

ANALYSIS

OF CURRENT LEGAL FRAME
IN NORTH MACEDONIA
REGARDING SEX WORKERS'
DIGITAL RIGHTS AND SECURITY



ANALYSIS OF CURRENT LEGAL FRAME IN NORTH MACEDONIA REGARDING SEX WORKERS' DIGITAL RIGHTS AND SECURITY



THE FIRST SEX WORKERS
COLLECTIVE IN THE BALKANS



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CONTENTS:



1. Introduction	5
2. Methodology	7
3. International experience and standards regarding sex workers' digital rights and digital security	9
3.1. Digital gender-based violence	10
3.2. Rights to privacy	13
3.3. Personal data protection	15
3.4. Unfair working conditions on online platforms	16
3.5. Freedom of speech and association	18
4. National context: Conditions and factors that affect digital sex work in North Macedonia	23
4.1. Sex work criminalization. Implications for sex workers' rights and access to justice	25
4.2. Conditions for offering sex services online	27
4.3. Digital gender-based violence	34
4.4. Personal data protection	37
4.4. Freedom of expression	40
5. Conclusions	44
6. Recommendations	52
7. Bibliography	55

1. --- INTRODUCTION

This analysis has the purpose of initiating a discussion regarding the human rights of marginalized communities, primarily sex workers, in the digital space, with particular emphasis on digital rights and digital security. The term digital rights refers to human rights in the digital sphere, where the right to privacy, freedom of expression, equality and other rights are central, which in the digital area include several segments that are continuously developing, such as the right to information about the amount of data and the manner of their use, the right to opt out, the right to control who uses one's personal data, for what purpose and in what manner, the right to transparency and participation in decision-making pertaining to the digital sphere, the right to access the Internet and online services, protection against hate speech and misinformation, the right to an accessible legal remedy in case of violation of digital rights, etc. The right to privacy as a digital right, apart from the elements related to personal data, also entails the right to anonymity, the right to a private/encrypted communication, i.e. protection against tapping and monitoring of private messages. The sphere of digital rights is an entirely new field of work in North Macedonia, which, like all other fields, has its own peculiarities that need to be properly understood, in order to map potential violations of rights of marginalized groups such as sex workers. Digital safety for the purposes of this analysis encompasses the safety of individuals, i.e. sex workers who work online, which includes the safety of personal data and freedom from any form of violence that may occur online, but also in person (physical) violence that has started, is organized or is motivated by an online event.

The focus of the analysis is mapping of situations in which violations of rights and inequalities in the digital sphere do occur, analysis of the international standards and the national legal framework and its adequacy in terms of protection and promotion of digital rights and digital safety of sex workers. The criteria for assessing the adequacy of the legal framework are formed by defining sex workers' needs regarding the protection of their rights in the digital sphere, as well as evaluating the possibilities of the legal framework to respond to these needs, taking into account the practices of the institutions in the process of implementation of the legal framework, with particular focus on handling cases of marginalized groups' rights violations. Furthermore, the analysis evaluates the legal framework in relation to international standards in this field, and according to the findings, it provides recommendations coming from international networks of organizations working in the field of digital rights of sex workers, namely the European Alliance for the Rights of Sex Workers (ESWA¹).

The analysis is conducted in conditions in which, in general, digital rights and digitization remain an underdeveloped area in North Macedonia. Understanding the impact of digitization on sex workers' rights and other marginalized communities is also insufficiently explored. In addition, a key fact that is taken into account in the analysis is that sex work in North Macedonia is neither decriminalized nor legalized, i.e. there is no

¹ Learn more about ESWA on this [link](#). STAR-STAR is an ESWA member.

legal framework that regulates sex work as work. On the contrary, sex work is criminalized in North Macedonia.

The analysis also covers the topics of gender equality and gender-based violence online, hate speech and freedom of expression online, decriminalization of sex work, labor rights in the digital sphere (rights of workers on platforms), the right to privacy online, protection of personal data and other related topics. In a broader context, the analysis aims to uncover how the stigma pertaining to sex work and the lack of a legal framework for decriminalization negatively affect the digital rights and digital security of sex workers in North Macedonia. Hence, this analysis can serve as yet another advocacy tool for the decriminalization of sex work, as the most appropriate model of regulation based on the dignity and human rights of sex workers. Additionally, the ways in which the marginalization and inequalities of sex workers and related marginalized groups are reinforced in the digital sphere is also a research question and area of interest.

The analysis was prepared for the needs of the Association for Support of Marginalized Workers STAR-STAR Skopje, within the frame of the project "Sex Workers' resilience in the digital age" - an initiative to strengthen the capacities of the organisation and those of sex workers to deal with threats in the digital sphere. The key findings and recommendations from this analysis will serve to define further activities of the Association aimed at the community itself and decision-makers as well.

2. _____ METHODOLOGY

The analysis is based on the Human Rights Framework, or more precisely the European Law on Human Rights, Equality and Non-Discrimination - a theoretical framework of gender equality taking into account substantive equality. The starting point of the analysis is the fact that the decriminalization of sex work is a unique model based on human rights, dignity and gender equality, a framework within which it is not only possible to improve the well-being of sex workers, but also the gender and sexual emancipation of the entire society.

First and foremost, the analysis maps the problems faced by sex workers in the digital sphere, such as violations of rights with emphasis on the right to privacy, protection of personal data, equality and protection against violence and discrimination, freedom of expression (protection from censorship and protection from hate speech), freedom of association and the right to work. The key issues were mapped by means of a focus group with sex workers and STAR-STAR's team, as well as by reviewing research in the field of international non-governmental organizations. In order to map the violations of sex workers' rights in the digital sphere in North Macedonia, data from the focus group, data from analyses and research of civil associations, reports from documenting cases and from proceedings before national and international bodies were utilized. Another sub-question of this topic was to determine the ways in which sex workers use the digital space to offer/give sex services, in order to determine the conditions, to evaluate their convenience and compliance with the needs of sex workers and to map risks for rights violations. A key limitation in this analysis is in fact the scarce data from sex workers from North Macedonia with regard to the way in which they utilize the digital space for sex work. In particular, there is a lack of data from sex workers who offer and provide sex services online. Hence, the analysis only covers platforms in which sex services are only offered, while the sex service itself is provided in person.

Furthermore, the analysis defines the international standards in this area of interest and establishes them as an analytical framework for assessing the minimum standards that national legislation should meet. The international instruments in the field are analyzed against the needs and problems of sex workers in the digital sphere. Five key subtopics are defined in this section, namely: 1. digital gender-based violence, 2. right to privacy, 3. protection of personal data, 4. unfair working conditions on online platforms, and 5. freedom of speech and association.

The analysis of the conditions regarding the rights of sex workers in the digital sphere in North Macedonia includes a preview, analysis and assessment of the national legislation and national policies in the field of digitization, digital security, protection of personal data, media, gender-based violence, freedom of expression and hate speech. The assessment is made against the analytical framework based on the needs and international standards. In order to obtain more detailed data in the field of digitization, digital security and personal data protection, an interview was conducted with an expert in the field. Reports and analyses of domestic and international institutions and

associations were reviewed as secondary data sources. Five additional subtopics are defined in this section: 1. criminalization of sex work, 2. conditions for offering sex services online, 3. digital gender-based violence, 4. personal data protection, and 5. freedom of expression.

The text rounds off with conclusions, which have been drawn from each chapter separately, as well as recommendations divided according to the stakeholders for whom they are intended.

3.

INTERNATIONAL EXPERIENCE AND STANDARDS REGARDING SEX WORKERS' DIGITAL RIGHTS AND DIGITAL SECURITY

Sex work today takes place in the digital sphere, whether it is just offering or both offering and providing sex services online. Unlike sex work on the street (at an open scene) or at a closed scene in brothels, clubs or private apartments, offering and/or providing services online is considered safer, i.e. digitization is generally viewed as beneficial for sex workers and the opportunities it offers are considered favorably. When offering sex services online there is no direct contact with clients, the police and third parties, such as pimps and abusers who want to take advantage of the marginalized position of sex workers. Sex workers have more time to decide whether to provide sex services to a particular client when the services are offered online, giving them more time to calculate the risks and assess whether a particular client is safe. In general, offering services online leaves more room for sex workers to negotiate with their clients when it comes to the use of protection (condoms), as well as to negotiate regarding the type of services, price, etc. When providing sex services online, such as webcam services, selling images and videos featuring sexual content, the risks of direct contact with customers are even further reduced. There are also benefits in terms of payment, in that by offering and providing sex services online, sex workers can arrange to be paid in advance via digital payment platforms. The benefits of offering and providing services online are even more prominent in countries where sex work is criminalized or not recognized as work. In such circumstances, sex workers working in the open scene directly expose themselves to risk of contact with the police, risk of criminal and/or misdemeanor sanctions, greater exposure to gender-based violence and hate violence, especially among transgender sex workers, exposure to public condemnation and mockery, extortion, blackmail and threats by pimps and more. However, this does not mean that by offering and providing sex services online, criminalization and other rights violations can be completely avoided altogether. Opportunities for online sex work have been particularly important in the context of the COVID-19 pandemic.

Nevertheless, the stigma surrounding sex workers and their marginalized position in society is also reflected in the digital sphere, displaying new ways of manifestation. In other words, the problems faced by sex workers and the violations of their rights are manifested in a different way in the digital sphere, while the causes of injustice remain the same. The digitization of sex work, although it can make sex work safer in certain aspects, cannot solve the problems faced by sex workers, which arise from the patriarchal value matrix and other values and practices that arise from it, such as gender-based violence, whorephobia, homophobia, sexism, transphobia and the lack of efficient and effective mechanisms for access to justice. For example, with online sex

work, one cannot be a victim of physical violence by a client, but you can be a victim of sexual abuse by means of visual material, as a specific form of sexual and psychological violence made possible by online communication technologies. From a privacy protection perspective, online sex work can be riskier than in-person sex work. Believing that technology is an easy solution to social problems is simply naive and wrong, so in relation to sex work we cannot consider that digitization alone will solve the problems of violating sex workers' human rights. On the contrary, techno-solutionism is harmful and dangerous when it does not take into account the complex social relations that affect the marginalization of a certain group.

The key problems sex workers face in the digital sphere can be divided into several categories: 1. digital gender-based violence, 2. right to privacy, 3. personal data protection, 4. unfair working conditions on online platforms and 5. freedom of speech and association.

3.1. Digital gender-based violence

This issue is related to the broader topic - gender equality online. Contrary to the wrongful belief that the digital world is gender-neutral, it is clear that gender inequality, gender bias and sexism are fundamental in the online sphere. Everything which is considered neutral usually reflects the norm of the majority, which is why even supposedly neutral software, algorithms and other technologies are based on gender stereotypes, that is, they are tools for reproduction of gender inequalities. "Oppressive concepts such as racism and (cis)sexism remain central in digital contexts." Claiming to be (gender) neutral makes it impossible to argue that "digital inequalities as entirely new problems that have only emerged due to technological advances as they are rooted in historical practices of surveillance and data processing that have long been used as tools of exploitation, colonialism, patriarchy and other forms of domination."

Gender norms and sexist worldviews are being transferred from the offline to the online sphere, since nothing has been done to prevent and change this. On the contrary, in the field of information technologies we are facing a huge gender gap, men are mainly the people who work and develop this area, and even if this is not the case, the employees in this sector are not more gender sensitive than everyone else. The processes of "machine learning", i.e. entering data into software, utilize the same common language that promotes and reinforces sexist attitudes and gender discrimination. In this area, the so-called algorithmic discrimination becomes more prominent, which results in unequal treatment, often based on gender, gender identity, race, and ethnicity, by algorithms used in automated decision-making technologies (for example, in employment, credit approval, and other services) and in biometric surveillance technologies (for example, face recognition²) etc.

On quite the contrary, "historians of technology have demonstrated time and time again that new technologies not only serve the interests of those in power, but they are also deliberately developed and exploited to support efforts of domination, policing, and surveillance. Whether by means of gender and racial classification schemes

² An example of this is a recent case in the Netherlands, where biometric surveillance technologies were found to perform worse when it comes to recognizing faces of women, and even worse when recognizing black people or non-white people in general. Therefore, if this technology is utilized to monitor misdemeanors, women and black people will be far more likely to be wrongfully accused of misdemeanors. In this way, the gender and racial biases of the offline criminal justice system are also enabled by the use of surveillance technologies.

or other methods, inequalities are embedded in the very foundations of digital infrastructure.” Historian of technology and gender Mar Hicks, in his essay “Sexism is a Feature, not a Bug”, explains the ways in which misogyny is embedded in technology and the online space.³ Ruha Benjamin, a sociologist and a university professor, states that “racism, whether in search results or in surveillance systems, is not a symptom or a result, but rather a prerequisite for the production of these technologies.”⁴ Hence, it is an issue pertaining to systemic inequalities and discrimination in technology and in the online space, not simply mistakes or exceptions that would be easily rectified.

Sex workers, especially women, transgender and gay sex workers, are considered to be the most notorious transgressors of gender norms, which results in social sanctions, stigma, exclusion, greater exposure to gender-based violence, and in many countries, criminalization by the laws and/or practice of the institutions. Gender inequalities and gender bias online especially affects their rights and safety in the online space. This is most noticeable in the field of digital gender-based violence and its ubiquitous form through the sexual abuse of visual material or sharing intimate images and videos without consent. Intimate relationships today also take place online, regardless of whether they are in the context of sex work or not. Sharing intimate photos, videos and messages with sexual partners is an integral part of a relationship. However, due to the unequal power relations resulting from double standards regarding sexuality, (trans)women do expose themselves to gender-based violence by sharing intimate materials with sexual partners. By sharing an intimate picture with your partner, there is a great imbalance of power, in which the environment is the main accomplice. (Trans) women depend on their partner’s good will and personal moral integrity not to share or publish it. Later on in the relationship, they can become hostages, forced stay in the relationship only to avoid the risk of the photos being published, accept offers against their will, and completely lose control over their intimate life.

All women and girls online can potentially encounter this type of violence, but due to the nature of the occupation, which involves offering and providing sex services online, sex workers are much more exposed to this type of gender-based violence. Whether they only offer or both, offer and provide sex services online, sharing and uploading materials with sexual content is part of the job of sex workers and they do it on a daily basis as part of the service or to attract clients. An additional risk is that the environment and family will find out that they are engaged in sex work, and for trans women and gay men there is also a risk of disclosure of their sexual orientation and gender identity. Quite frequently, clients share intimate materials with third parties without consent, upload them onto other platforms, and use them to threaten and blackmail sex workers, extorting money, sexual services, etc. from them. Although there are ways sex workers can reduce the risk of sexual abuse by visual materials, such as not posting photos with their face, blurring the face, using generic photos on advertising platforms, sending photos and videos on encrypted platforms for communication where there is a possibility of being visible only for a short period of time, etc. However, problems do also arise even when using these methods of protection, all the same. For example, they risk losing a client if they do not send a photo with a their face, the platform they use to communicate with the client does not have such options, or they themselves do not

3 [Mullaney, S.T.](#), [Peters, B.](#), [Hicks, M.](#), Philip, K., “Your Computer is on Fire”, The MIT Press, 2021.

4 Benjamin, Ruha, “Race after Technology. Abolitionist Tools for the New Jim Code”. Polity, 2019.

know that such opportunities exist or do not know how to use them. Understandably, these technologies do not offer absolute protection, customers who intend and want to share these materials without consent, also have numerous opportunities at their disposal to do so.

In terms of protection from this type of violence, the sexist attitudes of blaming the victim, “it’s her own fault” for sharing the photos, publishing them, sending them to someone, etc., are particularly impactful, i.e. not accepting the concept of consent as crucial in sexual and intimate relationships, whether it is a relationship between a sex worker and a client, intimate partners, friends or spouses. Blaming victims makes it impossible for institutions and victims themselves to recognize these acts as violence and deters victims from reporting it. Instead of condemning and shaming the perpetrator, it is the victims who blame and shame themselves.

The Istanbul Convention or the Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence⁵ is a key regional document that regulates this area. The Convention explicitly recognizes violence against women as gender-based, recognizes sexual harassment, other forms of sexual violence, promotes the concept of consent as the key to determining whether a certain act constitutes violence, provides for a series of measures to protect victims of sexual violence, etc. The Convention imposes an obligation to implement measures “in order to eradicate prejudices, customs, traditions and all other practices based on the idea of inferiority of women or on stereotypical roles for women and men.”⁶ In the implementation of the Convention, discrimination on any basis is strictly prohibited, including discrimination based on “sex, gender, race, color, language, religion, political or other opinion, national or social background, association with a national minority, property, birth, sexual orientation, gender identity, health condition, disability, marital status, migrant or refugee status, age, or other status.”⁷ Hence, sex workers have a significant benefit from the ratification and proper implementation of the Istanbul Convention. The convention has been ratified by 39 countries, including the European Union,⁸ by which it can be considered as a European standard in the field of gender-based violence.

Hate speech is another form of online violence, often gender-based, irrespective of whether it is directed at a specific sex worker, cis or trans woman, or an entire community. Sex workers who are also activists, trans and/or gay sex workers are particularly exposed to this form of violence. Hate speech based on gender, sexual orientation and gender identity is a form of psychological and verbal violence, but if it is frequent and goes unsanctioned, it becomes a form of social violence because members of marginalized communities are exposed to messages that they themselves and their identity are unacceptable and hated on a daily basis, that is, they live in a threatening and hostile environment that constantly violates the dignity of all members of the group.

Online gender-based violence and hate speech make the online space unsafe for sex workers. They experience stress, fear and survive traumatic experiences, especially when sexual and visual materials of them are published without their knowledge and consent, by which the environment, parents, children and other relatives or employers find out that they are sex workers. Due to this abuse, they can also be victimized,

5 Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence, Istanbul, 2011.

6 Article 12 Paragraph 1, Istanbul Convention, 2011.

7 Article 4 Paragraph 3, Istanbul Convention, 2011.

8 Council of Europe’s webpage on the Istanbul Convention. Available [here](#).

that is, their other rights may be violated, such as losing employment, the materials being used against them in child custody proceedings or the exercise of other social rights, etc.

3.2. Right to privacy

Privacy is a fundamental human right that encompasses the right to respect private and family life, home and correspondence. The only interference in the exercise of this right, i.e. limitation is possible only if it is provided by law as a measure that is in the interest of state and public security, prevention of crimes, protection of health, morals, freedoms and rights of others.⁹ When assessing the permissibility and legality of the intervention, the principle of proportionality applies.

The absence of sex work decriminalization involves a violation of the right to privacy in itself. Not recognizing sex work as work is the result of moralizing interference in privacy, bodily autonomy, self-determination and the right to make independent decisions related to sexuality. Decriminalization means that sex work is treated like any other work, the dignity of sex workers is respected, they are protected from violence and they are provided with safe and fair working conditions and protection at the workplace in accordance with the peculiarities of the profession. Hence, decriminalization is the only model that can best protect the right to privacy, i.e. the right to make free decisions regarding sexuality, the body, the choice of occupation, etc. In circumstances in which sex work is not decriminalized, it is not possible to expect that privacy will be respected in the online space as well.

Privacy is vital for all users in the online space, and it is especially important for sex workers because the violation of the right to privacy means the risk of violation of other rights and loss of means of livelihood. “For sex workers, privacy means control over their personal data, setting personal and professional boundaries, and living and working more safely.”¹⁰ The right to privacy in the digital sphere includes the right to be anonymous online. It is especially important for sex workers that the profiles they use for sex work cannot be linked to them personally, especially if they work in countries where sex work is criminalized.

One of the problems related to the right to privacy in the digital sphere is surveillance technologies, namely the surveillance of private communication on direct messaging platforms (communication that is not encrypted), which most strikingly violates the right to privacy, and surveillance technologies used in public space to secure facilities and the like. If the offline communication, i.e. correspondence is subject to protection with the right to privacy, it is expected that online communication on platforms intended for direct messaging and e-mail will also have such protection. When private communication is the subject of surveillance, numerous additional questions arise, such as: “Who can monitor this communication, in what way and under what conditions they use it and can use it?”, “Can it be used against the person in proceedings before a court of law or other state authority and under what conditions?” These questions are immensely important for sex workers, especially in countries where sex work is criminalized or not regulated as occupation, but also in general, because the stigma

9 Article 8, European Human Rights Convention

10 “Contested and Misunderstood: The Value of Privacy and Data Protection for Sex Workers”, European Sex Workers’ Rights Alliance, 2022, 22.

against sex workers is universal, so they run the risk of facing violence and stigma if the environment, institutions and families find out about their engagement sex work.

Some of the platforms that do not have encrypted communication also utilize algorithms to prevent sex work, so if they detect a private communication related to offering and providing sex services, the server deletes/bans the sex worker's profile (e.g. Grindr). These measures are part of the so-called deplatforming of sex work, which means taking a series of actions by the platforms to prevent them from being used for offering and/or providing sex services. In some cases, it can be a question of discriminatory and moralizing policy of the platform itself, but most often it is the result of public policies, by which the platforms can bear responsibility if they are utilized to organize human trafficking. These laws do not distinguish between voluntary sex work and human trafficking, thus criminalizing sex workers. An example of such a policy is the Fight Online Sex Trafficking Act/Stop Enabling Sex Traffickers Act (FOSTA/SESTA¹¹) in 2018 in the USA. The law has been repeatedly criticized by sex workers' associations and digital rights movements. According to the Law, the platforms are directly responsible for enabling human trafficking for sexual exploitation, and sexual exploitation also implies promoting and organizing prostitution, by which there is no clear distinction between the terms, to the detriment of sex workers. The law is an example of techno-solutionism, i.e. an attempt to solve complex social problems with simple technological solutions, and that is precisely why, according to the European Sex Workers Rights Alliance, the Law is ineffective in the prevention of human trafficking and perpetuates the dangerous equation between sex work with human trafficking,¹² causes censorship, deterioration of sex workers' working conditions, thus making them more vulnerable to sexual abuse. The negative impact of the Law is felt outside of the US, given that a great number of platforms that are used globally are registered in the US. For example, if you are a sex worker from New Zealand, you cannot benefit from the decriminalization of sex work in your country if you want to offer and provide services on a platform which is registered in the US, i.e. in the digital sphere you will be subject to rights violations (for example, closing and/or banning the profile, confiscation of financial means, etc.)

Even if it were not for of laws such as FOSTA/SESTA that directly discriminate against sex workers and criminalize online sex work, there are policies aimed at protecting children from online sexual abuse that also include measures that involve interference with the right to privacy. In 2022, the European Commission published the text of the Draft Regulation on the Prevention and Fight Against Sexual Abuse of Children.¹³ The proposal has been severely criticized by associations and digital rights experts, among other things, because it allows for temporary interference in the privacy of both children and adults by means of general surveillance measures, infringing the right to encrypted communication, and by doing so additionally limiting the possibilities for effective protection of children from sexual violence online. These policies disproportionately negatively affect sex workers as a marginalized community in the online space as well.

Policies to protect children from online sexual abuse require platforms to impose stricter criteria on creators of sexual content online, the likes of which include sex workers. Content creators are required to submit passport and ID photos, headshots,

¹¹ Fight Against Online Trafficking Act, 2018.

¹² The Impact of Online Censorship and Digital Discrimination on Sex Workers, ESWA, 2022, 2.

¹³ Proposal for a Regulation of the European Parliament and of the Council Laying Down Rules to Prevent and Combat Child Sexual Abuse, Brussels, 11.05.2022.

etc. to be able to use these platforms in order to verify that they are not minors. By doing so, the platforms have databases of personal documents of sex workers, for which there is a possibility of those documents being shared with law enforcement authorities and used in proceedings before state authorities, to the detriment of the workers. It is therefore necessary to find other ways to verify that creators of sexual content are of legal age, without requiring copies of ID documents from all creators.

Surveillance is widely used in the digital sphere in search engines, digital service platforms (private and public), data storage platforms (such as cloud services), online commerce, service stores, social networks, etc. In general, the entire Internet infrastructure is subject to surveillance by private multinational companies. These companies collect data, track and profile users and in an insufficiently regulated and monitored manner dispose of this data, on which they base their profits. According to experts, the authorities' measures to regulate their work in the direction of respecting privacy are ineffective, because the fines are not substantial enough to deter them on the one hand, and on the other hand, their business model is based on disregarding privacy. Sex workers are again disproportionately affected, as private companies have the information that they engage in sex work. Because of online tracking, sex workers cannot remain anonymous. For example, a sex worker offers services on a platform that they use for work and communicates with clients, but due to tracking, the profile of the sex worker appears on other platforms and social networks that they do not use for that purpose.¹⁴ In this way, clients learn their real name and can enter the "real" life of a sex worker. This situation increases the risks of violence, abuse, threats, blackmail and the like.

Surveillance technologies in public places also negatively affect the privacy of sex workers. These technologies directly intrude privacy and collect personal data. On the one hand, these technologies must be used only when it is absolutely necessary, and on the other hand, the access and the way of use of the materials and data that is collected must be precisely and strictly regulated. Filming in public spaces means revealing sex workers' status, and further risking that these materials will be published and used in criminal or misdemeanor proceedings against them.

3.3. Personal data protection

The personal data protection is an integral part of the right to privacy, but this section will elaborate the needs for protection of personal data collected by state authorities. Most countries in Europe have solid data protection legislation due to the EU General Data Protection Regulation.¹⁵

State authorities collect personal data about sex workers in various situations. In countries where sex work is decriminalized or legalized, sex workers usually have to register their occupation with an authority or register as holders of social and health insurance rights based on their engagement as sex workers. Personal data about sex workers is also collected in the healthcare sector as part of programs for the prevention against HIV and other sexually transmitted infections. If the social protection system recognizes sex workers, it will also collect personal data about them. These data are a special category of sensitive data because they reveal the status of a sex worker, and

¹⁴ Focus group data

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)

they can also include other categories, such as data on health status, sexual orientation, gender identity, ethnicity, etc., and as such, according to the EU Regulation, they enjoy a higher level of protection.

In countries where sex work is criminalized, whether it is a question of misdemeanors or crimes directly or indirectly targeting sex workers, personal data will be collected by law enforcement agencies such as the police, courts, prosecutors, ministries of justice, etc. In these cases, the risks of violating the privacy and right to protection of personal data of sex workers are the greatest. The very fact that the state penalizes the engagement in sex work is a violation of privacy. In these proceedings, the personal data of sex workers is transferred from one authority to another, being made publicly available in courtrooms, and can also be published by the media reporting on the proceedings, etc.

It is particularly important for sex workers to be certain that personal data collected by institutions (with the exception of law enforcement agencies that collect data for the purpose of punishing sex workers) will be secure, not released, transferred and used by other authorities in a way and for a purpose different from the one for which they were given and that they will not be used in proceedings against them in order to limit their rights. Hence, the protection of personal data collected by state authorities and their treatment as particularly sensitive data should be a key part of models for sex work decriminalization.

The most common types of abuse occur when the data from the authority where sex workers register their activity is handed over to other authorities at their request and used to sex workers' detriment. For example, at the request of the court, the registration authority provides information on whether someone is registered as a sex worker and this information is used in child custody proceedings as an argument that just because they are engaged in sex work, the person is not a good parent.

3.4. Unfair working conditions on online platforms

In this section, sex work online will be viewed through the prism of labor rights. Online sex workers are part of the broader category of platform workers¹⁶ who are already recognized as a separate category of workers, part of the so-called gig economy. "Working on a platform or platform work is a form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems, or provide specific services in exchange for payment."¹⁷ Online platforms are in most cases de facto employers, whether it is a platform for sex services, transportation or food delivery, domestic workers, IT services, consulting services, etc. Hence, all the rights that workers have offline must also apply online in employment via such platforms. Even if some of these workers are considered self-employed, they still have their fundamental rights to social security, health insurance, unemployment insurance, paid leave, etc. Most frequently, platform workers work without employment contracts, and at the expense of flexibility, they face a lack of financial security and lack of the opportunity to exercise labor rights. By not recognizing platform workers as workers, holders of labor rights, a group of vulnerable workers is created who work in bad conditions, have no power to negotiate (they have no right to a Union), and unfair working conditions can easily turn into exploitation.

Sex workers are in a certain sense platform workers. The situation with platform sex work is even riskier because of the stigma attached to this profession and the mor-

16 Translated term "platform workers"

17 EU website for platform workers available at this [link](#).

alizing laws and policies that regulate or influence it. The European Sex Workers' Rights Alliance maps the unfair conditions of sex work on platforms and criticizes the EU's Proposal for Platform Workers Directive as "a missed opportunity to engage sex workers, the group most at risk of exploitation and poor working conditions."¹⁸ They also criticize the failure to cover platforms for advertising services as these platforms also largely regulate the conditions in which (sex) work takes place.

Sex work on platforms also has numerous advantages compared to traditional ways of doing sex work. On the platforms, sex workers can offer different types of sex services, and some do not even have to engage in offline sex work at all and meet clients in person. Online sex services include the sale of visual sexual materials, such as content according to customer requests, the operation of live cams, subscription to profiles that share erotic content, direct communication with customers and sending materials with pornographic content, in addition to advertising offline services. The platforms decide under what conditions the sex workers will work on the platform, what services they will provide, in what way, how much they will earn,¹⁹ as well as what kind of protection mechanisms they are to put in place or not. Given that sex work is stigmatized and criminalized almost globally, it is easy for these platforms to evade responsibility regarding the health and safety of sex workers. Platforms also decide what data they collect about sex workers and clients and how it is used further on. Sex workers have no power to negotiate the terms, it all operates on a take-it-or-leave basis, nor are they involved in the development of the platform. On the contrary, in order to generate more profit, platforms adapt their terms to the needs of customers. For example, most of the time, platforms do not ask clients to open an account, while sex workers are asked to provide personal information, such as copies of IDs or passports. Due to the low power of sex workers and their marginalized position, they join these platforms, even if they dislike the terms or agree with all of them, because they would risk losing their livelihood.

The European Sex Workers Rights Alliance in the publication "Conditions, Control and Consent: Exploring the Effect of Platformization of Sex Work" maps the following problems and risks of platform sex work: 1. lack of transparency by platforms in terms of which data is collected and how it is stored and used, 2. failure to take measures to prevent and protect against sexual abuse via visual materials, 3. worse conditions on the platforms in countries where sex work is criminalized, 4. lack of agency of sex workers, understood as control over working conditions and practices and the opportunity to express disagreement in order to create a change in one's own situation, 5. lack of accessible and transparent compliance procedures in case of closure, blocking of profiles, seizure of assets, etc., 6. lack of mechanisms for protection against violence and abuse (e.g. reporting problems with clients and sharing information about them) and 7. payment problems (discrimination of sex workers by online payment platforms).

The decriminalization of sex work is the key to improving the working conditions of the platforms as well. The power of sex workers in relation to employers and/or other third parties involved in the sex industry increases under conditions of decriminalization, which gives them the opportunity to organize in trade unions, to advocate for better conditions, and for the state to protect and promote women workers' rights. In most countries we have laws that criminalize third parties (pimps and other entities) involved in sex work, so platforms can be accused of facilitating or promoting prostitution. This

¹⁸ "Conditions, Control and Consent: Exploring the Impact of Platformisation of Sex Work", ESWA, 2023, 2.

¹⁹ This is the case with platforms that allow profile subscription.

situation prevents platforms from transparently indicating that they serve as mediator in sex work, from publishing information on safety and health protection at work, as well as from introducing technologies to promote the same. In decriminalization, states can impose obligations on platforms to publish such information and introduce security technologies, such as a ban on saving sexual content, spaces for communication between sex workers to share experiences with clients, information about clients to respect the principle of consent, etc. Decriminalization will also overcome problems with online payments. The European Sex Workers Rights Alliance reported cases of the practice of freezing sex workers' financial assets or shutting down their profiles by the largest online payment services such as PayPal, MasterCard and Visa, thereby directly plunging them into poverty and unsafe working conditions. Such practices by these companies would be illegal and discriminatory if sex work were decriminalized.

3.5. Freedom of speech and association

Prohibitions on the promotion and facilitation of prostitution or human trafficking resulting from the harmful conflation of the two terms result in the restriction of sex workers' freedom of expression and association online. In this area, problems with social media are most striking. A key topic in this area is content moderation by social networking sites, which raises numerous questions and ethical dilemmas. Content moderation is mostly done with the help of algorithms, which in itself is problematic because different words can be used in different contexts. Content moderation is the regulation of freedom of expression as a key right in democratic societies, and platforms should invest in this area and ensure well-trained and sensitive staff to moderate content, in addition to algorithms. On the one hand, content moderation should not lead to censorship and restriction of freedom of speech, and on the other hand, the spread of extremist ideas, such as hate speech, child pornography, etc., must not be allowed. However, when it comes to sex workers, the actual situation is reversed. Social networks censor and allow the spread of (cis)sexist, transphobic, racist and homophobic attitudes. On social media (e.g. Twitter - X) the very word "sex work" can be subject to censorship, as well as photos related to the promotion of sex work as work.²⁰ ESWA's research shows that sex workers are disproportionately more censored by the ban on publishing content with nudity, i.e. the persistence of double standards.²¹ Sex workers report that their photos which did not feature explicit nudity were censored, while photos that contained far more nudity, but were not published by sex workers were not subject to censorship. "While sex workers are banned for disclosing information about sex work or publishing nudity, cases of gender-based violence, such as rape threats directed at sex workers, go unpunished."²² Social networks also use algorithms to promote content, thus content pertaining to sex work, even if it is not censored, will not attain adequate visibility.

Article 10 of the ECHR guarantees the freedom of expression of every person. "This right includes freedom of opinion and freedom to receive and convey information or ideas, without interference by public authority, regardless of borders."²³ Freedom of expression can only be limited in a democratic society as a measure necessary for state

20 Focus group data.

21 "The Impact of Online Censorship & Digital Discrimination on Sex Workers", ESWA, 2022, 8.

22 Ibid.

23 Article 10 Paragraph 1 ECHR.

security, public safety, protection of order and prevention of disorder and crime, protection of health or morals, reputation or rights of others, etc.²⁴ When assessing the permissibility of the restriction, the principle of proportionality is applied. However, even when applying the principle of proportionality, “it is necessary that human rights remain in our focus, because their devaluation is very likely if we have the interests expressed by the restriction in the foreground. The imprecise and broad definition of the terms “public interest, national security, health, morality and rights of others” is a risk for the effective protection of human rights. Morality as a reason for restriction is perhaps the most controversial concept, if we take into account that in a pluralistic society there are different notions of its content and meaning.”²⁵ The public interest is very commonly equated in practice with the interest of the majority.²⁶ If the authorities adhere to this notion of public interest or morality, they risk limiting the freedom of expression of all marginalized groups. Precisely because of the relativity of the concept of morality, the ECHR has a practice of giving a large margin of discretion to state authorities as they are best positioned to assess what constitutes a violation of morality in a certain context. However, in order to avoid arbitrariness, the Court instructs countries that they must prove that there is actual, not merely presumed, harm to morals.²⁷ Hence, the authorities’ promotion of sex work as work can easily be restricted as contrary to morality or public interest. The ECHR has repeatedly emphasized that freedom of expression is “one of the essential foundations of a democratic society, a basic prerequisite for its progress and for the self-realization of each individual.”²⁸ Article 10 protects information and ideas that “shock, offend or disturb the State or any segment of the population”²⁹, it should ensure plurality, not conformity and single-mindedness. Hence, the promotion of sex work as work, the demands for decriminalization as a unique model based on dignity and human rights, represent progressive ideas that are protected by freedom of expression and must not be limited due to relative concepts such as morality and public interest. On the contrary, the promotion of the human rights of sex workers, not only must not be limited, but it should also be an obligation for states.

Freedom of expression encompasses the freedom to receive information and ideas and the right to access information. Due to the censorship of content regarding sex work online, this aspect of sex workers’ freedom of expression is also limited. By closing pages of sex workers’ associations, removing content related to sex work, access to content on human rights, safety and health protection, information on recognition and prevention of gender-based violence and information on where and how to report it, renders them prevented from accessing legal, social and health services. Hence, moralizing policies that equate sex work with human trafficking and sexual exploitation, or criminalize sex work, directly affect sex workers’ access to evidence-based information.

Online censorship also infringes the right of association of sex workers online and the actions of their associations and other associations that protect the rights of sex

24 Article 10 Paragraph 2 ECHR.

25 Drndarevska, D., “The Standards of European Law for Prevention and Protection Against Discrimination Based on Sexual Orientation and Gender Identity”, 2019, 76.

26 Tsakyrakis, S., “Proportionality: An Assault on Human Rights?”, *International Journal of Constitutional Law*, 7(3), 468–493.

27 Bychawska-Siniarska, D., “Protecting the Right to Freedom of Expression, A Handbook for Legal Practitioners”, Council of Europe, 2017, 62.

28 *Thoma v. Luxembourg*, 2001; *Maronek v. Slovakia*, 2001; *Dichand and Others v. Austria*, 2002 and other.

29 *I.A. v. Turkey*, 2005.

workers. Association of sex workers is extremely important for their safety and well-being, and it also matters when it comes to political organizing to articulate demands for decriminalization and respect for rights. In the ESWA research,³⁰ the problem regarding lack of transparency in the removal of content and blocking profiles, ineffectiveness of complaint procedures, and in some cases no option of complaint is emphasized. For sex workers, profile removal can mean losing contact with clients, which not only threatens their livelihood, but also losing contact with support networks. Sex worker associations devote significant resources to building their online social media profiles, often in order to be able to communicate with the community and publish important safety information, as well as information on political organizing. Moreover, these associations are mostly small and do not have substantial resources, which is why the loss of their profiles has a great negative impact on the exercise of freedom of association and expression rights.

Protection against hate speech and speech that incites violence are a segment of freedom of expression, i.e. they do not fall under the category of protected speech. Speech that incites violence means speech that deliberately and directly uses words that call for violence (such as calls for rape, extermination, beating, killing of LGBTI, trans women, sex workers, etc.) or speech by which there is a real risk of causing offline violence (for example, a call to beat up or attack a specific person or organization). The ban on hate speech also entails speech that contains serious defamation, insults based on prejudice, even when there is no direct call for violence,³¹ especially towards minority communities. The Weidland and Others v. Sweden ruling is the most significant ruling regarding homophobic and transphobic speech, with which the Court decided not to protect speech that portrayed LGBTI people as immoral, harmful to society and carriers of HIV. A significant issue is liability for user-generated content. In the case of *Delphi v. Estonia*,³² the Court found that online media are responsible for hate speech published in comments on their content.

In particular, Holocaust denial and references to Nazi ideology, which are often used in hate speech against gender and sexual minorities, are exempt from the protection of freedom of expression. Hence, speech like “only Hitler for you” should be more severely sanctioned and criminalized.

Apart from the ECHR’s practice, the Council of Europe, that is, the Committee of Ministers addresses the problem of hate speech in several recommendations and requires comprehensive measures for prevention and protection in several different areas. In 2022, the Committee of Ministers gave a new recommendation³³ to combat hate speech. Some of the key recommendations regarding the legal framework for hate speech online, important for this analysis, include: 1. making clear and predictable provisions for the quick and effective removal of hate speech on the Internet that is prohibited under criminal, civil or administrative law, 2. defining and delimiting the roles and responsibilities of Internet intermediaries, the duties and responsibilities of state and non-state actors in addressing online hate speech and creating clear rules and procedures for effective cooperation with and between those actors in terms of

30 “The Impact of Online Censorship and Digital Discrimination on Sex Workers”, ESWA, 2022, 17.

31 *Vejdeland and Others v. Sweden*, 2012.

32 *Delfi v. Estonia*, 2015.

33 Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on Combating Hate Speech (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers)

speech assessment and investigation of hate speech on the Internet, 3. establishing mechanisms for reporting cases of hate speech on the Internet to public authorities and private actors, including Internet intermediaries and clear rules for processing such reports, 4. Internet intermediaries to guarantee the right of users of an effective remedy through transparent oversight and timely, accessible and fair complaint mechanisms, which are ultimately subject to independent judicial review, 5. establishing the duties of Internet intermediaries by law to promptly process reports of hate speech, removal of hate speech without delay, respecting privacy and data protection requirements, providing evidence related to hate speech prohibited by criminal law, submitting to law enforcement authorities, based on an order from a competent authority, evidence of criminal hate speech and other subscribers in cases where competent authorities have assessed that hate speech on the Internet violates the law.

Among the instruments of the Council of Europe, the most important one in the area of criminal prosecution of hate speech is the so-called Budapest Convention or the Convention on Cybercrime of the Council of Europe³⁴ in 2001 and the Additional Protocol on the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems³⁵ in 2003. These instruments are the foundation for international cooperation for the effective prevention and prosecution of hate speech committed through a computer system.

The European Union has the most progressive legislation in this area, especially with the adoption of the Digital Services Act³⁶ in 2022. Since it is a new instrument, the effects of its implementation should be monitored and analyzed. The Digital Services Act imposes greater responsibility on Internet intermediaries, search engines, platforms and social networks for hate speech and other human rights violations, such as an obligation for clear reporting and action systems, priority treatment of reports from trusted whistleblowers, feedback information following reports from users and broad obligations in terms of transparency.³⁷ The act also stipulates obligations regarding the prevention of disinformation and content that have effects on gender-based violence. Based on the Act, the European Commission can initiate proceedings for violation of the obligations of the Act by the platforms and impose fines of a maximum of 6% of the annual income at the world level.³⁸

The conditions in online media are also key to protecting against hate speech, respecting the dignity and privacy of sex workers. Online media are not regulated in the same way as traditional media, and in some countries there is no regulation at all (for example, North Macedonia). Hence, hate speech, violations of privacy, sensationalist and propagandistic reporting regarding sex work and other related topics such as gender equality, trans rights, HIV, etc., are present in online media. Online media are covered by the aforementioned instruments, but apart from regulation by criminal law, the operation of these media should be regulated by civil laws and be subject to self-regulation.

34 Convention on Cybercrime (ETS No. 185), Council of Europe, 2001.

35 Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, Council of Europe, no 189, 2003

36 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and Amending Directive 2000/31/EC (Digital Services Act)

37 Mihajlova Stratilati, E., "Analysis of the Legal Framework on Regulation of Hate Speech in North Macedonia", Helsinki Committee for Human Rights, 2023.

38 The European Commission initiated such a proceeding against Twitter (X) in 2023.

In the last decade, anti-democratic movements have been mobilizing all over Europe,³⁹ whose actors are key creators of content with hate speech, directed against sexual rights, gender equality, especially against the rights of transgender people. This content is mainly featured on social networks, but both online and traditional media convey their messages without necessarily labeling or framing them as hate speech, disinformation or propaganda speech. One of the key strategies of the anti-democratic movements is advocacy at an international and regional level, by which they actively organize to preserve the status quo or deny and deflate already accepted international standards. These movements also pose a threat to sex workers whose well-being directly depends on the degree of respect for gender equality, sexual and reproductive rights and the rights of trans people as well.

³⁹ International or transnational movement, i.e. an organized form of action that unites different actors against gender equality, sexual and reproductive rights and health, LGBTI rights. They can also be found and identified as anti-gender or anti-feminist movements.

4.

NATIONAL CONTEXT: CONDITIONS AND FACTORS THAT AFFECT DIGITAL SEX WORK IN NORTH MACEDONIA

North Macedonia is still not a sufficiently digitized society. Services in the private sector, and to an even lesser degree in the public sector, are not digitized enough. There is also no widespread use of algorithmic and automated decision-making, utilizing algorithms in surveillance technologies, datafication and technosolutionism, hence there is no awareness of the risks that these technologies can pose to human rights and the equality of citizens. The digital literacy of the population is not at a high level, in education there are no formal programs for digital literacy, with the exception of the educational activities of civil associations and the Agency for Personal Data Protection. The legislation in the area is evolving due to the need to align with the EU Law and the Council of Europe's Instruments, and many areas are still not sufficiently regulated. For the promotion of digital rights and digital security, international cooperation and the implementation of European standards are most important, especially for small countries like North Macedonia, which are powerless to impose rules on the operations of multinational companies that control the digital space. Hence, North Macedonia should follow trends, invest in its capacities, include citizens and marginalized communities in decision-making and network its institutions at an international and regional level. The issue of digital rights of sex workers has not been addressed until now, with the exception of activities to strengthen the digital literacy of marginalized communities.⁴⁰ Hence, this analysis is the first step towards a more systematic opening of this question.

Sex workers in North Macedonia utilize communication technologies for advertising and providing sex services continually with their development. Ever since the advertising of sexual services in printed newspapers commenced, in the 90s, the first "hot lines" for sex services by telephone were opened, and then the first platforms for direct online communication, such as Mirz, began to be used. When it comes to advertising sex services in the "advertisement" section of printed media, sex workers begin to advertise their services on online advertisers, after which they have also begun to use sex service advertising platforms, social networks, direct communication applications and sites with pornographic content.

STAR-STAR, the Association of the Sex Workers Community, mainly covers sex workers who work in the closed scene and partially in the open scene. HOPS, an association that provides services and advocates for the decriminalization and promotion of the rights of sex workers, works with sex workers in an open and partially closed scene. The Coalition Margins mainly works on advocacy, legal aid and psycho-social counseling, and communicates with sex workers through STAR-STAR and HOPS. Five pro-

⁴⁰ The Coalition Margins conducted trainings with LGBTI and sex workers on digital literacy and digital safety in 2022.

grams actively operate at a local level⁴¹ designed for HIV prevention among sex workers within the scope of civil associations' operations, which also work with sex workers from the open and closed scene.

Sex workers who are STAR-STAR members, mainly use the digital space to advertise services and communicate with clients to arrange sex services that they provide in person.⁴² This does not mean that there are no sex workers from North Macedonia who offer and provide sex services online (such as working on live web cams, providing services on subscription-based platforms, etc.), but the associations do not have access to them. They assume that these are sex workers who work only online and do not identify with the traditional notion of sex work, and hence do not seek services and help from the associations. On the other hand, STAR-STAR's and HOPS' services and programs are designed to meet the needs of sex workers who provide services in person. The civil sector that works with sex workers and advocates for the promotion of their rights, initially develops programs for sex workers within the HIV Prevention Program, out of which activities are directed to sex workers who have contacts with their clients in person. Hence, sex workers who work exclusively online are not supported by any association, nor are they self-organized. Until this point, no research has been done among sex workers regarding their needs and problems online. In 2017, the "Analysis of Sex Workers' Views on the Need to Change the Legal Regulations on Sex Work in Macedonia," stated that "the majority of the interviewed sex workers, even those who work at the open scene, 60% answered that the work, that is, the arrangement for sex services with the clients, is mostly done over the phone or on the Internet."⁴³ Based on experiences in the organizations, this has been the situation for the last 5 to 7 years, as cell phones and the Internet have become more accessible to sex workers. Prior to that, in order to find and make arrangements with clients, most sex workers had to go out into the open, cooperate with intermediaries or advertise their services in a publically printed advertisement. With the development of communication technologies, sex workers are changing the way they work, which renders them less and less available to support programs, which contributes to an increased risk to their health and safety.⁴⁴ Hence, in this analysis, the problems of violation of sex workers' rights in North Macedonia who offer and/or advertise services online will be considered.

Data on violations of sex workers' rights online is available through the work of associations and the Case Documenting Program of the Coalition Margins, in which several cases of violations of the rights of sex workers in the digital sphere have been documented so far, mainly violations of privacy and digital gender-based violence.

Key topics related to online sex work in North Macedonia that will be analysed throughout the following chapters include: 1. criminalization of sex work, 2. conditions for offering sex services online, 3. digital gender-based violence, 4. personal data protection and 5. freedom of expression.

41 In the RNM, there are a total of seven HIV prevention programs for sex workers, two in Skopje and five in other cities: Bitola, Ohrid, Strumica, Gevgelija and Gostivar.

42 Focus group data.

43 Shterjova Simonovikj, H., Boshkova, N., "Analysis of Sex Workers' Views on the Need to Change the Legal Regulations on Sex Work in Macedonia", HOPS, 2017, 14.

44 Ibid.

4.1. Sex work criminalization. Implications for sex workers' rights and access to justice

This section will provide insight into the legal framework in which sex work takes place in North Macedonia, the key feature of which is criminalization. Engagement in sex work, the so-called “prostitution” is a violation of public order and peace according to Article 19,⁴⁵ which stipulates that only sex workers working in the open scene could be punished for this offense. However, the Article also penalizes the provision of premises for the practice of prostitution, which also penalizes sex workers who work indoors. Paragraph 2 stipulates the punishment of legal entities that manage catering facilities where prostitution is conducted. With the Amendments to the Law from 2022, as part of the general policy of reducing the amount of fines, the fine in Article 19 is also reduced. Renting out for the purposes of prostitution and making premises available for such purpose is fined between 100 and 250 euros, and for legal entities that manage catering facilities, the amounts are graded according to the size of the legal entity.

According to the data gathered from the associations that work with sex workers, the offense from Article 19 is also utilized to penalize sex workers who work indoors, that is, “regardless of whether the sex work takes place indoors or outdoors.” Sanctioning those who rent apartments to sex workers affects sex workers' right to housing. Upon learning that they are engaged in sex work, the landlords terminate the lease contracts.⁴⁶

The Criminal Code criminalizes “mediation in prostitution” in Article 191. Paragraph 1 criminalizes the actions of recruiting, leading, inciting or luring a person into prostitution, and Paragraph 2 criminalizes enabling another person to use sex services for the purpose of earning. Intermediaries in sex work are part of the sex industry and their criminalization in itself negatively affects the safety and rights of sex workers. It is not disputed that the use of force, threat, coercion should be criminalized and they represent a boundary that differentiates sex work from sexual exploitation, but the broad definition of actions subject to criminalization in Article 191 opens the possibility of criminal prosecution of sex workers for mediation, especially according to Paragraph 2. In practice, sex workers often work together in one apartment, for safety and financial reasons. In several cases, the sex worker who owned the apartment, or who rented it, is sanctioned for mediation in prostitution, regardless of the fact that all of them were voluntarily engaged in sex work.⁴⁷

Article 205 criminalizes the transmission of infectious diseases by sexual contact. Although sex work is not directly criminalized, the Article was used to prosecute sex workers for suspected transmission of infectious diseases in the sensationalist action called “Suppression of Street Prostitution”. The condoms that were found in their possession and the positive results of Hepatitis blood tests from the forced testing were used as evidence in the proceedings, in which no one was harmed. The ECHR found a violation of the prohibition of torture and the right to privacy of sex workers in this case.⁴⁸

National policies criminalizing sex work often conflate sex work with sexual exploitation and human trafficking, because sex work is not recognized as a voluntary

45 Article 19, Law on Offenses of Public Order and Peace, (“Official Gazette of the Republic of Macedonia” No. 66/07 и 152/15 and (“Official Gazette of the Republic of Macedonia” No.171/22)

46 This happened after the broadcast of the show “Vo Centar (In the Center)” with Vasko Eftov, “Prostitution in Macedonia”.

47 Boshkova, N., Cekovski, I., “The Impact of Human Trafficking Policies on Sex Workers in the Republic of North Macedonia”, HOPS, 2020, 55.

48 Case of D.H. and Others v. North Macedonia (Application No. 44033/17), 2023.

occupation. Hence, sex work is viewed exclusively as a criminal and legal problem which is not regulated in terms of labor and social policy. Trafficking policies recognize sexual exploitation, but it is not clear to what extent sexual exploitation and trafficking for sexual exploitation are distinguished. Sex work is different from these concepts, which is voluntary, but within its scope sexual violence and exploitation can occur, precisely because of the unsafe conditions made possible by the lack of decriminalization. The HOPS analysis shows some improvement in the legal framework, but not in the actions of the institutions. “The abolition of the provision punishing coercion and threats in the practice of prostitution led to the elimination of the legal possibility of mixing these two phenomena, but the way institutions deal with human trafficking and prostitution shows that the treatment has not changed.”⁴⁹ In the same analysis, the documents “Form for identification of victims of human trafficking” are also criticized⁵⁰ as well as the “Indicators for identification of victims of human trafficking,”⁵¹ with the application of which, in practice sex workers can be equated with victims of human trafficking. “Several indicators listed in the Manual on the Identification and Direct Assistance and Support of Victims of Trafficking in Human Beings and Vulnerable Groups are even more confusing, for example: ‘group accommodation paid for by one person’, ‘a large number of condoms’, ‘women with very little clothing’, “most of the clothes they have are sexually appealing” and so on.⁵²

Criminalization itself necessarily involves not having access to mechanisms to protect ones rights in case they are violated. The HOPS Association analysis elaborates on an illustrative case that clearly portrays the treatment of sex work by law enforcement. “Namely, it is a case of living together and using an apartment to provide sex services by several women who had a mutual agreement. In fact, the convict is the one who rents the apartment, and a total of four women live and work in it, including the convicted herself. On the critical day when the crime of ‘mediation in prostitution’ was found, two masked individuals entered the apartment of the convicted and the victims, attacked and robbed them at knifepoint, and some of them were also injured during the attack. The women reported the case and called the police, and after they were all interrogated individually, one of them, the woman who rented the apartment, was charged with ‘mediation in prostitution’, and the other tenants were called as witnesses during the proceeding. Criminal proceedings were initiated against the accused and she was sentenced to one year in prison, which the sex worker served, but to date, no action has been taken to detect and punish the perpetrators of the crime of Robbery, which effectively robbed and injured women who voluntarily provided sex services for money in a shared apartment.”

Affirmative policies towards sex workers are only found in the healthcare sector, more precisely in the National HIV Prevention Strategies and Programs.⁵³ These policies have been in place for 20 years, which have produced good results and have enabled the association and political organization of sex workers. In these documents, the affirmative term “sex work” is used. Hence, public health policies for HIV prevention among sex workers are contradictory to the criminalization of sex work. For example, one institution distributes free condoms, while another used the condoms as evidence

49 Ibid 53, 63.

50 Government of the Republic of Macedonia, Standard Operating Procedures for Dealing with Victims of Human Trafficking, 2018.

51 Indicators for identification of victims of human trafficking, MLSP, 2014 r.

52 Ibid, 35.

53 Program for the Protection of the Population from the HIV Infection in the Republic of North Macedonia, which is published every year.

in a proceeding for the criminal prosecution of sex workers (such as in the action “Suppression of Street Prostitution”). The human rights-based approach of the healthcare sector has failed to spill over into other sectors, leaving this area isolated in its affirmative attitude towards sex work.

Progress has been made with the Law on Prevention and Protection from Violence against Women and Domestic Violence, in which sex workers are recognized as vulnerable women - the term “sex workers” is used and the authorities are required to act in cases of gender-based violence, and to consider their vulnerable position when taking measures and actions. The Action Plan for the implementation of the Istanbul Convention 2018-2023⁵⁴ includes measures for the promotion and protection from violence against sex workers, as well as the abolition of the provisions pertaining to penalizing sex work. The implementation of this measure is in the Amendments to Article 19 of the Law on Offenses of Public Order and Peace, which was planned for 2019, but the implementation has not even commenced.

Criminalization does have a negative impact on sex workers’ rights in the digital space as well. The negative effects of criminalization, which may include vulnerability to violence, stigma, discrimination and violation of privacy spill over into the digital sphere. Customer problems, such as non-payment for a service, sexual abuse, non-compliance with the type of service agreement, threats and blackmail, are further facilitated by on-line tools. The weak capacities of institutions to respond to these cases of digital gender-based violence and other types of electronic crime disproportionately negatively affect the protection of digital rights and digital safety of sex workers, as they are more exposed to risks. For sex workers, justice is still inaccessible because the fear of punishment deters them from reporting cases of rights violations in the online space to the police and other authorities.

4.2 Conditions for offering sex services online

Sex workers in North Macedonia use platforms to advertise escort services (such as, cityoflove.com⁵⁵, atlasescort.com⁵⁶, [eurogirlsesort.com](https://www.eurogirlsesort.com/)⁵⁷), as well as online advertisers (reklama5.mk, vipmarket5.mk). It is less often that they use sites with pornographic content, where they post videos and contact numbers. They normally use social media and direct chat applications to communicate with customers.

4.2.1. Escort advertising platforms

All three platforms for advertising escort services are registered in Europe, namely Spain, the Netherlands and the Czech Republic, which are countries where sex work is legalized. Only at [eurogirlsesort.com](https://www.eurogirlsesort.com/) is it explicitly stated that they are a platform registered as in the Czech Republic. All of these platforms serve to advertise services globally (with the exception of the USA for [cityoflove](https://cityoflove.com/) and [eurogirlsesort](https://www.eurogirlsesort.com/) due to SESTA/FOSTA). On these platforms, sex workers can offer, that is, advertise sex services and communicate directly with clients. [Atlasescort](https://atlasescort.com/) and [Eurogirlsesorts](https://www.eurogirlsesort.com/) also connect

54 Action Plan for the Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence in the Republic of Macedonia 2018-2023.

55 <https://cityoflove.com/>

56 <https://mk.atlasescorts.com/>

57 <https://www.eurogirlsesort.com/>

sex workers and customers to other websites that provide and/or offer other types of sex services, such as cams and live chat.

The terms and conditions to use these platforms constitute an agreement between the users (sex workers and/or clients) and the platform. None of these platforms are available in Macedonian or Albanian, and cityoflove is available exclusively in English. This presents a serious barrier, for which reason it can be assumed that a large portion of sex workers in North Macedonia do not know and could not know what they are agreeing to. The platforms are not designed in such a way that the terms and conditions of use are properly promoted and easily accessible. Terms and conditions of use and privacy policies are not part of the main menus of the platforms, but rather, they are placed at the bottom of the web pages in a smaller font. Other than requiring you to check the box that you agree to the terms and conditions, the platforms make no other effort to promote and ensure that users read and understand the terms and conditions.

Among all escort services advertising platforms used by sex workers in North Macedonia, the first thing that can be observed is the imbalance of data required by sex workers, as opposed to the clients. Customers do not have to register to see the ads in their entirety, but only if they want to leave reviews and put someone on the so-called 'blacklist' (eurogirlseskort.com). Even if they register and leave recommendations/reviews, only the name under which they registered and no other information is available. On the platforms, there is an option for clients to report abuse by a special "report abuse" button, available under each sex worker's profile, but there is no such option for sex workers to report clients. On eurogirlseskort customers have a "report fake" button under each profile. The policies do not state that sex workers will be contacted to corroborate reports or that they have the right to complain if a profile or an ad is removed. The platforms do not offer separate sections where sex workers can contact the platform. Email addresses where they can be contacted are listed in the privacy policies and terms of use. Atlaseskorts and eurogirlseskorts have published only one email address each, and cityoflove has left multiple addresses for different purposes and a request form related to personal data. However, neither platform's policies nor terms instruct sex workers to report any abuse by clients. The platforms ask to be contacted in the case of featuring minors content, customer reporting fake profiles, false information, fraud, refunds, etc.

With the exception of the eurogirlseskort.com platform, others do not provide the opportunity to publish clients' data with whom sex workers have something in common. The blacklist menu gives the opportunity to search for email addresses and phone numbers, which is a useful tool for sex workers to check clients with whom they arrange meetings. Of course, clients also have the option to blacklist sex workers. Customers can also leave reviews and rate sex workers, but there is no such option for customers, who do not even have to leave their profiles to rate ads in full. On these platforms, sex workers who ask to pay for the service in advance is now considered a scam. Therefore, sex workers have been blacklisted just because they asked for this. On the eurogirlseskort platform, in the terms of use and under each profile, the message "NEVER pay anyone via Gift/Bing card, Transcash, Neosurf/PCS coupons, Google play card, etc." is marked with a red exclamation mark. They are frauds. Please report these profiles! We recommend booking with verified companions, who are very unlikely to be a scam." Such a message for sex workers regarding non-payment by clients is a clear indication that the platform is not interested if the client does not pay and will not take

any action against these users. By advising clients not to pay in advance and labeling sex workers who ask for that as scammers, the platform affects the economic instability of sex workers. On the platforms, they cannot obtain information related to the safety of sex workers, such as advice on sexual and reproductive health, condom use, how to recognize scams or violent intent and sexual exploitation. At eurogirlseskort, even the tips for recognizing human trafficking are personalized for clients, in terms of how to recognize if a person they arranged to meet may be a victim of trafficking for sexual exploitation, while there are no tips and guidelines for individuals how to recognize and avoid the risks of human trafficking or sexual exploitation.

From all of the above, it can be concluded that the platforms are designed according to the needs of sex workers' clients, meet their needs and address them. Judging from the text and the design of the platforms, they treat sex workers as individuals without agency (autonomy of action), do not communicate in a direct manner with them and do not take into account their needs and opinions.

The data that sex workers from North Macedonia publish on escort advertising platforms include: personal photos, very often with a face, videos, information regarding the services they offer, prices, phone numbers, WhatsApp, Viber, email addresses, but they also share other information according to the requirements of the platform (such as age, ethnic origin, sexual orientation, city, hair color, eye color, breast size, information about tattoos, piercings, etc.). Most of the profiles feature face pictures. Very rarely the photos only show other parts of the body or the faces are blurred.

Sex workers do have the option not to share face pictures or publish other personal information on these platforms. However, the less data they release, the less likely customers are to contact them. Even if they don't decide to publish other data, in order to publish an ad they have to leave a valid email address on which the platform notifies them if and when the ad is approved, and by means of cookies other data is collected by which the user of the website can connect with a real person. It is forbidden to post other people's content on all platforms, i.e. false images. In addition, customers can report to the platform if real photos are not posted, i.e. the photo does not correspond to the appearance in person, which can result in the ad for which they paid to be removed, especially on eurogirlseskort where they can be placed on the so-called "black list." The platform's public statement claims that real images can be found here, which is what is expected of sex workers. On atlaseskorts.com, when registering an account, it is stated that "Privacy is a right. Spreading and sharing intimate photos of others without their consent is subject to legal sanctions in any country." Of course this is true and can be seen as an attempt to prevent violation of privacy and sexual abuse by means of visual materials. Nevertheless, the platforms do not offer any options to protect the privacy of sex workers who post their photos, such as blocking the option to download photos or take a screenshot. The eurogirlseskort.com platform advises sex workers to post real photos, at least three, verify their profile, post a correct phone number, and post more explicit photos in the section on how to make a good profile. It also states that profiles with fake photos will be deactivated, and customers are advised to schedule meetings with verified profiles to protect themselves from fraud. Verifying the profile means sending a photo of a personal document (identity card or passport) and a face photo to the platform. The platform will not make this data public, but it still collects it, which puts the right to anonymity online at risk, and the platform could share this data with state authorities with a court order.

The platforms also have similar policies in terms of how the information they publish is stored, processed and used. Eurogirlseskort states that personal data is not collected to be sold, traded or given to third parties in any way, that personal data is

treated in the strictest confidence and that it “will not be sold, reused, rented, disclosed or loaned.” An exception to this are situations in which data is requested from the platform by a court order, so that, for example, this data could be used in proceedings against sex workers as evidence in countries where sex work is criminalized. Atlaseskorts also claims that it does not sell user data to third parties and treats it confidentially. Cityoflove does not state this, but claims that “we may share information in specific situations and with certain third parties” and that they may share personal information in business transfers.

Nonetheless, the terms and conditions state that by using eurogirlseskort and atlaseskort you “grant us an irrevocable, non-exclusive, worldwide license to use, reproduce, adapt, publish, translate and distribute your content in any existing or future media. You also grant us the right to sublicense these rights and the right to sue for infringement of these rights.” On cityoflove, there is no such claim, but the terms and conditions state that “the user understands that the intellectual property rights arising from or in relation to any service and/or website owned by CityofLove,” which has the same meaning and effect as the other two platforms’ expressly written content rights terms. Consent applies to content, not other data, but published content includes personal data such as photos, phone numbers, location, and more. Sex workers on the platforms consent to almost any use of their content, which may include the sale and publication of the content on any other platform, risking to lose control over where, in what context and how their content is going to be further published and used.

Sex workers have limited options to request full and final deletion of personal data shared with the platform. Atlaseskorts does not save the data in the case of deleting a profile or advertisement, but can still make a copy on the server (back-up) in cases of absolute necessity, without explaining what that necessity entails. Cityoflove specifies that they may retain data to prevent fraud, assist in an investigation, and more. On eurogirlseskort, it is not explained if there is such an option and how to request it. Only on cityoflove is there an option to request information, view or delete data from the platform. This is possible by filling out a special form⁵⁸ in which sex workers can request information about what data is collected from them, have their data deleted, not sold to third parties, access their personal data, correct inaccurate data, obtain a copy of personal data, not share their data for advertising based on tracking data, to limit the use and disclosure of sensitive personal data, and more. However, we have no information whether the platform is responsive and whether it adequately responds to these demands by sex workers. Although we cannot claim that cityoflove is a better platform in terms of the right to privacy just because it has such a form, but this is a good practice. For example, unlike eurogirlseskort which claims that data “will not be sold, reused, rented, disclosed or loaned”, cityoflove offers the option to request for this not to be done. From this aspect, the conditions of eurogirlseskort are better, but there is no information there on whether and how you can check what data is stored, how to obtain a copy and request deletion.

Eurogirlseskort states that it utilizes secure server software (SSL), by which personal data is subject to several layers of encryption before being sent to the platform. At Atlaseskorts, data is protected by a “secure firewall against unauthorized use,” and cityoflove only states that it “implements appropriate and reasonable technical and organizational security measures designed to protect the security of all personal information

58 The form is available at this [link](#).

we process.” All three platforms have SSL/TLS protocols as a standard in data protection for all web pages.⁵⁹ Websites that use the latest versions of SSL/TLS protocols have a better level of protection against security incidents of user data. By checking web pages through the SSL server test tool,⁶⁰ *atlaseskorts* received an A+ grade, whereas *eurogirlsescort* and *cityoflove* received a B. Therefore, *atlaseskorts* provides better personal data protection of its users in cases of security incidents.

The use of the platforms is the responsibility of the users (escorts and clients), the platforms do not accept any responsibility for anything that may arise from the platform. The platforms themselves claim that they are in no way involved in sex work, “we are not an escort agency, but an agency for advertising escort services” (*eurogirlsescort*); “we operate an online platform and are in no way involved in the business of escorting or prostitution” (*atlaseskorts*) and “CityofLove is expressly not part of any contract or any direct or indirect contact between the Escort and the User”. Contrary to these claims, these platforms play a key role in sex work, directly and indirectly regulating the conditions in which sex work takes place, and have the potential to affect the safety, privacy and economic well-being of sex workers. The platforms are not neutral, on the contrary, with their design, the language they use and the information they (do not) share, the data they allow to be published, which they collect and use, they put sex workers in a more disadvantageous and risky position, they not meet their needs and do not care about their safety.

The terms and conditions on all platforms state that users agree and confirm that the use of the platform is in accordance with the laws of the countries where they reside, and that “the user is not prohibited by law from using the website due to any restriction, including age restrictions or laws criminalizing prostitution” (*cityoflove*). On the one hand, the platforms allow the offering and providing sex services in countries where sex work is criminalized, but the responsibility for this lies with the users, which again they refuse to accept and acknowledge the role they have in sex work.

On the one hand, they have the right to moderate, modify and delete content, and on the other hand, they are not responsible for the content. *Cityoflove* states that the platform “reserves the right to delete any content on the website that is not permitted in CityofLove’s opinion, including but not limited to defamatory, threatening, abusive content, as well as content that glorifies violence or that may incite violence or any other form of criminal conduct, as well as content containing images or video material of children, child pornography and advertising containing material that may be illegal.” The remaining platforms state that they will delete content of minors, child pornography, false images or advertisements for false services, double profiles, etc. Content that promotes violence is only mentioned on *cityoflove*. *Eurogirlsescort* and *atlaseskorts* state that they “manually” review all content before it is posted publicly. Hence, platforms have the capacity to prevent the spread of content that is disturbing, incites (gender-based) violence, discrimination, hate speech and more. The fact they omit to state these issues in the terms and conditions means that these are not important issues that the platform pays attention to, although we cannot claim that they will not be moderated in practice. However, no other criteria for content moderation has been published, nor has it been stated that algorithms are used in moderation. Hence, platforms do not take sufficient measures to prevent sexual abuse and violence, other

59 More information on SSL/TLS available at this [link](#).

60 The tool is available at this [link](#).

forms of gender-based violence and human trafficking. They can do this by publishing information and links to relevant websites and service providers, for all countries that allow the advertising of sex services, but also by opening a space for communication between sex workers to exchange information and experiences.

All platforms prohibit their use to promote or facilitate human trafficking and child pornography, while “forced sexual activity” is explicitly mentioned only on cityoflove. On cityoflove there is only a ban on such activities through the platform, on atlas-escorts it is stated that in case of suspicion of human trafficking the platform should be contacted immediately and that they will take measures, whereas eurogilseskort has the most detailed data on human trafficking that also includes recognition indicators by clients (not by sex workers) and data from reporting institutions, but only in the US, UK and Germany. The platforms do not use more sophisticated age verification technologies, it is only enough for the user to check the box claiming to be of legal age.

The platforms provide the opportunity of free ads, but for better visibility the ads are paid, and the prices depend on the duration of the ad. For the advertisement to appear among the first in the search, it must be paid for. When paying for ads, the usual data is shared, such as the name and surname of the card holder, card number, etc. The platforms do not collect payment data such as credit card numbers, but payment goes through third parties that enable such services, without specifying how those third parties store and use the data obtained through the platform. Only on cityoflove one can find a link to the company that enables the payment and its terms and privacy policies.

When opening the platforms, none of them offers the option to set the cookie functions.⁶¹ Cookies can of course be set by the browser used, but giving the option from the website itself displays a higher level of care and protection of user privacy. Providing such an opportunity increases the transparency and visibility of cookie policies, and users are given the opportunity to decide which data and for what purpose it will be collected by cookies. Since sex workers give away sensitive data by the use of web pages that can connect to them personally (for example, some so-called tracking cookies collect data about IP addresses and geographic locations), it is important that they have the opportunity to set cookies, by which making informed decisions is stimulated, and greater control over the data that is collected is obtained.

In order to improve the conditions under which sex workers in North Macedonia offer services on platforms, it is first of all necessary to decriminalize sex work. The advancement of labor rights, the conditions under which the work takes place and the safety of sex workers at work is possible only under conditions of sex work decriminalization. Among other things, this enables the unionization of sex workers and joint advocacy for better working conditions, which will mean gaining negotiating power with the companies that operate such platforms. Since these are platforms that are used on a global scale, it is necessary to network with sex workers from other countries and engage in joint advocacy for the adoption of favorable policies for decriminalization and for the regulation of the conditions in which platform workers at regional (European) and international level work. From the national legal framework point of view, the current legislation does not recognize platform workers at all, i.e. the Labor Law applies only

61 Cookies are generally harmless text files that websites embed on users' devices in order to personalize the experience of using the website. Therefore, through cookies, personal data is collected and the user's online behavior is monitored. It is important for users to know whether the data collected through cookies is protected and to what extent and in what way it is used further.

to workers who have an employment contract,⁶² thus many categories of workers are deprived of labor rights. Hence, in addition to a legal framework for decriminalization, amendments to the Labor Law are needed to recognize all workers who actually work, including platform workers, in accordance with the EU Law and the recommendations of the International Labor Organization. The legal framework for decriminalization must recognize sex workers who will not work with employment contracts as workers who are holders of labor rights.

4.2.2. Advertisements

The most frequently used advertisers for advertising and offering sex services are vipmarket5.mk, reklama5.mk and pazar3.mk. All three websites are advertisers for advertising all kinds of goods and services in North Macedonia. No advertiser has a “sex services” category or anything similar that can be directly linked to sex work. Most commonly, sex services are offered as massages. Ads that refer to sex services and not to real massages can be recognized by the price, the lack of descriptions of what kind of massages they are, and sometimes words like “discreet”, “intimate massages” or the like are used. These advertisers are used less and less frequently, which is why not many ads by sex workers can be found here. Sex workers are increasingly advertising their services on escort service platforms.

Advertisers are prohibited to offer and advertise sex services. Reklama5 has “offers for prostitution” in the list of prohibited content. On Pazar3, in the General Rules and Conditions for Advertising section, it is stated that “Pazar3 has certain prohibitions on which goods and services may not be advertised.” The products or services that according to the Laws and Regulations in R. Macedonia are defined as illegal, will not be published.” Offering sex services in North Macedonia is not a criminal offense, but under certain conditions it can be punishable according to the Law on Misdemeanors. However, the model of sex work regulation is criminalization, hence these advertisers most likely consider advertising sex services illegal without going into the details of sex work regulation.

Unlike escort platforms, sex workers leave much less data on advertisers, because the advertisers themselves are not intended for sex services. However, advertisers collect data that can be linked to the person such as first and last name, email address, contact phone number, location, IP address and data published on the advertisement. “Pazar3 helps the police, other authorized persons and parties by informing them about illegal activities in the advertisements. The identity of the advertiser or the person who pays will be revealed according to the IP address or the phone number, only at the request by an official and/or competent authority.” Sex workers risk being sanctioned for sex work if they advertise on these advertisers. Advertisers are not intended for sex services, hence they would be more motivated to delete ads that are related to sex work, even to report the advertisers to the Ministry of Interior. In addition, unlike escort platforms, advertisers are companies registered in North Macedonia, from where cooperation with Macedonian law enforcement authorities is simpler and more efficient.

At the focus group with sex workers and STAR-STAR office employees, it was shared that if they want to advertise on Pazar3 for massages, the advertiser requires a certificate for a completed course or similar for massage, in order to prevent advertising

62 Article 1 Paragraph 1, Labor Law.

of sex services. Hence, the advertiser takes specific measures to prevent sex services advertising. The focus group was told that the advertiser started this practice after incidents of sex workers sending ads with offensive content and started using it to settle scores with each other. Of course there are other ways to deal with such ads without completely banning the advertising of sex services, yet again it should be taken into account that the general policy of the advertiser is for it not to be used for this purpose at all.

4.3. Digital gender-based violence

Sex workers are disproportionately more exposed to digital gender-based violence, as their work involves sharing personal data and intimate photos and videos online, irrespective of whether this content is publicly available or shared in private messages with clients. Hence, sex workers are increasingly documenting cases in which their photos and videos have been published or shared with third parties without consent, and cases in which they have been photographed or filmed without consent. The latter cases are more characteristic of the open scene. Pictures and videos uploaded by clients or third parties filming sex workers in an open scene are published on various platforms. The most characteristic cases from North Macedonia in which there were aspects of digital gender-based violence and sexual abuse through visual material will be presented hereinafter.

The most famous case is “Public Room”, which involved mass sexual abuse by means of visual material.⁶³ Hundreds of thousands of photos of women and girls from North Macedonia, including photos and videos of sex workers were shared in a Telegram group called Public Room. The photos were shared without consent, alongside with other personal data such as phone numbers, links from social media profiles, place of residence, etc. The sharing was accompanied by degrading comments containing sexist language, sexual harassment and objectification of women. Some of the materials were downloaded from social media profiles, while others from private communication between victims and perpetrators. The Platform for Gender Equality organized protests and demanded that the Public Prosecutor’s Office conduct investigations and initiate criminal proceedings against the perpetrators.⁶⁴ The key slogan of the protests was “Public Room is a Crime” precisely because of the fact that the Public Prosecutor’s Office did not accept the fact that crimes were also committed against the adult victims in the case, not only against minors. For many women, sexual harassment from online spilled over to offline, i.e. they were harassed by phone, their social environment found out that their photos were in the group, after which they were victimized through gossip and accusations. Both the prosecution and the police were complicit in the victimization by accusing the victims who took pictures in a certain context and shared the pictures with someone or published them. Therefore, the prosecution prosecuted only the creators and administrators of the group for the crime of “Production and Distribution of Child Pornography”, which did not recognize the crimes against adult victims of sexual harassment by means of visual material. The

63 For more information about the Public Room case, visit this [link](#)

64 More information about the activities of the Gender Equality Platform for the “Public Room” case is available at this [link](#)

court reached guilty verdicts with a minimum prison sentence of 4 years.⁶⁵ Even then, the Prosecution had grounds in the Criminal Code to prosecute the perpetrators and to protect the adult victims, but in 2023, changes were made that explicitly make sexual harassment (live and online) a crime. Although we cannot know if the Prosecutor's Office would have acted differently according to the amendments to the Criminal Code in 2023, the fact remained that the victims did not receive protection, but victimization, with which the environment and institutions were complicit in the case of digital gender-based violence.

An older, yet significant case of this is the show program, "In the Center with Vasko Eftov: Prostitution in Macedonia."⁶⁶ broadcast on the national television Channel 5 in 2015. The authors of the show found contacts of sex workers from advertisements, contacted them pretending to be clients, then published their data and filmed them without informing them and without consent, after which they broadcast the material on one of the most popular national televisions, Channel 5 and on YouTube. Two transgender sex workers were filmed in their apartment, where the authors posed as clients and filmed them without their knowledge and consent. The phone number of one of the victims was published, in addition to photographs, a recorded telephone conversation without editing the voice, a video of the road to and around the apartment of the sex worker, a recording of a conversation with the sex worker in the apartment, all taken without knowledge, consent and without obfuscation of the material. After the broadcast of the show, the owner of the apartment terminated the lease agreement, and the sex worker had to move out immediately. Relatives, friends and acquaintances of the sex workers found out about their gender identity and sex work, after which they were victims of condemnation and rejection from the environment. The Council for Ethics in the Media⁶⁷ recognized a violation of the Code of Ethics. A lawsuit was filed asking the court to find a violation of the right to privacy by the publication of personal data in public, which violated private life and caused emotional pain, but the first and second instance courts did not recognize a violation of rights. Furthermore, one of the plaintiffs was subjected to harassment and humiliation in the courtroom by various comments about gender identity, especially when the plaintiffs' attorney submitted a motion to change the plaintiff's personal name. The lawyer asked for the judge's exemption from the case, but the President of the Court in the Decision by which the request is dismissed confirms the same stigmatizing attitudes regarding gender identity. An application was also submitted to the European Court of Human Rights, after which the state settled with the applicants, thus the court did not decide on the merits, but the sex workers received compensation for damages.

Documented cases of online gender-based violence against sex workers abound with examples in which intimate photos and phone conversations were shared publicly or with third parties without consent, cases of sexist, transphobic and homophobic harassment online, in private messages or in comments on social media, as well as cases in which ex-partners and/or pimps and clients use the intimate photos to blackmail sex workers to stay in a relationship with them or give them money not to publish them, not to send them to their family, etc. In several of the documented cases that were reported

⁶⁵ Information about the criminal proceedings in the sections Public Room 1 and 2 is available at this [link](#)

⁶⁶ The case was documented by the Coalition Margins, for which the Association provided free legal aid to the victims.

⁶⁷ Media release, "Hate Speech, Sensationalism and Violation of Sex Workers' Right to Privacy by Channel 5 Television", Coalition margins. Available [here](#).

to the police, two of which occurred after the adoption of amendments to the Criminal Law that criminalized sexual harassment, the police told the victims that they could not do anything, that is, they did not recognize the activity as a crime. In practice, sex workers are left to fend for themselves. Those who are networked within the civil associations ask for help to remove the photos, such as communicating with the perpetrator to remove the photos, reporting to the social network, competent institution, etc.

One such case of sexual harassment in a private Instagram message against a transgender sex worker and activist was reported to a police station in 2023.⁶⁸ The police officer did not know what to do, he consulted other colleagues to refer the victim to the Department of Electronic Crime and Digital Forensics. The Electronic Crime Department also did not recognize the case as a crime and relativized it as insufficiently serious, commenting that it was just one comment, that there was no threat to life, etc. According to the Department, there was no criminal offense in the case because in order to act according to Article 394-d - dissemination of racist and xenophobic material through a computer system, it is necessary that the comment was written publicly, and not in a private message. The legal advisor claimed this to be an act of sexual harassment, but the Department had no information that such changes had been made, even though the case was reported 6 months after the changes to the Criminal Code entering into force. When they heard that the crime was called "sexual harassment," they determined that they would not be in charge, as that was the competence of the Department for Blood and Sexual Crimes. The transgender woman was addressed in feminine gender, until they found out that she was transgender, after which they began to address her in masculine gender. They advised the victim to file a criminal charge with the Prosecutor's Office, but emphasized that the Prosecutor's Office will probably not do anything because they also faced the same problem with the Prosecutor's Office regarding the criminal charges they filed.

From the previously mentioned cases and the experience of civil associations, as well as in other cases of digital gender-based violence against women, we can conclude that there is no efficient and effective protection of the victims of these acts. When photos and other materials are shared in the context of sex work there is an additional barrier, i.e. the fear of criminalization of the victims, which is why they are afraid to seek help from the relevant institutions. The Criminal Code and the Law on Prevention and Protection from Violence against Women and Domestic Violence regulate this area accordingly. Acts of sexual harassment⁶⁹, stalking⁷⁰, misuse of personal data⁷¹, jeopardizing security⁷², extortion⁷³, blackmail⁷⁴ and the like, depending on the circumstances of the case, they can be used to protect sex workers from digital gender-based violence. The Law on Prevention and Protection against Violence against Women and Domestic Violence comprehensively regulates this area, recognizes and defines sexual harassment online⁷⁵ as a form of gender-based violence, and it recognizes sex workers as vulnerable women for whom institutions should take their vulnerable position into account while

68 The case is documented by Coalition Margins.

69 190 a CC

70 144 a CC

71 149 CC

72 144 CC

73 258 CC

74 259 CC

75 Article 3 Paragraph 1 Item 20, Law on Prevention and Protection against Violence against Women and Domestic Violence.

proceeding⁷⁶. The law provides services for the victims, coordinated action of the institutions and taking preventive measures, as well. The insufficient enforcement of this legal framework is the key problem. On the one hand, there are low capacities within the Electronic Crime Department, which does not have enough experts to respond to the increasing number of such cases, yet on the other hand, the key problem is in the Prosecutor's Office, which does not recognize these cases as crimes that should be prosecuted. Civil associations have observed numerous flaws in the actions taken by the Prosecutor's Office in cases of gender-based violence, which means that the institution does not have the capacity to conduct gender-sensitive investigations based on the principle of human rights with particular focus on the needs of the victims. At the core of the problem are the gender stereotypes and sexist attitudes of the institution that relativizes violence and blames the victims.

4.4 Personal Data Protection

The protection of personal data can be considered as personal data protection by state authorities of all the data pertaining to sex workers that they collect and process, as well as the protection of personal data online which is collected, stored, processed and used by platforms for offering sex services, social networking sites and all other websites that have data of sex workers.

Processing, analysis and useage of user data by platforms occurs constantly, that is, it is the core of the business model of technology companies. This means the massive use of surveillance technology that in actual fact invades users' privacy. The processing and analysis of data is profiling, that is, reducing the behavior of users to stereotypes and prejudices, within which they are expected to behave, but it also stimulates stereotypical behavior. "The multi-layered aspects that construct identity are simplified, categorized, and packaged into predetermined profiles, a process that reduces complex identities to mere stereotypes."⁷⁷ Hence, the platforms directly contribute to the proliferation of stereotypes in the digital sphere, thereby depriving users of their agency to make independent and informed decisions. Another problem is the online radicalization. Users who hold homophobic and chauvinistic views will be exposed to more such content, which will solidify their views instead of changing them. Hence, a key right regarding privacy in the digital sphere is for users to know which data, and in what way it is used, analyzed and stored, and the right to have control over these processes. However, the most obvious violations of rights occur when these data are used for algorithmic decision-making by public authorities when they decide on the rights or the restriction of rights of citizens. In this way, stereotypical decision-making is directly enabled by technology, contrary to the belief that by removing the human factor, decision-making becomes unbiased. In North Macedonia, algorithmic decision-making in the public sector is not yet widespread, which is why the risks for this type of discrimination are still low. North Macedonia does not have active policies and measures that address these problems, such as measures to prevent online radicalization, ban on online profiling based on discriminatory grounds, ban on advertising based on political affiliation, gender, sexual orientation, gender identity, religion, etc. These measures are

⁷⁶ Article 7, Law on Prevention and Protection against Violence against Women and Domestic Violence.

⁷⁷ Benaissa, N., "Article 7: The Right to Privacy as a Gatekeeper to Human Rights" article in "Digital Rights are Charter Rights", Digital Freedom Fund.

only being considered in the EU Law, especially with the Digital Services Act, and North Macedonia is lagging behind these trends.

In North Macedonia, institutions collect data on sex workers regarding their health by the implementation of the HIV Prevention Program, as well as within the judiciary system (police, prosecution and courts) as perpetrators of criminal acts related to sex work. Data related to sex work may also be available to the institutions for social protection, which they have obtained while working with people aiding them to exercise social rights and services. Data related to health, sex life, sexuality and criminal records (data related to criminal convictions) are sensitive data that enjoy a higher level of protection. Hence, the data on whether someone engages in sex work belongs to the group categorized as particularly sensitive data. These categories of data cannot be automatically processed unless domestic legislation provides for adequate safeguards and requires an increased level of protection.⁷⁸ The Personal Data Protection Law recognizes these categories of data as “special categories of personal data” and provides for stricter conditions for their collection and processing.

The protection of personal data, the right to privacy in relation to the processing of personal data, the rights of the subject to personal data, the transfer of personal data, the special operations of processing personal data, legal remedies and responsibility during the processing of personal data, the supervision over the protection of personal data, the role of the controller and the processor of personal data, offenses and misdemeanor proceedings in this area and the status and competences of the Agency for the Protection of Personal Data are regulated by the Law on Personal Data Protection⁷⁹. According to the Report of the European Commission, additional harmonization of the legal framework with the General Data Protection Regulation is required,⁸⁰ especially pertaining to the transfer of personal data and securing the independence of the Agency for the Personal Data Protection⁸¹. The Report documents key setbacks in this area, such as insufficient law enforcement, weak capacities of the Personal Data Protection Agency due to the limited financial and human resources and lack of independence, as well as non-compliance of sectoral laws with the Law on Personal Data Protection, which renders the law insufficiently enforced in various areas. The Report even concludes that “in general, data controllers⁸² do not implement the Law on Personal Data Protection”. Hence, we can conclude that most likely the data collected on sex workers by the state authorities generally has a low level of protection, but it is still necessary to check relevant circumstances in full detail by the Personal Data Protection Agency.

According to the data gathered from a focus group in the STAR-STAR's office, an organization that implements the HIV Prevention Program, data from sex workers who received any service within the Program, such as HIV testing, testing for other sexually transmitted infections, counseling, free condoms and lubricants etc., are recorded on forms in which codes are used, and the data are entered into the database of the Insti-

78 Guide to the Case-Law of the European Court of Human Rights “Data Protection”, ECHR, 2023.

79 Official Gazette of the Republic of North Macedonia” No.42/20 and 294/21

80 Regulation (EU) 2016/679 of the European Parliament and of the Council of Europe 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)

81 North Macedonia 2023 Report, European Commission, Brussels, 2023, 28.

82 A Data Controller in accordance with the General Data Protection Regulation is a legal or natural person, agency, public authority or any other body, which alone or when associated with others, determines the purposes behind data collection, the means and the manner of any data processing.

tute of Public Health. Codes are formed based on a combination of personal data. These data are stored and processed by the Institute for Public Health. Most of those involved in the implementation of the Program, including the employees of the Institute of Public Health, know how the codes are formed. If someone knows how to create a code, they can check if a person whose personal data is known to them has used services in the Prevention Program, where they can find out if they are engaged in sex work, data on gender identity and sex work, results of HIV testing and other extremely sensitive data. Those who implement the Program and know the community members, when reviewing the forms, they can recognize from the code which form refers to which person, and thus, for example, they can find out who had an HIV positive test. This way of formulating the codes does not guarantee the anonymity of sex workers. Of course, the HIV Prevention Program implementers are properly trained in confidentiality and the need to preserve privacy as a key to building trust between communities. From the information received from the administrator of the database (the Institute of Public Health), it is obvious that preventive measures have been taken to ensure confidentiality and a high level of protection of personal data, for example, there is only one administrator of the database and only they have access to this data, only one person is nominated from the civil associations who enters the data, those involved have undergone training on protection of personal data, the software commissioners requested the implementation of security technologies during its development, and the then Directorate for Protection was also consulted regarding personal data, with the help of which appropriate documents were prepared, in accordance with the law at the time, a legal basis was provided for the appropriate collection, storage and processing of data. But 10 years have passed since the creation of this software, and the method of collecting, storing and processing data was determined 20 years ago. Hence, it is necessary to rethink these processes, align them with the new Personal Data Protection Law and renew the software security technologies. The codes themselves represent personal data according to the Personal Data Law, because they contain information about natural persons who can be identified in an indirect way, while special categories of data are also collected in the database, i.e. sensitive data for which special rules for collection and processing apply. The method of data collection, storage, processing, their type and volume should be reviewed according to the key principles of minimizing the volume of data collected in accordance with the purpose of their collection. Taking into account the purpose of the collection and processing of data from the HIV Program (collection of epidemiological data to monitor conditions and create further measures for advanced prevention), collection of personal data via codes is unnecessary, and hence can be considered legally unjustified. The data collected by the codes does not serve the purpose and according to the principle of proportionality, other ways of creating unified codes can be devised that will not contain personal data or will contain less personal data. It should be taken into account that there is a requirement that the data be kept no longer than it is necessary to fulfill the purpose for which it was collected and processed, which is why it is necessary to examine which data and in what period they can be destroyed, which means adopting protocols that they will regulate this area. In order to ensure the highest possible level of protection of personal data and compliance of practices in alignment with the Law on Personal Data Protection, internal protocols should be developed that will

regulate these processes in detail, according to the current standards in this area, which are currently missing for certain segments or are not updated.

Considering the inadequate implementation of the Law on Personal Data Protection by the institutions as controllers, the issue of security of the personal data kept and processed by the institutions is raised. According to the data from an interview with an expert in the field, the websites and databases of the Macedonian institutions are considered insufficiently protected from hacker attacks and other incidents, some do not even meet minimum standards for cyber security, that is, data from state institutions could be easily stolen, published, abused, etc. The legal framework in this area is not adequate and should be further aligned with the EU Law. The Government is planning to pass a Law on the Security of Networks and Information Systems,⁸³ according to which a Digital Agency responsible for digital security and digitization should be established, and a new National Strategy for Cyber Security should also be adopted.⁸⁴ According to the Report of the European Commission, the Republic of North Macedonia is “moderately prepared” in this area, the legislation should be further aligned with the NIS and NIS 2 directives,⁸⁵ the capacities of all relevant institutions should be strengthened, and their cooperation and coordination should be reinforced.⁸⁶ In terms of protection of the personal data of sex workers, decision-makers should pay particular attention and to have special measures in place for the storage and processing of sensitive data, the so-called special categories of personal data, taking into account the consequences that marginalized citizens may face from the release and misuse of this data.

4.5. Freedom of expression

In this section, several aspects of freedom of expression that affect sex workers in North Macedonia will be overviewed, such as freedom of expression online, hate speech on social media and online media, as well as the violation of rights by online media.

Freedom of expression is guaranteed by the Constitution,⁸⁷ as well as by the European Convention on Human Rights which is part of the legal order. Censorship is prohibited by the Constitution.⁸⁸ The legal framework includes other laws regulating various areas of freedom of expression. The Law on Media and the Law on Audio and Audio-Visual Media Services regulate the rights and obligations of the media, the conditions for their registration and operation, define the key standards in the field and regulate the mechanisms for supervising their work. The Civil Liability for Insult and Defamation Act regulates these institutions as legal restrictions on freedom of expression. The Criminal Code regulates criminal acts, such as spreading xenophobic and racist material through computer systems and production, distribution of child pornography, disclosure of business secrets, disclosure of state secrets, calling for a violent change of the constitutional order, racial and other discrimination etc., which criminal liability is imposed for refraining from a certain type of speech or other form of expression. The Law on Access to Public Information regulates the right to be informed as an integral

83 The Draft Law is available at ENER at this [link](#).

84 The draft strategy is available at ENER at this [link](#).

85 The directives are comprehensive legal instruments in the field of cyber security and their aim is to achieve a common high level of cyber security in the European Union.

86 Report of the EC on North Macedonia 2023, 89.

87 Article 16, Constitution.

88 Ibid.

part of freedom of expression. Considering that several laws regulate various aspects of freedom of expression, and especially its limitation, the constitutional ban on censorship cannot be considered as an absolute ban on censorship, and it should be interpreted as censoring certain forms of expression against the law, i.e. contrary to what is implied by protected speech or other form of expression.

With the digitization of communications and the growth in popularity of social media, they have become a key medium for informing the population, a place where they create opinions on current social issues and a key platform for sharing views and ideas. This means that we give the global technology companies that run social networks the rights and obligations to protect and regulate freedom of expression, thereby privatizing the protection of freedoms and rights, which are crucial to democracy. Hence, it is necessary to develop the law at international and/or regional level, which will regulate their work in terms of enabling freedom of expression, which also includes protection against hate speech. Apart from a few parts of the Criminal Code that can be utilized to protect against online harassment and hate speech, the work of social media in North Macedonia is not regulated at all.

The previously mentioned problems of censorship of sex work on social media faced by sex workers and their associations, affect those associations and sex workers in North Macedonia. The STAR-STAR Association faced censorship on their Twitter and Instagram accounts. Twitter deleted the profile of the Association, while the Association did not have the opportunity to complain, nor to reopen an account with the same name. They could complain to Instagram, after which their account was returned. However, the problem remains that the words "sex work" or "sex" cannot be used, nor can photos of sex workers with scantily clad clothing be published. This severely limits the freedom of expression of the Association and of sex workers, who constantly have to find different expressions to say "sex work". In this way, the algorithms that social networks use for moderating content directly contribute to the invisibility of all efforts to decriminalize sex work and promote the rights of sex workers. Sex workers and activists for their rights are silenced and censored on the largest social media networks, thus limiting their right to a political association and advocacy against the harmful sexist policies that directly enable their perpetuation. The social marginalization and exclusion of sex workers from public discourse as the most relevant actors in the sex work debate from political life offline spills over online. Hence, it is naïve to expect that digital communication alone has the capacity to ensure equal participation and enjoyment of freedom of expression under equal conditions.

Sex workers from North Macedonia and their associations can hardly do anything about the problem of censorship on social media to change the situation. North Macedonia is unimportant to companies like Twitter (X), Facebook and Instagram. "The Western Balkans region is generally invisible to global technology companies, and without established channels of communication, access to rights protection is significantly reduced."⁸⁹

In the online space, sex workers are censored on the one hand, yet exposed to hate speech on the other. Social media algorithms are apparently not sensitive enough to hate speech. This creates an online environment that is disturbing and frightening, in which inequalities not only spill over almost unchallenged, but are amplified, mobilized and given greater visibility in the online space. As a consequence of the digitization of communications, sex workers, especially LGBTI, queer, Roma and other racially/ethnically marginalized sex workers, are more exposed to hate speech, harassment and

⁸⁹ "Regulation in the Field of Digital Rights Comparative Analysis: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia", Share Foundation, 2021, 17.

discriminatory speech, and hence more exposed to traumatic experiences that endanger their health, their security and discourage marginalized groups from organizing politically and articulating their needs and rights. Even when it is not the case of hate speech, the condemnation of sex work, the perpetuation of gender stereotypes related to female sexuality, the condemnation of women who have sex with multiple partners, etc., are everyday occurrence on social media, which creates a hostile environment, reinforces feelings of shame and increases the internalization of sexism, homophobia, transphobia and self-stigma. Social networks are more used for the mobilization and radicalization of right-wing populist ideas than for the promotion of ideas about equality and social justice for marginalized groups. Modern populism fueled by social media algorithms exploits the public sphere, disrupts and distorts individual reality.⁹⁰ In both science and theory, the term “algorithmic populism” is used to describe the use of algorithms on social media to spread right-wing populist (chauvinist, racist, and (cis)sexist) ideas. Hence, social media becomes a safe space for the spread of hate speech, so that even people who would not use hate speech otherwise, find an enabling and encouraging environment to do so⁹¹ Digital platforms, like social networking sites, have an obligation to prevent the spread of ideas of inequality and supremacy of one group over another. Nevertheless, these obligations should be subject to regulation and monitoring by national and international authorities, which is not the case in North Macedonia.

In North Macedonia, hate speech based on gender, sexual orientation, gender identity, race and ethnicity, sexist and whore-phobic speech are ubiquitous on social media. A worrying effect of the widespread hate speech is the self-censorship of voices that promote or would promote ideas of equality, promotion of rights and well-being of marginalized communities. Expressing positive views about sex work is unpopular, which is why promoting sex work as a job is likely to be met with hate speech and insults. In this way, the stigma is further amplified around this topic and voices IN FAVOR are silenced, thus becoming an unpopular and marginal topic in the public discourse.

National mechanisms for protection against hate speech, especially the criminal and legal protection, are ineffective. The Criminal Code provides for the acts of “racial and other discrimination”, “spreading racist and xenophobic speech through a computer system”, “causing hatred, discord or intolerance on national, racial, religious and other discriminatory grounds” etc., which can be used to prosecute hate speech, especially online. The Criminal Court’s practice regarding hate speech is scarce. It begins in 2016 with a verdict for a criminal offense - causing hatred, discord or intolerance on national, racial, religious and other discriminatory grounds by the Basic Court in Struga, followed by rulings by the Basic Criminal Court in Skopje.⁹² However, not a single ruling pertains to gender, sexual orientation and gender identity, although on social networks “hate speech based on sexual orientation occurs in the most explicit form.”⁹³ The key problem is the Prosecutor’s Office, which does not recognize these acts, and makes particularly biased decisions when it comes to hate speech based on sexual orientation, gender and

90 Maly, Ico. “Populism as a Mediatized Communicative Relation: The Birth of Algorithmic Populism.” *Tilburg Papers in Culture Studies*, Tilburg University, 2018.

91 Eksi, S., “Digital Populism: The Internet and the Rise of Right-Wing Populism”, *European Center for Populism Studies*, 2021.

92 Markoski, A., “Analysis to Determine the Institutional Gap Regarding the Registration and Processing of Hate Speech in the Republic of North Macedonia”, *Helsinki Committee for Human Rights*, 2023, 58.

93 Marolov, D., and Stojanovski, S., “Hate Speech on Social Media in the Republic of Macedonia”, *Goce Delchev University Shtip*.

gender identity.⁹⁴ “In the archives of the Public Prosecutor’s Office in Skopje, one can find several negative meritorious Public Prosecutor’s decisions that either dismissed the criminal complaint for a crime like this, or decided that there was no ground for public prosecutor’s intervention.”⁹⁵ It is necessary to strengthen the capacities of the Prosecutor’s Office, with special focus on handling cases of hate speech against LGBTI people, women and other marginalized groups. Furthermore, the Criminal Code should be made more specific by the provision of the offense of “hate speech,” which will cover all online and offline forms of hate speech, which due to their seriousness are subject to criminal legal protection. The Media Law does not regulate online media. Hence, in North Macedonia there is no civil law that would impose an obligation to monitor and penalize online media that spread hate speech and discriminatory speech. Traditional media are regulated by the Law on Media and the Law on Audio and Audio-Visual Media Services, which provide for prohibition and fines for hate speech, but hate speech rarely occurs there, and is not the subject matter of this analysis. Online media is the subject, i.e. they can be the subject to self-regulation, but self-regulation has limited effects, the media participate if they want to and there are no mechanisms to make a particular medium comply with the decision of the self-regulatory body. Therefore, self-regulation may have effects on those online media that aim to operate professionally, but it may not affect the rest.

94 Drndarevska, D., Report on Violations of Human Rights from Documented Cases in the Coalition Margins for the period between 1st February and 30th August 2023, Coalition Margins, 2023.

95 Ibid, 85.

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CONCLUSIONS

- The absence of decriminalization of sex work means a violation of the right to privacy in itself. Not recognizing sex work as an occupation is the result of moralizing and interfering with privacy, bodily autonomy, self-determination and independent decision-making related to sexuality. Decriminalization means that sex work is treated like any other occupation, the dignity of sex workers is respected, they are protected against violence and they are provided with safe and fair working conditions, protection at work according to the particularities of the profession.
- Unlike sex work on the street, or the closed scene in brothels, clubs or private apartments, offering and/or providing services online is considered safer and more favorable for sex workers (avoidance of direct contact with clients, reduced risk of penalizing, lower risk of physical violence, more time for negotiation, etc.).
- The stigma towards sex workers and their marginalized position in society is also reflected in the digital sphere by displaying new ways of manifestation. The problems faced by sex workers and the violations of their rights are manifested in a different way in the digital sphere, while social injustice and inequalities persist.
- The allegedly neutral software, algorithms and other technologies are based on gender stereotypes, that is, they are tools for reproducing gender inequalities. In the digital sphere, it is about systemic inequalities and discrimination in technology, which in the online space that has become a part of the digital infrastructure, it is not simply an issue of mistakes or exceptions that would be easily rectified. "Sexism is a Feature, not a Bug".⁹⁶
- The algorithmic discrimination is an unequal treatment, often based on gender, gender identity, race and ethnicity, by algorithms used in automated decision-making technologies (for example, in employment, credit approval and other services), biometric technologies for surveillance (for example, face recognition) and the like.
- Gender inequalities and gender bias online particularly affect the rights of sex workers and their safety in the online space. This is most prominent in the field of digital gender-based violence and its ubiquitous form, sexual abuse via visual material or sharing images and videos with intimate content without consent. Due to the nature of the occupation, which entails offering and providing sex services online, sex workers are much more exposed to this type of gender-based violence.
- The Istanbul Convention is a key regional instrument for gender-based violence, on the basis of which measures should be implemented to

96 Ibid, 6.

prevent and protect against sexual abuse by visual material and other forms of digital gender-based violence.

- Privacy is particularly important for sex workers because the violation of the right to privacy means the risk of violation of other rights and loss of livelihood. A key right regarding privacy in the digital sphere is that users know which data, in what way it is used, analyzed and stored, and the right to have control over these processes. “For sex workers, privacy means control over their personal data, setting personal and professional boundaries, and living and working more safely.”
- One of the problems related to the right to privacy in the digital sphere includes surveillance technologies, namely the surveillance of private communication on direct messaging platforms (communication that is not encrypted), which most strikingly violates the right to privacy, particularly by utilizing surveillance of online behavior and surveillance technologies that are used in public space to secure premises and the like.
- The processing and analysis of data in the digital sphere is based on profiling, that is, reducing the behavior of users to stereotypes within which they are expected to behave, which in turn also stimulates stereotypical behavior. Platforms directly contribute to the spread of stereotypes in the digital sphere, thereby taking away the agency of users to make independent and informed decisions.
- The algorithms enable online radicalization. Users who have homophobic and chauvinistic attitudes will be exposed to more such content, which will solidify their attitudes instead of changing them.
- Deplatforming sex work entails taking a series of measures by various platforms to prevent them from being used to offer and/or provide sexual services (use of surveillance technologies, even direct communication tools, algorithms that prevent the use of words and terms used in sex work, etc.)
- Deplatforming is often the result of public policies that make platforms liable if they are used for the purpose of organizing human trafficking. These policies do not distinguish between voluntary sex work and human trafficking, thus criminalizing sex workers. An example of this is the 2018 United States Fight Online Sex Trafficking Act/Stop Enabling Sex Traffickers Act (FOSTA/SESTA). According to the Act, the platforms are directly responsible for enabling human trafficking for sexual exploitation, in which sexual exploitation is viewed as promoting and organizing prostitution, which makes no distinction between the terms. The negative impact of the Law is felt outside the US, as a number of platforms used globally are registered in the US.
- Most countries in Europe have solid data protection legislation due to the EU’s General Data Protection Regulation. State authorities collect personal data about sex workers in various situations. In countries where sex work is decriminalized or legalized, sex workers usually have to register their activity with an authority or register as holders of social and health insurance rights based on their work as sex workers. Person-

al data about sex workers is also collected in the healthcare sector, social protection sector, judiciary, police, etc. These data are a special category of sensitive data because they reveal the status of a sex worker, and they can also contain other categories, such as data on health status, sexual orientation, gender identity, ethnicity, etc. and as such, according to the EU regulation, they enjoy a higher level of protection.

- Online sex workers are part of a wider category of platform workers who are already recognized as a separate category of workers. Online platforms are in most cases de facto employers, whether it is a platform for sex services, transportation or food delivery, domestic workers, consulting services, etc. The proposed EU directive on platform workers is a missed opportunity to include sex workers, the group which is most at risk of exploitation and poor working conditions. Labor legislation in North Macedonia lags significantly behind these trends. The Labor Law recognizes only workers who have an employment contract.
- Platforms provide unfair conditions for sex workers who offer and provide services online. Key problems include: 1. lack of transparency on the part of the platforms, in terms of which data is collected, how it is stored and used, 2. failure to take measures to prevent and protect against sexual abuse through visual material, 3. worse conditions on the platforms in countries where sex work is criminalized, 4. lack of agency for sex workers is perceived as control over their working conditions and practices and the possibility to express disagreement in order to create a change in their own situation, 5. lack of accessible and transparent complaint procedures in case of violation of rights by the platform (e.g. deletion, blocking of profiles, confiscation of funds), 6. lack of mechanisms to protect against violence and abuse (e.g. reporting problems with customers and sharing information about them) and 7. problems with payment.
- Sex work is subject to censorship by means of content moderation algorithms. Article 10 of the ECHR protects information and ideas that shock, offend or disturb the state or any part of the population, it should ensure plurality, not conformity and unanimity. Hence the promotion of sex work as work, demands for decriminalization as a unique model based on dignity and human rights which represent progressive ideas that are protected by freedom of expression and must not be limited due to relative concepts such as morality and public interest.
- Social networks censor and allow the spread of (cis)sexist, transphobic, racist and homophobic viewpoints. On social media (e.g. Twitter-X), the very word “sex work” can be subject to censorship, as well as photos related to the promotion of sex work as work.
- Freedom of expression entails the freedom to receive information and ideas and the right to access information. Due to the censorship of sex work-related content online, this aspect of sex workers’ freedom of expression is also limited.
- Censorship also affects the right of association of sex workers and the activities of their associations and other associations that protect the rights of sex workers. Sex workers’ association is not only extremely im-

portant for their safety and well-being, but it is also essential for political organizing to articulate demands for decriminalization and respect for rights.

- Protection against hate speech and speech that incites violence (such as homo/transphobic speech, sexist speech, etc.) is part of the freedom of expression, i.e. they do not fall under the category of protected speech. According to the practice of the ECHR and the recommendations of the Committee of Ministers of the Council of Europe, states should implement comprehensive measures for prevention and protection in several areas, including criminal-legal protection.
- Among the instruments of the Council of Europe, the most important one in the area of criminal prosecution of hate speech is the so-called Budapest Convention or the Convention on Cybercrime of the Council of Europe from 2001 and the Additional Protocol on the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, which are the bases for enhanced international cooperation in this area.
- The European Union has the most progressive legislation in this area, especially with the enactment of the Digital Services Act in 2022. The Digital Services Act imposes greater accountability on Internet intermediaries for hate speech and other human rights violations on major social media, such as an obligation for clear reporting and action systems, priority treatment of confidential whistleblower reports, feedback after user reports and broad transparency obligations.
- In the last decade, anti-democratic movements have been mobilized throughout Europe, whose actors are key creators of content with hate speech, directed against sexual rights, gender equality, and especially against the rights of transgender people. These movements also pose a threat to sex workers whose well-being directly depends on the degree of respect for gender equality, sexual and reproductive rights and the rights of transgender people.
- North Macedonia is still not a sufficiently digitized society. Services from the private sector, and to an even lesser degree from the public sector, are not digitized enough. There is no widespread use of algorithmic and automated decision-making, the use of algorithms in surveillance technologies, datafication and techno-solutionism, hence there is no awareness of the risks these technologies can pose to human rights and the equality of citizens.
- Legislation in this area is currently being developed, governed by the need to align with the EU Law and the Council of Europe's instruments, and many areas are still not sufficiently regulated. For the promotion of digital rights and digital security, international cooperation and the implementation of European standards are most important, especially for small countries like North Macedonia, which are powerless to impose rules over the operations of multinational companies that control the digital space.
- The programs of the associations working with sex workers in North Macedonia are primarily developed and aimed at sex workers who offer

services in person. Hence, sex workers who work exclusively online are not covered by any association, nor are they self-organized. Until this point, no research has been conducted among sex workers regarding their needs and problems online.

- Sex work in North Macedonia is criminalized. Even the Articles of the Criminal Code and the Law on Offenses of Public Order and Peace, which do not directly refer to sex workers, are used in practice to penalize and criminalize voluntary sex work. Criminalization does necessarily entail not having access to mechanisms to protect rights in case they are violated. Sex work is seen exclusively as a criminal and legal problem and it is not regulated in terms of labor and social policy. Affirmative policies towards sex workers are only found in the healthcare sector in the National HIV Prevention Strategies and Programs. The policy of criminalization is directly opposed to the goals of public health policies.
- Progress has been achieved with the Law on Prevention and Protection against Violence on Women and Domestic Violence, in which sex workers are recognized as vulnerable women - the affirmative term "sex workers" is used and the authorities are required to take into account their vulnerable position when taking measures and activities in cases of gender-based violence. The Action Plan for the implementation of the Istanbul Convention 2018-2023 includes measures to abolish the provisions which penalize sex work. The implementation of this measure, Amendments to Article 19 of the Law on Offenses of Public Order and Peace, is planned for 2019, but the implementation has not even commenced yet.
- Sex workers in North Macedonia use platforms for advertising escort services, as well as printed advertisers. They use sites with pornographic content less often, where they post videos and contact numbers. Social networks and direct chat applications are used to communicate with customers.
- None of the platforms for escort services displays the Terms and Conditions of Use of the platforms in Macedonian or Albanian language.
- The platforms are designed around the needs of sex workers' clients, by means of meeting their needs and addressing them. Judging by the text and design of the platforms, they treat sex workers as individuals without agency (autonomy of action), do not communicate in a direct way with them and do not take into account their needs and opinions.
- Across all platforms for advertising escort services used by sex workers in North Macedonia, the imbalance of data required by sex workers versus clients is striking. Customers do not have to register to view the ads in their entirety.
- The platforms do not offer separate sections where sex workers can contact the platform or communicate with each other, there is no data on safety, use of contraception, transmission of STIs/HIV, protection from gender-based violence, etc. Content of sex workers can be easily saved by the platforms.

- With the exception of the eurogirlseskort.com platform, there is no possibility on other platforms to publish data about clients with whom sex workers have had bad experiences. The blacklist menu has the option to search for email addresses and phone numbers, which is a useful tool for sex workers to check clients with whom they arrange meetings. However, on these platforms, when sex workers ask for payment in advance for a service is considered a scam. Therefore, sex workers have been blacklisted just because they asked for it.
- Sex workers on the platforms consent to almost any use of their content, which may include the sale and publication of the content on any other platform, risking that they have no control over where, in what context and how their content goes further published and used.
- Sex workers have limited options to request full and final deletion of personal data shared with the platform. Only on cityoflove there is an option to request information, review or deletion of data by the platform.
- The platforms do not accept any responsibility for anything that may arise from the platform itself. The platforms themselves claim that they are in no way involved in sex work. Contrary to these claims, these platforms play a key role in sex work, directly and indirectly regulating the conditions in which sex work takes place, and have the potential to affect the safety, privacy and the economic well-being of sex workers. Platforms are not neutral, on the contrary, with their design, the language they use and the information they (do not) share, with the data they allow to be published, which they collect and use, they put sex workers at a disadvantage, they do not meet their needs and do not care about their safety.
- Printed advertisers used to advertise sex services are not intended for sex work. They prohibit advertizing sex services. These advertisers are less frequently used, and the data published by sex workers is scarcer. The advertisers collect personal data that can be linked to the person. Sex workers risk being sanctioned for sex work if they advertise on these advertisers, especially considering that the advertisers themselves do not want such ads on their pages, and unlike escort platforms, these advertisers are companies registered in North Macedonia, where the cooperation with the Macedonian prosecution authorities is simpler and much more efficient.
- In North Macedonia, there is no efficient and effective protection from digital gender-based violence victims. When photos and other materials are shared in the context of sex work, there is an additional barrier, that is, the fear of criminalization of the victims is what prevents them from seeking help from competent institutions. The Criminal Code and the Law on Prevention and Protection from Violence against Women and Domestic Violence regulate this area accordingly. The insufficient enforcement of the legal framework is the key problem. On the one hand, there are low capacities within the Electronic Crime Department, which does not have enough experts to respond to the increasing number of such cases, but the key problem is in the Prosecutor's Office, which does

not recognize these as crimes that should be prosecuted. At the core of the problem are the gender stereotypes and sexist attitudes of the institution itself that relativizes violence and blames the victims.

- In North Macedonia, institutions collect data on sex workers in the field of healthcare through the implementation of the HIV Prevention Program, as well as in the judiciary (police, prosecution and courts), as perpetrators of criminal acts related to sex work. The Personal Data Protection Law recognizes these categories of data as “special categories of personal data” and provides for stricter conditions for their collection and processing. The Law needs to be further harmonized with the EU Law, but the key problem is its insufficient implementation.
- There is a need to modernize the way of collecting, storing and processing data, including the volume of data collected within the framework of the HIV Prevention Program, in order to align with the new Personal Data Protection Law, renewal of software security technologies, rethinking codes in a way that they will not contain personal data, as well as developing internal protocols that will regulate these processes in detail.
- With the digitization of communications and the growth in popularity of social media, they have become a key source of information for the population. This means that we give global technology companies rights and obligations to protect and regulate freedom of expression, thereby privatizing the protection of freedoms and rights which are crucial to democracy. Hence, it is necessary to develop the law at the international and/or regional level in order to regulate their work in relation to enabling freedom of expression, which also includes protection against hate speech. Apart from a few sections in the Criminal Code that can be used to protect against online harassment and hate speech, the work of social networks in North Macedonia is not regulated at all.
- Sex workers from North Macedonia and their associations can hardly do anything about the problem of censorship on social networks to change the situation. “The Western Balkans region is generally invisible to global technology companies, and without established channels of communication, the access to rights protection is significantly reduced.”⁹⁷
- Social networks are predominantly used for the mobilization and radicalization of right-wing populist ideas than for the promotion of ideas regarding equality and social justice for marginalized groups. Modern populism fueled by social media algorithms exploits the public sphere, disrupts and distorts the individual’s reality.⁹⁸ Social media provide for a safe space for spreading hate speech, which is why even those who would not use hate speech in person, find an enabling and encouraging environment to do so online.
- In North Macedonia, hate speech based on gender, sexual orientation, gender identity, race and ethnicity, sexist and whore-phobic speech are ubiquitous on social networks. A worrying effect of the widespread hate speech is the self-censorship of voices that promote or would promote

97 Ibid 96.

98 Ibid 97.

ideas of equality, promotion of rights and well-being of marginalized communities. Expressing positive views on sex work is unpopular, so promoting sex work as work is very likely to be met with hate speech and insults.

- National mechanisms for protection against hate speech, especially the criminal and legal protection, are ineffective. The Criminal Court's practice regarding hate speech is scarce. The key problem is the Prosecutor's Office, which does not recognize these acts, and makes particularly biased decisions when it comes to hate speech based on sexual orientation, gender and gender identity.
- The Law on Media does not regulate online media. In North Macedonia, there is no civil law that would impose an obligation to monitor and penalize online media that spread hate speech and discriminatory speech. Online media is subject, i.e. they can be subject to self-regulation, but self-regulation has limited effects, given that the media participate if they wish and there are no mechanisms to make a particular medium comply with the decision of the self-regulatory body.

6.

RECOMMENDATIONS

For decision-makers:

- Decriminalization of sex work following the example of New Zealand. The legal framework for decriminalization should pay particular attention to the protection of sex workers from digital gender-based violence, protection of personal data and other aspects of the right to privacy, and provide employment rights for sex workers working online.
- Strengthening the capacities of the Department for Electronic Crime and Digital Forensics, the Public Prosecutor's Offices and the Courts for protection against hate speech and digital gender-based violence.
- Full alignment of the Law on Personal Data Protection with the EU Law (General EU Data Protection Regulation), strengthening the capacities of the Agency for the Protection of Personal Data (financial and human) and law enforcement institutions, as well as alignment of the legislation in all areas with the Law on Personal Data Protection.
- Harmonization of the domestic law with the EU Law in the field of digitization, in particular with the Digital Services Act, protection of the right to privacy online, prohibition of surveillance of private communication, responsibility of technology companies and Internet intermediaries for hate speech, misinformation and discriminatory speech, prohibition of profiling based on stereotypes, guaranteeing the right to control user data that are collected and processed, the right to appeal, etc.
- Recognizing the aspects of equality, non-discrimination, hate speech and gender-based violence in digitalization policies and their inclusion in the Cyber Security Strategy, the Network Security Law and other relevant policies.
- Adopting a Law on Media that will cover online media and address the problem of hate speech and misinformation.
- Strengthening the capacities of all institutions involved in the response and prevention of gender-based violence and violence against women, with focus on online sexual abuse.
- Consistent implementation of the Action Plan for the implementation of the Istanbul Convention 2018-2023.
- Explicit criminalization of online and offline hate speech, which due to its seriousness should be subject to criminal sanctions.
- Adoption and implementation of digital literacy programs and prevention of online radicalization in formal education at all levels.
- Recognition of algorithmic discrimination in the Law on Prevention and Protection from Discrimination.

- Enact protocols in institutions that use or plan to use decision-making algorithms or in surveillance technologies for the prevention of algorithmic discrimination.
- Promotion of policies for prevention and protection of human trafficking, with the aim of clearly separating sex work from sexual exploitation and human trafficking for sexual exploitation.
- The Institute of Public Health and the Ministry of Health in cooperation with the associations that implement the HIV Program should modernize the way of collecting, storing and processing data, including the amount of data collected within the framework of the HIV Prevention Program, comply with the new Personal Data Protection Law, update them on software security technologies, rethink the way codes are formed so that they do not contain personal data, and develop internal protocols that will regulate these processes in detail.
- Fundamental changes in the labor legislation in order to recognize the so-called platform workers and other self-employed individuals and people working without an employment contract.

For civil associations:

- Conducting outreach research with sex workers from North Macedonia to map the tools and technologies they use, their behavior in the digital space, their data protection needs and the advancement of digital security.
- Creating a training module for digital literacy and digital rights among sex workers that will cover the topics of (safer) behavior in the online space and strategies for coping and reducing harm from discrimination, censorship and exclusion from the digital space. The module should be implemented by peer educators, so that sex workers value their privacy and digital security more and to acquire skills to use protection technologies.
- Developing legal and social service programs for sex workers who work exclusively online and strengthening their capacity to promote rights.
- Conducting awareness-raising activities on digital gender-based violence, such as image sexual abuse and online sexual harassment among sex workers, with the aim of recognizing these forms of violence as reportable, documentable and protection-seeking behaviour.
- Partnerships with gender equality and gender-based violence organizations for joint advocacy to raise awareness and implement recommendations to strengthen digital security in order to reduce non-consensual sharing of intimate material and hold perpetrators accountable.
- Partnerships with associations and other key actors in the field of digital rights in order to recognize gender equality, the rights of sex workers and other marginalized groups in the Digitalization Agenda.
- When advocating for sex work decriminalization, consider the digital rights and digital security of sex workers, as well as the protection of

personal data. The data that sex workers would provide to the authority in which they are registered should be minimal, that is, only data that is necessary to obtain rights should be provided. The sex work regulation model should include guarantees that sex workers' data collected by the authority where they are registered will not be shared with other authorities and will not be used contrary to the purpose for which they are provided.

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