

Extended Abstract

Title: A law and economic analyses of prostitution: new insights from the Italian market.

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Abstract

This work proposes a law and economic analysis of prostitution in Italy, considering the current sex market and the opportunities created by a legislative reform of this profession. Moving among the shadows of this market, authors present the peculiarities of this market that is characterized by an unregulated profession, even if tolerated by the institutions. Paradoxically, autonomous workers can offer their services on the sex market but, since the profession does not exist officially, they are not subject to taxation, and they have no recognition of labor rights.

Considering the current Italian reality, this work is twofold: it proposes the legal foundations to recognize the activity of sex workers and their tax obligations, as well as their labor rights (i), and it offers a budget impact analysis if a reform of such market would be adopted by the policy maker (ii). According to the proposed insights, there are significant policy and practical implications that could lead the policy maker in an effective regulation of this profession.

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Introduction

Autonomous sex workers can offer their services on the market but, since the profession does not exist officially in Italy and it is not regulated, they are not subject to taxation, and they have no recognition of labor rights. Even if there is no relevant debate on the opportunities to recognize this profession and the workers' rights in Italy, the discussion is livelier on their tax obligations, suggesting the necessity to consider "*ius receptum*" the taxability of prostitution.

This principle has been stated by the Court of Cassation in numerous judgments, particularly in tax matters,² based on the legality of the activity itself. This claim is supported by the judgment of the European Court of Justice C-268/99 of 20 November 2001, which states that "prostitution constitutes the provision of services for remuneration which falls within the concept of economic activity". Hence, according to current jurisprudence, the passive tax liability of those who carry out an activity aimed at providing sexual services in exchange for a consideration in cash or in kind has been repeatedly confirmed. The judges of the Court of Cassation stated that "there is no doubt that such income must also be taxed, since, although it is a morally questionable activity, it certainly cannot be considered illegal". In other words, "that income from prostitution does not constitute exempt or non-taxable income, nor even the proceeds of an illegal activity, but falls within the category of other taxable income". This principle is confirmed and strengthened by the pronouncements of various provincial tax courts (e.g., *Commissione Tributaria Provinciale* of Bolzano in 2013, followed by sentence of *Commissione Tributaria Regionale of Liguria* no. 44 of 11 April 2013 and *Commissione Tributaria Regionale* of Veneto no. 788 of 16 June 2016 and *Commissione Tributaria Provinciale* of Bolzano no 27 of 30 March 2017), which affirm that the taxation of income from prostitution is in line with Article 53 of the Italian Constitution, which states that "everyone shall contribute to the expenses of the State according to his means".

Far from being considered unlawful by the case law, the taxation of mercenary income is the implementation of constitutional principles, in accordance with article 53 or, more generally, articles 3 and 23. Accordingly, the activities and the related remunerations should always be considered as

² According to the jurisprudential doctrine (Cass. 1 October 2010, n. 20528; Cass. 13 May 2011, n. 10578; Cass. 24 July 2013 - that confirms the legitimacy of the decision of the same year of the Regional Tax Commission of Liguria, which had led to a heavy tax assessment against a Romanian occasional prostitute; Cass. 27 July 2016, n. 15596; Cass. 4 November 2016, no. 22413; Cass. Pen. 26 July 2017, n. 37107; Cass. 22 Novembre 2017, n. 53137) the failure to declare this income in the annual declaration constitutes an offence (cfr. Cass. Pen. 7 October 2016, no. 42160 according to which, also the failure to declare income derived from the exploitation of the prostitution constitutes an offence, since all income, including illicit income, constitutes taxable income).

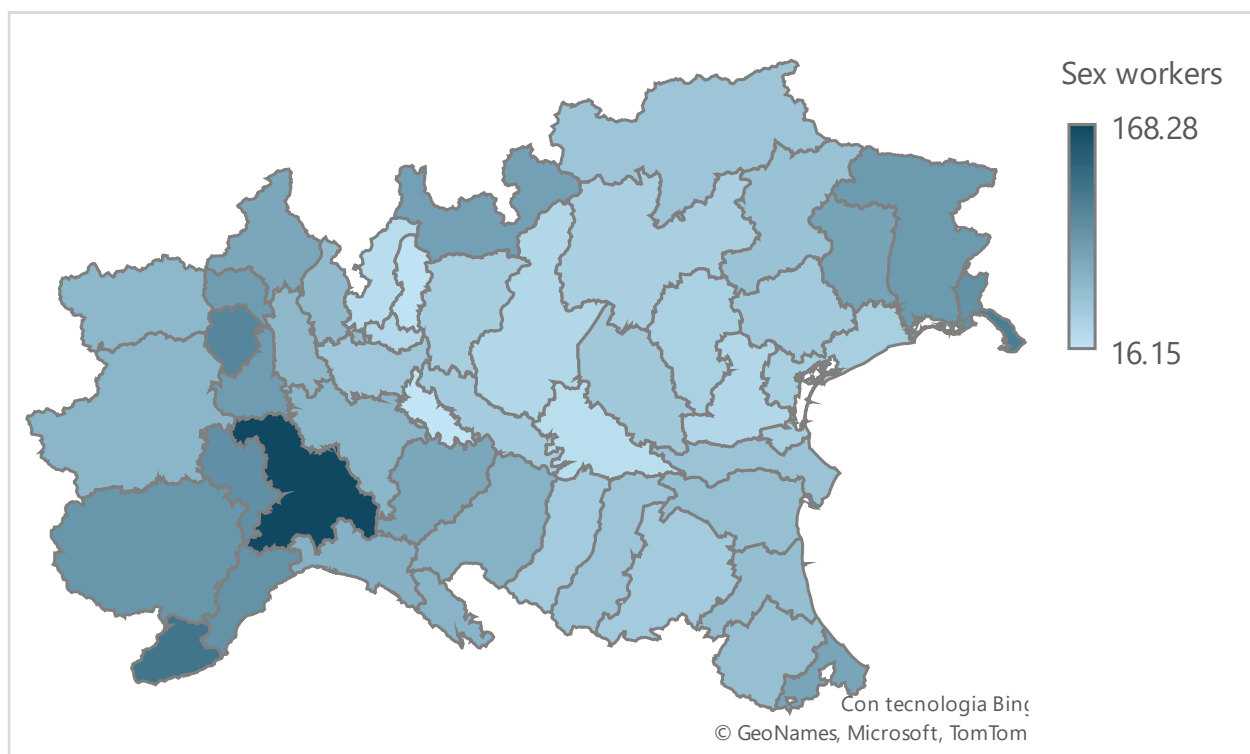
taxable according to the current regulation. In detail, we expect to consider the Value-added tax (i), which refers to the services supplied by these sex workers, and it should be paid by the clients. Afterwards, we expect to consider the Income Tax (ii), which is known as IRPEF, and should consider the net earnings generated by these sex workers through their activities, as well as the regional and local additional taxes to fund the institutions where these workers are resident (iii). Last but not the least, considering these workers like all the others productive units of our labor market, we expect to consider the social security contributions (iv). Indeed, if the policy maker recognizes prostitution as a legal activity, and tax these services in accordance with the Court of Cassation's guidelines, it seems questionable to prevent prostitutes from being subject to social security, guaranteeing them a pension treatment commensurate with the contributions paid during their labor life. On the other hand, another constitutional provision would come into play here, Article 8, which states that “workers have the right to be guaranteed adequate means of subsistence in the event of accident, sickness, invalidity and old age”. And not only that. In a *de iure condendo* perspective, any regulation of prostitution cannot fail to encourage prostitutes to change their profession, to provide social welfare measures to accommodate them, to restore them to a different life and to direct them towards other work activities. The income from the taxes paid can contribute to the financing of the social measures thus identified.

Obviously, the policy maker must fill the legislative gap, defining limits and boundaries of such market, creating the structural pillars for a successful regulation of this profession. A reform that includes not only the (tax) obligations on these activities, but also the rights of workers involved in such activities.

Methods and preliminary results

Considering one of the most used sex-dating platforms in the North of Italy, we have tracked almost 10,000 sex workers in 2024, localizing the provinces and regions where they offer services (see Figure 1). Afterwards, taking in consideration a set of tariffs applied by these workers, and assuming a specific business model to simulate expected revenues and costs, we estimated the public budget impact of a regulated market (local and regional tax revenues, as well as state tax revenues and social security contributions). Focusing on this specific macro area, the absence of a regulation in this market could represent a loss of tax revenues between 800 and 1,400 million of euro.

Figure 1: Prevalence of sex workers in the North of Italy (April 2024)



Number of sex workers (escorts and transgender) every 100,000-resident people (female and male, who are aged between 16 and 65 years old).

Preliminary conclusions

This study presents a discussion of the current Italian sex market, highlighting the main legislative gaps and the opportunities for its regulation. According to the current background, autonomous workers can offer their services on the sex market, they are not subject to taxation, and they have no recognition of labor rights. If the policy maker fills this legislative gap, regulating the sex market and recognizing this labor activity, such workers could have socio-economic supports and labor protection like the other categories of productive workers (e.g., pension and/or interventions in case of disability). Moreover, the tax revenues collected in this market could support social initiatives, fostering the acceptance of these workers in the communities where they operate.