******

***Bulgaria***

**INPUT**

by Dignita Foundation

for the SP’s thematic report due to the UN Human Rights Council 56th session in June 2024

1. **About Dignita**

|  |
| --- |
| Dignita[[1]](#footnote-1) was established in 2020 and together with “A 21” Foundation they are the only two civil society organizations in Bulgaria dedicated solely to prevention of the crime human trafficking, as well to the legal counselling of identified or potential victims of human trafficking. Our main activities are advocacy and training, as well as individual consultation and information of direct clients. Dignita is active nationally and internationally, our team has vast experience and expertise in issues connected to prevention of human trafficking and gender-based violence, advocacy and development of rights based-policies for combating trafficking in persons. 1. **Statement relative to question no. 4 - what forms of violence are prostituted women and girls subjected to (physical, psychological, sexual, economic, administrative, or other)?**

I provide an answer to this question based on my personal interviews with sex workers in 2022[[2]](#footnote-2), the 2020 book “The Prostitution in Bulgaria, sociological analysis” by the University of National and World Economy – Sofia and desktop research of the national case law done for the purpose of this input. The most common form of violence, which the interviewed sex workers discuss, is the **economic** one. Sex workers in the middle class of prostitution (on call) complain of the blackmail they face, should they wish to work independently. They complain that members of organized criminal groups or police officers visit their addresses and demand a percentage from their income, under the threat of physical violence or criminal charges. Sex workers in the lowest layer of prostitution (on street) tell that they live together with the co-parent of their children, who is unemployed, and the sex worker is the only person providing financial means for the family. The second most common form of violence is the **sexual** violence and it is evident from verdicts delivered against sexual offenders. The number of cases that are being reported, investigated and punished is very low. Receiving sexual services from underage sex worker (below 18 years) is always a crime, regardless of the consent. The clients of underage sex workers were criminalized in Bulgaria 15 years ago and since then only 6 men were found guilty nationwide. This number does not prove that child prostitution does not exist, just the contrary, it exemplifies the systemic lack of reporting and investigating of a widespread phenomenon. This is true, because repetitive official and non-governmental sources report that the most common ground to impose punishment “detention in educational facility” on school girls is prostitution.[[3]](#footnote-3)As regards adult sex workers, I found several verdicts regarding women beaten and raped by their clients. Their number is disturbingly low considering that rape is criminalized 55 years ago. The Bulgarian Supreme Court of Cassation has ruled that the victim’s profession is not a mitigating circumstance for the defendant’s guilt: “The fact that N.A. worked in prostitution does not presuppose lower degree of public danger of the interference with her sexual integrity, because it does not deprive her from the right to choose on her own and upon her free will when and with whom she shall have sexual contacts. Moreover, the activity practiced by the victim is a serious risk factor and makes her significantly more vulnerable to such violations” (judgment no. 230 of 19/06/2015 in criminal case no. 398/2015 of the Supreme Court of Cassation, III criminal chamber). On third place, I put the **administrative** violence, understood as re-victimization of sex workers on behalf of the State via criminal-law policies directed against them. For example, the criminalization of earning income in immoral manner and the detention of minors engaged in prostitution. The former was considered a crime and actually prosecuted, between 1968 and 2022. Recently, the Bulgarian Constitutional Court ruled that the provision in question “interferes in constitutionally unacceptable manner with the sanctity of the citizens’ personal life” and in effect gives a respite to third persons, who might be involved in exploitation of the prostitution of others (traffickers, pimps, etc.) “feeding into the message that the victims await from the State punishment, not support” (judgment no. 13 of 27/09/2022 in constitutional case no. 8/2022).[[4]](#footnote-4) As indicated above, prostitution is the most common ground on the basis of which the Bulgarian courts order the detention of minor girls in educational facilities. **Physical** violence on behalf of the clients (one that is not followed by sexual violence) is almost never reported to researchers or investigation authorities. It must be mentioned, though, that the majority of the interviewed sex workers admitted that they suffered physical and/or sexual violence in their childhood, before resorting to prostitution.1. **Statement relative to issue no. 6 - describe the linkages between prostitution and the violation of the human rights of women and girls.**

“*Human rights had to be the main criterion in designing and implementing policies on prostitution*“ – is one of the headlines with which the European Court of Human Rights announced its latest judgment under the anti-trafficking provision of the ECHR, in the case *Krachunova v. Bulgaria*.[[5]](#footnote-5) Therein, the Court announced a new substantive right: “Article 4 of the Convention, construed in the light of its object and purpose and in a way that renders its safeguards practical and effective, lays down a positive obligation on the part of the Contracting States to enable the victims of trafficking to claim compensation from their traffickers in respect of lost earnings.” (§ 173). According to the Court’s analysis, “[c]oncerns based on moral considerations must be taken into account in such a sensitive domain as prostitution, which is approached differently in different legal systems depending on the respective society’s understanding of it. That said, the way in which domestic law approaches different aspects of the problem must be coherent and permit the various legitimate interests at play to be adequately taken into account. Moreover, as noted by the Parliamentary Assembly of the Council of Europe, human rights should be the main criterion in designing and implementing policies on prostitution and trafficking.” (§ 190). Applying this principle to the concrete case, the Court held that “it cannot be accepted that a simple reference to the “immoral” character of the applicant’s earnings constituted sufficient justification for failing to comply with that obligation [to enable trafficking victims to claim compensation from their traffickers]. But even if there existed sound public-policy reasons to dismiss a tort claim relating to earnings obtained through prostitution (for instance, it could be argued that upholding such a claim might be seen as condoning prostitution or encourage some people to engage in it), in the present case such reasons came up against the countervailing and undoubtedly compelling public policy against trafficking in human beings and in favour of protecting its victims”(§§ 192 and 193).  In an earlier case, the European Court of Human Rights found discrimination against an African sex worker in Spain: “The Court considers that where the State authorities investigate violent incidents, they have an additional obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. … [I]n her complaints of 21 and 25 July 2005 the applicant mentioned the racist remarks allegedly made to her by the police, such as “get out of here you black whore”, and submitted that the officers had not stopped and questioned other women carrying on the same activity but having a “European phenotype”. Those submissions were not examined by the courts dealing with the case, which merely adopted the contents of the reports by the Balearic Islands chief of police without carrying out a more thorough investigation into the alleged racist attitudes. In the light of the evidence submitted in the present case, the Court considers that the decisions made by the domestic courts failed to take account of the applicant’s particular vulnerability inherent in her position as an African woman working as a prostitute. The authorities thus failed to comply with their duty … to take all possible steps to ascertain whether or not a discriminatory attitude might have played a role in the events.” (judgment of 24/07/2012 in the case *B.S. v. Spain*, §§ 58, 61 and 62).[[6]](#footnote-6) Mostly relevant to the Special Rapporteur’s task is the communicated case *M. A. et Autres c. France et 4 autres affaires* (applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20).[[7]](#footnote-7) The applicants are two hundred and sixty-one men and women of various nationalities: Albanian, Algerian, Argentinian, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Columbian, Dominican, Equatorial Guinean, Ecuadorian, Spanish, French, Nigerian, Peruvian, Romanian and Venezuelan, who state that they “are habitually engaged in prostitution, in a lawful manner under the provisions of French law”. They complained about the criminalisation of the purchase of sexual relations, even between consenting adults, introduced by Law no. 2016-444 of 13 April 2016 “to strengthen the fight against the prostitution system and provide support to prostituted individuals”, and codified in Articles 611-1 and 225-12-1 of the Criminal Code. The applicants alleged that the French legislation criminalising the purchase of sexual relations seriously endangered the physical and mental integrity and health of individuals who, like them, engaged in prostitution. They also argued that the fact of making it a criminal offence to obtain sexual services in exchange for payment, even where this occurred between consenting adults and even in purely private places, radically encroached on the right to respect for the private life of individuals engaged in prostitution and of their clients, in so far as this included the right to personal autonomy and sexual freedom. According to the applicants, the possibility of criminal proceedings being brought against clients pushes those engaged in prostitution into operating in a clandestine manner and in isolation, exposes them to greater risks for their physical integrity and lives, and affects their freedom to define how they live their private lives. On 27 June 2023 the Court declared admissible this case[[8]](#footnote-8), holding that the applicants have an arguable claim to be victims of the right to:* **Respect for private life** (Right to autonomy and sexual freedom of persons offering prostitution-related services, faced with the criminalisation of the purchase of sexual services);
* **Degrading and inhuman treatment** (Increased risk and lack of assistance for persons offering prostitution-related services and obliged to work illegally as a result of criminalisation of the purchase of sexual services).
1. **Statement relative to question no. 15, what recommendations do you have to prevent and end violence associated with the prostitution for women and girls?**
* Ratify the Convention of the Council of Europe on preventing and combating all forms of violence against women, including domestic violence (Istanbul Convention);
* Provide adequate and consistent funding to non-governmental organizations working against violence;
* Provide repetitive training for law enforcement personnel on gender stereotypes and violence against sex workers; modernize the vocabulary in legislation;
* Pursue efforts to encourage the victims of violence to report the cases to the authorities;
* Initiate gender sensitive monitoring of criminal violence cases and analyse the reasons why they are rarely reported;
* Provide support in the form of qualification courses and job trainings/mentorship for children accommodated in state institutions, so that they have the necessary qualifications and soft skills needed to access gainful employment, and thus do not resort to prostitution as subsistence strategy.

  |

1. **Dignita Foundation grants its permission for this input to be public and to be posted on the Special Rapporteur webpage. The input was prepared by:**

Mrs Natasha Dobreva

Human Rights Attorney

1. <https://www.dignita.bg/en> [↑](#footnote-ref-1)
2. <https://www.dignita.bg/articles> [↑](#footnote-ref-2)
3. Report of the Ombudsperson “Rights of Children Accommodated in State Homes”, 2023, <https://www.ombudsman.bg/bg/p/dokladi-ot-proverki-555> ; Report of the Institute of Social Activities and Practices “Action Research of the Needs of Support of Children Participating in Legal Proceedings”, 2023, p. 8, <https://sapibg.org/bg/news/doklad-ot-uchastvashcho-izsledvane-v-deistvie-action-na-nuzhdite-ot-podkrepa-na-deca-uchastvashchi-v-pravni-proceduri-i-tehnite-roditeli> ; Report of the Bulgarian Helsinki Committee “Children Deprived of Liberty in Bulgaria: Between the Legacy and the Reform”, 2014, p. 208, 215, <https://www.bghelsinki.org/bg/reports/deca-lisheni-ot-svoboda-v-bylgarija-mejdu-nasledstvoto-i-reformata> [↑](#footnote-ref-3)
4. <https://www.constcourt.bg/en/case-615> [↑](#footnote-ref-4)
5. <https://hudoc.echr.coe.int/eng?i=001-229129> [↑](#footnote-ref-5)
6. <https://hudoc.echr.coe.int/eng?i=001-112459> [↑](#footnote-ref-6)
7. <https://hudoc.echr.coe.int/eng?i=001-209407> [↑](#footnote-ref-7)
8. <https://hudoc.echr.coe.int/eng?i=001-226443> [↑](#footnote-ref-8)