
Sex Work Policy in Poland and Its Impact on the Lived Experience of Sex Workers

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Summary

This article discusses the model of sex work regulation in Poland. Officially being an abolitionist one, it criminalises directly third parties, while in practice the whole working environment is criminalised, pushing sex workers into shadow economy and precarious working conditions, and exposing them to heightened risks of violence. At the same time, the Polish state does not provide any support programmes for sex workers. As such, it misrecognises sex workers, who are not seen as workers or victims. This article looks at the prostitution policy from the perspective of sex workers' rights. It also shows how complicated sex work policy is, since the law includes contradictory rules and values, which all have a negative impact on sex workers' lives, and how these contradictory rules contribute to misrecognition of sex workers, as workers, subjects of rights and citizens, and to their stigmatisation.

Keywords: Sex Work Policy, Prostitution Policy, Criminalisation, Policy Implementation, Policy Instruments, Poland

Introduction

'We are here to pursue our collective revolution, which will give us the opportunity to work in safe conditions (...), abolish criminalisation, and give us access to civil and labour rights', demanded sex workers during Manifa, the annual 8th March celebrations in Warsaw in 2019 (Sex Work Polska, 2019). In this manifesto, as well as on numerous other occasions, sex workers voiced in the public space their demands to fully participate as peers in society (Fraser, 2010). This points to the pursuit of sex workers' rights activists of being recognised as workers and subjects of rights in the policy and laws, which are presently far from what sex workers' rights activists struggle for. The sex work policy in Poland is far from what the activists envision. Several elements account for the ambiguity and complexity of the

prostitution policy in Poland shaping sex workers' lives. First, Poland has an abolitionist framework, which views sex work as a violation of women's dignity, a form of violence against women, and frames persons selling sexual services as victims (Dziuban and Ratecka, 2017). In contrast, patriarchal norms that shape the law, the criminalisation of third parties and workers, together with the central role of the police and the absence of social and health policies, make for an ambiguous policy type which it is challenging to classify. This article aims at untangling these ambiguities and providing a contextualised and locally situated policy analysis by exploring the key policy instruments, their aims, implementation and the impact on the sector, in particular on sex workers.

As I will demonstrate, Polish prostitution policy, labelled as abolitionist (Gardocki, 1998; Błońska, 2006; Namysłowska-Gabrysiak, 2010; Derlich-Mielczarek, 2010; Drapalska-Grochowicz, 2018; Szota, 2018; Ślęzak, 2019; Kosonoga-Zygmunt, 2022; Krajewski, 2022), is in many ways contradictory to the abolitionist norm, which aims at protecting sex workers while criminalising third parties (and clients in the neoabolitionist approach). While I am critical of the abolitionist approach, the policy outcomes of which are rather harmful for sex workers (Vuola-järvi, 2019), it will be nonetheless my point of reference in this analysis as it constitutes the framework for Polish legal regulations. I will use social anthropologist Petra Östergren's prostitution policies typology (2020) to unpack the contradiction between the stated aim of protecting the 'dignity' of women who sell sex and the reality of the structural exclusion of sex workers and their absence as subjects of rights in the Polish context. A close investigation into the legal framework that includes the criminal law, the administrative law, the tax law, and other policy components reveals punitive intentions behind the legal measures, which diverge significantly from the abolitionist paradigm. As such, rather than protecting sex workers, the legal measures target them as persons not fitting in the social order and exclude them from the enjoyment of rights available to citizens.

So far, there has been no sociological analysis of the Polish sex work policy. The field of sex work scholarship in Poland is emerging with only a few authors using sex work as a work perspective and empirically-based approach. So far, the authors have published on indoor workplaces (Ślęzak, 2017), the violence against sex workers (Ślęzak, 2019), advocacy for sex workers' rights (Dziuban, 2018), abolitionist narratives on sex work (Dziuban and Ratecka, 2017), sex workers' situation during the COVID-19 pandemic (Dziuban, Moźdrzeń and Ratecka, 2021) and NGOs engagement with advocacy for sex workers' rights (Ratecka, 2018). None of the sociological articles has analysed the sex work policy in Poland in a way that would include legal measures, their implementation and an assessment of the impact on sex workers' situation. Up to now, it was the legal and criminological

scholarship that discussed the regulation of sex work in Poland, including one edited issue dedicated solely to sex work (Mozgawa, 2014a). These articles, however, discuss detailed aspects of the policy, usually legal measures, but lack a comprehensive assessment, they are rarely based on field work, and make no reference to the broader societal context. As such, they are simply data for getting insight into the legal discourse on sex work rather than comprehensive analyses of policy. My analysis aims to fill this gap by ‘examination in action’ (Vuolajärvi, 2019, p. 162) of the sex work policy in Poland. It will be based on two sources of data. First, my extensive fieldwork conducted from 2009 to 2022 with civic organisations engaged in providing services for sex workers and in advocacy for sex workers’ rights. Second, the study will review the current legal literature on the regulation of sex work in Poland.

The first section of this article discusses the inconsistencies in scholarship on sex work governance and introduces Östergren’s (2020) typology, as this provides a fruitful tool for prostitution policy analysis. In the second section, I present the methods and data used in this article. Turning to the findings, I follow Östergren’s analytical strategy by investigating policy instruments including the Penal Code (PC), Code of Petty Offences (CPO), Tax Act, health, and social programmes. In the following sections, I analyse the intentions behind the legal provisions by reading closely the legal comments and interpretations of the laws. Finally, I explore the impact on the sector and demonstrate how the Polish state fails to provide protection for persons selling sexual services, but also – by criminalising the working environment – contributes to their marginalisation. In this article I will refer to ‘prostitution’ as is understood in the legal framework in Poland, i.e. as the transaction of selling direct sexual services. In the text I will interchangeably use the term prostitution/sex work, where sex work will denote only the directly offered services. In this article I will only discuss the sale of sex by consenting adults.

Studying Sex Work Policy

Policies regulating commercial sex pose a challenge to researchers because they ‘come as a “package” of beliefs about and attitudes towards women, laws, rules, agencies, professionals, policy instruments, practices, and consequences, both intended and unintended’ (Wagenaar, Amesberger and Altnik, 2017). Both contemporary and historical research on the governance of sex work demonstrate that these regulations serve many functions beyond the direct control of the provision of sexual services and are often a tool for channelling various social anxieties. They are tied to political agendas, often referred to as ‘moral panics’ stemming from social, political and economic motivations and transformations (Kulick, 2003; Weitzer, 2006; Suchland, 2015; Jahnsen and Wagenaar, 2017). Given the many layers that make up sex work policy, Henrik Wagenaar and Sietske Altnik argue that it is a ‘policy

resistant field' (Wagenaar and Altink, 2012), mostly in the contexts where third parties are criminalised, as they tend to 'operate on a dubious business model that aims to maximise profits by denying sex workers basic labour rights and decent working conditions' (Wagenaar, Amesberger and Altink, 2017, p. 17). The stigma causes sex workers to be as anonymous as possible in their work, resulting in a lack of reliable numerical data and insight into how the field operates (Wagenaar and Altink, 2012).

Several different and nonexclusive terms have been used to characterise policies regulating commercial sex: abolitionism, neoabolitionism, decriminalisation, criminalisation, regulation, and legalisation (Outshoorn, 2004; Della Giusta and Munro, 2008; Scoular, 2010; Dewey and Kelly, 2011). Regardless of the terminology used, in the scope of sex work regulation it is possible to distinguish three or four types: prohibitionism, abolitionism and/or neoabolitionism, legalisation, and decriminalisation (for a discussion, see Östergren, 2020). The existing typologies are criticised for several reasons. Firstly, critics point to their one-sidedness, making the policy-makers' intentions the defining element while disregarding the effects and implementation of the policies (Skilbrei, 2019; Östergren, 2020; Wagenaar, Amesberger and Altink, 2017). Another weakness of the typologies are the contradictions in policy implementation even within a single state, making clear distinctions difficult (Wagenaar and Altink, 2012). Thus May-Len Skilbrei underlines the uncertainty of policy outcomes, as they are highly contextual, and similar solutions could be implemented differently in particular countries or lead to various outcomes in local contexts (2019). In addition, as Östergren (2020) argues, criticism arises from the complexity of the regulations, which lie at the intersection of several areas, including criminal law, public health, social security, and tax regimes, as well as migration, social order, and security measures. The sex industry is therefore characterised as a 'joint outcome of autonomous socio-economic forces, government intervention and civil society responses' (Wagenaar, Amesberger and Altink, 2017, p. 4), and all these factors should be considered when assessing the prostitution policy. Following Skilbrei, Wagenaar and Östergren's criticism of existing analysis of prostitution policies, I present a contextualised and locally rooted policy analysis, located in a specific political and social context. The Polish case is also illustrative of the inadequacy of the commonly used typology of sex work governance policies, which does not allow for a robust presentation of the complexities of sex work policy.

The approach to the typology of prostitution policies presented by Östergren makes it possible to go beyond decontextualised legal analysis and tackle the contradictory elements. At the same time, it draws attention to various actors engaged in the sex sector. In particular, it makes it possible to avoid focusing solely on sex workers and to include other participants of sex trade, including legislators, third parties, law enforcement and civil society actors, clients (Agustín, 2005). My analy-

sis of prostitution policy in Poland will follow Östergren's typology and methodology, which defines the 4 Is: Intentions, Instruments, Implementation, and Impact (Östergren, 2020, p. 593). The ideal types introduced by Östergren include repressive, restrictive and integrative types based on six components: the definition of sex work provision; the ideological justification of the public policy; the stated purpose of the public policy; its instruments (both legal measures and welfare/social programmes); the impact (including unintended and unplanned outcomes) of the policy on the status of the sex industry and the legal situation of its participants; the way in which the sex industry is regulated as a result of the public policy.

Methodology

The comprehensive policy analysis covering legal acts, implementation and real-life impact requires a combination of research methods. An in-depth investigation of various aspects of the field can provide data to examine the policy's operation in practice, as 'the law on paper does not tell us everything about how people involved in prostitution are actually policed', as Skilbrei argues (2019, p. 494). Hence, my analysis is primarily based on the multisited ethnography I conducted in Poland from 2009 to 2022. It involved (auto)ethnographic¹ participatory research with civil society actors providing services to sex workers and sex workers advocacy groups. For five years, 2010-2015, I was engaged with a service-providing NGO and an anti-trafficking NGO. I worked as an outreach worker with sex workers and as a social worker with victims of human trafficking. At the same time, I carried out participant observation in those organisations. From 2014 to 2022 I realised participatory, engaged research with sex workers' rights collective, and took part in workshops, participant observation, and advocacy projects. This fieldwork allowed me to collect in-depth knowledge and insights into the lived experiences of sex workers and their interactions with third parties, law enforcement agencies, public institutions, and civil society actors. During my fieldwork, I participated in more than 180 outreach duties with the service-providing NGO and the sex workers' rights activist group, 30 events (conferences, seminars, protests, meetings, workshops) online and offline. I also analysed more than 100 documents including governmental and NGOs' reports, flyers and pamphlets, newspaper, magazine and online articles, and manifestos. I also participated in numerous informal interviews with activists, sex workers, social workers, police officers documented with my fieldnotes. I conducted 6 formal interviews and one focus group with outreach and social

¹ My research was autoethnographic as defined by Leon Anderson (2006). It includes full membership in the researched groups that is made visible in my academic work. During my fieldwork I was a member of the studied organisations, influencing their values and actions, and thus also shaping the field of sex work advocacy in Poland.

workers from harm reduction NGOs, 7 interviews with anti-trafficking foundation leaders and/or employees, 5 individual interviews and 3 focus group interviews with sex workers' rights activists, 2 interviews with police officers. The interviews lasted from 30 minutes to three hours. In order to conduct the analysis of the policy instruments and their interpretations, I examined legal documents referring to sex work, namely the Penal Code (Kodeks Karny) (1997), which concerns serious crimes, and the Code of Petty Offences (Kodeks Wykroczeń) (1971), which deals with misdemeanours, as well as the Personal Income Tax Act (Ustawa o podatku dochodowym od osób fizycznych) (1991). The legal documents, however, do not speak for themselves, so commentaries discussing those legal provisions and the legal scientific literature constitute an important source of legal discourse providing point of reference for the legal practice. I performed literature review by searching for scholarly articles in the 'Central and Eastern European Online Library' and Google Scholar with the term 'prostyucja' (prostitution), and selected those published in main Polish legal journals and pertaining to prostitution policy. I supplemented the search with sources that did not appear in the search, but were often cited and regarded as important in the abovementioned literature. In all, I identified 25 texts, academic commentaries, journal articles, academic books, and book chapters, and one legal analysis.² I used thematic analysis (Braun and Clarke, 2006) to examine the legal texts and interviews. The flexibility of this method allowed me to integrate my knowledge from the field with the themes that emerged from the review of the legal literature. In this article I follow a feminist approach to legal studies and 'engage with law as a site of discursive struggle where meanings about gender, culture, and other normative categories are contested' (Hunter, 2013, p. 25). In doing so, I challenge the legal image of sex work by providing an empirically grounded account of the impact of the law on the lived experiences of those whose lives are shaped by it.

Polish Prostitution Policy

The identification of Polish prostitution policy as abolitionist is based on the 1949 United Nations Convention against Trafficking in Women and Children (hereinafter: The UN Convention), ratified by the socialist Polish People's Republic in 1952. This document defines 'prostitution' as an offence against human dignity and refers to its gendered character. It was ratified by the socialist state, as it was consistent with Marxist ideology defining prostitution as an inherently capitalist phenomenon (Dobrowolska, 2020). The ratification was followed by repealing registration and laws against women providing sexual services from the Penal Code in

² I marked the analysed texts with a * in the References section.

1969 (Błońska, 2006). Although legally deemed non-existent, during the state socialism, people engaged in sex work and the sector went through many changes, including forced rehabilitation of women providing sexual services in the 1950s, escort work with foreigners coming from the Western Europe during the 1970s and 1980s, or migration to engage in sex work in the Middle East in the 1980s (Dobrowolska, 2020). The 1990s transition and deep economic crisis, together with AIDS epidemics and the introduction of the neoliberal order, brought major changes for the sex industry. The period from early 1990s up to today has been characterised by constant change in the field, from a sector that was to a large extent controlled by criminal networks toward independent work or semilegal businesses, from outdoor to indoor work, escorting and digital sex work. The sex industry was also influenced by opening borders, joining the EU and the Schengen zone followed by migration flows from, through, and to Poland.

Today, it is estimated that about 200,000 people work in the industry (Dziuban and Polcyn, 2023), both in indoors premises (called usually ‘*agencja towarzyska*’), as escorts, as well as outdoors in larger cities or by highways. More than half of the sex workers are migrants from the post-Soviet and post-socialist countries (Dziuban, 2023). The sex venues can be found in all larger cities in Poland in the form of brothels, private apartments, or massage parlours.

The new Penal Code introduced in 1997 to a large extent upheld already existing legal solutions that govern sex work (Błońska, 2006). The only major change was the introduction of the provision on human trafficking in 2010. On the other hand, the implementation of the policy changed significantly. While from mid-1990s to mid-2010s some, although scarce, health and social programmes were directed toward sex workers, since 2015 the conservative Law and Order government adopted an ultraconservative agenda aimed against any gender equality or diversity policy interventions (Korolczuk, 2020), practically withdrawing from any health or social programmes dedicated to sex workers. The characteristic feature of the Polish prostitution policy is [thus?] its incoherent character, as well as the discrepancies between the law and its implementation. This could be illustrated by this citation from a journal article authored by recognised Polish legal scholars: ‘The practice of prostitution is legal in Poland, as is the purchase of sex services, whereas reaping benefits from someone else’s prostitution is illegal. However, if the provisions of Polish law were to be interpreted literally, all activities aimed at providing sexual services and the use of such services would be illegal’ (Lasocik and Wiczorek, 2020). I will trace these discrepancies first by looking at the policy intentions, and then continue with the other *Is* as Östergren (2020) suggests, the instruments, implementation, and impact.

Intentions: Victimless Crimes and Defence of Public Decency

Based on the review of academic legal texts, I argue that the intention behind the laws on prostitution fits the repressive regime in Östergren's typology, employing a 'wholesale condemnation of sex work' (Östergren, 2020, p. 84). Rather than pursuing the abolitionist goals of preventing the alleged harms of sex work for women engaged in it, it views women selling sexual services as dangerous to society and its morals. The key concept necessary to understand the logic behind Polish prostitution laws is the notion of 'public decency', which is seen by the legal scholars as the core value protected by those laws. The legal measures fail to consider clients as actors playing a constitutive part of the trade, a central feature of neoabolitionism targeting the demand. This is consistent with the conservative and patriarchal norms condemning selling sexual services as antisocial behaviour that violates 'public order', stigmatising, and restricting women's sexual and economic activity, but not male sexual behaviours.

The intention of the abolitionist framework is inscribed in its very name – it is the 'abolition' of sex work, its eradication by hindering the practice of it and, since the 2000s, reducing the 'demand' by targeting clients (Ward and Wylie, 2017). Accordingly, the UN 1949 Convention explicitly states that 'prostitution and the accompanying evil of traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community'. It frames prostitution as a threat to gender equality and aims at protecting, or rather deterring, women from engaging in sex work, and facilitates (or rather forces) their quitting sex work.

The contradiction between the assumed abolitionist norm and the actual purpose intended by the lawmakers is mirrored in the legal discussions concerning the underlying premise of the prostitution law. Moral judgment of commercial sex prevalent in the legal literature views sex work almost exclusively as antisocial behaviour. This is mirrored in the language discussing sex work, which strongly associates sex work with antisocial and immoral behaviour. Engagement in sex work (referred almost solely as prostitution) is usually described with the word 'proceder' (Błońska, 2006; Mozgawa, 2014b; Piotrowska-Figiel and Wala, 2014; Szota, 2018; Kowalewska-Łukuć, 2022; Krajewski, 2022), which can be translated as 'an activity, often someone's livelihood, that is considered contrary to moral principles or the law' (PWN, 2018). This value-laden language shapes the setting for discussion on the interpretation of prostitution laws.

The language is consistent with the evaluation of sex work presented in most of the sources which convey moral condemnation of sex work as antisocial behaviour and lack of recognition of sex work either as harmful (abolitionist perspectives) or as legitimate labour (the sex work as work perspective). Although some

authors critically approach the provisions dating back to state socialism, only a few propose its amendment towards liberalisation. The authors are almost completely consistent in identifying the intention behind the provision in the PC which aims at protecting 'public decency' and restricting prostitution by criminalising third parties using the criminal law. Furthermore, the relevance of the CPO provisos is in most cases either minimalised or ignored.

The discussions pertaining to §1 and §2 of Article 204 of the PC criminalising the activity of third parties are especially informative about the various interpretations of the intentions of the policy. The purpose of the prostitution law suggested by the title 'Crimes against sexual freedom' of the PC, where prostitution measures are located, indicates that the freedom of the sex worker could be violated by third parties, who are 'exploiting prostitution of other persons'. However, as Julia Kosonoga-Zygmunt claims, the protection of 'sexual freedom' does not refer to the freedom of persons selling sexual services. Rather, it refers to the freedom of society in general to be protected from 'imposition, intrusion, violation of the public order and morality by offering sexual services' (Kosonoga-Zygmunt, 2022, p. 38).

The abolitionist approach in interpretation of the law or pointing to the discrepancy between the intentions of the law and the abolitionist framework is marginal, found only in three analysed articles (Błońska, 2006; Namysłowska-Gabrysiak, 2010; Drapalska-Grochowicz, 2018). These three authors present but a few voices that pay attention to the consequences of the Polish prostitution law for persons selling sexual services and highlight the need to recognise sex workers as subjects of rights and urge for securing their access to justice. The majority of legal scholars argue that criminalisation of third parties aims to protect 'public decency' (Gardocki, 1998; Filar, 2006; Warylewski, 2020; Krajewski, 2022), understood 'in the abstract way as a system of social norms, mainly moral, that regulate human behaviour in the sexual sphere' (Gardocki, 1998, p. 249). The prevalent interpretation is well summarised by Joanna Derlich-Mielczarek, who argues that 'the legislator's aim is not to protect specific legal goods violated by the perpetrator, but is rather an attempt to enforce a certain moral attitude' (2010, p. 42). Consequently, §1 and §2 of Article 204 are seen as victimless crimes where sex workers are not treated as victims of third parties violating their sexual freedom (or any other good). Thus, sex workers cannot, for example, demand compensation for 'exploitation' of their work (Kosonoga-Zygmunt, 2022; Błońska, 2006; Namysłowska-Gabrysiak, 2010; Derlich-Mielczarek, 2010).

Only a few scholars suggest changing these measures towards legalisation or decriminalisation, arguing that the 'public decency' norm is outdated (Krajewski, 2022; Kosonoga-Zygmunt, 2022), third parties' activities do not pose a harm for consensual sex work, thus do not violate individual sexual freedom (Filar, 2006), or

using the feminist perspective to critically assess the central role of criminal law in regulating sex work (Płatek, 2013; Więckiewicz, 2013). These interpretations constitute, however, a minority of voices in the legal discourse on sex work. This points to Östergren's criterion for the repressive policy, namely the protection of the society from sex work on the moral grounds and the vision of 'proper sexual morality' (2020, p. 584). Having discussed the intentions behind the laws, I will now move on to investigate the policy instruments used to govern sex work.

Instruments: Abolitionist or Repressive?

The legal provisions that directly address sex work are placed in two separate documents, the PC, the main tool for criminal law, and the CPO, which is part of administrative law. Whereas the PC follows the abolitionist framework, the CPO introduces punitive measures against sex workers. In the PC, the provisions concerning prostitution are found in the section 'Offences against sexual freedom and decency', and are contained in two articles, 203 and 204, which are referred to as 'exploitation of prostitution'. Article 203 refers to the coercion of another person into prostitution and punishes anyone who 'induces another person to engage in prostitution by means of force, unlawful threat, deception or abuse of a relationship of dependence or critical position' with up to 10 years' imprisonment.

It is Article 204 of the PC, which criminalises third parties, that is widely discussed by numerous authors assessing the legal measures referring directly to prostitution. Article 204 §1 criminalises solicitation, 'stręczycielstwo', the recruitment of other persons to sex work and the facilitation of sex work, 'kuplerstwo', therefore anyone who 'with the intention of obtaining financial gain, induces or facilitates another person to engage in prostitution, shall be punished by imprisonment from 3 months to 5 years'. The same penalty concerns pimping and anyone who, according to Article 204 §2, 'derives material benefit from the practice of prostitution by another person' (Penal Code, 1997). These laws criminalise the organisation and ownership of brothels and escort agencies, facilitation of sex work including activities such as working as a receptionist or a bodyguard in an indoor workplace, renting a property for the purpose of selling sexual services, or owning a sex advertising portal. It also criminalises any sex workers working together and thus 'facilitating' each other's prostitution (Piotrowska-Figiel and Wala, 2014). As a result, third parties operate illegally, which means that the sex industry is pushed to the shadow economy and operates illegally, which according to Östergren (2020, p. 585) is a distinctive feature of the repressive policy type, but quite inconsistent with the implementation.

Direct reference to prostitution could also be found in the measures concerning trafficking in human beings, which are located in the Penal Code. They have

been formulated in line with the UN Palermo Protocol concerning prevention and suppression of human trafficking. Article 115 §22 of the PC lists ‘prostitution, pornography or other forms of sexual exploitation’ as first among the purposes of exploitation in human trafficking. In 2010 this definition replaced two previous provisions, Article 204 §4 of the PC which did not include a precise definition of human trafficking and the part of Article 204 which referred to ‘enticing or abducting a person with the aim of having him/her engage in prostitution abroad’ (Penal Code, 1997). These laws are, however, rarely used to target sex industry, which is evidenced by only 12 identified victims of sex trafficking in 2022 (Ministry of Interior and Administration, 2023).

Criminal law is not the only legal act which regulates sex for sale that is often overlooked in research (Weatherburn and Brière, 2017). The provisions from the CPO (1971) are less often discussed, however they constitute a substantial element of the prostitution policy and shed quite a different light on the (il)legality of selling sexual services in Poland. The chapter titled ‘Offenses against public decency’ includes three articles which target sex workers. Article 142 of the CPO states that ‘It is a punishable offence to propose to another person to perform an illicit act with a person in an intrusive, coercive or otherwise disturbing manner for material gain’. The offender may be sentenced to imprisonment, deprivation of liberty, or a fine. Furthermore, persons offering sexual services in public spaces can be charged under yet another provision in Article 140 of the CPO if their behavior is treated as ‘nieobyczajny wybryk’ (eng. ‘indecent deed’). This offence is punishable with imprisonment, deprivation of liberty or a fine of up to 1500 PLN (350 EUR). The regulations in the CPO were introduced in 1971 and remain unchanged (with only the amount of fine being occasionally adjusted, most recently in 2022). The direct criminalisation of sex workers with these two articles exemplifies that sex work, especially when practised outdoors, is not legal. Although the implementation of these laws is not always meticulous, it still pushes sex workers into the criminal realm. Moreover, the fact that these provisions have been in effect since state socialism shows continuity in the repressive regulation of sex work despite major political and social changes.

This inconsistency between the abolitionist norm and the punitive measures in the CPO has been discussed by the legal scholars, and there is no unified interpretation of it. Some authors point to the discrepancy between those two legal acts (Derlich-Mielczarek, 2010; Kotowska, 2013; Płatek, 2013; Mozgawa, 2014b). For example, Derlich-Mielczarek argues that the presence of two abovementioned articles in the CPO is ‘an attempt to circumvent Article 6’ of the UN Convention (2010, p. 53). Similarly, Monika Kotowska pointed out that these regulations aim to ‘introduce through the side door the criminalisation of prostitution’ (2013, p. 54).

Other authors argued that it does not stand in contradiction with the UN Convention (Kosonoga-Zygmunt, 2022) and even advocated harsher control (Krajewski, 2011). This disparity in viewpoints demonstrates the ambiguity among legal professionals in interpreting the legal measures and assessing the governance of sex work in Poland.

There are also other policy areas addressing sex work, but their importance or even existence is often omitted in research, as exemplified by this statement in an article evaluating Polish prostitution policy authored by influential legal scholars in the field: ‘In Poland, there are no regulations that apply to issues related to the health, hygiene, taxation, or organisation of sexual services’ (Lasocik and Wiczorek, 2020, p. 157). In particular the tax law is an important element of prostitution policy and, as sociologist Isabel Crowhurst argues, fiscal policies, depending on their content, could contribute to inclusion of sex workers or could ‘reinforce the social and political liminality of sex workers as lesser citizens’ (Crowhurst, 2019, p. 166). The Personal Income Tax Act (1991) (referred to further as PITA) refers to commercial sex and is consistent with the abolitionist framework denying the status of work to direct provision of sexual services. Article 2 §5 of the PITA states that tax cannot be paid on income from ‘activities that cannot be the subject of a legally valid contract’. The ‘income arising from prostitution’ is first mentioned in the list of such activities and is excluded from taxation on moral grounds and ‘social cohesion rules’ (Olczyk, 2017, p. 58).³ According to this interpretation, sex workers do not have to and cannot pay income tax with money derived from prostitution as long as they can prove their involvement in commercial sex as service providers (Kępa, 2014). However, to prove one’s engagement in sex work is connected with outing oneself as a sex worker and exposure to stigmatisation. In consequence, Polish tax law denies sex workers ‘economic citizenship’ (Crowhurst, 2019) and excludes them by not recognising sex work as work from which income should and could be taxed.

Other policy areas such as health or social programmes addressing sex workers as a group with particular needs are almost non-existent. The health policy on HIV used to be the one that addressed sex workers as key actors in HIV prevention (Struzik, 2021; Owczarczak, 2010). Currently, that is in 2023, the strategy of the National AIDS Centre, designed by the Ministry of Health, mentions people who sell sexual services as one of the specific target groups for preventive measures, but does not finance any programmes dedicated to sex workers (Krajowe Centrum ds.

³ However, recent attempts of the Polish state aim at taxing all other sexual services, including web cam and other services offered online. As sex workers engaged in digital sex work have begun to register their economic activity as entrepreneurs, the Tax Office is very meticulous in controlling income derived from online platforms.

AIDS, 2021). Moreover, Article 161 of the PC criminalises the infecting of other persons with HIV, a venereal or infectious or an incurable, including life-threatening disease, and the penalty has been increased to 10 years of imprisonment in 2022 during the COVID-19 pandemic. Although this provision was rarely implemented, with only 4 convictions between 2008 and 2020 (Ministry of Justice, 2021), it targeted sex workers, who were accused of intentionally spreading HIV (Rynek Zdrowia, 2016; Trójmiasto.pl, 2013).

The centrality of the criminal law and the lack of recognition of sex work as work would point to the repressive type. However, the presence of the administrative regulations and especially the implementation of the policy instruments, as I discuss it in the following sections, suggest that the aim of the policy is to control and limit the sex industry rather than deterring (and definitely not rescuing) persons from engaging in sex work.

Implementation: Between Policing and Invisibility

The implementation of prostitution policy is characterised by the central role of criminal provisions, diminishing importance of other measures, and unpredictability of enforcement. This part of the analysis is based on my fieldwork with civil society organisations engaged in outreach with sex workers and advocacy for the rights of sex workers as well as previous research on the topic (Dziuban, 2023; Ślezak, 2019) and document analysis.

Policing plays a central role in implementing the law and its main aim is to prevent existing establishments from operating. According to police documents, the law enforcement sees its role with respect to prostitution in 'eliminating the phenomenon' focusing on policing indoor workplaces (KPP Środa Wielkopolska, 2023). The third parties, who are the main target of police interventions, are usually described in police narratives as 'criminals' and/or 'organised criminal groups' (*ibid.*). On the other hand, the surveillance of indoor workplaces is very selective and unpredictable. The intensity and frequency of raids on brothels is often influenced by the government politics on crime as well as local circumstances, such as competition between the owners of premises. Despite the police focus on surveillance, the indoors places thrive. Although the system is repressive and the policing of sex workers and their workplaces is the main agenda of the state, there is at the same time an informal acknowledgement of the operation of sex work venues. While the surveillance and investigation into the third parties' activities remains the primary objective of the police, sex workers are seen as entangled in criminal activity. The police textbook, for example, refers (solely) to female sex workers who are usually described as 'criminogenic', characterised by 'deviant type of behaviour' and having 'links with criminality and alcohol abuse' (Zielonka, 2019, p. 42). In the course of my

fieldwork, I identified only one police campaign aimed at ‘helping victims of trafficking and forced prostitution’, which was carried out in the years 2001-2006 in cooperation with the Catholic NGO Caritas (Policja Podkarpacka, 2001). Focusing on policing third parties without accompanying programmes to support sex workers, for example in leaving sex work, is not in accordance with the abolitionist framework, and persons providing sexual services are perceived by the police as being complicit in crime rather than persons whose rights and safety should be the responsibility of the police force.

From the perspective of sex workers, the main goal of the police is control and surveillance of their work. The presence of the police in the lives of sex workers varies depending on the character of the work. While independent escorts might rarely come into contact with the police, persons working in organised places or outdoors meet the police on a regular basis. The presence of police officers in the daily lives of sex workers is ambiguous. Sex workers working outdoors, who are subject to the CPO laws, are vulnerable to police intervention. ID checks can be performed several times a day. Additionally, ID checks are often accompanied by the registration of telephone numbers, which is illegal, as any registration is prohibited by the UN 1949 Convention and was repealed in Poland in 1952.

Persons working in indoor venues are also subjected to police checks. In such cases, the sex workers are the ones who most often come in contact with the police. As Oliwia, one of the outreach workers from the sex workers’ rights collective, mentioned:

There come those [police officers – A. R.] who chat about the family, who have never said anything bad to anyone, who have never used abusive language, who always knock and always show their ID at the door.

The outreach worker refers to the familiar atmosphere that some police officers try to create. In practice, the attitude of police officers may vary. Some representatives of NGOs that cooperate with the police mentioned in informal conversations that they knew about ‘sex worker friendly’ police officers who are trusted by sex workers and can be contacted in case of violence. However, the sex workers’ rights activist underscores that the power relations between police officers and workers are always unequal: ‘Whether he’s the nicest guy or not, people feel they can’t say no to him’ [Oliwia]. The supposedly friendly atmosphere obscures only the power dynamics in which sex workers have no choice but to behave according to the expectations of the police. Especially police raids put indoor sex workers in a very vulnerable situation. The occasional spectacular actions are aimed at closing down particular premises and arresting third parties, usually the owner(s), security guards, receptionists or suppliers and drivers. In some cases, sex workers are also arrested because they often work part-time as receptionists or bartenders.

Outdoor workers also experience increased policing and the imposition of the highest possible fines under Article 142 of the CPO. Sex workers working by the highways were often targeted by this law, and the enforcement was even more strengthened during the COVID pandemic, when sex workers were additionally punished with fines often higher than their monthly income (5000 PLN, 1200 EUR) while already being in a precarious situation.

Policing plays the central role in the governance of sex work, which is even more visible when compared to implementation of other relevant policies beyond the anti-prostitution laws. It is exemplified by the governmental HIV prevention programme. The state agency responsible for HIV prevention, National AIDS Centre, identifies sex workers as a group that should be specifically reached and offered tailored programmes (Krajowe Centrum ds. AIDS, 2021). Currently, there are no state-funded health programmes dedicated to sex workers. This was not always the case. In the late 1990s, funding for HIV prevention programmes for sex workers came mostly from international grant-making institutions such as the Global Fund. With EU accession in 2004 most international funding withdrew from Poland, and these NGOs had to resort to state funds (Owczarczak, 2010). Although prevention has always been low on the agenda of Polish HIV policy, until 2016 the state funded at least a few outreach programmes dedicated exclusively to sex workers (Ptaszak, 2006; Krajowe Centrum ds. AIDS, 2011, 2016; Dec, 2012; Struzik, 2021). These programmes employed the human rights and harm reduction frameworks and were pioneers in outreach work with persons selling sexual services. Although very selective and limited, they were nevertheless the only state-funded initiatives that aimed to improve sex workers' health and provide social support for this group.

The situation changed in 2015 with the election of the right-wing Law and Order party as the ruling party, which led to democratic backsliding. The conservative politics of the ruling party also brought about changes in public policy, including support for the traditional family model with more than one child, limiting already restricted access to legal abortion, discrimination of single parents in accessing family allowances and limiting support for civil society organisations who did not follow the conservative values. These led to 'authoritarian governance of insecurities' (Lendvai-Bainton and Szelewa, 2021, p. 569) and translated to withdrawal from funding any feminist, queer, and harm-reduction NGOs' programmes by the state (Korolczuk, 2020). Consequently, since 2016 the government has not funded any services dedicated to sex workers, and most local governments have also withdrawn from these programmes. Both the focus on policing and the limited or non-existent health or social programmes dedicated to sex workers heavily impact the sex workers' situation, which I will discuss in the following section.

Impact on the Sector: Tolerated Shadow Economy and Marginalisation of Sex Workers

Selective policing on the one hand and the lack of recognition of sex workers as subjects of rights on the other result in a thriving sex industry and misrecognition of sex workers, especially those in precarious situations. As mentioned above, the police is aware of the location of most brothels, which operate in the shadow economy or are legalised by operating on the basis of fake registrations as shops, night-clubs, motels, service companies or massage parlours (Ślęzak, 2017). Although the media reported several spectacular raids on organised workplaces in the last 5 years, followed by closing two main sex advertising portals Roska and Odloty in 2021 and 2022 (which had operated legally for 15 years), police statistics point to a rather low detectability of the criminal offences of exploitation of prostitution. In 2021 only 64 crimes were detected under the Article 204 §1 of the PC (KGP, 2021). Given the approximate estimate of 200,000 people (mostly women) selling sexual services in Poland (Dziuban and Polcyn, 2023), these are not large numbers and indicate that the industry is thriving despite the repressive policy framework. In addition, the decrease in the investigations into the third parties' activities (crimes under Article 204 §1 of the PC) from 410 cases in 2001 to 187 in 2020, and only 64 in 2021, points to a changing character of the industry as well as the failure of the policy to fulfil the goal of limiting sex industry and 'abolishing' sex work.

Despite the 'thriving' industry, sex workers remain in precarious positions as a result of the criminalisation of the third parties and lack of recognition of sex work. Sex workers lack access to benefits linked to legal employment like sick leave, maternity leave, unemployment benefits, health insurance, or pension schemes. To access these services, some sex workers register as unemployed to be included in the health insurance scheme, while others seek 'false' employment in legal businesses or, if they can afford it, pay for insurance themselves. In consequence, the most vulnerable persons are left without any social protection. In the event of sickness or pregnancy, they are forced to work to pay for medical services. Some also fall into homelessness, as access to affordable housing in Poland is very limited.

Depending on social location and capital, the policy affects different persons in various ways. Independent sex workers who work as escorts are less likely to experience the repressive nature of the policy as their activity is not covered by the laws criminalising third parties, while sex workers who work in organised workplaces and outdoors are subjected to increased policing which heavily impacts their working conditions and sense of safety.

Accounts provided by grassroots sex workers' organisations point to the ambiguous character of police engagement with sex workers. For example, the toolkit on how to work safely 'Doświadczalnik' (Nieformalna Grupa Pracownic Seksualnych, 2019), provides a description of the possible scenarios of encounters with police officers:

Police checks at sex work sites are also common. Depending on the politics of the local police and the attitudes of individual officers, you may find yourself supported by the police in crisis situations or, on the contrary, experiencing abuse, violations of your rights, and mistreatment (*ibid.*, p. 50).

Sex workers cannot determine the purpose of the police check, whether it is to prevent abuse and violence against sex workers or to improve statistics by issuing a few fines for 'indecent behaviour'.

These checks, if carried out several times in a row, can be oppressive and make work impossible by scaring away clients. Sex workers are also aware that given the legal provisions, law enforcement can use any excuse to close the workplace, as one of my informants commented:

[The police officer] puts himself in a position where the person cannot refuse him whatever he demands at that moment. Often, she [sex worker] feels that she cannot say no. Whether it is giving him evidence, whether it is talking to him, whether it is letting him into the workplace, whether it is providing a service with payment or perhaps sometimes without [Oliwia].

Potentially subjected to fines, imprisonment, stigmatisation and secondary victimisation, sex workers are in a vulnerable position towards the police without any instance of addressing it.

The repressive nature of sex work policies and the oppressive role of the police were particularly exposed during the COVID pandemic across Europe, including Poland (Fedorkó *et al.*, 2022). Outreach workers from the sex workers' rights group, who were also providing outreach services during the COVID pandemic, observed that in indoor workplaces:

[The police] just went in without any legal basis, intending to close down all sex work spaces. They raided the workplaces and intimidated the people working there (Dziuban, Moźdrzeń and Ratecka, 2021, p. 367).

One of the examples of police action was a raid on a network of brothels carried out on 8 March 2021, on Women's Day, which is widely celebrated in Poland. In this action, several brothels were approached in the early morning, the owners and managers were arrested, and workplaces were closed. In consequence, many sex workers lost work and those living on the premises became homeless.

Migrant sex workers' situation, studied by sociologist Agata Dziuban (2023), is especially precarious. They have to navigate not only the sex work regulations but also the migration laws. Most migrant sex workers in Poland originate from post-socialist and post-Soviet countries and in many cases, they need a visa and often also a proof of employment to travel to Poland. As Dziuban demonstrates, many migrants choose sex work as a form of flexible employment that allows them to travel back and forth between Poland and their home country. Migrant sex workers often reside on the premises where they work, as this allows them to save more money. As a result, they may be even more reluctant to call the police in the event of violence or other forms of harassment or exploitation, which can lead not only to losing their jobs, endangering the entire workplace and their colleagues, but also to deportation or ban on entry into Poland (*ibid.*).

Access to justice is very limited for sex workers. As Ślęzak's research on women working in escort agencies in Poland demonstrated, reporting violence to the police 'is a significant decision for the existence of the workplace', and abuse is reported only in 'extreme cases' (Ślęzak, 2017, p. 250). This situation exerts a great burden on individual workers as they usually refrain from risking loss of income, work, and possibly arrest of colleagues. In such a situation, the management of violence is privatised, workers either have to deal with it themselves or are dependent on the security of the workplace. As a result, 'clients may not suffer any consequences of their aggressive behaviour' (*ibid.*). Furthermore, the stigma attached to sex work, and the revictimisation by the justice system that victims of sexual violence generally experience (Grabowska and Grzybek, 2016), limit the access of sex workers to justice.

Discussion

The typology developed by Östergren proved to be a fruitful instrument to problematise the discrepancies within the prostitution policy in Poland. It allowed me to go beyond the stated aims of the abolitionist framework and expose both the moral condemnation and punitive intentions behind the laws, inconsistencies in implementation, and harmful impact on the lived experience of sex workers. The central role of the police in the implementation of the prostitution policy, together with the control of indoor workplaces, points to a discrepancy between the stated aims of protecting women by preventing prostitution and the practice of criminalising the rights of sex workers, in effect hindering sex workers' equality with other citizens and access to support, while creating a perpetual state of instability and precariousness. The legal discourse pathologises sex work by defining it largely as antisocial and morally wrong. Moreover, it denies the status of victim to sex workers by ascribing the 'victimless' character to the 'exploitation of prostitution' offences. The

invisibility of clients as parties in the sexual trade indicates the gendered character of the repressive measures, as not male but female sexuality is seen as transgressing the gender norms and in need of policing. This corresponds with the patriarchal character of Polish law and conservative attitudes of policy-makers, heavily influenced by the Catholic Church (Kościańska, 2020), while the general attitudes of Polish society towards sexuality are changing and have become more liberal (Nawojski, Pluta and Zielińska, 2018). Thus, the negative effects on sex workers and their ambivalent legal status could be seen as a desirable outcome rather than unintended consequences of the legal framework and its implementation (Dziuban, Moźdrzeń and Ratecka, 2021).

The central role of the police in the enforcement of the prostitution policy is even more visible when analysed in relation to other policy areas relevant to sex work. Programmes comprising the prostitution policy in other European contexts often include also social services, for example, harm reduction programmes or exit services, as well as, most often, public health programmes in the field of HIV/AIDS prevention (Jahnsen and Wagenaar, 2017). The Polish prostitution policy fits Östergren's repressive type characteristics, in which 'laws are intended to "send a signal" rather than to achieve a feasible, measurable goal' (Östergren, 2020, p. 14). Consequently, Polish prostitution policy misrecognises sex workers, whether in the declared abolitionist framework as victims, or in the sex work as work perspective. Sex workers are constructed as invisible in terms of their participation in social life and the access to justice and redistribution of wealth.

After the analysis of the 4 Is: instruments, intentions, implementation, and impact, the Polish sex work policy cannot be unequivocally classified. Polish policy on sex work oscillates between the repressive and the restrictive types. In both of these types sex work is viewed negatively, as being morally wrong, indecent, and antisocial. However, while the repressive type of policy aims at prohibiting sex work altogether, the restrictive type aims rather at limiting the sex industry, which is the case in Poland, where the sex trade, with the (informal) consent of the police, is functioning on 'illegal informal' terms (Sanders, 2008, p. 705). Also, the laws aimed at punishing sex workers working outdoors aim at protecting the society from 'indecentcy', which is seen as having particularly harmful effects on society when performed in public spaces and thus has to be restricted to private (indoor) spaces.

In this context of failure of the state to address the situation of persons providing sexual services, sex workers are self-organising by establishing advocacy collectives and community-based support networks. In the absence of any other state-funded programmes, sex workers' rights collective Sex Work Polska has been carrying out a peer-education outreach programme and 24/7 emergency line, while also providing free therapeutic and legal services funded by independent national

and international donors (SWP, 2023). During the COVID-19 pandemic, the collective established an Emergency Fund, a community crowdfunding to support sex workers in crisis (Dziuban, Moźdrzeń and Ratecka, 2021). One of the community organisers described the way the sex workers' rights activists group perceives its role and positions itself within the Polish sex work policy:

We are angry that we had to set up the emergency fund. The very fact that we had to do this is very frustrating because it clearly shows that we are outsourcing the responsibilities of state institutions. We have taken over the obligations of the state, which should be looking after citizens and migrants, those who are most vulnerable to the virus and other effects of the pandemic. There are a lot of people who are left to fend for themselves. (...) We are one of those completely grassroots initiatives that support their community, because our community has been completely abandoned by all the institutions (*ibid.*).

The other sex workers' activist group Nieformalna Grupa Pracownic Seksualnych (Informal Sex Workers Group) conducted community research collecting experiences of sex workers in various sectors and published a toolkit 'Doświadczalnik', aimed at exchanging information about how to navigate the sex industry in Poland (Nieformalna Grupa Pracownic Seksualnych, 2019). Even more individual activists are active in social media and in pop culture, publishing podcasts or books with personal histories of activism and work. These struggles aim to change the narrative, destigmatising sex work, and introducing a perspective of sex workers' rights into public debate. Influencing the structural level, for example changing the law towards decriminalisation of sex work, is blocked as long as the right-wing government is in power.

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