

# POLICY BRIEF AND RECOMMENDATIONS ON THE RIGHTS OF MIGRANT SEX WORKERS



## EXECUTIVE SUMMARY

Sex workers in Europe face constant violations of their human rights, contrary to the principles of the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, including the goal of gender equality. Their situation is further exacerbated by increasing social and political conservatism, backlashes against women's and LGBT rights, and growing governmental efforts to criminalise sex workers, their clients and non-exploitative third parties facilitating or profiting from sex workers' labour.

Migrant sex workers are estimated to comprise more than 65 percent of the sex worker population in Western Europe and 16-17 percent in Central Europe. Additionally, in recent years sex work has increasingly become an income-generating strategy among asylum seekers and refugees fleeing to Europe.

The increasing use of criminal law in migration management, negative developments in the regulation of sex work, and the targeting of migrant sex workers by misguided anti-trafficking policies have significantly heightened this population's vulnerability to abuse, violence and exploitation. Repeated police raids and so-called "rescue operations" in sex work settings continuously undermine sex workers' safety, force them to work underground, and expose them to exploitation and trafficking. Furthermore, these measures frequently result in migrants' repatriation or deportation, often to countries where they face high levels of gender-based violence and persecution.

The magnitude of these problems is calling for urgent European and national policy responses. These need to address the root causes of migrants' vulnerability: the criminalisation of migration and the facilitation of the entry and stay of undocumented migrants, lack of access to employment, repressive laws regulating sex work, and the use of anti-trafficking policies to detect and deport undocumented sex workers.

### **The International Committee on the Rights of Sex Workers in Europe (ICRSE) therefore calls upon policy makers to:**

- Support the decriminalisation of sex work in order to ensure (undocumented) migrant sex workers' access to health and justice.
- Support irregular migrants' regularisation and an end of deportations of (undocumented) migrant sex workers.
- Ensure that asylum seekers, refugees and (undocumented) migrants have access to welfare support and to economic and employment opportunities.

## **TRAPPED IN A WEB OF REPRESSIVE ANTI-SEX WORK, ANTI-IMMIGRATION AND ANTI-TRAFFICKING POLICIES**

The criminalisation of migration in contemporary Europe and the common conflation of human trafficking with sex work adversely affect the human rights situation of migrant sex workers.

The raising influx of migrants to the European region has been followed by the implementation of repressive immigration policies.<sup>1</sup> Stricter border controls and conditions of entry, expanding capacities for prison-like detention and deportation, and criminal penalties increasingly used for migration offences, such as irregular entry and stay, all represent alarming trends in the treatment of irregular migrants, asylum seekers and refugees in all parts of Europe.<sup>2</sup>

Consequences are severe for all of these groups. In many countries, asylum seekers do not have access to a thorough and fair examination of their claims, are housed in horrid reception conditions, can face criminal charges for changing their address without authorisation, and are not allowed to access legal employment or engage in any economic activity. Since public authorities and service providers are often obliged to report one's irregular status to law enforcement agencies, undocumented migrants often refrain from seeking help in various institutions, including social services or healthcare, and from reporting crimes committed against them or others to the police. The use of criminal law to target employers and landlords restricts irregular migrants' access to housing and employment, and leaves them vulnerable to exploitation. Furthermore, the criminalisation of migration brings about abusive detection practices, such as racial and ethnic profiling of undocumented migrants by the police, in turn leading to distrust towards law enforcement officers by migrant communities.

As a result, many refugees, asylum seekers and undocumented migrants might feel they have little choice but to sell sex due to repressive migration laws, lack of other employment opportunities and poverty. Lack of social and economic opportunities in people's respective home countries, the goal to improve one's economic situation, and the need to escape from oppressive family arrangements, patriarchal relations, and trans- or homophobia are also among the motivations that see a large number of people migrate to and across Europe in order to find work in the sex industry.

Migrant sex worker populations are frequently targeted by anti-trafficking measures, which are driven by the historical conflation of human trafficking with sex work. These actions manifest themselves in police operations that aim to fight trafficking by focusing on the prosecution of traffickers. In reality however, they lead to police raids which cause trauma for migrant and undocumented

sex workers, frequently leading to their loss of ability to continue work or even resulting in their detention and deportation. On many occasions, there are no mechanisms in place that would guarantee trafficked persons the return of seized property or compensation for crimes committed against them.<sup>3</sup> Evidence furthermore shows that police raid and rescue actions often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to unfair workplace practices, abuse and trafficking.

This complex web of anti-immigration and anti-trafficking policies, coupled with repressive sex work laws, leads to violations of fundamental human rights of migrant sex workers:

### **1. Right to employment**

- In countries where sex work is illegal, e.g. in Croatia, Romania, the Russian Federation, and Ukraine, migrant sex workers are denied the right to work and subjected to heavy punishment, including deportation.
- In countries that do not recognise sex work as legitimate form of employment, e.g. Norway, migrant sex workers are subjected to deportation because they do not have valid work and residence permits.
- In countries where sex work is legal or regulated, some categories of migrants have limited access to legal (self-) employment in sex work. Romanian and Bulgarian sex workers, for instance, are not allowed to work outside of employment relationships in the Netherlands; non-EEA and non-EU-citizens who want to work as sex workers in Austria do need a specific visa which allows them to work for periods of three to six months only, within a 12-month period.

### **2. Right to housing**

- In many countries, migrant sex workers are excluded from state-subsidised housing, publicly-funded homeless services, and emergency accommodation.
- Without valid residence permits, migrant sex workers' applications are mostly rejected or they might face eviction in the private housing market. They might also face exploitation and are frequently offered overpriced accommodation in extremely poor conditions.
- When sex workers live together for safety concerns and to share costs associated with housing, police might interpret this as a sign of coercive third party relationships or trafficking and carry out investigations and raids, which can lead to the disruption of workplaces and deportation.
- If fellow sex workers provide help for newly arriving migrant sex workers in irregular situations, this, too, can be interpreted by law-enforcement as facilitation of irregular entry or stay and lead to criminal charges.

### 3. Right to health

- Without proof of employment or work permits in countries where sex work is not considered legitimate work, migrant sex workers have no access to public healthcare services.
- In all EU member states, undocumented migrant sex workers are entitled by law only to emergency care, and in some countries, they have to cover these costs by themselves.
- In many countries, primary and secondary healthcare services are available only against payment. High costs of healthcare often lead undocumented migrant sex workers to avoid healthcare services or delay seeking treatment to which they might be legally entitled to.
- Healthcare providers or authorities in several countries, e.g. in Germany and Ireland, have to report migrants in irregular situations to immigration enforcement bodies.

### 4. Right to be free from violence

- Mass media, politicians and police fuel discrimination and violence against migrant sex workers by depicting them as “illegal” economic migrants who are said to be immoral and to pose a threat to social order, moral values and public health.
- Deportations of sex workers often also expose them to further criminalisation and violence in their countries of origin.
- Police raids, frequently accompanied by surveillance, racial profiling, police extortion, and regular control of migrant sex workers, all have a negative effect on migrant sex workers’ mental and physical health and deter them from seeking help upon victimisation.

## **RIGHTS NOT RESCUE! RECOMMENDATIONS FOR EU POLICY MAKERS**

### **CRIMINALISATION OF MIGRATION**

- Monitor the implementation of the Return Directive and ensure that member states do not subject migrants to custodial penalties for irregular entry or stay as long as the Return Directive applies to them.
- Recommend to member states that non-EU citizens who are victims of exploitation and abuse receive a residence permit which is not dependent on assisting with the prosecution of their perpetrators.
- Promote the Council of Europe Convention on preventing and combating violence against women and domestic violence and encourage member states to sign and ratify it.

- Revise the Facilitation Directive by explicitly excluding punishment for humanitarian assistance at entry (e.g. rescue at sea and assisting refugees to seek safety) as well as the provision of non-profit humanitarian assistance (e.g. food, shelter, medical care, legal advice) to migrants in irregular situations.
- Revise the Facilitation Directive so that renting accommodation to migrants in irregular situations is not considered facilitation of stay, while ensuring that the legal system punishes those persons who rent accommodation under exploitative conditions.
- Promote the facilitation of residence permits for undocumented workers, including sex workers, and encourage ongoing regularisations.
- Address the demand and supply for irregular work by establishing better regulations for the EU labour market by facilitating the creation of more entry and stay opportunities for third country migrant workers across skill levels and labour sectors in member states, including sex work.
- Reform laws and policies that limit access to health services on the basis of residence or employment status.

## **CRIMINALISATION OF SEX WORK AND REPRESSIVE ANTI-TRAFFICKING POLICIES**

- Promote a rights-based approach to sex work by calling for the decriminalisation of all aspects of consensual adult sex work and the elimination of all discriminatory and repressive laws and regulations contributing to sex workers' vulnerability to violence, abuse, discrimination and exploitation.
- Recognise sex work as work and promote sex workers' labour rights, thus providing them with labour benefits and protections, including access to social and medical services, and the rights to redress, and to bargain collectively.
- Include the monitoring of the availability and accessibility of legal protections pertaining to health, employment and discrimination for sex workers in the ongoing work of the European Parliament and European Commission, e.g. in the monitoring of the implementation of the Victims' Rights Directive (2012/29/EU).
- Support the creation of more effective complaints mechanisms and access to justice by creating direct funding opportunities for sex worker-lead civil society organisations and trade unions providing first-line assistance to migrant sex workers with labour, health and victim's rights complaints.
- Explore and apply the synergies between the Anti-Trafficking Directive (2011/36/EU), the Victims' Directive (2012/29/EU), and the Employers'

Sanctions Directive (2009/52/EC) to develop a more comprehensive human rights-based approach to assistance, protection and access to justice and redress for trafficked persons.

## REFERENCES

- <sup>1</sup> Parkin J., 2013, The Criminalisation of Migration in Europe: A State-of-the-Art of the Academic Literature and Research, CEPS Paper in Liberty and Security in Europe 6: 1-22
- <sup>2</sup> Council of Europe: Human rights of immigrants, refugees and asylum seekers. <http://www.coe.int/be/web/commissioner/thematic-work/migration>
- <sup>3</sup> X:talk project, 2010, Human rights, sex work and the challenge of trafficking. Human rights impact assessment of anti-trafficking policy in the UK. <http://www.xtalkproject.net/wp-content/uploads/2010/12/reportfinal1.pdf>

