/document/cons_doc_LAW_331608/

2019 Order of the Ministry of Labor and Social Protection of the Russian Federation dated December 30, 2019 N 840 "On approval of recommendations on the formation of regional plans and managerial mechanisms aimed at improving the status of women"/ Bulletin of Labor and Social Legislation of the Russian Federation, 2020, No. 3

2015 Appeal ruling No. 33-21419/2014 33-828/2015 of January 28, 2015 in case No. 33-21419/2014 //sudact.ru/regular/doc/8EOryyhQRI18/

2013 Appeal ruling No. 33-19137 / 2013 of December 24, 2013 in case No. 33-19137/2013 //sudact.ru/regular/doc/MolhaaFyICLt/

2005 Swedish Alien Act (2005:716)

2003 UK Sexual Offences Act 2003,.

2003 Federal Law of the Russian Federation 08.12.2003 N 162-FZ

2001 "Kodeks Rossiyskoy Federatsii ob administrativnykh pravonarusheniyakh" [Code of the Russian Federation on Administrative Offenses] from 30.12.2001 #195-FZ

2001 “Trudovoy kodeks Rossiyskoy Federatsii” [Labor Code of the Russian Federation] from 30.12.2001 No. 197-FZ (edt. on 16.12.2019) //available at http://www.consultant.ru/cons/cgi/online.cgi?req=doc,base=LAW,n=340339,fld=134,dst=100006,0,rnd=0.4124199443269637#06944969943952717 (last accessed on 07.01.2020).

2001 Swedish Social Services Act 2001:453

2000 Postanovleniye Pravitel'stva RF ot 25.02.2000 N 162 "Ob utverzhdenii perechnya tyazhelykh rabot i rabot s vrednymi ili opasnymi usloviyami truda, pri vypolnenii kotorykh zapreshchayetsya primeneniye truda zhenshchin” (Decree of the Government of the Russian Federation of February 25, 2000 N 162 "On approval of the list of heavy work and work with harmful or dangerous working conditions, the implementation of which prohibits the use of women's labor"), available at http://www.consultant.ru/document/cons_doc_LAW_26328/.

1996 Criminal Code of the Russian Federation (from 13.06.1996 No. 63-FZ (revised on 07.04.2020) (as revised and amended, entered into force on 12.04.2020)/ available at (Russian language) http://www.consultant.ru/document/cons_doc_LAW_10699/

1994 Civil Code of the Russian Federation (Part One) от 30.11.1994 N 51-ФЗ (ред. от 16.12.2019), available at http://www.consultant.ru/document/cons_doc_LAW_5142/ (last accessed on 05.01.2020)

1993 "Konstitutsiya Rossiyskoy Federatsii" [Constitution of the Russian Federation] (adopted by popular vote on 12/12/1993)

1962 Swedish Criminal Code, SFS 1962:700

DECLARATIONS, RESOLUTIONS AND RECOMMENDATIONS

2018 Committee on Women’s Rights and Gender Equality, ‘On Sexual Exploitation and Prostitution and Its Impact on Gender Equality’, (European Parliament 2018) available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN#title6

2018 CEDAW Committee, General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, UN Doc. CEDAW/C/GC/37, 7 February 2018

2018 CEDAW Committee, General recommendation No. 37 "On gender-related dimensions of disaster risk reduction in the context of climate change", UN Doc. CEDAW/C/GC/37, 2018.

2017 Justice and Civil Liberties on Sex Work in Contemporary International Human Rights Law UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/35/21, 28 March 2017.

2017 UN Committee on Economic, Social and Cultural Rights (CESCR) General comment No 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, 10 August 2017

2016 UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/23, 7 April 2016

2016 ILO Report: VIET NAM'S SEX INDUSTRY – A Labour Right Perspective. A QUALITATIVE STUDY – SUMMARY REPORT, available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_524918.pdf (last accessed on April 30, 2020)

2015 CEDAW Committee, General recommendation on women's access to justice, UN Doc. CEDAW/C/GC/33, 23 July 2015

2015 ILO Recommendation No 204, Transition from the Informal to the Formal Economy, 2015

2015 CEDAW Committee, General recommendation "On women's access to justice", UN Doc. CEDAW/C/GC/33, 2015.

2013 CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35, 2013.

2013 CEDAW Committee individual communication *Svetlana Medvedeva v Russian Federation*, application N 60/2013 (2016)

2012 UNAIDS Guidance note on HIV and sex work (updated April 2012), available at https://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work (last accessed on 07.01.2020)

2010 ILO Recommendation No 200 concerning HIV and AIDS and the World of Work, 2010.

2009 Working Group on Trafficking in Persons, 'Analysis of Key Concepts of the Trafficking in Persons Protocol' (9 December 2009) CTOC/COP/WG.4/2010/2.

2009 The cost of coercion. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference. 98th Session 2009, Geneva, ILO Publications, 2009

2008 CEDAW Committee, General recommendation No. 26 "On women migrant workers", UN Doc. CEDAW/C/2009/WP.1/R, 2008

2008 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 19, The right to social security (art. 9), UN. Doc. E/C.12/GC/19, 2008

2008 UN Committee on Economic, Social and Cultural Rights, General Comment No 19, The right to social security (art. 9), UN. Doc. E/C.12/GC/19, 2008

2007 Council of Europe Parliamentary Assembly, Committee on Equal Opportunities for Women and Men Report "Prostitution - which stance to take", PA CoE No 11352, 09.07.2007

2006 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the Covenant), UN Doc. E/C.12/GC/18, 2006.

2006 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the Covenant), UN Doc. E/C.12/GC/18, 6 February 2006

2004 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Directive 2004/81/EC)

2002 Conclusions concerning decent work and the informal economy, *General Conference of the International Labour Organization*, 90th session.

2000 Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. Interpretative Notes A/55/383/Add.1.

1992 CEDAW, General Recommendation No 19 "Violence against women", UN Doc. A/47/38, 1992.

1990 UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), UN Doc. E/1991/23, 14 December 1990

1986 UN Commission on Human Rights, Note verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles"), 8 January 1987, UN Doc. E/CN.4/1987/17.

1948 Universal Declaration of Human Rights, 10 December 1948, adopted by the UN General Assembly Resolution 217 A (III).

CONCLUDING OBSERVATIONS

2019 Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Andorra. , UN Doc. CEDAW/C/AND/CO/4, 13 November 2019.

2019 Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Lithuania, UN Doc. CEDAW/C/LTU/CO/6, 12 November 2019.

2019 Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, UN Doc. CEDAW/C/BIH/CO/6, 8 November 2019.

2019 European Social Charter Governmental Committee, Report concerning Conclusions 2017 of the European Social Charter (Revised), No GC(2018)24, 31 January 2019.

2018 European Social Charter Governmental Committee, Report concerning Conclusions 2017 of the European Social Charter (Revised), No GC(2018)24, 31 January 2019

2018 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Sweden UN Doc. CEDAW/C/SWE/CO/8-9, 27), February 2018.

2017 Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the Russian Federation UN Doc. E/C.12/RUS/CO/6 , 16 October 2017.

2016 Committee on Economic, Social and Cultural Rights Concluding observations of the on the sixth periodic report of Sweden UN Doc. E/C.12/SWE/CO/6, 14 July 2016.

2016 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of France, UN Doc. CEDAW/C/FRA/CO/7-8, 25 July 2016.

2016 CEDAW Committee Concluding observations on the sixth periodic report of the Netherlands, UN Doc. CEDAW/C/NLD/CO/6, 24 November 2016.

2015 Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of the Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 20 November 2015.

2012 ESCR Conclusions 2012 - Albania - Article 1-2 2012/def/ALB/1/2/EN.

2010 Committee on the Elimination of Discrimination against Women Concluding observations on the combined sixth and seventh report of the Russian Federation, UN Doc. CEDAW/C/USR/7, 2010.

2010 Committee on the Elimination of Discrimination against Women, Concluding observations UN Doc. CEDAW/C/USR/CO/7 30 July 2010.

2010 Committee on the Elimination of Discrimination against Women, Concluding observations The Netherlands, UN Doc. CEDAW/C/NLD/CO/5, 5 February 2010.

1969 European Committee of Social Rights, Conclusions I, Statement of interpretation – Article 3, No I_Ob_-11/Ob/EN, 31/05/1969.

OTHER DOCUMENTS

2019 Committee on the Elimination of Discrimination against Women, Ninth periodic report submitted by the Russian Federation under article 18 of the CEDAW, due in 2019, UN Doc. CEDAW/C/RUS/9.

2019 CESCR Seventh periodic report of Belarus, due in 2019 UN Doc. E/C.12/BLR/7.

2019 “Svodnyye statisticheskiye svedeniya o deyatel'nosti federal'nykh sudov obshchey yurisdiktsii i mirovykh sudey za 1 polugodiye 2019 goda” [Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for the 1st half of the 2019], available at http://www.cdep.ru/index.php?id=79,item=5083, (last accessed on 28.11.2019 //sudact.ru/regular/doc/8EOryyhQRI18/

2019 the CEDAW Workplan for the CEDAW General Recommendation on Trafficking in the Context of Global Migration, as of 12 July 2019, subject to change, available at https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx, last approached 18.04.2020.

2019 CEDAW Committee Draft on General Recommendation on Trafficking of Women and Girls in the Context of Global Migration, available at

https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx, last approached 18.04.2020.

2010 Swedish Ministry of Justice Report: Prohibition of the purchase of sexual services. An evaluation 1999-2008 (SOU 2010:49) to the Government, 2010. Available at https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/

2006 Trafficking in Human Beings and Peace Support Operations: Trainers' Guide, United Nations Interregional Crime and Justice Research Institute, 2006.

2005 UNODC Issue Paper (2005) "The Concepts of 'Exploitation' in the Trafficking in Persons Protocol"

INTERNET RESOURCES

BJÖRNBOM, JONNA "PROSTITUERADE FÅR RÄTT TILL SJUKPENNING", IN SVT, 5 JULI 2012, AVAILABLE AT
Community Report by International Committee on the Rights of Sex Workers in Europe: Social and institutional oppression experienced by sex workers in Europe, 2015 http://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE%20CR%20StrctrlViolence-final.pdf, (last accessed on 02.01.2020)

Danna, Daniela, Report on Prostitution Laws in the European Union, Università degli Studi di Milano, Dipartimento di scienze sociali e politiche, 2014, available at http://lastradainternational.org/lsidocs/3048-EU-prostitution-laws.pdf (last accessed on April 30, 2020)

Ekberg, Gunilla S. et al, Brief: Swedish Laws, Policies and Interventions on Prostitution and Trafficking in Human Beings: A Comprehensive Overview, Stockholm, Sweden, 24 February 2018.
European Court of Human Rights Statistics by the year 2019, Available at https://www.echr.coe.int/Pages/home.aspx?p=reports, last approached 01.06.2020.

European Parliament Report: "National legislation on prostitution and the trafficking in women and children". Study",, 2005, p. 39, available at https://ec.europa.eu/anti-trafficking/publications/study-national-legislation-prostitution-and-trafficking-women-and-children_en, last approached 04.04.2020.

European Parliament, "Sexual exploitation and prostitution and its impact on gender equality. Study.", 2014, available at http://www.europarl.europa.eu/studies, last approached 02.06.2020.

Framework on Rights of Sex Workers and CEDAW. Yale Law School. https://law.yale.edu/system/files/area/center/ghjp/documents/framework_on_rights_of_sex_workers_cedaw.pdf (last accessed on November 19, 2018)

https://www.svt.se/nyheter/nyhetstecken/prostituerade-far-ratt-till-sjukpenning, last approached 20.05.2020.

Jackson, Crystal A., "Sex Worker Rights Organizing as Social Movement Unionism: Responding to the Criminalization of Work" (2013). UNLV Theses, Dissertations, Professional Papers, and Capstones. 1844. https://digitalscholarship.unlv.edu/thesesdissertations/1844, (last accessed on January 13, 2020)

NSWP Briefing Note. Social protection, 2019, available at https://www.nswp.org/resource/briefing-note-social-protection, last approached 20.04.2020.

NSWP Policy Brief: Sex Work and Gender Equality, 2017, available at https://www.nswp.org/node/3512, last approached 15.05.2020.

Overs, Cheryl, "Sex Workers : Part of the Solution. An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries." 2002 http://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf, (last accessed on August 15, 2018) Schultze-Florey, S.F. (2011), *Prostitution and the free will – a critical view on consent in prostitution*, University of Bergen (p.95). Available at : https://bora.uib.no/handle/1956/5502 (last accessed on April 30, 2020)

Schulze, Erika, Novo Canto, Sandra Isabel, Mason, Peter , Skalin, Maria, S*exual exploitation and prostitution and its impact on gender equality. Study*, European Parliament, 2014, available at http://www.europarl.europa.eu/studies (last accessed on April 30, 2020)

Sharp, Corena, "Responding to Sex Workers' Rights as Workers' Rights: Reducing Sex Trafficking in the Dominican Republic" (2015). Western Libraries Undergraduate Research Award. 6.https://cedar.wwu.edu/library_researchaward/ (last accessed on April 30, 2020)

Swedish Ministry of Justice Report: Prohibition of the purchase of sexual services. An evaluation 1999-2008 (SOU 2010:49) to the Government, 2010. Available at https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/ , last approached 07.03.2020.

Swedish Ministry of Justice Report: Prohibition of the purchase of sexual services. An evaluation 1999-2008 (SOU 2010:49) to the Government, 2010. Available at https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/ , last approached 07.03.2020.

Swepston, Lee, "Forced and compulsory labour in international human rights law", International Labour Office - Geneva: ILO, 2005, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_342966.pdf (last accessed on 30 April, 2020)

UNAIDS Terminology Guidelines

www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf (last accessed on August 15, 2018)

Waltman, Max , MacKinnon, Catharine A., Suggestions to the Government's Review of the Sex Purchase Act (Sweden) (March 17, 2010). Available at: http://dx.doi.org/10.2139/ssrn.2416479

WHO Publications: Sexual health, human rights and the law, 2015, available at https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/, last approached 09.04.2020.