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# PROFESSED PROTECTION, POINTLESS PROVISIONS– OVERVIEW OF THE GERMAN PROSTITUTES PROTECTION ACT (Prostituiertenschutzgesetz – ProstSchG)

# OVERVIEW

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This briefing paper was developed by the International Committee on the Rights of Sex Workers in Europe (ICRSE) in collaboration with Hydra e.V. and the Professional Association Erotic and Sexual Services (BesD e.V.) and presented on the occasion of the International Sex Workers' Day on June 2, 2017. This briefing paper aims to offer policy makers, sex workers, and sex workers' allies an analysis of Germany's new "Prostitutes Protection Act" and its expected impact on sex workers, and outline recommendations from the sex worker community.

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# 1. INTRODUCTION

While sex work is legal in Germany, it is subjected to many special laws that have the effect of criminalising the practice. Of particular concern are prostitution zoning laws (“Sperrgebietsverordnungen”) which effectively render sex work illegal in many cities and communities.

On January 1, 2002, the Prostitution Act (Prostitutionsgesetz – ProstG) came into force in Germany. It was adopted with the aim of improving the legal position of prostitutes as service providers and enabling sex workers to sue for payment and get statutory health insurance.

On July 1, 2017, the so-called “Prostitutes Protection Act” (Prostituiertenschutzgesetz, ProstSchG) will come into force, a new law that requires all providers of sexual and erotic services to personally register with designated authorities. Which particular authorities will be responsible is not defined by the law and therefore left at the discretion of the respective federal state. Police stations, residents’ registration offices (Meldeämter), and trade offices could be considered.<sup>1</sup>

The registration must be made under applicants’ actual name, and must additionally include two photographs, their registered address of permanent residence, date and location of birth, and citizenship. Furthermore, sex workers will also be obliged to undergo mandatory health counselling. After up to five business days, a photo identification card will be provided that has to be carried on the job at all times; workers over 21 years of age must renew their registration every two years.<sup>2</sup> In addition, a mandatory health counselling session must be repeated annually. Sex workers under the age of 21 are subject to different requirements and must renew their registration every year and repeat the mandatory health counselling session every six months. If the authorities find any indication that a person is providing sexual or erotic services without

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1 In February 2017, it became known that the State Parliament of Hamburg had not yet provided a draft for the implementation of the law. Furthermore, the development of the “Round Table Prostitution” that was agreed upon in the coalition agreement also did not seem to be completed, just like the closely linked evaluation of the prostitution zoning laws. See: Die Linke Fraktion in der Hamburgischen Bürgerschaft [The Left Fraction Hamburg] “Prostituiertenschutzgesetz: Hamburg ist nicht vorbereitet [Prostitutes Protection Act: Hamburg is not prepared]” (February 28, 2017); URL: <http://www.linksfraktion-hamburg.de/2017/02/28/prostituiertenschutzgesetz-hamburg-ist-nicht-vorbereitet/> (Last viewed: April 30, 2017); See also Voice4Sexworkers, Gemeinnützige Stiftung Sexualität und Gesundheit (GSSG) [Voice4Sexworkers, Foundation Sexuality and Health] “München – Beschluss des Gesundheitsausschusses [Munich – Ruling of Health Committee]” (February 13, 2017); URL: <https://www.prostituiertenschutzgesetz.info/muenchen-beschluss-des-gesundheitsausschusses/> (Last viewed: April 30, 2017); see also Doña Carmen e.V. Verein für soziale und politische Rechte von Prostituierten [Doña Carmen Organisation for social and political rights of prostitutes] “Pressemitteilung: Stadt München zwingt Sexarbeiter/innen in den Untergrund [Press release: City of Munich forces sex workers underground]” (March 1, 2017); URL: <http://www.donacarmen.de/pressemitteilung-stadt-muenchen-zwingt-sexarbeiterinnen-in-den-untergrund/> (Last viewed: April 30, 2017).

2 For people over 21 who are subject to registration and register for the first time before December 31, 2017, the registration certificate will be valid for three years; all subsequent certificates will be valid for two years.

the required registration, they can impose fines of up to €1,000. Proof of registration and health counselling then has to be accounted for within an appropriate period of time. Brothels and “brothel-like businesses” will be required to obtain a special licence. The definition of “brothel-like businesses” includes walk-in brothels, apartments used for sex work, escort agencies as well as any apartment in which two or more sex workers occasionally work together. Since further extensive requirements (such as separate bathrooms, recreation rooms etc.) will be imposed on such businesses, it is to be expected that it will be particularly difficult for small businesses to acquire a licence. Compounding this, brothel operators are, among other things, required to employ only registered sex workers and to ensure that working rooms are not also used for sleeping.

Henceforward, “prostitution events” will have to be licenced and reported to the designated authorities four weeks before the event date. (Sex parties and so called “[Rape]-Gang-Bang” events will be prohibited, if they are commercial in nature.) In order to register such events, applicants must possess a copy of the official permit for them, the operational concept the permit is based on, consent of the owner of the venue, proof of compliance to the minimum requirements of the venue, and copies of the registration certificates of all sex workers who are planned to be working during the event.

The complete legal text can be downloaded as a PDF file on the website of the German Bundestag.<sup>3</sup>

It is remarkable that a law pretending to provide protection for people working in sex work significantly undermines many of their fundamental rights. Mandatory registration and the possibility of issuing administrative orders for sex workers limit their right to freedom to choose one’s occupation, and the extensive means of surveillance that the Prostitutes Protection Act affords the authorities infringes the constitutional right of the inviolability of the home. The recording of personal data in connection with information about persons’ sexual life is a particularly serious issue as it violates the fundamental right to informational self-determination and the directive of the European Parliament on “the protection of individuals with regard to the processing of personal data”.<sup>4</sup> Given the impossibility of providing absolute data protection, the upcoming collection of this personal information is highly problematic.

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3 Deutscher Bundestag, 18. Wahlperiode [German Bundestag, 18. legislative period] “Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen [Draft bill by the Federal Government. Draft for a law to regulate prostitution businesses and protect people working in prostitution]” Berlin (May 25, 2016); URL: <http://dip21.bundestag.de/dip21/btd/18/085/1808556.pdf> (Last viewed April 30, 2017)

4 See Article 8; European Parliament “Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data” Official Journal L 281, 23/11/1995 P. 0031 - 0050 (November 23, 1995); URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31995L0046&from=DE> (Last viewed: April 30, 2017)

Despite the fact that people who became victims of human trafficking and commercial sexual exploitation supposedly served as leitmotif for the provisions contained in the Prostitutes Protection Act, it grants neither sex workers nor persons affected by human trafficking and commercial sexual exploitation any rights or entitlements. Instead, the law includes various obligations and restrictions for sex workers, and grants authorities extensive means of controlling their activities.

## **2. SUMMARY OF THE INDIVIDUAL PARAGRAPHS OF THE PROSTITUTES PROTECTION ACT INCLUDING EXPECTED EFFECTS AND VOICES OF SEX WORKERS**

### **§ 1 AND § 2 – WHOM DOES THE PROSTITUTES PROTECTION ACT AFFECT?**

The law applies to any form of sexual or erotic service offered for money with clients present in person. Hence, not only work in brothels is defined as prostitution, but also escort, BDSM, or tantra services, street-based sex work, and erotic massages.<sup>5</sup> For this definition, it is irrelevant if the service is provided regularly or occasionally, or full- or part-time.

Persons running a prostitution venue (such as a brothel, walk-in brothel, or a tantra studio), organising and carrying out prostitution events, or running a prostitution agency (such as an escort agency) will be considered as “operating a prostitution business”. Two sex workers working together, e.g. at an apartment, are also classified as running a prostitution business.

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**I have no official address, no health insurance and often no place to sleep. Now I should get registered? How should that work? – *Migrant street-based trans sex worker***

**I work at night and sleep when the social workers work. How should I get registered? – *Trans sex worker***

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<sup>5</sup> BDSM is a collective term common in literature for a group of related sexual preferences that often are referred to as sadomasochism (short: SM). The word BDSM stems from the first letters of the terms „Bondage & Discipline, Dominance & Submission, Sadism & Masochism“.



"It's not my occupation that's the problem but your bourgeois morality." Protest by sex workers and allies to mark International Sex Workers' Day in Berlin © 2013 Matthias Lehmann

### **§ 3 TO § 6 – MANDATORY REGISTRATION FOR PROSTITUTES**

Any person planning to engage in sex work is obliged to personally register with the designated authorities before taking up sex work. Subsequently, the registration has to be renewed every two years, or annually if the person is under the age of 21. In this process, the full name as stated on their ID card or passport, their official registered address, birth date and place, and nationality as well as intended work locations will be registered. Additionally, two passport photographs have to be provided.

Foreign nationals have to prove that they are permitted to work self-employed in Germany (§4). When all necessary documents have been provided and no evidence of coercion has been detected, applicants will receive a registration certificate including a photograph (photo ID) within five business days. Thereafter, they are allowed to work anywhere in Germany, unless there are relevant local contradictory regulations at the federal state level. However, if sex workers want to work in a community not specified in their registration certificate, they have to contact the respective designated authority and register their activity in advance. While working, sex workers have to be able to produce the photo ID at all times (§5). It is possible to receive an alias photo ID that features an alias instead of the real name, but this version of the photo ID will also include a photograph (§ 6).

The German Women Lawyers Association (Deutscher Juristinnenbund, djb) regards the mandatory registration, which includes the recording of personal data in connection to persons' sexual life, as an infringement on personal rights in regards to the rights to sexual and informational self-determination. Furthermore, the fact that registrations can also be denied represents an infringement on the constitutional right to freedom of vocational choice according to §12 of the German Constitution (Grundgesetz, GG). Upon loss or theft, a registration certificate with such sensitive data could be used by perpetrators to blackmail sex workers. This would significantly increase the danger of unwanted outings of sex workers along with the risk of public stigmatisation.<sup>6</sup> This grave infringement of fundamental rights is inappropriate and unjustifiable, because it permanently impairs sex workers' individual security, affecting both those who engage self-determinedly in sex work, and especially those vulnerable individuals the lawmakers pretend to want to protect with the Prostitutes Protection Act.

The German Network and Coordination Office Against Trafficking In Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel, KOK) points out that once migrants will be registered as sex workers in Germany, they will fear facing repressions in their countries of origin, where sex work is illegal, if their activity is put on record, e.g. through official data exchanges between authorities from their countries of origin and destination or in cases of data theft. The registration certificate therefore represents a potential means of leverage for third parties, rendering sex workers susceptible to blackmail, as they could, for instance, be threatened with being outed in their country of origin.

As the German Women Lawyers Association explains, it is obvious that people who were victims of human trafficking and commercial sexual exploitation ("forced prostitution") served as leitmotif for the regulations contained in the Prostitutes Protection Act. Denying people engaging in sex work their autonomy and ability of self-determination is a central theme of the new law. Due to the disproportionate requirements for self-employed sex workers, the Professional Association of Erotic and Sexual Services (Berufsverband erotische und sexuelle Dienstleistungen e.V., BesD) expects this group to be pushed into illegality through violation of trade laws, and an increase of their vulnerability.<sup>7</sup> Documented experiences

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6 Deutscher Juristinnenbund (djB) e.V. [German Women Lawyers Association] "Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen (ProstSchG-RefE) [Statement on the first draft of a law to regulate prostitution businesses and protect people working in prostitution (ProstSchG-RefE) by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth]" (September 4, 2015); URL: <https://www.djb.de/st-pm/st/st15-10/> (Last viewed: April 30, 2017).

7 Berufsverband erotische und sexuelle Dienstleistungen e.V. [Professional Association Erotic and Sexual Services] „Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen“ [Statement on the first draft of a law to regulate prostitution businesses and protect people working in prostitution by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth] (September 11, 2015); URL: <http://berufsverband-sexarbeit.de/stellungnahme-des-besd-zum-referentenentwurf-eines-prostituiertenschutzgesetzes/>



with repressive trade law regulations indicate that many sex workers will evade registration. According to the German Women Lawyers Association, this “concerns on the one hand individuals who only occasionally engage in sex work, but above all, it will concern prostitutes that do not want or cannot risk a registration with the authorities because of their specific vulnerability in their social environment, their working conditions or locations, drug addiction, lack of resident status, negative experiences with government institutions and the like.”<sup>8</sup> The same applies to many trans individuals and individuals who have experienced racism.

The public health sector also stresses that “especially the many prostitutes with a migrant background, or those suffering psychological stress or in socially precarious living situations will be unable to comply with these regulations; they will be criminalised and rendered even more vulnerable”.<sup>9</sup>

For a large number of sex workers it will not be possible to provide all the documents necessary for registration. This is especially true for migrant sex workers without residence or work permits, who will be forced further into illegality by mandatory registration measures, because registrations will not be possible without those certificates. Thus, the German AIDS Service Organisation (Deutsche AIDS-Hilfe, DAH) voices criticism that especially highly stigmatised and vulnerable groups will be forced into riskier and concealed areas of sex work. This would dramatically increase their risk of becoming victims of violence outside permitted and established prostitution venues. Sex workers without a work permit or registration certificate will not be able to alert the police or social services when faced with problems, and therefore, they will also be outside the reach of healthcare support and risk prevention measures.<sup>10</sup> As experience shows, perpetrators posing as clients and clients demanding unprotected sex acts often prefer to frequent these uncontrolled and concealed working areas.

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(Last viewed: April 30, 2017).

8 djB (2015)

9 Bundesverband der Ärztinnen und Ärzte des öffentlichen Gesundheitsdienstes (BVÖGD) und den Amtsleiterinnen und Amtsleitern von 22 Gesundheitsämtern in Deutschland [Federal Association of Doctors in Public Health Service and head officials of 22 health departments in Germany], „Stellungnahme zum Referentenentwurf des BMFSFJ. Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen [Statement on draft bill by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Draft for a law to regulate prostitution businesses and protect people working in prostitution]“ (August 31, 2015); URL: [https://www.aidshilfe.de/sites/default/files/documents/2015-09\\_Stellungnahme\\_%C3%96GD.pdf](https://www.aidshilfe.de/sites/default/files/documents/2015-09_Stellungnahme_%C3%96GD.pdf) (Last viewed: April 30, 2017)

10 Deutsche AIDS-Hilfe (DAH) e.V. [German AIDS Service Organisation], „Stellungnahme zum Entwurf eines ‚Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen‘ (Prostituiertenschutzgesetz, ProstSchG) des Bundesministeriums für Familie, Senioren, Frauen und Jugend“ [Statement on the first draft of a law to regulate prostitution businesses and protect people working in prostitution (Prostitutes Protection Act, ProstSchG) by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth] (September 21, 2015); URL: [https://www.aidshilfe.de/sites/default/files/documents/2015-09-11\\_PrSchG\\_DAH-Stellungnahme\\_final.pdf](https://www.aidshilfe.de/sites/default/files/documents/2015-09-11_PrSchG_DAH-Stellungnahme_final.pdf) (Last viewed: April 30, 2017)





I feel oppressed. In my opinion the law is a tool of oppression against us that will render us less safe during work and further increase the whore stigma. A colleague of mine is Jewish. The whore ID seriously affected her mental constitution. She said: 'We had this once already in this country. You know what happened then.'<sup>11</sup> – *German sex worker at a bar*

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I often work for a short time in different cities. How should the registration work for me there? – *Sex worker at sex parties, in the BDSM area, and cam girl*

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The whore ID will be interesting for us. Apart from the fact that most of us won't be able to get it anyway, because we often have no registered official address, it is already extremely difficult for us when we face an inspection on the streets. Our face on the streets often doesn't resemble the picture in our ID cards. And if the ID, as usual, provides a male name and "male" as gender, the trouble only starts. Under which name and with which photograph should we get the whore ID and how can that be implemented? That will be a lot of fun for us. – *Migrant street based trans sex worker*

## **§7 TO §9 – MANDATORY COUNSELLING INTERVIEW**

Upon registration, a mandatory information and counselling session will be conducted with sex workers. During this conversation, it should be determined whether the person in question takes up sex work voluntarily. The counselling session should be conducted on a confidential basis and inform sex workers about their legal situation, health and social support services, emergency help, and tax obligations. Authorities should provide information about engaging in of sex work in a language the sex worker understands. However, the law only stipulates that language barriers should be met "with the provision of multilingual information material". Although it is noted that third parties can generally be included in interviews "upon approval of the authority and the individual obliged to register" and "for the purpose of language mediation...even without approval of the individual obliged to register", the further arrangement of the information and counselling

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<sup>11</sup> In Germany an ID card for sex workers existed also in the 1930s, when sex workers were deported to concentration camps where they were raped by Nazis.

session is “may follow the usual practice of local authorities” (§8). The provision of translators or interpreters is not explicitly mentioned in the legal text.

If the counselling session provides “factual evidence” implying that the individual has no alternatives to sex work and that the decision to take up sex work has been predominantly determined by third parties, the designated authority is obliged to take immediate measures to protect the individual (§9). This can include the transfer of information to other public authorities and bodies; depending on the situation, this could be psychosocial services, youth welfare offices, police, or qualified counselling services and shelters.

However, a prerequisite for a successful counselling session and an eventual disclosure of a hardship situation or the existence of coercion is a relationship of trust, which in turn requires voluntariness and a guarantee that no personal data will be recorded and processed. As the German AIDS Service Organisation (DAH) elaborates, the planned mandatory counselling sessions would replace the existing effective counselling services and examinations with a counterproductive formality that would contradict the proclaimed goal of the Prostitutes Protection Act.<sup>12</sup>

The German Network and Coordination Office Against Trafficking In Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel, KOK) points out that individuals affected by human trafficking often disclose their situation only after an extended period of time. Even for vigilant and trained staff of public authorities it is not possible to identify people affected by human trafficking after just one interview. In addition, evidence shows that in cases of human trafficking, it is difficult for affected individuals to provide evidence of their coercion. Furthermore, courts could subsequently interpret a successful registration negatively because the individual did not use this formalised opportunity to disclose their situation.<sup>13</sup>

In general, tax authorities will be notified about registrations. If the authority sees any evidence of coercion, it can arrange the transfer of data to third parties without the consent of the individual in question. Due to the vague wording of the legal text of the Prostitutes Protection Act, the extent of potential data transfers cannot be predicted. This results in an unclear and dubious situation with regards to data protection.<sup>14</sup>

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12 DAH (2015)

13 Bundesweiter Koordinierungskreis gegen Menschenhandel (KOK) e.V. [German Network and Coordination Office Against Trafficking In Human Beings], „Stellungnahme des KOK e.V. zu dem Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend. Entwurf eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen vom 29.07.2015 [Statement of KOK e.V. on the first draft of a law to regulate prostitution businesses and protect people working in prostitution by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, published 29.07.2015]“ Berlin (September 11, 2015); URL: <https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/kok-stellungnahme-zum-geplanten-prostituiertenschutzgesetz/> (Last viewed: April 30, 2017)

14 See §34 Prostitutes Protection Act Enquiry, Processing and Utilisation; Data Protection



They told us the new law will protect us from pimps. But in reality, pimps now have one more way to exert pressure on sex workers, if they manage to steal their whore ID. I am very afraid of being outed so I won't take the ID with me when I'm doing outcalls. Angry colleagues and our clients will have one more way of repressing and stalking us, if they want to. As far as I am concerned, the whore ID is just an impossible thing for outcall or street based work.  
– *Sex Worker at an officially registered middle class brothel*

## § 10 – HEALTH COUNSELLING

Prior to a worker's first registration, a health counselling session must be attended, a confirmation of which must be produced at registration. This confirmation, together with the registration certificate, i.e. "the whore ID", has to be carried at all times while engaging in sex work. After the first registration, sex workers over the age of 21 have to attend the mandatory health counselling session again every 12 months and provide evidence thereof; sex workers under the age of 21 have to attend it every six months. Tailored to the particular living situation, this counselling session should address questions of preventive healthcare, contraception, pregnancy, and risks of alcohol and drug use. The session should also provide sex workers with an opportunity to disclose the existence of coercion or hardship situations in a confidential framework.

The German AIDS Service Organisation (DAH) and the German STI-Society for the Promotion of Sexual Health (Deutsche STI-Gesellschaft zur Förderung der Sexuellen Gesundheit, DSTIG) have criticised this procedure as it abolishes the principles of anonymity and voluntariness in health counselling sessions and AIDS/STI prevention that were created for good reason in §19 of the Infection Protection Act (Infektionsschutzgesetz, IfSG). The Prostitutes Protection Act is therefore excluding one of the most important groups from the anonymous access that it was expressly created for. In doing so, the achievements in AIDS/STI prevention of the past 30 years would be substantially jeopardised, because counselling for sex workers would degenerate into a formality and once again be perceived as a measure of governmental control and repression.<sup>15</sup>

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15 DAH (2015); Deutsche STI-Gesellschaft (DSTIG) Gesellschaft zur Förderung der Sexuellen Gesundheit [German STI Society (DSTIG) for the Promotion of Sexual Health], „Stellungnahme der DSTIG zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen [Statement of DSTIG on the first draft of a law to regulate prostitution businesses and protect people working in prostitution by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth]" (July 29, 2015); URL: <http://www.dstig.de/aktuellespressekalender/190-stellungnahme-prostituiertenschutzgesetz.html> (Last viewed: April 30, 2017)

The public health sector has also pointed to past experiences of establishing good access to so-called “hard-to-reach” populations like sex workers by introducing low-threshold, voluntary and anonymous services, while controlling measures were explicitly and consistently abolished. Public health departments fear severe negative impacts on the acceptance and voluntary use of their counselling and support services, which have been high up until now. Authorities recording the names of individuals seeking help would no longer be perceived as places that allow for trustful individual health counselling. This would especially jeopardise the outreach work of social workers and the staff of health departments, as it rendered the trustful establishment of contact impossible, if individuals are not registered. This meant that certain groups such as migrant and trans sex workers as well as adolescents, who offer sexual services despite its legal prohibition or who do so under coercion from third parties, will lose what more often than not is their only access to medical care.<sup>16</sup>



**I feel treated like a child and incapacitated by the Prostitutes Protection Act. I’m being told that I am incapable of self-determining my sexuality. – Sex worker offering upscale escort services**

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**I don’t want to face the prejudices of the people conducting the counselling. I am trans\* and I don’t want more discrimination than I already experience. It’s not okay to be forced to talk about your work. It is absurd and contradicts my human dignity that I should lose my job because of their ideas of health and security in my line of work. –Trans sex worker at an officially registered middle class brothel**

## **§ 11 – ADMINISTRATIVE ORDERS TO PROSTITUTES**

Sex workers who are not registered or cannot provide proof of completing the mandatory health counselling session will be asked to register immediately and can be sanctioned with fines of up to one thousand euros.

Insofar as it serves the protection of clients of sex workers, dependant children, or nearby residents from noise disturbance, behavioural or other nuisances,

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<sup>16</sup> BVÖGD et al. (2015)



authorities can take measures or issue orders restricting the practice of sex work at any time. This provision allows the tackling of any and all problems – real or imagined – stemming from prostitution businesses with retrospective orders. For example, it could be deemed necessary for the protection of the community to issue an order to limit behavioural nuisances and disturbances caused by the business. As a last resort, it is possible to forbid engaging in sex work or the operation of a prostitution business entirely.

The German Women Lawyers Association (djb) considers this broad definition of possible disturbances an infringement on the constitutional right to freedom of vocational choice according to Art. 12 para. 1 of the German constitution (GG). Prejudices against sex workers would thereby be “written into law and converted into intervention powers that represent a free pass for the suppression of any visible prostitution”. Judging from past experiences, there would always be a risk that third parties claimed they felt harassed by the mere existence of sex work. According to the djb, it is therefore to be expected that this regulation will especially affect street-based sex work.<sup>17</sup>



**My boyfriend is handling the bureaucracy for me. I try to understand what he does, so that I won't be too dependent on him, but I haven't succeeded yet. Due to the increased complexity of having to register under the Prostitutes Protection Act, I will understand things even less, and those of my colleagues who work with pimps will become even more dependent on them.**  
– *Street-based migrant sex worker*

## **§ 12 TO § 28 – LICENCE REQUIREMENTS FOR PROSTITUTION BUSINESSES**

Individuals planning to operate a prostitution business, which includes as few as two sex workers working together occasionally, are required to get licenced by the respective designated authorities. The duration of this licence may be limited. Upon application, a business concept has to be provided (§16) and various licencing requirements have to be met (§14). A licence can be denied if the business concept or its location is seen as running contrary to public interest, or if the applicant does not meet the reliability criteria, amongst other reasons (§15). To determine (and regularly review) the latter, a certificate of good conduct and a statement from the state police (Landespolizei) have to be provided. Additionally,

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17 djb (2015)

the licence can be subject to limiting provisions, especially where business hours, the number of people working at the business, and the number of rooms used for sexual services are concerned (§ 17).

The minimal requirements for facilities used for prostitution businesses were formulated in §18 of the Prostitutes Protection Act. These requirements include that premises must not be observable from the outside and have to be equipped with a properly installed emergency call system, separate sanitary facilities for sex workers and clients as well as common and break rooms. Furthermore, sex workers are no longer allowed to use work rooms as living or sleeping space, although §18 para. 3 stipulates that designated authorities may, in individual cases, grant exceptions for prostitution business operating at apartments.

For prostitution events, operators have to compile an event concept before each event. Documents necessary under §20 are wide-ranging and must include, for instance, copies of the registration certificates of all sex workers expected to work at the event as well as copies of any agreements concluded with them. Operators are obliged to exclusively employ registered sex workers (§25) and ensure their health and safety (§24). They are furthermore obliged to compile and retain daily records. Aside from the registration data of the respective sex workers working on the premises, their working days and all payments made must also be documented. These data have to be stored for at least two years (§28).

As mentioned earlier, the new law also classifies prostitution venues with more than one person, i.e. the operator, working there as prostitution businesses. This also applies to prostitution vehicles (so-called “Love Mobiles”), prostitution events, and agencies. Although transparent rules and regulations for licencing prostitution businesses should not be rejected per se, the regulations of the Prostitutes Protection Act disproportionately favour large businesses and increase the risk for small and medium businesses that cannot comply with all requirements being denied a licence and thus having to close or operate illegally.<sup>18</sup> According to the djb, businesses forced into illegality in such a way will certainly not be easier to monitor.<sup>19</sup> This was particularly significant as small and medium sized businesses are often organised and managed by sex workers themselves, offering a higher level of security, self-determination and independence than large businesses, as the German STI Society (DSTIG) notes.<sup>20</sup>

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18 Hydra e.V. Treffpunkt und Beratung für Prostituierte [Hydra e.V. Meeting and Counseling Center for Prostitutes] „Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen (ProstSchG-RefE) [Statement on the first draft of a law to regulate prostitution businesses and protect people working in prostitution (ProstSchG-RefE) by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth]“ (September 10, 2015); URL: <http://www.hydra-berlin.de/aktuelles/meldungen/detail/artikel/stellungnahme-von-hydra-zum-referentenentwurf-des-prostschg/> (Last viewed: April 30, 2017)

19 djb (2015)

20 DSTIG (2015)

As sex work is considered a trade, building laws come also into play, which allow prostitution businesses as places of entertainment only in core, commercial, and industrial areas. The majority of prostitution businesses, however, is located in residential areas, as apartments provide a more fitting infrastructure for the trade than commercial properties.<sup>21</sup> The djB points out that the decriminalisation of prostitution alone does not effectively create access to rights, and that relying on strictly regulatory provisions in the context of a subject as socially stigmatised as prostitution carried the risk of abuse by police and staff of other authorities.<sup>22</sup>

Since operators of brothels and other places defined as prostitution venues will have to ensure that only registered sex workers work at their venues, finding a safe work space will be rendered virtually impossible for sex workers without registration. The German Network and Coordination Office Against Trafficking In Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel, KOK) thus warns that “especially vulnerable individuals who decide against registration would no longer be within the reach of counselling services.”<sup>23</sup>

In densely populated areas, housing is often scarce and expensive, causing additional costs. Hence, rented work rooms often represent the only financially feasible accommodation, particularly for sex workers who have a permanent address out of town. Others have no alternatives whatsoever to sleeping at their work place and will be forced into homelessness by this provision, or indirectly forced to offer sexual services in exchange for accommodation.

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**I work with two colleagues at an apartment that we rented. This feels good and safe. Apart from that, it gives us a place to sleep. When the ProstSchG comes into force, we can't legally do this anymore. We have no chance of registering the apartment with our landlord or with some other authorities. – Sex worker at an apartment**

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21 djB (2015); BesD (2015)

22 djB (2015)

23 Bundesweiter Koordinierungskreis gegen Menschenhandel (KOK) e.V. (Eds.) [German Network and Coordination Office Against Trafficking In Human Beings], „Herausforderungen des Datenschutzes in der Politik gegen Menschenhandel“ [Data security challenges for politics against human trafficking] Berlin (2015); URL: [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/KOK\\_informiert/datAct\\_deutsch\\_Online.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/KOK_informiert/datAct_deutsch_Online.pdf) (Last viewed: April 30, 2017)



“Forced registration – Not with us!” Sex workers and allies demonstrate against the ProstSchG in front of the Federal Ministry for Family Affairs in Berlin © 2015 Emy Fem

## **§ 29 TO § 31 – MONITORING OF PROSTITUTION BUSINESSES**

Designated authorities are authorised to examine and inspect properties, offices, and rooms used for sexual services as well as conduct identity checks “during business hours typical for prostitution businesses”. To avoid “immediate dangers to public security and order”, authorities are also authorised to access these places outside of business hours, even in cases where rooms simultaneously serve residential purposes. In §29 para. 2, law makers admit that they thereby limit the constitutional right of inviolability of the home under §13 para. 1 of the German constitution (GG). Persons affected and third parties had to tolerate these measures.

Operators of prostitution businesses are obliged to provide designated authorities with all the information necessary to monitor business operations (§30). Authorities are entitled to the powers granted by §29 even in cases “when facts justify the assumption” that a prostitution business operates without licence or that a sex worker uses an apartment, other premises, or a vehicle for the provision of sexual services (§31).

This broadly formulated article grants designated authorities extensive monitoring powers that also affect sex workers working alone at their homes. These powers limit the constitutional right of the inviolability of one’s home, despite there being no data available that would prove that the detection rate of human trafficking



related crimes increased thanks to raids and identity checks. As the latest situation report on trafficking in human beings, published by the Federal Criminal Police Department (Bundeskriminalamt, BKA) shows, proceedings were mostly initiated on the basis of tips by affected individuals or third parties. Only in 17% of all cases could the initiation of proceedings be traced back to police measures conducted without specific cause.<sup>24</sup>



**Many of my colleagues will not be able to get registered. They are the ones who will have to do unsafe sex jobs and work for too low prices. – Migrant sex worker at a brothel**

### **§ 32 TO § 33 PROHIBITIONS AND FINES**

The Prostitutes Protection Act introduces a general obligation to use condoms that also applies to oral sex (§ 32 para. 1). Fines for failing to comply with this obligation are stipulated for clients only (§ 33 para. 3). Henceforth, advertisements for sexual services are allowed to a limited extent only (§ 32 para. 3).

Persons failing to comply with these regulations under the Prostitutes Protection Act are committing an administrative offence that is punishable with fines of varying degrees. Sex workers who work without a registration can be fined up to €1,000; persons operating a prostitution business without a licence – which, as mentioned above, includes as few as two sex workers occasionally working together at an apartment – can be fined up to €10,000; clients who do not ensure that a condom is being used, contrary to § 32 para. 1, can be fined up to €50,000 (§ 33).

As the German AIDS Service Organisation (DAH) explains, mandatory condom use regulations directly contradict the preventive work in Germany based on education and individual responsibility, which has proven to be very successful compared to the rest of Europe. In addition, policing mandatory condom use could not be implemented in practice, and clients asking for unprotected sex would thus “move to the illegal areas of the prostitution trade that will grow anyway due to the law”, the DAH argues.<sup>25</sup>

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24 Although the Federal Criminal Police Department states that 56% of all contact initiations between individuals affected by human trafficking and the police could be traced back to policing measures, this figure includes 39% of cases in which reactive policing measures were taken, i.e. measures that took place after the police received information from third parties or after reports were made. See Bundeskriminalamt (eds.) [German Federal Criminal Police Department], „Menschenhandel Bundeslagebild 2015 (korrigierte Fassung) [Situation Report on Trafficking in Human Beings 2015]“ Wiesbaden (January 18, 2017); URL: <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2015.html?nn=27956> (Last viewed: April 30, 2017)

25 DAH (2015)

Furthermore, the German STI Society (DSTIG) cautions that because of the mandatory condom use regulation, persons concerned will consider themselves in an environment of “false safety from sexually transmitted diseases” like chlamydia, gonorrhoea, syphilis, or human papillomavirus, which can easily be transmitted in spite of using condoms.<sup>26</sup>

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**I don't have any health insurance and my registered official address doesn't really work. I have to wait and see what happens when they catch me without registration. – *Migrant sex worker at a brothel***

**If they want us to work safely, they should provide free condoms and sex education for our clients instead of introducing mandatory condom use, a rule many won't follow. – *German sex worker at an upper class brothel***

## **SUMMARY § 34 – PERSONAL DATA**

As far as no protective measures according to §9 para. 2 or orders according to §11 para. 3 have been carried out, the data used for a registration has to be deleted no later than three months after the expiration of the registration certificate. In addition, other recipients of personal data have to be informed immediately about the deletion and reminded of their obligation to delete the data as well (§34 para. 3). Sharing personal data of sex workers with private parties is not permitted. Access to personal data of sex workers by private parties “in anonymised or pseudonymised form for scientific or statistical purposes could be provided in accordance to respective federal or state laws”. Public institutions are allowed to use personal data “only for monitoring a prostitution business or a prostitution activity” (§ 34 para. 2, 4 and 5). Furthermore, the competent authority will immediately forward the content of the registration to tax authorities (§ 34 para. 8).

The Prostitutes Protection Act violates the directive of the European Parliament on the “protection of individuals with regard to the processing of personal data”, according to which it is not permitted to register or record information about the sexual life of individuals.<sup>27</sup> The law disregards the impossibility of providing absolute data protection, especially since various parts of the law allow the transfer of data to third parties, which will increase the risk of outings of sex workers,

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<sup>26</sup> DSTIG (2015)

<sup>27</sup> European Parliament (1995)

accompanied by stigmatisation and often resulting in negative and dangerous consequences. Moreover, the question remains when such data will be deleted, if protective measures (§ 9 para. 2) or administrative orders (§ 11 para. 3) for sex workers have been carried out.

At the 2016 congress of the Chaos Computer Club, the professors Rüdiger Weishaben, Volker Grassmuk and Stefan Lucks, authors of the study “Technology for and against digital sovereignty” commissioned by the Federal Department of Justice, discussed the recent advances in digital face recognition, and urgently warned against a mandatory registration for sex workers. Even alias certificates could easily be de-anonymised – with unpredictable consequences for the affected people. This had been proven by a case in Russia last year, where a significant number of Russian pornographic actresses were de-anonymised by face recognition software and thereafter harassed. As cryptologist Rüdiger Weis argued, assurances by the federal government could not be trusted, “since they are not even able to protect their computers at the Bundestag [German parliament]”.<sup>28</sup>



**What will happen when I travel to countries where sex work is illegal, like the USA? I’m afraid that my data will be leaked somehow. – Migrant sex worker at a brothel**

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**I’m afraid to take my whore ID with me on house or hotel visits to clients, because it’s unthinkable for me to have my clients find out my real name and my address. – BDSM sex worker**

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**I already don’t trust the data protection at my brothel or in general. This new form of registration offers even more possibilities of my data as a sex worker becoming known. Because there’s no possibility for me to work at my brothel unregistered, I have to get registered. The danger of getting outed is okay for me, but I know many colleagues who can’t get registered because of this or will even stop working in sex work. – German sex worker at an upper class brothel**

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<sup>28</sup> Klein, Torsten, „33C3: Wissenschaftler fordern Maßnahmen für Datenschutz [33C3 Scientists demand measures for data protection]“ Heise Online (December 30, 2016); URL: <https://www.heise.de/newsticker/meldung/33C3-Wissenschaftler-fordern-Massnahmen-fuer-Datenschutz-3583079.html> (Last viewed: April 30, 2017)

### 3. DEMANDS AND CONCLUSION

The Prostitutes Protection Act mainly consists of instruments of regulatory law. In contrast, binding statements about the extension of support services or health care that could effectively improve the situation of people working in sex work, and that have been repeatedly demanded by sex workers and other experts, are entirely absent.

#### DEMANDS – WHAT WE NEED!

1. To reach individuals in precarious situations, identify human trafficking and support affected individuals – as the Prostitutes Protection Act allegedly intends – nationwide voluntary and anonymous support services should be extended in parallel with the new bureaucratic hurdles. Urgently needed are multilingual support services and low-threshold outreach work, especially through projects with a peer-to-peer approach. Beyond that, additional anonymous, low-threshold, outreach and multilingual services by public health departments should be created that are also accessible for individuals without health insurance or official resident status.
2. To promote the self-determination of sex workers, sound counselling for individuals considering taking up sex work should be facilitated, especially by peer-to-peer projects or public health departments; in addition, education and training opportunities for sex workers should be created.
3. The designated authorities in the respective federal states should be exempt from the obligation to report individuals without valid resident status according to §87 para. 2 of the Residence Act (Aufenthaltsgesetz, AufenthG), so that the latter do not have to fear incarceration or deportation as a result of their registration.
4. To combat human trafficking, persons affected have to be granted special residence permits, independent from their willingness to testify in any subsequent criminal proceedings, and exemption from punishment.
5. Before measures are initiated by relevant authorities, it should be made a prerequisite to obtain consent of the individuals affected in advance to ensure that individuals can decide where their data gets transferred to.
6. Municipalities should provide sex workers without an officially registered address a useable postal address.
7. The mandatory registration and counselling session, which were incorporated into the Prostitutes Protection Act despite recommendations to the contrary by sex workers and other experts, must be free of charge for sex workers.



8. Clear exemptions from the prohibition to sleep at working rooms should be created, especially for migrants, but also for German sex workers who work outside their places of residence.

## CONCLUSION

In its adopted form, the Prostitutes Protection Act is entirely unacceptable. It criminalises sex workers and represents a grave violation of their fundamental rights. The destigmatisation of sex work is a particularly important human rights objective which the new law not even rudimentarily satisfies. Fifteen years after the Prostitution Act came into force, and despite great efforts, legislators continue to fail to listen to the voices of sex workers and other experts from various fields, including law, health, AIDS/STI prevention, human trafficking prevention, and victim protection, who understand this area fundamentally better and have provided extensive suggestions for the law's improvement. As a position paper by the Green Party accurately states, what is labelled as protection has to include protection.<sup>29</sup> The Prostitutes Protection Act, however, in the form that it will come into effect on July 1, 2017, only pretends to be a law for the protection of sex workers, and the regulations provided therein fail to support both sex workers and trafficked persons. Instead, the law will force sex workers into illegality, especially those working together at apartments as well as migrant, trans, and otherwise particularly vulnerable individuals in sex work. What is labelled as protection is in large parts simply a law aimed at repressing sex work.



**Many authorities and brothel owners have to record our data. I'm sure that it will turn up somewhere, where it will harm me or my colleagues. – Migrant sex worker at a brothel**

**When the mandatory registration comes into force, I will stop working, because I don't trust data security and I'm afraid of getting outed. I can't afford to be outed as a sex worker in my social environment. – BDSM sex worker**

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29 Schauws, Ulle; Steffens, Barbara; Alt, Irene; Fegebank, Katharina; Stahmann, Anja, „Wo Schutz drauf steht, muss Schutz drin sein. Positionspapier zum Gesetzentwurf des Prostituiertenschutzgesetzes“ [What is labelled as protection has to include protection. Position Paper on draft for the Prostitutes Protection Act] (October 1, 2015); URL: [http://www.gruene-bundestag.de/fileadmin/media/gruenebundestag\\_de/fraktion/beschluesse/Beschluss\\_Prostitutionsgesetz.pdf](http://www.gruene-bundestag.de/fileadmin/media/gruenebundestag_de/fraktion/beschluesse/Beschluss_Prostitutionsgesetz.pdf) (Last viewed: 30. April 2017)



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