

The National and Moral Borders of the 2016 French Law on Sex Work: An Analysis of the ‘Prostitution Exit Programme’

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Abstract:

The 2016 law on prostitution in France introduced the so-called Swedish model approach to sex work, which, at the national level, criminalises those who purchase sex rather than the sex workers themselves. Alongside the repressive character of the law, lawmakers introduced a number of social policy measures through the implementation of a ‘prostitution exit programme’. Whilst some pioneering research has sought to evaluate the impact of penalising the clients of sex workers, no survey has yet focused on the outcomes of prostitution exit programmes. Based on qualitative data, including interviews with sex workers and grassroots organisations, this article aims to analyse how the programme was implemented and its overall outcomes. The interviews we conducted shed particular light on the fact that the implementation of the programme is impacted on by the application of restrictive migration policies.

Introduction

Since the end of the 1970s, debates on sex work have been wrought by strong tensions amidst feminists between those denouncing prostitution, essentially as a manifestation of patriarchy, and those advocating the recognition of the agency of the women and men who decide to undertake sex work (Duggan and Hunter, 1995). Since the mid 1990s, in particular, there has been a strong rise in power of a neo-abolitionist approach to sex work within feminisms at a global level, these positions have seen the unexpected proximity between some feminisms with some conservative religious actors (Bernstein, 2010). This could also be noted in France where Catholic groups, which feminists have traditionally kept at bay, became closer and closer to some feminists and started what Lilian Mathieu has termed an ‘institutional acclimation’ (2018) of their fight against the so-called ‘prostitutional system’. This ultimately led to the implementation of repressive policies targeting sex workers’ clients within the French context (Calderaro and Giametta, 2019).

By focusing on France, our article seeks to contribute to empirical analyses of the mechanisms characterising the rescue approach, repressive prostitution laws, and their impact on those who are targeted by them. While most of the literature on the topic tends to focus exclusively on the case of migrant women as they become the main targets of new legislation on prostitution in western countries, here we include both migrant and non-migrant women in the analysis to underline the impact of such laws for the broader population in the sex work sector.

France's abolitionist stance concerning prostitution, which can be traced back to 1960 with its signature of the UN Convention against Human Trafficking, became official in April 2016 with the implementation of the law (n° 2016-444) to reinforce the fight against the 'prostitution system' and to support people involved in prostitution¹. While most of the research on this topic focuses on repressive laws (i.e. end-demand laws) we wanted to question the social policy aspect of such laws. The 2016 law on prostitution instituted three main measures: i. the decriminalisation of soliciting and the criminalisation of the purchase of sexual acts, ii. the creation of a prostitution exit programme, iii. and the inclusion of sex work within sexual education programmes in junior high school. This article focuses on the second element of the law, that is, the creation of an exit programme. By analysing the drafting procedure, its content and its implementation, we seek to analyse how social measures based on humanitarian and feminist concerns may contribute to reinforcing border controls, where borders can be interpreted as both physical/national and psychological/moral.

The implementation of the exit programme has been delegated to and is the responsibility of special committees within each *department* (region) across the country² that are chaired by the appointed prefect in these departments.³ The situation where the prefects chair these committees is problematic insofar as their main prerogative is to ensure the application of security measures within their department with migration control being an important one amongst these. In its application through these committees the law created a cumbersome bureaucratic apparatus overseeing a twofold administrative control directed at both applicants

¹ In French: Loi visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées.

² Ordinance n° 2016-1467 of this law.

³ Unlike the presidents of regional and departmental councils the prefects are appointed senior level civil servants.

and the accredited non-governmental or grassroots organisations⁴ that represent them. Furthermore, the fact that these organisations play a crucial role in identifying, supporting and accompanying the applicant in the exit programme means that they effectively risk becoming a first “bordering” mechanism for many migrant (trans and cis) women.

Other than these new means of selection and control designed to decide who enters the programme and who does not, the exit programme also erects a social border between those sex workers who are willing to apply and those who are unwilling. As Jacquemart and Jaksic have argued, the law only provides support to those who leave the prostitution sector. While the law considers all sex workers as victims, as will be shown below, it paradoxically does not offer rights to all of them (Jacquemart and Jaksic, 2018). In so doing, the law provides an opportunity to redraw a moral border between those actively opposed to prostitution, those who consider themselves as victims, and those seen as approving of prostitution. The latter are perceived as maintaining the ‘system’ of paid sex work because they are unwilling to stop. Drawing such a moral border between deserving and undeserving women opens the door to the policing of the undeserving. It, thus, demonstrates how feminist and humanitarian policies can contribute to securitarian and repressive policies, as theorised by the American sociologist Elizabeth Bernstein with her concept of ‘carceral feminism’ (Bernstein, 2010). This notion designates those forms of feminist-based lobbying that heavily rely on state power, such as law enforcement and legal institutions, to fight for gender equality and against patriarchy.

In order to provide the empirical grounds for the claims made in this article, we draw on our previous study which resulted in a qualitative report on the impact of the end-demand model on sex workers in France—which both of us co-authored (Le Bail, Giametta et al., 2018) for a collaborative survey involving eleven sex workers’ rights associations and community health organisations. All eleven had experience of working with sex workers across France. The methodology is described in details in the online open access report⁵

⁴ According to the Decree 2016–1467, an accredited organisation is one that has received an accreditation issued by the Prefect of the Department. To be accredited an organisation must fulfil certain conditions, namely it must have: been legally established for at least three years and have a statutory activity to provide both assistance and support to women; proved to have enough resources to implement the exit programme; and among which it must have provided evidence of its commitment to implement a policy whose main objective is to help people out of prostitution.

⁵ Research protocol and interview grids are also available open access in the Research data repository of Sciences Po : <https://data.sciencespo.fr/dataset.xhtml?persistentId=doi:10.21410/7E4/GSPQEL>

I. Arriving at the 2016 law on prostitution in France

After two years of parliamentary debates and about fifteen years of active advocacy (Mathieu, 2014), France adopted a new law on Prostitution on the 13th April 2016. The law, entitled the *Loi visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées*, aims at reinforcing the fight against the ‘prostitution system’ and supporting people who ‘prostitute themselves’. The successful parliamentary vote for this law resulted from a convergence in the lobbying efforts of neo-abolitionist organisations, religious conservative groups and vocal/lobbying feminist groups which redefined sex work through a repressive paradigm, conflating it with violence against women. Moreover, anti-globalisation discourses were widely mobilised to redefine sex work as a political issue at both the national and international levels (Calderaro and Giametta, 2019).

In the French public sphere, the 2016 law was both widely approved and widely criticised for, on the one hand, its decriminalisation of soliciting and, on the other, its criminalisation of the purchase of sex. The vote for this law was partly the result of the advocacy against a previous 2003 law (part of the LSI, the domestic security law also known as the Sarkozy law), which had further criminalised soliciting by including passive soliciting (i.e. criminalising the fact of standing in the streets and waiting for clients). Although the 2003 law mentioned the fight against human trafficking as one of its aims, the main objective was of a security nature. This became clear because of the new legal tools implemented to deport undesirable migrant groups and remove sex workers from the public space (Mainsant, 2013). The 2016 law, on the contrary, is presented as transferring the burden of the criminality, and consequently the burden of stigma, from the sellers to the buyers. In other words, this law proposed an end-demand strategy through the adoption of the ‘Swedish model’ (Levy, 2014). The rationale was to place the responsibility on clients for two reasons. On the one hand, because the act of purchasing a sexual service is inherently violent and, on the other, because it contributes to maintaining what legislators call a ‘prostitution system’ springing from mafia-like networks of exploitation. Underlying the law is a view of sex workers as a homogenised group of victims, and, more precisely victims of a patriarchal system predicated on the exploitation of the women’s bodies.

This underlying assumption can be seen in the following excerpt which is part of the

introduction of the resolution adopted by the French National Assembly in 2011. It illustrates how legislators tend to homogenise and victimise a whole population:

“First, the number of people in prostitution in France is around 20,000, according to the Ministry of the Interior. Concerning people involved in street prostitution, 85% are women, while almost all of the clients are men. This demonstrates the gendered reality of prostitution. Second, we must emphasise the historic reversal that has taken place in the space of twenty years. Whereas, only 20% of women doing prostitution in the public space were of foreign nationality in 1990, today they represent almost 90%. The countries of origin are well known (mainly Romania, Bulgaria, Nigeria and China) which demonstrates the growing grip of trafficking networks on prostitution.” (National Assembly, 2011)⁶

This official document discussed at the National Assembly summarises the basic arguments that legislators accepted to develop the abolitionist approach in France. While politicians, both pro and against criminalisation, all agreed on the question of violence, they disagreed on how to fight against it. Their analysis also differed concerning the reasons behind the violence to which sex workers are exposed. In particular, the link between migrant status and being a victim of trafficking networks (migrant sex worker = victim of human trafficking), as alluded to in the above-statement, was controversial, especially by some who consequently viewed the rescue approach as inappropriate. Later in this article, we will focus on the criticisms sex workers made in relation to this type of rescue approach—one based on a homogenising and simplified vision of the prostitute/victim. At this stage, we will only list the pragmatic criticisms of those opposed to the criminalisation of sex workers’ clients. The first of these is the risk of the geographical displacement of prostitution and the greater risk of economic precariousness and exposure to violence for sex workers. Secondly, there would be greater difficulty in accessing the services of social and grassroots organisations. And thirdly, a loss of autonomy and an increase in procurement with an increased risk of exploitation⁷. These arguments against the

⁶ Extract of the introduction of the resolution adopted by the National Assembly in 2011. The resolution is based on a public report produced by a special commission and was a first step towards the writing of draft law. Authors’ translation.

⁷ Our report on the collaborative survey ‘What Sex workers think about the French Prostitution law’ clearly demonstrated that the sex workers experienced the criminalisation of clients as merely an extension of the criminalisation of all the actors involved in sex work. They felt they were also, inevitably, the target of such criminalisation by proxy. The survey also demonstrated that they did not feel at all that stigmatising representations of sex work or behaviour had changed since the implementation of the new law (Le Bail, Giametta et al. 2018).

Swedish model of dealing with sex work were broadly based on those put forward against the prior crime of soliciting. Those advocating for the new law essentially agreed with this interpretation. Thus, it was important for them to counterbalance the repressive aspects of the law with social policy measures. It needs to be stressed that it was in this context, that the prostitution exit programme was established.

The exit programme advocates state that it should provide the requisite social and financial support for sex workers in order for them to cease this activity. Depending on the individual's situation, the programme could include the provision of a six-month, temporary residence permit, one that could be renewed up to three times. Furthermore, there are provisions of financial assistance to help with social and professional integration (known by its French acronym, AFIS) for those who are not eligible for minimum government allowances. This aid is set at €330 per month plus €120 for each dependent child. Moreover, the programme provides for the support of an accredited organisation to have access to housing and employment, training, healthcare and other social rights that are not negligible.

Yet, more than one year after the social measures in the law were implemented (between the end of 2017 and the beginning of 2019), according to the organisations we consulted, the number of individuals who have successfully applied to the programme remains relatively small. The local authorities that have validated the highest number of applications are the Haute Garonne department (Toulouse), where eighteen applications had been successful as of April 2019, and amongst the eight local authorities in the greater Paris region, where 57 applications had been accepted as of the November 2018. Other regions, including those with large cities like Lyon, Marseille or Lille, have accepted from a few to zero applications. Most of the time access to social housing is extremely difficult and the financial aid is not sufficient to live in decent conditions especially in large cities. The 6-month temporary visa is considered as too short to provide stable conditions and start training, obtaining a work contract, or a housing contract. Furthermore, the procedure and the number of documents requested by the committees are very demanding and the burden on the social workers of accredited organisations is so heavy that they themselves tend to limit the number of applicants.

II. The implementation of the exit programme and national borders

In the following section we seek to examine how accredited organisations can readily become

part and parcel of the government's filtering system for the migrant population. Further, we will look at how 'national borders' emerge as a protectionist mechanism in an exit programme that is supposed to combat human trafficking targeting migrants. Inevitably this part will mainly focus on the case of migrant sex workers while the next will develop a more comprehensive analysis of the impact of the law on both migrants and non-migrants sex workers.

Selection of 'good' migrants: the imperatives of migration control

Setting up the exit programme proved very difficult across the country. In the interviews that we conducted with sex workers about the implementation of this mechanism, it emerged clearly that they were often in doubt about whether it was directed at them. Alongside the community of sex workers, confusion about the exit programme readily spread among the accredited organisations as well. An important question that arose in the organisations we contacted concerned the selection of applicants before sending their applications to the prefecture. On the one hand, preparing applications and the preliminary monitoring entailed a significant amount of work. Yet of all the grassroots organisations interviewed, only one had received additional funding for this purpose. On the other hand, most of those responsible for the relevant departmental services (the delegate for women's rights) claimed that they could only accept a limited number of applications given the financial resources available. Complicating the situation, some organisations refused to select among the applications they had received. As one NGO representative stated:

“No quota has been mentioned. The only thing that was mentioned was from the person from the Prefecture responsible for residence rights, they told us that if someone was regularised elsewhere, in this case, the Nigerian person who was regularised in a third country, without a doubt, obviously the Prefect would not authorise them to join the exit programme. [...] In contrast, they weren't very clear about people under the Dublin Regulation, people who have been issued with an OQTF [obligation to leave the French territory].” (Interview with Paloma, an organisation in Nantes, winter 2018).

In dealing with some other departmental committees, the organisations' workers we interviewed found that the eligibility criteria to benefit from the exit programme had become more demanding. For example, applicants must not be subject to an order to leave the territory, they must not be seeking asylum in France or another European country, they must provide a

birth certificate, provide proof of integration, be proficient in the French language and provide evidence of their housing situation or health status (Le Bail, Giametta et al. 2018). In some regions, notably in Meurthe et Moselle and in Haute Savoie, applicants were asked to provide proof that they had filed a complaint for pimping. This shows the extent to which some of local prefects and civil servants in charge of protecting women's rights ignored important aspects of the law. Further dysfunctional aspects, revealed during the course of our research, include the observation that some committees accept applications from individuals who had already ceased being involved in sex work for several years. There are regional disparities and inequalities in the way treatment of applicants to the exit programme, also in relation to the criteria used to decide who is eligible. Due to the lack of precise content in the ordinances and their loose interpretation at a local level, each departmental committee could establish its own criteria for accepting applications under the exit programme. In some instances non-governmental and grassroots organisations participated in the definition of these criteria, while in other cases they refused to take part in establishing criteria, or openly criticised the role that local authorities expected them to undertake.

A number of organisations contacted during our research, indicated that when they explained to the sex workers they dealt with, what they needed to provide in terms of documents, several of the latter withdrew from the process. The organisations that refused to apply for accreditation (despite sometimes being asked to do so by the department), often refused to do so because of the further police control that the new exit system had engendered. For example, when in the course of our research we asked a sex worker about the compulsory process of signing a document with the prefecture stating that he/she would commit themselves to stopping sex work, and therefore providing the prefecture with his/her personal data, the respondent stated:

“No, for my part, no. I don't want to be registered. If I say that I want to leave prostitution and then they catch me with a client? What would happen? I would be on the records and then later, if I want a residence permit or some other status, they won't accept me.” (Aurora, Argentinian trans woman)

Moving beyond the local level described above, the 'sexual humanitarian' approach of the exit programme cannot be analysed without situating it within a national and indeed international context that involves further normalising restrictive migration regimes through police control. As Hoefinger *et al.* (2020) contend in their analysis of sexual humanitarian anti-trafficking

policies in the United States, the sexual humanitarian approach frames all forms of sex work as sexual exploitation, given that it emanates from the global rise of repressive approaches in order to abolish prostitution. These authors argue that ‘sexual humanitarianism leverages morality, affect, and normative ideas about sexuality in the service of heightened security’ (Hoefinger et al, 2020:3). A telling example of the problems that occur when a sexual humanitarian logic pairs with migration control practices occurred in Nice in April 2017, the French city where the first exit programme committee was established in France. Here the regional committee rejected the applications of a large number of Nigerian women involved in sex work. The committee members deliberated that the applicants were lying about their commitment to stop their involvement in prostitution on the grounds that they were all undocumented. When later we interviewed social workers from the sex work organisations, they expressed a deep discomfort with what had occurred in Nice. They did not think that an irregular migration status could be used against the women they were supporting in the application process. This was particularly troubling to them as the law specifically mentioned the possibility of issuing a temporary residence permit to people in such a situation. The sex work focused organisation, ALC, that operates in Nice told us that the fifteen applications of (mostly) Nigerian women were overwhelmingly rejected by the prefecture. They also stressed the fact that after having their applications rejected some of the women stopped going to the organisation, as they felt they could not trust them any longer. One of our interviewees from ALC reported that:

“The vast majority of applications were from Nigerian women who, for understandable reasons, either had failed the asylum process or had not pressed charges [against their pimps] so, obviously, for them, it was a way out...The members of the committee were mostly people we had worked with for a long time, people who knew the Prefecture, the national police, social cohesion, etc. Anyway, all these people came from bodies that we had worked with for a very long time, so they knew exactly which groups we were going to talk about. In contrast, the Prefecture’s position was: “We think these provisions are going to be misused and, because controlling migration is an extremely sensitive issue, particularly in the Alpes Maritimes department, we will be examining the applications from that perspective.” So, people who have been issued with an OQTF [obligation to leave French territory], and people who fall under the Dublin Regulation (which was all the applications we presented), will not be considered in a positive light [...]” (Interview with ALC, an organisation in Nices, winter 2018).

It became clear to the ALC social workers that members of the Alpes Maritime departmental committee were afraid that migrants would use the exit programme as a new means of being regularised as legal migrants. Thus, the priorities of the departmental migration policies impacted considerably on the implementation of the social policy of the law and, in so doing, it became discredited in the eyes of both sex workers and non-governmental organisations. The Nice affair shows how migration priorities have an impact on the largely unsuccessful implementation of the exit programme. On the one hand, lawmakers presented the law as necessary to fight against human trafficking, which is understood to mainly concern migrant women. On the other, the only measure in the law that some sex workers initially ‘supported’ was the possibility to have their residential status regularised by entering the exit programme. However, as seen above, when migrants apply it is this very measure that makes them suspect in the eyes of the decision-makers.

Over a year later, in the summer of 2018, the prefecture of Marseille set up a meeting with some of the accredited organisations in order to discuss how to carry out the exit programme. A social worker who attended this meeting said that organisations were put in a position of having to play strategically; they said that ‘it felt like treading on thin ice, one had to be very careful to know what kind of information to share and what to retain’ (interview, 2018). They also said that it would be ideal if ‘all the structures and actors involved followed the same objectives on the subject’ (same interview), but this was not the case, as the organisations had different political objectives and thus different priorities.

Similarly, in Toulouse, the organisation Griselidis attended the regional exit programme meetings that the prefecture organised. They noted the strong suspicion with which both sex workers and accredited organisations were met. Later they informed us that,

“overall, the committee members tried to reject the applications and had an attitude of suspicion towards applicants and organisations” (Interview with Griselidis, an organisation in Toulouse, winter 2018).

Yet, in order for the organisations to maintain credibility vis-à-vis the decision-makers they had to undertake a painstaking effort so as to present their applicants in the best possible way, despite the efforts they would struggle to be believed:

“We were also criticised because all the applications ‘looked alike’, because people had similar life stories. We had to redo several versions of the applications and complete the content to meet the expectations of the committee...” (idem)

They were asked to act ‘unethically’ according to the social workers, for example they were asked to visit women in their homes to verify that they were no longer part of a trafficking network; meet their partners to verify that they were not their pimps; reveal their own mental health status and so on. Some committee members also expected women to appear before the committee themselves. Further, when women had identity documents, there was a prevailing suspicion that these were false. The implementation of the exit programme in the context of sexual humanitarian governance has repeatedly shown that this mechanism contributes to further controlling certain migrant populations in the name of protecting borders.

Exclusion of bad victims: sexism and racism when selecting the ‘rescued’ sex workers

Within the moral parameters underpinning the repressive regime to control sex work in France it is impossible to conceive of sex workers speaking for themselves as they are all seen as victims of patriarchal domination and gendered forms of exploitation (Pheterson, 2016). When discussing the notion of ‘the victim’ it is important to analyse the co-existence of a vulnerability/criminality dichotomy, that is, the continuum between the categories of victimisation and suspicion through which sex workers (particularly migrants) are placed in the public sphere (Jakšić, 2016). For example, French anthropologist, Prune de Montvalon (2018) highlights the suspicion felt in the experience of Nigerian women when they lodge an asylum application. Her research shows that when the victims are to be protected, the institutions want to be able to identify not only the ‘real’, but also the ‘good’, victims. In this context, proof of the veracity of the ‘victim’s’ asylum claim is transformed over time into a moral proof of trust. Today this suspicion can also be found in the committees responsible for making decisions regarding the prostitution exit programme. In particular, non-governmental and grassroots organisations, both accredited and non-accredited, report on the use of racist and sexist language and stereotypes by members of the local authority committees during their deliberations. Gender stereotypes were present at the committee level, as a number of accredited organisations reveal. These prejudices would often play a role in the emergence of the ‘national borders’ that the exit programme system would often erect. As the representative of one organisation recounted:

“We presented applications of women who were still working on the street: they questioned their real desire to get out of sex work since they were still on the street. Similarly, when in the applications it was stated that people wanted to do stereotypical jobs (feminine labour, precarious, etc.) as hairdresser or housekeeper, the committee members made fun of them. And when we presented the application of a woman wanting to be a pharmacy assistant, her life project was ridiculed as completely unattainable.” (Interview with Griselidis, an organisation in Toulouse, winter 2018)

The fact that migrant women working in domestic work, garment factories, or restaurants do sex work on the side to earn more money is often ignored. Geravimov argues that even

‘trade unions and NGOs working on migrants’ rights, domestic workers’ rights, and garment workers’ rights see sex work and sex workers’ rights as something completely unrelated to their work and their communities’ (Geravimov, 2020).

Paradoxically, when migrant women are not seen as ‘workers’ but only recognised as ‘victims’, they can avail themselves of the state-funded protection mechanisms that have been put in place to fight prostitution and human trafficking in France. However, many of the women who use these mechanisms said to us that they felt patronised and thought that their migratory experience was interrupted by the conditions imposed on them. Migrant women in the sex industry are the ones who have been most impacted upon by the repressive system of sex work and the dysfunctional aspects of the exit programme. International scholarly research has shown that anti-trafficking responses can further exacerbate the vulnerability of social groups considered to be ‘at risk’ of trafficking (Showden and Majic, 2018). In particular, migrant women deemed to be ‘at risk’ of trafficking continue to face deportation and heightened state surveillance (O’Connell Davidson, 2006, Plambech, 2017). From our fieldwork it was clear that punitive and penal solutions to the ‘problem of prostitution’ contribute to making migrant and racialised women more vulnerable to exploitation and acute financial precariousness. Our research shows that those who are victims of trafficking, supposedly the main beneficiaries of this law, are also the ones who face the most drastic increase in insecurity and in risks for their health.

III. The implementation of the exit programme and moral borders

Since the exit programme is intrinsically directed at migrant women, the first part of the analysis has focused on how much the implementation is intermingled and limited by migration control dynamics and political priorities. Recent social science literature draws attention to the fact that many laws and regulations based on feminist conceptions can further divide women amongst themselves and stigmatise the most marginalised, who are usually poor and racialised women (Ticktin, 2008; Scott, 2007; Fassin, 2010). In France, vocal feminist groups, who are mainly white and middle and upper class, have pushed for the homogenisation of values that do not include the experiences of all the social and gender groups, especially the experiences of migrant and racialised women. Indeed, the exit programme is mainly directed at poor and racialised women (sex workers) and promoted and implemented by mainly white, non-migrant led organisations (Lieber and Le Bail 2021). However, the process of defining who can legitimately participate or not also implies determining who is willing to participate or not. Although they have no interest in participating in the exit programme, women and men—migrant or not, white or not—can be judged according to their willingness to ‘escape’ from the ‘prostitution system’. Both migrants and non-migrants in the sex work sector, are thus concerned by a programme which selects and recreates divisions among the people it addresses. Our research has shown how this humanitarian and feminist based social support mechanism is creating moral borders by imposing its values - in particular socially constructed notions of acceptable sexuality, and the need for individual emancipation on all sex workers - and how these moral borders produce inequalities and stigmatisation.

Inequalities: A law with conditional access increasing precariousness

Over the course of the debates in French parliament, between 2013 and 2016, different actors have commented on the content of the law, one in particular insisted on the fact that the exit programme would introduce unequal treatment among sex workers. In fact in a public notice published on the 16 December 2015, the French Human Rights Ombudsman (Défenseur des Droits) expressed the following opinion:

“While recognizing the necessity to protect and help the persons in prostitution who want to be assisted, The Human Rights Ombudsman notes with regret the concept of a prostitution exit programme. This concept would appear to be particularly inappropriate because it requires people in prostitution to sign up for a predefined procedure without, once again, considering

the diversity of their situations. The obligation for ‘victims of prostitution’ to cease prostitution if they want to benefit from this assistance or protection is problematical. The Ombudsman also has serious reservations about the conditions for engaging in an exit programme, in contrast to the principle of equal access to rights, and recommends unconditional access to social, health and professional support mechanisms.” (Défenseur des Droits, 2015)⁸

The critics of the draft law focused on the discriminatory nature of the way in which the exit programme was established, the conditions of accessing it, and the failure to take into account the diversity of sex workers’ living situations. First of all, regarding the access conditions, applicants cannot make the application on their own, but they must be represented by an organisation that received accreditation. The selective path for organisations to obtain this accreditation is in itself a source of inequality since the applicant cannot choose an organisation and a social worker with whom he/she feels comfortable. Besides, an organisation wishing to request accreditation needs to commit itself, via a deliberation at its general assembly, to implementing actions whose main objective is ‘to help people in prostitution and the victims of procurement and human trafficking to get out of prostitution’. Commentators have questioned this requirement from the government, as it makes public funding conditional upon compliance to a specific political position, namely an abolitionist position. As already mentioned, many French non-governmental and grassroots organisations known for their long experience of social work with sex workers refused to request accreditation based on their own philosophy, namely, to accompany sex workers according to the latter’s own needs and wishes. In this context, the accreditation requirement for organisations significantly restricts a sex worker’s ability to choose the organisation she/he deems would provide the most appropriate form of support. It also prevents them from asking on their own initiative to be included in the programme.

Secondly, through its failure to take cognisance of the diversity of sex workers’ living situations and expectations, the exit programme was criticised for, at best, pushing people towards greater financial insecurity, or, at worst, for being contemptuous when proposing precarious solutions to sex workers. According to the official circular implementing the exit programme in January 2017 (DGCS/B2/2017/18), the organisation that applies on behalf of the person must provide the following documents: a request form to begin or renew the given exit route, evidence of the

⁸ Authors’ translation.

administrative, family and social situation of the individual, and a ‘sworn statement to cease the activity of prostitution’. Considering the fact that sex workers will lose their earnings, the law proposes quite modest financial assistance (see above). This support is allocated when the individual cannot benefit of any other form of social assistance. This means that French nationals and regular residents are not beneficiaries since they can obtain better financial assistance through other programmes. Financial support is supposed to be complemented by a priority access to social housing, yet this is almost never the case due to the dearth of supply of social emergency housing in France. Furthermore, applicants are requested to cease sex work as soon as their request for the exit programme starts, but the procedures usually take several months. This implies that during this waiting period the person remains without an income.

Stigmatisation: A law dividing good and bad women

In the interviews we conducted between 2016 and 2018, sex workers expressed scepticism about this social policy aspect of the law, i.e. the exit programme, and many among them revealed that they felt harassed by such legal measures:

“It’s a good option. It’s good but I’m not sure it’ll be used, you know we earn more than €300 a week in the street, so €300 a month to stop, I don’t know if the girls will accept that.” (Blessing, Nigerian woman)

“What can you do with €300 per month? The law doesn’t offer a solid basis to enable you to stop working. You can’t quit your job just like that. But if they offered me a job I could do, definitely, I’d stop prostitution!” (Jessica, Peruvian trans woman)

It is not only the questions of the conditions of accessing support that were criticised, but also the implicit ideologies behind such a programme:

“No, even if they offered me €100,000 I don’t want it. If I tighten my belt, I can get €100,000 in three months. I’m independent. I manage my own money, it’s not my money that manages me.” (Yacine, Algerian travesti, notes from Doctors of the World rounds in Montpellier)

“I’ll never bow down to this kind of moral domination. [...] I don’t want this type of promises or offers from another planet. Leaving sex work to go into the world of public charity? Never. I’d prefer to die as a free and proud whore than do that.” (Aurora, Argentine trans woman)

“[I’ll never apply for the exit programme] because I don’t want to be categorised as having ‘repented’.” (Maria, French woman)

These quotes express sex workers’ anger emerging from their experiences of realising that once more their activity is considered as immoral. The message behind the exit programme, and the whole law, could be phrased as ‘you are victims and the law will help you stop prostitution’. Such a hegemonic discourse tends to stigmatise the sex workers who do not accept, or are not reaching out for, the state-organised assistance to stop sex work. Refusing the ‘solution’ means being categorised as a ‘bad woman’ who does not deserve help from the government. As one social worker stated, the law is telling these sex workers that they belong to an immoral past and that there is no place for them in the democratic society of the future:

It is a kind of divorce between the women: these women [the prostitutes] and public authorities. What the [representative] of Women Rights Bureau say is very violent. They say: “we want a world without you. What you represent, your culture, we want it to disappear”. It is like when you arrive in a factory and you say that it has to be closed, when you say to the workers that there will be no more workers in the future but only robots, and that workers culture, trade unions, etc., are archaic, that there is no more room for them in the modern world. It is what the women of the Women Rights Bureau say to the prostitutes: “prostitution is backwards, archaic. The future we want is without you”. It is violent for people for which prostitution is not only a question of money, but also their culture, their social life... (Interview with a representative of *Le Bus des Femmes*, organisation in Paris, autumn 2017)

Some interviewees went a step further when criticising the exit programme. They expressed the view that, by instituting a distinction between the deserving and non-deserving sex workers, the government’s plan to eliminate sex work strengthens the stigma around those who have decided to do this work.

“We continue to tarnish prostitutes’ reputations and give a very poor image of them. There is almost impunity for those who attack a prostitute. And all these laws contribute towards the idea that prostitutes can be attacked with impunity, because they don’t have the right to work or the right to be here.” (Amel, French trans woman)

“We are never victims. No, we are sluts. First of all, we are women. So why are we not tied to the kitchen sink, churning out babies? But, in addition to not being tied to the kitchen sink and churning out babies, we dare to make money for favours that should only be offered to our darling husbands? That’s what this is all about.” (Magali, French woman)

The survey we published in 2018 confirmed an increased stigmatisation of sex work across France. In particular we have shown that after the 2016 law, insults and violence in the street targeting sex workers became more common. As interviewees said, penalising clients results in stigmatising the whole activity of prostitution and thus stigmatising sex workers themselves. Furthermore, the mediatisation of the exit programme and the lack of information on its implementation spread the idea that it became easier for sex workers to stop and change activity. In other words social commentators became even less tolerant towards those who did not stop. In November 2018, the Constitutional Council was seized by a group of organizations, sex workers and lawyers who presented a Priority Question of Constitutionality⁹ (priority preliminary ruling on the issue of constitutionality) stating that the law did not respect the right for personal autonomy, the right to sexual freedom, and that it was a violation of the right of free enterprise and the freedom of contract (Conseil constitutionnel, 2019). Giving his arguments in front of the Constitutional Council, one of the lawyers stated:

“Sex workers hate this law, they hate it because it humiliates them, they all say the same thing: who is this legislator who denies my existence? Who denies me my individuality, who denies me my free will? Who denies me the right to do with my own body what I want and my capacity to make life choices life as a rational actor? Who is he?”¹⁰

⁹ ‘Question prioritaire de constitutionnalité’ in French law. The audience took place in January 2019 and the final decision was given in February 2019

¹⁰ The video of the session is available online at: <https://www.dailymotion.com/video/x713k75>

This section shows that the moral message propagated by the mechanism of the exit programme contributes to denying the fact that sex workers can make their own decisions. The new law further highlights the schizophrenic tendency of the political treatment of sex work in France where, on the one hand, buying sex is criminalised and “exit prostitution” is normalised as the solution to the 'problem of prostitution'. On the other hand, sex workers are still regarded as independent workers, supposed to declare their yearly income and controlled by the tax office.

Conclusions

This article has focused on the social policy aspect of the 2016 French law, the exit programme, to demonstrate how the rescue approach can be detrimental to the persons concerned and, furthermore, how difficult it is to implement such an approach in a context of restrictive immigration policy and of on-going racialised suspicion towards immigrants. Some local authorities have systematically refused Nigerian women’s applications on the basis of two opposing stereotypes, namely, that they are both victims and profiteers of the system. On the one hand, members of some local authority committees pigeonhole them as victims of human trafficking and refuse their applications on the basis that the system risks being instrumentalised by international criminal networks. On the other hand, these racialised women migrants are themselves suspected of trying to manipulate the system and their motivations are questioned.

Furthermore, by analysing the exit programme through the prism of sexual humanitarianism reveals how such mechanism can contribute to crystallise gendered narratives of sexual predation and victimisation and deny sex workers’ diversity and agency. Our research also shows that most sex workers who change careers and find other employment do so by their own means, or with the support already provided by the organisations without recourse to the exit programme. The immediate advantage of changing work autonomously, or asking for support outside of the exit programme, is that people do not have to suddenly break with their previous lives if they do not want to do so. The exit programme requires them to do so. This precipitous break can be adapted for victims of exploitation, but most of the time it leaves people without sufficient resources to provide for their basic needs.

In addition to the impact of the social policy aspect of the law, which was the main focus of this article, the repressive nature of the law has had a detrimental impact in terms of women’s rights, empowerment, as well as engendering violence and detrimental impacts on their health.

A vast body of research exists highlighting how anti-prostitution and anti-trafficking policies negatively impact on sex workers' livelihoods; these studies have often stressed a correlation between (physical and mental) health disparities of sex workers and experiences of policing, arrest, social stigma and precariousness (Dewey et al., 2015; Krusi et al., 2016; Maciotti et al., 2017). Among our interviewees, many sex workers felt that when they were victims of violence, the police neglected them. Even before, but even more so since the new law, the interviewees do not report violence to the police. They are fearful of being dismissed or even being arrested or deported (for those who are undocumented). Outside the exit programme itself, the current municipal ordinances and identity checks mean that the repressive measures still overwhelmingly target sex workers rather than their clients. The continuity of repressive laws concerning prostitution in France, from the law against street soliciting (2003) to the law penalising clients (2016) has undermined the rights and neglected the needs of those working in the sex work sector for the ultimate goal of abolishing prostitution.

BIBLIOGRAPHY

Bernstein E. (2010) Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns. *Signs* 36(1): 45-71.

Calderaro C. and Giametta C. (2019) The Problem of Prostitution': Repressive policies in the name of migration control, public order, and women's rights in France. *Anti-Trafficking Review* issue 12: 155-171.

Conseil constitutionnel (2019) Decision no. 2018-761 QPC of 1 February 2019. Médecins du monde association and others [Punishment of clients of persons working as prostitutes] Available at: <https://www.conseil-constitutionnel.fr/en/decision/2019/2018761QPC.htm>

Défenseur des droits (2015) Avis 15-28 du 16 décembre 2015 relatif à la lutte contre le système prostitutionnel et à accompagner les personnes prostituées. Available at : https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=16965

De Montvalon P. (2018) On condition of "active emancipation": The right to asylum of Nigerian sex workers victims of human trafficking. *Droit et société* 99(2): 375-392.

Dewey S., Zheng T. and Orchard T. (2015) *Sex Workers and Criminalization in North America and China: Ethical and Legal Issues in Exclusionary Regimes*. Berlin: Springer Press.

Duggan L. and Hunter N. D. (1995) *Sex wars: sexual dissent and political culture*. New York: Routledge.

Fassin É. (2010) National Identities and Transnational Intimacies: French sex workers consider the 2016 law as being specifically aimed at migrant sex workers. *Sexual Democracy and the Politics of Immigration in Europe*. *Public Culture* 22(3): 507-529.

- Geravimov B. (2020) Sex workers can tell you why sex work is work – speak to them. *Open Democracy*. Available at: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-can-tell-you-why-sex-work-is-work-speak-to-them/>
- Hoefinger H., Musto J., Maciotti P.G., Fehrenbacher A. E., Mai, N., Bennachie C. and Giametta C. (2020) Community-Based Responses to Negative Health Impacts of Sexual Humanitarian Anti-Trafficking Policies and the Criminalization of Sex Work and Migration in the US. *Soc. Sci* 9(1). Available at: <https://doi.org/10.3390/socsci9010001>.
- Jacksic M. (2016) *La Traite des Etres Humains en France*. Paris: CNRS Editions.
- Jacquemart A. and Jacksic M. (2018) Droits des femmes ou femmes sans droits? Le féminisme d’Etat face à la prostitution” (Women’s rights or women without rights? State feminism and the fight against prostitution). *Genre Sexualité et société* 20 (Autumn). Available at: <https://journals.openedition.org/gss/5006>
- Krusi A., Kerr T., Taylor C., Rhodes T. and Shannon K.. (2016) They won’t change it back in their heads that we’re trash’: The intersection of sex work-related stigma and evolving policing strategies. *Sociology of Health & Illness* 38: 1137–50.
- Le Bail H., Giametta C., RASSOUW N. (2018 (2019 for the English Version)). *What do sex workers think about the French Prostitution Act?: A Study on the Impact of the Law from 13 April 2016 Against the ‘Prostitution System’ in France*. Médecins du Monde. Available at: <https://hal.archives-ouvertes.fr/hal-02115877/document>
- [Lieber M., Le Bail H. \(2021\) Aren’t Sex Workers Women? Ladies, Sex Workers and the Contrasting Definitions of Safety and Violence. *ACME: An International Journal for Critical Geographies* 20\(3\): 241-256.](#)
- Levy J. (2014) *Criminalising the Purchase of Sex: Lessons from Sweden*. London: Routledge.
- Maciotti P.G., Grenfell P., Platt L. and Sanders T. (2017) *Sex Work and Mental Health*. Leicester UK: University of Leicester.
- Mainsant G. (2013) Gérer les contradictions du droit ‘par le bas’. Logiques de police en concurrence dans le contrôle de la prostitution de rue à Paris. *Actes de la recherche en sciences sociales* 198: 23-34.
- Mathieu L. (2014) *La Fin du tapin : Sociologie de la croisade pour l’abolition de la prostitution*. Paris: François Bourin.
- Mathieu L. (2018) L’ enrôlement du féminisme dans la lutte contre la prostitution. *Cités*73(1) : 57-66.
- National Assembly (2011) Proposition de Résolution réaffirmant la position abolitionniste de la France en matière de prostitution. Available at: <http://www.assemblee-nationale.fr/13/propositions/pion3522.asp>
- O’Connell Davidson J. (2006) Will the real sex slave please stand up? *Feminist Review* 83: 4–22.
- Pheterson G. (2016) At long last, listen to the women! *Open Democracy* 2 March 2016. Available at: <https://www.opendemocracy.net/beyondslavery/sws/gail-pheterson/at-long-last-listen-to-women>.
- Plambech S. (2017) Sex, deportation and rescue: Economies of migration among Nigerian sex workers. *Feminist Economics* 23: 134–59.
- Showden C.R. and Majic S. (2018) *Youth Who Trade Sex in the U.S: Intersectionality, Agency,*

and Vulnerability. Philadelphia PA: Temple University Press.

Ticktin M. (2008) Sexual Violence as the Language of Border Control: Where French Feminist and Anti-Immigrant Rhetoric Meet. *Signs: Journal of Women and Culture in Society* 33(4): 863-889.