

Policy Issues

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Institut für Ost- und Südosteuropaforschung
Landshuter Straße 4, D-93047 Regensburg
Telefon: ++49 (09 41) 943 54-10
E-Mail: info@ios-regensburg.de
Internet: www.ios-regensburg.de

Rights of Sex Workers in Germany: Shifting Focus from the Locals to the Migrants from Eastern and Southeastern Europe?

Stefano Petrungaro, Ekaterina Selezneva

The main goal of the German Prostitution Act of 2002 to improve the human and labor rights of sex workers has not been achieved. The gradual substitution of German sex workers with migrants, most of whom stem from Central and Eastern Europe and former Soviet Union countries, is overlooked, since multiple sex workers from these countries are, in reality, not covered by the Act; victims of human trafficking are also not adequately protected by current legislation. The issue is complex and regulation requires policy makers in Germany and the EU to address it together with human trafficking and migration issues.

Introduction

In February 2015 the German Federal government coalition has discussed a new law regarding the regulation of prostitution in Germany: "For the first time will there be clear rules for legal prostitution in Germany, which will serve to protect women", maintained Manuela Schwesig, Federal Minister of Family Affairs, Senior Citizens, Women and Youth.¹ The goals of this legal act should be, according to the Minister, to protect sex workers from violence, sexual exploitation, and illnesses. This is the last of a series of proposed legal acts conceived for integrating and improving the much debated law – Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten – entered into force on January 1, 2002, which liberalized prostitution in Germany. During the last thirteen years, the country has been going through intense social and legislative debates in order to find a better way for officially dealing with the phenomenon of prostitution. The debate itself is hardly new, especially in a historical and comparative international perspective, though some novelties, as protection of the human rights of prostitutes, got globally introduced only in the second half of the 20th century.

We start with a short overview of the prostitution regulation since the 19th century up to the present moment. Then we address the composition of the pool of sex workers nowadays, and their working conditions in Germany and related issues of trafficking in people, especially from the countries of the Central and Eastern Europe (CEE) and successor states of the former Soviet Union (FSU).

Historical context: Regulation vs. abolition

The discussion on the role of state, namely adoption of the regulationist or the abolitionist model, accompanied the European history throughout the entire 19th and 20th century up to now (Janssen, 2011).

Modern arguments in the debates on prostitution are rooted in the history of the last two centuries. In the early 19th century, the first modern system of registered female prostitutes, who had to undergo mandatory health examinations, was introduced by Napoleon in France and later implemented throughout Europe. The

Netherlands, Italy, England, Germany, among others, subsequently introduced variants of the French regulationism model. The main concern was the spread of venereal diseases. A range of legislative acts, such as the famous British Contagious Diseases Acts of the 1860s, primarily targeted protection of the rest of the population, and in particular the male clients of prostitutes, but not the prostitutes themselves. Hygienic concerns merged with moral and religious condemnation rooted in Christian morality, which regarded prostitution as the manifestation of devilish madness, sexual and moral impurity, and socially dangerous deviance. In times of imperialist ambitions, such concerns were also projected to the colonies, where different forms of maisons de tolérance were introduced in order to protect the colonial troops, and the “colonizing race” in general.

As a reaction to the proliferation of the regulationism model, a strong abolitionist movement arose during the 19th century. The heterogeneous group of international supporters of the movement – representatives of major religious confessions, socialist parties, feminists, and medical doctors – argued that female prostitution had to be seen primarily as a form of sexual violence against women. This was linked with the increased public attention toward the “women trafficking”, or “white slave trade” as it was called, i.e. forced recruitment of women to prostitution. Starting with the International Agreement for the Suppression of the White Slave Trade, signed in Paris on the May 18th, 1904, a number of international conventions was adopted by European countries, and later by the newly founded League of Nations, in order to fight against this form of human trafficking.

The second reason for the emergence of the abolitionist movement was represented by the failures of the regulationism model in containing the spread of venereal diseases. Once again, the main aim in this case was not so much the protection of female prostitutes and their human and civil rights, but the protection of collective health. As state intervention was unable to confine and take the problem under control, it seemed there was no other option as to eliminate the problem at the bottom, completely banning prostitution.

A new important organized interlocutor in the debate emerged during the second half of the 20th century, namely the representatives of an international sex workers' rights movement. At the same time the early 70s saw a number of important public actions led by prostitutes in France and the United States with two main issues on the agenda: social de-stigmatization of this profession and legal recognition as a regular job. This movement gave birth to an International Committee for Prostitutes' Rights in 1985. In addition, a new and less morally connoted notion of sex worker was introduced, which clearly detached the sexual exploitation from consensual sex trade, defending the right to freely decide to do this profession. Decriminalization of this activity and removal of the negative moral connotations attached to it should lead to the proper “regulation” of sex work; the latter implies the prostitutes should have not only duties, but also rights, first of all in terms of social security.

Legality/recognition of prostitution as a regular job is a widely discussed issue in the EU. While in Sweden, both outdoor and indoor prostitution is prohibited and the clients might be prosecuted, in several other European countries sex work itself is not illegal, though facilitation of prostitution is criminalized. Finally, in the Netherlands and Germany the approach is the most liberal. Starting from this historical and contemporary context we focus on German case and on the relevant legal and social developments, that merge traditional moral, hygienic and feminist preoccupations with the relatively recent concerns regarding sex workers' labor and social rights.

German Prostitution Act of 2002

With regard to the German case, it is not true, as one can often read, that the federal Act Regulating the Legal Status of Prostitutes (Prostitution Act – Prostitutionsgesetz) of 2002 “legalized” prostitution. Though defined as immoral activity, it was first decriminalized in the Weimar Republic already in 1927 and is taxable in Western Germany since 1964. With the law of 2002, prostitution got not considered anymore, from the legal point of view, a crime “against the morality” (sittenwidrig). The main novelty of the law was thus a re-evaluation of the legal position of prostitutes, aiming at strengthening the legal and social status of female and male sex workers, in order to reduce the criminal component of prostitution activities (Di Nicola et al, 2005, Kavemann and Steffan, 2013). This was in line with the calls to distinguish the freely chosen from coerced relationships, and prostitution from human trafficking. A particular attention was paid to improvement of working conditions and to support for those willing to get out of prostitution. It is also important, that before 2002 prostitution was not considered a regular job. The new law made possible the legal employment contracts between prostitutes and brothel operators. The employment contracts, apart from giving the right to sex workers to be able to determine the practices s/he delivers, also gave them the access to the statutory social insurance system in form of health care, unemployment insurance, and pension schemes. In addition, a relationship between a client and a prostitute got recognized as a legal contract; payment upon the service delivery may be enforced through a court.

However, the law was released as a Federal Act without the approval of the Federal Council (Bundesrat, the legislative body that represents at the national level the sixteen Länder, the federal states of Germany). Some relevant aspects were not elaborated in detail, mentioning among all the links between the liberalization and industrial laws, and actual implementation of the law within the federal states. In fact, multiple issues related to protection of public safety, trading law, and urban planning law are under the jurisdiction of the Länder; municipalities have the right to take decisions regarding crucial aspects of the regulation of prostitution at the local level (licensing of

prostitution business, declaring prohibited areas or streets, etc). As a result, the national law is differently interpreted and put into practice, or even opposed, at the regional and local level (e.g. Schulze et al., 2014). De facto, prostitution is not legal on the whole territory of Germany due to local and regional restrictions and regulations.

Characteristics of sex workers in Germany

Quantitative evidence regarding the impact of the 2002 liberalization act on number of sex workers, their socio-demographic characteristics and working conditions is scarce. An important source of information is the European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers (TAMPEP). Publicly available data, however, appear with a three to five years delay. Even this scarce and not up-to-date information provides us with two insights: A growing proportion of migrants in the pool of sex workers and, in its turn, an increasing share of women from Central and Eastern Europe and successor states of the former Soviet Union within the pool of migrant sex workers. Within the European Union, Germany shares both tendencies.

According to the report on "Sexual exploitation and prostitution and its impact on gender equality" published in 2014 by the Directorate-general for internal policies of the European Parliament, on average 70% of prostitutes in the EU nowadays are migrant women. As Di Nicola et al. (2009) noted, about 70% of sex workers in EU are from CEE, including the Baltic and Balkan States. In other words, 32% are from recent EU accession States (EU 8), and 37% from non-EU States in Eastern Europe and the Balkans.

Table 1: Shares of migrants and non-migrants female sex workers in Germany

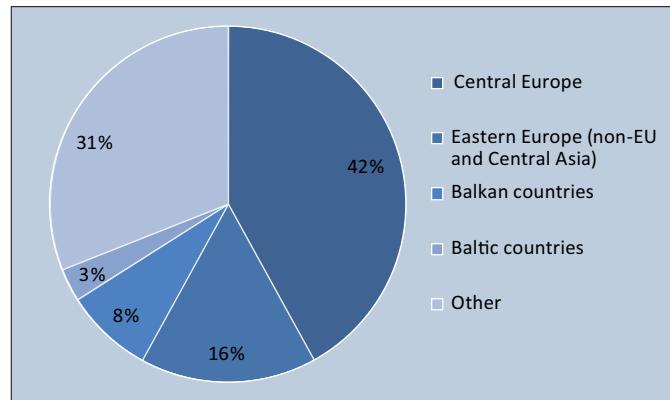
Country	1999	2001	2003
% nationals	48	45	43
% migrants	52	55	57

Source: TAMPEP National Report for Germany (2009). URL: <http://tampep.eu/documents/ANNEX%204%20National%20Reports.pdf>, retrieved on 01.07.2015.

Similarly, according to the TAMPEP expert estimates, migrants accounted for as much as 63% of the female sexual workers in Germany by 2008 (Table 1). The process of replacement of national sex-workers by migrants had gradually started far before the Law adoption in 2002 and before the two EU enlargements in 2004 and 2007 (TAMPEP, 2009). The process was possibly enhanced by the increased demand for "exotic", non-German, prostitutes over the first decade of the 2000s. Whereas the top-1 sending country for sex workers to Germany in

2008 was Thailand, the CEE and FSU countries took 8 of the remaining 9 positions in the top-10 ranking (see Figure 1). Neither the EU enlargements of 2004 and 2007 nor the Prostitution Act of 2002 had a significant impact on the increasing curve regarding the number of migrant sex workers, but they did have an impact on the national composition of migrant sex workers pool. An increasing trend of percentage of migrant sex workers coming from Central and Eastern Europe was observed: From 50% in 2003, to 55% in 2005, and to 70% in 2008, as quoted in reports by TAMPEP.

Figure 1: Country of origin of sex-workers in Germany, 2008



Source: TAMPEP National Report for Germany (2009). URL: <http://tampep.eu/documents/ANNEX%204%20National%20Reports.pdf>, retrieved on 01.07.2015.

Notes: Central Europe (EU countries: Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia), Eastern Europe (Non EU countries and Central Asia: Belarus, Moldova, Russia, Ukraine, Kazakhstan, Tadzhikistan, Azerbaijan, Uzbekistan, Kyrgyzstan, Turkmenistan), Baltic countries (Estonia, Latvia, Lithuania), Balkan countries (Albania, Bosnia-Herzegovina, Croatia, Montenegro, Serbia, Kosovo, FYR of Macedonia).

Why Eastern Europe as the sending region?

The process of the economic transition in post-communist states of Central and Eastern Europe and former Soviet Union brought about such phenomena as unemployment and poverty. In addition, in Southeastern Europe, a series of war conflicts took place. "Feminisation of poverty" and "female labour migration" followed. El-Cherkeh et al. (2004) refers to this as to "gendered migration pressure from Eastern Europe"; the poor economic opportunities, and gender based discrimination in the regions of origin pushed women from CEE and FSU to seek for labour opportunities – even those not corresponding to their skills and education – within the EU countries. Economic as well as family and housing concerns served as the main motivations.

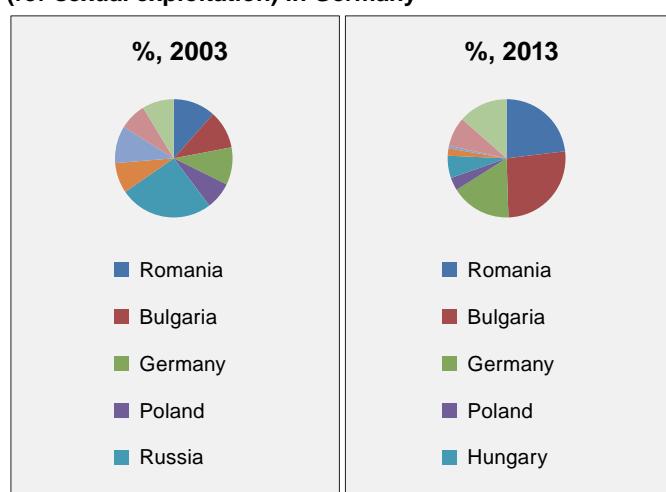
The flow of female workers, however, was not welcomed at the official/institutional level. The workers met the implicit restriction on migrants' admission for female types of occupations in the Western European countries as well as the rigid labour market and welfare state regulations (El-Cherkeh et al., 2004). A great share of migrant workers, especially women, was channeled into "3D-jobs" (dirty, difficult, danger-

ous), often on informal basis. In addition, while male migrants often worked in groups, women's work was rather individualized in the domestic sector, care or other low-paid service jobs which exposed women to high risk of (sexual) exploitation. Some migrant women entered prostitution in the country of destination as a means to earn money in the absence of other alternatives.

An accompanying phenomenon, the trafficking of women from Central and Eastern Europe (CEE) into Germany for purpose of sexual exploitation, has been high on the agenda of German politicians since the mid-1990s (Follmar-Otto and Rabe, 2009). Two main factors are usually listed to explain the intense trafficking flows, namely geographical proximity to Germany and income disparities between the countries of origin and Germany. Socio-economic transformation in CEE became one of the triggers of the trafficking flow intensification.

Only about one fifth of women recruited by the traffickers in their countries of origin was knowingly recruited into prostitution, even though some victims were promised work as exotic dancers, masseurs and the like, and might understand that they would have to render sexual services. However, they were unaware of the accompanying working conditions including restricted freedom of movement and physical abuse. As the United Nations Office on Drugs and Crime (UNODC) reports, victims of trafficking for sexual exploitation, coming to Germany from the Balkans, the former Soviet Union and Central Europe, were often recruited by their own acquaintances, friends or relatives. A number of case studies can be, for example, found in the Migrant Smuggling case database collected by the University of Queensland (<https://ssl.law.uq.edu.au/som-database/>).

Figure 2: Nationalities of victims of human trafficking (for sexual exploitation) in Germany



Source: Bundeskriminalamt, Lagebilder Menschenhandel URL: http://www.bka.de/mn_193360/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandel_node.html?__nnn=true retrieved on 01.07.2015.

According to UNODC, Europe, and Germany in particular, is still a major destination of international trafficking in humans for sexual exploitation. In Germany (2005–2007) the pool of victims included a significant group of nationals from post-communist countries: Bulgarians, Romanians, Poles, Czech, Russians, and Slovaks. According to the latest report of the Federal Criminal Police Office (Bundeskriminalamt) on trafficking in people, in 2013, 39% of migrant victims were recruited into prostitution through deception and only 22% knew the actual nature of the job they were offered. 19% of victims were forced into prostitution. According to the Bundeskriminalamt, 87% of the (revealed) victims of trafficking for sexual exploitation in 2013 were brought to Germany from European countries, the leading two being Bulgaria and Romania (see figure 2).

Protection of sex workers in Germany after 2002

The implementation of the law of 2002 has failed to achieve its goal to protect the sex workers in Germany. The law covered only a small share of prostitutes, namely those with legally registered employment contracts, leaving aside those performing the activity on the freelance base and those forced into prostitution (victims of trafficking). A Government Evaluation of the law implementation in 2007 revealed, that the majority of prostitutes had not signed employment contracts and hence was still not entitled to social protection, working conditions did hardly improve, and no exit programs were organized by regional authorities (Schulze et al., 2014).

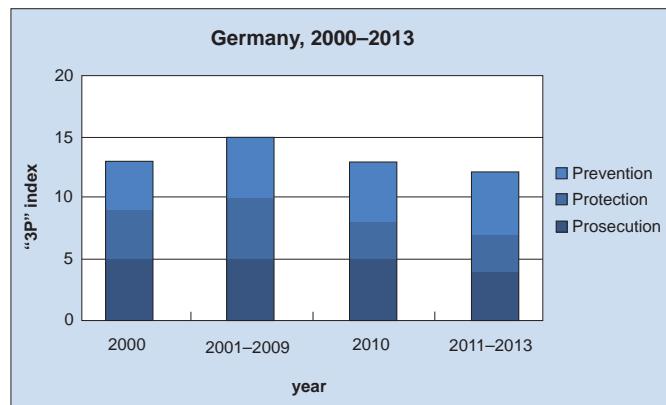
Though migrants account for the lion share of the workers in the sector, a number of them balance at the edge of informality and illegality and hence is not protected by the law of 2002. Women stemming from new Member States are allowed to undertake the activity only as self-employed (Schulze et al., 2014). Work in sex industry is not yet considered a valid occupation in order to apply for work permits, especially when migrant workers from non-EU countries are considered; working as a prostitute is illegal for holders of touristic visas. Victims of trafficking for sexual exploitation from non-EU countries are deported to their sending countries at the end of the juridical tribunal examination of their cases. Thus, the exclusion of non-EU nationals from the law coverage makes its goal of protection of all sex workers in Germany even more difficult to achieve.

In addition, the legislation in the sphere of victims (of trafficking) protection has a number of drawbacks. Germany does have an anti-trafficking legislation, especially in connection to sexual exploitation (e.g. §232 of the criminal code). In 2005, the Bundestag ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The German legislation implies penalization of the agents recruiting people in their home countries for a further trafficking to Germany, and prosecution of those forcing victims into prostitution. Further tightening of controls/monitoring of sex businesses and greater

penalties for human trafficking were supposed to be introduced by the Directive 2011/36/EU. Aiming at implementing this EU Directive, the Federal Government adopted a draft law on 28 January 2015.

In fact, according to the “3P” Anti-trafficking Policy Index measuring countries’ policy efforts targeting three areas – prosecution, (victim) protection, prevention – Germany is high on the classification (e.g. Cho et al. 2014). On international standards, Germany performs well in the areas of prevention and prosecution, where it receives a maximum of 5 point for these dimensions according to the 3P index methodology (see Figure 3). However, the situation with the victims’ protection – the area that receives the least attention worldwide – has been deteriorating in Germany starting from 2010.

Figure 3: 3P Anti-trafficking Policy Index for Germany



Source: URL: http://www.economics-human-trafficking.org/mediapool/99/998280/data/3P_Index_2000-2013.xlsx, retrieved on 01.07.2015

Notes: 3-P index = sum of the scores along three dimensions: prevention, protection, prosecution. Higher scores mean stronger/more present regulation in the sphere: 1 is the lowest and 5 the highest score; 4: strong, 3: modest, 2: limited efforts. The index may reach maximum 15 points in total

While the human trafficking offences are difficult to monitor/document, there was an evidence of a decrease of victims of trafficking for sexual exploitation (25% between 2002 and 2010, in Schulze et al., 2014; or as figures of 2013 being the lowest registered since 2006, as reported by Bundeskriminalamt). However, the reports of Bundeskriminalamt clearly state that the recognition of a person as a victim of trafficking for purpose of sexual exploitation depends on the testimony of the victims themselves. Apart of a likely pressure from the side of the traffickers threatening life and/or safety of the victims and their families, the victims face rigid legislation often classifying them as criminals or/and illegal immigrants. The latter leads to expulsion of the immigrants back into their home countries, and thus diminishes they will to collaborate. Hence, in Germany victims of human trafficking are often not recognized of being victims (Cho et al., 2014). This means they will not be granted amnesty for illegal

acts performed due to their conditions (due to the fact of they been trafficked), as it is prescribed by the United Nations Protocol. Further humanitarian and social assistance to the victims of trafficking is also widely lacking.

Conclusions and policy recommendations

While the reasons of the failure of the Prostitution Act of 2002 to reach its goal to protect sex workers are widely discussed, the issue of the law coverage is often neglected. A gradual substitution of German sex workers with migrants, a majority of whom stems from Central and Eastern Europe and former Soviet Union countries made the issue of the rights of sex workers even more complex, and should push migration and protection of victims of trafficking for the purpose of sexual exploitation to the front of the policy agenda in Germany.

Thus the changes that accompany a legislation, which liberalizes prostitution and aims at protecting rights of the sex workers, must be accompanied by changes in migration policy and innovative measures to protect victims of human trafficking. The victims are not protected by the current legislation; they are often residing and working illegally and have to hide their work, which puts them in a vulnerable position. Further legislation amendments should diminish the fear of deportation of the victims in case of their collaboration (denunciation) at the police. Human trafficking policies should pay attention not only to punishing traffickers, but also to protecting victims. Given the current multi-national composition of the sex workers pool in Germany and the current legal framework, further measures should be undertaken for legalization of prostitutes stemming from non-EU countries, which would contribute positively to the achievement of the goals of the law of 2002 as well as reinforcement of the ex-victims position.

Migration policies should make a step from being centered on the receiving nation towards being more migrant-oriented. Thus measures should be put in place to help newly arrived migrants and refugees to find work with help of specific regional and municipal programs.

Better pan-European cooperation should be established between governments and NGO's to combat human trafficking and for protecting victims' rights as well sex workers' rights in general. Finally, wider funding of programs targeting the collection of reliable and up-to-date data would also be highly beneficial for timely policy reaction.

Note

“Durchbruch beim Prostitutionsgesetz: Kondompflicht kommt”, Focus.online, 04.02.2015 (http://www.focus.de/politik/deutschland/gesellschaft-durchbruch-beim-prostitutionsgesetz-kondompflicht-kommt_id_4452395.html).

Following the 2013 election, a federal coalition was formed by Christian Democratic Union (CDU), its Bavarian sister party, the Christian Social Union (CSU), and the Social Democratic Party of Germany (SPD). It seems that in May 2015 a proposal for a new law was already drafted: “Prostitution: Bordellbetreiber sollen auf Zuverlässigkeit überprüft werden”, 11. 04. 2015 (<http://www.spiegel.de/politik/deutschland/manuela-schweisig-will-schaerfere-regeln-fuer-betreiber-von-bordellen-a-1027959.html>).

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About the authors:

Dr. Stefano Petrungaro: IOS Regensburg
<http://www.ios-regensburg.de/personen/mitarbeiterinnen/stefano-petrungaro.html>

Dr. Ekaterina Selezneva: IOS Regensburg

<http://www.ios-regensburg.de/personen/mitarbeiterinnen/ekaterina-selezneva.html>

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