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A CRITIQUE OF GERMANY'S PROSTITUTION LEGISLATION

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A Critique of Germany's Prostitution Legislation

Abstract

The Prostitution Act (Prostitutionsgesetz) in Germany, enacted in 2002 and amended in 2017, aims to protect sex workers, ensure their rights, and address issues of exploitation and trafficking. However, critics argue that the Act fails to address the challenges posed by prostitution in diverse sexual subcultures, such as the LGBT community, and is ineffective in regulating illegal prostitution. This critique explores the impact of the Act on gay prostitution, the need for better enforcement of laws, and the social and legal challenges faced by sex workers. It also discusses the loopholes in the current legislation, such as the lack of oversight of brothels and online prostitution and offers suggestions for improvement to prioritize the safety and well-being of sex workers.

Keywords: Prostitution Act, Germany, Critique, LGBT community, Illegal prostitution, Sex workers, Regulations, Improvements, Exploitation, Trafficking

Prostitutionsgesetz

Germany drafted the Prostitution Act in 2001 which came in force in 2002 and was amended to insert new rules in 2017. The Act was introduced by the Green Party. However, it is criticised as a failed law on different fronts. The Act is gender neutral; it supports gender equality and intends to protect women from trafficking and exploitation. It also recognises the right to self-determination. However, the Act fails to consider new challenges against prostitution. Prostitution is not only heteronormative i.e. female to male and brothels but is largely rampant in other diverse sexual subcultures e.g. in the LGBT community. For instance, although technically not illegal, in Germany gay prostitution remains cloaked in secrecy. The invisible gay prostitution challenges the Prostitution Act. This study will attempt to answer why and how gay prostitution challenges the act, what efforts are needed to regulate illegal prostitution, its impact on public health and the socio-legal challenges, probable solutions thereto.

On 1 July 2017, Germany introduced new rules for prostitutes and prostitution establishments. The aim of the new regulations is to provide people who work as prostitutes with information about their rights and obligations, and to encourage them to exercise their rights and seek help if they need it.¹

Voluntary prostitution is generally allowed in Germany. The minimum legal age for prostitution is 18. Furthermore, pimping and exploitation, forced prostitution, human trafficking, and the sexual abuse of minors are also prohibited in Germany. The Prostitution Act, 2002 (Prostitutionsgesetz) and the new Prostitute Protection Act, 2017 (Prostituiertenschutzgesetz) apply throughout Germany to all prostitutes, their clients, and the operators of prostitution establishments.²

¹ The new Prostitute Protection Act, p.3, <https://www.bmfsfj.de/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf> (accessed on September 18, 2023).

² Ibid.

The Act gives prostitutes the right to demand that clients pay the agreed fee, and they have the right to go to court if necessary. Clients cannot refuse to pay the money, for example, in case if they were unsatisfied. Furthermore, employment contracts and other contracts between prostitutes and operators of a brothel, an escort agency, etc. can be legally entered. The contracts are valid only if they comply with legal regulations and do not infringe the rights of prostitutes.³

Under this Act, the operators of prostitution business have limited power. They may not tell prostitutes who to provide sexual services to and how to perform them. Prostitutes also have the right to refuse to provide a sexual service or stop providing such a service, even if it had been agreed beforehand. Since 1 July 2017 it has been mandatory for prostitutes to personally register their work. This obligation to register applies to all persons providing sexual services. Upon registration a certificate is issued. Prostitutes must have this certificate on them to be able to show it to a brothel operator, the owner of an escort agency, or during an official inspection. The registration certificate is valid throughout Germany. Federal states may issue their own additional rules. The registration certificate is valid for two years for persons over 21, and just one year for persons under 21. Before registration it is necessary to attend health consultation. The Act imposes condom requirement. Official permit is a must for a person who wishes to operate a prostitution business. This includes brothels and similar establishments (e.g. sauna or nudism clubs, brothel flats or “model flats”), prostitution vehicles (e.g. “Love-Mobiles”), prostitution events (e.g. commercial sex parties), and prostitution agencies (e.g. escort agencies).⁴

There is provision for social coverage for self-employed and employed prostitutes. Also, there is health insurance, nursing care insurance, pension insurance, accident insurance, unemployment benefit and basic support for jobseekers. Further, there are tax obligations of prostitutes, tax obligations for employees like wage tax as income tax, professional costs, and tax obligations for self-employed prostitutes. In some federal states value added tax, business tax, entertainment tax and advance / return tax apply to prostitutes.⁵

The Act also provides for advice and drop-in centres, health advice, advice on pregnancy, contraception, and relationships. In addition, there is a provision for emergency service, e.g. police, fire, rescue service. Support hotline for violence against women and pregnant women in distress. Telephone counselling is also open for all prostitutes.⁶ In some federal states, prostitution is prohibited in general in smaller towns. Before registering prostitutes should inquire with the local authorities about regional regulations. Since not all local policymakers

³ The new Prostitute Protection Act, p.3-4,

<https://www.bmfsfj.de/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>
(accessed on September 28, 2023).

⁴ The new Prostitute Protection Act, p.4-5,

<https://www.bmfsfj.de/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>
(accessed on September 28, 2023).

⁵ The new Prostitute Protection Act, p.5-14,

<https://www.bmfsfj.de/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>
(accessed on September 28, 2023).

⁶ The new Prostitute Protection Act, p.15-18,

<https://www.bmfsfj.de/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>
(accessed on September 28, 2023).

agreed with the Act's intentions, this has led to a range of bylaws and practices making it difficult for the sex workers to operate legally.⁷ This makes it a 'legalization' or 'regulation' regime. Also, this could fall in the category of 'decriminalization', since upon its enactment, the new Prostitution Act, 2017 decriminalized the 'promotion' of prostitution, whereby operating sex work premises and advertising had been illegal before. Furthermore, the arbitrary and repressive policies enforced by some states have led scholars to describe the legal approach as renewed 'criminalization' of prostitution. The new Act gives a lot of power to the state authorities to control sex workers leaving scope for crime and illegal prostitution. The ambiguous language will sanction federal states to completely prohibit sex work premises.⁸

Critique

Sex-work activists have severely criticised the Act. Activist Stephanie Klee, a sex-work activist working for HighLights-Agentur in Berlin, states:

“In practice, these provisions have had little effect on our work. To date there have been few employment contracts. The reasons for this are that: Our colleagues do not want it. We are used to getting paid every day, or after every guest. Brothel-keepers do not want it since the law limits their rights as an employer in relation to their employees. If an employee is lazy or does not feel like working, the employer cannot command her to work. Neither wh_res nor brothel-keepers have any experience with work contracts and social insurance. They are suspicious as to whether it all works like they are told, or if there is some catch hidden somewhere. a prostitute may not be willing to appear publicly in court or pay the cost for taking the matter to the court.”⁹

Klee further states, “this would force us to withdraw once more, not act in public, and serious [In German, “seriös” means “legitimate, reputable, with good intention”] people in the business will have to make way for the not-so-serious.”¹⁰

Politicians and authorities have failed to make the Prostitution Act widely known. Many prostitutes are unaware of their rights, nor do they know how to obtain them. As already mentioned, Germany being a federation, the laws are interpreted differently in different states.¹¹

Although the language of the Act is gender neutral, it has heteronormative dimensions. In contrast to female prostitution, male prostitution experiences severe discrimination not only from society but also from politics. The prostitute protection law leaves out the queer-migrant (gays, trans, male migrants, and other identities).¹²

⁷ Östergren, P. From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies, June 2017, p.5, <https://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies> (accessed on July 19, 2023), See Hunecke, I. (2017) Germany. In: Jahnsen, S. & Wagenaar H, (eds.) Assessing Prostitution Polices in Europe. London, New York: Routledge.

⁸ See Hunecke, I. (2017) Germany. In: Jahnsen, S. & Wagenaar H, (eds.) Assessing Prostitution Polices in Europe. London, New York: Routledge.

⁹ Klee, S. The German Prostitution Act: Consequences for Sex Workers, Report of the European Conference on Sex Work, Human Rights, Labour and Migration, Brussels (2005), p.54, <https://www.walnet.org/csis/groups/icrse/brussels-2005/SWRights-German.pdf> (July 18, 2023).

¹⁰ Ibid, p.56.

¹¹ Ibid, p.55.

¹² Sex-Business: Stuttgarter Augen bleiben zu, während Männer anschaffen, 12 February 2019, <https://www.spd-stuttgart.de/meldungen/sex-business-stuttgarter-augen-bleiben-zu-waehrend-maenner-anschaffen/> (accessed on July 21, 2023).

With endless regulation of prostitution businesses, the Act fails to secure effective enforcement of laws that ensure equal protection. It also shows a disregard towards gender diversity and sexual orientation. Technology has changed the face of prostitution. In modern societies sex workers use the Internet and other new technologies to facilitate their work.¹³ The Act has ignored this fact, leaving a vacuum for illegal prostitution.

In her article Verena Nagel writes:

“...the obligation to report to the authorities and to carry a prostitute ID unsettles the sex workers. In our digitally networked world, the obligation to register can even be dangerous.....The law is particularly risky for migrants. These often do not have a postal address in Germany and do not know what happens to their data. They also face criminal prosecution when they return to their home country. The numbers also reflect the failure of the law. While only two male prostitutes are registered with the office in Stuttgart, the association estimates that there are around 350 to 500 sex workers under the age of 35 in the region.....If you are in migration processes for migrating illegally, what other options do you have? You could go into drug trafficking, but that is illegal. Sex work is therefore often the only way to legally get money.”¹⁴

Suggestions for improvement

One loophole in the Prostitutionsgesetz 2017 in Germany is the lack of regulation and oversight of brothels and other sex establishments. This can lead to exploitation and abuse of sex workers, as well as the presence of illegal activity such as trafficking and underage prostitution. To correct this loophole, the law could be amended to require regular inspections and licensing of brothels and sex establishments, as well as stricter penalties for those found to be engaging in illegal activities. Additionally, there could be more support and resources allocated to help sex workers leave the industry if they wish to do so.

Another loophole in the law is the lack of regulation for online and street-based prostitution, which can be harder to control and monitor. To address this, the law could be updated to include specific regulations for these types of prostitution, such as requiring registration and regular health checks for sex workers operating in these contexts. Overall, the key to correcting these loopholes in the Prostitutionsgesetz 2017 in Germany is to prioritize the safety and well-being of sex workers, and to work towards creating a legal framework that protects their rights and ensures their dignity and autonomy.

¹³ Cunningham, Anthony & Kendall, Todd. (2011). Prostitution, Technology, and the Law: New Data and Directions. Research Handbook On The Economics Of Family Law, https://www.researchgate.net/publication/252498626_Prostitution_Technology_and_the_Law_New_Data_and_Directions (accessed on July 18, 2023).

¹⁴ Nagel, V. Männliche Prostitution Sex for Sale - nicht nur Frauen schaffen an, 24 January 2020, <https://www.edit-magazin.de/sex-sale-nicht-nur-frauen-schaffen.html> (accessed on July 21, 2023).

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