



Prostitution in Germany – A Comprehensive Analysis of Complex Challenges

© Authors:

**Dorothea Czarnecki, Henny Engels, Barbara Kavemann,
Wiltrud Schenk, Elfriede Steffan, Dorothee Törnau**

Consultant On Human Trafficking: Naile Tanis

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Author group: **Dorothea Czarnecki, Henny Engels, Barbara Kavemann, Wiltrud Schenk, Elfriede Steffan, Dorothee Törnau**

Consultant on human trafficking: **Naile Tanis**

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Contact:

Barbara Kavemann (soffi-berlin@web.de)

Elfriede Steffan (e.steffan@spi-research.de)

and the other authors (see appendix)

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Prostitution in Germany – A comprehensive analysis of complex challenges

WHY THIS TEXT?

Debate about prostitution was rekindled in Germany in the autumn of 2013, in connection with a number of national and international media and policy campaigns. This debate has often conflated two different issues: prostitution on the one hand, and human trafficking for the purpose of sexual exploitation on the other. This in turn has led to incorrect information being spread about the legal situation and practice in Germany.¹ A campaign by the European Women's Lobby, for example, seeks to "free" Europe from prostitution. Along with the *Bild-Zeitung* and *Der Spiegel*, feminists both at home and abroad are calling Germany "Europe's brothel". In the autumn of 2013 the women's magazine *EMMA* called on its readers to sign a petition to criminalize sex workers' clients and to eliminate prostitution as such. In response, the newly founded Professional Association for Erotic and Sexual Services (*Berufsverband erotische und sexuelle Dienstleistungen – BesD*) proceeded to release its own "pro prostitution" petition.

WHAT DO WE SEEK?

We, the authors of this analysis, are feminists who work with both sex workers and trafficked persons as part of our professional activities, which include providing psychosocial support, doing research, and seeking to improve the situation of these two groups in terms of both policy and practice (see the bios in section 14). We seek to achieve a secure legal framework for sex workers,² because we know that strengthening their rights will lead to greater protection against violence, better disease

prevention and health services, and also reduce the social stigmatization and humiliating treatment they experience from authorities. We are publishing this analysis to help provide a more objective and nuanced basis for discussion about prostitution. We seek to present a realistic view of prostitution in Germany that is based on research and professional experience.

Our analysis of this issue focuses on the rights and legal equality of sex workers, and on the protection thereof. We do not make value judgments about prostitution. We realize that not all feminists share this position. Some feminists view prostitution as a threat to women's right to equality with men and to a life free of male violence and patriarchal dominance. They fear that the public presence of prostitutes, along with the associated sexualized and stereotypical view of women and the character of the sexual services they provide, could make these social struggles more difficult and undermine the achievements of the women's movement. We take these fears very seriously. These questions are of concern to many women who are clearly willing to take a closer look at the issues and not to simplify them on the basis of any ideology. We are aware that this constitutes a dilemma – the rights of individuals or a minority stand in opposition to the widespread wish for a society without prostitution. But this dilemma may not be resolved in a one-sided manner. Comprehensive account must be taken of different situations, different worlds, and the "obstinate lifestyles of others" (Nauerth 2012:58). This is a matter of self-determination – and of respect for decisions that women make in the face of greatly reduced options. And many women make decisions that others would strictly reject for themselves.

The current debate in Europe is having a dire and polarizing effect on how women who work in prostitution are viewed. The attribution of "sad or bad" (Dodsworth 2011:1) divides them into two groups: those who are victims and deserve our help, and those with deficient morals who are not worthy of support. Sex workers themselves present a more complex picture of their lives and the pathways they

1 At a conference in Germany in 2012, for example, Pierrette Pape (policy officer and project coordinator for the European Women's Lobby) stated that women would suffer cuts in social insurance benefits if they were not willing to consider jobs in the prostitution sector: www.womenlobby.org/spip.php?article4084&lang=de


2 This paper concentrates on female sex workers because they are the focus of the debate, which devotes very little attention to prostitution by men or transsexuals.

have taken (ibid). A polarizing approach threatens to deny their self-determination to the extent of ignoring or silencing their voices in decisions about legal regulations and social policy.

In addition to differences among feminists, the debate also extends to the role of the state and its institutions. To what extent may or should it limit the rights to freely selecting an occupation and sexual activity? May or should the state interfere in sexual activity between adults, and dictate moral standards to its citizens? Different legal traditions and histories play a crucial role here, as can be seen by the different routes taken by Sweden and Germany (Dodillet 2013). What type of state influence do we want here, and what type do we want to keep in check? These questions should be discussed openly. Another set of issues is influencing this debate in the background – albeit in generally unacknowledged form – namely, our understanding of female and male sexuality. Not a few feminists view the willingness to pay for sexual services as an indication of violent aspects in male sexuality. A wish for casual sex is thereby apparently equated with the wish to dominate and subjugate, and is considered unacceptable. A wish for sexual activities that not all women are willing to engage in is considered reprehensible and only acceptable if practiced in a partnership. Female sexuality, by contrast, is viewed as normatively bound to the model of a loving relationship. Sexual self-determination is then only possible in certain defined areas. The women are reduced to their bodies, and sex workers do not provide services but rather sell their bodies and souls (cf. Haaf 2013).

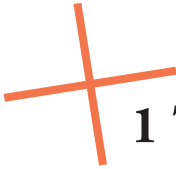
A discussion on how our individual understanding of sexuality determines how we view prostitution would be productive here, as well as a discussion on morals and values: which do we consider indispensable for ourselves, which should apply to everyone, and which restrict the rights of others?

Before starting we would like to make a clear notion on what we have in mind when addressing sex work. Sex work is legal in Germany; outdoor sex work is not forbidden as well. There is a large variety of working places and living conditions in the field of sex work in Germany, Therefore our focus and the focus of most of the surveys is on professional sex work excluding drug related sex work, which exists as an extra topic of course, but is hardly playing a role in the recent German discussion about sex work since programmes for opioid-substitution treatment (Methadone) have been successfully implemented (Zurhold 2013) Literature from UK like the research by Marianne Hester and Nicole Westmarland (2004) or the recent book by Roger Matthews and colleagues (2014) – both very carefully conducted qualitative studies – deal with the issue of drug-related prostitution. The life situation and the conditions of negotiations with customers or the possibilities for claiming rights are very different for the sex workers using drugs as soon as the drug supply is the prime motivation for entering sex work. Therefore it is difficult to compare research results from German studies and studies conducted in countries with different framework conditions for prostitution.



OUR POSITION: In this analysis of prostitution and female sex workers in Germany, we present only the knowledge gained from many years of professional experience and the facts derived from scientific studies, including their complexities and discrepancies. We present the results of different surveys on sex workers. We are just as concerned to avoid a rosy picture of prostitution as we are to avoid a view of its practitioners as pathological. We note the real need for support as shown by the responses to surveys. We expect a discussion among feminists not to take a patronizing attitude that dictates what other women should think and feel and how they should act. It cannot be a matter of proceeding from a self-defined position, such as a rescuer, and seeking to protect other women from themselves.³ Women must be able and allowed to decide themselves how to live their lives in compliance with the law. This also has to apply to decisions that others cannot or barely understand, such as when women decide to work in prostitution. Women are entitled to expect their decisions to be accepted and respected. To claim or imply that these decisions are never made freely is to oppose the call by all women for the right to autonomy.

³ The law correctly allows very little scope to intervene in the personal rights of others to protect them from themselves, applying exclusively to an acute risk of suicide.



1 The Prostitution Act – A step toward legal equality and against discrimination

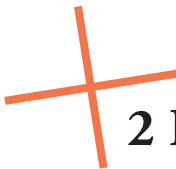
The Prostitution Act (Prostitutionsgesetz) of 2002 was an attempt by the federal government of the time to improve the conditions of life and work for sex workers in Germany (see section 4.1). The Act abolished the designation of prostitution as *sittenwidrig*, a term in German law meaning roughly “contrary to good morals”, which renders transactions such as contracts invalid. It thereby eliminated a basic legal disadvantage for sex workers. But the Prostitution Act was too narrow in scope to achieve any further improvements. It does not contain the key provisions needed to put its content into practice. This is due to the federal structure of Germany, which places many matters under the jurisdiction of the 16 states. The Prostitution Act passed the Bundestag (the lower chamber of parliament consisting of members elected directly by the people) with its make-up of political parties at the time. But its wording was deliberately restricted to the federal level, because laws that affect state interests also have to be passed by the Bundesrat (the upper chamber of parliament consisting of delegates from state governments). The Bundesrat would have rejected a law that required modifications to individual state matters such as commercial, planning and building regulations.

Although a majority of the public and the major social and religious institutions were in favor of abolishing the “against public morals” clause, conflicting positions and open questions have remained which will be examined in greater detail below. As can be seen in the current debate, prostitution speaks not only to the mind but also to the emotions. Most people associate prostitution with notions such as “prostitutes sell themselves and/or their bodies” – which trigger negative sentiments. Individuals who have decided to work in prostitution for short or long periods of time reject such descriptions of their actions. They say that they sell a service, just as many other service providers do. But many people find it impossible to imagine that women might voluntarily do so. The current debate

is therefore taking place between two poles: “prostitution is a voluntary and autonomous activity”, and “prostitution is violence against women”. The latter position describes sex workers’ activities in a negative way that does not correspond to the workers’ image of themselves. Figures that lack empirical basis are marshaled to sensationalize and reject the Prostitution Act by suggesting it is ineffective or even harmful. This is often coupled with the implication that those who favor an attitude of acceptance toward sex workers are idealizing prostitution and are willing to put up with violence.

To improve the situation of sex workers, what is needed is an unbiased, non-ideological discussion about prostitution as a means of earning a living. Discussion of this type draws a sharp distinction between the activity of prostitution on the one hand, and that of human trafficking on the other which is a violation of human rights and a criminal offense.

The sections below refer primarily to the situation of female sex workers, because the current discussion of prostitution in Europe refers exclusively to women and raises the question of violence against women and/or the possibility of autonomy in sex work. The legal regulations described below, however, also apply to men and trans* people in sex work. The same is true in part for the support services described.



2 Prostitution as gainful employment: Conditions, places and types of work

Studies and publications from other countries on the working conditions in prostitution generally address street-based and drug-related forms. Research in Germany, by contrast, tends to look at the entire and very complex spectrum of prostitution. Nonetheless, there are no generally valid definitions for places of work in prostitution. The focus is far more often on the respective working conditions and the associated opportunities for autonomy or the risk of dependency.

Like any other area of economic activity, prostitution is heterogeneous. It includes select, high-priced services, low-wage sectors, family-run organizations, one-woman shops, collectives, and exploitative working relationships. As in other sectors – discount retail chains come to mind – working conditions often tend to be poor in large-scale operations, whereas small shops might sometimes be run under less than 100% hygienic conditions but nevertheless offer greater safety and more scope for autonomous action. Because this sector lacked labor protection regulations for a long time, a shadow economy developed which is marked not only by deregulation but also in part by a crude form of capitalism. This can definitely cross the line into criminal exploitation. Prostitution means the provision of sexual services, and thus a very specific application of the body and intimacy. Those who work in this field therefore need protection, and above all they need rights that are a matter of course for other gainfully employed persons. In addition to labor law and social welfare law, a major issue is always that of ensuring autonomy in sexual matters. That is why the working conditions are a crucial issue.

A few examples indicate the variety of workplaces and associated working conditions:

OPEN-DOOR ESTABLISHMENTS, BROTHELS

An open-door establishment, or *Laufhaus* in German, is a facility at which sex workers wait in rented rooms or in ground-floor windows. Clients walk past its windows or through its halls. A brothel is a facility that has a contact room in which sex workers introduce themselves to clients. The sex worker then generally goes with the client to a back room that she rents there.

Advantages of these workplaces:

- They provide relatively good protection against assaults by clients.
- Sex workers can use the infrastructure of these facilities.
- The rooms can be very pleasantly furnished.

Disadvantages of these workplaces:

- High room rents and high fees for e.g. housekeepers and laundry are often charged.
- Flexibility is limited in planning work, because room occupancy has to be scheduled.
- High room rental rates lead to debt, especially when the sex workers have a shortage of clients or need to take time off due to e.g. illness.

APARTMENTS, PRIVATE RESIDENCES, CLUBS

These places of work require a pleasant atmosphere for the client, plus conversation skills on the part of sex workers which assumes a (good) command of German and a certain talent for communication.

Advantages of these workplaces:

- The working situation is very individual and discrete.

Disadvantages of these workplaces:

- Rent and infrastructure expenses can be high.
- Many clubs expect the consumption of alcohol.
- Nude or sauna clubs expect the sex workers to be unclothed. The clients can also be unclothed; some use bathrobes or towels.

CARAVANS

What in German can be called “lovemobiles” are caravans or mobile homes parked on easily accessible roads outside municipal limits, often in close proximity to freeway on-ramps. Sex workers usually rent them, and occasionally own them.

Advantages of these workplaces:

- They enable flexible time planning.
- Independent work is possible.

Disadvantages of these workplaces:

- They are public. There is a high probability of exposure to e.g. neighbors or acquaintances.
- There is a high risk of violence from clients, because sex workers tend to be at these workplaces alone.
- There are running costs for renting mobile homes as well as for parking places and utilities, including when the women cannot work on account of e.g. illness.

OUTDOOR WORK

Outdoor work is banned in many cities by exclusion zone ordinances.⁴ These laws impose both spatial and temporal restrictions. Migrants who do not have good German language skills often find a possibility for work here. Drug-related prostitution also takes place largely outdoors. These forms of prostitution are therefore the most visible to the general population, and often lead to conflict due

4 These ordinances also apply to brothels, prostitution in residences, etc.

to protests by local residents.⁵ However, these two forms of prostitution account for a small share of sex work in general. Experts estimate that less than 20 percent of prostitution takes place outdoors.⁶

Advantages of these workplaces:

- Not a lot of conversation is required (good German language skills are not needed), the clients do not need to be “entertained”.
- In contrast to many clubs and brothels, no alcohol needs to be consumed outdoors.
- Sex workers determine for themselves which services they will offer at what prices, and which clients they will serve.
- There are no overhead costs for e.g. room rentals or advertising. No costs accrue during periods of non-work.

Disadvantages and hazards of these workplaces:

- These workplaces are public. There is a high probability of being seen by e.g. neighbors or acquaintances.
- The danger posed by violent clients is higher at these workplaces than in other areas.
- Exclusion zone ordinances often mean that outdoor work takes place in remote and generally isolated parts of towns and cities, with little or no infrastructure such as running water, toilets, lighting etc.
- The exclusion zone ordinances in many German cities are very complex, including both spatial and temporal restrictions. This poses a high risk of police interaction and fines.
- Pay can be low.

B/D/S/M STUDIO

B/D/S/M studios (bondage & discipline, dominance & submission, sadism & masochism) serve complex client desires that involve elements such as role playing and/or equipment.

5 See the section below on exclusion zone ordinances.

6 See e.g. Statistisches Bundesamt (2013) [Federal Statistical Office], p. 3

Advantages of these workplaces:

- This sector offers a good potential for income.
- Agreements about the services are generally adhered to.
- Sex workers playing dominant roles can control and also refuse bodily contact.

Disadvantages of these workplaces:

- Knowledge of special sexual practices (e.g. restraint techniques) and certain apparel (made of e.g. latex or leather) are required.
- Good language and communications skills are required to discuss clients' wishes and define limits.

ESCORT SECTOR, HOME AND HOTEL VISITS

Sexual services are not always the focus in the escort sector or for home/hotel visits. Often these services consist of accompanying the client to a restaurant or theater. A talent for communication, a certain level of education and the ability to conduct oneself suitably in different social contexts are required.

Advantages of these workplaces:

- This sector offers good potential for income.

Disadvantages of these workplaces:

- Good language, communication and social skills, and a suitable appearance are required.
- Work in hotel rooms entails a risk of violence on the part of clients.

SEXUAL ASSISTANCE / SEXUAL SURROGACY

A special form of prostitution consists of providing sexual services to people who, on account of disabilities, have little possibility to experience sexuality with other individuals. Sexual assistants have usually completed training or therapeutic programs that enable them to specialize in the needs of disabled people.

CONCLUSION:

There is no single valid definition of good conditions or types of work for all sex workers. In general, however, the main questions have to do with safety (protection against violence and exploitation), hygiene and suitable income. Every sex worker has to find out for herself in which sector she feels comfortable, where she can best offer her services, and where she can determine them herself. The following factors can enter into such decisions:

- How great is the need for anonymity?
- How great is the need for a protected space?
- Is sex work her main job or a sideline?
- Can she accept the consumption of alcohol?
- Does she wish to work together with colleagues?
- What sexual services will she provide?
- Does she have the required skills for the sector in question?



3 What reasons do women give for entering prostitution?

European debates about prostitution are frequently based on the assumption that all the women who engage in this activity have been coerced, and that there is no such thing as a voluntary decision to do so. This position simplifies what is a complex reality, blurs the boundaries between prostitution and human trafficking, and reinforces clichés, without contributing to an understanding of the issues.

There are numerous motives for working in prostitution. Both the German and international literature point to primarily economic reasons for this decision by women, as well as by men (Leopold/Steffan 1997, Gangoli/Westmarland 2006, Svanström 2006, Strobl 2006, Kavemann/Rabe 2008). As in other areas of employment, the objective is to have an income. However, the starting points can differ widely. Some women select prostitution from among a variety of alternatives. These women might be students, or well educated individuals who have already been gainfully employed in other areas. The world of prostitution can exert a strong counter-attraction to bourgeois society. Other women make their decisions under economic duress in the face of scant or limited alternatives. This applies above all to certain groups of migrants, for whom labor laws in Germany currently allow only self-employment or whose language skills limit other possibilities. Debt is also a motive for working in prostitution, a field that elicits expectations of rapid income. Prostitution is often seen as the only way to earn the money required to pay off debts, fulfill certain wishes, purchase drugs or support a family. Experts at specialized counseling centers report that women often lack information about other ways of solving their debt problems and about how government services can help. The latter generally do not apply to migrants. In addition to language difficulties and a general unfamiliarity with counseling services, shame about poverty, debts and/or the associated stigma can exacerbate the lack of information and pose a further obstacle to seeking counseling.

Generally speaking the decision to earn money by means of prostitution is not a final one. Many women start by working occasionally in prostitution, expecting to stop after earning a certain sum to pay off debts or to achieve another aim (Leopold/Steffan 1997).

In general women are also young or very young when they enter prostitution (Gangoli/Westmarland 2006). Youngsters who have run away from home or who come from violent family backgrounds are more likely to engage in risky sexual behavior. Additional motives listed by young women include the wish for money to buy “beautiful things”, to hold their own in their peer groups or to strengthen a low sense of self-esteem (ibid).

Contrary to the assumption that women take up sex work via a male friend or acquaintance who functions as her intermediary (pimp), it is far more often the case that female friends or acquaintances in general who have already earned money in this way take them along and introduce them to the work (ibid).

Drug addiction is primarily an issue among outdoor workers. For most drug users, “hustling” is a necessary evil (cf. Strobl 2006). Reports by social scientists and counselors indicate that there is no simple answer to the question of what came first, the drugs or the prostitution. Drug addiction often leads to prostitution, but psychological stress from prostitution can lead to taking drugs and from there to addiction (ibid).

Studies have shown a close link between experiencing (sexual) violence in childhood/youth and subsequent drug addiction (Hester/Westmarland 2004, Kersch 2003). But one can by no means jump to the conclusion that all those who enter prostitution have experienced violence or that violence necessarily leads to prostitution. In this context, too, the predominant motives are economic.⁷

7 Relevant literature here includes: Kavemann et al, 2006a: Abschlussbericht der Untersuchung zu den Auswirkungen des Prostitutionsgesetzes
Kavemann et al, 2006b: Vertiefung spezifischer Fragestellungen zu den Auswirkungen des Prostitutionsgesetzes: Ausstieg aus der Prostitution. Kriminalitätsbekämpfung und Prostitutionsgesetz
For an assessment in English see Kavemann and Rabe, „Findings of a study on the impact of the German Prostitution Act“: www.cahrv.uni-osnabrueck.de/reddot/BroschuereProstGenglisch.pdf [3 November 2014]

4 Everything goes? Legal regulations in Germany

THE PROSTITUTION ACT

Until the Prostitution Act (Prostitutionsgesetz, abbreviated as “ProstG”)⁸ came into effect as of 2002, there was no specific legal regulation of prostitution in Germany. As of 1927 prostitution had no longer been prohibited, but was considered “contrary to good morals” (*sittenwidrig*) and “harmful to the common good” (*gemeinschaftsschädlich*) in high-level court decisions. This valuation was based primarily on a decision by the Federal Administrative Court in 1965, which equated prostitution with habitual criminal activity. The standard for the idea of good morals was a formulation from the Supreme Court in 1901 of a “sense of decency by all those of fair and just mind”. The practice of prostitution was subject to taxation, but prostitution-related contracts (such as commercial rental contracts, payment agreements, health insurance contracts) had no legal force because the activity was considered “contrary to public morals”. Refusing to pay for prostitution services received was not punishable by law.⁹

By uncoupling the activity from morals, the Prostitution Act gave sex workers a legal basis to claim payment for services rendered. It enabled them to enter into lawful agreements and to enforce their claims for payment. It should be noted that these agreements are unilateral: the sex workers are legally entitled to payment, but clients may not base objections on the (non-)performance of certain practices. As such, the sex workers are by no means required to provide a specific service agreed upon with the clients. Section 1 sentence 2 of the Prostitution Act states that sex workers are also entitled to payment, particularly within an employment relationship, if payment was agreed upon but the worker was simply available to provide the service.

Section 2 of the Prostitution Act states that these claims cannot be transferred. This means that they cannot be assigned to another person (e.g. a pimp

or brothel operator) who could take legal action based on them.

According to section 3 of the Prostitution Act, the employer’s restricted authority to give instructions to sex workers does not constitute an obstacle to conducting an employment relationship subject to social insurance.

The restricted authority to give instructions includes:

- restriction of the employer’s authority to give instructions combined with a maximum degree of autonomy for the sex worker. The employer may not prescribe the choice of clients or the type of services provided
- a certain degree of integration into the business, e.g. agreement on working times
- the voluntary nature of the activity (BMFSFJ 2006: 16)

The misunderstanding persists that the Prostitution Act does in fact give prostitution business operators the authority to give instructions. But this applies only to labor contracts subject to insurance contributions – and then only within the framework listed above.

In effect, self-employed sex workers can now have health insurance and retirement schemes just like other self-employed persons. The Prostitution Act does not regulate taxation on prostitution, and sex workers were previously subject to taxation anyway (see section 5.2).

⁸ See section 1 of the appendix for a translation of the entire Prostitution Act.

⁹ That is why advance payment continues to be the rule in prostitution today.

4.2 EUROPEAN REGULATIONS

The regulations on sex work in Europe include partial to full criminalization (e.g. Romania), abolitionist (e.g. Sweden, Finland) and prohibitionist positions (the majority of countries), and in a few cases regulation (e.g. Austria, Germany, the Netherlands). Strategies and interventions differ widely across Europe and sometimes conflict, although all declare agreement with the basic shared aim of combating discrimination, violence and social ostracism in the field of sex work. Decades of experience with one legal system in Germany – according to which prostitution per se was not prohibited but was instead considered “contrary to public morals” and it was a criminal activity to organize it – have shown that this particular legal approach to prostitution sought the well-being and protection of women yet actually achieved the opposite. Abolitionist approaches reinforce the stigmatization of sex work and the ostracism of sex workers, and also reinforce a double standard (Leopold/Steffan 1994). Currently only nine of the 47 countries in the Council of Europe are pursuing a regulatory approach to legalizing sex work. Some countries include compulsory health exams for sex workers as part of their regulations, which raises other problems (see section 6.1).

A recent survey of 1,000 female sex workers about their conditions of work and their access to health care in seven European countries – Germany, Poland, Estonia, Latvia, the Slovak Republic, Bulgaria and Romania (SPI 2013) – underscores the need throughout Europe to acknowledge sex workers as an important target group for disease prevention, research and policy. Policy initiatives should be embedded in strategies that put human rights into practice and that end discrimination. This fits in with the recommendations from the WHO: “All countries should work towards decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.[...] Health services should be made available, accessible, and acceptable to sex workers based on the principles of avoidance of stigma, non-discrimination, and the right to health” (WHO 2012).

4.3 THE INFLUENCE OF MIGRATION LAW ON PROSTITUTION IN GERMANY ¹⁰

FREE MOVEMENT OF CITIZENS ACT/EU

Since Bulgaria and Romania joined the EU in 2007 as part of its eastward expansion, smaller studies and reports of actual practice indicate that a substantial share of the migrants active in sex work in Germany come from these two countries. Like all other members of the EU, citizens of these countries can move freely within the EU without a visa and settle wherever they wish. The legal basis for this in Germany is the Free Movement of Citizens Act/EU (Freizügigkeitsgesetz/EU) described here. Unlike citizens of other EU member states, citizens of Bulgaria and Romania are still prohibited from entering into wage-based employment relationships in Germany, but they can work on a self-employed basis. The Act enables citizens of all the other EU member states to legally take jobs in prostitution in Germany. In compliance with the Free Movement of Citizens Directive from the EU, Germany’s Free Movement of Citizens Act/EU (section 2 paragraph 5) states that citizens of EU member states need only a valid passport or ID card to enter the country and stay for up to three months.

For EU citizens to remain in Germany for more than three months, section 2 paragraph 2 of the Free Movement of Citizens Act/EU specifies that they must be employed, seeking work or undergoing occupational training for a certain period of time, self-employed or service providers, or in possession of sufficient means of livelihood as well as healthcare if they do not have work. As such, migrants from Bulgaria and Romania who engage in prostitution in Germany need a passport or ID card, registration of their residence with the police (like all other residents of Germany), and a tax ID number plus proof that they are fulfilling their tax obligations in Germany.

Citizens of the European Union who are entitled to freedom of movement can lose their right to resi-

¹⁰ The laws are available on the Website of the Federal Ministry of Justice (BMJ): www.gesetze-im-internet.de

dency for reasons of public order, safety or health. The conditions for determining this are very strict: there must be a real and sufficiently serious threat to public order or safety that threatens a basic interest of society. This threat must be based on the individual conduct of the EU citizen.

In addition, the Foreigner Registration Office (Ausländerbehörde) can revoke the right to residency on the basis of section 5 paragraph 5 of the Free Movement of Citizens Act/EU within the first five years of residence if the conditions for exercising this right are not met. Good cause must be present to carry out an investigation, however. This might include the provision of false information about an employment relationship while drawing substantial associated social benefits. If their right to residency is revoked, EU citizens have to leave the country.

RESIDENCE ACT

The Residence Act (Aufenthaltsgesetz) is part of the Immigration Act (das Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern) which entered into force on 1 January 2005. It prohibits all type of employment for citizens of non-EU countries who do not have a residence permit for Germany. This also applies to work in prostitution. These individuals can be deported immediately if apprehended, for example in the course of a raid.

4.4. CRIMINAL CODE PROVISIONS ON ASPECTS OF PROSTITUTION

In Germany, criminal offenses and their penalties are contained largely in the Criminal Code (Strafgesetzbuch, abbreviated StGB).

CRIMINAL LAW ON PROSTITUTION ¹¹

The German Criminal Code (StGB) contains various provisions related to prostitution. They include section 180a StGB (exploitation of prostitutes) and section 181a StGB (controlling prostitution). Controlling prostitution is divided into exploitative (section 181a, paragraph 1, no. 1), “dirigiste” i.e. supervising/determining it for material benefit (section 181a, paragraph 1, no. 2), and commercial promotion of prostitution (section 181a, paragraph 2).

Adults who take the sexual services of minors as per sections 176 and 176a StGB (child abuse and aggravated child abuse) are punishable by law, regardless of whether a person under 14 years of age is willing or even offers sexual activity. Adults are liable to prosecution based on section 182 paragraph 3 if they engage in sexual activity with a person under 16 or induce the person to engage in sexual activity with a third person years of age (abuse of juveniles). As of 2008, adults in Germany are also punishable by law if they accept the sexual services of 16 or 17-year-olds (see section 7.2).

There is some discussion of raising the legal age for prostitution to 21 in order to combat forced prostitution and human trafficking more effectively. This proposal is based on the idea of extending special protection to young women. It would make prostitution illegal for those under 21, which would mean that these sex workers would have to fear prosecution themselves and that it probably would be extremely difficult to reach them to provide social or healthcare services. This proposal also conflicts with the paradigm adopted by all those involved, namely, to not subject sex workers themselves to criminal prosecution. Moreover, the proposed age limit would not fit other legal regulations for this

¹¹ This section is based on KOK 2008.

age group, which allow e.g. marriage as of age 18, and in exceptional cases even as of 16, armed military service as of 18, and organ donation as of 16.

Section 180a StGB states that the exploitation of persons engaged in prostitution is punishable by law. It aims to protect sex workers from exploitative structures and to ensure that they can determine their sexual activity freely and not be subject to external control thereof.¹² Those who maintain or manage a prostitution enterprise at which persons are held in personal or financial dependency are liable to imprisonment. Of key importance is the fact that “dependency” is defined more broadly here than in typical employment relationships, because the employer has only a restricted authority to give instructions as stipulated in section 3 of the Prostitution Act. Dependency here therefore refers to external influence on sex workers’ right to sexual autonomy. Dependency can also refer to sex workers’ person (if e.g. their freedom of movement is limited) or economic situation (if e.g. an excessive share of their income is withheld). Section 180a paragraph 2 sentence 1 StGB makes those who provide a person under 18 with “a dwelling on a commercial basis, an abode or a residence for the exercise of prostitution” punishable by law, and thus de facto prohibits prostitution for persons under 18.¹³

Germany – like all European countries that regulate prostitution – prohibits controlling prostitution (pimping). Exploitation of a person who engages in prostitution is punishable by law according to section 181a paragraph 1 sentence 1 StGB.¹⁴ The exploitation needs to take place within the framework of a dependency relation with a profit-seeking motive and the sex worker needs to have suffered a notable worsening of her economic situation. This can be assumed in cases where e.g. 50% of the income is collected.¹⁵

12 Satzger, Schmitt, Widmaier, Kommentar zum StGB, 1st edition, 2009, section 180a StGB, margin no. 1

13 *ibid*, margin no. 6

14 Exploitation of prostitutes as per section 180a paragraph 2 sentence 1 refers to provision of a dwelling, abode or residence on a commercial basis to a person under 18 years of age for the exercise of prostitution. Section 180a paragraph 2 sentence 2 refers to keeping or exploiting a person regardless of age for prostitution to whom a dwelling has been provided for that purpose.

15 Lackner/Kühl StGB-Kommentar, 27th edition, section 181a, margin no. 3.

Supervisory (“dirigiste”) controlling is punishable by law according to section 181a paragraph 1 sentence 2 StGB. The term “dirigiste” denotes an external direction or pressure, which means that third parties or pimps control the type and activity of prostitution in such a way that the workers cannot act freely. This includes keeping sex workers in dependency relations, taking measures to prevent them from giving up prostitution, or restricting their freedom of choice in other ways.¹⁶ Controlling is not to be equated with organizing prostitution.

Brothel operators may not dictate the type or amount of work. The sex workers must have the right to terminate their work at any time and to refuse sexual activities, and they may not be subject to directives of any type that would require them to take certain clients against their will.¹⁷

CRIMINAL LAW ON HUMAN TRAFFICKING

The EU’s Framework Decision on Combating Trafficking in Human Beings¹⁸ of 2002 was adopted in Germany in 2005. It led to the introduction of criminal liability for the activities described in sections 232 ff StGB. Human trafficking for the purpose of sexual exploitation is defined by §232 StGB as the exploitation of another person’s predicament or “helplessness arising from being in another country” by means of violence, threat or fraud to induce them to engage in or continue to engage in prostitution or sexual activity. Inducement can take a number of different forms, including psychological violence or the threat thereof, blackmail, illegal withholding of documents and/or earned income, theft, isolation or fraud. It also includes exploitation of a helpless situation, abuse of authority, and debt bondage. Relevant dependency relationships can arise for example by means of fictitious fees for entering the country that need to be worked off. The conditions of labor in these situations are also not comparable with those of autonomous sex workers.

16 Lackner/Kühl, 27th edition, section 181a, margin no. 4.

17 Lackner/Kühl, 27th edition, section 181a, margin no. 4.

18 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA): <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0629&from=EN> (1 November 2014)

Section 232 paragraph 1 StGB contains a special feature. It states that those who induce a person under 21 years of age to engage in or continue to engage in prostitution or other sexual activity are punishable by law. These cases require no predicament or helplessness arising from being in a foreign country, or the exploitation thereof. The criminal offense of human trafficking is therefore especially easy to commit on persons under 21 years of age.

In addition to human trafficking for sexual exploitation, there is also human trafficking for the purpose of labor exploitation. Often the term “trafficking” is misunderstood because sections 232 and 233 StGB do not refer to crossing borders or recruitment.¹⁹ The victims, or those whose legal rights have been violated, can therefore be citizens of non-EU countries, or EU citizens, or even German citizens because human trafficking can also take place within a single country.

Section 233a StGB makes assisting human trafficking as defined in sections 232 or 233 StGB a criminal act in itself. This includes human trafficking as understood in an international context. Assistance include recruiting, transporting, referring, harboring or sheltering persons.

Now there is Directive 2011/36/EU of 2011 from the European Parliament and Council on preventing and combating trafficking in human beings and on protecting victims, which replaces Council Framework Directive 2002/629/JHA, and which Germany was required to adopt by 6 April 2013. In addition to improving the identification and sanctioning of criminal acts, this directive also aims to improve the protection of victims. It calls for an integrated, comprehensive and human rights-based approach to combating human trafficking. Germany has not yet adopted this EU directive.²⁰ This directive also covers the exploitation of begging activities, and of criminal action such as organ

trafficking. These forms of exploitation have not yet been considered forms of human trafficking in Germany and are therefore not punishable in the country.

19 Renzikowski, Entwicklung von tragfähigen Unterstützungsstrukturen für die Betroffenen von Menschenhandel zur Arbeitsausbeutung, BMAS 2011

20 Status of 30 November 2013: On 4 June 13 the ruling coalition parties CDU/CSU and FDP presented draft legislation 17/13706 to the Bundestag, which was accepted in the second and third reading on 27 June 2013. But the Bundesrat decided on 20 September 13 to convene the mediation committee, which meant that the draft legislation failed due to the principle of discontinuity. Adoption of Directive 2011/36/EU now has to be renegotiated in the current (18th) legislative period (2013-2017).

5 Influence of other laws and regulations

5.1 HEALTHCARE

Until the Infection Protection Act (Infektionsschutzgesetz – IfSG) was passed in 2001, the public health agencies in Germany used the Combating Venereal Diseases Act (Gesetz zur Bekämpfung der Geschlechtskrankheiten – GeschlKG) as the basis for measures taken to diagnose and monitor only four defined venereal diseases (gonorrhea, syphilis, ulcus molle, lymphogranuloma venereum). This Act contained an optional provision of ordering compulsory health exams for certain persons with “frequent sexual partners”, which was applied exclusively to sex workers. It was the basis for requiring female sex workers in many of the federal states to have regular exams for venereal diseases.²¹ Even if they worked in exclusively “safe” ways and had never been ill, the usual interval for exams was two weeks. Depending on the municipality or the state, female social workers, health inspectors or policewomen checked these exam documents in the course of their outreach work, or in inspections or raids. If female sex workers were found without valid health certificates, they were reported to the public health departments, which fined them for repeat offenses. Given this situation, it was difficult for trust-based relationships to be established between the sex workers and the social workers from the public health agencies.

The Infection Protection Act (IfSG) of 2001 was the first attempt in Germany to provide a common legal basis for dealing with all of the over 30 sexually transmitted infections (STIs) including HIV/AIDS. The title of section 3, namely “Prevention via education”, reflects the basic idea behind the law. The risks posed by many infectious diseases can be effectively reduced if people are supported in their efforts to protect themselves. The government is no longer focusing on surveillance but rather on promoting health-conscious individual behavior.

Section 19 IfSG goes into more detail on what the health agencies should do to combat STIs. Voluntary,

21 The compulsory health exams were in fact only applied to female sex workers.

anonymous and even free services are designed to promote individual health awareness.

Public health departments offer counseling and free exams for sexually transmitted infections and tuberculosis, or arrange for them to take place at other healthcare facilities. These exams for persons whose circumstances pose a heightened risk of infection to themselves or others are also supposed to be offered as part of outreach programs, and in individual cases can also include on-site treatment by physicians from the health departments for the purpose of preventing the spread of sexually transmitted diseases or tuberculosis. The services for sexually transmitted infections can also be used anonymously.

For sex workers, these services are important for a number of reasons:

- Eliminating compulsory health exams did away with what was often a humiliating procedure, and one which was shown not to make sense from a public health standpoint.²²
- The assurance of anonymity protects individual privacy and also enables non-EU sex workers without residency status to make use of these services.
- The non-disease-specific definition of STI lays a better and broader diagnostic foundation.
- Outreach at workplaces helps to establish trust, ensures access to health-promotion services, and raises the level of health-related knowledge. Outreach is especially effective in reaching migrants in sex work.
- The services do not require that the recipients have health insurance.
- Although the counseling centers at the public health departments reported that they received fewer visits by patients from the sex work sector in the first few years following the elimination of compulsory health exams, in subsequent years they have reported an increase.²³

22 Female sex workers were among the groups most often tested for the four STDs and HIV in the German states with compulsory health exams before the IfSG, but were not found to have higher average levels of infection than the female population at large (Leopold/Steffan 1994).

23 Annual statistics can be requested from the Berlin State Senate Department for Health, the Environment and Consumer Protection.

5.2 TAX LAW

Even before the Prostitution Act was passed, prostitution was not prohibited. It was legal, but considered “contrary to good morals” (*sittenwidrig*) in court decisions. It was not possible to sign up for retirement or health insurance under the job title of sex work or prostitution. However, income from sex work was always supposed to be taxed under the heading “other income”. By eliminating the designation of prostitution as “immoral”, the Prostitution Act now requires taxpayers to register with the tax office and obtain a tax ID number under the job description of prostitution, escort service, or “personal and material services”. As is the case with all taxpayers, sex workers too are required to submit an income tax declaration once a year that lists all of their revenue. They can also deduct expenses for their income-generating activities in the sex work sector.

Tax categories are based on income levels and personal status (married, single, dependents, etc). Although sex workers have thus far not been able to register as a business (only as self-employed), under tax law they are in fact considered to be pursuing a business, which means that they also have to pay business tax as of a certain level of income.

Because the majority of sex workers have self-employed status and frequently change their place of work, tax office personnel often question the accuracy or honesty of their income declarations. Numerous cities have therefore introduced the option of paying a standard “tax collection assurance advance” (*Vorauszahlung zur Sicherung der Steuererhebung*). This model has no legal basis,²⁴ but can be used on a voluntary basis. If sex workers use this model, they pay a certain set level for every day they work (regardless of how many hours they work and regardless of their actual income). The level varies by city: 30 euros in Berlin, over 25 in Stuttgart and Munich, 15 in Leipzig and 20 in Cologne. If the sex workers have a self-employed arrangement at a brothel, the brothel operators collect this standard fee and forward it to the tax office. This model offers the option of paying the fee under a pseudonym, which means that workers need not give personal information to the brothel operators.

²⁴ For this reason the state of Lower Saxony, for example, did not introduce the option.

Unfortunately many sex workers do not realize that despite paying this standard fee, their tax obligation is not fulfilled until they file their income tax declarations with the tax office following the end of the year.

Since the Prostitution Act was passed, the tax offices have been carrying out more audits at brothels.

Some cities charge a municipal use tax or entertainment tax. The object of taxation consists of “entertainment within city premises” of a sexual nature. It is charged to establishments that provide “targeted opportunity for sexual entertainment” and also to sex workers who offer “sexual activity for remuneration” outside such establishments.

5.3 EXCLUSION ZONE ORDINANCES: SPATIAL AND TEMPORAL RESTRICTIONS ON SEX WORK

The Introductory Act to the Criminal Code (*Einführungsgesetz zum Strafgesetzbuch – EGStGB*) states that governments of the federal states in Germany can prohibit prostitution entirely in municipalities of up to 50,000 inhabitants, and for municipalities of more than 50,000 inhabitants they can impose spatial or temporal restrictions that prohibit it in certain streets or areas or at certain times. Regardless of the number of inhabitants, by-laws can also be issued to prohibit outdoor sex work in entire municipalities, parts of municipalities, or non-municipal areas.

Exclusion zone ordinances provide the legal basis for this (see the appendix for an example of such an ordinance). All municipalities of a certain size in Germany with the exception of Rostock and Berlin have such an exclusion zone ordinance. State and regional governments are responsible for monitoring and implementing these ordinances. Municipal offices of public order (*Ordnungsämter*) play a leading role here. Compliance is also monitored in part by the police. Violators are ordered to leave the exclusion zone and can also be fined.

These exclusion zone ordinances, as well as similar ordinances such as to protect minors and public decency, are solely displacement measures. Muni-

icipalities generally tend to keep their central areas “prostitution free”, and issue the corresponding ordinances to do so which can also contain temporal restrictions. They are based on frequent complaints from residents and businesspeople who are disturbed by prostitution-related activities (solicitation, customer traffic, nightlife). Exclusion zones can be imposed not only for outdoor work but also for brothels and other prostitution enterprises.

The areas that municipalities tend to allow for outdoor work are often remote, hard to reach by public transportation, and have little or no lighting. They also usually do not have rain shelters, trash bins, or toilets. Emergency telephones are not available, and they are often far removed from facilities that might offer some conveniences or protection such as brightly lit petrol stations or restaurants. Many of the areas for prostitution allowed by law therefore have inadequate infrastructure and pose a high level of risk for sex workers’ safety and health.

The fact that municipalities have other possibilities at their disposal is shown by a current project in the city of Berlin, which does not have exclusion zones. To address the conflicts of use by residents, businesspeople and sex workers in and around Kurfürstenstrasse, talks are being held with all the interest groups and the situation is being analyzed on-site. The aim is to find solutions together with all those involved, in order to minimize disturbances and to prevent displacement.²⁵

25 Christiane Howe (2012): Nachbarschaften und Straßenprostitution: http://www.tu-berlin.de/fileadmin/f27/PDFs/Forschung/Nachbarschaften_und_Strassen-Prostitution_Bericht.pdf



6 Migration and prostitution

According to current EU statistics on international migration, more than one third of all non-citizens residing in the 27 EU member states on 1 January 2012 were from other EU member states.²⁶ Germany has the highest number of foreign residents in the EU (7.1 million on 1 January 2012), followed by Spain and the United Kingdom. The new EU member states of Romania and Bulgaria are among the countries whose populations show the greatest mobility within the EU.²⁷

According to the 2010 Migration Report from the Federal Office for Migration and Refugees (BAMF), Romania and Bulgaria are the two major countries of origin for documented migrants to Germany. The number of Romanians residing in Germany has more than tripled since the country joined the EU in 2006, and the number of Bulgarians has increased approximately five-fold.²⁸

These official statistics cannot provide a comprehensive picture of the dynamics and mobility patterns of non-documented migrants in Germany. There are no data on regular movements of persons entering the country on tourist visas without work or residence permits.

The percentage of sex workers among the migrant women and men is not known either, and there are no convincing studies.²⁹ However, migration and prostitution are closely related topics – and that is nothing new. Experts surmise that more than half of the sex workers in Germany are from other countries.³⁰ A clear picture of change in countries of origin has emerged following the eastern expansion of the EU. While women from Latin American, African and Asian countries predominated in the

1970s, many women from Poland and Ukraine came shortly after the borders opened in the early 1990s to work in prostitution in Germany. For these women from what were non-EU countries at the time (e.g. Poland), labor regulations for non-EU citizens meant that they were not allowed to work, including in prostitution, with the corresponding negative effects on their working and living conditions. The freedom of movement arrangements in connection with the EU's expansion to the east in 2004 and 2007 prompted greater numbers of women from the new EU countries to come to Western Europe and especially to Germany to work in prostitution. A number of different reasons for this are advanced. Andriajasevic (2007) observes that rising levels of unemployment were associated with the transformation process for states joining the EU, and that women were disproportionately affected by these job losses. A parallel demand for services in the low-wage sector, including the sex sector, plus efforts on the part of individuals to improve their economic situation all contributed significantly to an East-West migration in prostitution.³¹ Sex workers from new EU countries have advantages over those from non-EU countries in terms of residence rights; they can enter other EU member countries without a visa and stay for three months, and also are permitted to work on a self-employed basis. To be entitled to social benefits and to the unemployment benefits known as "Arbeitslosengeld II" – which is possible under certain conditions – they need to be registered with the tax office and have submitted an income tax declaration. This route is only taken in unusual cases, however. Current counseling experience has shown that it has thus far not always been easy to claim these rights in practice.

A number of challenges, some of which are new, face this group of persons:

Since the expansion of the EU in 2007, many municipalities in Germany have been seeing greater levels of migration from southeastern EU countries. They have been developing better ways to deal with this new situation (see the discussion of social policy initiatives on municipal and state levels in section 10.1). The city of Duisburg, for example, has produced a strategy paper entitled "Addressing migration from Southeastern Europe" (Zum Umgang mit der Zuwanderung von Menschen aus

26 http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics/de

27 EUROSTAT: (2011)

28 Federal Office for Migration and Refugees (BAMF), 2010

29 We draw the reader's attention once again here to the fact that we are reporting solely about female sex workers, although men and boys from Eastern Europe play a major role in male-male sex work.

30 <http://tampep.eu/documents.asp?section=reports>

31 *ibid*, see Website; 1.

Südost-Europa), which states in the introduction: “This migration situation will not be temporary, so the question arises of how to integrate the migrants into society.”³² The strategy still needs to prove itself in practice.

The phenomenon of women migrating from Southeastern Europe and entering prostitution in Germany represents a challenge for counseling centers and public health departments. In order to provide individual counseling on site and at the centers, counselors need to be familiar with the cultural backgrounds of the women, their levels of education and their general life situations. Based on this knowledge, their informational materials need to be reworked and translated into additional languages. They also need to develop pictograms and audio information for those who are illiterate.

The issue of migration and prostitution is often automatically assumed to be the same as human trafficking for sexual exploitation – but this is an assumption that does not correspond to reality (see section 9.2 and BKA 2011). Countering this assumption is a major challenge for all those who seek a more nuanced view of prostitution, and therefore

32 City of Duisburg, 2011, p. 3.

7 Support services

7.1 SUPPORT SERVICES FOR WOMEN IN PROSTITUTION³³

Women are not in need of counseling and/or support on account of their work in the sex sector. Like others, however, they have a right to professional advice and targeted support in certain situations, such as problems with their children or partner, debt, violence, or psychological crises. Fearing discrimination, sex workers with these problems only rarely turn to general counseling services, such as those for debt. They are even less inclined to do so if the problems are related to their work in prostitution, such as conflicts with colleagues, brothel operators or the police, or if they wish to find another line of work. There is therefore a need for facilities that can provide advice and support without making moral judgments, that have knowledge of sex workers' specific living and working situations, and that cover a certain range of qualified social work.

In addition to counseling and support projects launched by sex workers themselves, various independent counseling centers in some large German cities target their services to female, male and trans* persons in the sex work sector. They have different focuses. Some offer counseling and support only for female sex workers. Others concentrate on special groups such as male sex workers, migrants, minors (female or male), or drug users in the sex industry.

A major focus consists of outreach at all places where sexual services are offered. It establishes initial contact with sex workers, maintains contact with those who do not want or cannot come to counseling centers, and provides information about the centers' services and about prostitution-related issues and relevant materials, such as condoms.

Some specialized counseling centers offer on-site workshops to enhance the professionalization of sex services.³⁴

33 This text is based on Dücker/Leopold (2008)

34 One example is: Profis – Professionalisierung von Sexarbeiter_innen in Bordellen ("Profis – Professionalism for Sex Workers at Brothels"), www.aidshilfe.de. It was developed by the activist Stephanie Klee for the Deutsche AIDS-Hilfe.

The majority of prostitution counseling centers are financed by a mixture of sources, including funding from the states, counties and municipalities including revenue from all manner of administrative fines, and also donations. The teams at the counseling centers consist largely of female social workers and educators, as well as psychologists, sociologists and former sex workers. Men with corresponding training only work at centers that serve men or boys in the sex-work sector. Some of the counseling centers for women have a religious affiliation. The vast majority of these are facilities sponsored by the Protestant Church, most of which are part of its social welfare organization (Diakonisches Werk).

Other counseling centers have their roots or are otherwise active in Germany's sex workers' rights movement, known as the "whores' movement" (Hurenbewegung). They do not have a religious affiliation, and tend to have smaller sponsorship associations. The activities and services of these projects have changed somewhat over time, from representing the political interests of sex workers to providing a broad range of social work and educational opportunities for sex workers. They now have the status of specialized counseling centers, but have not neglected their political activities to eliminate discrimination against the sex work sector.

Regardless of their target groups, focuses and sponsorship backgrounds, these counseling centers pursue an approach marked by solidarity and acceptance vis-à-vis sex workers. They strive to meet sex workers' needs for counseling and support regardless of the latter's wish to continue or discontinue work in the field.

Both within their respective sponsorship associations and on a trans-sponsorship basis, these different counseling centers develop strategies and joint policy positions on specific topics such as the Prostitution Act.

For example, the Alliance of Counseling Centers for Sex Workers (Bündnis der Fachberatungsstellen für Sexarbeiterinnen und Sexarbeiter – bufas e.V.) was founded in 2010.³⁵ It works to achieve the following goals:

→ lasting improvement of sex workers' living and working conditions

35 www.bufas.net

- legal and social equality for sex workers
- equal status for sex work in commercial/trade law
- decriminalization of sex work and de-stigmatization of sex workers

In addition to these specialized counseling centers, sex workers also seek out counseling centers for STIs and HIV/AIDS at public health departments – see section 7.2.

Addresses can be found here:

www.services4sexworkers.eu/s4swi/services/country/?name=Germany

specific support and prevention measures can reach this target group. Their personnel come into contact with the children and juveniles in the course of their outreach activities, or are alerted by other sex workers. Joint efforts with information services at schools and youth agencies have also proven successful (Leopold/Grieger 2004). While it is illegal for brothels and brothel-related enterprises to offer sexual services by minors, girls and boys can engage in prostitution in less conspicuous ways on the streets and in pubs, discotheques and residences. All experts are called upon to expand the prevention and support services in this area.

7.2 SUPPORT SERVICES FOR MINORS IN PROSTITUTION

Prostitution by minors is illegal, but takes place anyway in grey zones and at interfaces of various milieus such as adult prostitution, homeless/street youth, and the drug scene. With the exception of drug-related aspects, prostitution by minors is usually hidden, which makes it difficult to reach and help those affected. Counseling centers such as Dortmund's "Mitternachtsmission" offer specific support services for minors. The counselors report very different individual reasons for why girls and boys enter prostitution. Most of these are economic, such as low job prospects, or poor pay in typical occupations for girls and women. A lack of life experience, the wish for consumer goods, naivety, "being in love", hope for a better life, and double standards in their social environments can also prompt them to enter prostitution. There is much discussion of the "lover boy" strategy of recruiting girls, which consists of having young men fake a love relationship to entice or induce them into prostitution.³⁶ Girls who run away from homes or families avoid contact with the staff of public institutions for fear of being sent back. They see no choice but to go underground, yet at the same time have to support themselves (Mitternachtsmission 2012: 56). However, counseling centers that offer

³⁶ <http://www.kok-buero.de/kok-informiert/aktuelle-kok-publicationen/fachliteratur-studien-berichte/fachliteratur-studien-berichte/eintraege/detailansicht-fachliteratur-studien-berichte/artikel/expertise-zum-thema-deutsche-betroffene-von-menschenhandel.html>

7.3 HEALTHCARE SUPPORT SERVICES

Many larger cities in the Federal Republic of Germany have special counseling centers for sexually transmitted diseases, which can be used not only by sex workers but also by anyone affected. They often have multi-disciplinary teams, i.e. physicians who offer anonymous testing for STIs and treatment if needed. Social workers provide information, via interpreters if necessary, about protection against STIs and the use of condoms. Female sex workers receive information about legal matters such as health insurance and taxes, about protection against violence, and how to “hustle and stay healthy” in general. Social workers from the health departments also offer these counseling/informational services in outreach settings, i.e. on the streets or other workplaces.

Health department social workers do not have the right to enter brothels; they have to describe their services and convince brothel operators of the benefits of information about disease prevention and safe sex practices. Sex workers, who are no longer required by law to undergo regular exams for STIs at the health departments, can now receive counseling on all matters of importance to them, including health and health insurance, taxes, and possibly finding other employment. Since the elimination of compulsory health exams, social workers have been offering assistance in the event of problems or crises. This has led to a greater number of sex workers visiting the health departments under difficult circumstances than before the Infection Protection Act (IfSG) went into effect in 2001. This clearly indicates that a voluntary basis is the only way to effectively prevent sexually transmitted diseases and to provide assistance if coercion is involved in prostitution.

Health department counseling centers for STI/HIV: www.services4sexworkers.eu/s4swi/services/country/?name=Germany

7.4 SUPPORT SERVICES FOR PERSONS TRAFFICKED FOR SEXUAL EXPLOITATION

Human trafficking for the purposes of sexual exploitation consists of deceiving or forcing women – including but not limited to those from other countries – to engage in prostitution. But women who have freely chosen to engage in prostitution can also become victims of human trafficking under certain circumstances. According to the status report (Bundeslagebild) from the Federal Criminal Police Office (BKA), 27 percent of the human trafficking victims identified in 2011 stated that they were willing to enter prostitution (Bundeskriminalamt 2011: 11). Counseling centers for trafficked persons also report that some of them had not been deceived about working in prostitution but rather about the working conditions. For example, they received only a fraction of the promised earnings, had to engage in other sexual practices, or were not allowed to select clients on their own (Prasad 2008: 70). Often other factors are involved such as fictitious debts that need to be worked off for entering the country, or the withholding of passports. Such practices deliberately create dependency relations that fall under the criminal offense of human trafficking for sexual exploitation.

Trafficked persons can receive support from specialized counseling centers in Germany. These centers are NGOs with different sponsors, or from the women’s movement, which address the interests and issues of their clients. The centers help their clients know and assert their rights, and support them in exercising autonomy. The services are voluntary, and if needed can be anonymous and provided in clients’ native languages. The counselors are legally bound to preserve confidentiality with respect to both the clients and all information they receive. They can also coordinate a range of more specific counseling services. Each German state currently has at least one such specialized counseling center. All the centers are organized in the German NGO Network Against Trafficking in Human Beings (KOK) – either as members themselves or via the membership of their head offices.

These counseling centers provide a wide range of services, some of which differ markedly depending on the respective approach and facilities. They

usually have mixed funding consisting of subsidies from the ministries (usually of social affairs) in the respective states, subsidies from the respective municipalities, money from foundations, and donations. In addition to providing direct support to trafficked persons, most of the centers also do awareness raising, networking, lobbying and committee work. They focus on the following areas:

- crisis intervention and consultation, including outreach
- ongoing psychosocial counseling and support
- clarification of residence and welfare issues, covering basic needs
- arranging accommodation, medical care, therapy, education/training and recreational opportunities
- accompanying clients to meetings with state agencies
- accompanying clients at police investigations, criminal proceedings, and court, including psychosocial support for legal proceedings
- arranging legal assistance
- providing information about rights as victims of criminal acts, e.g. via the Crime Victims' Compensation Act (OEG)
- support for settling in Germany: language courses, finding a place to live and educational/employment opportunities
- organization and support for leaving Germany and locating support services in home countries.

Many counseling centers, on account of their history, sponsors and general approach, concentrate primarily on women. With an ever greater focus on human trafficking for sexual exploitation, which was designated a criminal offense in its own right in Germany in 2005 in section 233 of the Criminal Code (StGB), trafficking in men is becoming more visible as well. The counseling centers can either serve men or direct them to other suitable centers.

The women find out about these specialized counseling centers by referrals from general counseling centers or similar services at hospitals and psychiatric clinics, pregnancy counseling centers, women's shelters, social agencies, private individuals, or by

enquiring themselves. But they can also be referred by the police, if there is reason to suspect that human trafficking is involved with women found without valid documents in the course of raids on brothels. Cooperation between the counseling centers and public prosecutors was established in 1999 by means of a joint guideline developed by a federal/state working committee on trafficking in women, changed to "human beings" in November 2012 (B-L-AG Menschenhandel).³⁷ The aim and purpose of the guideline is to set clear and binding rules for dealing with the trafficked persons. It specifies consistent and transparent responsibilities and tasks – with respect to joint action in this area – and also defines the respective areas of jurisdiction. Another important element is a list of contact partners for the police and the counseling centers. Such cooperation guidelines have proven to be effective in 13 German states in creating a workable basis for cooperation between the counseling centers and the police.³⁸

A list of all 37 member organizations in the KOK is found at: www.kok-gegen-menschenhandel.de/en/member-organisations-counselling-centres.html

³⁷ The "B-L-AG Menschenhandel" is an interdisciplinary committee that was founded in 1997 under the guidance of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). It facilitates trans-disciplinary communication and the development of strategies and recommendations for action. In addition to various federal ministries (BMFSFJ, BMAS, BMI, BMJ) its members also include the Federal Criminal Police (BKA) and KOK: <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=73024.html> [2 November 2104]

³⁸ See the working paper at: <http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=101044.html>



8 Retraining programs

Within the European Women’s Lobby (EWL) and other European contexts there has been intensive discussion about reducing or completely eliminating prostitution. In countries with abolitionist positions, however, no real support or training is offered to sex workers seeking to find other employment.

In Germany, most counseling centers for sex workers also offer information for those who wish to leave prostitution and seek other possibilities.

Little is known about the motives of women who have been working in prostitution but seek to find other employment. Studies provide little if any information about the decisions of women who have already taken this step, in part because they have already attained their aim. More information is available about the women who seek out counseling centers or “exit programs” for this purpose.

One evaluation of support measures for leaving prostitution³⁹ confirms what appears to be a pattern. For many women, the wish to pursue another activity results primarily from psychological, physical and economic burn-out. This can make them feel unable to cope with what can be tough everyday working conditions and can require extreme use of resources. Another motivation for leaving prostitution is a decline in earnings. If sex work no longer makes financial sense, women start to think about new possibilities. Age too can play a role.

For women who want to give up prostitution, the decision depends on finding other employment that will enable them to make a living. The crucial factor here is whether realistic possibilities exist or are conceivable.

The motivation for a new start lies in the hope to improve the quality of life in a different professional and social environment. However, if the necessary goals that have to be achieved lie too far in the future, or consist solely of living at a subsistence level on government support, or depend on what seem to be unreasonable activities, the motivation to start anew can decline or the attempts to strike off on new paths can fail.

39 Kavemann/Steffan, publication expected in 2015

When sex workers decide to enter new sectors, they often face a large number of difficulties. In addition to financial, family-related and/or health problems, nearly half of them have gaps in their educational or professional backgrounds that generally render attempts to find work on the mainstream job market unsuccessful. It is therefore important for them to have access to specialized support and qualification programs.⁴⁰

8.1 SUPPORT FOR NEW EMPLOYMENT

Experts in social work, policy-making and social sciences in Germany have long considered ways of promoting retraining opportunities. Various different models have been tested. A major distinction has to be drawn between individual counseling/guidance for finding new work, and retraining programs in a group context. Some cities in Germany have carried out sporadic retraining programs in group contexts, such as computer seminars. However, more effort has been put into individual counseling models in order to locate the best solutions for the women in finding training and occupational opportunities and managing debt.

Exit programs in the form of counseling and training services used to be funded by individual states or municipalities or also by the European Structural Funds (Kavemann/Rabe 2008). This funding was provided on an occasional basis, and has essentially stopped in the last ten years. However, a sufficient range of these support services is not available (Kavemann et al 2006b). Since 2011 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has been funding a federal model project at four locations, where counseling centers for sex workers are testing new forms of support and qualification programs. This model has low entry criteria: women need not have left prostitution to take part in it. The model is being evaluated by two independent research institutes, with results expected in the autumn of 2015.⁴¹

Many challenges are associated with leaving prostitution. Society has not proven sufficiently open to

40 ibid.

41 For more information: <http://www.kassandra-nbg.de>; <http://www.diwa-berlin.de>; <http://www.pink-baden.de>

give sex workers, who face considerable discrimination, a chance to seek new opportunities – as it does for those from other fields who make career transitions. Discrimination leads to isolation, and erects high barriers that make it difficult to leave the field of prostitution.

Some sex workers pay excessively high rents for their flats, or they do not have their own homes – their workplace is also where they live – so finding a new job also means finding a new place to live. Affordable flats are not easy to come by, especially in large cities. Debts delay plans to seek new opportunities. For a variety of legal reasons, it is especially important to manage debts before taking a job with social insurance requirements and benefits. A positive note here is that the new law on personal insolvency that came into effect on 1 January 1999 offers individuals the chance to become free of debt even if they have little or no income.

Since the Prostitution Act came into effect, counseling centers report a greater number of clients. This is true of health department centers, specialized counseling centers for sex workers, and sex workers' self-help organizations. Those active in prostitution have a higher need for information, some because they want to pursue their activity legally with the requisite tax and commercial registrations, and others because they are having problems with tax offices or health insurance agencies. As part of these initial contacts with groups of clients who previously would not have sought out their services, staff members at counseling centers can draw their attention in advance to ways of seeking new employment opportunities.

9 Open questions and political controversies

9.1 DO THE PROSTITUTION ACT AND ASSOCIATED MEASURES MEET EXPECTATIONS?

Many different expectations from many different contexts have been placed on the Prostitution Act. These expectations often extend well beyond what an omnibus act on the federal level can provide. There have been hardly any associated measures thus far. Generally speaking the “expectations for the Prostitution Act” are more a matter of “expectations for comprehensive government regulation of prostitution”. In some instances it would be more accurate to speak of “hopes” rather than “expectations”, especially because the sex workers themselves are not always in a position to formulate expectations.

Surveys have shown that sex workers desire a greater degree of fairness and a higher level of respect (Kavemann et al 2006, Leopold/Steffan 1997; Steffan/Kersch 2004). The Prostitution Act lays the foundation for this by eliminating the formal element of “against good morals” (*sittenwidrig*), but actually achieving these desires will require a transformation in society. This in turn will have to be the sum of many different discussion processes – including discussions about the stigmatization and discrimination of sex workers. Another expectation is that of improved working conditions. The Prostitution Act lays a foundation here too, but effective implementation has thus far been hindered by state jurisdiction over commercial and building law, and also by labor protection regulations which are linked to the type of employment. If no initiatives for standards and regulations in this area come from the states, the Prostitution Act will not have any further consequences. More discussion has been prompted in this area on the federal level (BMFSFJ 2012).

Sex workers who want to leave the sector for other means of employment expect support in seeking new opportunities and in securing their livelihoods. They also expect the threshold criteria to be lowered for access to good treatment for trauma, as well as for health and family problems.

Expectations on the part of brothel operators (Kavemann et al 2006) center on the ability to lay firm plans. Without such plans they will not invest in their enterprises. States and municipalities need to produce initiatives that will require prostitution enterprises to put hygiene and safety standards into place, because the businesses will not take action on their own. More effort should therefore be put into making changes to commercial law.

Other groups in society expect the Prostitution Act to help combat human trafficking, reduce the influx of sex workers from other countries, reduce prostitution in general, or even reduce migration. The Prostitution Act cannot fulfill these expectations, because they would require entirely new laws and measures.

The main point here is that the Prostitution Act can fulfill only a few expectations. Further policy and social initiatives are needed to attain the aims of the Prostitution Act.

9.2 DOES THE PROSTITUTION ACT ENCOURAGE PROCUREMENT AND HUMAN TRAFFICKING?

Until 2002, engaging in prostitution in Germany was considered “contrary to good morals” (*sittenwidrig*), but it was legal. Only the promotion of prostitution was prohibited, as specified in section 180a paragraph 1 sentence 2 of the Criminal Code (StGB). Because the promotion of voluntary prostitution is no longer illegal since the Prostitution Act went into effect as of 1 January 2002 (and the StGB was correspondingly amended), opponents of prostitution especially fear that decriminalization will lead to an increase in procurement/controlling activities as well as an increase in human trafficking within Europe (see SOLWODI, 18 June 2012).

Successive opening of EU borders to southeastern European countries, and the associated (in part still restricted) freedom of movement for employment purposes, has led to higher levels of labor migration to Germany. Given the precarious economic conditions and lower income levels of new EU countries compared to those in the Federal Republic of Germany, the opportunity to work in Germany seems attractive – leaving aside the fact that actual access

to the country's labor market is restricted to certain low-income sectors (see section 6). But there is no substantiation for the argument that a greater influx of Bulgarian and Romanian sex workers in Germany means that inner-European human trafficking is flourishing on account of the Prostitution Act. Equating the activity of prostitution with human trafficking would also mean declaring these women to be victims of human trafficking.

Estimates of how many women and men in Germany are affected by human trafficking for the purposes of sexual exploitation differ widely and are not based on sound statistics. The only reliable figures are published annually by the Federal Criminal Police Office (BKA) in its status report on human trafficking (Bundeslagebild Menschenhandel). Contrary to the claim that the Prostitution Act promotes human trafficking, it shows no increase in the number of victims but rather a slight decline over recent years. However, the status report only shows the statistics known to the police, i.e. those based on completed investigations. If we consider the difficulty of identifying and establishing access to trafficked persons (Herz/Minthe 2006), it quickly becomes clear that the BKA statistics cannot realistically reflect the actual situation. This is also the position of the federal government, which holds that a high number of unreported cases must be assumed (see Bundesrat Printed Paper 17/12504). But there are not any studies seeking to assess the extent of unreported cases that would allow reliable estimates. The position of the federal government is also supported by the experience of the counseling centers, which repeatedly report the difficulties of gaining access to trafficked persons, and which note that not all clients file charges and therefore that even these cases are not reflected in the status report from the BKA.

A recent study (Cho/Dreher/Neumeyer 2012) caused a sensation by creating a link between the liberalization of prostitution rights and higher levels of human trafficking. Although the authors themselves concede the poor quality of their data and resort to selective estimates, they nevertheless draw conclusions that they incorrectly present as causal connections. Among other things they refer to data from a UNODC report (2006) but ignore an important distinction: UNODC lists only the number of reports on human trafficking, whereas Cho et al present these figures as the actual number of cases

of human trafficking (see Henning/Walentowitz 2012). The authors also do not define the concept of human trafficking, nor do they specify what is meant by "legalization" of prostitution – which in Germany was already legal before the Prostitution Act.

The question of whether or to what extent the Prostitution Act encourages controlling (pimping) and human trafficking has generated controversy. Advocates of abolitionism use claims that have not been substantiated about the Prostitution Act in this context, in order to prohibit voluntary prostitution on the one hand and to make the purchase of sexual services a criminal offense on the other. By eliminating the provision that makes it illegal to promote (voluntary) prostitution, the Prostitution Act lays the foundation for improving the working conditions of sex workers and facilitating their access to support structures. Differentiating between prostitution on the one hand and human trafficking on the other does not make it harder for trafficked persons to find assistance. Experience on the ground at most counseling centers, which work together directly with trafficked persons as well as with the police and the justice system, does not confirm any link between the Prostitution Act and an increase in human trafficking (see KOK 2008).

9.3 DOES THE PROSTITUTION ACT HINDER CRIMINAL PROSECUTION?

With the introduction of the Prostitution Act, parts of the Criminal Code (StGB) were also amended (see section 4.4). The aim of these amendments was to improve the legal framework conditions for sex workers to have access to social benefits, to protect them from exploitative structures (Bundestag Printed Paper 16/4146, p. 23), and to "remove the basis for associated criminal activities by creating a legal framework for engaging in prostitution" (Bundestag Printed Paper 14/5958).

In the debate on this topic, however, fears continue to be expressed that efforts to combat criminality in red-light districts, with particular mention of human trafficking and organized criminality, "could have been hindered" by the changes to the legal status of prostitution in the Criminal Code (Bundestag Printed Paper 16/4146, p. 23).

These assertions are backed up by a declining number of criminal proceedings for human trafficking and other offences such as organized criminality and controlling prostitution (Bundestag Printed Paper 16/4146, p. 23). In the 2007 report on the impact of the Prostitution Act commissioned by the federal government (BMFSFJ 2007), however, the majority of experts established no connection between the declining number of cases and the introduction of the Act (Bundestag Printed Paper 16/4146, p. 26). The number of cases was declining before the Act came into effect. Moreover, it is usually only possible to prosecute human trafficking and controlling/procurement on the basis of statements by witnesses who are victims. According to experts, improving criminal prosecution in these areas will depend primarily on improved access to victims/witnesses and on improved treatment of them including residence rights and witness protection programs (Wohlfahrt 2007, Helfferich/Kavemann/Rabe 2010, Steffan 2010).

Some legal experts (e.g. Renzikowski 2008, Wohlfahrt 2007), however, consider critiques of the Prostitution Act to be “essentially” valid. As they describe it, the Prostitution Act was limited to laying a foundation in civil law to engage in prostitution, and completely neglected to address the matter of monitoring compliance. But this was not any better under the previous legal conditions. The future is expected to bring increased calls for further regulations (e.g. commercial, planning/building, licensing) to establish a binding legal framework for prostitution in Germany that is uniform on all levels in order to strengthen the legal status of sex work (Renzikowski 2008).

Eliminating the status of prostitution as “contrary to good morals” (*sittenwidrig*) opens up new approaches for criminal prosecution which can also be used in more intensive ways. Instead of protection “against prostitution”, the current legal situation seeks protection “within prostitution” (Renzikowski 2008). This new legal foundation has enabled interdisciplinary model programs by e.g. the police and social workers to be developed over recent years, which can substantially improve protection and legal status for sex workers (Steffan 2010).

9.4 PRO AND CONTRA THE CRIMINALIZATION OF PURCHASING SEX SERVICES

Particularly with respect to human trafficking for the purposes of sexual exploitation, the question is often raised of whether criminalizing those who purchase sexual services might solve at least some of the associated problems. Some participants in this debate, however, are applying this approach not only to human trafficking but also to the field of voluntary legal prostitution. The different positions held by policy makers and the public in general are also found in feminist discourses. Here too, the view that women should be able to voluntarily engage in this work is juxtaposed with the view that sex must not be for sale. Some hold the position that prostitution in general is not compatible with a positive image of women. And not a few see prostitution as a form of violence against women which must be combated. Those who hold this latter position would presumably be in favor of general criminal liability.⁴²

Reference is made to countries where sex workers are not liable to criminal prosecution, but their clients are. One of the most prominent examples is Sweden. While the Swedish government and advocates of this solution often describe the approach as extremely successful (Ministry of Justice, Sweden 2010), critics portray it as a failure. In the 13 years since the law was introduced, the Swedish government has not succeeded in demonstrating that the number of clients or providers of sex services has declined or that human trafficking has decreased (e.g. Jordan 2012; Levy 2011; Dodillet 2011). These studies report that the law has encouraged sex workers to go underground – or for sex services to be offered and purchased in the border regions of neighboring countries or on ships, and that this hinders both the prosecution of violent crimes and the access to social and healthcare services. In addition, these studies suggest that the criminal offense of solicitation can only be proven with difficulty and the legal proceedings are too cumbersome to have a widespread effect.

In the Federal Republic of Germany this matter is most likely to be discussed in connection with

⁴² See *EMMA* magazine, May/June 2003 and January/February 2013

combating human trafficking for the purpose of sexual exploitation, although other steps can be taken with regard to criminalizing the purchase of sexual services such as raising the minimum age to 21, reintroducing compulsory health exams, and so on. Advocates hope that introducing penalties will have a deterrent effect. Opponents note that compulsory measures connected with prostitution have thus far shown no success, but rather have worsened the situation of sex workers, and therefore doubt that penalizing clients would be helpful in this regard. Moreover, if clients were punishable by law, they would not be willing to help those affected by violence or human trafficking. It can be assumed that nobody will alert the police to the possibility of human trafficking if they can be prosecuted for having made use of the services. The opponents of penalizing clients also seek effective ways of combating violence against women, and are certainly in favor of criminal prosecution of men who knowingly use the services of victims of human trafficking.

Prosecuting clients who purchase legal and voluntary services from sex workers would also face the difficulty in Germany that since the Prostitution Act went into effect, the agreements between sex workers and their clients are no longer “contrary to good morals” (*sittenwidrig*) but rather legally valid. Introducing a measure of this type would mean either defining a new criminal offense or reintroducing the immorality designation and reinstating the previous discriminatory legal status for sex workers – which is not viewed as expedient.

9.5 WHAT BENEFITS WOULD LICENSING PROSTITUTION BRING?

Mandatory permits or licenses are an established part of commercial law in Germany, and serve to protect consumers.

Some of the German states, parts of the Federal Criminal Police Office (BKA), the majority of the police, and some religiously affiliated counseling centers for trafficked persons are in favor of requiring permits for prostitution enterprises (brothel licenses) as the main component of their calls for greater legal regulation of prostitution. They argue

that “every beer tent requires a license, but a brothel can be run without one.”⁴³

The following reasons are given for requiring brothel licenses:

- They are an indispensable instrument for combating human trafficking and exploitation.
- They are the only way to ensure that the police and counseling center personnel have access to trafficked persons.
- They are the only way to do background checks on brothel operators.
- They help in combating associated criminal activity.

Draft legislation is currently under discussion that would require operating licenses – or permits – for brothels.⁴⁴ Yet specialists criticize the form that this mandatory licensing would take: the majority of counseling centers for sex workers and counseling centers for sexual health at public health departments explain their criticism as follows:

- Mandatory licensing that does not contain any criteria by which compliance also grants rights would serve only to monitor prostitution/brothel-type enterprises without improving the situation of the women who work there.
- Mandatory licensing without concomitant rights would once again just be a special law for sex work, and would serve surveillance purposes instead of normalizing, reducing stigmatization, and opening up new alternatives.
- Background checks can be evaded by using a front man or woman.

However, mandatory licensing can also provide opportunities if it introduces rights. This would be the only way to:

- develop and set minimum standards for safety, hygiene, working conditions, etc. for brothels

43 Press statement by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), 24 January 2007

44 Draft Act of 4 June 2013 for Combating Human Trafficking and Monitoring Places of Prostitution (Bundestag Printed Paper 17/13706)

- protect women better from violence and coercion
- enable licensing to contribute positively to combating human trafficking
- give sex workers the chance to check whether a brothel is registered and see who is in charge before starting to work there
- achieve greater transparency, and enable users/clients to see whether it is a legal/monitored brothel where no one is forced to engage in prostitution
- make the right to operate a brothel an earned one, instead of one simply given without comment as before
- give brothel operators a secure legal status and therefore an incentive to invest in appropriate working conditions
- elevate prostitution enterprises from the grey zone of tacit toleration and “blind-eye” treatment by authorities

The consequences of mandatory licensing for the women and men who work in prostitution would depend on the details of the regulations. If the context is limited to state control, this can be expected to worsen the situation of sex workers:

- Because there are no official definitions of places of prostitution, brothels, brothel-like enterprises, etc. in Germany, these would first have to be created.
- Licenses must not be a requirement for outdoor work or for self-employed persons who work alone.

Greater transparency in the “red-light milieu” is needed, plus a reduction in associated criminal activity. Mandatory licenses that entitle the police to search “prostitution enterprises” at any time without due cause for investigation is not a means to this end, and is at odds with the current Prostitution Act (see sections 4.4.1 and 4.4.2 above). Mandatory licensing must include both rights and obligations, and above all it has to strengthen the position of sex workers – only then can it effect positive changes and protect women from coercion and exploitation.



10 Policy initiatives and prospects

Despite all the ideological differences in this area, there is now a new culture of debate. It offers excellent opportunities to replace unfruitful and polarizing approaches with pragmatic strategies that achieve concrete solutions by engaging in well-informed discussions and by addressing the interests and needs of all those involved. Some of these strategies are presented here, on account of the important steps they take in a productive direction.

10.1 REPRESENTING SEX WORKERS' INTERESTS

Sex workers' interests are represented in Germany both by organizations of outside researchers and specialists, and by organizations of sex workers themselves.

10.1.1 ALLIANCE OF COUNSELING CENTERS FOR SEX WORKERS (BUFAS E.V.)

In the late 1990s sex workers and counseling centers for prostitutes came together to exchange ideas about how to improve primarily the legal status of prostitution. The topics they discussed then were not very different from those of today: exclusion zone ordinances that make sex work more difficult, access to health insurance for sex workers, migrants in sex work, taxation, making prostitution an official category of self-employment or business, ways of working independently in prostitution, etc.

The Federal Working Committee on Law/Prostitution (Bundesweite Arbeitsgemeinschaft Recht/Prostitution) was formed, which made many statements to policy makers, the press and the public over the years in order to inform them about the situation of sex workers and the legal status of sex work, and to call for changes.

Since the Prostitution Act came into force, the public view of sex work has changed but sex workers

continue to be stigmatized. There is no professional means of conveying serious information about entering sex work, there is no union representation, the legal status in many areas is unclear or has not been adapted to the Prostitution Act (e.g. the ban on advertising), and employment relations subject to social insurance have not been created.

To reinforce the calls for change and to raise the profile of the movement – throughout all parts of society – the Federal Working Committee on Law/Prostitution became the Alliance of Counseling Centers for Sex Workers (Bündnis der Fachberatungsstellen für Sexarbeiterinnen und Sexarbeiter e.V.) or bufas e.V. in 2010. bufas e.V. is an alliance of specialized counseling centers for sex workers, and has an advisory council of active sex workers. It currently has 16 member organizations and three organizations with guest status. Its headquarters are in Berlin.

The declared aims of bufas e.V. are:

- to promote professional and cultural education for sex workers
- to raise awareness of sex workers' concerns among government, administration and the public
- to promote self-organization on the part of sex workers

It works to achieve:

- lasting improvement in the working and living conditions of sex workers
- legal and social equality for sex workers
- equal treatment of sex work in commercial/trade law
- decriminalization of sex work and de-stigmatization of sex workers

bufas e.V. views its guiding principle as actively helping to change and shape society and policy together with the sex worker's rights movement (Hurenbewegung) and in the interest of the workers. It strives to articulate its demands on national and international levels and advance solidarity-based networking. For more information: www.bufas.net

10.1.2 PROFESSIONAL ORGANIZATION FOR EROTIC AND SEXUAL SERVICES (BESD)

Active and former sex workers founded the Professional Organization for Erotic and Sexual Services (Berufsverband erotische und sexuelle Dienstleistungen – BesD) on 13 October 2013. Its founding members included residence, brothel and street based workers as well as escorts, call boys, tantra masseuses, and dominas. Its members also include active or former brothel operators.

This country-wide organization aims to improve the working and living conditions of sex workers. It seeks to provide information about the different aspects of prostitution and to convey a realistic picture of sex work to policy makers, the press and the public, and thereby to oppose discrimination and criminalization of people involved in sex work.

The organization was founded in light of the continuing existence of numerous special regulations that hinder sex work. It criticizes legal measures such as the exclusion zone ordinances and the ban on advertising. It also sees a need to address increasing calls from the government and the media to expand and strengthen the Prostitution Act, and to make sure that these efforts improve sex workers' rights. More information is available at: www.sexwork-deutschland.de

10.2 MODEL PROJECTS: JOINT INSTITUTIONAL EFFORTS TO ADDRESS PROSTITUTION

Policy initiatives have been launched in many places in Germany to address questions related to the Prostitution Act, such as how to implement it, how to assess its effects, and how to make potential improvements. These initiatives tackle a high degree of conflict between different policy-making interests, and between sex workers and neighborhood associations and residents. They seek solutions that lead to greater acceptance and mutual respect on the one hand, and to resolute ways of combating criminality. Some examples are presented below. Their general approach is substantiated by the results of an international comparative study on prostitution

policy (Wagenaar 2013) and the recommendations of an international conference in 2013 on “Exchange of Experiences on Regulatory Measures in the Area of Sex Work” (organized by the Women’s Department of the City of Vienna). One of their conclusions is that the complex dynamics of prostitution require appropriate coordination among the various authorities and agencies. The specialist term in the literature for this is “reciprocal dependency”, which means that mutual agreement is required for policies to be successful. It also requires continuous, sustained communication among those involved in implementing the policies. That includes developing informational and participatory processes, and promoting network-building skills (cf. Wagenaar 2013: 19).

10.2.1 “ROUND TABLE ON PROSTITUTION” IN NORTH RHINE-WESTPHALIA (DEVELOPING STRATEGY FOR A LARGE FEDERAL STATE)

The cabinet of the state of North Rhine-Westphalia commissioned the round table known as Runder Tisch NRW Prostitution to develop a strategy for putting the Prostitution Act into practice. The state government was thereby seeking to improve the living and working conditions of sex workers and to strengthen their right to self-determination. In addition, it proceeded from the premise that “regulating prostitution can make an important contribution to combating human trafficking for sexual purposes”.⁴⁵ The round table started its work in January 2011. Its approach was intended to bring together everyone affected for the first time at state level. Its permanent members include representatives of the state ministries, municipal umbrella organizations, the city of Dortmund, counseling centers for trafficked persons, the state working group on male prostitution, the state working group of municipal equal opportunity officers, and the state working group on law/prostitution, as well as two self-employed active sex workers. The round table is also charged with bringing in outside experts, in order to benefit from both social and other scientists as well as specialists with practical experience.

⁴⁵ http://www.mgepa.nrw.de/emanzipation/frauen/frau_und_beruf/runder_tisch_prostitution/index.php

The tasks of the round table are to analyze the situation in NRW, to observe current developments in prostitution and to draw up recommendations. It describes itself as facing the challenge of discussing opposing positions and projections on a sensitive topic and finding solutions that everyone can live with. “The challenge that round tables are formed to face is especially large in our case: The issue has to do with matters of sexuality and thus the most intimate aspects of personhood. It touches on basic ethical positions. Conduct and procedures at this round table therefore need to be marked by an especially high degree of sensitivity and mutual respect” (ibid).

The round table states from the start that there will be no ideal path that everyone will agree with – as shown by attempts in other countries – and that “there will be no arrangements without undesired side effects”. In addition, the people who work in prostitution have very different interests themselves, depending on their type of work and their individual situations. The sex industry is marked by competition, and by a wish for as little bureaucracy as possible. Moreover, the monitoring that comes with regulation excludes those sex workers for whom anonymity is more important than safety. The round table therefore emphasizes the importance of keeping the limitations of regulation in mind at all times. However, “this should not hold up the process, launched by the Prostitution Act, of strengthening prostitutes’ right to self-determination” (ibid).

10.2.2 “ROUND TABLE ON SEXUAL SERVICES” IN HAMBURG (DEVELOPING STRATEGY FOR A CITY-STATE)

In 2008 the city-state of Hamburg launched the Runder Tisch sexuelle Dienstleistungen, a round table on sexual services, which met until presenting its results in 2012. The aim was to found a trans-institutional committee with a restricted time framework that would create a mutually agreed strategy to put the Prostitution Act into effect, discuss low-threshold exit programs, and develop strategies against third-party dependency and for independent sex work. All the relevant senate departments

and authorities were represented at the round table, as was the Hamburg-based Ratschlag Prostitution (Prostitution Proposal) network.⁴⁶

Principle areas of agreement from the round table included:

- “Prostitution by adults is not an immoral means of earning money, but rather a profession like any other.
- The working and general situation of prostitutes should be improved.
- Equal treatment with other occupations and a secure legal status for prostitutes should be standards.
- Targeted information in relevant languages should facilitate access to support systems and explain obligations and rights.
- The interests of prostitutes and the general public should be jointly clarified and balanced as much as possible.
- Exit assistance programs are an important aim.
- Human trafficking and exploitation should be countered by preventive means and combated by repressive means.
- Improvement is needed in preventing under-age prostitution. Adequate social welfare assistance should continue to be provided to prevent no-exit trajectories” (Runder Tisch sexuelle Dienstleistungen Hamburg: 11).

The focus should be on:

- “Creating framework conditions that can strengthen prostitutes’ right to self-determination. This could increase their willingness to provide crucial evidence for prosecuting crimes of human trafficking.
- Combating every type of exploitation of prostitutes” (ibid: 12).

The round table discussed a large number of underlying and current problems, and drew up recommendations for solutions. Attention focused on conflicts in one Hamburg district with considerable

⁴⁶ The “Ratschlag Prostitution” network’s members include organizations such as Amnesty for Women/TAMPEP, Basis-Projekt, CASA blanca, Kaffeekluppe, Koofra e.V., Ragazza e.V., and Sperrgebiet, as well as the ver.di trade union for service providers.

prostitution and complaints by residents. Participatory strategies were recommended that are designed to encourage the two sides to approach each other with mutual respect. The round table identified one problem in connection with southeastern European sex workers who are often in Germany or Hamburg only for short periods of time and thus have no vested interest in long-term solutions.

The round table ascertained that there is a sufficient range of counseling and support services in Hamburg for sex workers and trafficked persons. Important supplements were recommended: additional exit and retraining services, as well as specific programs for minors in prostitution – including drug users – in order to provide prompt alternatives and assistance and to prevent no-exit trajectories (ibid: 27).

Consensus was not achieved in all areas, and some conflicts remain – sex workers' support organizations have a fundamentally different view of exclusion zones than do public authorities – but decisive steps were taken to improve the living and working conditions of sex workers and recommendations were made for further development of the Prostitution Act.

10.2.3 “WORKING GROUP ON THE RED-LIGHT DISTRICT, PROSTITUTION AND HUMAN TRAFFICKING FOR THE MUNICIPAL CRIME PREVENTION COUNCIL” IN HANNOVER (DEVELOPING STRATEGY FOR A MUNICIPALITY)

In late 1998 the Municipal Crime Prevention Council (Kommunaler Kriminalpräventionsrat – KKP) of the city of Hannover, the capital of the state of Lower Saxony, launched the Working Group on the Red-Light District, Prostitution and Human Trafficking (Arbeitsgruppe Milieu, Prostitution, Menschenhandel). This step was taken because the Special Operations “Red-Light District” (Fachkommissariat Milieu), which was founded in 1996 with a wide range of activities, needed a high degree of coordination with non-police municipal departments.

Aims and actions of the working group:

- strengthening citizens' sense of safety
- increasing administrative efficiency at all levels
- intensifying exchange of information
- setting shared aims
- preventing/countering dangerous situations
- launching preventive strategies/measures
- identifying deficits in the law

Members of the working group:

- Hannover Police Department, Special Operations “Red-Light District”
- Hannover state capital: Law and Order department, Planning and Urban Development department, Equality Opportunity office, administrative office of the district of Mitte, KKP office
- Hannover region: Health department
- Hannover public prosecutor's office, witness protection program of the Hannover state office of criminal investigations (LKA), Hannover central customs agency
- Phoenix e.V.: Phoenix Project – Counseling Center for Prostitutes (Projekt Phoenix – Beratungsstelle für Prostituierte) and Kobra: Coordination and Counseling Centre for Victims of Human Trafficking (Koordinierungs- und Beratungsstelle für Opfer von Menschenhandel)
- Outside consultants for specific topics

The working group developed a shared approach. Attempts to use greater transparency to prevent criminal activity in the red-light district had failed on account of general legal conditions. Based on these findings, the working group developed comprehensive draft legislation which was received positively by the Interior Ministry of the state of Lower Saxony.

Further actions followed:

- A flyer entitled “Anschaffen in Hannover” (“Doing sex work in Hannover”) was developed for the EXPO 2000 World's Fair.

- The working group addressed questions about legislation proposed by the political party Alliance 90/The Greens designed to improve sex workers' legal and social status (Deutscher Bundestag, May 2001).
- When the Prostitution Act came into effect, the working group published two brochures, one for people in the red-light district and one for the staff of city/state offices.
- The working group joined discussions in 2005 on changing Hannover's exclusion zone ordinance.
- In 2006 the working group issued a position paper against changing criminal law to penalize clients.
- The working group launched a further draft legislation initiative in 2007 to include prostitution in commercial/trade law. It has been widely distributed and discussed, but thus far no action has been taken.

The working group also views its activities as lobbying for legal prostitution, and therefore against banning prostitution. Its objectives are the following:

- combating human trafficking
- explaining and promoting legal prostitution
- continuing to call for quality standards for sex workers
- helping to further develop commercial and other rights for sex workers
- monitoring and integrating developments in planning/building law
- helping to shape reforms to the Criminal Code where possible

The working group has established sound cooperative processes, and a good network.⁴⁷

10.3 PARTICIPATORY NEGOTIATION OF CONFLICTS OF USE IN PUBLIC SPACE

Ever more cities and municipalities in Germany are working to negotiate the disparate interests of sex workers, residents, educational and social facilities, and businesses. The aim is enable peaceful coexistence of different types of work and life based on mutual respect. We present two examples here, one from Berlin and one from Cologne.

10.3.1 KURFÜRSTENSTRASSE NEIGHBORHOOD PROJECT IN BERLIN

Peaceful coexistence of sex workers, residents, and businesspeople has been established in recent years in the central Berlin district of Tempelhof-Schöneberg.

“The neighborhood around Kurfürstenstraße in the northern part of Schöneberg and the southern part of Tiergarten is the home and place of work for long-time and new Berliners, elderly and young people, families with and without migration backgrounds, and people with a wide range of educational levels and occupations. There are many families with children. There are four social service offices for families, youth and seniors, three schools, two childcare centers and one mosque. A total of around 26,000 people live in these two administrative areas, of whom around 60% have a migration background” (Howe 2011: 7).

Prostitution has taken place here since 1850. Solicitation generally took place on the streets in front of the buildings, and services were provided in rented rooms in the buildings, brothels, associated night clubs, hourly service hotels and massage salons. Coexistence with residents and businesses was relatively routine on into the 1980s. Changes only began in the mid-1980s when many of the older buildings were torn down or modernized. Flophouses and pensions were discouraged. According to official statements, the intent was not to drive sex workers away from this traditional location. No real plans were present, however, and were not developed subsequently. There were no assessments

⁴⁷ The brochures are found on the Phoenix Website: www.phoenix-beratung.de; for more on the KKP see: www.hannover.de

of the consequences of these developments, which ultimately meant that sex workers' places of work were modernized away. The women resorted to outdoor work. The area around Kurfürstenstraße has become known not exclusively but certainly in part for street-based prostitution. This has led to noise (clients driving up and away), trash (such as used condoms on the streets), harassment by men not seeking services or by men accompanied by their wives or children, and also acts of violence against sex workers, especially against transsexual workers. In order to prevent the situation from escalating and in order to do justice to all sides (sex workers, residents, businesspeople), the district mayor of Tempelhof-Schöneberg commissioned the Center for Technology and Science (ZTG) at the Technical University in Berlin in 2011 to make an assessment and propose solutions and recommendations for action.

All those affected were involved. Interviews were held with sex workers, clients, residents, businesspeople, representatives of schools and childcare centers, experts from health agencies and counseling centers, police and policy makers. Round table discussions were held, as well as workshops at a church. The participants came to know and understand each other and each other's needs. Sex workers respected residents' wishes for quiet, for no condoms on the streets, and no sex in public. Residents saw that sex workers need to secure their livelihoods like everyone else. The result was a portrayal of the problem that all groups could agree upon. At public meetings moderated by members of the research project, solutions and a plan for action were developed jointly and have been put partially into practice:⁴⁸

- Further training opportunities for childcare center personnel have been offered on "How do I talk with children about sex/prostitution?"
- Informational events have been held for parents at a childcare center on the reasons why people enter prostitution.
- Informational events have been held on the topic of "clients".
- Group work has been done with (male)

48 The research report: http://www.tu-berlin.de/fileadmin/f27/PDFs/Forschung/Nachbarschaften_und_Strassen-Prostitution_Bericht.pdf

youth about transsexuals and female sex workers: they are often mothers, they have to feed their children, etc.

- Attacks by male youth on transsexuals have now stopped.
- The streets are cleaner (there have been joint clean-up actions by sex workers and the Berlin municipal waste disposal company – BSR).
- Sex workers are more discrete in soliciting business.
- There is a traveling photo exhibition on "Neighborhood and Street Prostitution – How Does That Work? A Trip through a District – 30 People Tell Their Stories" (Howe/Haug/Hemmerich 2012).⁴⁹
- The "Neighborhood and Street Prostitution" exhibition was shown at the Schöneberg district town hall in 2013.
- A manual was published for organizations that work with children, youth and families, entitled "Sex Education – Focus on (Street) Prostitution".⁵⁰

And there have been regular events on different prostitution-related topics at the neighborhood meeting place known as HUZUR, with average attendance of 150. Sex workers, residents, businesspeople and policy makers are talking with each other, and are well on their way to treating each other with respect. One problem here is the high level of fluctuation among the sex workers, who often change their location or city in order to improve business. The information and negotiation work therefore has to be continued in order to have long-term effects.

49 The report and photos can be downloaded free of charge from: http://www.berlin.de/imperia/md/content/batempelhofschoeneberg/abtgesstadtqm/plangendenk/qm/brosch__re_stra__enprostitution.pdf?start&ts=1361790874&file=brosch__re_stra__enprostitution.pdf

50 The manual can be downloaded free of charge from: http://www.magdeburgerplatz-quartier.de/fileadmin/content-media/media/2013_kh-gb/Logos___Copyrights/04_2013/Handbuch_sexuelle_Bildung-1.pdf

10.3.2 GEESTEMÜNDER STRASSE STREET PROSTITUTION PROJECT IN COLOGNE

More than ten years ago, Cologne was the first major city in Germany to break new ground in offering positive incentives to relocate street-based prostitution. This project combined elements of public order, health and social policy. The objective was to shift street-based prostitution from the center of Cologne to the outskirts of the city, to improve access to social service and health facilities for sex workers, and to combat violence against them. This model project was made possible by unusually close, interdisciplinary and targeted joint efforts on the part of the police, office of public order, health department, and the Catholic Women's Welfare Service (Sozialdienst katholischer Frauen – SkF) as the support organization.

The site for the street-based prostitution project lies relatively far from the center of Cologne, namely in an industrial area on the outskirts of the city. It can be reached by car, as well as by tram and bus. The official prostitution site of Geestemünder Straße is about as large as a football field. The premises consist of an approximately 400-meter solicitation zone in the form of a one-way circuit which must be driven at walking speed, the “box barn” with ten “performance boxes” (*Verrichtungsboxen*) that have special safety features to protect the sex workers, and the support facility run by the Catholic Women's Welfare Service (SkF).

The premises are surrounded by walls that protect both the workers and clients from observation. The support facility, which is housed in a container, has a lounge set up as a café and a small counseling room. For the protection of the workers and to monitor the site, police and public order personnel appear at irregular intervals.

Even if the objectives of the city of Cologne have only been met in part, because not all sex workers accept the new site and many continue to work in the exclusion zone, the project has proven its worth to this day. The aims of the SkF have been attained: there is no violence against sex workers at this site. There is a special focus on intensive counseling for workers who use drugs, which also includes rehab options and medium-term exit strategies from prostitution.⁵¹

51 www.stadt-koeln.de/mediaasset/content/pdf53/2.pdf

10.4 MODEL PROJECTS: JOINT INTERNATIONAL EFFORTS TO COMBAT HUMAN TRAFFICKING

10.4.1 THE GERMAN NGO NETWORK AGAINST TRAFFICKING IN HUMAN BEINGS (KOK)

Prompted by women's counseling centers, female migrant projects, counseling centers for sex workers, religiously affiliated organizations, and women volunteers, a network of counseling centers for persons trafficked for sexual exploitation has been developing in Germany since the late 1980s. The organizations started by organizing joint annual meetings. In 1999 this loose association acquired an official trans-regional structure in the form of a non-profit organization. The German NGO Network against Trafficking in Women and Violence against Women in the Migration Process (KOK) was formed, changing its name to The German NGO Network against Trafficking in Human Beings (KOK) in 2014. Headquartered in Berlin, it currently has 37 member organizations. The members are NGOs with various sponsors, feminist organizations, organizations for female migrants, counseling centers for sex workers, safe houses, lobbying organizations and charitable organizations. Despite or precisely because of the heterogeneous nature of these projects and organizations and regardless of their different backgrounds, there is a shared wish to network in order to represent the interests of trafficked persons and of female migrants who have experienced violence. That is the special nature of the KOK network. The needs and wishes of trafficked persons, especially women, are the constant focus of the comprehensive work done by these organizations.

KOK membership is voluntary, and the members decide whether to accept membership applications from other organizations. The KOK's main areas of activity are also determined by the interests of its member organizations. The overarching aim is to promote progressively better measures to tackle human rights violations against women. As the only network in Germany or even Europe with this focus that can build on long-term practical experience, the KOK forms a key interface between counseling

centers, policy makers and the public as well as relevant partner organizations. With a structure that is unique in Germany and also in Europe, the KOK is viewed in many places as a best-practice model.

Member organizations of the KOK share the following aims:

- combating human trafficking worldwide
- improving the rights of trafficked persons
- achieving human rights for migrants
- achieving legal and social equality for sex workers

With PR and lobbying work, the KOK takes part in public and policy-making discussions; it represents the interests of its member organizations and thus indirectly the interests of the trafficked women. For example, it responds to stereotypical media coverage of human trafficking (KOK/Czarnecki 2013). The degree to which persons who have fallen victim to human trafficking are treated with respect and dignity by society and the authorities depends to no small degree on how the topic is treated in the press.

The KOK also monitors and engages with the legislative process and other policy developments about its main concerns. With constant feedback from its member organizations, it can convey information about current problems and trends to policy-making levels. At the same time, it transmits policy developments to the level of actual practice where joint analyses can be made and corresponding strategies and action plans developed. The KOK also promotes targeted transfer of expertise, and has set up an information platform. Its administrative office publishes studies and research reports on relevant topics and places comprehensive current information about human trafficking and violence against migrants online.

The KOK is funded in large part by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). It also carries out EU-funded projects, such as the COMPACT (European Action for Compensation for Trafficked Persons) project completed in December 2012 to ensure that trafficked persons receive compensation for violation of their rights and for their unpaid labor. Various foundations also fund KOK projects. The OAK

Foundation has been financing the “datACT – Data Protection in Anti Trafficking Action” which was developed together with the La Strada International European network against human trafficking to strengthen data protection for trafficked persons. datACT promotes the rights of trafficked persons to privacy, autonomy, and protection of their personal data in Germany and other European countries. The time frame for this project runs from November 2012 to October 2014.⁵²

Best-practice example: Cooperation strategy between counseling centers and the police

Human trafficking can only be combated effectively and the trafficked women can only be successfully protected and supported if all those involved in these efforts work together. Even before international instruments such as the Palermo Protocol (2000) and the Council of Europe Convention of 2005 emphasized this point, cooperation between different institutions was already taking place in Germany. Under the guidance of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), the Federal-State Working Group on Trafficking in Women was founded in 1997, changed to “Human Trafficking” in November 2012 (B-L-AG Menschenhandel). This interdisciplinary body (see section 10.4.2) seeks to exchange information and expertise and to provide a forum for government and non-governmental organizations to meet eye-to-eye to jointly develop strategies and action plans against human trafficking for sexual exploitation.⁵³

One of the first and most important results of the Federal-State Working Group on Human Trafficking was its cooperation strategy of 1999,⁵⁴ which regulates joint efforts on the part of counseling centers and prosecutors’ offices. Trafficked women are referred to the counseling centers by general social counseling centers, counseling centers at hospitals and psychiatric clinics, pregnancy counseling centers, women’s shelters, state welfare departments or private individuals, or they seek the specialized centers themselves. But they can also be referred by the

52 For more information: www.kok-buero.de

53 <http://www.bmfsfj.de/BMFSFJ/gleichstellung,-did=73024.html> [7 November 2014]

54 <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-kooperationskonzept,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf> [7 November 2014]

police, for example following raids in brothels. This is where the cooperation strategy comes in, to ensure the best possible treatment of the women and comprehensive support despite the different approaches and aims of the prosecutors' offices on the one hand and the counseling centers on the other. The purpose of the strategy is to specify clear guidelines for dealing with trafficked persons. It makes the different responsibilities and work – relevant to the joint efforts – transparent and consistent, and also specifies the respective areas of jurisdiction. Another important component lists contacts for the respective institutions. Experience of recent years has increasingly shown that a workable basis for cooperation between the counseling centers and the police investigative offices needs to be defined in clear and binding terms. Based on the model of this cooperation strategy, which started as a recommendation for the individual states, there are now cooperation agreements in 13 of the 16 German states. They take the form of contracts between counseling centers and police stations or mandates by the relevant administrative authorities (usually ministries) (cf. Franke 2008: 113). These cooperation agreements often have similar focuses and aims, but differ in their content and partners. For example, some states also include additional bodies such as the foreigner registration offices and social service departments.

To promote and improve institutionalized cooperation in the states, round tables have been formed in connection with these agreements which are also attended by representatives of other relevant offices such as health departments, foreigner registration offices, labor agencies and justice departments. These are all key institutions that are needed to ensure direct exchange of information and to discuss current issues and questions related to human trafficking.

10.4.2 FEDERAL-STATE WORKING GROUP ON HUMAN TRAFFICKING

The Federal-State Working Group on Human Trafficking (B-L-AG Menschenhandel) is an interdisciplinary committee of experts that was founded in 1997 under the guidance of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). It brings representatives of the federal and state governments together with representatives of institutions that deal with this issue in practice in order to promote interdisciplinary exchange of information and joint development of strategies and action plans. In addition to the BMFSFJ, the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of the Interior (BMI), the Federal Ministry of Justice and Consumer Protection (BMJV) and the corresponding state ministries, the Federal Criminal Police Office (BKA) and the German NGO Network against Trafficking in Human Beings (KOK) are also represented.⁵⁵ The Federal-State Working Group on Human Trafficking developed and resolved the cooperation strategy for counseling centers and prosecutors' offices described in section 10.4.1.

55 www.bmfsfj.de/BMFSFJ/gleichstellung,did=73024.html
[7 November 2014]



Conclusion

We view this analysis of the situation of sex workers in Germany and the relevant legal measures as providing an unbiased and factual basis for a debate that can often be influenced by ideology, and in such cases helps neither the women who work in prostitution nor the women who are trafficked. Polarization of these discussions encourages a black-and-white way of thinking, which does not do justice to the complexity of the issues. It endangers and discriminates against women who earn their livelihoods in prostitution. Every type of criminalization – including of clients – worsens the working conditions of sex workers and raises the risk of violence. Moreover, criminalization does not eliminate prostitution.

We seek a respectful discussion with the following aims:

- to promote respectful treatment of women who work in prostitution
- to improve the working and living conditions of sex workers
- to successfully prevent very young and uninformed women from entering the sector – often for the sake of a friend
- to promote support services for women who seek alternatives to prostitution
- to fight for residence rights and permits for migrants
- to oppose hostility toward certain groups and the formation of stereotypes.



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13 Appendix

13.1 THE PROSTITUTION ACT

Act

Regulating the Legal Situation of Prostitutes (Prostitution Act) of 20 December 2001

Federal Law Gazette (Bundesgesetzblatt) 2001 part I no. 74, published in Bonn on 27 December 2001
3983

The Bundestag passed the following Act:

Article 1

Act Regulating the Legal Situation of Prostitutes (Prostitution Act)

Section 1

If sexual activities are provided for a previously agreed fee, this agreement constitutes a legally enforceable claim. The same applies if a person, in particular within the context of an employment relationship, is available for a certain period of time to perform such services for a previously agreed fee.

Section 2

This claim cannot be transferred and can only be made in the person's own name. The only objection to a claim as per section 1 sentence 1 can be non-performance, as well as partial non-performance as per section 1 sentence 2 if it affects the agreed period of time. With the exception of objection to fulfillment as per section 362 of the Civil Code and the plea of statutory limitation other objections and pleas are excluded.

Section 3

The restricted authority to give instructions to prostitutes does not constitute an obstacle to conducting an employment relationship subject to social insurance law.

Article 2

Amendment to the Criminal Code

The Criminal Code in the version published on 13 November 1998 (BGBl. I p. 3322), last changed by Article 4 of the Act of 19 December 2001 (BGBl. I p. 3922), is amended as follows:

1. The content overview of section 180a will be formulated as follows:

“Section 180a Exploitation of prostitutes”.

2. Section 180a will be amended as follows:

a) The title will be formulated as follows:

“Section 180a Exploitation of prostitutes”.

b) Paragraph 1 will be amended as follows:

aa) The number “1.” will be deleted.

bb) After the words “in personal or financial dependency” the word “or” will be replaced by a comma.

cc) Sentence 2 will be removed.

3. Section 181a paragraph 2 will be reformulated as follows:

“(2) Whosoever impairs another person's personal or financial independence by promoting that person's engagement in prostitution, by procuring sexual relations on a commercial basis, and for that purpose maintains a general relationship with the person beyond a particular occasion shall be liable to imprisonment not exceeding three years or a fine.”

Article 3

Entry into force: This Act enters into force on 1 January 2002.

13.2 EXAMPLE OF AN EXCLUSION ZONE ORDINANCE

Statutory Order for the Protection of Juveniles and Public Decency on the Area of the City of Dortmund (Exclusion Zone Ordinance) of 2 May 2011

Based on article 297 paragraph 1 sentence 1 number 3 and paragraph 2 of the Introductory Act to the Criminal Code (EGStGB) of 2 March 1974 (BGBl. I p. 469), last changed via article 4 of the Act of 22 December 2010 (BGBl. I p. 2300) in conjunction with section 1 of the Ordinance on Stipulating the Administrative Authorities Responsible for Issuing Statutory Orders as per article 297 EGStGB of 11 March 1975 (GV. NW. 1975, p. 258) the following is mandated for the area of the city of Dortmund:

Section 1

For the protection of juveniles and public decency it is prohibited to engage in prostitution (street prostitution) on public roads, paths and squares, in public parks and other locations open to view from these places for the **entire municipal area of the city of Dortmund**, with the exception of Liniestraße. The municipal area extends to the borders described by the respective current edition of the official map “City of Dortmund – Surveying and Land Registry Office”; map basis: Ruhrgebiet city planning office, coordinate system: ETRS 89/UTM (see appendix).

Section 2

(1) Violations are subject to a fine of up to 500 euros as a regulatory offence as per section 120 in conjunction with section 21 of the Regulatory Offences Act.

(2) Repeat violations are subject to imprisonment or a fine as per sections 184e and 184f of the Criminal Code.

Section 3

This statutory order enters into force one week after the day of its publication in the official gazette of the county of Arnsberg.

The remaining regulations of the Statutory Order for the Protection of Juveniles and Public Decency on the Area of the City of Dortmund of 17 December 1974 (official gazette for the county of Arnsberg 1974, p. 72), last changed via the Statutory Order on Changing the Statutory Order for the Protection of Juveniles and Public Decency on the Area of the City of Dortmund of 17 October 1985 (official gazette for the county of Arnsberg 1985, p. 365) are unchanged.

signed Gerd Bollermann, chief administrator – published in official gazette no. 18/2011 of the county of Arnsberg on 7 May 2011



14 Author biographies

DOROTHEA CZARNECKI, DR., ECPAT DEUTSCHLAND E.V.

Born in 1982, studied general and intercultural education at the Universities of Bamberg and Oldenburg. Doctorate in 2013 from the University of Oldenburg with a dissertation on child prostitution in Guatemala. Work and research in Costa Rica and Guatemala 2005–2009. Trainer for ECPAT Deutschland e.V. for raising awareness of commercial sexual exploitation of minors in tourism 2009–2014. Educator at a child protection center in Oldenburg 2010–2012 on preventing sexualized violence against children. Consultant from 2012 to late 2013 for the German NGO Network Against Trafficking in Women and Violence Against Women in the Migration Process (former name of KOK e.V.), Berlin. Since 2014 project coordinator for ECPAT Deutschland e.V., Freiburg.

Focuses: human trafficking, sexual exploitation of minors in tourism, prevention of sexual violence.

Contact: czarnecki@ecpat.de

HENNY ENGELS, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF GERMAN WOMEN'S ORGANIZATIONS (DF), BERLIN

Born in 1949, trained as a book seller, studied social work, political science, sociology and Catholic theology (religious education), MA degree (Magister Artium). President of the German Catholic Youth League (BDKJ) for the Archdiocese of Cologne for six years, Vice President of the national BDKJ for two years. Senior Specialist for the German League of Catholic Women (KFD) for ten years, in charge of key issues. Since May 2001 Executive Director of the National Council of German Women's Organizations (Deutscher Frauenrat).

BARBARA KAVEMANN, DR., PROFESSOR OF SOCIOLOGY

Senior Researcher at the Social Sciences Women's Research Institute (SOFFI) at the Freiburg Protestant University of Applied Sciences, and Associate Professor at the Catholic University of Applied Sciences Berlin (KHSB).

Since 1978 her work has focused on violence in gender relations and on sexualized violence, since 1982 on sexual abuse of children and youth, since 2005 on prostitution and human trafficking, and since 2010 again on sexualized violence.

www.barbara-kavemann.de,
Contact: soffi-berlin@web.de

WILTRUD SCHENK, SEXUAL HEALTH AND FAMILY PLANNING CENTER, BERLIN

Born in 1950, social worker, mediator, sex educator. Studies at the Dortmund University of Applied Sciences and Arts until 1979, then four years of development assistance in Botswana. Ten years of social work at the youth welfare office in Berlin Neukölln, many years of voluntary work for the Wildwasser association against sexual abuse of girls, since 1990 social worker for the Charlottenburg-Wilmersdorf public health office, currently director of the Sexual Health and Family Planning Center, including outreach at prostitution workplaces, counseling on safe sex and other issues, not only for sex workers.

Contact:
Zentrum für sexuelle Gesundheit und Familienplanung
Hohenzollerndamm 173
10713 Berlin

cw503400@charlottenburg-wilmersdorf.de
phone: +49 (0)30 902916888

The Sexual Health and Family Planning Center in Berlin was founded in 2008 to combine the counseling centers for sexually transmitted diseases, the AIDS counseling centers, and the social medical services for marriage counseling, family planning and pregnancy. Its job is to advise people

with questions and problems related to the sensitive fields of sexuality, parenting, family planning and pregnancy in as non-bureaucratic a manner as possible and also to provide targeted support in very difficult situations. This work is done with a high level of commitment by a staff of around 25 people. Physicians from different fields of medicine, healthcare personnel, social workers and psychologists, supported by language specialists, take the time in a confidential setting for extensive talks and precise assessment in order to understand what very personal problems are. The support services in conjunction with other agencies also take place in a confidential setting.

In many cases the Center's work is subsidiary, which means that it serves individuals who have no primary opportunities for support, such as migrants currently without health insurance or low-income individuals. Very many activities can only be handled on the basis of trust established over many years with independent sponsors and other institutions. This includes e.g. advising women who are affected by trafficking and sexual violence. An important part of the work consists of prevention, such as sex-education group programs for young people. One of the traditional tasks of the Center is to support autonomy on the part of sex workers. Outreach counseling and condom distribution services are two classical tasks of public health agencies. Participation by language specialists facilitates the building of trust-based relationships with women from other linguistic and cultural backgrounds.

Since 2003 the Center's tasks have also included directly addressing the clients of sex workers. Together with government and independent sponsors, the "Healthy Client" working group has developed guidelines for responsible use of sex services. These guidelines have been distributed in the course of numerous media-friendly public campaigns by staff members dressed in striking full-body condom costumes. The response at e.g. major sport and cultural events has been consistently positive.

Because the best protection for sex workers consists of an open approach to sexual services, the district agency is working together with sex workers' self-help organizations to develop criteria for brothels by which labor protection and working conditions can be met in exemplary fashion in a discrete atmosphere.

The staff of the Center are constantly reflecting on their tasks, tackling new challenges and optimizing services. They work together intensively with other institutions and sponsors in the process. I would be pleased if you recommend the work by the Center, and do not hesitate to use its services yourself.

ELFRIEDE STEFFAN, SOCIOLOGIST

Active with SPI Forschung gGmbH since 1989 and Vice President since 1996. She has long-term national and international social science research experience in fields related to women and health. She also has extensive experience in organizing and developing municipal intervention services (women and violence, mothers/children) and coordinating international, generally EU-subsidized cooperation projects (HIV/AIDS prevention, prostitution and migration) in conjunction with central and eastern Europe. In addition to carrying out research projects, she possesses special expertise in implementing and evaluating pilot projects in these fields.

www.spi-research.eu

DOROTHEE TÜRNUAU, PHOENIX E.V., PROJECT PHOENIX – COUNSELING CENTER FOR PROSTITUTES, HANNOVER

Born in 1957, degree in social education/social work. Studies at the Hannover Protestant University of Applied Sciences until 1982, state certification in 1984, work at the Institute for Development Planning and Structural Research (IES) at the University of Hannover with a focus on "healthcare model evaluation". Since late 1989 social educator/worker for Phoenix e.V. at the Project Phoenix counseling center for prostitutes in Hannover with a focus on advisory services, red-light district outreach, public relations. Board member for bufas e.V. from 2011 to 2013.

Contact:
Phoenix
Postfach 4762
30047 Hannover

kontakt@phoenix-beratung.de
phone: +49 (0)511-898288-01
www.phoenix-beratung.de

Phoenix e.V. (www.phoenix-verein.org) consists of four projects that are all active throughout the state of Lower Saxony:

- Phoenix project – counseling center for prostitutes
- La Strada project – contact and counseling center for drug-using girls and women who work in prostitution and are at risk of violence
- Kobra project – coordination and counseling center for victims of human trafficking
- Nachtschicht project – counseling and on-site outreach for street-based workers

The Phoenix project's services are for domestic and foreign sex workers who work on a voluntary basis, who wish to continue working in the sex sector, and for those who wish to enter new fields of work, as well as for their partners and family members. The counseling services are offered on a voluntary basis and can also be provided anonymously and in clients' native languages. Services are offered in German, Polish, Russian, Bulgarian and English, and in other languages with via interpreters.

The services include:

- anonymous counseling by phone
- counseling in person
- support

Outreach work

- at brothels and clubs
- at Café Nachtschicht and outdoors
- in the residence prostitution sector
- at lovemobile (caravan) sites

Free coaching for sex workers at their places of work

Public relations

- events and campaigns for HIV/STI prevention

- speakers on prostitution
- participation in working groups on the municipal level
- cooperation with prostitution-related NGOs on national and international levels
- participation in the Alliance of Counseling Centers for Sex Workers (bufas e.V.)

Phoenix works to achieve:

- labor/commercial equality for sex workers
- secure legal status and minimum standards for sex work
- integration and social equality
- greater autonomy for sex workers in their profession and in seeking new work