

“RESTRICTED JUSTICE”:

**REPORT ON LEGAL
SUPPORT TO SEX WORKER
TRANS WOMEN SUFFERING
FROM RIGHTS VIOLATIONS**



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December 2014

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1

INTRODUCTION

SEX WORKER TRANS WOMEN IN THE GRIP OF VIOLENCE, AND THE JUSTICE THAT DOES NOT “REACH”: WHAT HAVE WE DONE WITH OUR ASSOCIATION, AND WHAT DO WE NEED?

KEMAL ÖRDEK

Red Umbrella started out in April 2013 to improve human rights of all sex workers including female, male, and trans individuals. To this end, we try to act on stigmatization, marginalization, discrimination, hate speech, hate crimes, violence and murder, and all other violation of rights committed against all sex workers as well as main problems within the framework of economic justice and fundamental human rights from the day the association was established.

We are conducting several projects to improve human rights conditions of sex workers. The fundamental perspective in these projects is based not only on providing

services to sex workers once they become the victims of rights violation but also on enhancing the capacity of all sex workers to ensure that they will not suffer from rights violation. In other words, in addition to offering sex employees legal support after they become victims of rights violation, we attach great importance to securing fundamental rights as well as informing and educating sex workers to make sure that they will not incur violation of their rights.

Until early 2014, Red Umbrella tried to offer sex workers legal counseling or direct legal support after the violation of rights that they suffered, without any financial resource. As an association for sex workers, we had great difficulty finding financial resource in this field for various reasons. The first one of these reasons was to find out that when we first contacted the funding organizations as an association for sex workers, no other civil society organization that acted directly on human rights or labor rights of sex workers had contacted them before. The organizations that were rather in contact with civil society organizations dealing with LGBTI-related activities and that support such organizations encountered a civil society organization that was acting in another domain for the first time. The second reason was that we were a newly established organization. We encountered

some hesitations on what activities we conduct in what fields, and on what capacity we could handle the financial resources that may be allocated to us. The last reason was that the funding organizations were not much familiar with human rights struggle of sex workers, and the broad prejudices held by those controlling such organizations against sex labor and sex workers.

By the late 2013, we engaged in an intensive effort with funding organizations to find financial for the said financial resources which our association needs to offer legal support. We negotiated with many funding institutions and organizations, informing them about both the activities of our association and our vision and mission in general. We communicated in detail the rights violations encountered by sex workers in Turkey, which are made up of different groups, their vulnerable position in the face of these violations, and the hindrances they suffer from in their access to justice. Although we conducted such informing activities with a perspective of advocacy in a sense for all sex workers, we had difficulty finding financial support that covers all sex workers. In addition, we decided to address our efforts with funding organizations with special focus on sex worker trans women for reasons such as the absence of a systematic effort for the acts of violence faced by sex worker trans women in

various provinces in Turkey and the fact that the acts of violence targeting such groups come to the public agenda more frequently each day.

We mentioned during our meetings with many funding organizations the need to monitor and map the violence against sex worker trans women in various provinces of Turkey by means of gender equality and minority rights approaches. We also mentioned the importance of offering legal counseling and direct legal support to sex worker trans women who suffered from violence and related acts. These efforts enabled us to conduct the “Mapping of Violence Directed towards Sex worker trans women in Turkey and Legal Support Project” with the support of the Consulate General of Sweden in Istanbul, Open Society Foundation and Dutch Embassy in Ankara.

Since January 2014, we have aimed to reach 150 sex worker trans women from 10 provinces in Turkey and to conduct special surveys that will allow them to communicate their experiences of violence to us. A project specific to sex workers has not been conducted in Turkey except for 3 major provinces. We did not have any systematic data other than the claims of activists, some hearsay with regard to the violence directed towards this group of people, and testimonies in these 3 ma-

major provinces and some of the surrounding provinces. Gathering data, listening to the witnesses, offering legal counseling or direct legal support to victims based on the violations that occurred made up the first steps of the advocacy works for remedying the violations of rights in this field. Thus we started our actions under this project.

We have conducted a survey with 233 transgender sex workers from 10 provinces of Turkey; distributed a "Leaflet of Information on Rights Violations against Sex Workers"; provided legal counseling and support to about 50 cases through police station support, personal contact, telephone, and email; participated in many conferences and seminars on LGBTI held during the time of the project; taken part in activities organized on violence against women or disadvantaged groups and preventive measures; and organized information workshops against rights violations towards sex workers with the attendance of our lawyers. Within the scope of this project, we aim to gather 30 sex worker trans women from 10 provinces of Turkey and offer them two training sessions on sexual health and reproductive health rights, and preventive and protective policies against violation of rights. We also aim to make a list of needs and demands against the acts of violence targeting sex

worker trans women with 30 participants and to give this list to the relevant units of the Government. We are also planning to organize a one-day public information conference on 20 December 2014, bringing the subjects of the matter and the authorities together. In addition to the present report, we publish a book of interviews prepared by compiling the interviews made with 20 sex worker trans women from 10 provinces of Turkey as well as an analysis report based on the data acquired from the surveys that we have conducted. Lastly, we are publishing for the public and the authorities the work titled "Stop the Violence to Sex worker trans women: Needs, Demands and Suggestions" to be prepared after the collaboration of sex worker trans women brought together in Ankara on 18 - 19 December 2014.

Our encounters with sex worker trans women who suffered from violence and related rights violations have been usually troublesome in the last one year. Our association was well aware of the difficulties of reaching and bringing service to sex worker trans women who had so much difficulty making a living. There were several reasons why the process was full of difficulties. First, we were working with a team of lawyers who worked in this field for the first time. Nihan Erdoğan, Sinem Hun, Eda Ayşegül Kılıç and Oğuz Evren Kılıç, the lawyers who

are authorized to represent our association and are members of our team of lawyers, had been offering legal counseling or direct legal support to sex worker trans women who were victims of violence for some time. However, we did not have a full command of the dynamics in this field yet. The period of project helped both our association and our team of lawyers to get to know this field better, respond to the requirements of the field in a better way, and have an idea about what steps we may take after the end of the project.

We contacted several groups of sex workers, received tens of assistance requests from other cities, offered counseling to as many victims as we can through telephone and email, tried to intervene in the legal proceedings of victims in some case and our lawyers actually intervened and provided support in some lawsuits. One of the problems we experienced in this process was the lack of trust in victimized sex worker trans women and in fact, all sex workers to both associations and to lawyers. Despite the fact that various civil society organizations try to reach transgender sex workers who suffered from violence and other violations of rights for years, victims still do not know in what ways associations or lawyers can help them or how they can enhance their own capacity. Many sex worker trans women who had some

personal issues with certain civil society organizations and were unable to get the legal or other kinds of support they demanded in the past, having problems of confidence in such organizations also had issues of confidence in us and distanced themselves to us even if it was the first time our association reached them and we had not known them at that time.

Many sex workers expressed their lack of confidence in justice. The sex workers who did not believe in justice stated that they did not want to get any legal support even though they reached us immediately after the violation of right. Many sex workers decided to terminate the legal process as they had difficulty affording it. As many other sex workers, on the other hand, refused to claim their rights even though they were seriously victimized due to the exhaustion from sex labor and frequent encounters with law enforcement.

Another truth underlying the fact that transgender sex workers and other sex workers do not “want to” ask for justice is the fear that the regulation on sex labor and the social perception of sex workers create on them. Many sex workers we met, and initially offered legal support, who later gave up or did not want to continue the process by any means, and did distance themselves from

the justice mechanism for many similar reasons have stated in different ways that they could not reach justice due to broad rights granted to the officers of law enforcement, which criminalizes them. Sometimes, when they filed a criminal complaint about a police officer, the police officers threatened them saying "you cannot go out to work tomorrow night if you file a complaint about us" or saw that the police officers whom a sex workers filed a complaint about files a counter-complaint about them. A rape victim sex worker said that she revoked her complaint upon losing her faith in justice and feeling a threat and pressure of some sort when the rapist mentioned the event to his acquaintances. Another sex worker stated that she was tired of the threats of a customer who battered her, and withdrew the lawsuit in agreement with the perpetrator. A brothel sex worker who reached our lawyers said that she was tired of the psychological pressure and threats of brothel operators and in fact wanted to file a criminal complaint but she could not decide on what legal action to take as she both worried about the safety of her own life and about causing other women working in the brothel to suffer, as the criminal complaint may result in closure of the establishment in accordance with the legislation once the incident is heard by the public. This and many other examples show the obstacles which both legislation and

social pressure creates between sex workers and justice.

Another problem we came across was the state of “indifference” observed in most of the sex workers. Our lawyers who reached the victims have stated with regard to their relationship with many victims that they were unwilling or indifferent to start or continue the legal procedure. We have invited sex workers to our information and education meetings several times but either they did not come at all or just a few of them attended. We visited the victims at their homes to have a letter of attorney issued. They accepted in the beginning but did not call us later. We invited them to our organizations, to deliver a speech in order to tell their own problems but they did not accept. We stated that legal support is one of the most important necessities of their lives but most of them either refrained from taking a step or rejected and did not care from the very beginning. In addition to the pressure and fear inflicted by the system on sex workers, we witnessed that sex workers did not want to access the justice mechanism themselves and that they lacked solidarity.

Throughout our project, our lawyers gathered with our project team several times. We talked about problems, offered solutions, and tried to address the question of

how we provide a better counseling or support to victims. In short, we always looked for ways to improve the service that we provide. In this process, we achieved as much as the difficulties we had. While many sex workers from many provinces in Turkey reached our association to state that they suffer from rights violations, thanks to our informing materials on rights violations. A significant portion of them requested counseling or support. The workers of our association and our lawyers always reached victims in other cities by telephone or face-to-face and informed them about access to justice, wrote petitions to courts, and contacted relevant police stations after violation of rights. Within the bounds of our possibilities and in cases with symbolic significance, our lawyers contacted the victims and followed proceedings in different cities.

We also had difficulty providing support to the incidents outside the city, because we did not have the financial power to help every victim calling from outside the city. In order to overcome this problem, we reached lawyers sensitive on the matter in the cities of the victims, and directed the victims to those lawyers. Still, we have not been able to contact a sufficient number of lawyers in the provinces where sex worker trans women live. This means that we can only offer counseling by telephone,

write petitions, or contact relevant authorities and directing the victims to them when the sex workers in other provinces are concerned.

Aside from impossibilities and difficulties, we managed to get positive results from our objections to arbitrary fines imposed on sex worker trans women by police officers. We also managed to have the decree to prosecute the incident of “injuring with a shotgun” suffered by a violence victim trans women sex worker as “simple bodily harm” changed into “homicidal attempt” and to have a protection order issued for the victim. We witnessed that violence directed to sex workers supported by our lawyers at the police station decreased and police officers had to act more carefully. We have also seen that the sex workers who contacted us understand that access to justice enhanced their safety, upon which they had an augmented level of consciousness and awareness on the matter.

Red Umbrella aims to continue providing legal counseling or support to victimized sex workers after the end of this project. In addition to the legal support to be provided, we are planning to organize training programs for lawyers and invite lawyers from various provinces in order to make them well-informed and raise their aware-

ness on the matter, encouraging them to take part in the process. The most important way to achieve this is to retain the support of funding organizations to our association. Likewise, it is extremely important for sex worker trans women in particular and all sex workers in general to maintain their support to Red Umbrella the way they do today. As our future plans, we aim to inform lawyers from every province of Turkey for human rights of sex workers, ensure that bar associations and other relevant organizations to take part in the efforts or to have a policy on this matter; conduct trainings for raising awareness and consciousness for sex workers from every province in Turkey; and to engage in systematic advocacy work regarding violence to sex workers intended for law and decision makers. We hope to get necessary and sufficient support and means regarding these actions.

We express our endless gratitude to Swedish Consulate General in İstanbul, Open Society Foundation and the Dutch Embassy in Ankara for their contributions to our efforts of providing legal counseling and support to victimized sex worker trans women under this project. We would like to thank Lawyers Nihan Erdoğan, Sinem Hun, Eda Ayşegül Kılıç and Oğuz Evren Kılıç who did not leave us alone and contributed to our legal counseling and direct support works with their ideas and efforts. Last-

ly, we thank Belgin Çelik who established the contact between victimized sex worker trans women and our lawyers, directing both the project team and our lawyers with her ideas and experience on the support to be provided. None of the efforts presented in this analysis report would be realized if it were not for them.

2

RIGHTS-BASED LEGAL APPROACH TO SEX WORK

SİNEM HUN, ATTORNEY AT LAW

Introduction

Even though it has recently been mentioned frequently in the field of human rights, the rights-based approach is a term that emerged from enormous global violations in development policies, economic inequalities and socio-economic rights. The history of entrance of the term into circulation does not date a long way back contrary to popular assumptions. To sum up, the post-cold war transition from bipolar world order to the unipolar one has transformed capitalism that had been dominant for many years. The primary victims of this transformation were not only the “working class” in classical economic terms but also the groups that are coded on the basis of their identity or their existence. Sex workers are among such groups. Many domains ranging from sheltering to education were and are still re-designed against sex workers.

One of the methods of coping with this “power” to design is to subject the law to a positive instrumentalization under its status of “protector of fundamental rights”. Thus, the law will always increase its effectiveness and continuity, and the notion of “justice” as one of the most important components of the relationship among the human, society and state will grow stronger. In this article, I will give you an account of the method that I will call positive instrumentalization on the basis of a rights-based approach that is referred to frequently on the axis of development. Then, adapting the “rights-based approach” to the domain of sex labor for the first time, I will try to explain the “backyards that a lawyer of human rights may wander through the rights-based approach” on the basis of the incident of S., a trans women sex worker in Çorum. I will also make some suggestions in the conclusion part.

Development Policies and Rights-Based Approach

As the destructive impacts of profit-based development policies and neo-capitalist regimes reached a global scale and affected the international society, the discourse arguing that the policies made or implemented without the presence of or without taking into consideration the economic and social rights of humans would

sooner or later collapse has started to gain recognition. Known as the rights-based approach, this approach is generally considered is generally recognized in three ways: Normative, pragmatic, and ethical rights-based approach.

The normative approach argues that discussing human rights places policy and values at the center of development practice. Therefore, normative, i.e. legislative regulations should be made, and socioeconomic domain should be regulated with human rights in mind. According to Hausermann, talking about the rights both draws a framework of a development partnership of “what should be done” and can direct the criticisms of development.

Pragmatic approach, on the other hand, puts human rights in the agenda of development and instrumentalizes fundamental rights. Therefore, it reminds the responsibilities of states and enables citizens to exert pressure on the stage. According to Ferguson, what matters in the pragmatic approach is to get a “result”, and making an endeavor to derive the “maximum” benefit is within the scope of this approach. Pragmatic approach also takes non-state actors rather than states as the addressee of the problem.

Lastly, the ethical approach gives us the opportunity to question power relations in international development policies. For instance, Eyben states that talking about rights in fact means talking about power and power relations, thus employing an ethical-philosophical approach makes it possible to put the liabilities of those who are engaged in the responsibilities of development into the agenda.

The Problem of Adapting the Rights-Based Approach to Human Rights of Sex Workers

The necessity to “adapt” the approaches and their discussions we have mentioned briefly to the human rights of sex workers is obvious now. To the best of our knowledge, no study has yet been conducted on how the rights-based approach should be with regard to the human rights of sex workers. In this section, I will try to examine in greater detail the normative, pragmatic, and ethical approaches mentioned above, taking into consideration the specific dynamics of the field.

Above all, however, the challenges set before the lawyer by the field, the victims and the society, and the double and double victimization caused by the state of being a transgender sex worker should be surely taken into consideration while this adaptation is being made.

Still, in acting with the rights-based approach, the lawyer should establish an equilibrium between the subjective realities of the incident and the objective realities of the field, and think them over accurately. Here is what should be inferred from this: The fact that a victim is a transgender individual and a sex worker alone should not necessarily mean that they should be accorded with “under any circumstances”. The identity of the victim and the violations they suffer are two different “things” in essence, and a lawyer who employs rights-based approach towards sex workers should make this distinction at every step. In this sense, a lawyer who works on sex labor may possibly “shift” among these the three attitudes mentioned above before, during and after the litigation process, and such shifts should not be considered “bad” and “undesirable”. On the contrary, it is even fair to say that this is necessary for the lawyer to hold on to the case and retain their presence on the case file.

One of the normative, ethical and pragmatic approaches, normative approach may be defined as attributing precedence to coding and legalizing the human rights domain of sex workers, and taking such rights into constitutional assurance. Normative approach gives prominence to constitutional and legal guarantees for sex workers, and inspects whether the processes and ac-

tions of the administration are in compliance with not only the norms of domestic law but also with the contracts on the fundamental rights and freedoms, to which the state is a party. In addition, what is meant by norm in this approach includes national or supra-national decrees taken by the courts with regard to human rights, as well as the laws. In this sense, the decisions of the European Court of Human Rights, the decisions of UN Human Rights Council, and the decisions on individual applications taken by the Constitutional Court, which will allow an “expansionary interpretation” on the field, and the precedent decisions of the Court of Cassation and the Council of State should also be used and implemented effectively in this field. The final and primary advantage of this kind of a normative method is that it makes claims of rights visible rather than the controversial sides of sex labor. For instance, when the houses of sex workers are sealed pursuant to the article 96 and 104 of the Legislation on Combating Prostitution, a normative approach may allow advocacy of the fact that this action also causes violation of sex workers’ right to shelter and privacy. Likewise, normative approach presents an appropriate way of bringing fundamental rights into the agenda. This approach is important to change public policies, reminding the state of its duties and authorities, and making policies on this matter.

On the other hand, as pragmatic approach aims to instrumentalize rights and change the general policies, it is about defending anyone's right in any legal proceeding or under any circumstances and being aware of the difficulty of compensating for an existing violation. In fact, when this approach takes us to the conclusion that when human rights are used to change state policies, a normative approach and monitoring would not be needed much in the future.

Lastly, the ethical-philosophical approach makes it possible to see the established power relations and to act by making sense of such relations, in the field of sex labor where the power, and even the powers on the body are intertwined. In this sense, approaching a matter on meta-norm basis, i.e. over the values beyond norms will necessarily broaden the perspective. Now, not only the rule laid down by the law-maker but also the reason why that rule is laid down, and how the administration interprets a rule, and even why that norm is needed at a given time or thereafter is included in the approach. Therefore, law should be assisted by other sciences such as sociology, history, and anthropology. Ethical approach does not require taking external dynamics into consideration but it also requires considering internal dynamics. Some of these dynamics are the status and attitude of the victim,

following their criminal procedure; their determination in their right to legal remedies, and similar dynamics.

However, ethical approach does not only accept the changing dynamics the way they are but they are also concerned with their underlying power relations. For instance, relative indifference of sex workers with regard to their right to legal remedies is closely related to the long-established culture of impunity, mistrust to the court and the justice mechanism, and the feeling of intimidation.

Discussing Rights-Based Approach on the Basis of Case Analysis

Lastly, I will try to illustrate the “shifts” mentioned above by an example. I would like to discuss the experiences of the trans women sex worker S. in Çorum, whom I had the opportunity to follow in the last few months.

On October 4, 2014, it was exposed in the social media that transgender sex worker S. was abducted to a forest in Çorum by a group of men, severely wounded by one of them using a firearm, and was subject to the acts of hate crime, and that Çorum Bar Association refused to assign a lawyer, arguing that they “would not assign a lawyer to transvestites”, hence committing a discrimina-

tion crime. In response, an attempt was made by mainstream LGBTI organizations to mobilize the lawyers in Çorum and surrounding provinces but the lawyers that were contacted either did not accept to support the victim or argued that their workload would not allow them to do so. Although the causes of such reluctance and refusals make an interesting topic that could be discussed in another article, when the attempts to find a lawyer using the existing networks failed, I took the initiative and decided to travel to Çorum with the intention to obtain more reliable information for my colleagues and organizations which are concerned with LGBTI rights, and even to take part in the proceedings. My perception and attitude before the travel were closer to the ethical approach based on the first-hand information that I obtained from the social media: A typical example of the hate crimes committed suffered by transgender sex workers was the case. This time, the local bar association also involved in the impunity and discrimination policy of the justice system which violated the fundamental rights of human beings, including the right to fair trial and the right access legal knowledge.

In Çorum, I was able to access further information that did not make it to the social media: The victim was rapidly taken away from Çorum in order to ensure her safety

of life, because the culprits, who had been under arrest, were released. Even though my familiarization with this new information renders my position closer to the ethical approach, my investigations on the file, statements of the victim, and my discussions with the prosecutor who ordered to have the friends of the victim, and the culprits arrested again, it started to appear to me that the incident was not a hate crime: I was not convinced a crime that is defined in Turkish Penal Code was committed on the basis of the transgender and/or sex worker identity of the victim. Therefore, I started to "shift" from my initial ethical approach to the normative approach. Yes, the file was missing some points which should be made up for in order to restore the rights that were violated: For this reason, the victim was made to request a lawyer as per the Code of Criminal Procedure and testify one more time before the lawyer. In addition, the victim was taken under the protection of the police. My discussion with the prosecutor helped us to collect the remaining evidence or speed up the procedures.

However, despite our progress in the file, I changed my position on the matter once more upon learning in a phone call with S. on 11 October 2014 that she would withdraw her complaint. S. told me on the phone that she would not be able to "bear the responsibility of caus-

ing the culprit to be sent to prison". First I told her that her withdrawal of her complaint would not change the chances that the culprit would be sent to prison, and then I asked her: "How can you say so about a person who wanted to kill you?" The answer was simple: "Let him be punished by god". This brief answer implied that the culprit engaged in a romantic relationship with the victim, and emotionally manipulated and confused her, and that the victim would be withdraw her complaint as she was not enhanced or would not stay strong in the face of this matter. At this point, I "shifted" my position to a bit to the pragmatic approach, which meant that the primary concern was to obtain a result under the criminal procedure and to have the culprits penalized. The fact that the victim gave up "voluntarily" her desire to act in cooperation with the lawyer had caused me to reduce the matter to a criminal procedure.

Conclusion

Legal examination of the specifics of the incident and the fact that the victim altered her position in the process "voluntarily" may always alter the form and content of the rights-based approach of the lawyer. Such alterations that I define as "shifts" are not necessarily bad, because the lawyer who works on the file still adopts a

rights-based approach. It is possible that when conditions change, so do the attitudes. Moreover, a lawyer may return to their former approach on the basis of another state of affairs or remain in an intermediate state in the process. Normal-ethical or pragmatic-normative approaches are also possible.

An epilogue: The lawyers who consider sex approach sex labor from the perspective of human rights should think about identifying their rights-based approaches on file basis. A lawyer has to revise their position, attitude and objectives again and again at each step, and in each development. This is very important for rights-based practice of law to assume a standard in long term if not in short term.

A Brief List of Citations

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3

THE ARBITRARY NATURE OF ADMINISTRATIVE FINES AND THEIR IMPACTS ON SEX WORKERS

NIHAN ERDOĞAN, ATTORNEY AT LAW

"I remember being fined three times at one night. I had 200 TL earned under foulest conditions, and had to pay three fines of 82 TL each, which added up to 246 TL. I had to go out to work again that night to make up for my loss. I had to earn money to carry on. That night, I stayed on the side of the road waiting for customers from 10:00 PM to 4:00 or 5:00 AM. I couldn't stand upright due to muscle soreness for the next two days..."

Melek, Trans women Sex Worker

(Interview with Melek, 26.11.2013, Ankara – Kemal ÖRDEK, "A Registered Robbery in an Unregistered Domain": Administrative Fines as the Means of Taxation for Transgender Sex Workers, page: 25)

The fine that Melek complains about in the quote given above, by which she expresses what many sex workers experience is called “administrative fine”. Administrative fines are imposed directly by administrative authorities for noncompliance with certain rules (*Bir Yaptırım Türü Olarak Para Cezalarının Teori ve Uygulamadaki Analizi – Haluk ÇOLAK, Uğurtan ALTUN, TBB Dergisi, issue. 69, 2007, p.271, d.n.82*)

Administrative fines are imposed without a judicial decision, and such sanctions are administrative processes. While the misdemeanors that make up the subject matter of these processes were addressed in Turkish Penal Code in the legislation before 2005, a regulation made in 2005 canceled their status as ‘crimes’.

This article is about the problems encountered in practice with regard to the administrative fines imposed on sex workers in accordance with the Law of Misdemeanor which took effect 01.06.2005, and the unlawful practices observed during an experience that lasted for one and a half year.

In recent years, administrative fines imposed on sex workers are grounded on the act of “disturbing” in the article 37 of the Law of Misdemeanor. An examination of the manner in which these fines are imposed reveals

that the word that best describes this process is “arbitrary”.

Also known as “Sledgehammers”, the undercover police officers sometimes fine sex workers that wait for customers on the street or take sex workers to police station to impose this fine. A complaint is filed for “resisting the officer on duty” and an investigation is started on some of our clients who do not want to go to the police station.

An examination of the duration from the moment that police encounters a sex worker to the moment that the sex worker is taken to the police station or fined and to the stage of trial reveals in terms of positive law that:

a) When a law enforcement officer forces a sex worker to get into a police car for imposing a fine is in fact a seizure which lacks legal basis, because the article 90/1 of Turkish Penal Code authorizes seizure only if a person is encountered during committing a crime or it is possible that a person may flee while under custody for being caught in the act, or if it is not possible to authenticate the identity immediately. However, it is well known that “prostitution” is not a crime according to Turkish Penal Code.

b) Sex workers may be verbally abused, threatened or mistreated while the police forces them to get into the police car for imposing a fine. When they go to the police station to complain about these such acts, they may be kept waiting until the morning before their testimony is taken. In addition, the testimony is taken by a police squad that includes the officers who committed violence in the first place, and after – or before – taking the testimony, the law enforcement officer files a complaint claiming that the sex worker resisted the public officer. In other words, the complaining victim is turned into a perpetrator.

Whereas, resistance in order to hinder performance of a duty is only possible in case of coercion or threat to prevent a public officer from performing their duty. Let alone using force or threatening, according to what we have learned from our clients, it is the sex workers themselves who are subject to coercion, insult and threat.

c) In the police reports that are made during or after the incident, which usually illustrate the incident inaccurately if at all, transgender sex workers are referred to as “transvestites” while non-sex worker trans women are referred to as “the well-known person” or “the lady in question”.

Likewise, it is seen that the shopkeepers, residents and passers-by are annoyed even though the reports that the clients bring along indicate that they were made at 00:00 to 04:00. Considering that the traffic on a quiet street or avenue would not be congested at that hour, it is a mystery how a sex worker waiting for her customers on the sidewalk may stop the traffic.

d) When administrative fines are not imposed in the police station, the receipt is not delivered to the sex worker, nor is it delivered to the sex worker later. Omission of the delivery or notification of the receipt means that the sex worker is not able to learn about the legal remedy that may be taken for the relevant procedure, and that the sex worker cannot use such remedies.

e) Another problem in this field arises during the legal process that is followed in case of objection to administrative fines. One of the observations in this process is that uniformity does not exist with regard to the procedure of remedy. While some courts deliver the response of the other party and the documents it provides to the sex worker who is actually the objecting party, and give the sex workers the right to respond, others consider the response of the other party sufficient and conclude the case.

f) The administrative sanction order report which is compulsory to be kept in accordance with the Ministry of the Interior, Turkish National Police circular no. B051EGMo110511/1666 on Implementation of the Law of Misdemeanor is used as the legal basis of the administrative fine by the other party, and included in the file.

As can be appreciated, a report is not a document that shows the justification or legal basis of the process. However, a resolution of the Commission Combating Prostitution in the form of an administrative process has not been presented for the files for which advocacy activities are conducted.

g) The actions in the police report are listed as “waiting to negotiate a prostitution deal”, “blocking the traffic occasionally by stepping on the road”, “stopping the vehicles and pedestrians that are in motion”, “engaging in negotiations for prostitution with the persons waiting on the side of the road and disturbing the shopkeepers, residents and passers-by with such behaviors”, “preventing pedestrians from walking on the pavement or driving in the traffic”.

This is the fundamental question to be asked here: Are all these acts included in the article 37 of the Law of Misdemeanor? If they are not, does it not mean that the

principle of lawfulness is violated?

The article 37 in which the misdemeanor of “disturbing” is defined is as follows:

"To Disturb:

(1) Those who disturb others to sell goods or services shall be penalized with an administrative fine of fifty Turkish Liras.

(2) Law enforcement or municipal constabulary officers shall be authorized to impose administrative fines for such misdemeanors."

It was stated in the Draft Law of Misdemeanors no. 1/993 dated 10.03.2005 and in the Justice Commission Report that the article 37 was added to the draft law under the title of “disturbing” to prevent such practices as harassment and invitation of customers by shouting during the sale of goods or services. As can be understood, sale of goods or services, and harassment of others by shouting during this act of selling goods or services are required for implementation of this provision.

While the article 37 of the Law of Misdemeanors generally applies to traveling vendors, the administration also

implements this article to sex workers working on the street. The orders of administrative sanction lack any information regarding what kind of goods or services are being sold during the act of disturbing. The act that is attributed to sex workers is not clear, which already violates the principle of "accountability of the acts and procedures of the administration".

h) Another problem is that the objections made to the administrative fines are examined by the judges of the criminal courts of peace. How reliable is such an examination? Considering particularly that the fines are below the limit of finalization, I think it would be fair to say that positive law causes impunity.

Judges of criminal courts of peace do not perform an examination in terms of the elements, i.e. subject, purpose, authority, manner, or cause, of administrative procedures. In the only of annulment that has been given so far, the reason for annulment was that the act that was subject to administrative fine was not described in detail, the reason why the objector was stopped by police officers was not mentioned, and the objector was imposed an administrative fine of 91 TL while the fine should have been 50 TL. Although this is clearly a preferable to the decisions of rejecting the request of an-

nulment, it still fails to reveal that the question here is the fact that the act is misrepresented and that police officers make arrests in contradiction to the provisions of the article 91 and subsequent articles of the Law of Criminal Procedure.

One of the outcomes of systematic practices in the field is impunity. It would be fair to argue that this is caused by unappealability of decisions, the fact that deferment of the announcement of the verdict turns into the anxiety of being fined one more time and subsequent concession of several violations of rights; non-notification of fines; and the psychology and even the survival instincts of the subjects on site. Their manifestations and reasons are the subject of another study that may contribute to development of policies on site.

The direct impact that the implementation of administrative fines and subsequent instances of unlawfulness that are attempted to be revealed in this study have on the lives of sex workers include intimidation, despair, a sense of insignificance, wrath, lack of faith and isolation. These impacts and consequences are – and should be – a disgrace to the society.

4

POLICE VIOLENCE AND ILL-TREATMENT TO SEX WORKERS

**EDA AYŞEGÜL KILIÇ, ATTORNEY AT
LAW**

In Turkey, police violence and misconduct are encountered in every aspect of life. People of every age from all walks of life suffer from or witness such treatments. Due to the characteristics of their work, sex workers are certainly subject police misconduct more than any other group of people. When sex workers go out to find customers, wait for customers at their houses or while they are shopping, spending time at home with their friends, walking on the street, and even when they go to a restaurant, they frequently encounter police officers. Police intervention which sometimes exceeds the range of the authority and could qualify as harassment has become an integral part of the lives of sex workers. As lawyers, we frequently witness this violence.

The implications of complaining so much about the police can be grouped under several headings. First, police

is the face of peer pressure in the country. In a society that justifies any cruelty to sex workers, the oppression applied by the police force, which is deemed the champion of the values and “morals” of this society is considered natural and ordinary by everyone. Everyone has accepted this misconduct as a natural occurrence as snow, earthquake or feeling cold in winter. We are only trying to find ways of dealing with it. However, nobody is aware of the fact that this sense of morality is in contradiction to human rights. For instance, nobody seems to care about the fact that it is against human rights and human dignity that a sex worker who is fined for “occupying a pavement” is treated like a “commodity”. For years, the same implicit principle applied when a sexual assault is penalized with one third less than the actual penalty if it is committed to a sex worker.

Second, police officers are not – or opt not to be – informed about the law. As can be seen in countless statements and indictments, there are many police officers and even prosecutors in this country who are unaware of the fact that there is a “crime of prostitution” in Turkey. In other words, as I will illustrate later, the fate of sex workers is in the hands of the police officers who think that mistreatment of sex workers is part of the “normal procedure”

Our third heading is the “deterrence policy”. As most of the police officers consider it a duty to enforce their own morals and requests rather than catching the perpetrators who are responsible for disrupting the public order or just responding objectively without involving in the contents of incidents, verbal abuse, insult, physical violence, and threats are considered normal acts to “correct” sex workers.

Illustrating these matters with some of the incidents we have experienced would help you visualize the state of affairs. A transgender sex worker called us for help at midnight. We talked to her on the phone many times on our way to the police station. She said “I am so afraid, please help me, they are threatening me. Please come here, help me” on the phone. What we saw at the police station was rather baffling. Police officers were waiting for us almost at the entrance. Three or four police officers and a transgender sex worker were at the scene. The sex worker had been crying so much that her make-up was running. She was shivering of fear among three police officers. We learned later that the reason for this fear was that a few days ago she was beaten by police officers so much that she was not able to move for a few days. This incident had left her confined to her home for weeks from fear. Surprised upon hearing that we came

for the sex worker, the police officers said “we have resolved the matter. We won’t file a complaint”. When we asked about the incident, they told us that they fined the sex worker and that they would release her soon. Then we asked about the legal basis of the fine, and they said that there was a complaint without expressing the source of the complaint in question. When we investigated further, they threatened us with filing a police report. Then we told them that we would also make a report of their unlawful behavior, only to get a striking response: “This is the routine procedure anyway. We haven’t done anything more.”

This is exactly the problem here. There is something wrong with this “routine” normalized by the police. When you are issued a traffic ticket, are you taken to the police station? Or are you kept waiting at the police station, insulted and harassed? When you ask about the reason why you are taken to the police station, do you hear terrible threats? Have you ever experienced anything like that? If you think that this is a misconduct to a driver, it is equally unlawful and wrong to take a sex worker to the police station to issue a fine. However, we see that police officers consider this a normal and regular procedure, even defending this misconduct. That night, we could only take the sex worker out of the po-

lice station by threatening to take legal action (e.g. filing a report, requesting announcement/complaint records, etc.) and an intense quarrel.

In another incident, a very furious sex worker was asking for help, claiming that they were misconducted by the police and that they were being kept in the police station although they had not done anything wrong. As we were far away to the police station, it took us an hour to reach the police station. During that time, sex workers were constantly insulted and humiliated at the police station. When we arrived at the police station, several officers who could not believe we actually arrived for help went out and watched us in amazement. We heard one of them say "it seems they actually have a lawyer". We left with the sex workers upon learning that the police did not start any proceedings about the sex workers. That night, three sex workers were chased by the police for no reason, fell down and were slightly injured. Then, they were kept in the police station for longer than an hour.

I would also like to mention the treatment to a sex worker who went to the police as a victim. A sex worker who was raped, beaten, and had her money and property stolen asked for our help after taking refuge in a police

station. She told that she was not mistreated for being a sex worker but that she felt a bit humiliated. We could not interfere in her statement as it was already complete by the time we arrived at the police station. However, there was something wrong. The victim turned out to have taken alcohol in her examination. Despite the fact that there is no such crime as “taking alcohol” in any law of the Republic of Turkey, she was fined for “Being drunk and disturbing the people around” in accordance with the Law of Misdemeanors. However, the incident did not include any complaint regarding the influence of alcohol. There were no eyewitnesses. Records of surveillance cameras were completely confirming the statements of the victim. It was clear that she was subject to violence. Moreover, it was she who made a complaint. The perpetrator was missing, which meant that he could not have testified or made a complaint. The victim was fined for taking alcohol according to the Law of Misdemeanors despite the fact that she did not harm any living being or property. Our objection to this penalty was not accepted. Although we could make an individual application to the Constitutional Court and be awarded a precedent judgment, we were unable to file the application as the sex worker refused it and cut off her communication with us.

In all these three incidents, we see psychological, physical and social violence applied by the police in different situations. In fact, there are sex workers who experience much worse of these three simple examples. We are used to see administrative fines well over thousands of Turkish Liras every day. Arbitrary orders such as “We don’t want you to work here” or “Put on something other than a skirt” are common in certain regions.

What we want is very simple: basic human rights. Today we all know that sex workers exist. Considering the supply and demand, it seems impossible that the sex industry will collapse. In other words, saying that “there will be no prostitution” only endangers the health and safety of these individuals. Sex workers whose houses are sealed stay outside. They cannot go to hospitals or police stations from fear when something happens to them. It is the society itself that creates sex labor. The system will maintain the purchasable status of sex. Therefore, it is one of the major paradoxes of the system that the state which is responsible for protecting its citizens is a threat to the citizens’ safety of life.

At this point, there are certain circumstances caused by the sex workers who are not able or do not intend to fight the adversities that the system creates on them.

Refusing to obtain a physical violence report, not considering psychological violence, insult and threat an element of crime, not filing complaints, and above all, not feeling the need to seek legal assistance are some of the major problems on this matter. Many sex workers keep silent in the face of the police violence that they encounter outside and make themselves believe that there is nothing that can be done about it. Many sex workers are not aware of what is considered crime. Those who file a complaint and take the matter to the court cannot defend and express themselves effectively, nor can they cope with the legal terms and procedures that they cannot fully comprehend. A sex worker who makes a complaint about the police without taking a battery report and then complains about the unconvinced prosecutor both ends up being the one in the wrong and becomes an open target. It is almost impossible for a person who was not informed about access to the justice to express themselves with the correct procedures and principles in the court. In fact, it is nothing different from diagnosing yourself and starting a treatment. In such cases, either a procedural mistake is made with an irrevocable damage caused or the essence is not communicated clearly or full of details and the mistake of missing the essentials is made, and the justice mechanism is blamed. We sometimes encounter statements such as "The judge was bi-

ased. The prosecutor already knew who I am. They did not even bother to listen to me. I was unaware of the restriction of time”.

Already having difficulty maintaining their life in the society, sex workers feel themselves lonely and desperate throughout the process of justice. As the result of all this process, we see that sex workers even avoid entering a courthouse. However, such misconceptions only contribute to the growth of police violence. Today, you ought to know that many fines imposed as per the Law of Misdemeanors are unlawful and can be canceled. It is also unlawful for the police to take you to the police station to issue your fine. It is not a crime to disturb or give harm under the influence of alcohol, not to take it. We can always give more examples.

What should be done when any of the said examples of unlawfulness mentioned is encountered? Fighting or resisting would push you into new crimes, even possibly making you the one in the wrong. Whether you are a victim or criminal, or the accused, the first thing you should do is take legal assistance. When you contact the association or us, you will rule out the possibility of making a legal mistake since we will stand by you by legal guidance or intervention.

So, what do we do when we receive a call from you? After deciding what to do upon the information gathered from you, we enable you to testify with the support of a lawyer and protect you from pressure and violence when you testify. The chances of intervention in a testimony you may have given in the absence of a lawyer are very low. As you are not familiar with legal terminology, you may end up testifying against yourself while you intend the opposite. While you are entitled to deny your testimony during a trial, you should keep in mind that this testimony also gives the judge and the prosecutor an opinion. Above all, you need to have a lawyer to protect you from misconduct, insult, battery, or threat. You also need a lawyer for legal counseling. Expressing yourself sufficiently is as equally important as avoiding unfairness. Sometimes the rights that were not violated during the incident may be violated during the defense. This is why legal counseling is important.

For all these reasons, we need justice and lawyers in order to make sure that we do not experience the problems that have been experienced by many sex workers so far. It would not be right to expect that everything will magically get better once an association or a lawyer is included in the process. In fact, we are all in a process, and our legal achievements imply that we are pro-

ceeding correctly in the process. On the other hand, we should learn the right lessons from our defeats. Giving up without attempting – and even exhausting – the legal remedies is in a sense giving up without struggling.

Sex workers, activists, lawyers, and those who only see those lives... Despite everything and everyone, we are struggling for a life that is consistent with human dignity. This struggle includes fighting, reading, telling, listening and being patient in equal amounts. Neither fighting, nor patience is sufficient on its own. We have our own way trying all these processes one by one and pressing our luck. Above all, we do it for you. But ultimately, our efforts concern everyone. Today, a world where the rights of sex workers are protected is our ideal world, because they are the ones whose rights are usurped most frequently. You do not have to share an origin, a religion, a world view, a belief, or an occupation with a person to advocate the sanctity of a person's life. Human life and human rights are sacred. This is what our struggle is all about. Sex workers exist, and we are here... for you.

5

OFFERING LEGAL SUPPORT TO SEX WORKERS FROM THE EYES OF THE LAWYERS: CHALLENGES, PREDICTIONS, NEEDS

INTERVIEWS / COMPILED BY: NİHAN ERDOĞAN, ATTORNEY AT LAW

In the first days of March in 2013, as a lawyer who had just become familiar with the streets, I decided to contribute to improving the life conditions of lesbian, gay, bisexual, transsexual, and intersexual individuals. It was two months later than the day I took this decision that my path crossed with that of Red Umbrella Association of Sexual Health and Human Rights.

So how could we collaborate with the association? What were the problems of sex workers? Would I be able to qualify to solve their problems? After I learned that a teacher who was suspended from their profession due to their sexual orientation lives off sex labor under terrible conditions, I was not able to sleep for days. Perhaps, learning about this traumatized my small and sterile life.

I started working on the promise that I would listen to my tears. It was the first encounter between a lawyer who is not much noticed by the system and a group of people whom the system does not want to see, which made this encounter anything but a coincidence. As the cases were handled with experience, knowledge, legal curiosity, and the desire to generate new arguments, the nature started to take its course.

I am not alone in my efforts. There are many lawyers who worked with sex workers, and provided them with legal support. This article is mainly about the practice of law, the problems experienced by lawyers, needs of victims in the field, the tension between the lawyer and the client, and suggested solutions on the example of three lawyers – Sinem Hun, Eda Ayşegül Kılıç and Oğuz Evren Kılıç.

The most significant problem that we, lawyers, come across is the fact that we advocate the rights of a group who is subject to intense violence or live with the possibility of being the victim of this violence any time. Although it would not be right to call this “state” a problem on its own, working with such a fragile group makes fragile the legal service that is provided. In cases where the violence originating from the state / law enforcement is

involved, troubles of a lawyer increases even more.

Acting as the lawyer of a transgender sex worker brings along certain labels from the very beginning. This may take place verbally with labels such as “the lawyer of the fags”, or it may be implied in gestures or with certain words used in sentences. It may also lead to long waiting periods in law enforcement offices compared to other Code of Criminal Procedure tasks, which may manifest itself as denying the lawyer the right to speak or ignoring them in the courtroom.

The second most significant problem is about the established perception of “lawyer” in victims. Sadly, transgender sex workers have not fully comprehended what rights-based law practice means, and why it is important to collaborate in visible or invisible cases of violence. They should understand that the practice of law is as indispensable as the other rights of them, and that law is actually part of their lives.

Another problem is that clients sometimes distort the truths to attract the attention of the lawyer or mobilize them more rapidly, saying that they would file a complaint with the fury and resentment in the heat of the moment but abandoning their claim the next day. Just as this perception and behavior was not established in

just one day, they will not be abolished in one day. However, we should make mutual efforts to this end. The lawyers should make sure that the lawyer acts “in favor of” the victim.

Another problem is the reluctance of transgender sex workers to use their right to legal remedies, and their lack of confidence and belief in the justice system. This lack of confidence and belief leads them to seek justice on their own. They meet gangsters in this process and they end up cooperating with gangs whereas they should make a covenant with the state. One should not forget that majority of transgender sex workers are obliged to be in touch with illegal groups and individuals, become victims of extortion and racketeering or lead their lives under extremely dangerous conditions due to their particular status, therefore open to external directions and fear for these reasons.

Another problem of the field is that the legislation is the product of a very conservative ideology and that the legislation cannot be amended as this mindset cannot be overcome.

In fact, it is not an unattainable goal for the fragile group that we work with to protect their right to legal remedies, increasing the number of rights-based lawsuits,

hence the number concrete data for “re-establishment of justice” in any area where violation of rights takes place.

In response to the problem areas that are briefly mentioned above, certain solutions are suggested under a few headings below.

A full cooperation must be provided with the victim.

The legal support process of Red Umbrella Association of Sexual Health and Human Rights, which is going on for one and a half year, has shown that the suffering of the victim is not “one-off”. Persistence of victimization implies continuity of the relationship between the lawyer and the client. In fact, the example closest to this relationship is the “family law practice” which is popular in some countries. Therefore, as the relationship between the lawyer and their client requires a closer and more continuous relationship than normal, this implies an extra effort for both parties.

The problem of boundaries

How the living space of the lawyer is to be defined is another problem in a close relationship. Late night hours are implicitly the usual times of violence that may be caused by the law enforcement and the customer. How

the fact that the lawyer will usually have to respond “at night” affects the quality of the service provided is another question that should be kept in mind.

A semi-distant and monitoring relation with every stage of the state

The truth that the law enforcement and judicial body of the state are by no means objective, and that they show an ideological and agitating attitude and consider themselves a side of the matter should never be forgotten. Police stations are the places where a lawyer “displays” their struggle most frequently. Therefore, a lawyer should identify their presence and strategies beforehand. They should think through every aspect including how to dress up, how to speak, and how to position themselves between the client and law enforcement. For this reason, the European Convention on Human Rights and other human rights conventions should be referred and the position should be based on rights in all testimonial records and complaints. The lawyer should display this attitude in their monitoring behavior while struggling before the prosecution office and the court.

What is meant by monitoring behavior is to try to bring the matter to the Constitutional Court and European Court of Human Rights after exhausting all legal means

in the domestic law. The lawyer should have precedent decisions taken by these courts, following up the execution process of the decisions that are made. All these plans and techniques will enhance the solidarity among lawyers in addition to the quality of the service to be offered to the group that we stand with, because the field is a difficult one that necessitates cooperation.

Keeping informed, reading and doing research

A lawyer should keep themselves “up-to-date” in all matters. Such knowledge updates should not only include the local legislation but also the monitoring of ECHR orders, and the reports of United Nations, European Council and other CSOs. It is very important for a lawyer to know and monitor the current legislation, draft regulations, judicial case law, and international legislation and case law.

Since a good command of law is required to make alterations in the legal system that is shaped by centuries of moral laws and positive laws, the lawyers should be well-educated particularly in strategic litigation which is their primary weapon on the battlefield for obtaining precedent rulings, annulment or amendment of the existing provisions of laws, nullification, and prevention of the repetition of administrative practices.

In the light of the main problematic areas and suggestions listed above, it would be fair to say that the following points should be taken into consideration by the lawyers who work or would like to work in the field.

a) It is necessary to establish a close relationship with the headquarters of bar associations and their commissions such as Law of Criminal Procedure, lawyer's rights, human rights, women's rights, etc. If the relevant organizations of the relevant bar association can be mobilized in each incident, victimization of the lawyer can be prevented, above all. It is still difficult to tell whether harassment of the victimized group by law enforcement reduces or not. We can only experience it.

b) It is necessary to help a lawyer get into this field or increase their sensitivities in this regard. For instance, having a separate list formed to this end in CMK lawyer assignment system, hence attempting to introduce the lawyers who are specialized on the matter might be a way of doing this. It is also possible to raise awareness on the matter among the lawyers by collaboration with bar associations and relevant CSOs.

c) It is important to use judicial and extrajudicial means to prevent violence attributable to law enforcement in particular. Human Rights Organization of Turkey is

among the organizations that can be appealed to this end. A regular reporting may be made to organizations such as UN Human Rights Committee, and European Council.

d) Financial sustainability of field lawyers should be ensured, and they should not be confined to a victim-based finance model (where a private power of attorney is established with the victim on the basis of an agreement for attorney fee). Unfortunately, neither bar associations nor the Ministry of Justice has such vision. The relevant CSOs should be more sensitive to this matter.

e) Field lawyers should be provided with social enhancement service. As the lawyers also become part of the violence cycle, they should be offered psychological and social support. CSOs play a good deal of role in this.

f) Field lawyers should be enhanced in terms of their occupational and intellectual capacities. Workgroups should be established and they should engage in collaboration with universities and CSOs.

g) Victims should be informed about the obligation to “collaborate with a lawyer” and the boundaries of this collaboration.

h) As can be understood from the requests made to

Red Umbrella Association of Sexual Health and Human Rights, rights-based CSOs and other organizations that provide legal support should be available in greater numbers in every province. Victims should be able to apply to a local lawyer or organization without difficulty or being subject to discrimination. In addition, where it is difficult to establish CSOs in every province, the legal support capacity of the existing CSOs should be enhanced, and they should be able to reach and support victims in other provinces.

6

SUGGESTIONS

KEMAL ÖRDEK

This section contains our suggestion list for persons and organizations of different groups regarding the acts of violence towards sex worker trans women in particular and all sex workers in general. These suggestions were generated to form the necessary mechanisms to ensure that sex workers have access to justice.

There are different responsibilities and steps to be taken by various individuals, and representatives of organizations, in order to end the violence that sex workers are subject to in their daily lives. The suggestions in the list are developed on the basis of the experiences and demands of sex workers as well as the experiences of lawyers who provide legal support in the field.

Suggestions for Law-Makers and Decision-Makers

- It is compulsory for the state to recognize the transgender identity in order to prevent any violence towards transgender women and human rights violations, or protection of such individuals from violation of rights. In this respect, the Article 10 of the Constitution should be amended to include the terms “gender identity” and “expression of gender”.
- The terms “gender identity” and “gender expression” should be added to the grounds among which no discrimination is to be made under the Draft Law on Combating Discrimination and on Equality, which is pending as a Draft Law prepared by the Government in order to prevent discrimination against transgender women in different domains and penalize the perpetrators of such violations.
- A legislation of hate crime that includes “gender identity” and “expression of gender” as grounds that are not discriminated against should be prepared and ratified in order to prevent any hate

crime committed against transgender women and penalize the perpetrators.

- Based on the fact that a significant part of transgender women are sex workers, the steps taken for engaging in sex labor should not be criminalized in accordance with the legislation that covers sex labor. The acts of “providing a place”, “mediation”, and “procurement for prostitution”, which are criminalized under Turkish Penal Code, should not be used to target sex workers. Assuming that these acts are indispensable parts of sex labor, Turkish Penal Code should be reorganized and such acts should be criminalized only when they are committed with methods of pressure such as extortion, coercion, threat, and intimidation.
- Use of “immoral actions” and “obscenity” in the articles 225 and 226 under the section “Crimes against General Morality” in the Turkish Penal Code against sex workers should be stopped. It is unacceptable that the websites used by sex workers to find customers are targeted with administrative sanctions and penal measures under the relevant paragraphs of these articles, which

causes many sex workers to be sentenced to prison or to work at insecure area. The approach employed by the relevant articles whereby sex labor is considered a criminal category should be stopped and necessary arrangements should be made.

- The regulation that arranges sex labor and shortly called the Regulation on Combating Venereal Diseases and Prostitution should be amended within the framework of the needs and demands of sex workers and current requirements. It is compulsory to amend this regulation from the perspective of human rights and labor rights rather than controlling the bodies of sex worker women and prevention of sexually-transmitted infections. The aspects – abolishing or restricting in the undeclared domain the principles such as the right to shelter, right to privacy, freedom of travel, and similar principles – of this regulation which was arranged for a “preventive” purpose towards sex workers who engage in undeclared sex labor should be abolished. “Penalization” of undeclared sex workers by administrative practices should be stopped.

- Transgender individuals without a pink identity, who, in other words, are not considered to have a “female” identity card, are not allowed to register in brothels in accordance with the relevant regulation. This regulation should be amended to allow employment of all sex workers in brothels rather than being restricted to the individuals with a “pink identity card”. This amendment is also essential as per the principle of equality.
- Closure of brothels should be stopped, and safe working environments organized in compliance with human rights, and sexual and reproductive health requirements of all sex workers should be created.
- The steps that are taken by Commissions of Combating Prostitution and police departments in provinces for implementation of the articles of the Law of Misdemeanors and Highway Traffic Law – which are already implemented in an arbitrary and unlawful manner – in a way that targets sex workers should be stopped. The arbitrary actions taken by police officers on the basis of the relevant articles of these laws should be investigated, and offenders should be penalized if the

legitimate authority is exceeded.

- Misconducts and abusive actions by law enforcement officers due to arbitrary use of the laws mentioned above should be subject to effective investigation and offenders should be penalized.
- Any act of violence including the police violence committed by organized criminal groups, customers, mediators or other individuals or groups towards sex workers should be subject to effective investigation and offenders should be penalized appropriately.
- Every sex worker including sex worker trans women who suffer from violence should be able to equally benefit from support mechanisms. In this respect, guesthouses, women's shelters and other mechanisms should be built as soon as possible.
- Efficient and sustainable exist strategies should be made available for sex worker trans women and all other sex workers in accordance with the needs and demands of the sex workers that are mentioned. These strategies should be realized with long-term and sustainable employment

opportunities, social security, capacity enhancement trainings and similar instruments. An artificial and unrealistic perspective such as “saving” the sex workers should not be adopted in developing these strategies.

- All sex workers including the trans women sex worker victims of violence should be supported with an approach that is far from prejudice and does not reward the perpetrators at the stages of investigation and prosecution.
- Judicial authorities and law enforcement officers, healthcare professionals, specialists of social services, psychologists and psychiatrists, and all occupational groups that potentially keep in touch with violence victim sex workers should be trained about the problems, needs and demands of sex workers and these trainings should be held in the presence of sex workers.
- The relevant units of the government should collect data on the acts of violence targeting all sex workers including the sex worker trans women, and share such data with civil society organizations and the public.

- The relevant units of the government should be in cooperation and a sustainable dialog with civil society organizations working with trans womens and sex workers. It is important for the government to provide support to civil society organizations including financial support.
- The steps taken by the government for “prevention of prostitution” or “termination of prostitu-tion” should be abolished, and the sector should be recognized and organized on the basis of hu-man rights and public health.

Suggestions for Civil Society Organizations

- Civil society organizations should engage in na-tionwide studies on sex worker trans women, and respond to the problems and requirements of sex worker trans women who live out of major provinces such as İstanbul, Ankara and İzmir.
- It is essential for CSOs to perform field studies, reports, transfer of testimony, and similar studies to collect data that reveal the problems, needs

and demands of sex worker trans women who live out of major provinces, and use such data to conduct advocacy work throughout Turkey.

- Being conscious of the fact that the acts of violence targeting the majority of transgender women also arise from engaging in sex labor in unsafe areas, the CSOs that operate in the field should generate policy on the axis of sex labor rather than focusing on transgender identity only.
- Sustainable legal support, psychological support, social support and similar support programs intended for violence victim sex worker trans women and in compliance with the sensitivities of the group should be generated by CSOs.
- Capacity enhancement trainings should be held and publications should be prepared for sex worker trans women in order to facilitate their access to justice.
- CSOs should engage in efforts of contacting lawyers that can offer legal support to violence victims, creating networks of lawyers in various cities, training lawyers, and improving the legal

support as per the requirements.

- In their efforts of advocacy related to violence targeting sex worker trans women, CSOs should make sex worker trans women visible and give importance to the statements of the subjects.
- For effective amendment of the relevant legislations, practices and policies, CSOs should effectively engage in advocacy and lobbying activities and prepare campaigns.

Suggestions for Donors

- Funding organizations should not hesitate to financially support the projects of CSOs that generate projects for preventing violence within the framework of the sensitivities of violence victim sex worker trans women and that are directed by sex worker trans women.

Suggestions for the Media

- The media should stop broadcasting news that reveals the identity of trans women sex worker victims of violence. It should be known that broadcasting the news in several media organs, which reveals the identity of the victims, constitutes a criminal act.
- The media should remain objective and reflect the news about sex worker trans women only after conducting an interview with sex worker trans women and the lawyers of the victims. The fact that press correspondents make news based on the records issued or the statement made by the police leads to emergence of a discourse of journalism that targets violence victim sex worker trans women based on the prejudices.
- The media should not feature the examples of hate speech aimed at sex worker trans women.
- After the acts of violence, the CSOs working with sex worker trans women should be contacted and the sensitivities and interest of the victim should be observed when acting on an incident.

Suggestions for Lawyers

- Lawyers should not refuse – on the grounds of their prejudices or inaccurate knowledge – to support or discriminate against sex worker trans women who seek their legal assistance.
- Lawyers should listen to the stories of sex worker trans women to whom they provide legal support, and avoid taking steps that may be contrary to the interest of the victims.
- Lawyers should contact CSOs that work with sex worker trans women, and be informed about the needs of this group of people at the point of their access to justice.
- Lawyers who do or intend to work with sex worker trans women should engage in advocacy work for supporting this group in the bar association that they are affiliated with; the lawyers in provinces should be trained about this matter, and sub-units that will provide sustainable legal support to sex worker trans women and all other sex workers should be established under bar associations.



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