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ANKARA

INFORMATION SHEET ON ADMINISTRATIVE FINES IMPOSED AGAINST TRANS SEX WORKERS -2¹

This information sheet has been prepared on the occasion of 3rd March International Sex Worker's Day and sent to the relevant state institutions and organizations in Turkey.

RED UMBRELLA IN SUMMARY...

Red Umbrella Sexual Health and Human Rights Association is an NGO which aims to inform, activate and organize sex workers about the issues which male, female and trans sex workers are exposed to regarding social exclusion, stigmatization, discrimination, violence and sexual health and reproductive health and to advocate towards the public officials in accordance with the needs and demands of sex workers.

The Red Umbrella has adapted the issues such as the termination of every kind of right violations that sex workers are exposed, acceptance of prostitution as a labor form and ability of sex workers to live within a fair system equal to other citizens as its **vision**.

The **mission** of the Red Umbrella Association is to visibility the problems of sex workers and the solutions to these problems as a part of the agenda of the society and the relevant authorities, to maintain the advocacy activities to develop laws and policies in accordance with the interests of sex workers; to strengthen the capacities of sex workers against the human rights violations that sex workers experience and to enable them to reach out to various support mechanisms.

Our association makes and implements projects in accordance with its vision and mission. The organisation currently has various on going projects; such as observing, reporting and documenting the human rights violations that trans people face. Owing to those projects, the human rights violations against trans people has been monitored and the data regarding them collected systematically and with the data collected, the reports are prepared; and with those reports, the Association does advocacy work to improve the present situation of trans people in Turkey.

¹ This information sheet has been prepared within the scope of "Stop Fining Our Identity!" project implemented by Red Umbrella Sexual Health and Human Rights Association and financially supported by the US Department of State.

The second work of the Red Umbrella is to do advocacy and lobbying. In that context, it is aimed to improve trans people's living conditions, to strengthen their capacity toward the violence they faced and to organize them. In addition to that, the Association has lobbying activities to raise the awareness of state institutions and organizations on this issue.

Red Umbrella, also brings up the administrative fines against the sex workers by law enforcement officials to the public agenda of state authorities. In addition to that, the Association meets with the relevant state authorities aiming to inform them about human rights violations against trans people.

Red Umbrella also provides sex workers whose human rights are violated with legal counseling and legal support by its lawyers. In this way, the Association aims to support them and to strengthen their information capacities regarding legal support..

One of the Association's goals is to improve the capacity of sex workers in various areas in order them to have a proper life. Within this framework, education programs are prepared and conducted in various fields such as access to justice mechanism, access to sexual health and reproductive health services, advocacy and lobbying etc.

One of the aforementioned education programs is about the improvement of sex worker's sexual health and reproductive health which is conducted together with UNFPA Ankara. Within this program, sex workers from different cities, are informed about sexually transmitted infections, access to health services and public health. In addition to that, in provinces visited the needs of sex workers are discussed with the decision-makers living in these provinces.

Another field of work of Red Umbrella is to conduct seminars, education programs and workshops with shareholders to raise the information and awareness. In that extend, some activities are conducted for bar associations, lawyers, doctors, civil servants etc. and Red Umbrella's ties with them gets stronger.

Red Umbrella, between the years 2016-2017, under European Union EIDHR program, aims to reach many trans sex workers in various provinces in Turkey, to provide them with trainings about access to justice, sexual health and reproductive health, advocacy, lobbying. Also it aims to make seminars, education programs and workshops with bar associations and lawyers to raise the possible future capacity and provide legal consultation to sex workers who are the victims of violence. After implementation of the project, with the collected datas, Red Umbrella aims to produce new advocacy and visibility materials and use them for future works.

One of the important studies of Red Umbrella is a field research which is conducted together by Ege University Medicine Faculty, İzmir CYBH and AIDS association. The research aims to map the vulnerable key populations and their spots and risky sexual behaviors including sex workers in terms of HIV emidemia and to survey how frequently they encounter with HIV

Within the scope of works of Red Umbrella in order to raise awareness in public and of authorities, Red Umbrella organizes education programmes for sex workers on various subjects, panels open to public, and round table meetings for the public authorities regarding March 3 International Sex Worker Rights Day and December 17 International Day to End Violence against Sex Workers . In addition to these two, Red Umbrella also conducts activities for bringing up the mentioned issues of sex workers to the agenda in other important days such as March 8 International Women's day, May 17 International Day Against Homophobia and Transphobia, LGBTIQ Pride Week, November 20 ansgender Day of Remembrance., November 25 International Day for the Elimination of Violence

against Women, December 1 World AIDS Day etc.

ADMINISTRATIVE FINES: BACKGROUND²

Sex worker trans women and ciswomen³ sex workers face with administrative fines based on the Law on Misdemeanors. The arguments which are used as a basis for the implementation of Misdemeanor Law are “protecting public order” and “ensuring public health”. However, in fact, the main motivation behind those is to discourage trans people to work as sex workers by oppression.

Administrative fines are the fines due to violation of certain laws, directly enforced by the administrative authorities. Administrative fines are the fines being enforced without the judicial decision and these sanctions are administrative procedures. The misdemeanors, which are the subject of those sanctions, were regulated within the Turkish Penal Code according to the previous legislation before 2005, however, with an amendment made in 2005, those have not been counted as a “criminal acts” anymore.

Misdemeanor Law is enforced together with other legislations. Law enforcement officials are assigned to target unrecorded sex workers based on several articles of Misdemeanor Law. Those target sex workers based on Regulations regarding Brothels and Prostitution⁴ and Laws on the Duties and Powers of the Police⁵. Under the same legislation, administrative fines are imposed against sex workers with the claim of violating Article 36: “Noise” and Article 37: “Disturbances” and Article 32: “Misconduct”.⁶

Sex worker trans women face with fines based on Misdemeanor Law systematically and it is even enough to be seen on the streets in order to be subjected to such fines. Even though it is said that these sanctions are to protect public order, it causes the sex workers to face with extreme physical violence; their rights to be violated and it also causes sex workers to work in insecure places. Likewise, the existence of administrative fines, causes sex workers to exercise very risky sexual behaviors causing not only sex workers but also public health to be at risk regarding sexually transmitted infections. The administrative fines also affect sex workers’s economical situation in a negative way by causing them to be poor.

There is no kind of protection mechanism for this vulnerable group; which can ensure them to enjoy their right to live equally. There is no anti-discrimination law and law on hate crimes which contain gender identity and gender expression terms in an anti discriminatory way. Additionally, there is no de facto applications which can highlight the preventions against discrimination and hate crimes based on transphobia..

In order to define the methods used to impose administrative fines, the most suitable term is “arbitrary”. For example, In Ankara civil police who are also called as “Balyoz: sledgehammer”,

² The references used in preparation of this part as follows:

* Örddek, K. (2014). “RECORDED”ROBBERY IN THE “UNRECORDED ” SPHERE : Administrative Fines as a Means of “Taxation”Towards Trans Sex Workers, Atalay Publication, Ankara.

* Örddek, K. (2014). “RESTRICTED JUSTICE”: REPORT ON LEGAL SUPPORT TO SEX WORKER TRANS WOMEN SUFFERING FROM RIGHTS VIOLATIONS Ayrıntı Publication Ankara.

³ Cisgender is a term used for people who are not trans, highlighting their biological sex

⁴ General Regulations regarding Brothels and Prostitution and the Fight Against Venereal Disease) No: 30/03/1961 - 5/984

⁵ Law No: 2559 on Law on Duties and Powers of Police, amended by Law No. 6495 in 2013

⁶ Related articles of Misdemeanor Law are; Article 32: Misconduct, Article 36: Noise and Article 37: Disturbances stating in summary that an administrative fine (between 50 and 100 Turkish liras (approximately 40 Euros), are infringed by intentionally disobeying the orders issued by authorised bodies with the aim of protecting public order and safety.

impose the administrative fines against sex workers who work on streets and sometimes bring them to police station on account of these fines. For the sex workers who do not want to go to police station, police file a complaint against the sex workers for “resisting to the police officers”. Considering the time passed between first encounter of sex workers with police officers until the administrative fines are imposed the unlawful actions can be explained in terms of positive law as below:

- a) The action of forcing sex workers to get in a police car to impose administrative fines on them, is actually a seizing process. However there is not a legal basis of that action. In accordance to article 90/1 in Code of Criminal Procedure, a seizure is allowed only under extraordinary circumstances; if the perpetrator is caught on the act i.e. in flag-rante delicto; or on hot pursuit, on the condition that the perpetrator must be under the suspicion of preparing to flee or it will be impossible otherwise to identify that person later.. However prostitution is not a crime in terms of TPC.
- b) During the action of forcing sex workers to get in a police car to impose administrative fines on them, sex workers face with insults, threats and mistreatments by police. When they approach to a police station to file a complaint, they are forced to wait there to testify till morning arbitrarily. Additionally, while bearing a testimony, the polices who mistreated the victim/s can also exist there. Before or after this testimony procedure, police can file a complaint against the victim on account of “resisting to the police officers”. In other words, the victims can be criminalized as perpetrators by the police. However, threat or using force on police officers are the conditions to be considered as resisting to police. Sex workers are not resistant in fact, on the contrary, they are the ones who are always facing with threats or insults.
- c) The officials reports, which are recorded during or after the incident, are revised in a way as distorting the facts. In these reports sex worker trans women are mentioned as “transvestites” and ciswoman sex workers are defined as “the well known person” or “ well known lady” . These reports are recorded between 00:00- 4:00 however in the reports, it is written that sex workers disturbed shopkeepers and residents in the neighborhood. However it is not possible because between 00:00 – 04:00 am, the neighborhood is not much used.
- d) When administrative fines are not imposed in the police station, they are not pass to the sex workers by hand and later, no notification on them are sent. This situation cause the fact that sex workers does not learn about the fines or how to appeal against these fines.
- e) Another problem on this field is, the legal process in case of an application for appealing against administrative fines. One of the observations in the process is, there is no certain method for resolving this issue currently. Some of the courts can provide the sex workers as claimants with documents and the answers of the defendants by also giving a chance them to answer these documents, whereas some of the courts can find answers of the defendants adequate to render a a verdict
- f) Defendants are providing in their file MOI General Directorate of Security’s Circular No.B051EGM0110511/1666 on Misdemeanor Law including the minutes regarding administrative fines which have to be applied as a legal basis for the fines they imposed in the night of the event. As it can be seen, minutes are not a kind of documents which will can be a legal base for the mentioned process. However, till know, there is not any decision of Commission Against Prostitution added to files as a administrative act.
- g) Actions mentioned in the minutes are as follow : “waiting for the purpose of prostitution”, “ from time to time preventing road traffic”, “stopping vehicles and pedestrians”, “bargaining with people who waits for prostitution while disturbing shopkeepers and residents in the neighborhood”, “hindering the people who walks and the vehicles on the road”.

At that point the question should be asked that whether all the actions given above, can be considered under Article 37 on Misdemeanor Law and If this is not the case, whether it is violation of the principle of legality or not.

“Disturbance” under Article 37 of Misdemeanor Law states that :

“Disturbance:

- (1) Any person who disturbs others to sell goods or services, penalized with an administrative fine (50 Turkish Liras)
- (2) Law enforcement authorities or municipal police officers are authorized to impose administrative fines on account of aforementioned reasons.

In the Draft of Law on Misdemeanors No. 1/993 and Justice Commission Report dated on 10.03.2005; it is stated that a new Article 37 was added to prevent invitations of customer with loud voice and molestation while selling goods or services. As it is mentioned above, for the implementation of this provision there should be a verbal molestation as a precondition while selling goods or services

37th article of Misdemeanor Law is usually applied to street vendors, however this is arbitrarily imposed against sex workers. There is not any kind of explanations in the given administrative sanctions about how sex workers disturb other by selling goods or services. So the act of sex workers upon which the fines are imposed is vague and this is against the principle that “administration’s processes and actions can be controlled” which is required by a state of law.

h) The other problem is, the appeals against administrative fines are evaluated by criminal courts. So it is a big problem whether these decisions are reasonable. Especially considering the fact that the administrative fines are close to the finalization limit, it is possible to say that positive law creates its own impunity.

The judges of criminal courts, do not make any analysis with regard to administrative actions’ factors which means subject, purpose, authority, causal elements. Up to now, some of the administrative fines were appealed because the action of the person was not defined well while imposing administrative fine penalty or there is lack of knowledge about why the person was stopped by the police, or the administrative fine was fined more than it suppose to be. These decisions, of course are little far away from the rejections of appeal requests. However, it is still a hard possibility to bring the issues regarding the way of action is unrealistic and the way used by police for arresting is against the law according to article 91 of CCP to court.

One of the results of the systematic applications in the field is impunity. The reasons behind this fact are that the decisions are not appealed, the pronouncement of judgment turns the fear of “I can get another administrative fine penalty” and so that many violation of rights turn into silence, the fines are not notified and the psychology and the survival reflex of the persons in the field. Manifestations and causes are the subject of a separate study which can contribute to policy-making in the field.

All the unlawful actions during and after the process of implementation of administrative fines, brings intimidation , helplessness, feelings of worthlessness, anger, disbelief , solitude to the life of sex workers. There Red Umbrella try to reach every victim and provide legal support to them.

HUMAN RIGHTS VIOLATIONS AGAINST TRANS PEOPLE: OPINIONS

SİNEM HUN- Lawyer of Red Umbrella

What kind of support have you provided to the association in terms of administrative fines so far?

We can summarize the support we provide to Red Umbrella Sexual Health and Human Rights Association as follows. We are applying for an appeal against the administrative fines to the criminal court within 15 days of upon the receipt of the minutes . The victims apply a warrant of attorney in notary to ensure this appeal made by lawyers of the association. We also help and forward the people who call us from different cities about the administrative fines and who are unaware of which steps they should follow. We usually help them by sending a template of appeal petition to give them to criminal court or we tell them how they can do it on the phone. If the victim wants to work with a lawyer in her city, we try to give a contact information of a lawyer who has a human rights sensitivity. After the case is open, we provide answer petitions to the administrations' answers. After all presented in this petition file, the decision of the lawyer who decided on that file is counted as "res judicata", so after that point we bring to case to Constitutional Court. Also we also go to the police station if the administrative fine is recorded in the station. Thus our subjects might be exposed to psychical or psychological violence of police. Some of the examples of these violences can be given as follow: physical intimacy which targets sex worker trans women's gender identity, glance , laughs or insults, hold them to the station unlawfully for long hours and without any reasons. At that point, we both open a case against the detention of sex workers and police's unjust actions.

What are the difficulties in the provision of this support?

The biggest challenge that faced is subjects are not assured about justice and they do not know how to access justice. We can provide them the required information about access to justice however, being not assured about justice is not a problem that we can solve, which is more points out a structural problem. This structural problem cannot be solved in a short or middle term. On the other hand, it is also challenging for lawyers who give access to justice support to subjects. Social fragility of sex worker trans women, all kinds of risk at any moment they can become victims of violence, fear and violence history are also reflected in communication with lawyer. On the other hand, when we have to go to police station, the violence of police can be directed to us too. Especially, Police Station in Esat can be given as an epitomist example, this place is also known with their "transphobic" hate culture. This place also well known for their systematic human rights violations against sex workers .

What should be the next step?

First of all, as I mentioned above, for elimination of the structural problems, all the institutions of state should make common, inclusive , democratic, human rights-based public policies and put them into action. While making these policies, it should be consulted to related NGOs and the subjects should be involved in this process. On the other hand, law enforcement agents, jurisdiction and public employee should be informed and educated about administrative fines as a economic violence which affects sex worker's life and jobs. At that point, it is important to add mechanism should be aware of in "discrimination" and "transphobia" subjects so that impunity on these subjects can end. Other way it will be unrealistic to expect the structural and institutive transformation against discrimination.

NIHAN ERDOĞAN- Lawyer of Red Umbrella

What kind of support have you provided to the association in terms of administrative fines so far? And What challenges have you faced?

The subjects do not or cannot finance themselves during the justice seeking to enjoy their own human rights which stranded both NGOs and lawyers. It should be known by the subjects that, this process can be long and hard so the expectations should be shaped according to these situations and new strategies should be found. Unfortunately this is a issue that we observe in a very few subjects.

Do you have any success on appeal of administrative fines?

Yes. Even they are very few, we are able to appeal some of the administrative fines. But I am not sure about considering them as a success. It is supposed to be sustainable and people should be committed about their cases by having different reflexes and strategies against administration's behaviors. We as a principle should consider those from a critical and human rights based perspective with collective mind. We hope that this perception will be beneficial to have reasonable decisions.

Is there any file in that you followed a strategic method?

Yes there is. In four files , with the support of Red Umbrella, after the Judge decided to reject the case against administrative fines, we appeal to Constitutional Court against the decisions. In these cases, we provided the Red Umbrella's publication about the Administrative Fines. We tried to criticize the decisions made by Law enforcement agent's arbitrary attitude.

THE IMPACT OF ADMINISTRATIVE FINES ON TRANS PEOPLE FROM TRANS PEOPLE'S OWN EXPERIENCES:

BENGÜSU SULTAN:

"There is no possibility for installment. State takes the fines from you anyway. The paper is asked from finance office. It can be also seen from E-devlet (electronically access to governmental paperwork). There is no hurry to collect the fine or late payment penalties are erased in amnesties but the main amount of fine still exists. Or sometimes the installments can be made in special cases. But I became a victim financially"

EDA:

"I usually run away. For me, it is very hard to work as a sex worker. I am having problems to pay the fines. Balyoz officers are very strict on this issue.. It is unjust to be punished. I have to work more to pay these fines. That is so unfair! Also it is very difficult to work in these cold days!"

İREM:

"These fines are so unjust. State collects its taxes via these fines. I am so careful about to not have any administrative fine penalty. I had some before. I paid them all. Now I do not have any. It is so hard to deal with State. There is nothing to do and this makes me nervous."

RECOMMENDATIONS

Red Umbrella Sexual Health and Human Rights Association, prepared some recommendations for some departments such as law enforcement officials, judicial departments, Commission Against Prostitution to stop the Administrative fines imposed on sex workers. All the recommendations are

prepared to prevent violence against sex workers, especially sex worker trans women. The following recommendations are prepared with the aim of forming mechanisms for the access to justice for sex workers. Recommendations also are prepared to explain the responsibilities and the steps that people or representatives of organizations from different fields. Policies in this direction are developed in cooperation with and for trans sex workers and their lawyers.

Recommendations for Law Makers and Decision Makers:

In order to prevent human rights violations against trans people and provide protection, 10th Article in the Constitution which regulates equality, should include the terms “Gender identity” and “gender expression”.

Discrimination against trans people in different fields should be prevented. “Gender identity” and “gender expression” terms should be added to Draft for Combating Discrimination and Equality Law which is prepared by the government to punish the perpetrator of human rights violations which is now waiting as a draft of law.

To prevent all kinds of hate crimes against trans people and to punish the perpetrators, a regulation about hate crimes should be prepared and "Gender identity" and "gender expression" phrases should be included in the regulation to prevent discrimination.

It should stop using "Immodest movement" and "obscenity" words against sex workers which are located in "Offences against Morality" section which are regulated by Turkish Penal Code in article 225 and 226. These articles are also used to impose administrative sanctions or punitive measures for sex workers who use some websites to find customer. As a result of that actions many sex workers face with prison sentence, or they start working in insecure places. In the mentioned articles attitudes toward sex workers should be revised and they should not see sex work as a crime category.

The legislation which is called “Prevention of venereal diseases and prostitution” should be amended in accordance to needs and demands of sex workers. This legislation should not be only to prevent venereal diseases but also to protect human rights and workers' rights. The legislation which is prepared for “prevention” of unrecorded prostitution, has a threatening nature. This should be ended. The punishment which is given under administrative actions against unrecorded sex workers should be abolished.

Relevant articles in the Misdemeanor Law and Road Traffic Law are imposed in an arbitrary and unlawful manner which targets sex workers by provincial police officers and commissions, this should be terminated. Police's arbitrary and unlawful actions should be investigated and perpetrators should be punished.

Ill treatment and torture as a result of the arbitrary treatment of the ones mentioned above, should be investigated and perpetrators should be punished.

Every time of violence against sex workers which are made by police, organized crime groups, customers, agents or other persons or groups should be investigated and perpetrators should be punished.

Support mechanism should be equally provided to sex workers, including sex worker trans women who are victims of violence. In this context, guest houses , shelters and other mechanisms should be provided for these people too.

Sex workers, including sex worker trans women who are victims of violence should be supported without prejudices and attitudes which reward the perpetrators in the investigation and prosecution process should be changed.

Law enforcement and the judiciary and the other possible professions in relation with sex workers who are victims of violence should be trained in accordance with sex workers' demand and needs. Sex workers should be involved in these training programs.

Government should record the administrative fines which are imposed against sex workers. Also it should share these records with NGOs and public.

Government should contact with non-governmental organizations which work with sex worker trans women and the possible cooperations should be ensured including economic support.

The government should remove the steps taken from perspective of " the prevention of prostitution " or " termination of the prostitution" and sex worker industry should be known and human rights and public health issues should be revised to include sex workers.

Recommendations for NGOs:

It is important to highlight the problems and the needs of sex worker trans women in the provinces apart from big cities such as Ankara, İstanbul and İzmir by NGOs.

NGOs should prepare projects on the needs and demands of sex worker trans women, create reports, collect datas, make field researches, testimony sharing and through these, they should do advocacy for sex worker trans women in Turkey.

NGOs which works in that field should not only focus on trans identity but also know that many violence actions happen because trans women sex workers have to work in the insecure places. This should be considered while creating policies.

Trainings about capacity building of trans people should be conducted and publications should be prepared in order to facilitate trans people's access to justice.

NGOs should contact with lawyers who can provide legal support for trans people who are the victims of violence. Also these NGOs should create lawyer network in various provinces, train these lawyers, conduct studies to strength legal support for several needs.

It is important to make sex worker trans women who are victims of violence is visible and give importance to their experiences to be shared with the help of NGO's advocacy work which targets trans people. It is important for NGOs to pay attention to the works on violence and advocacy to make sex worker trans women who are victims of violence visible and give importance to their experience to be shared.

NGOs should do advocacy and lobbying affectively to change the legislation and practices about the subject and should prepare campaigns.

Recommendations for Funding Institutions:

Funding institutions, should not hesitate to provide financial support the projects of NGOs which are directed by trans people which aim to prevents administrative fines against trans people, inhuman treatments, and to make them visible and to stop physical, sexual, psychological and economic violence against trans people.

Recommendations for Press and Media:

Sex worker trans women should not be decoded on Tv or News by giving the information about the administrative fines imposed on sex worker trans women. It is important to highlight that, in the news decoding the victims of administrative fines is crime.

Media should prepare the news by making interviews with the subjects of the news who are sex workers trans women and their lawyers and the journalists should be objective about the case when they prepare the news.

Reporters should not only use official reports which are given by police or disclosures made by police. Because this makes sex worker as a target and foster the prejudices on sex worker trans women.

Media should not give place to hate speech examples which targets trans people.

After the cases, media should contact with NGOs who work with sex worker trans women so that media can act in accordance to the victim's vulnerability and interests.

Recommendations for Lawyers

Lawyers should not refuse to provide legal support to sex workers with the reason of prejudice, discrimination or their lack of knowledge on sex workers and it is required to refrain from taking steps that can be contrary to the interests of victims.

Lawyers who provide legal support to sex workers, should listen them carefully and should refrain from taking steps that can be contrary to the interests of victims.

Lawyers should contact with NGOs who works with sex workers and be informed about the needs which can appear in case of access to justice.

Lawyers who plan to work with sex worker trans women should do an advocacy in the bar associations they belong to, train other lawyers via the bar and develop sub units which will provide sustainable legal support for both ciswoman sex workers and sex workers trans women.

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