

The contents of the draft act to regulate prostitution

The regulatory efforts of the law are directed at two areas: they focus on prostitution of individuals and on operating nightclubs.

The definition of prostitution as business

The starting point for the legal regulation is the definition of prostitution. Prostitution is defined in the way it is generally understood, i.e. providing sexual services for pay which involve physical contact between the prostituting person and the client (activities not falling under this term are striptease, peep/show, phone sex and other similar activities).

This activity accomplishes all the elements of business stated in the Commercial Code. Business is a continuing activity performed independently by a businessperson in his/her own name and on his/her own responsibility for the purpose of reaching profits (§2 Com. C.).

Individual prostitution

With regard to independent individual prostitution, this activity is, as mentioned above, understood as business; nevertheless, the rules will be adjusted to the fact that this area is specific to a great extent. However, general regulations on business apply to prostitution as well. Persons practicing prostitution will be required to pay personal income tax, social security insurance premium, contributions to the state employment policy, keep the accounting in a proper manner etc.

The law states explicitly that prostitution may not be practiced as employment or in the framework of another similar relation. There are often speculations in the media suggesting that prostitution might be offered by the Labour Office. This, of course, is completely out of the question.

To put it simply, persons allowed to practice prostitution must be

- aged 18 and over,
- fit in terms of health and a holders of a valid license certificate

The practice of prostitution in the territory of our country will not be permitted to foreigners, with the exception of the citizens of EU states and those states having an association agreement with our country from which a right of settling arises. The exclusion will, furthermore, not concern those foreign nationals who are, through an international treaty, entitled to carry on business or economic activity in the CR under the same conditions as Czech nationals (the states of the *European Economic Space* and Switzerland).

The **license** certificate for offering or practicing prostitution (hereinafter only “license”) will be issued by the local authority of a community with extended powers of that administrative district where the

applicant has his/her place of permanent residence, or place of residence. The applicant will be entitled to receive the license provided that he/she meets set conditions.

The conditions for issuing the license are:

- reaching the age of 18
- full legal capacity
- no criminal records (relates only to listed offences)
- medical fitness
- health insurance and
- administrative fee (1,000.- CZK)

The citizens of countries with a visa duty shall submit also a copy of their visa permitting their abode for more than 90 days for business purposes (Bulgaria, Rumania).

No criminal records for the purpose of this law is a person with no criminal record of a final and conclusive judgment convicting the person of the offence of murder, robbery, blackmailing, prohibited acquisition and possession of firearms, certain tax offenses etc.

A valid license will entitle its holder to offering and practicing prostitution in the whole territory of the Czech Republic. The license validity period can be extended repeatedly by one year (500; - CZK), if the holder meets the conditions for its issue (i.e. medical fitness, no perpetration of any of the offences listed, valid visa if required, etc.).

The license will not contain the first name and family name of the license. The license will only contain a register number, photo, the local authority that has issued the license and the date of issue.

The purpose of the **medical report** is to prevent spreading sexually transmitted diseases (the list of diseases rendering the person medically unfit to practice prostitution will be set by a regulation of the Ministry of Health. If the person is fit in terms of health to practice prostitution, the medical doctor confirms his/her fitness for the pertinent period in the license.

The medical report is valid for 1 month. Consequently, if the holder of the certificate wants to practice prostitution continuously, he/she will have to go through a medical check up every month. The presence or absence of the confirmation of the medical fitness has no effect on the validity of the license, which means that it is possible to have a six months' break and not see the doctor. The law, however, forbids the practice of prostitution without medical confirmation for the pertinent period and it imposes penalties for breaching this provision.

The law further stipulates **in what places prostitution may be practiced.** These places should be only nightclubs or the client's place of dwelling; in other places, prostitution will be forbidden.

Offering prostitution, as far as street offer is concerned, will be allowed only in places set by a regulation of a particular community. This provision is based on the assumption that communities have the best knowledge of the local conditions, and they also have the right to secure their public order, i.e. not to desire prostitution in those places where it may annoy the public, where it is exposed to children etc.

Facilities aimed at practicing prostitution

There are similar principles underlying the regulation of nightclubs, holding that their operation should be a trade. Communities will have the right to decide on the presence of a nightclub in their territory. The keeper of a nightclub will have to ask the community council for a permit; issuing this permit, however, is discretionary; i.e. even here, every community will have the possibility to decide whether it wants a nightclub in its territory, or as the case may be, where and how many. The community will be entitled to set a local fee up to 200,000 (according to the capacity) for every permitted nightclub (the permit is valid 10 years).

In order to be allowed to operate the facility, the owner will need, next to a trade license (the trade falling under a category of a special notifiable trade Keeping a Facility Aimed at Carrying on Prostitution), also the community council permit. The sequence of the granted permits is not important; i.e. it is possible to attain the trade license after attaining the permit of the community council.

Apart from the duties imposed on all entrepreneurs (proper keeping of the accounts, archiving, duties related to the facility, or the register of companies), the law imposes also other duties on the keeper related to the purpose of the law and the mechanisms for ensuring its observance. The keeper of the facility, for example, may not mark the facility in a manner provoking public nuisance, enable the entrance to the facility to persons younger than 18 years of age, or enable a person without a valid medical report to practice prostitution in this facility. The keeper is also required to keep, for control purposes, a register of the persons practicing prostitution in the facility.

Also in technical and construction terms, nightclubs will have to meet higher demands, equivalent to accommodation facilities classified by three stars at minimum (this means, e.g., that a mere wash basin with running water in the room will not be sufficient).

Control of complying with the terms

Facility

Control of complying with the terms will be performed, in the standard way, by the respective competent state administration bodies and self-government authorities, e.g. the Tax Office, the Trade

License Office, the building office, the authority responsible for the state fire supervision, the public health office, the community and the municipal police. Also the activity of the Police of the Czech Republic is allowed for in terms of detecting administrative delicts and criminal offences.

This applies accordingly also to individuals practicing prostitution.

The Police of the Czech Republic and the municipal police should make sure that, e.g., the persons practicing prostitution have a valid license, do not offer these services in forbidden places that clients do not seek out these services in such places, that the keepers of the facilities observe the duties set by this law etc. Police officers and the community employees assigned to the municipal police may, while fulfilling the tasks of the Police of the Czech Republic and the municipal police, enter all the areas of the facilities, require submitting the license, or look into the register kept by the facility keeper.

Penalties

A person practicing prostitution in contrary to law will commit an administrative delict. Depending on the gravity of such conduct, a fine may be imposed, with a maxim limit from 5 thousand CZK (e.g. failure to submit the license on the request of a controlling authority) up to 50 thousand CZK (carrying on prostitution without a license or without a valid medical report). Persons practicing prostitution without a doctor's confirmation may be subject to prosecution for the criminal offence of the illicit practice of prostitution provided that they commit this act repeatedly.

For the failure to observe the duties, the facility keeper may be fined (the maximum limits for individual administrative delicts move from 10 thousand to 2 mil. CZK), deprived of the license or prohibited to undertake activities. For operating the facility without a permit, the keeper may be fined up to 2 mil. CZK.

The law also allows for penalties for clients if they intentionally seek out prostitution in places where offering prostitution is forbidden. These may be fined up to 15,000 CZK.

A medical doctor may be fined up to 50,000 CZK if he/she certifies health fitness for the practice of prostitution to a person who is not fit in terms of health.