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## **Written Report to CEDAW**

**Subject: Written submission on the general discussion on trafficking in women and girls in the context of global migration (General discussion on TWGCGM)**

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### **1. Introduction**

With the Prostitutes Protection Act (ProstSchG), Germany has introduced regulations in July 2017, that aim to protect sex workers and potential trafficking victims from exploitation within the sex business. However, leading up to the new law, the political discourse and the media in Germany have shown and continue to show a persistent lack of critical distinction between human trafficking, exploitation and sex work. This report is the team effort of volunteers from several associations of sex workers from the Sex Workers' Rights Movement in Germany, giving our common assessment on CEDAW's article 6 on the trafficking and exploitation of women in prostitution. In it we aim to highlight the manifold problems correlating with the new legislative situation in Germany and explore the negative impacts of the regulations on those they claim to protect.



*Berufsverband für erotische und sexuelle Dienstleistungen e.V. is a collective of active and former sex workers with several hundred members. It was founded in 2013 to improve working conditions for sex workers and to represent sex workers in public debates. <http://www.berufsverband-sexarbeit.de>*



*Hydra is a sex worker-led association, which runs a counseling center for sex workers in Berlin. It was founded in 1980 to fight for sex work to be recognized as work. <http://www.hydra-berlin.de>*

## **2. Legislation in Germany**

### **a) Prostitution Act of 2002 (ProstG)**

There are many misperceptions about the Prostitution Act of 2002 allegedly leading to an increase of human trafficking, bad working conditions and exploitation within the sex business in Germany. The deficiencies of the law were pointed out in an evaluation, however the Prostitution Act mainly strived to expand the rights of sex workers. Sex work had been legal in Germany long before. With the introduction of the law, prostitution was legally defined as an autonomous decision – protected by the law and no longer considered immoral.

- Although few made use of that option, sex workers gained the right to conclude proper employment contracts, theoretically enabling them to go to court in case of a non-paying client. The new law also gave sex workers the right to get into the social security system and receive healthcare-insurance, unemployment-insurance etc.
- Employer's right to issue instructions was restricted in favor of the right to sexual self-determination. The aim was, for no prostitute to be obliged to engage in sexual services against her will. However, in practice this particular part of the law showed only a limited effect. Nearly all sex workers are freelancers on paper, brothel management merely resorted to house rules – making sex workers agree to offer certain services, if they wanted to work in their establishment.
- The punishability of “promotion of prostitution” was removed. Before the removal, this section was often misused in order to sue brothel management, that provided a good working place. Since then, brothels in general have gotten more attractive, hygienic and safer. Police also used the law to sue pimps and traffickers and complained about the loss of this possibility. Some federal states reacted by implementing paragraphs to adapt to the needs of the police in fighting crime – in those states there was subsequently less complaint about the new legislation from the police, than in other states that didn't react appropriately.

Conclusion: The Sex Workers' Rights Movement in Germany does not see a connection between the Prostitution Act of 2002 and detrimental developments within the sex business in our country. The Prostitution Act gave further rights to sex workers and trafficking victims alike, but remained limited in practice as well as too weak in impact and therefore stayed unknown among most sex workers in Germany.

### **b) Prostitutes Protection Act of 2017 (ProstSchG)**

#### **i) Registration and IDs**

Since January 1<sup>st</sup>, 2018 every sex worker in Germany has to undergo a registration process in person – in contrast to other public offices, the company by witnesses is not allowed. Details on personal ID are entered into a local database and the records are forwarded to the local tax office and all the other local registration offices the sex worker declares as potential

work destinations. Non-EU migrants additionally have to prove their legal work status in Germany in order to be able to register.

Registered sex workers are subsequently required by law to carry a sex worker ID commonly known as “Hurenausweis”, which in effect amounts to a special working permit. Working without the ID may result in fines up to 1.000 €. Especially brothels are increasingly inspected for the ID, it is therefore legally impossible to work without this permit in brothels.

The registration is meant to guarantee, that sex workers are not forced into sex work as well as permitted to work in Germany. The state aims to identify victims of exploitation or trafficking by registering them and thereby “inviting” them to reveal themselves as victims. However, as specialized counseling centers have pointed out numerous times: Victims generally need a trustful relationship to a counselor in order to reveal themselves in need of help – hardly something that is prone to happen within a short period of time in a public office.

Another aim of the registration is to expand sex workers' knowledge about their rights and duties, arguing, that many migrant sex workers do not speak sufficient German and lack opportunities to access knowledge. However, the legislator failed to establish enough budget for certified interpreters.

Reports to counseling centers show, that a number of non-German speaking sex workers have received significantly less information at the registration office as well as at health counseling. Often interpretation is only available by phone.

## **ii) Mandatory health counseling**

Before registration, sex workers have to have a counseling session with the local health authorities. Originally the new law was meant to implement mandatory regular health checks. This would have been illegal in Germany and therefore it was changed to a mandatory counseling session – twice a year for ages 18 to 21, once a year for sex workers above the age of 21. One of the intentions of those regular mandatory health counselings is to provide regular opportunity to victims of trafficking and other exploitation within sex work, to confide themselves to the public authority staff as victims seeking for help.

The mandatory health counseling might have good intentions – yearly appointments with public authority will, however, hardly provide the proper setting for potentially highly traumatized, exploited people to open up. As mentioned above, experienced counseling centers who work with victims of trafficking and exploitation suggest strongly, that a basis of trust is required for victims to reach out.

Furthermore, mandatory counseling by non-sex worker office staff may easily become humiliating and seem patronizing to sex workers – insinuating that they are unable to check their own health, or not capable of seeking a doctor if they have health problems.

We strongly suggest a non-obligatory version of counseling instead – an easily accessible space, operated by people who are familiar with sex workers' working conditions, available spontaneously and not only by pre-booked appointments. The counseling centers organized by bufas e.V. are good examples of such spaces, where sex workers can seek advice on their own. Some of them, like Hydra, are also community places – further informations and knowledge about rights and empowerment can be provided through peer education and

outreach among the community itself. Informal counseling centers for sex workers additionally have the right to keep information from authorities –that protection may be needed, if sex workers are threatened to be deported against their will.

### **iii) Brothel license**

Under the new law, brothels are subject to many new licensing requirements, for example the need to install separate bathrooms for clients and sex workers.

While those requirements are supposed to result in better, less exploitative working conditions, they in practice destroy the market of self-organized small brothels, which cannot be realistically expected to be able to conform to them. Such places typically offer comfortable, familiar working environments and are often run by former or still active sex workers, who are working collectively for safety reasons.

In contrast, these new standards are easily followed by big businesses such as huge sauna clubs and brothels who are armed with money, lawyers and ready-made business concepts. Brothel managers have to control the registration of each sex worker – if a non-registered sex worker is found working in their brothel, they lose their license immediately and have to pay a fine up to 50.000 €.

The new requirements neither benefit the safety and health of sex workers nor of trafficked persons, but lead to less variety of working spaces for sex workers to choose to work in.

### **c) Anti-trafficking laws**

In the reform of Germany's anti-trafficking laws in 2016, the §232a was renamed from “trafficking for the purpose of sexual exploitation (Menschenhandel zum Zweck sexueller Ausbeutung)” to “forced prostitution (Zwangsprostitution)”. We strongly disapprove of this implementation of a political buzz word into the naming of a law.

Furthermore, a penalty for clients “who know or were able to assume that their service provider is trafficked or forced and still accepted the services” was introduced. Since then, only one case has been reported. We fear, that an evaluation of the reform may interpret this as “proof” for even stricter laws and may lead to a general criminalization of clients in Germany.

The Sex Workers' Rights Movement in Germany is of the opinion, that the existing laws against trafficking and exploitation of labor force, against sexual violence, deprivation of liberty, and non-assistance to a person in danger, are sufficient to initiate legal and juridical proceedings against traffickers, exploiters and clients. We also criticize, that the reform failed to introduce an unlimited right of residence for victims of trafficking.

### **d) Further laws regulation concerning sex work**

Prostitution is regulated at various levels: Regional laws, local laws, special laws like the Prostitutes Protection Acts and the Administrative Offences Act – which indirectly leads to criminalisation.

It is forbidden to advertise services without condoms. While safer sex is very important for sex workers in order to stay healthy and be able to work, we fear that the illegality motivates clients to offer more money. This may in turn incent sex workers under financial or emotional or exploitative pressure to accept unsafe demands or to agree in unsafe practices.

Broad off-limit areas fuel the financial exploitation of sex workers by cities and towns. A prime example can be found in Hamburg: Residents successfully fought for a non-contact-area for sex workers and clients on the streets of St. Georg – a traditional red light area, where mostly poor sex workers offer their services.

Police officers hand out fines to sex workers, who are caught getting in contact with clients. In order to be able to pay, the sex worker keeps working on the streets of St. Georg. She keeps getting caught and fined, or has to go to prison for an equivalent period of time. The negative results on sex workers living conditions also worsens the conditions of victims of trafficking and exploitation. The legislation not only fails to help victims, but puts even more financial pressure onto them and limits their freedom even more.

### **3. Harmfulness of an “end the demand”-approach**

It is often believed, that "reducing the demand for sex work" will help sex workers. If all sex workers were forced into sex work, exploited and abused, then this approach might make sense.

However, we Sex Workers' Rights Movements keep challenging this way of thinking. We believe, that sex work is work. It can be done in better or in worse conditions, just like many other jobs. The approach of “ending the demand” to regulate sex work ignores the labour- and human rights-issues that actually make sex work precarious or the socioeconomic problems, that cause many people to turn to sex work (Vanwesenbeeck, 2017). Tackling demand will not get rid of the problems in sex work, nor will it actually end the demand for sex work (McGarry and Fitzgerald, 2017). Instead, the stigma of sex work is only shifted to clients and politics based on subjective moral values are pursued (Kulick, 2005).

Sex work is a vital source of income for many migrants, as there is no formal education expected (nor available) and language skills are of secondary importance. This includes victims of trafficking. However, criminalising the purchase of sex only increases the power of the police and the surveillance of migrant sex workers (NSWP, 2017).

Trying to reduce the demand for sex work does not improve conditions for sex workers. Client criminalisation - as under the Swedish or Nordic model - increases the risks sex workers take, to do their job (Östergren, 2017). The Nordic model claims to want to improve the conditions of sex workers – especially migrants – and increase gender equality, but in effect only leads to control, deportations and the situation of migrants becoming more difficult (Vuolajärvi, 2018). It leads to less safe work areas, no possibility of working in brothels for safety reasons, as well as to fewer clients – which cuts the income for a highly marginalised group (Medecins du Monde, 2016).

Criminalising sex workers as well as clients is adding stigma to the profession and therefore makes it harder to seek help for sex workers in need - including victims of trafficking (Holmström und Skilbrei, 2017). In general, criminalizing approaches only result in those

involved moving further underground and being more difficult to regulate. Therefore, statistics claiming that the purchase of sexual services has gone down since the introduction of the Nordic model are often inaccurate, because studies have shown that the rate of reporting and access to sex workers and clients is unsurprisingly more difficult in an illegalised environment (Kulick, 2005; Kingston and Thomas, 2018).

It is incredibly important to distinguish between regulations against trafficking and exploitation - and making the working and living conditions worse for a group, that is already particularly marginalised. In Germany, there are already laws against human trafficking and against purchasing sex from victims of coercion; these laws should be better enforced rather than introducing counter-productive client criminalizing laws. "Reducing the demand for sex work" only makes things worse for the people it tries to protect (NSWP, 2017).

#### **4. Effects of the Prostitutes Protection Act**

##### **a) Effects on sex workers**

###### **i) Stigmatization**

Carrying a registration ID with a photograph – whether under a legal name, or under a working name – effectively outs someone as a (former) sexworker. Such outings contain many risks:

- Loosing the office job
- Children may become victims of bullying
- Being cast out by friends or family members
- Eviction by landlords
- Being left or pressured by partners to quit sex work

###### **ii) Data security**

Despite claims, that the database used for the registration is very secure, the incredible amount of data leaks over the years shows, that there are no reasonable guarantees in this area anymore. Concerns about data security begin with the automatic transmission of the registration data to the tax authorities. This is to check if the registering sex worker already has a tax number, either as a sex worker or under another occupational title, which is very common among sex workers (eg: as hostess, escort, entertainer, masseuse etc.). If this is the case, then the tax offices will write a letter to the sex worker, asking if the occupational title may be changed to "prostitute", especially if they have an additional occupation registered with the tax authorities that is not sex work. Sex workers fear such letters, as they offer additional risk of being unintentionally outed.

Many sex workers, especially migrant sex workers from countries where sex work is illegal, express concerns about data security. Those sex workers additionally fear for their families in their home countries to get in trouble with local police officers.

Fears of stigmatization and data security are motivating sex workers to shift from previously working under legal conditions to working illegalized underground.

### **iii) Increasing isolation**

Due to the new brothel regulations, it is even more difficult for sex workers to work in flats together legally. This leads to increasing safety risks for sex workers left to work alone – for example by doing apartment in-calls. Sex workers who cannot or do not want to get registered, have moved their client acquisition sites from brothels to the internet platforms. While brothels are quite safe work places – with another sex worker or security staff ready to intervene – working alone in an apartment lacks this security. The new policy results therefore results in isolation of sex workers who worked in brothels before.

Since the introduction of the law, an increasing number of sex workers report to counseling centers about:

- Physical and sexual violence
- Higher risk of stalking
- Financial violence – clients rejecting to pay the fees stating "you are not registered and cannot go to the police anyways"

### **iv) New markets for potential traffickers and exploiters**

The need to adapt to the new legislation leads to uncertainty and increased vulnerability – potential exploiters may get access to sex workers through newly developed markets.

- A market for delivery addresses developed (9,90€/month for a delivery address)
- A rise of services to create and manage the web profile for those sex workers, who left brothels, but lack skills to market their services themselves on the internet.
- Market for "security guards": Sex workers agree to offers such as "As you no longer work in a safe environment in the brothel, you need someone who can protect you – I offer you my security services for money."
- Market for consultants, who address the confusing situation and offer help to sex workers to comply with all the new regulations and work within the new law.

## **b) Effects on victims of trafficking in the sex business**

So far, sex workers and social workers in counseling centers made following observations:

### **i) Increased illegalization**

Way more sex worker work illegalized. Due to this, they are more vulnerable to trafficking and exploitation.

### **ii) Isolation of sex workers**

Many sex workers shifted from working in brothels to advertising their services on internet platforms. This re-organisation of the market leads to isolation of sex workers – they lack exchange with colleagues and are less accessible for peer education and outreach of social workers.

About half of the trafficking victims in the German police reports worked in brothels and about a third of them were accompanied to the police by counseling center staff. We see a correlation between the access from outreach-work to sex workers in brothels and the higher numbers of known victims. It is likely, that the declined access to sex workers will lead to less victims seeking help from counseling centers.

### **iii) Police interventions stay ineffective**

The Sex Workers' Rights Movement assesses police interventions very critically – according to experience, martial raids do more damage than good. The law aimed to improve the access to sex workers and provide the police with better tools to fight trafficking. Yet police officers complain, that the fight against trafficking and exploitation got more difficult for them.

### **iv) Criminalisation**

Exploited or trafficked sex workers are in a particularly precarious situation. Neither the registration nor the surveillance actually helps them – instead it worsens their situation.

They may have to get registered under the pressure of traffickers without revealing themselves to the public authorities. The registration may even decrease the likelihood of taking steps against their traffickers. If they cannot or didn't get registered, they might avoid seeking help as they fear to get penalized for working unregistered, without paying taxes. They may lack appropriate visa and/ or work permit and fear deportation to their home countries. As studies have shown (KOK, 2017), most trafficked people indeed wanted to leave their home countries in the first place and were taken advantage of by third parties agreeing to help them move to Germany to find work. Therefore, many victims of trafficking seek an improvement to their situation in Germany and simply deporting them will not help them and is certainly not the way to empower them.

This enhances the dependency from traffickers. As long as these victims of trafficking cannot ask the authorities for help without risking deportation, their situations will not improve.

**Conclusion:** The Prostitutes Protection Act fails to reach its goals. The measures resemble a scattergun approach and cost enormous amounts of money. Concerns of sex worker associations and counseling centers were unfortunately ignored – our concerns have come true, that any positive effects the law might have, cannot counterbalance the many disastrous effects.

## **5. Recommendations**

- We strongly urge CEDAW to distinguish clearly between the phenomena of sex work and trafficking.
- We ask CEDAW to recognize, that a legal and decriminalized status for sex work does not promote trafficking or exploitation, but instead improves the labour rights of sex workers and makes it easier for trafficked persons in the sex business to seek help.
- The right of victims of trafficking to stay, live and work in the country have to be enforced – independently from cooperating with police in trials against traffickers or after the court case ends. We ask for CEDAW's international recommendation of introducing this right.

- We urge CEDAW to acknowledge and recommend peer education as effective strategy to empower sex workers and victims of exploitation and trafficking within sex work. It is an effective tool to provide knowledge about rights and duties such as labor rights, rights towards brothel management, migration laws and rights of victims of exploitation and trafficking, among many others. It further empowers victims to seek help from counseling centers.
- Counseling for sex workers as well as potential victims needs to be anonymous, for free and voluntary. It has to be the choice of the person seeking advice or help, to decide if she wants to file a complaint.
- Laws and measures against trafficking should not endanger the living and working conditions of sex workers, nor increase vulnerability of sex workers to exploitation or trafficking. Measures against trafficking have to be reasonable and effective.
- Regulations of sex work should neither endanger sex workers lives nor the lives of trafficked persons in the sex business. Sex workers concerns have to be taken seriously.

## 6. Sources

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