

Prostitution from a criminal law perspective

Abstract

In view of the existing jurisprudence, prostitution can be understood not only as sexual intercourse with other persons for remuneration in the form of coitus, but also as all other forms of exhibition of the sexual drive of another person of the same or opposite sex by physical intercourse. However, when defining prostitution, it is necessary to take into consideration the element of voluntariness, i.e. whether prostitution is provided voluntarily or involuntarily. The aim of the rigorous thesis was to describe both of these forms, i.e. both the issue of voluntary prostitution and the issue of involuntary prostitution. The differentiation of prostitution according to the element of voluntariness can also be observed at the level of international legislation, which tends to focus on forced prostitution.

The same is the case at the legal level, where the current approach to prostitution in the Czech Republic can be described as abolitionist, i.e. prostitution as such is not punished, but only the accompanying phenomena or prohibited forms of prostitution. In this context, the rigorous thesis analyses the offence of prostitution endangering the moral development of children according to Section 190 of the Criminal Code, the offence of pimping according to Section 189 of the Criminal Code, the offence of trafficking in human beings according to Section 168 of the Criminal Code, the offence of spreading a contagious human disease according to Section 152 of the Criminal Code and the offence of spreading a contagious human disease through negligence according to Section 153 of the Criminal Code.

The outlined legislation within the Czech Republic was further analysed comparatively with the German legislation, especially in view of the great contrast between them, since the Federal Republic of Germany has a statutory regulation of prostitution; the basic legal regulation in this context is the ProstG. Illegal forms of prostitution are then dealt with by the StGB. The Swedish legislation on prostitution, based on radical feminism, was also mentioned in basic terms, and is particularly specific in that it punishes only the demand, not the supply, of sexual services.

Considering the different approaches to prostitution in foreign jurisdictions, a certain part of the thesis deals with considerations on the most appropriate approach to voluntary prostitution and its possible introduction in the Czech Republic. Specifically, the repressive approach, the regulation approach and the existing abolitionist approach are analysed in turn.

In addition to comparative analyses, the author attempted to approach the issue of prostitution in the Czech Republic from another perspective, namely from the perspective of statistical data. For this purpose, the author used the reports on the state of human trafficking processed by the Ministry of the Interior, the reports on the social and legal protection of children processed by the Ministry of Labour

and Social Affairs and data from other important organizations operating in the Czech Republic, i.e. La Strada Czech Republic, o. p. s.; ROZKOŠ bez RIZIKA, z.s.; Archdiocesan Charity Prague and the Diakonia of the Evangelical Church of Czech Brethren.

Last but not least, the rigorous thesis is enriched by the findings of sexologist MUDr. Vladimíra Grubauerová, who works closely with the ROZKOŠ bez RIZIKA, z.s. organization and has been working on the issue of voluntary prostitution for many years. In particular, it consistently reminds us that the current abolitionist approach does not sufficiently ensure the protection of persons providing prostitution.

Keywords: prostitution; criminal law; human rights dimension of prostitution