

Digital Prostitution: International Legal Experience of Criminalization and Decriminalization

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Summary

Legislative approaches to regulating the digital sex industry are increasingly being debated at the international and national levels. There is a trend showing an increased interest in the decriminalization of sex work. At the same time, in many countries, activities related to digital prostitution remain criminalized. In this regard, it is important to analyze the international legal experience of the criminalization and decriminalization of digital prostitution, as well as to pay attention to the key problematic issues that arise during the criminalization and decriminalization of such an issue. The object of the study is the international experience of criminalization and decriminalization of digital prostitution. The subject of the study is social relations that arise, change, and cease during the criminalization and decriminalization of digital prostitution. The research methodology consists of such methods as philosophical, logical, special-legal, system analysis methods, and formal-dogmatic methods. Research results. As a result of the study of the international legal experience of criminalization and decriminalization of digital prostitution, it was concluded that the criminalization and/or decriminalization of digital prostitution is treated differently in different countries. Workers in this industry advocate decriminalization, not legalization, because decriminalization puts power directly in the hands of sex workers and creates no legal barriers. Countries that have decriminalized digital prostitution believe that sex work is real work and should be treated respectfully, and banning resources such as OnlyFans is not in favor of such workers. Regarding positions on the criminalization of prostitution, countries use different models of such criminalization, including the model of legalization of digital prostitution, which, on the one hand, allows prostitution, but establishes criminal liability for deviations from the rules established by the state.

Keywords:

criminalization, decriminalization, digital prostitution, prohibition, legalization.

1. Introduction

Information technologies change people's lives every year, creating and changing certain phenomena. Digital transformation and new opportunities for communication on the Internet have changed such a phenomenon as prostitution, creating conditions for the existence of digital prostitution.

In different countries, attitude to the regulation of the activity of those providing sexual services and the

distribution of images of an intimate nature for a fee on the Internet differs. At the same time, the path to recognition of prostitution as a legal activity was not an evolutionary process that began with a complete ban and ended with its legalization. On the contrary, calls to legalize and tax prostitution were already heard thousands of years ago: in the Middle East and the Mediterranean region, prostitution "for religious reasons" legally existed just in temples, and in ancient Sumerian texts prostitution appears among the main occupations of a person. Researchers described a similar practice among the Aztecs, the Incas had certain forms of regulation of prostitution by government officials, Greek heterosexuals had to pay taxes, and in Ancient Rome, prostitution was legal, registered, and very common. In the East, Japanese brothels were popular among Asians and Western travelers, and West Indian trading companies were involved in the trade of Japanese women for prostitution. And even Muslims, having formally banned prostitution, created completely legal harems, i.e. actually legalized the sexual slavery of women [5].

Society perceives the legalization and decriminalization of prostitution in different ways. Increasingly, countries instead of upholding liberal values and free choice choose a position that aims to protect women from sexual violence and exploitation.

Currently, most countries of the world have established the illegal status of prostitution at the legislative level, but the ban usually remains formal.

Ukraine is among such countries. In particular, Article 3 of the Constitution of Ukraine defines a person, his life and health, honor and dignity, inviolability, and security as the highest social value [1]. The Criminal Code of Ukraine provides for liability for encroachment on a person's sexual freedom and sexual integrity. In addition, criminal liability for pimping [3] and administrative [4]

At the same time, there are completely different opinions among the public regarding the legalization and taxation of prostitution (including digital) and filling the budget, as well as the criminalization of prostitution and more severe punishment.

To find out the role of digital media titulation in ensuring the rights of women/men and in the sex trade, it is important to analyze the existing definitions of concepts

regarding digital prostitution, as well as different approaches to the regulation of digital prostitution in the international community. Understanding the above will allow a better understanding of the role of prostitution and its impact on modern society.

Because no consensus has been reached at the international level regarding the definition of prostitution, it is worth turning to the policy of individual states on this issue. At the same time, in general, four main political models of prostitution are distinguished: full criminalization, full decriminalization, partial decriminalization, and legalization. At the same time, many states are still undecided on the positioning of the criminal model, which will be discussed in more depth due to their salient relevance to the current research in understanding opportunities for criminalization and decriminalization. Moreover, the issue of regulation of digital prostitution also remains unexplored enough.

Therefore, taking into account the above, it is important to analyze the international legal experience of criminalization and decriminalization of digital prostitution and pay attention to the key trends regarding the regulation of this issue.

2. Methodology

Thanks to the use of a set of methods of learning legal phenomena, it became possible to study the international legal experience of criminalization and decriminalization of digital prostitution.

Philosophical methods have become the basis for the study of digital prostitution. Philosophical categories, as those that integrate scientific knowledge, play the role of methodological principles of knowledge and methodological functions in the knowledge of special objects. The use of such principles of dialectical knowledge as objectivity, comprehensiveness, concreteness, completeness of knowledge, bifurcation of the one, and knowledge of its contradictory sides, made it possible to understand the peculiarities of criminalization and decriminalization of digital prostitution, as well as to reveal the content of models of legalization and decriminalization in different countries.

Thanks to logical methods, among which analysis, synthesis, induction, deduction, analogy, descent from the abstract to the concrete and from the concrete to the abstract, the cause-and-effect relationship between changes in legislation and social changes related to the criminalization and decriminalization of digital prostitution was investigated and, in general, logical techniques accompanied the entire process of analyzing the researched topic. In addition, the value of logical methods is especially important when formulating the concepts of "digital prostitution", "criminalization", "decriminalization" and

"legalization" identifying the properties of these phenomena and investigating their functioning in specific countries. Also, the logical method made it possible, based on logical techniques, to analyze normative legal acts, compare them and reveal the connection of common features.

During the conducted research, a concrete historical method was used. Thus, it is possible to better understand the essence and prerequisites for the adoption of legislation in different countries thanks to the analysis of the history of such a state, because knowledge of the modern role and functions of the state in different countries helps to understand better its previous history. At the same time, knowledge of the past and present allows us to identify the trend of the development of the state and its legislation in the future. The identification of general properties is accompanied by special attention to individual historical events that reflect the uniqueness of the factors that influenced the formation of individual legal norms. After all, every society has its factors related to the culture of the people, its historical experience and traditions, and worldview. So, with the help of specific historical methods, the dynamics of the development of legislation regarding the criminalization and decriminalization of prostitution in different countries became clear, and the features of the periods that influenced the criminalization and/or decriminalization of prostitution (including digital) were highlighted, and the features of the legislative changes were revealed.

The use of methods of system analysis made it possible to understand the structure and components of the legal system of different countries. In particular, thanks to these methods, the relationship between the legal system and the criminalization/decriminalization of digital prostitution became clear.

The application of the formal-dogmatic method in the analysis of external forms of expression of law and the interpretation of legal norms was necessary to clarify the content of the guiding principles of the adoption of legislative acts and norms of both international and national law, which contributed to the identification of certain regularities in the formation, functioning, and development of criminalization of legislation and decriminalization of digital prostitution in different countries of the world.

3. Recent Research and Findings

The international legal experience of criminalization and decriminalization of digital prostitution was studied by domestic and foreign scientists.

The Swedish model of combating prostitution was investigated by Zaitseva (2018) [5]. The lawyer concluded that the Swedish model for the legalization of prostitution

had become a third way next to the dilemma of "forbid/allow" and embodies a systemic approach to the fight against prostitution and the need to support women. Thus, the author emphasizes that the Swedish model is effective in what it is aimed at reducing the volume of prostitution and human trafficking.

The issue of the legalization of prostitution and pimping as a legal and social problem became the object of research by Mykhaylyn and Radutny (2020). According to the researchers, a person engaged in prostitution does not cross the line, after which there is a threat to society, condemnation, and persecution, but does not in any way affect the interests of society and the state; there is neither public danger nor public harm in engaging in prostitution, pimping, and related activities; the benefits of legalizing prostitution far outweigh the risks. Moreover, according to the authors, the advantages of the legalization of prostitution are the replenishment of the state budget at the expense of taxes received from the legalization of prostitution; the social welfare of prostitutes; reducing the spread of venereal diseases among the population due to medical examinations of prostitutes and passing blood tests; reduction of corruption in law enforcement agencies [6].

The legal, social and historical aspect of the legalization of the provision of sexual services was analyzed by Onishko (2020) [7].

Savinova (2012) analyzed the general provisions of criminal law support for the development of the information society in Ukraine [8].

Changes in the relationship between the police and street sex workers in New Zealand following the decriminalization of sex work in 2003 from the perspectives of sex workers, police, and support organizations were explored by Armstrong (2016) [9]. In particular, the author concludes that decriminalization has caused a dramatic change in the approach to the control of the sex business, and highlights the importance of these findings in the context of the global debate on prostitution law reform.

An article by Azzopardi (2021) [10] explores the legalization of prostitution in Malta. In particular, the author, referring to the position of the Maltese, noted that the legalization of prostitution will not solve the social problems that arise in society in connection with its criminalization. Jong B. (2021) analyzed the models of legalization of prostitution that should be used in Malta [11].

In their study, Koenig B., Murphy A., Johnston S., Pearson J., Knight R., Gilbert M., Shannon K., and Krusi K. (2022) analyzed the features of regulation of digital prostitution. The authors noted that online prostitution reduces the risk of workplace violence. However, little is known about how the criminalization of on-demand sex work and the regulation of online sex work sites shape the ability of men and non-binary sex workers to maintain their safety while receiving services online. The authors also concluded that alongside calls to decriminalize sex work,

there is a need to normalize sex work as a form of work, promote access to online ordering among men and non-binary sex workers, and develop standards for online sex work platforms in partnership with sex business workers who prioritize the safety of sex workers [12].

The issue of human rights in the context of sex work has been explored by Alexander (2010) [13].

The experience of decriminalization of sex work in South Africa was analyzed by Mgbako C., Bass K., Bunda E., Mehak Jamil, Jere Keys, and Lauren Melkus (2017) [15].

Machat S., Shannon K., Braschel M., Moreheart S., and Shira M. Goldenberg (2019) analyzed the experience of criminalizing prostitution in Canada. The authors concluded that there is no direct cause-and-effect relationship between the criminalization of prostitution and changes in working conditions and ensuring safety for workers. On the contrary, there are possible negative consequences for the safety of persons engaged in prostitution due to further shadow activities [16].

The work of Samuel Lee and Petra Persson (2022) examines the issue of criminalization and decriminalization of prostitution in detail. The author drew attention to the need for optimal regulation of sexual service markets and noted that the existence of a prostitution market with voluntary and forced prostitutes is possible. Because criminalization harms voluntary service providers and decriminalization promotes human trafficking [17].

Lucy Platt, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi, and Anna-Louise Crago (2018) paid more attention to the problematic issues of ensuring the health of women who provide sexual services [18].

Melanie C. Basil (2015) believes that it is not safe to say that the United States should legalize prostitution, but it is safe to say that the political model in the US is ineffective. The author draws attention to the shortcomings of the current model of regulation of prostitution in the USA. In particular, among the disadvantages is the social stigmatization of the "criminal" due to being forced to work in illegal conditions. Another disadvantage is that criminalized prostitution reduced the chances of identifying potential victims of human trafficking [19].

Yvette Tan (2022) analyzed the specifics of Singapore's legislation on the regulation of digital prostitution. Also, the issue of digital prostitution was investigated. Davis B. (2022) also analyzed the features of digital prostitution through the prism of the functioning of the OnlyFans platform [20].

So, as can be seen from the above analysis of the literature, the issue of criminalization and decriminalization of prostitution has been studied by both domestic and foreign scientists, however, the issue of international legal experience of criminalization or decriminalization of digital prostitution has not been sufficiently investigated, which necessitates a more detailed analysis of this issue.

4. Main Results

The creation of digital platforms that allow the posting of sexual content has changed the typical view of prostitution, allowing people without physical contact to earn money through the active use of such resources.

One of the well-known programs that promote digital prostitution is OnlyFans. Let's consider the features of the functioning of this platform in more detail. In general, this platform is a service where creators publish unique content and users subscribe to view it. In 2021, the platform changed its terms of use, which prohibits users from posting content that shows, promotes, advertises, or refers to "sexually explicit conduct." As before, it is forbidden to publish images of persons under the age of 18, or adults without their consent, promote sadomasochism, and zoophilia, and advertise drugs and weapons. The service justified such a step by "fulfilling the requirements of banking partners and payment service providers" and "ensuring the long-term operation of the platform" (Statement on only fan changes, 2021) [21]. However, these rules have been lifted due to the risk-free nature of such content.

At the same time, the publication of materials on the above-mentioned resource as a type of prostitution (digital prostitution) is considered differently in different countries. In most countries where OnlyFans is popular, there is no legal ban on such services, although people who post content on the platform still suffer because of it. So, in general, the content posted on the platform can be divided into erotic (aimed at satisfying aesthetic needs), sexual (aimed at satisfying sexual needs), and pornographic (contains details of sexual acts and "corrupts and distorts public morality"). All three types of content can be posted on OnlyFans, and depending on the legal regulation of each country, you can get jail time. As for the people who pay for this content, there is currently no responsibility for them.

Let's consider in more detail the key provisions of the legislation of different countries regarding the criminalization and decriminalization of prostitution.

New Zealand decriminalized prostitution in June 2003 by adopting a corresponding reform. Although New Zealand has a generally different political and social history, its experience makes New Zealand a fruitful case study for providing evidence of the positive effects of decriminalization. During the New Zealand reform, a committee representing a range of sectors, including sex workers, the faith community, and women, was established and chaired by a former police commissioner. The committee concluded that decriminalization "has had a notable impact on protecting the right of sex workers to refuse specific clients and practices, mainly by empowering sex workers by decriminalizing their work." Research conducted in New Zealand after decriminalization suggests that sex workers have better working conditions, better

access to health services, measures to stop the spread of disease and better relations with the police, improved access to justice when they are victims of crime, and increased confidence and well-being (Mgbak, Bass, Bundra, Mehak Jamil, Jere Keys, Lauren Melkus, 2017) [15].

The model of criminalization of prostitution, which originated in Sweden, is currently known and used in other countries as the Swedish model. In general, this Swedish model is a legal concept aimed at combating demand as the main reason for the existence of prostitution. This system was introduced in Sweden in 1999 and provides for a criminal defendant existence for pimps and clients of prostitution, but exempts prostituted persons from responsibility, offering them help to get out of prostitution and various types of support, including psychological, legal, and material. A key difference of the Scandinavian approach is the focus on customers/buyers - those who have been in the shadows all these years. That is, there is a change in the established perception of prostitution: criminals are not recognized as criminals who are pushed by poverty and systemic inequality to sell their bodies, but as "customers" who create demand. There has been a shift from perceptions of voluntary prostitution to the reality of millions of poor women and girls being forced into prostitution because of poverty, blackmail, threats, or hopelessness. It is quite logical to punish the client in the form of a fine or imprisonment (up to 6 months in Sweden). Pimping and mediation in human trafficking, according to the Scandinavian model, are recognized as crimes (Zaitseva, 2018) [15].

Prostitution is currently criminalized in Malta. However, the issue of applying the northern model of decriminalization of prostitution is on the agenda. Thus, this model decriminalizes prostitutes and instead criminalizes their traffickers and clients (Azzopardi, 2021). Services such as pimping and running brothels will also remain illegal. This means that the work will not be illegal, but the use of services will be. At the same time, there is an ongoing debate in Malta over the application of the Finnish model, which distinguishes between willing sex workers and those working under the guidance of a pimp, minors, or victims of human trafficking, and stipulates that it is legal to both buy and provide sex – services if a person works individually. Such policies allow voluntary sex work to continue to exist, rather than pushing it underground, making it unsafe (Jong, 2021) [11].

In 2014, Canada introduced the criminalization of terminal demand (the Protection of Communities and Exploited Persons Act (PCEPA)), criminalizing the purchase of sexual services while leaving the sale of sexual services legal (Machat S., Shannon K., Braschel M., Moreheart S., Shira M. Goldenberg, 2019) [16].

South Africa Prostitution is currently criminalized, but the possibility of decriminalizing prostitution is being considered.

In Singapore, the production, transmission, and distribution of obscene material are widely recognized as not meeting the moral standards and norms of Singapore (Yvette Tan, 2022) [20].

It is worth noting that according to the UN Convention on Combating Trafficking in Human Beings and the Exploitation of Prostitution by Third Parties, "prostitution and the evil that accompanies it are incompatible with the dignity and value of the human person and threaten the well-being of the person, family and society" (Convention on the Elimination of All Forms of Discrimination Against Women. United Nations. Volume 11. Posted 1979/12/18) [2].

This shows that the international community recognizes that human trafficking and prostitution harm and threaten both the prostituted person and the entire society, emphasizing that the prostituted person is the victim. Even if individuals, for some reason, say they enjoy selling their bodies, that does not justify the violence inflicted on all other prostituted persons or the systemic inequality between women and men that drives women to do so.

In addition, the development of a separate policy to reduce human rights violations worldwide by persons engaged in the sex business indicates the presence of a single goal among states both in digital and in prostitution in its usual sense - avoiding human rights violations and combating sex trafficking (Amnesty International policy on state obligations to respect, protect and fulfill the human rights of sex workers, 2016) [14].

Thus, international legal experience shows that there are different approaches to the legalization (criminalization) and decriminalization of prostitution, and mostly it is aimed at ensuring human rights and bringing people engaged in prostitution (both performers and buyers of such services) out of the shadows.

5. Conclusions

1. In connection with the new possibilities of digital transformation, it became possible to use digital resources to engage in prostitution in its non-classical sense, but with the help of placing appropriate content on special platforms. At the same time, posting erotic, sexual, and pornographic content is possible. Depending on the content, liability may arise in many countries.

2. The issue of legalization (decriminalization) of sex work (including on the Internet) is loudly discussed in many countries. Among the advantages is the safety of sex workers, and the taxation of activities (persons posting pornographic content on separate platforms cannot pay taxes for inherently illegal activities).

3. On the example of the Swedish and Finnish models, as well as the experience of the legalization (criminalization) of prostitution in New Zealand, Singapore, Canada, and

other countries, it can be concluded that the regulation of such activities is based on the analysis of prerequisites, key factors of interaction between the state and society, as well as the main threats for persons carrying out such activities.

4. The main goal of criminalization and decriminalization of prostitution (including digital) is to ensure the rights of persons engaged in such activities and fight against the sex trade and pimping.

Concerning further scientific research on digital prostitution, it is worth analyzing the possibilities of legal regulation of the use of information platforms on which pornographic content is posted, as well as the establishment of restrictions for persons carrying out activities on such platforms.

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