

Analysis and Strategic Concept

The New German Way

For a Reorganisation of Prostitution Legislation

The necessary reorganisation must be oriented towards everyday reality, humane standards and ethical responsibility.

Helmut Sporer

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1. Preliminary Remarks

For decades, prostitution in Germany has been the focus of public attention due to a lack of or inadequate regulations. In the meantime, this social fringe area has become a kind of permanent construction site in the search for the right regulation.

Also the last two reforms have shown after a short time that they are not suitable to satisfactorily remedy the obvious grievances in this milieu or at least to noticeably improve it. Therefore, the call for renewed regulation is getting louder and louder. At the same time, it is not only the question of which regulations are sensible and expedient that is currently being discussed in different ways. Even the basic questions themselves, what is usually understood by prostitution, which forms are predominant, etc., are causing controversy.

Representatives of different points of view present different realities. On the one hand, the profiteers of the scene, such as functionaries of brothel operators' associations and luxury prostitutes, and on the other hand, organisations and activists who see the victims of exploitation and human trafficking in the foreground, and who in some parts see prostitution in general as an offence against human dignity, claim the sovereignty of interpretation. These positions are often diametrically opposed. It can therefore be difficult for decision-makers in politics, administration and the media, as well as for those interested in the subject, to weigh up information correctly.

This article is intended to provide an overview of the real situation in the prostitution milieu and to identify frequently used prejudices and false arguments. It should provide information about everyday prostitution, about niche areas and myths. In the effort to find the right way for a sustainable new regulation of the prostitution system, a look back at the circumstances of the recent past is quite helpful. It shows which regulations have proved successful in the past and why the situation has changed so dramatically.

The following elaboration is deliberately not intended to be a scientific contribution; rather, the explanations refer to decades of experience in criminal investigation and surveillance practice. In contrast to a theoretical-scientific approach, countless direct impressions from contacts with a wide variety of prostitutes¹, brothel operators, pimps, johns and victims of human trafficking are taken into account as well as findings from prostitution controls, criminal investigations, searches, undercover operations and the like.

¹ The feminine form was chosen because significantly more women than men are involved in prostitution

2. Developments since 1990

The prostitution sector has undergone serious changes at various levels over the past decades. In the following, important developments of the past 30 years are briefly outlined.

2.1 Prostitution in the period from 1990 to 2001

The prostitution situation in the 1990s cannot be compared at all with the current situation.

There were considerably fewer prostitutes in that period, almost all of them German, and comparatively many of them had their private centre of life in the region where they worked. Communication with the prostitutes was unrestricted and barrier-free.

With few exceptions, foreign prostitutes were prohibited by law from engaging in prostitution. The law on foreigners in force at the time required a permit for prostitutes to "pursue self-employment", but this was only very rarely granted if, among other things, they had the appropriate language skills.

Regular and obligatory health examinations² (every one to four weeks, depending on the state) were obligatory, positively assessed by the prostitutes and strictly observed. In addition to a free health examination, the regular visit to the public health office (GA) with the contacts to GA staff as well as to other prostitutes also represented an important social component.

Every prostitute received a DIN A5 booklet as proof of examination, which had to be presented at brothel inspections. If a prostitute did not have a valid examination certificate (also known colloquially as a "Bockschein"), a prohibition order was issued; prostitution was then temporarily prohibited.

The sexual practices offered differed considerably from today's standard. For an everyday prostitute, for example, sex without a condom or kissing was absolutely taboo. Today's widespread offers such as "taboo-free" or "GFS - girlfriend sex with kissing and exchange of caresses" were unthinkable back then.

The usual prices for sexual services were very high compared to today. The prostitutes were able to finance a private life. Living in a brothel was absolutely unusual.

Typical milieu crimes such as pimping, blackmail, assault, etc. were of course also committed then, but to a much lesser extent than today. The prostitutes seemed much more stable overall. Mass imports or transfers of prostitutes were completely unknown back then.

Furthermore, there were far fewer brothels at that time and also no large brothels with operating concepts that are widespread today, such as nudist clubs. According to the legal situation at the time, such mass operations would have been illegal. These

² Former Federal Epidemics Act, STD Act

business models only function with a high degree of internal regulations for the prostitutes working there, such as compulsory attendance for up to 15 hours until three o'clock in the morning (these brothels successfully advertise with the assurance "always 20, 30 or 40 different girls to choose from") and regulations for price, behaviour (e.g. mobile phone ban) and clothing (e.g. compulsory nudity!), sometimes also with prescribed sexual practices (e.g. information to johns "blow jobs are included in the basic rate").

Such encroachments on the personal freedom of prostitutes were strictly forbidden at the time. The freedom of prostitutes was protected in particular by the criminal law norms of the time: "Interventionist pimping § 181a StGB" and "Promotion of Prostitution (§ 180a StGB)". Any specifications or interventions regarding the type, place, duration, etc. of prostitution activities were punishable. The mere drawing up of shift plans with attendance schedules was a serious offence. Violations had serious consequences for brothel operators. Courts mostly imposed prison sentences; resulting in a high deterrent potential.

Advertising for prostitution was generally prohibited at that time (administrative offence according to § 119 OWiG). In part, it was tolerated due to the principle of opportunity if it was neutral, not offensive or harmful to young people.

In short, prostitutes were victims of violence and crime even then and lived on the fringes of society. Prostitution was immoral and the practice of it in legal transactions was a "socially inferior activity".

The conditions in the 1990s were precarious, but compared to today, they were more orderly, more transparent, with a valid database and, above all, with many more protective factors for the women.

From the mid-90s onwards, as a result of the collapse of the Eastern Bloc, a new phenomenon increasingly emerged with prostitutes from Eastern Europe. Initially, women from Poland and the Czech Republic were particularly common. They were now able to enter the country as tourists without visas and were increasingly found to be working as illegal prostitutes in restaurants, hotels and similar establishments. Parallel to this, criminal structures were formed in the smuggling and distribution of these persons. At that time, these women made themselves liable to prosecution for illegal residence by practising prostitution, because the tourist status did not include this.

With the paradigm shift of 2001, the legal as well as the general circumstances changed fundamentally. Previous structures were abandoned, which brought massive problems for the people working in prostitution.

2.2 Infection Protection Act as of 2001

In 2001, compulsory health examinations for prostitutes were abolished and the newly created Infection Protection Act (IfSG) focused exclusively on voluntary and self-responsibility health care for prostitutes.

The expression of concerns by practitioners on the part of public health offices and the police about negative effects with decreasing examination numbers, combined with dangers for prostitutes due to an increase in sexually transmitted infections, remained unsuccessful. At that time, prostitutes even protested massively against this new regulation because of fear for their health and submitted corresponding lists of signatures. They also feared (rightly) that the thousands of new Eastern European prostitutes, who were to be expected as a result of the imminent eastward expansion of the EU would mostly not have themselves examined.

In the following years, the number of examinations actually decreased from originally about 100 % to about 10 % (with regional differences). Parallel to this, there was an increase in relevant infections.

2.3 Prostitution Act as of 2002

In 2002, the Prostitution Act (ProstG) came into force. According to the official justification of the then red-green government, it was intended to counter the negative image of prostitution, to improve the legal and social situation of prostitutes and to give prostitutes access to social insurance. The law consists of only three paragraphs with a few sentences and had different consequences. The hoped-for access to social insurances was a complete failure and was not accepted at all for various reasons (with about 250,000 prostitutes, according to the Federal Statistical Office, only about 70 employment contracts for dependent prostitution practice were registered). In contrast, the "restricted right to issue instructions" briefly mentioned in § 3 ProstG had a considerable impact on the brothel landscape in Germany. Together with the simultaneous abolition of § 180a StGB (Criminal Code: promotion of prostitution) and a defusing of § 181a StGB (pimping), brothels with new operational concepts (such as the nudist clubs already described in section 2.1) were now legally permissible with corresponding consequences for those affected.

At the same time, the authorities' possibilities for investigation were severely restricted.³ The restricted right to issue instructions enshrined in § 3 of the Prostitution Act collides with § 181a of the Criminal Code (Dirigiste Pimping) and largely invalidated this previously effective protective provision for prostitutes (it guaranteed the freedom of disposition and thus the independence of prostitutes in their activities).

³ Schmidbauer: The Prostitution Act between Claim and Reality from a Police Perspective (NJW 2005, 871)

A well-known example in professional circles of the tension between the two competing regulations and the changed legal situation is an investigation against the operators of the nudist club Colosseum in Augsburg in 2006. The public prosecutor's office in Augsburg had brought charges of dirigiste pimping. However, the Augsburg Regional Court dismissed the charges by means of a non-opening order with explicit reference to § 3 ProstG⁴.

Increasingly, a different, progressive public presentation of prostitution was propagated. Sometimes demands were made that prostitution should be a "job like any other". In TV talk shows, model prostitutes declared their activity to be a dream job. In individual cases, there were even calls for prostitution to become an apprenticeship.

2.4 Serving alcohol in brothels

In the course of liberalisation, the legal situation regarding catering licences for brothels changed in 2008 after a complaint⁵ by brothel operators before the Administrative Court (with reference to the Prostitution Act). Until then, the commercial serving of alcohol in brothels was generally forbidden due to the fact that a restaurant licence could not be granted. Violations were punished with high fines.

This also shows that the liberalisation of the industry had brought economic advantages to brothel operators in particular. Since then, they have been able to legally sell alcoholic beverages to johns at very high prices. The prostitutes in the brothels, on the other hand, are exposed to additional dangers. They are often encouraged to buy champagne, etc. (usually for a small share of the turnover) and may then be obliged to drink with the johns. They are thus subject to a higher risk of alcohol abuse.

2.5 EU enlargement to the East in 2004 and 2007

The accession of ten Eastern European countries to the EU in 2004 and especially Romania and Bulgaria in 2007 caused hundreds of thousands of young women from these countries to flow uncontrollably into prostitution in Germany, which fundamentally changed the conditions in the milieu. The decisive factors were, on the one hand, the economic poverty in the home countries and on the other hand the new right to freedom of movement including freedom of establishment creating a huge army, a veritable reservoir of girls and young women from Southeast Europe with whom the brothels in Germany could be filled. Figuratively speaking, all the floodgates were opened. Unlike in the past, prostitution for foreign women was now legally possible without any legal restrictions or regulations, i.e. without a visa, without a work permit, without taking up residence, etc. A veritable paradise for prostitutes emerged.

⁴ 2006 Colosseum; [https://marjorie-wiki.de/wiki/Colosseum_\(Bordell\)](https://marjorie-wiki.de/wiki/Colosseum_(Bordell))

⁵ Complaint concerning serving alcohol: https://www.ra-kotz.de/bordell_gaststaettenerlaubnis.htm

This created a real paradise for profiteers who could market the mostly dependent, inexperienced and often overstrained girls from Eastern Europe in Germany.

As a result, prostitution experienced a huge boom in all areas. Residential prostitution grew as well as street prostitution. In some cities, real ethnically dominated milieu areas emerged.

Also the large, tightly organised brothels, such as nudist sauna clubs, which were now permitted and set up in large numbers, profited from the mass influx of foreign prostitutes.

The establishment of large brothels is only possible with considerable capital investment in the order of an estimated three to six million Euros. The origin of these large sums is often the subject of conjecture. In some cases, it became known that regular entrepreneurs from completely different, non-milieu industries were silent partners in brothels or discreetly gave very large loans with high expectations of returns.

In a kind of disastrous interrelationship, an infrastructure was created to accommodate the newly available prostitutes. The operating concept of having a very large number of prostitutes paying daily rent for the brothel and being available to the johns in a large selection would certainly have failed without the incessant supply of women. On the other hand, without the many new establishments for women, the mass influx would not have got out of hand to this extent.

It remains incomprehensible why the liberalisation of the prostitution law did not take into account the EU's eastward expansion with the expected consequences, already foreseeable at that time.

Parallel to the new laws and EU extensions, a new, open relationship to prostitution developed in parts of society under the influence of the liberalisation, which was also initiated by parts of the media. Sex for sale became a normal commodity, often compared to a visit to the hairdresser. New types of johns developed who openly and self-confidently presented themselves accordingly.

In addition, the new digital advertising possibilities via countless internet platforms (e.g. Rotlichtguide.de, ladies.de, gesext.de and many more) provided completely new advertising and marketing opportunities for prostitutes with photos, precise descriptions of services, etc.

3. Prostitutes Protection Act (ProstSchG) as of 2017

3.1 Evaluation, effects

The effects of the paradigm shift of 2001 and the EU's eastward expansion led to the known catastrophic undesirable developments such as mass prostitution with general impoverishment and exploitation including human trafficking and forced prostitution. A new law was supposed to counteract these intolerable conditions. After years of controversial discussion, the Prostitutes Protection Act was finally introduced on 01.07.2017.

With the exception of a few positive elements such as the introduction of a permit requirement for brothels or the prohibition of certain operating concepts such as flat rate offers, the law was criticised from the beginning because it is one-sidedly tailored to the small sector of self-organised prostitutes, but does not regulate many concerns that affect the vast majority of victimised everyday prostitutes.

Among other things, the regulation of compulsory registration for prostitutes was a complete failure. It created a huge bureaucratic burden for the administrative authorities to whom the responsibility was newly transferred and who, as expected, were overburdened with the issue, but not the hoped-for added value. Thus, even after four years, there is neither the hoped-for improved transparency in prostitution, nor has the obligation to register been implemented across the board.

The lack of victim orientation of the law is particularly evident in the fact that there is no possibility for the administrative authorities to refuse a prostitution registration for illiterate or disabled persons.⁶ This indirectly promotes forced prostitution. The ProstSchG, on the other hand, offers the possibility to have the ID card for prostitution registration issued with an alias for data protection reasons. For an average prostitute, such regulations are worthless; she has other problems. That is why there is talk of a "law without a target group". Conversely, for the large target group of average prostitutes, there is still no law that would give them sufficient protection.

As a result, more than five years after its introduction, the ProstSchG has actually not changed anything significant about the deplorable conditions that this law was supposed to improve. The same women are found in brothels with victim criteria as before the introduction of the ProstSchG.

It would be imperative for the planned changes that regulations are not primarily made for the very small group of self-employed, self-organised prostitutes who are visible and can make their concerns clear themselves. Instead, thought should be given at last to the large anonymous mass of almost exclusively foreign prostitutes who are externally determined, who stay in the large brothels or on the street, often 24 hours a day, and who cannot draw attention to themselves, who do not speak German, who

⁶ unless there is a concrete suspicion of relevant criminal offences

have no voice, no lobby, who mostly eke out a victim existence, who presumably no politician has ever seen or even spoken to.

The situation of these prostitutes is roughly comparable to the temporary workers in the meat industry, only their situation is much more extreme, because here it is not only the labour that is affected, but the most personal intimate sphere. Many of the abuses rightly denounced in the meat industry, such as working hours, accommodation, hygienic conditions, treatment, etc. can be seamlessly transferred to prostitutes. While politicians reacted very quickly to the scandalous conditions in the meat industry coming to light by the pandemic by applying the Occupational Health and Safety Control Act, they have been waiting a long time for suitable solutions for prostitution. The outrage here is limited to the description and administration of grievances. Yet prostitutes also urgently need an improvement in their living situation.

3.2 Controversial regulations in the Prostitutes Protection Act - Examples

3.2.1 Special treatment of prostitution?

During the discussion on the Prostitutes Protection Act, the regulatory system was criticised by some representatives of the prostitution scene. On the one hand, there were massive demands to treat prostitution at least as a normal gainful activity and not to create "special laws" for it, but to apply the general rules of trade law. Accordingly, these objections were taken into account in the reform of the prostitutes law in 2017: So, the ban on advertising prostitution was lifted and the obligation to register prostitutes was not transferred to the police, who had always been entrusted with monitoring prostitution. Instead, the public order offices of the general administration, which were completely inexperienced with the subject and overburdened in terms of topics and personnel, became responsible. Important preventive measures such as situational or surveillance intelligence were thus qualitatively jeopardised.

On the other hand, the same circles demanded special regulations beyond the general trade law because of the alleged "stigmatisation to be feared". Accordingly, these demands were taken into account in the last reform. For example, as already mentioned above, registration certificates of prostitutes may be issued with aliases, which is unprecedented in trade regulations. In addition, the exchange of data between the general administration and the police on prostitute registrations, in contrast to other trade matters, has been severely hampered by special data protection hurdles.

Moreover, the regulations that came into force with the Prostitutes Protection Act have partially excluded the police as a supervisory authority. Profiteers in the illegal sector can thus de facto operate in a more relaxed manner than in the past.

For professional prostitutes, there is currently a kind of "best practice situation" at the expense of the large number of victim types. Their fate has deteriorated even further because of the inferior standards of protection and supervision.

3.2.2 Separation of working and private spaces

There is also some controversy about the obligation in § 18 ProstSchG that rooms used for sexual services may not be used as sleeping or living quarters. This sensible provision was intended to counter the widespread practice of prostitutes being available 24 hours a day to brothel operators and johns alike and having to sleep in the bed in which they also perform prostitution. In order to maintain a residual privacy, the women are to sleep outside the brothel.

Unfortunately, the implementation of this regulation is sometimes not oriented towards the welfare of the prostitutes as envisaged, but towards the interests of brothel operators. In some cases, the authorities accept sheds with bunk beds inside the brothel, for which extra charges of around 20 Euros are made in addition to the daily rent. However, this misses the original purpose of the regulation.

In part, the regulation on the separation of working and sleeping is also criticised in general, "because the women could no longer afford their own flat in view of the already very high ancillary costs". Here it is simply ignored that the economic constraint does not result from the additional flat rent, but is rooted in the exorbitantly high room rents, which, however, are hardly objected to by the same critics. If these daily rents were lower, every prostitute could afford a private flat from these savings.

4. Mechanisms in the milieu

4.1 The triangular relationship

A major factor in the milieu is brothel prostitution. This also includes nudist, sauna and similarly named "clubs" as well as so-called whorehouses. Insofar as insights behind the official facade are possible, an identical or similar operational structure in the form of a special mutual relationship between prostitute, her pimp and the brothel operator is always recognisable.

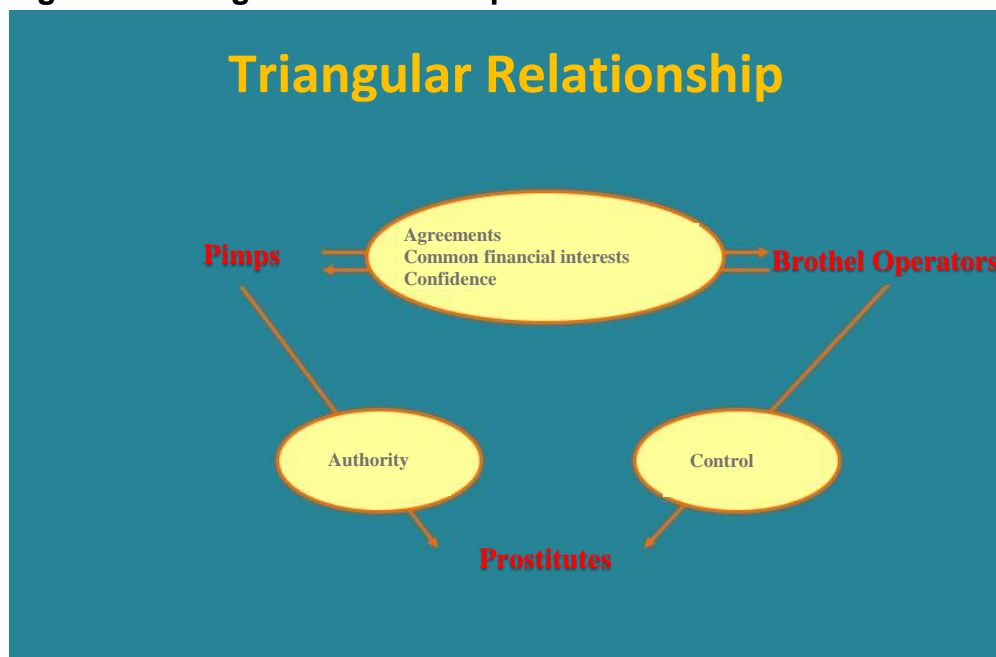
The relationship between the prostitute and her pimp is characterised by authority, either violent or emotional and often a mixture of both. It is typical here that the pimp contacts the operator of an often distant brothel and sends the prostitute there. He himself does not appear in the brothel. The woman is supposedly independent.

The relationship between the prostitute and the brothel operator is characterised by control. He discreetly monitors her activities (turnover, behaviour, etc.) by means of cameras and/or security. The prostitute submits to the circumstances in the knowledge of the connection between her pimp and the brothel operator.

The relationship between pimp and brothel operator is in turn characterised by mutual trust, agreements and the common interest that the prostitute works as profitably as possible for both the pimp and the brothel operator without causing problems. The prostitute is therefore played off against both, often sees herself in a hopeless situation and resigns herself to her fate.

In simple brothel inspections by the authorities, these background mechanisms are not perceptible. Only the light field, i.e. the apparent relationship between the prostitute and the brothel operator, is visible.

To the outside world, this superficially creates the image that the prostitute is working independently and uninfluenced. Everything seems to be in order. Yet the woman is remote-controlled like a marionette with invisible strings. The mechanisms mentioned run in the background, in the so-called dark field.

Figure 1: Triangular Relationship

Source: Helmut Sporer

This relationship or this collusion is often difficult to detect and even more difficult to prove, requiring elaborate undercover investigations.

The network of relationships usually functions excellently, since the prostitute is de facto completely isolated and constantly under control. Against this background, it becomes more understandable that hardly any women out themselves as victims during brothel inspections.

Such mechanisms can be assumed especially in larger brothels with many women on offer. The economic attractiveness of such establishments depends on the presence of many women. In order to be able to keep a large number of suitable women in stock at all times, connections to trafficking and supply structures are apparently indispensable.

4.2 Connection between prostitution and human trafficking

Especially from the prostitution lobby, the view is published that regular prostitution must be strictly separated from forced prostitution and human trafficking. In the public perception and discussion, these terms are said to be inadmissibly mixed up.

This assessment is completely wrong in view of the reality of the scene. Prostitution generally cannot be distinguished from forced prostitution and trafficking in human beings. Large areas of prostitution are characterised by coercion, pressure and human trafficking. The prostitution milieu as a whole is and remains an area highly prone to criminality, as long as a high proportion of so-called victim types practise prostitution in regular locations. Accordingly, milieu-specific crimes such as forced prostitution,

pimping, etc. are primarily committed in regular, commonly known prostitution locations, i.e. where the victim types are active. This is also documented in the BKA situation report on human trafficking (see section 5.3).

Figure 2: Prostitution and Human Trafficking separated



Source: Helmut Sporer

Figure 3 Prostitution and Human Trafficking Overlapping



Source: Helmut Sporer

A separation into "good official" prostitution and "bad illegal" prostitution would falsely suggest that the official brothels and the official places for street prostitution are free of milieu-typical crimes such as forced prostitution.

In fact, the opposite is the case. This is regularly shown by investigations such as the "Paradise" case (chapter 5.5), or also the findings of the aid organisation KOBER in regular brothels in North Rhine-Westfalia (see point 6.3). The decisive factor is whether one accepts to be blinded by a facade or looks behind it and only then forms a judgement.

It is not intended to give the impression that all places of prostitution are generally tainted with criminality. There are definitely operators who really try to be correct. But even they cannot always judge whether a prostitute is under the influence of somebody. The more vulnerable women there are in a prostitution site, the higher the probability of criminal phenomena, regardless of whether operators are aware of them, are involved in them or not.

The demand for a separated consideration of the areas of prostitution is therefore wrong. As described above, a distinction based on a particular location cannot be made. It remains a theoretical construct and possibly an attempt by interested circles to divert attention from conditions in official prostitution sites that are worthy of criticism. In this context, an interesting study by the University of Heidelberg deserves mention, which comes to the conclusion that liberal prostitution legislation leads to more human trafficking⁷.

This corresponds with the assessment gained from practice, that human trafficking and forced prostitution need regular prostitution as a cloak in which to thrive in secret. Without the cocoon of regular prostitution, trafficking would be much more conspicuous and the perpetrators would have more problems concealing their business. In this way however, classic victims can be inconspicuously mixed with other prostitutes.

For a realistic assessment of regular prostitution, it is also helpful to take a look at the relevant forums for johns. Here, johns exchange their experiences in brothels and with prostitutes (e.g. new "fresh meat offers"), rate the women and thus give a certain live impression of the conditions in regular brothels.

4.3 Social organisations in the prostitution system

A number of organisations with very different approaches participate in the public discussion about conditions in prostitution.

On the one hand, there are interest groups or self-help initiatives, some of which were founded by prostitutes and usually have very few members. They campaign for the legal and social betterment of prostitutes. Their clients are self-employed prostitutes; their services also include counselling on entering prostitution.

⁷ Universität Heidelberg report

https://www.uniheidelberg.de/presse/news2013/pm20130527_prostitution.html

On the other hand, social groups have been founded that are exclusively concerned with those affected by human trafficking, exploitation and forced marriages, and some of them consider prostitution to be problematic in general.

In addition, there are several interest groups of brothel operators, most of which have only a very small number of members. In accordance with their purpose, they naturally represent their own economic interests.

Paradoxically, the largest group by far in the milieu, the average prostitutes, have no representation of their own, despite their vulnerability. They are defined therefore as victims without a lobby.

Assessments of conditions in prostitution or proposals for regulation usually differ depending on the group from which they were voiced and its own interests. However, irritations arise when the claim is made or the impression is created that prostitutes' self-help initiatives or brothel operators' associations do not only lobby for their own small clientele, but want to speak for the entirety of prostitutes, i.e. also for the vast majority of average prostitutes. This regularly leads to distorted images.

5. Current situation

5.1 The prostitutes

One of the most important aspects in this context is the question of who is actually involved in prostitution. Many strategic assessments depend on this. Unfortunately, in contrast to all other sectors, there are no reliable statistical figures on the total number and composition of prostitutes at the federal level. This deficit is one of the shortcomings of the failed Prostitutes Protection Act. In public one finds different figures ranging from estimates up to 400,000 or even more prostitutes in Germany. The author estimates the number to be much lower, around 250,000 prostitutes, and bases this on cities with valid data on the number of prostitutes and in relation to the number of inhabitants.

The composition of prostitutes has changed completely in the last 25 years. Whereas in the early 1990s a foreign prostitute was still the absolute exception, women from abroad now dominate the market with a share of about 90 per cent. German prostitutes make up a maximum of about 10 per cent, whereby the composition varies depending on the prostitution sector. In so-called niche areas such as S&M studios or luxury flats, one finds a comparatively high proportion of German prostitutes, while in so-called mass establishments such as large brothels, running houses or nudist clubs and also in street prostitution, hardly any German women are still to be found.

The personality structures of the prostitutes are correspondingly different. In niche areas, which probably have a maximum market share of 5 %, mostly independent, self-organised women work. Here, there are only very rarely grounds for suspicion of milieu crimes (pimping, forced prostitution, human trafficking, etc.).

However, the situation is completely different in the mass establishments, which represent a large part of the scene. There, one finds a great many women who, due to their personality, education, age, behaviour, appearance, origin or company, give reason to suspect that they are victims of a milieu crime. Even if these women are victims, they hardly ever declare this during controls. Again and again, one encounters girls who still seem childlike, who have their doll or a teddy bear with them in the room. In the vast majority of cases, however, they only confirm that they are victims after extensive investigations in their environment and after the perpetrators have been arrested.

These so-called victim types, who work in brothels or street prostitution under duress or at least out of sheer necessity, make up the largest group. Only a fraction of these women are recorded as official victims. The vast majority, although they are certainly equally aggrieved, remain unrecognised or unrecorded by the authorities and statistics. In their subjective hopelessness, they simply resign themselves to their fate.

The large proportion of women who are involuntarily involved in prostitution in various forms is indisputable. It does not matter whether, depending on the standard of assessment, a proportion of 90 or 70 or only 60 percent is assumed. The percentage is always too high.

5.2 The "typical" prostitute

Due to years of practical experience from brothel inspections, raids and investigations into human trafficking, forced prostitution, etc., the profile of a so-called "typical" prostitute, or the majority of prostitutes, can be outlined as follows:

Personal profile:

- Age 18 - 25 years, home country Romania, Bulgaria or Hungary,
- no or insufficient language skills in German,
- without vocational training in the home country, no experience abroad (except prostitution e.g. in Spain),
- in male company
- no residence in Germany, not registered for tax purposes, official legal status in Germany "self-employed".

Economic situation:

- Daily rent working room 80 - 160 Euros
- Daily rent for bedroom 20 Euros
- Internet advertising per week 80 - 100 Euros
- Living expenses (food, cosmetics, telephone etc.) 20 Euro per day.

→ Total fixed costs per day: 130 - 200 euros → Income per punter approx. 50 euros, resulting in:

- 3 - 6 punters per day required to cover the fixed costs
- plus living expenses for boyfriend, escort, pimp
- plus remittances to the family in the home country

Constraints:

The unchecked mass influx of mainly Eastern European women into the prostitution market in Germany has led to a veritable vicious circle for those affected. As a result of the oversupply of women working in prostitution, the prices for room rents are at a very high level of up to 170 Euros per day. On the other hand, the immense price and competitive pressure means that women are forced to offer their services ever cheaper and at the same time offer more and more practices that are often dangerous to health or degrading.

A look at advertising platforms for prostitution on the internet shows the extent of this dilemma. Almost more drastic are handwritten notes that often hang on the doors of whorehouses or flat brothels, on which prostitutes usually write down their range of

offers to interested johns in scrawly writing and bad German. The following are a few examples noted on the spot:

"Fucking, kisses, Blow job, licking anal, "hot hole, all possible", "faeces much", "French Kiss", "All included", "ejaculation on body", "Fist anal".

This form of "advertising" is not the exception, but everyday prostitution. For large parts of society this may be repulsive and shocking, but at the same time it shows the great misery of these women. They are forced to agree to anything in order to earn money. These everyday realities stand in stark contrast to ideas such as "preserving self-determination", "refusing unwelcome johns or practices", "limiting working hours" or taking out private health insurances.

Consequences:

The uncontrolled flooding of the market with more and more women engaged in prostitution has different consequences.

On the one hand, there are industries that profit from it. These include landlords of prostitution flats, brothel operators, the advertising industry (advertising platforms on the internet as well as the advertising papers), which earn more and can charge higher prices the more women enter the market.

On the other hand, there are the large number of women who, as described, are exploited and left alone to fend for themselves, in contrast to other sectors such as for example contract workers in the meat sector, who have no representation of interests or trade union support, and who are also largely ignored by politicians.

5.3 Federal Bureau of Investigation - BKA - Situation Report on Human Trafficking

The annual situation report on human trafficking by the Federal Criminal Police Office BKA is a valuable tool for assessing the situation in the prostitution milieu⁸ in the light of solved/reported cases ("clear field").

The number of recorded cases has been decreasing for years. For 2020, 291 cases of human trafficking for sexual exploitation (including forced prostitution, exploitation of prostitutes, etc.) with 421 suspects (102 of whom were German) and 406 victims (152 of whom were from the main countries of origin Romania, Bulgaria and Hungary) were recorded.

For comparison: In 2015, 364 cases with 573 suspects (142 of them German) and 416 victims were registered. In 2013, there were 425 cases with 625 suspects (176 Germans) and 469 victims (291 of them from Romania/Bulgaria/Hungary).

⁸BKA-Lagebild

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Menschenhandel/menschenhandel_node.html

Approximately half of the recorded victims are under 21 years of age and are therefore in need of special protection. With values between 45 - 56 per cent, this proportion has remained almost constant over the past ten years.

The data basis for the case numbers of the situation report are the officially initiated criminal investigations, the so-called "clear field". It must be taken into account that the number of cases recorded represent only statistics of suspected offences. A large part of the recorded preliminary proceedings have to be discontinued due to the particularly difficult circumstances of evidence in this crime sector. Roughly estimated, only half of the proceedings will end with a conviction (see also point 6.5).

The major political parties as well as all experts agree that the vast majority of prostitutes does not work in a self-determined and independent manner, but instead in a dependant capacity and often exhibits victim criteria⁹. This majority is subject to various pressures such as poverty, desperation or forced prostitution.

If one takes a mathematical average of 300,000 prostitutes and assumes that only half of them do not work voluntarily and are therefore mostly victims, this results in a figure of 150,000 victims in prostitution. In relation to the 406 registered victims from the Situation Report 2020, this means that arithmetically only about 0.3 percent of the victims are recognised and registered. But even if the estimates are set much lower (200,000 prostitutes with 40 % in victim status yielding 80,000 victims), the result is that only 0.5 per cent of the victims are known, a value that is as disastrous as it is revealing. The official case numbers therefore do not reflect reality in any way.

The discrepancy between the official case figures and the reality of prostitution as a whole is striking. Prostitution and trafficking in human beings / forced prostitution remain therefore predominantly in the statistical dark field.

This disproportion is clear evidence that the existing laws, be it the Prostitution Act (ProstG), the Prostitutes Protection Act (ProstSchG) or the current criminal law provisions, are unsuitable for effectively combating these abuses.

Not only are the current control and investigation possibilities completely inadequate, but the general system of these legal relationships is desolate. A further deterioration appears inconceivable.

⁹ Resolution of the Women's Union of the Christian Democratic Union - CDU 29.06.20 - excerpt

There are women who work in prostitution voluntarily and without coercion. However, the vast majority of women do so out of poverty and desperation or are forced into prostitution by criminals. They suffer from it for the rest of their lives.

Resolution of the Social Democratic Party of Germany – SPD, Federal Executive Committee 16.11.2020 - excerpt

For their design, it is relevant whether a person engages in prostitution voluntarily, offers sexual acts for money for more or less involuntary reasons, or whether a person is a victim of forced prostitution. We know that the second group represents the majority of people engaged in prostitution. These women, men and trans people often work in prostitution in a parallel society due to very different personal hardships. We also know that the line between prostitution for involuntary reasons and forced prostitution is sometimes blurred

To sum up, a special kind of conclusion, which is occasionally used by prostitution lobbyists, is discussed. According to this, the low number of cases would prove that human trafficking does not play a significant role and is only hyped up. Declining figures from the BKA situation report on human trafficking would prove that the reforms were successful. Such statements ignore reality.

5.4 The alleged "dark field"

In the discussion about regulating prostitution, critics often point to the danger of a "shift into the dark field". This would mean that prostitutes would no longer be accessible to authorities and social services. The feared dark field is rarely described in concrete terms. Sometimes the idea of anonymous, secret brothels is associated with it. The more realistic assumption is, that anonymous online offers of hotel and flat prostitution are considered, that are difficult or impossible to control.

This would now become concretely apparent after the closure of brothels due to the pandemic and would be proof that a general ban on prostitution would inevitably lead to a drift into the dark or into illegality and would be the wrong way to go.

This ignores the fact that this development is not a pandemic-related new development or a future scenario associated with a more restrictive regulation of prostitution, but is already a reality in Germany. For some years now, it has been increasingly observed that prostitutes are progressively offered through online advertisements in hotels, private or holiday flats, etc. This has various advantages for the organisers or profiteers, e.g. avoiding high daily rents, greater flexibility and subjective anonymity. Since the Corona pandemic and the brothel closures, these offers have merely become more noticeable. It is also revealing that this variant has developed despite the extremely liberal prostitution regulations in Germany. Regardless of Post-Corona reopenings of brothels, this variant will increase significantly in the future because of its attractiveness for users. To curb this trend, specific regulations are needed, for example to hold hotel operators or flat landlords more responsible.

This form of prostitution, which is sometimes misleadingly referred to as the "dark field", is not a hurdle for the authorities to reach prostitutes. In contrast to narcotics crime, which can thrive well in secrecy, the prostitution market necessarily requires a certain amount of publicity and advertising. Through advertising platforms, the police finds access to this market just as quickly as the actual target group for advertising, the johns. The fears about this alleged dark field are therefore unfounded.

5.5 The actual dark field

However, a dark field of a different nature is actual reality and a central problem. This particular dark field exists in official German prostitution sites and is hardly taken into account in the pertinent discussions.

In many brothels, especially in the large so-called mass establishments, but also in street prostitution, one encounters predominantly young foreign women, the so-called "victim types". The specialised authorities, who know the conditions on the ground, are usually aware that these women are mostly determined by third parties and thus victims. However, well-founded investigations require concrete suspicions, usually in the form of a statement by prostitutes. Unfortunately, this happens very rarely for well-known reasons (e.g. violence, threats, intimidation, emotional dependence). Therefore, despite obvious suspicions, it is often not possible for the prosecuting authorities to act and they are thus forced to wait or watch.

The official facade of a brothel therefore often does not reflect the actual conditions behind the scenes, i.e. the "dark field".

A very well-known example of this phenomenon is the large brothel "Paradise" in Stuttgart¹⁰. Its operators propagated their business for years as a modern model of "clean, legal brothel prostitution" and for this reason they were regular guests on many well-known talk shows such as "Jauch", "Maischberger" etc. One of the operators run even his own weekly TV show and acted as a "brothel evaluator". The "Paradise" was regarded by the public as a modern, social and women-friendly model business (there was even a women's representative in the brothel). However, experts were already aware at that time that the conditions in the "Paradise" were characterised by serious criminality, contrary to what was portrayed in the media.

In 2013, after a suspicious case against the "Paradise", undercover investigations were initiated. The glimpses behind the facade, i.e. into the brothel's internal dark field, exceeded all suspicions and revealed a cleverly camouflaged network of serious and organised crime. After extremely elaborate investigations, the brothel operators were sentenced in 2019 to prison terms of up to 5 years for multiple typical milieu offences such as aiding and abetting serious human trafficking and pimping in 18 cases. The four perpetrators made confessions at the Stuttgart Regional Court. The sentences are legally binding^{11 12}.

It must be assumed that behind a supposedly clean facade, similar criminal structures prevail in many other brothels in Germany. This is also shown by investigations against other large brothels in Germany. If the actual conditions in the "Paradise" had not been

¹⁰ The perfect brothel – SPIEGEL – 30.05.2009

¹¹ sentence Paradise 27.02.2019

https://landgericht-stuttgart.justiz-bw.de/pb/,Lde/Startseite/Aktuelles/Urteil+im+_Paradise-Prozess_/?LISTPAGE=1195716

¹² Paradise sentence

https://www.focus.de/politik/gerichte-in-deutschland/das-paradise-als-hoelle-ein-opfer-anwalt-ueber-den-prozess-gegen-einen-puff-koenig_id_11273671.html

uncovered, the "Paradise" would still be considered a model brothel today and would at the same time be cited as proof of the effectiveness of the Prostitution Protection Act - ProstG.

In the discussion about a more restrictive regulation of prostitution, buzzwords such as "dark field" or "illegality" are therefore sometimes used in a misleading way and can thus cause a certain bias.

5.6 Voluntariness

Large parts of the political community now agree, as do experts, that the overwhelming majority of prostitutes do not work voluntarily and self-determined.

On the other hand, all women who work in prostitution are currently legally considered voluntary prostitutes, unless they admit to being victims of crimes typical of the milieu. Typical indicators that women are victims naturally give rise to suspicion, but this alone, without a clear statement by the women concerned, does not in most cases enable either authorities or aid organisations to intervene. Efforts to help must therefore be limited to offers of counselling, testimony or exit.

As long as the legislator sticks to these principles, nothing will change because of the problem of evidence. Apart from exceptions (e.g. an act of violence is directly observed), the authorities have to be content with observing the situation and hoping that victim witnesses will be willing to testify. However, the fears of testifying are known to be very great.

Clearly vulnerable women, ranging from illiterates, persons with impaired psyche or beginnings of mental handicap, girls with still childlike behaviour, to women with the name of their pimp tattooed on the back of their neck like a brand as "proof of ownership", are thus in the first instance legally considered voluntary and self-employed workers. Many of these victim types have even received the official confirmation of registration in accordance with the law, because they have received corresponding instructions from their pimps not to tell anything about their actual circumstances. In some cases, the women have to switch on their mobile phones during appointments with the authorities so that the pimps can monitor the conversations. All these cases do not describe genuine voluntariness, but simulated voluntariness, based on coercion by those behind them or subjectively perceived lack of alternatives.

Thus, offers of exit counselling or health counselling, as important as they may be in individual cases, structurally appear more like an expression of helplessness. The instrument of exit counselling and assistance alone, which is not known from any other sector ("no job like any other"), shows the dramatic and incomparable nature of this activity.

5.7 The johns

The self-image of johns has changed over time. In earlier times, when prostitution still took place largely in the shadows, the john was still a kind of "unknown entity". No one outed themselves as a john back then. People wanted to remain unrecognised. The johns were usually visibly uncomfortable with their identification.

In the course of the liberalisation of prostitution, a change in the behaviour of johns could be observed, as already mentioned above. They were now more open about it, and a visit to a brothel was now seen in the same way as a hairdresser's appointment. Previously unthinkable, company parties and company outings to brothels became known. Even during police checks, young punters in particular showed a different, more open behaviour. Certainly, there is not only this one category of johns, but in general a "new type of john" has been perceived since then.

Johns are also one, if not the decisive factor determining the constantly increasing number of prostitutes. The permanently growing offer is directly related to a constantly growing demand. The lower the price, the higher the demand. The oversupply of women, combined with competitive pressure and extremely low prices, gives johns a very comfortable consumer situation. Somewhat simplified, the john can now buy sexual services two to three times as often as before with the same financial outlay. Without the increased demand, especially in the low-price sector, there would not be such a mass of prostitutes.

The rampant john behaviour is also evident in the countless john forums that can be found on the internet. Under the protection of anonymity, all kinds of knowledge and experiences are exchanged, e.g. where there is "new fuckable fresh meat" or hit lists are drawn up about prostitutes according to the ratings of "users". In the process, one finds degrading, discriminatory or even racist contributions.

Investigative practice repeatedly reveals that johns demand dangerous, health-endangering sexual practices and exploit the economic hardship and competitive pressure of the women. When it comes to the question of whether johns know or have to recognise whether they have a victim in front of them, the following scenario is typical in reality: After contacting them by phone, the john receives information about the address, price, etc. There he first meets the interlocutor/agent/pimp, hands over the agreed amount and is then led to the prostitute, who usually does not speak German and follows the orders of the pimp.

It was precisely such or similar scenarios that had led to demands a few years ago to hold the johns responsible in obvious cases. In 2017, punishment of johns in cases of forced prostitution was introduced in the Criminal Code, but only in cases of intentional action, which can practically never be proven (Section 232a/VI StGB). After numerous interventions, the provision was extended in 2021 to the more realistic variant of reckless (grossly negligent) action. With this amendment, the concrete option of prosecuting johns of forced prostitutes will also open up in practice in the future.

In the area of illegal prostitution in restricted areas, however, the john is incomprehensibly still privileged. While a woman who engages in prostitution in a restricted area (e.g. flat, hotel, street) is subject to prosecution by the authorities (§ 120 OWiG, in case of persistent repetition § 184f StGB), a john who visits a prostitution site in a restricted area does not need to fear corresponding prosecution by the authorities. This unjustified preferential treatment of johns is criticised, especially since the condom requirement is defined the other way round and in the case of infringements it is not the prostitute but only the john who can be held liable for fines.

In principle, johns can also be important witnesses in relevant investigative proceedings and thus helpful in providing evidence. However, a critical analysis of many proceedings showed that johns played a very subordinate role in the presentation of evidence.

5.8 Prostitution and Corona

Measures to combat the Corona pandemic included the closure of brothels. Subsequently, there were repeated reports that "*because of the closure of brothels, women were forced to migrate into illegality in order to make a living*". Others "*are on the streets after brothel closures and have no money to go home or find shelter*." The publication of these reports created a distorted picture of the undoubtedly miserable situation of many prostitutes. This is because they are not forced by the pandemic, but in many cases they are forced by third parties, and there is often no mention of the fact that their earnings usually have to be given to these. This gives the false impression that, contrary to everyday reality, the prostitutes concerned could keep their earnings for themselves.

Instead, it is correct that with the closure of brothels, primarily the pimps of the prostitutes were economically harmed and the prostitutes were not taken to unofficial prostitution sites voluntarily, as pretended, but mostly with coercion and for the benefit of the pimps. Therefore, the alleged "migration into illegality" was only a change of location for the continuation of a serious crime to the detriment of the women. Ideally, for most women, the closure of the brothels would have been rather a liberation and an opportunity for reorientation outside of prostitution.

6. Action deficits despite known realities

6.1 Inadequate impact of new laws

Even after or despite the most recent reform with the introduction of the Prostitutes Protection Act, the practice of regular, legal prostitution is still a highly dangerous activity with massive threats to the fundamental rights of those affected, such as life, health, sexual self-determination and freedom. The mass influx of women continues unchecked, the pressure of competition with cheap sex and impoverishment is still omnipresent. Not only has the Prostitution Act of 2002 completely failed and only benefited the profiteers such as brothel operators and pimps. The Prostitutes Protection Act of 2017 does not live up to its name either. Already shortly after its introduction, there were calls to bring forward the evaluation scheduled for 2023 and introduce at last effective protection regulations.

In the meantime, there are a multitude of reports and investigations on the scandalous overall circumstances, both at federal and state level. A considerable number of these have been commissioned or at least promoted by politicians. The results are mostly similar.

The precarious situation of many women has thus been known to the responsible authorities for a long time. Unfortunately, however, neither the Prostitutes Protection Act nor the period after its introduction created effective regulations to eliminate or at least defuse the typical dangers. Hence, there is no lack of knowledge about this problem, but rather a lack of action.

6.2 Guideline of the BMFSFJ on § 10 Prostitutes Protection Act - ProstSchG

In this context, reference may be made, for example, to the guidelines of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) on health counselling according to § 10 of the Prostitutes Protection Act (ProstSchG) of 2019¹³. Here, a whole series of typical everyday realities and dangers are described (especially on pages 38 - 51). Although the dangers of exploitation and heteronomy are hardly mentioned here, the list of dangers listed is simply shocking. Massive risks of infection, considerable safety risks, sexual practices that pose a serious health risk, etc. (semen in the eye, avoidance of wearing a scarf because of the risk of strangulation, advice on anal dilation, etc.) are to be reduced with counselling sessions. Taking into account the hardships and constraints to which typical everyday prostitutes are exposed, doubts may be raised as to whether the certainly well-intentioned counselling advices and offers fulfil their purpose even rudimentarily, or whether they merely have an alibi character. Inevitably, the question arises as to who does this incredibly dangerous job voluntarily, even more so when only the bare minimum of income remains.

¹³ Leitfaden § 10 ProstSchG http://www.prostituiertenschutzgesetz-niedersachsen.de/doc/doc_download.cfm?uuid=EC77B30A57F848A583EBAC3C9FAB5D77&&IRACER_AUTOLINK&&

It should therefore be indisputable that with such in many respects incredibly dangerous but even officially confirmed working conditions, more massive protective measures than mere counselling offers should be standard. Mandatory health and safety regulations are obligatory in all hazardous industries, as is the prohibition of dangerous, incalculable work practices. (cf. compulsory wearing of helmets on construction sites, protective clothing when handling material containing asbestos, etc.). In the case of prostitution, however, people are content with pointing out the dangers in the knowledge that the advice is often neither understood, nor implemented. At the same time, the practice of prostitution is probably the most dangerous activity of all because of the incomparable variety of dangers involved.

6.3 KOBER report on the prostitution scene

Insights into the realities in the milieu are provided, for example, by the state-supported report of the counselling centre KOBER from Dortmund on "Changes and effects of the Prostitution Protection Act on the prostitution scene in North-Rhine Westfalia - NRW" from 2018¹⁴. There, unacceptable conditions in brothels are described, even if partly very cautious formulations are used. For a better understanding, some of the conditions that KOBER found on site and documented in various passages of their report are reproduced verbatim below:

"Originally recruited for catering, they then found themselves in prostitution", "discouraged from trying to escape by threats".

"Women with little education and no language skills", "communication often difficult to impossible", "ill", "health-endangering offers such as 'without condoms'", "illiterate women", "deceived", "exercising coercion", "families or partners exerted extreme emotional pressure", "blackmail", "possibly not working voluntarily",

"women's fears usually too great to confide in someone", "fixed prices and dress code prescribed", "both establishments and women run down", "decline in prices of sex work", "dumping prices", "dangerous to health", "pressure and competitive situation", "men in possession of women's IDs", "ID with false photo", etc.

It must be taken into account that these findings were explicitly made in regular, legal brothels, i.e. in the clear field usually presented as orderly and clean.

In order to protect those affected by such misery, quick and effective action is necessary. It would be fatal if the abuses described were accepted simply with reference to an evaluation planned in some years.

¹⁴ <https://www.kober-do.de/2019/05/15/auswirkungen-des-prostituiertenschutzgesetzes-auf-die-prostitutionsszene-in-nrw/>

6.4 Example 'Right to issue instructions'

The failure to improve the protection of prostitutes can also be measured by the "limited right to issue instructions" (§ 3 Prostitution Act - ProstG). It exclusively regulates the right of brothel operators to issue directives to ensure organisational procedures in brothels and empowers operators to issue directives not only to dependent but also formally self-employed prostitutes, who are thus unilaterally curtailed in their elementary basic rights (see also section 2.3), without the same degree of employer obligations such as wage and turnover tax. The fact that, despite much criticism, this right was not simply abolished in the 2017 reform (which was supposed to strengthen the rights of prostitutes), but merely revised a little editorially, allows conclusions to be drawn about external influence.

6.5 US State Department report on human trafficking in Germany

Of importance in this context is also the equally critical and revealing report of the US Department of State from July 2021 on the standards of combating human trafficking in Germany¹⁵. Already in 2019, Germany had been downgraded by the USA to a category with countries of inferior standards due to deficits in efforts to combat this area of crime.

The 2021 report also found that Germany does not fully meet the minimum standards in combating human trafficking and therefore remains in the lower category 2. This is an unflattering, even alarming result for Germany.

Excerpts from the report's plethora of criticisms are quoted here, for example, that there are very few investigations of human trafficking, forced prostitution, pimping and exploitation of prostitutes in Germany. According to the report, in 2019 there were only 287 preliminary proceedings involving 430 suspects, of whom only 195 persons (= 45%) were convicted. 72% of those convicted received very low sentences (59% suspended, meaning they did not have to go to prison at all, 10% received only fines and 3% received sentences of less than 1 year). Only one of the 195 convicted traffickers received a sentence of over 5 years.

The report criticised that this sentencing practice ***"neither served to deter this crime nor was it proportionate to the offence. This practice reduced the deterrent effect, possibly undermined the efforts of the police and prosecutors, and possibly endangered the safety of the victims in particular, who were cooperative in the investigation and proceedings."***

The report identifies precisely those deficits that experts from the judiciary and the police have been pointing out for years and reveals also further evidence of the difficult investigative circumstances in this area of crime. According to the report, more than every second investigation had to be discontinued and of the few convicted, only about

¹⁵ Report US- Foreign Ministry, <https://de.usembassy.gov/de/laenderberichte-zu-menschenhandel-2021/>

4 per cent (8 out of 195 convicted) received a prison sentence of at least three years. These sentences do not do justice to the massive violations of legal rights that are associated with these offences.

The figures for 2020 and 2021 are not likely to be significantly different.

6.6 Evaluation of the Criminological Research Institute of Lower Saxony

An evaluation commissioned by the Federal Ministry of Justice and Consumer Protection from the Criminological Research Institute of Lower Saxony - KFN in 2021 on the criminal law provisions on combating human trafficking reformed in 2016 comes to similar conclusions.¹⁶ Some of the main contents of the evaluation are briefly presented below:

- Evaluation of 221 investigation procedures for human trafficking for sexual exploitation provided by the Federal Bureau of Investigation - BKA.
- Assumption that behind each identified trafficking victim in Germany there are nine unidentified victims, so that at least 90% of trafficking offences remain in the dark.
- 83 % of preliminary proceedings were dropped, only 11-14 % of perpetrators were convicted.
- Consistent victim testimonies are extremely important
- No improvement discernible through reformed formulation of offences.

6.7 Summary

In summary, it is clear that those affected, i. e. the prostitutes who are to be protected by law, were structurally worse off after each reform, that the monitoring and investigation possibilities became more difficult and that the reforms mostly did not take into account the changed exterior circumstances.

Especially the political changes of 2001 and 2002 are responsible for mass prostitution and impoverishment. So far, despite major or minor reforms since the 1990s, it has not been possible to stop and correct this disastrous development politically.

¹⁶https://www.bmj.de/DE/Ministerium/ForschungUndWissenschaft/Evaluierung_Strafvorschriften_Bekaempfung_Menschenhandel/Bericht_Evaluierung_Strafvorschriften_Bekaempfung_Menschenhandel.html;jsessionid=352CFCFED6D469E168E4551EB37EB083.2_cid289?nn=16914790

7. Solution-oriented analysis

7.1 Conclusions from past developments

The reasons for this unpleasant result are judged differently. The assessments range from technical mistakes in new legal regulations to ideological blindness with a fading out of realities to strong influence by the prostitution lobby. However, despite the previous failures in attempts at regulation, the impression must not be created that the prostitution sector is unregulable. Instead it is only important to draw the right conclusions from the mistakes of the past. This also includes that in the future

- the real, actual conditions must be the basis for decisions. The focus must be on the protection needs and interests of the so-called everyday prostitutes and no longer on the wishes of the few self-employed prostitutes. It would be unacceptable if the vast majority were again sacrificed to the interests of individuals.
- finally more the causes of the grievances must be addressed instead of just symptoms. At present, the focus of aid measures is mainly on combating (visible) effects. The many forms of social work are very important and indispensable to alleviate acute problem situations. But even an expansion of help and counselling services is not sufficient to solve the basic problem in the long term. As long as, for example, every prostitute who has been successfully helped to leave the trade can be replaced without any problems, the problem is only shifted to the successor.
- sham solutions or token measures should be refrained from. This includes, for example, the questionable installation of so-called "Performing Boxes" like the one in Kurfürstenstraße in Berlin. These are merely expensive PR measures and do not really help the women, but only secure income for their pimps. If the already distressed women are provided with a foul-smelling wooden shed, which is also used for defecation, to carry out their activity, this alone is an affront to their human dignity. This is not a solution, but rather administration and manifestation or even support of grievances.

Figure 4: „Performing Boxes“ ("Verrichtungsboxen") in Berlin (Source: Own photo)



Photo: Helmut Sporer

- orientation is on what is actually feasible, rather than on theoretical or even ideological thoughts. Any regulation is only as good as the possibilities of its control.
- representatives of the prostitution lobby such as brothel operators are no longer involved in round tables and decision-making processes. The involvement of the prostitution lobby is to be seen extremely critically. They cannot be neutral. This circumstance could be partly responsible for some wrong regulations from the past. An unpleasant memory is still a press photo from 2001, when the Social-Democratic Party (SPD) federal minister responsible at the time and the parliamentary group leader of the Greens toasted the new prostitution law with a brothel operator. The fatal consequences of this law for ordinary prostitutes are well known.

7.2 Rigid and flexible factors

In addition to flexible factors, the prostitution sector includes rigid, unchangeable conditions that cannot be influenced, or can only be influenced to an insignificant extent, even with reforms. These rigid factors include

- on the one hand, the freedom of movement and the freedom of establishment of EU nationals. The almost endless influx of women from south-eastern

European EU states, caused by the prosperity gap, cannot be limited significantly.

- on the other hand, the personnel situation: A stronger regulation associated with a new reform would also require more surveillance and control in this huge, unmanageable market, especially since the prostitution scene is predominantly associated with serious crime. However, the personnel capacities for surveillance and investigation are limited and, taking into account personnel developments, will not be able to be expanded in the future to the extent that would be necessary for an effective control pressure.
- finally, principles of criminal procedure in criminal proceedings for forced prostitution etc. cannot be reformed at will. The direct personal evidence, i.e. mostly in the form of a victim's testimony in the main trial, will remain indispensable in most cases in the future. The associated constraints, fears and reprisals can only be contained to a very limited extent with victim protection measures. Most investigations fail at this eye of the needle or "predetermined breaking point".

In addition to the rigid factors, there are a large number of flexible factors. They can be changed comparatively easily through reforms. These include

- a minimum age of 21 for prostitution,
- a registration and deregistration requirement for prostitutes in every city,
- a ban on the practice of prostitution for particularly vulnerable persons such as the disabled, illiterate, persons without German language skills, etc,
- a complete abolition of the brothel operators' right to issue instructions,
- a regulation of curfew hours for brothels with limitation of working hours for prostitutes,
- a limitation of daily rentals,
- a ban on street prostitution,
- a punishment for prostitution in restricted areas,
- a ban on advertising prostitution,
- a ban on entry counselling,
- an extension of the special protection regulations for adolescents in § 232a/l StGB (forced prostitution) to all prostitutes,
- better investigation possibilities such as the possibility of telecommunication surveillance on suspicion of pimping or exploitation of prostitutes, etc.

8. Variants for a new regulation

There are basically two options for a new regulation.

8.1 Further reform while retaining the previous legal structure

This variant follows the idea of maintaining a fundamentally liberal prostitution policy. With the implementation of a bundle of measures, a limited positive effect on prostitution conditions would be conceivable in principle. The above list of possible measures is merely exemplary and could be constructively expanded.

However, it is important to remember that most of these points had already been demanded by experts during the last reform in 2016, but due to external resistance, they were not taken into account either in the ministry's (BMFSFJ's) draft at that time or in the law itself. Thus, a renewed discussion would have to be feared lasting years with the risk of an unsatisfactory compromise result. In the meantime, those affected would continue to be defenceless and many new victims would be added.

A decisive improvement of the situation must be doubted however, because an oversupply of victim types would remain on the market and sufficient investigation, control and judicial resources are lacking. This forecast does not even take into account the current developments in Ukraine. It is to be feared that the influx of refugees from Ukraine will lead to a high influx of Ukrainian women who end up in prostitution, thus aggravating the situation anew.

The punishment of johns for prostitution in restricted areas would certainly be an effective instrument in principle, provided that a realistic risk of detection for johns was guaranteed with sufficient control density. However, an adequate control frequency can only be achieved with a smaller prostitution milieu, but not with the currently huge market, if the control capacities remain the same, i.e. the number of staff remains unchanged.

In summary, the following can be stated:

- A liberal prostitution policy only regulates the processes in prostitution and secures both the existence of brothels and a high number of prostitutes and thus implies a high exploitation rate.
- No country is known to have achieved a satisfactory balance between liberal regulation and adequate protection of women from exploitation with a guarantee of human rights.
- It remains questionable whether this variant would be desirable at least as a transitional solution heading towards a general reorientation.

8.2 A general change of system

"Germany must become less attractive for human traffickers and other profiteers!" Fortunately, there is now a broad political consensus on this central demand. For at present, Germany, with its unique diversity of brothels, its huge supply of prostitutes, its liberal prostitution policy, considered partly unrealistic, and the associated low risk of detection for offenders, is the most interesting country of all for profiteers of the prostitution business. Evidence for this predicate are, among other things, the many johns from abroad who visit Germany exclusively because of the incomparable prostitution offers and sometimes also use package tours offered especially for the purpose to visit brothels. Critics therefore feel compelled to make unflattering comparisons with Thailand.

Solution-oriented approaches therefore deal with the central aspect of how the attractiveness of Germany as a prostitution country can be reduced. The most important measure here is a massive reduction in the number of prostitutes. At the same time, the high number of (mostly anonymous, unrecorded) victims will be massively reduced.

This cannot be achieved through regulatory measures. A reduction can only be effectively achieved if the profiteers no longer have opportunities or places to park their women, i.e. brothels and other prostitution sites are reduced. Correspondingly, more preventive measures must be taken, i.e. it must be prevented that the victim types of young women are brought into prostitution in the first place. Preventing entry is at least as important as efforts to help women to exit after they have been harmed.

8.3 The "Nordic Model"

These goals can best be achieved with a solution based on the well-known Nordic Model¹⁷. Here, in contrast to the current regulatory situation in Germany (e.g. prostitution in restricted areas), women who engage in prostitution are no longer criminalised - one of the core ideas of the Nordic Model. In contrast, all those who profit in any way from their activity, such as landlords, brothel operators, pimps, "managers" and also the johns, must expect criminal prosecution.

With a change to regulations similar to the Nordic Model, prostitution and exploitation will undoubtedly continue, but to a much lesser extent than now. For one thing, the special dark field in the regular brothels will disappear because there will then be no more licensed brothels. For another thing, the further migration to hotels and private homes etc. will be limited. For this purpose, special regulations must be created that prohibit hotel operators and other landlords from letting premises for prostitution purposes and to take precautions to recognise attempts to rent premises for prostitution purposes. This is not difficult to implement. These regulations will have a

¹⁷<https://sisters-ev.de/2020/04/25/faktencheck-zu-prostitution-und-zum-nordischen-modell-von-sisters-e-v/>

high deterrent effect both on potential landlords and on relevant prospective tenants. In this way, it will be achieved that the basically available prostitution places are very limited.

As a result, the authorities will be able to monitor the milieu in a much more targeted way than at the moment. The monitoring of prostitution, which is very important from a preventive point of view and currently includes an estimated 250,000 prostitutes for the whole of Germany, spread over several thousand brothels, streets and other prostitution sites, requires an immense amount of personnel from the police and, since 2017, also from the administrative authorities, which is often not available in sufficient numbers. Checks can therefore not be carried out to the extent that is actually necessary, but too infrequently or only superficially. However, professional monitoring measures, which can achieve meaningful results, are costly and must include more than mere attendance checks with personal data checks.

The disproportion between an estimated 250,000 prostitutes (a high percentage of whom are so-called victim types) and only 300 recorded victims of human trafficking for the whole of Germany (BKA Situation Report on Human Trafficking 2019) is also evidence of the currently inadequate control and investigation possibilities. In addition, it must be taken into account that the number of cases recorded, as described in sections 5.3 and 6.5, is only a matter of suspicion statistics.

With the introduction of regulation based on the Nordic Model, the market would shrink by an estimated 80 percent. Initially, a maximum of about 50,000 prostitutes would still be active (with decreasing tendency). The police would then be able to monitor this smaller and more manageable market with the same amount of manpower as before and would certainly be much more successful in identifying victims and convicting offenders than they are now.

A massive increase in police surveillance personnel, which is sometimes called for, is unrealistic in view of the actual development of police personnel and tasks. Therefore, when evaluating future solutions, the respective necessary personnel requirements are relevant.

In addition, the abolition of the obligation to register prostitutes as stipulated in the Prostitution Protection Act and for brothel operators to obtain a permit as well as the monitoring and advisory duties of the public order and health authorities will free up considerable personnel resources. These can then be used in a targeted and much more efficient way than at present to help prostitutes to leave the trade and to support and educate the much smaller number of prostitutes. The same applies to the immense public financial resources used.

8.4 Criticism of the Nordic Model

Some people are critical of the Nordic Model because they fear additional work for the investigating authorities. It is argued that "at least now we know where the prostitutes

are". However, the following must be taken into account: What is the use of knowing in which brothels the prostitutes are if, as described in paragraph 5.6, usually nothing can be done against the abuses and, somewhat exaggeratedly formulated, human trafficking, forced prostitution and pimping take place, so to speak, before the eyes of the prosecuting authorities, whose hands are usually tied as described without concrete investigative concepts? The marginal case numbers of the BKA situation report on trafficking in human beings, to which reference is made once again, prove precisely this deplorable state of affairs.

The same applies to the alleged and erroneous argument that the Nordic Model shifts prostitution into an unofficial area, which is also referred to as the dark field. As already described in paragraph 5.4, prostitution always needs a certain degree of publicity so that johns know where they can find the prostitutes. Obviously, it is possible in the same way for investigating authorities and outreach work to gain knowledge of prostitution sites. For the trend towards prostitution in unofficial locations such as hotels, holiday flats, etc., observed for several years, the police have already developed appropriate control and evidence strategies.

Doubts about the effectiveness of the Nordic Model are dispelled by experts from judiciary and police in Sweden who have been directly involved in this profession for 20 years. Prostitution and especially crimes against prostitutes have decreased massively there. The Swedish Special Ambassador for Combating Trafficking in Human Beings, Per-Anders Sunesson, quotes an Interpol report: "The Swedish market for trafficking in human beings is virtually dead."¹⁸. Accordingly, the Swedish police officer Simon Häggström, an internationally recognised expert in the field of prostitution surveillance, confirms the effectiveness of the Swedish model.

The number of killed or murdered prostitutes can also be seen as an indication of this. While in Sweden only one case has been reported in the last 20 years, in Germany more than 100 murders of prostitutes have been registered in the same period. In relation to the different population figures of the two countries, the rate of prostitutes killed by violence in Germany is more than ten times higher than in Sweden. This proves that personal safety is not more at risk with the Nordic model, as some fear.

Another objection regularly raised against the Nordic Model is that it interferes with the freedom of choice of profession. In this regard, it must be taken into account: Even if the framework conditions are changed, the practice of prostitution remains permitted and women in prostitution are precisely not criminalised. Of course, for the few women who are actually independent, the activity is more attractive under the current conditions. Ultimately, it is necessary to weigh up the fundamental right to free development of the personality of a small number of people against the fundamental right to physical and psychological integrity of a very large group of people, i.e. whether the interests of a few professional prostitutes should continue to leave the vast majority of involuntary women to their unfortunate fate.

¹⁸ EMMA 27.02.2020.

Criticism of the Nordic Model is sometimes linked to the attempt to create the impression that current conditions were good and that if the Nordic Model were introduced, everything would fall into disarray and a kind of chaos would break out. In fact, the exact opposite is the case. A further worsening of conditions is simply not conceivable.

Compared to the current situation, the Nordic Model has a completely different approach, is an expression of a modern understanding of society and has four pillars

1. decriminalisation of women
2. criminalisation of johns, pimps, brothel operators,
3. exit assistance, and
4. education of those affected and society as a whole

through a coherent overall concept. Regulations such as the Nordic Model will certainly not create completely violence-free conditions, but they will significantly reduce the known abuses overall. The leverage effect will be greater than in other countries that have already introduced the Nordic Model, because before the introduction of the Nordic Model, France or Sweden, for example, did not have anywhere near the percentage of prostitutes that Germany currently has.

As described above, the Nordic Model leads to a considerable reduction in prostitutes, which also means a considerable reduction in victims. It works as a form of entry prevention and is thus an excellent preventive victim protection.

9. Change in social values

A modern society needs a high sensitivity for prostitution and its excesses. This includes making it even clearer what is usually actually hidden behind prostitution and countering inaccurate, outdated, crude, derogatory or romanticised ideas. Just as, for example, the political debate on racism leads to a new awareness, this would also be important for the area of prostitution/exploitation. For this purpose, structural education in schools would be just as conceivable as publicity measures by the federal government. Following effective campaigns such as education on sexual hygiene ("make it with condom"), special education campaigns ("A man doesn't buy a woman") would be important. In general, the question must be addressed to what extent the current progressive prostitution regulations can still be reconciled with the ethical standards of a modern, responsible society, especially in view of the real conditions. Furthermore, it is also necessary to provide the significance of violations of legal rights in milieu offences with a different, adequate legal framework. This could be oriented to the positive developments in the area of combating child pornography. In the distant past, this was partly classified as a marginal offence. In recent years, however, the massive violation of legal rights behind these offences has been increasingly taken into account. In addition to a change in public perception, this has led to considerable tightening of criminal law and criminal procedure law, as well as to the formation of specialised investigation units at the criminal police and public prosecutor's office.

10. Perspectives for former prostitutes

A change of system in the direction of the Nordic Model is inevitably linked to the question of what will happen to the many women who can then no longer prostitute themselves or no longer have to. Some of them would certainly be able to be integrated into the labour market in Germany through support measures.

However, according to previous experience, the majority of women are basically willing to return to their home country and familiar social structures. To this end, appropriate economic incentives and alternatives must be created. This requires a new and comprehensive approach. Within the framework of targeted economic support to be initiated by Germany in the main countries of origin such as Romania, Bulgaria and Hungary, specific support measures could be initiated that include training, further education and adequate employment, possibly in non-profit enterprises or similar. In this way, especially women who used to work in prostitution in Germany can find an economic future. Such projects must be exclusively or primarily reserved for such women and must give them an employment guarantee for two to three years.

The financing costs are certainly considerable, but could be reduced by redirecting previous economic or development aid, especially since a direct and high added value can be expected here for all those involved. In addition to the organisational and financial costs, it should not be overlooked that other problems such as the danger of stigmatisation of former prostitutes in their home countries need to be solved.

Ultimately, however, there is no alternative to these efforts if a real improvement in the situation is desired, and they make absolute sense because they show a way out of the current dilemma that is laborious and expensive, but at the same time practicable. With its legislation, Germany has played a major role in causing this dilemma and therefore has a duty to correct the grievances.

It also opens up the opportunity for Germany to become the pioneer of a new policy and, in optimising the Nordic Model with its well-known four pillars in the form of concrete economic projects in the home countries, to create a further, fifth pillar and thus introduce a specific "**New German Way for a Reorganisation of Prostitution Legislation**":

1. decriminalisation of women,
2. criminalisation of johns, pimps, brothel operators,
3. exit assistance and
4. education of those affected and of society
5. **economic projects for returnees in the women's countries of origin.**

11. Concluding remarks

The precarious conditions that prevail in the reality of prostitution must be remedied as soon as possible.

Previous attempts at regulation were torn between romanticised ideology, lobbyism and reality. Apart from selective progress, the regulations have not been able to positively influence the overall phenomenon of prostitution and human trafficking.

The sobering figures on the proportion of vulnerable prostitutes, the large official dark area in regular prostitution establishments, the marginal number of investigations carried out and the shockingly low conviction rate show that desolate conditions prevail in all fields of prostitution.

An effective, i.e. a victim-protection-oriented and victim-avoiding change in the context of humane standards cannot be achieved, as in the past, with a few sometimes impractical cosmetic changes or minor adjustments. Rather, a massive change of course is required to achieve this goal.

Every additional year without a new reorientation means knowingly accepting thousands of new victims. Over the past two decades, Germany has become a much-criticised and negative example of prostitution policy in Europe. It is also a matter of sending a signal of responsibility to other countries by reorienting this issue. This would also be a strong signal to the main countries of origin of prostitutes.

An effective reorganisation of prostitution is exclusively a question of political will.

About the author:

Until his retirement two years ago, Helmut Sporer, as senior detective, had worked for the criminal police in Augsburg for almost 30 years since 1990 and was almost continuously entrusted with the issue of prostitution and human trafficking. For almost 15 years, he was responsible as an investigator for the surveillance of prostitution, among other things, and was in charge of investigative proceedings in the area of human trafficking, pimping and organised crime. Afterwards, he was the head of a police department responsible for combating human trafficking and monitoring prostitution for about 15 years. During this time, he led numerous investigations and operations and directly experienced the effects of legal changes as well as changes in the prostitution market.

In his strategic concept "The Augsburg Way", written in 2010, he pointed out possibilities for improving conditions in prostitution. In the past, he has repeatedly served as an expert on the issue of prostitution and human trafficking in committees of the German Bundestag as well as other political bodies.

Notes

1. The female form was chosen because significantly more women than men are involved in prostitution.
2. Former Federal Epidemics Act, Sexually Transmitted Diseases Act.
3. Schmidbauer, Wilhelm: Das Prostitutionsgesetz zwischen Anspruch und Wirklichkeit aus polizeilicher Sicht, in: NJW, 2005, p. 871.
4. 2006 Colosseum; <https://marjorie-wiki.de/wiki/Colosseum> (Bordell)
5. Lawsuit on serving alcohol, https://www.ra-kotz.de/bordell_gaststaettenerlaubnis.htm
6. Unless there is a concrete suspicion of relevant criminal offences.
7. University of Heidelberg expert opinion, https://www.uniheidelberg.de/presse/news/2013/pm20130527_prostitution.html
8. BKA Situation Report, [https://www.bka.de/DE/Aktuelle Informationen/ Statistiken Lagebilder/Lagebilder/Menschenhandel/menschenhandel_node.html](https://www.bka.de/DE/Aktuelle%20Informationen/Statistiken/Lagebilder/Lagebilder/Menschenhandel/menschenhandel_node.html)
9. CDU Women's Union, resolution 29.6.20, excerpt: There are women who work in prostitution voluntarily. The vast majority of women, however, do so out of poverty and desperation or are forced into prostitution by criminals. They suffer as a result for the rest of their lives. Resolution of the Social Democratic Party (SPD) Federal Executive Committee, 16.11.2020, excerpt: For their design it is of importance whether a person voluntarily engages in prostitution, whether a person offers for more or less involuntary reasons sexual acts for money or whether a person is a victim of forced prostitution. We know that the second group is the majority of people involved in prostitution. These women, men and trans people often work in prostitution in a parallel society due to very different personal hardships. We also know that the border between prostitution for involuntary reasons and forced prostitution is sometimes fluid.
10. The perfect brothel, in: magazine Spiegel, 30.5.2009.
11. Verdict brothel Paradise, 27.2.2019, https://landgericht-stuttgart.justiz-bw.de/pb/Lde/Startseite/Aktuelles/Urteil+im+_Paradise-Prozess_/?LISTPAGE=1195716; Paradise Urteil, https://www.focus.de/politik/gerichte-in-deutschland/das-paradise-als-hoelle-ein-opfer-anwalt-ueber-den-prozess-gegen-einen-puff-koenig_id_11273671.html
12. Guideline § 10 ProstSchG http://www.prostituiertenschutzgesetz-niedersachsen.de/doc/doc_download.cfm?uuid=EC77B30A57F848A583EBAC3C9FAB5D77&&IRACER_AUTOLINK&&
13. <https://www.kober-do.de/2019/05/15/auswirkungen-des-prostituiertenschutzgesetzes-auf-die-prostitutionsszene-in-nrw/>
14. Report US Foreign Ministry, <https://de.usembassy.gov/de/laenderberichte-zu-menschenhandel-2021/>

15. [https://www.bmj.de/DE/Ministerium/Forschung und Wissenschaft/Evaluierung Strafvorschriften Bekaempfung_Menschenhandel/Bericht_Evaluierung Strafvorschriften_Bekaempfung_Menschenhandel.html;jsessionid=352CFCFED6D469E168E4551EB37EB083.2_cid289?nn=16914790](https://www.bmj.de/DE/Ministerium/Forschung%20und%20Wissenschaft/Evaluierung%20Strafvorschriften%20Bekaempfung_Menschenhandel/Bericht_Evaluierung%20Strafvorschriften_Bekaempfung_Menschenhandel.html;jsessionid=352CFCFED6D469E168E4551EB37EB083.2_cid289?nn=16914790)
16. [http://magazin.spiegel.de/Epub Delivery/spiegel/pdf/21731850](http://magazin.spiegel.de/Epub%20Delivery/spiegel/pdf/21731850)
17. <https://sisters-ev.de/2020/04/25/faktencheck-zu-prostitution-und-zum-nordischen-modell-von-sisters-e-v/>
18. In: magazine Emma, 27.2.2020.
19. <https://ressourcesfeministes.fr/2021/01/08/prostitution-kills-women/>