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Dispatch

From Legal Grey Area to Legal Recognition: Recent Legislative Reforms Regarding Sex Work Under Employment Contracts in Belgium

NINON RAMLOT*

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I. INTRODUCTION

ON 1ST DECEMBER 2024, the Law of 3 May 2024 *portant des dispositions en matière du travail du sexe sous contrat de travail* [laying down provisions on sex work under an employment contract] entered into force in Belgium.¹ This piece of legislation establishes a strict legal framework for an employer to lawfully employ sex workers, without this being condemned under the criminal offence of procuring, as well as creating an employee status tailored to sex workers. This Act is another building block in the broader process undertaken over the last few years to resolve the legal inconsistency surrounding sex work under employment contracts. This Dispatch aims to describe this reform process by outlining its legal, social, and criminal implications for both workers and employers.

As an initial remark, the conceptual and ideological dimensions of the reform should be emphasised, insofar as it marks a shift from the abolitionist model to the “labour” or “neo-regulatory” approach (Hausman, 2024). Indeed, regulations surrounding prostitution are shaped by moral considerations, resulting in a variety of legal models across different countries (see Cruz and Herrmann, 2024). The abolitionist stance equates sex work with human trafficking and patriarchal oppression and advocates eliminating it by repealing prostitution laws, without criminalising sex work or the workers themselves (André, 2020, p. 43) but often criminalising clients and certain third parties, or certain related activities.² In contrast, the labour model distinguishes between voluntary sex work, i.e., “consensual exchange of sexual services for payment among adults” (Council of Europe, 2024), which should be recognised and regulated, and trafficking and exploitation, which remain criminalised. This approach supports the recognition of sex workers as ordinary workers and involves pragmatic legislative intervention, free from moral judgements (André, 2020, p. 44). While influences of the latter approach can be observed in legislation from New Zealand, most Australian states, Germany and the Netherlands, the Belgian Act is regarded as the first “labour law for sex workers”, recognising their work as legitimate labour and granting them full access to protections of social law (which entails both social security and labour law).

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1. M.B., 6 June 2024. Since its entry into force, an appeal has been lodged against the law (Constitutional Court, nr. 8385 — pending). A decision can be expected in 2026.
 2. In particular, recent variants of the model, known as the neo-abolitionist or Nordic model, aim to reduce the demand for prostitution by criminalising clients.

II. LEGAL INCONSISTENCIES AS BACKDROP

The recent legislative interventions in Belgium must be understood in the context of the previous incoherent legal framework governing sex work, particularly in employment relationships. While sex work sits at the intersection of criminal, social, administrative, and tax law, scholars have repeatedly highlighted discrepancies within and between these legal fields, leading to negative outcomes for sex workers (André, 2017; Devroey, 2005; Gilson, 2017).

Since 1948, Belgium has adopted a “tolerant abolitionist approach” to sex work, decriminalising it so that neither the sex worker nor the client committed an offence punishable under criminal law.³ However, certain related behaviours deemed contrary to public order, such as solicitation and advertising by sex workers, were criminalised (Devroey, 2005). In the same vein, most third-party involvement, including the employment of sex workers with the worker’s consent, was criminalised as procuring.⁴ That is, the criminal framework only allowed sex work as a self-employed worker, and even in this context, it prevented workers from effectively engaging in sex work, given that essential partners, such as premises lessors or accountants, and sex workers themselves, risked criminal proceedings (Vermeulen and Neelen, 2018).

The social law framework similarly revealed a significant contradiction, which resulted in a lack of protection for sex workers. In Belgium, as in several European countries, the employment contract triggers the application of labour law, including workplace well-being legislation, and subjects the worker to the social security scheme for salaried workers. As for all civil contracts, an employment agreement must have a lawful purpose, including compliance with public order and morality. Most case law held that the employment of sex workers was contrary to public order and morality, rendering the contract null and void.⁵ As a result, claims for unpaid wages or compensations were dismissed, since employers were relieved of their obligations. This would discourage sex workers from pursuing legal action. In social security law as well as in tax law, an employed sex worker’s income was considered professional income subject to taxation and social contributions. However, sex workers lost their entitlement

3. Loi abolissant la réglementation officielle en matière de prostitution [law abolishing official regulation of prostitution] of 21 August 1948, M.B., 13 September 1948. Support for the abolitionist approach was later reinforced by the ratification of the UN New York Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (André, 2020).

4. See former art. 380 of the Penal Code.

5. See C. trav. Mons, 26 January 2011, R.G. no. 2009/AM/21839.

to benefits once the contract was declared void. In short, while the professional nature of the income earned from sex work under employment was recognised by tax and social security legislations, the occupational relationship itself was denied under labour law, leading to all social rights (including social security benefits) being dismissed.

During the COVID-19 pandemic, the vulnerability and unstable situation of sex workers were brought to light and onto the political agenda. The Belgian government committed, in its coalition agreement of September 2020, to initiate a consultation process in collaboration with relevant actors in the field, to improve the living and working conditions of sex workers (Gouvernement fédéral Belge, 2020, p. 28). This statement was followed by three pieces of legislation proposed by the Government and since then adopted by the federal Parliament.

III. CORRECTIVE MEASURES AND DECRIMINALISATION OF SEX WORK

An initial step towards reforming the legal framework governing sex work was completed by the enactment of the Law of 21 February 2022 *concernant l'inopposabilité de la nullité du contrat de travail des personnes qui se prostituent* [Law concerning the unenforceability of the nullity of the employment contract of people engaged in prostitution].⁶ This law establishes a corrective mechanism to address the legal insecurity and the adverse economic and social consequences arising from the nullity of sex workers' employment contracts. Under Article 2 of this Law, the nullity of the employment contract of a sex worker "may not be availed of against the rights of the worker which derive from the application of the provisions of labour law and the legislation governing the social security scheme for salaried workers" [translated].⁷ This act amends a range of provisions in existing legal texts to ensure consistency with this principle. This means that if the employment contract were to be declared null and void, the employer or third parties, such as social security institutions, would still be required to fulfil the obligations normally deriving from the employment contract such as claims for unpaid wages or contributory social security benefits.

The reform process also touched on criminal law, as part of the broader overhaul of criminal law relating to sexual acts. The Act of 21 March 2022, which amends the Penal Code, is regarded as a "decriminalisation" measure for adult

6. M.B., 21 March 2022.

7. Law of 21 February 2022, art. 2.

sex work, as it repealed several offences previously linked to such activities.⁸ The wording of the former offence of “procuring” was redefined to target three specific acts, including the organisation of the prostitution of others in order to obtain a benefit, except in cases provided for by law.⁹ In other words, under certain conditions yet to be specified, an employer could lawfully employ a sex worker. This exception was intended to draw a distinction between voluntary sex work and cases of exploitation and coercion, which remain criminalised (Hausman, 2024, p. 68). What is more, it lays the groundwork for the employment contract framework established by the Act of 3 May 2024.

IV. THE EMPLOYMENT CONTRACT FOR SEX WORKERS

The legal reform process was completed with the enactment of the Law of 3 May 2024. This Act establishes a comprehensive legal framework for the employment of adult sex workers, ensuring specific social rights for them while also constituting a ground for justification against the offence of procuring.¹⁰ Crucially, it establishes a new specific arrangement called an “employment contract for sex worker”, which is defined as “the contract under which a sex worker agrees to provide sex work in exchange for remuneration under the authority of a licensed employer”.¹¹ Sex work here refers narrowly to physical contact, excluding purely digital services (e.g., by webcam) and striptease from the scope of the law.¹² The law is characterised by a certain tension between treating the employment contract for sex worker as a standard employment relationship and taking account of the specificities of sex work. The explanatory memorandum (*Doc.*, 3926/001) confirms the position of the labour approach:

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8. Loi modifiant le Code pénal et relative à la compétence d’ester en justice, en ce qui concerne le droit pénal sexuel [Law amending the Penal Code and relating to the competence to institute legal proceedings, with regard to sexual criminal law] of 21 March 2022, M.B., 30 March 2022.
 9. Art. 433^{quater}/1 of the Penal Code. Some legal scholars and parliamentary members highlighted the non-compliance of this exception to procuring with the New York Convention of 2 December 1949 (Clesse, 2022, p. 271). At the same time, offences related to abuses and human trafficking remain criminalised.
 10. In view of the dual criminal and social dimensions of the framework created, the legislator opted for a self-standing law, instead of including the employment contract for sex workers in the general law on employment contracts.
 11. Law of 3 May 2024, art. 7, §1.
 12. Projet de loi portant dispositions en matière du travail du sexe sous contrat de travail, explanatory memorandum, *Doc.*, Ch., 2023-2024, 3926/001, p. 8 [here after: explanatory memorandum, *Doc.*, 3926/001].

the aim is not to create a *sui generis* status, but to apply social law “as to all employed workers”.¹³ This is explicitly enshrined in article 3 stating that

the sex worker employment contract is an employment contract within the meaning of the Employment Contract Act of 3 July 1978. All the provisions of labour and social security law apply to it, subject to the exceptions set out in this law [translated].¹⁴

As shown further below, however, these specific features, in particular the worker’s free consent, entail significant derogations from the general social law. The following sections aim to identify the recognised specificities of this type of work and how they were embodied in the legislation. Given the limited scope of this contribution, only a few particularly illustrative provisions will be addressed.

A. A KEY SPECIFICITY OF SEX WORK: THE PROTECTION OF WORKER’S FREE CONSENT

A core concern when drafting the law was the protection of the worker’s free consent, recognised as “all the more important in this sector”.¹⁵ This specificity directly affects the execution of the contract, leading to a redefinition of the rights and obligations arising from the employment contract. In this respect, the law enshrines four rights and freedoms of the sex worker, i.e., the rights (1) to refuse sexual relations with a client; (2) to refuse to perform specific sexual acts; (3) to cease or interrupt sexual activity; or (4) to impose their own conditions on the sexual activity or act. Those are unconditional rights, as the sex worker may exercise any of them at any time and without justification.¹⁶

The legislator has coupled ancillary rights to these four freedoms to ensure their effective exercise. These secondary rights are characterised by significant exceptions to the standard provisions of social law. Notably, exercising these rights and freedoms cannot be considered a breach of contract, and sex workers are entitled to take leave with full pay. Additionally, several provisions of social law were adapted in order not to prevent the worker from leaving prostitution,

13. Explanatory memorandum, *Doc.*, 3926/001, p. 9.

14. Law of 3 May 2024, art. 3.

15. Explanatory memorandum, *Doc.*, 3926/001, p. 5.

16. Explanatory memorandum, *Doc.*, 3926/001, p. 13; Law of 3 May 2024, art. 7 §1.

In addition to those four rights, sex workers are entitled to refuse an act of exposure, such as public exposure in a window display. This right, unlike the other four, is subject to conditions as it may be exercised when there are concrete indications that one’s safety or integrity (or that of one’s family) will be jeopardised by this act.

including the right to terminate their employment contract without notice or compensation.¹⁷

B. Workplace Well-Being

Particular attention has been directed to supplement the existing workplace well-being legislation (covering occupational safety, health protection, psychosocial factors and workplace hygiene) with additional protective measures, many of which are enshrined as licence requirements for the employer. These extra requirements derive from

the particularly intimate nature of sex workers' work, closely linked to their physical and sexual integrity, [which] exposes them to a higher-than-average risk of being subjected to particularly strong emotional stress, in addition to the risk of violence and traumatic experiences [translated].¹⁸

In this regard, to enhance safety, sex workers must be equipped with an emergency button that directly connects them to an appointed "reference person", who must remain available throughout their shifts in case of emergencies, such as a violent client. Another striking feature is the prominent role given to sex worker associations, alongside trade unions. In this instance, these organisations are granted access to the premises to promote safe sex practices and support the implementation of the law's protective measures.¹⁹

C. THE EMPLOYER LICENCE REQUIREMENT

With regard to the employer, compliance with the Law of 3 May 2024 carries criminal law implications, as the employment of sex workers will not be considered as procuring. This exception to the offence of procuring is formalised through a licence granted to the employer. The requirements embedded in the licence aim to ensure the protection of sex workers' rights, while also facilitating the monitoring by the labour inspectorate and effective criminal prosecution in cases of non-compliance. To this end, to obtain a licence, the employer is required to be a legal entity with its registered office or place of business in Belgium, ensuring better organisation, financial stability and accountability to employees and third parties. To maintain their licence, further obligations must be met by the employer. These include compliance with social law, including the above-mentioned conditions relating to well-being at work and regulations

17. Law of 3 May 2024, art. 7, §§1–2 and art. 8, al. 1.

18. Explanatory memorandum, *Doc.*, 3926/001, p. 17.

19. Law of 3 May 2024, art. 17, al. 1, 3°, 5° and 6°.

governing the employment of foreign workers. As a consequence of this licence process, the employer may not delegate to subcontractors the exercise of employer authority and its obligations. Non-compliance with those requirements may lead to the withdrawal of the licence, in which case the worker is entitled to compensation in lieu of notice.²⁰

V. CONCLUSION

Recent reforms in Belgium regarding sex work under employment contracts mark a significant shift from its traditional abolitionist model toward a labour approach. While the initial legislative intervention was confined to isolated corrective measures, the Law of 3 May 2024, along with the Penal Code reform, establishes a comprehensive framework with both social and criminal law dimensions, serving a dual purpose. First, it creates a tailored status for sex workers, applying social law with targeted derogations reflecting the specific features of sex work. Second, it aims to combat exploitation and abuses, which remain criminal offences, with employer licensing mechanisms to ensure compliance.

Despite these safeguards, questions remain about the law's effectiveness. Employers may avoid licensing, opting to continue operating clandestinely. However, new counterweights — harsh sentences for procuring and the enforcement of employment obligations even under annulled employment contracts — may discourage non-compliance. The success of the law will depend on its implementation and acceptance. Its evaluation, scheduled in two years, will be crucial for assessing its impact and determining whether further adjustments are required.

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