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## The question of digital prostitution's criminalization and decriminalization: International-legal experience

### Щодо питання криміналізації та декриміналізації цифрової проституції: міжнародно-правовий досвід

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#### Abstract

Regulation of the digital sex industry is a topic of debate at both national and international levels. While there is an increasing interest in decriminalizing sex work, digital prostitution remains illegal in many countries. Therefore, it is crucial to analyze the international experience of criminalizing and decriminalizing digital prostitution, and to pay attention to the problematic issues that arise during this process. The objective of the study is to explore the international experience of criminalizing and decriminalizing digital prostitution, while the subject of the study is the social relations that emerge during this process. The research methodology employs various methods, including philosophical, logical, special-legal, system analysis, and formal-dogmatic methods. The research concludes that different countries treat the criminalization and decriminalization of digital prostitution differently. Sex workers in this industry advocate for decriminalization as it

#### Анотація

Регулювання цифрової секс-індустрії є темою дискусій як на національному, так і на міжнародному рівнях. Незважаючи на зростаючий інтерес до декриміналізації секс-бізнесу, цифрова проституція залишається незаконною в багатьох країнах. Тому вкрай важливо проаналізувати міжнародний досвід криміналізації та декриміналізації цифрової проституції та звернути увагу на проблемні питання, які виникають під час цього процесу. Метою дослідження є вивчення міжнародного досвіду криміналізації та декриміналізації цифрової проституції, а предметом дослідження є суспільні відносини, що виникають під час цього процесу. У методології дослідження використовуються різноманітні методи, зокрема філософські, логічні, спеціально-юридичні, системного аналізу, формально-догматичні. В результаті дослідження встановлено, що країни по-різному ставляться до криміналізації та

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puts power directly in their hands and eliminates legal barriers. Countries that have decriminalized digital prostitution believe that sex work is legitimate work and should be treated with respect. However, countries have different models of criminalizing prostitution, including the legalization of digital prostitution with criminal liability for deviations from established state rules.

**Keywords:** crime, criminal code, online prostitution, sex workers, criminal liability.

## Introduction

The use of information technologies brings about changes in people's lives each year, leading to the emergence and transformation of various phenomena. One of these phenomena that has been affected by the digital transformation and the new opportunities for communication on the Internet is prostitution, which has given rise to the existence of digital prostitution.

Different countries have varying attitudes towards regulating the provision of sexual services and the distribution of intimate images for a fee on the Internet. However, recognizing prostitution as a legal activity did not follow an evolutionary process starting with a complete ban and ending with legalization. Calls for legalizing and taxing prostitution were already present thousands of years ago in different parts of the world. For instance, prostitution "for religious reasons" was legally permitted in temples in the Middle East and Mediterranean regions, and ancient Sumerian texts included prostitution as a common occupation. Researchers have observed similar practices among the Aztecs, while the Incas regulated prostitution through government officials, and Greek heterosexuals had to pay taxes on it. In Ancient Rome, prostitution was legal, registered, and widely practiced. In the East, Japanese brothels were popular among Asians and Western travelers, and West Indian trading companies were involved in the trade of Japanese women for prostitution. Even in Muslim societies, prostitution was formally banned, but legal harems were created, which effectively legalized the sexual slavery of women.

декриміналізації цифрової проституції. Секс-працівники цієї індустрії виступають за декриміналізацію, оскільки усуваються правові бар'єри здійснення даного роду діяльності та підвищення прибутку. Країни, які декриміналізували цифрову проституцію, вважають, що секс-бізнес є законною роботою і її слід сприймати на рівні з іншими професіями. Проте, слід відзначити, що в країнах існують різні моделі криміналізації проституції, зокрема легалізація цифрової проституції з кримінальною відповідальністю за відхилення від встановлених державою правил.

**Ключові слова:** злочинність, кримінальний кодекс, інтернет-проституція, працівники секс-бізнесу, кримінальна відповідальність.

The way in which society views the legalization and decriminalization of prostitution varies, with some countries opting to protect women from sexual exploitation and violence instead of upholding liberal values and free choice. Although prostitution is illegal in most countries, including Ukraine, the ban is often just a formality. The Ukrainian Constitution (Law 254k/96-VR, 1996) prioritize the protection of a person's life, health, dignity, and sexual freedom. Furthermore, in Ukraine, both prostitution and pimping are subject to criminal and administrative liability as stipulated by Article 303 of the Criminal Code (Law 2341-III, 2001) and Article 181-1 of the Code of Ukraine on Administrative Offenses (Law 8073-X, 1984).

However, there are differing opinions within the public regarding the legalization and taxation of prostitution, and the criminalization of prostitution with more severe punishment. To understand the role of digital media in ensuring the rights of women and men in the sex trade, it is important to analyze the existing definitions of digital prostitution and the various approaches to its regulation internationally. This will aid in better understanding the impact of prostitution on modern society.

As there is no agreement on the definition of prostitution at the international level, it is useful to look at individual states' policies on the matter. Generally, four main political models for prostitution are recognized: full criminalization, full decriminalization, partial decriminalization, and legalization. However, many states have not yet decided on which model to adopt, making it

crucial to examine the potential benefits and drawbacks of criminalization and decriminalization. Additionally, the regulation of digital prostitution is still largely unexplored. Therefore, it is necessary to study the international legal experience of criminalizing and decriminalizing digital prostitution, as well as identify key trends in regulating this issue.

### **Theoretical Framework or Literature Review**

Researchers from both domestic and foreign backgrounds have studied the international legal approaches to criminalizing and decriminalizing digital prostitution. Zaitseva (2018) examined the Swedish model of combating prostitution and concluded that it represents a third way beyond the traditional dilemma of "forbid/allow," emphasizing a systemic approach to reducing prostitution and human trafficking while supporting women. The author argues that the Swedish model is effective in achieving its goals. Mykhaylyn and Radutny (2020) researched the issue of legalizing prostitution and pimping as a legal and social problem. They suggest that engaging in prostitution and related activities does not pose a threat to society or harm public interest. They also argue that legalizing prostitution would have several advantages, such as increasing state revenue through taxation, improving the welfare of prostitutes, reducing the spread of venereal diseases, and decreasing corruption in law enforcement agencies.

Onishko (2020) conducted an analysis of the legal, social, and historical aspects of legalizing sexual services. Savinova (2012) focused on the general provisions of criminal law and the development of the information society in Ukraine. Armstrong (2016) examined the changes in the relationship between police and street sex workers in New Zealand after sex work was decriminalized in 2003. Azzopardi (2021) wrote an article discussing the legalization of prostitution in Malta and the social problems it may or may not solve. Jong B. (2021) analyzed the different models of legalization of prostitution that could be implemented in Malta. Koenig B., Murphy A., Johnston S., Pearson J., Knight R., Gilbert M., Shannon K., and Krusi K. (2022) analyzed the regulation of digital prostitution and the need to decriminalize sex work while promoting it as a form of work, developing standards for online sex work platforms, and prioritizing the safety of sex workers.

Alexander (2010) conducted a study on human rights in the context of sex work. Mgbako C.,

Bass K., Bundra E., Mehak Jamil, Jere Keys, and Lauren Melkus (2017) examined the decriminalization of sex work in South Africa, while Machat S., Shannon K., Braschel M., Moreheart S., and Shira M. Goldenberg (2019) analyzed the effects of criminalizing prostitution in Canada. The authors found that criminalization may not improve working conditions and safety for sex workers, and may even lead to negative consequences such as further shadow activities. Samuel Lee Petra Persson (2022) emphasized the need for optimal regulation of sexual service markets and highlighted the possibility of a prostitution market with both voluntary and forced participants. The author argued that criminalization harms voluntary service providers, while decriminalization may promote human trafficking. Lucy Platt, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi, and Anna-Louise Crago (2018) focused on health issues faced by women engaged in sex work.

Melanie C. Basil (2015) argues that while it may not be safe to say that prostitution should be legalized in the United States, it is safe to say that the current political model is ineffective. The author points out the flaws in the current system of regulating prostitution in the US, including the social stigma attached to those labeled as "criminals" due to their forced labor in illegal conditions, as well as the reduction in identifying potential victims of human trafficking as a result of criminalizing prostitution.

Yvette Tan (2022) examined Singapore's legislation on regulating digital prostitution, and the issue of digital prostitution was also explored. Davis B. (2022) analyzed the features of digital prostitution through the functioning of the OnlyFans platform. The literature reviewed highlights that prostitution's criminalization and decriminalization have been extensively studied by scholars, both nationally and internationally. However, there is a lack of research on the international legal experience of criminalizing or decriminalizing digital prostitution, indicating the need for further investigation into this issue.

### **Methodology**

By utilizing a variety of techniques for understanding legal concepts, it has become feasible to examine the international legal experience concerning the criminalization and decriminalization of digital prostitution. The study of digital prostitution is based on

philosophical methodologies, which serve as methodological principles for knowledge and methodological functions in understanding particular subjects. Philosophical categories, which are integral components of scientific knowledge, are used in this study. The utilization of dialectical knowledge principles, such as comprehensiveness, concreteness, objectivity, complete knowledge, bifurcation of the one, and understanding of its contradictory aspects, enabled the comprehension of the nuances of criminalization and decriminalization of digital prostitution. Furthermore, it facilitated the discovery of the contents of legalization and decriminalization models in various countries.

The investigation of the cause-and-effect relationship between legislative changes and social changes related to the criminalization and decriminalization of digital prostitution was made possible through the application of logical methodologies, such as analysis, synthesis, induction, deduction, analogy, and movement from abstract to concrete and vice versa. These logical techniques were utilized throughout the entire process of analyzing the subject matter. In particular, logical methods were of significant importance in formulating the concepts of "digital prostitution," "criminalization," "decriminalization," and "legalization," identifying the characteristics of these phenomena, and examining their operations in specific countries. Furthermore, logical techniques facilitated the analysis of normative legal acts, comparison between them, and identification of the common features connecting them.

Throughout the research, a concrete historical method was employed, which enabled a better understanding of the essence and underlying reasons for the enactment of legislation in various countries. Analyzing a state's history can provide valuable insights into the state's present role and functions, aiding in understanding its past. Simultaneously, understanding both past and present trends can help identify the direction of the state's and its legislation's future development. The identification of general properties was given special attention to particular historical events that reflected unique factors that influenced the formation of specific legal norms. Every society has its unique culture, historical experience, traditions, and worldview, which can affect the development of legal norms. Specific historical methods helped to reveal the dynamics of legislative development concerning criminalization and decriminalization of prostitution (including digital) across different

countries, highlight the features of the periods influencing these phenomena, and identify the legislative changes' distinctive features.

System analysis methodologies were used to comprehend the structure and components of different countries' legal systems. In particular, these methods helped clarify the connection between the legal system and the criminalization/decriminalization of digital prostitution.

The formal-dogmatic method was applied to analyze the external forms of law expression and interpret legal norms. This was necessary to understand the guiding principles underlying the adoption of legislative acts and norms of both international and national law. This method facilitated the identification of certain patterns in the formation, functioning, and development of criminalization and decriminalization legislation concerning digital prostitution in various countries worldwide.

## Results and Discussion

The emergence of digital platforms that facilitate the sharing of sexual content has revolutionized the traditional concept of prostitution and enabled individuals to earn money without physical interaction by using such platforms.

One prominent example of such a platform is OnlyFans. This platform operates as a subscription-based service where content creators upload exclusive content, and subscribers pay to view it. In 2021, OnlyFans introduced new terms of service that prohibited users from posting sexually explicit content. This move was justified as necessary to comply with the requirements of banking partners and payment service providers and to ensure the long-term operation of the platform. However, due to the low risk associated with such content, these rules were eventually reversed. The practice of posting content on OnlyFans for financial gain, known as digital prostitution, is treated differently in various countries. While such services are not legally prohibited in most countries where OnlyFans operates, those who post such content still face stigma and legal consequences depending on the nature of the content and the legal regulations in each country. The content posted on OnlyFans can be categorized into three types: erotic, sexual, and pornographic (Sex workers alliance Ireland, 2021). All three types are allowed on the platform, but their legality varies by country.

Customers who pay to access such content currently face no legal repercussions.

The legislation of various countries regarding the criminalization and decriminalization of prostitution is an important topic to consider.

In June 2003, New Zealand decriminalized prostitution, which resulted in better working conditions for sex workers, improved access to health services and justice, and increased confidence and well-being.

The Swedish model, which criminalizes pimps and clients but not prostituted persons, is aimed at combating demand for prostitution. This model is focused on customers/buyers as the main reason for the existence of prostitution and recognizes pimping and mediation in human trafficking as crimes. The shift from perceptions of voluntary prostitution to the reality of poor women and girls being forced into prostitution due to poverty, blackmail, threats, or hopelessness has led to the punishment of clients with fines or imprisonment (up to 6 months in Sweden) in order to address demand.

Currently, prostitution is illegal in Malta, but the implementation of the Northern model of decriminalization is being discussed. This model would decriminalize sex workers and criminalize their clients and traffickers, while services like pimping and running brothels would remain illegal. On the other hand, there is also a debate about adopting the Finnish model, which distinguishes between voluntary sex work and those working under the guidance of a pimp, minors, or victims of human trafficking.

In Canada, the purchase of sexual services is illegal under the Protection of Communities and Exploited Persons Act (PCEPA), but selling sexual services is legal. South Africa is currently discussing the possibility of decriminalizing prostitution, while in Singapore, the production, transmission, and distribution of obscene material is widely considered to go against Singapore's moral standards and norms.

The UN Convention on Combating Trafficking in Human Beings and the Exploitation of Prostitution by Third Parties (United Nations, 1949) highlights that prostitution and its associated issues pose a threat to the dignity and well-being of individuals, families, and society as a whole. This definition is included in the Convention on the Elimination of All Forms of Discrimination Against Women (United Nations, 1979).

The international community recognizes that prostitution and human trafficking are harmful and that the prostituted person is the victim. Even if some individuals claim to enjoy selling their bodies, it does not justify the violence and systemic inequality faced by those engaged in prostitution.

The development of policies aimed at reducing human rights violations in the sex industry demonstrates a shared goal among states to combat sex trafficking and avoid human rights abuses.

Therefore, international legal experience shows that various approaches to the legalization or decriminalization of prostitution are primarily focused on protecting human rights and bringing people engaged in prostitution out of the shadows.

## Conclusions

After studying the international legal experience of criminalization and decriminalization of digital prostitution, the following conclusions can be drawn:

Digital transformation has enabled the use of digital resources for engaging in prostitution through the placement of relevant content on special platforms, which may result in legal liability in many countries depending on the type of content.

The legalization (decriminalization) of sex work, including on the internet, is being discussed in many countries, with some considering it to enhance the safety of sex workers and increase revenue through taxation. However, the illegal nature of such activities may prevent tax payment.

The regulation of such activities is based on the analysis of prerequisites, key factors of interaction between the state and society, and the main threats for persons involved in such activities. The Swedish and Finnish models, as well as the experiences of other countries like New Zealand, Singapore, and Canada, provide examples of successful regulation of prostitution. The main goal of criminalization and decriminalization of prostitution, including digital prostitution, is to ensure the rights of persons involved in such activities and combat the sex trade and pimping.

Further research is needed to explore the possibilities of legal regulation of information

platforms where pornographic content is posted and the establishment of restrictions for persons carrying out activities on such platforms.

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