



# JURIDICAL FRAMEWORKS ON PROSTITUTION AND ITS EFFECTS

A comparative study of Germany and Sweden

24.11.2016

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## Table of Contents

Problem statement .....	2
Introduction .....	2
Objective and Relevance .....	3
Main research question .....	4
Outline .....	4
Methods .....	4
Methodological challenges .....	5
1 Political and ethical background discussions concerning legalization of prostitution .....	6
1.1 Prostitution as a harm to humans and their rights .....	6
Practical consequences .....	6
1.2 Prostitution as a violation against morality .....	7
Practical consequences .....	7
1.3 Prostitution as an autonomous decision for a risky occupation .....	8
Practical consequences .....	9
1.4 Prostitution as a profession like any other .....	9
2 European Union level legal context on prostitution .....	10
2.1 Historical background .....	10
2.2 Timeline of recent developments on prostitution policies within Europe .....	11
2.3 Current situation .....	13
3 Legal framework in Germany .....	14
3.1 History .....	14
3.2 Current situation .....	14
4 Working conditions of prostitutes in Germany .....	15
4.1 Levels of prostitution .....	15
4.2 Social circumstances .....	15
4.3 Voluntariness .....	17
4.4 Governmental Efforts .....	18
5 Legal framework in Sweden .....	19
6 Working conditions of prostitutes in Sweden .....	20
6.1 Levels of prostitution .....	20
6.2 Changes of the conditions in prostitution .....	20
6.3 Human Trafficking .....	21
6.4 Health and Counselling Services .....	22
6.5 Governmental budget .....	22
6.6 Demand for prostitution .....	22
Discussion and Conclusion .....	24
References .....	26
Figures .....	28
ANNEX .....	28

# Legal Frameworks on Prostitution

## Problem statement

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### Introduction

Prostitution is a polarized topic within our society. Sexuality is closely interlinked with our ethical notions of what a good society should look like (Mattson, 2016). Therefore, also opinions on how to govern this issue widely differ. In addition, prostitution is often interlinked with problems like human trafficking, sexual abuse, sexual diseases and other negative effects on health like Posttraumatic Stress Disorder (PTSD) and drug abuse. This has negative effects on the aggrieved parties (Shelley, 2010 and Farley, 2004).

Within the European Union different approaches on the management of prostitution can be found. There are currently three main legal frameworks for a rationalization of prostitution: **Regulation, Abolition and Prohibition** (Mattson, 2016 and Renzikowski, 2007). Regulation means legalizing prostitution and in some cases also brothels. The abolition approach defines prostitution as illegal whereas the prohibition framework views the purchase of sex as an illegal act: the clients are punished instead of the prostitute, the goal is the decriminalization of the sex worker (Renzikowski, 2007). All of those currently adapted policies aim at limiting human trafficking and sexual abuse (O'Brien, 2009).



Figure 1: Prostitution in Europe

This variation in legal frameworks leads to a basic contrast between two principles: Either legalizing prostitution in any form or banning prostitution by making selling or buying illegal (van Rij, 2014). These principles are highly interlinked with aspects of gender inequality: The first model – legalizing prostitution – has been linked to the idea of prostitution in itself enhancing gender equality, since a woman has the right to decide for herself what to do with her body (Czarnecki et al, 2014). The second model – banning prostitution – is based on the assumption that prostitution is a fundamental violation of a female’s right and perpetuates gender inequality (Levy and Jakobsson, 2014).

Both approaches seek to improve society and circumstances for men and women working in the legal or illegal sex sector. But which approach is indeed better for the well-being of people? And which consequences does the law offer?

In the European Union both approaches co-exist and are implemented. Two countries which have opposite ideas on prostitution are Sweden and Germany. Sweden was the first country which introduced ‘Sexköpslagen’ (sex purchase law) in 1999 (Levy and Jakobsson, 2014). This law criminalizes the purchase of sex, while at the same time decriminalizing the sale of sex (Levy and Jakobsson, 2014). This has widely become known as the “Scandinavian Model” and served as a role model for countries like France. Germany on the other hand has a very liberal law on prostitution. After introducing the new ‘Prostitutionsgesetz’ (law on prostitution) in 2002, the purchase and sale of sex is legal (Czarnecki et al, 2014).

In 2014, the European Parliament passed a non-binding “Resolution On Combating Violence Against Women”, in which the Scandinavian model is supported. It states that this model has a deterrent effect on trafficking in Sweden and that such a law is able to have long-term effects on a population (European Parliament, 2014). But is this indeed the case?

I will examine the theory and practical effects of the legal framework on prostitution by comparing Sweden to Germany and by gathering information on what the environment for prostitutes look like.

## Objective and Relevance

The main objective of this paper is to compare the legal frameworks of prostitution in Germany and Sweden and their impacts on crimes like human trafficking and drug abuse. This thesis will examine the evidence on these issues taking into account the methodological challenges. In addition, I will describe and analyse the political arguments and motivations behind the two legal frameworks and examine if their expectations have become realised.

The topic is of both scientific and societal relevance: The discussion on whether prostitution should be legalized or not is nowadays surrounded by emotional and ideological arguments. Hereby, the reality can be presented in different ways in order to link it to one’s opinion. This demands more fact-based arguments for the discussion. Furthermore, only view research is being done which compares situations of opposite legal frameworks for prostitution.

In addition to that, policy makers’ decisions need to be founded on reality instead of on an aspired future-state which is not viable in the current situation. Although politicians have to take decisions which are strongly determining the society in the future, the well-being of society is supposed to be emphasized and not one’s own ideological approaches. The promotion for or against a legalization of prostitution should therefore not be due to a conservative, liberal, religious, feminist or any other motive, but should focus on the welfare of the society as a whole and on a minimization of harms (such as forced prostitution, human trafficking, emotional and physical violence or drug abuse) to the sex workers and the society. This thesis will therefore examine the opposition of the two political approaches on prostitution and give a critical answer to this question.

## Main research question

The main research question is: How is a country's legal framework on prostitution influencing the work circumstances of women working in the sex industry? A comparative study of Germany and Sweden.

## Outline

To guide the reader, a broader elaboration on the ethical and political background discussions forms a basis to understand the European situation. After that, the law on prostitution in Germany and Sweden will first be introduced and then its impacts will be analysed. The following sub-questions are used in order to structure the research: What are the political and ethical background discussions concerning the legalization of prostitution? What is the European Union's legal context on prostitution? What does the legal framework in Sweden look like? What does the legal framework in Germany look like? What are the work circumstances of prostitutes in Sweden? What are the work circumstances of prostitutes in Germany?

## Methods

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This thesis is based mainly on a review of the scientific literature on the topic. In-depth interviews will be used to back up and question my findings. Due to time-limitations the use of interviews will be abridged.

First a general overview on the background discussion concerning the legalization of prostitution will be given. Abolition or legalization of prostitution are rooted in a historical and social context. On top of that, the European context and approach will be studied and then Sweden's and Germany's legal context will be explained.

Concluding, a look into the reality of the sex workers in Sweden and Germany and the social impact will lead to an analysis about which framework has positive or negative effects on sex workers.

The literature used was found by searching the global search interface of Wageningen Library (which combines all the databases it subscribes to included ISI and Scopus). By using keywords like 'legalization', 'prostitution', 'Scandinavian model', 'Prostitutionsgesetz', 'European law', 'abolitionist', 'decriminalization', 'human trafficking', 'prostitution policy', 'sex work', 'Germany', 'Sweden' and a combination of these literature was accumulated. This database also provides similar literature. More literature was accumulated with the means of the "snowball" effect, thus using references from already accumulated literature. With these means, around 30 articles formed the scientific basis for this thesis. Furthermore, the countries' law was used and will be cited.

In addition to that, one in-depths interview with a prostitute in Germany was made. The notes of the interview are to be found in the Annex. Also policy documents from the EU, UN, and governments in Sweden and Germany will be used in this thesis.

Accessing the target group is difficult and in-depth interviews with prostitutes or former prostitutes are often available in grey literature like blogs, forums and documentaries by former prostitutes, pimps, purchasers of sex, social workers and social activists. I used and cited grey literature, in order to shed more light into the circumstances of prostitutes.

### Methodological challenges

Knill and Tosun (2012, p. 174ff) differentiate between two types of policy evaluation. The Programmatic evaluation pertains facts in which social impact is measured and the policy is evaluated based upon a scientific cost-benefit evaluation. Contrary, the political evaluation views success or failure of a policy as socially constructed. The evaluation is subject to political contestations and cannot be neutral.

Political evaluation happens by default: Politicians have to “sell” their policies as a success in order to be re-elected. The opposition might, depending on their interests, present it as a failure.

Programmatic evaluation is difficult because costs and benefits are perceived differently within the social realm. Scientific facts are politically interpreted and presented in various ways. (Knill and Tosun, 2012, p. 174ff)

This leads to a problem when answering the research question. It is impossible to clearly point out the way in which legal frameworks influence work circumstances of prostitutes. Who benefits from a certain policy is perceived dissimilar by different stakeholders and information given is already coloured by political ideas. This thesis tries to meet this challenge by basing the research on a diverse scientific literature with different point of views on this topic.

# 1 Political and ethical background discussions concerning legalization of prostitution

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Lawmakers base their decisions on underlying assumptions. Renzikowski (2007) points out four different points of views on prostitution: Prostitution can be seen as a harm to a person's human rights, as a violation of morality, as an autonomous decision for a risky occupation or as a profession like any other.

This differentiation is not synonymous with the different legal frameworks for a rationalization of prostitution, but it correlates with some of them. Prohibition finds its justification in the assumption of prostitution harming human rights. Abolitionists may advocate their opinion by placing prostitution as an unconscionable act and the regulative concept tries to enhance women's self-determination. (Renzikowski, 2007)

## 1.1 Prostitution as a harm to humans and their rights

Viewing prostitution as a harm to humans and their rights can be found in the earliest parts of the United Nation's soft law. The preamble of the "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others" in 1949 states "... **prostitution** and the accompanying evil of the traffic in persons for the purpose of prostitution are **incompatible with the dignity and worth of the human person** and endanger the welfare of the individual, the family and the community, ..." (UN General Assembly, 1949). The motivations for this approach widely differ.

Feminists argue that prostitution is paid rape (Barry, 1996, p.37). Barry views prostitution as disembodied sex where the prostitutes are not perceived as human beings by the customer. Therefore, both, rape and prostitution construct power relations and violate the fundamental and constitutional equality between men and women (Barry, 1996). With the same argumentative backgrounds, Jeffrey compares prostitution to slavery and finds certain common grounds (2008, p. 177ff). She also points out that females do not voluntarily decide to enter prostitution but are forced to do so by their circumstances which do not leave much agency and opportunities (2008, p.152ff). Statistical findings show that a higher percentage of females working in the prostitution industry have a history of sexual abuse in their childhood (Farley and Barkan, 1998). It is argued that sex workers have a low self-esteem and are trained to make use of their bodies (Jeffrey 2008, p. 153ff).

This approach entails several objections. First of all, equalling prostitution and rape is missing the ex-ante agreements. A sexual service against payment implies an oral contract which is agreed upon before the actual sexual exchange. This is not the case with rape (Renzikowski, 2007). On top of that during the interview the author carried out with a sex worker from Germany, it was found that there are girls who form worker's unions in order to advocate their right for working as a prostitute. The fact that voluntary prostitution exist questions the idea of prostitution being paid rape and a threat towards human dignity.

### Practical consequences

If law-makers view prostitution as a harm to human rights, prostitution violates article 1 of the EU Charter of Fundamental Rights (cf. European Parliament, 2000). All member states of the European Union are committed to respect and protect those rights resulting in legal consequences for prostitution. Consequently, pimping as well as brothels would be banned: both support prostitution and would therefore support the enslavement of human beings. Pimps or owners of brothels could then be seen as criminals. The purchase of sex would be illegal as well, leaving a legal opportunity

for punishing the customers. Prostitutes would be victimized as their human dignity would be violated (Renzikowski, 2007).

Furthermore, if this approach leads to a criminalization of sex-buyers, criminal investigators would lose the most valuable source for information on trafficking: Most of the hints concerning possible victims of human trafficking are from men who purchase sex. Criminalizing them would lead to a decrease of that information. (Bundestag, 2016)

## 1.2 Prostitution as a violation against morality

The Duhaime's Law Dictionary defines "Unconscionability" as "a bargain or contract which is clearly unfair, exorbitant, harsh, contrary to common sense or good conscience" (Duhaime, 2016). The common sense is a set of social rules which are constitutive within a society: A society's morality. This common sense is not questionable as every legal framework demands a fundamental consensus of its underlying values. Unconscionable is everything that violates those values (Renzikowski, 2007). Remarkable is that those values (the definition of morality) are not clearly written down, thus they are a very vague concept of what is commonly accepted and not accepted.

Also, in the 'Metaphysics of Morals', Immanuel Kant states in § 25 "in the [sexual] act a human makes himself into a thing, which conflicts with the right of humanity in his own person. There is only one condition under which this is possible: that while one person is acquired by the other as if it were a thing, the one who is acquired acquires the other in turn; for in this way each reclaims itself and restores personality." He follows in § 26 that this can only be achieved within the framework of a monogamous marriage: "... the relation of the partners in a marriage is a relation of equality of possession, equality [both] in their possession of each other as persons (hence only in monogamy, since in a polygamy the person who surrenders herself gains only a part of the man who gets her completely, and therefore makes herself into a mere thing)" (Kant, 1870). Prostitution is, due to its polygamous and unequal nature conflicting with the right of humanity defined by Kant, as he views it as a degradation of the prostitute towards a "thing".

This argument is very weak and it is hardly able to defend but it is mentioned here because historically, laws on prostitution (especially in Germany) were based upon the argument of Unconscionability (Czarnecki et al, 2014).

Such an approach entails several objections: Kant's argument is of moral nature, but it has been argued that the Law's task is not a moral education but the guarantee and protection of a person's legal sphere. (Renzikowski, 2007) Based on this legitimation, the law is not entitled to intervene.

It is also questionable whether this argumentative line is solely able to form a judicial basis for a law on prostitution. The common sense can hardly be defined by law (Renzikowski, 2007) and there is evidence that society changes constantly (Knill and Tosun, 2012, p. 79ff).

### Practical consequences

Judicial and political law-making is left with a wide room for manoeuvre: A society's common sense is a judicial broad term which could be interpreted in several ways. Consequences would be similar to the first approach and thus imply a prohibition of prostitution due to its immoral character. Brothels and pimping would be forbidden and also the purchase of sex could be criminalized as they disturb the public order (Renzikowski, 2007).

Another consequence is the rather negative effect on the prostitutes. Sex workers are viewed as immoral and therefore judged and discriminated (Czarnecki et al, 2014). On top of that, prostitutes are transformed into a social problem: Prostitution is not solely an economic way of making a living but is a problem of social control. This may result in a lack of judicial protection: As prostitution is

would then be viewed as a problem, this problem needs to be eradicated instead of protected. The focus of a policy would then not lie on the vulnerability of females working in prostitution, but on how to decrease the amount of prostitution. A lack of protecting vulnerable prostitutes might occur since this would not be the goal of the state. (Renzikowski, 2007).

### 1.3 Prostitution as an autonomous decision for a risky occupation

In addition to the two already introduced approaches, viewing prostitution as an autonomous decision for a risky occupation is fundamentally acknowledging prostitution as a possible free choice. In international soft law, the “Declaration on the Elimination of Violence against Women” by the UN in 1993 states in article 2b that Violence against women shall include “Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, **trafficking in women and forced prostitution**” Prostitution in itself is not mentioned and therefore excluded from the definition of being violent against females (cf. UN, 1993). Also, the WHO recommends that all countries should “work towards decriminalization of sex work and urge countries to improve sex workers’ access towards health services.” (WHO, 2012). The decriminalization of prostitution is demanded.

The need for a differentiation between forced and voluntary prostitution is stressed in this approach. While human trafficking and forced prostitution is clearly violating the human rights (Bonewit, 2016), voluntary prostitution is claimed to be fundamentally different. Sexual self-determination means to be able to decide for oneself about the form of sexual contacts. This is in the theory the case when talking about voluntary prostitutes (Renzikowski, 2007).

Still, a prostitute is exposed to more risks than a standard profession: Due to many and changing sexual contacts, there is a higher risk for a transmission of STDs (Czarnecki et al, 2014).

In a study by Farley and Barkan in 1998 130 prostitutes working in San Francisco were interviewed and it was found that around 80% of them had been physically assaulted and threatened with a weapon while nearly 70% had been raped during the time they have been working in prostitution.

One objection is that there is no clear boarder between human trafficking and prostitution (Czarnecki et al, 2014). There are also often reasons which force women into prostitution such as poverty or low self-esteem. Furthermore, these hidden motives could not be obvious to the individual prostitute. (Jeffrey 2008, p. 153ff) One could conclude based on the above mentioned higher statistical correlations between prostitution and them being abused in their childhood (Farley and Barkan, 1998) that prostitutes are indirectly forced to enter this job (Jeffrey 2008, p. 153ff). Furthermore, economic reasons often do not leave a choice but form a mean of force into prostitution (Renzikowski, 2007). It is also said that a regulation sends the wrong signals to prostitutes and society. The threshold for engaging in any form of prostitution is lowered, making prostitution more acceptable and therefore also the chances for human trafficking. Practically it is argued that an improvement of the circumstances of prostitutes is not realizable. Pimps would simply make use of the unpunished opportunities while prostitutes would not enforce their rights (Renzikowski, 2007).

### Practical consequences

Human trafficking and forced prostitution would be illegal and punishable. A voluntary prostitution however could be allowed whereas the risks need to be minimized by law. This minimization could include sex education and education about the risks for this profession. Brothels would be legal but regulated, subjected to restriction and controlled by officials in order to minimize the risks (Renzikowski, 2007).

Also the psychological effects are notable: Farley points out in her article that dissociation and depression are often found amongst prostitutes. The emotional distance the prostitute needs to maintain while being physically intimate can have a negative effect on the prostitute (Farley, 2004).

## 1.4 Prostitution as a profession like any other

Approaching prostitution as a profession like any other is denying the link between crimes like human trafficking and prostitution (Renzikowski, 2007). Phillip Thi e (2005) is stating that human trafficking and forced prostitution is not existing in the form the public and the criminal law currently adopt. He also criticises the police, churches and NGOs which “propagandize” white slavery by making use of individual cases. According to him, prostitution is legally much more to be seen as a migration of labour. Political consequences of prostitution would be non-existent; a prostitute would fall under the normal employment law.

This approach is objected by statistical findings on crimes within prostitution (Farley & Barkan, 1998) and the official numbers of human trafficking by the EU. Eurostat states that there were in total 30146 registered human trafficking victims within the EU between year 2010 and 2012, of which 69% were trafficking for sexual exploitation. (cf. European Union, 2015)

## 2 European Union level legal context on prostitution

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In order to be able to place the discussions on prostitution within Germany and Sweden into the broader political context I will summarize the Historical background and also the more recent developments on prostitution policies within Europe.

### 2.1 Historical background

From the late 19<sup>th</sup> century until roughly the first World War, Europe was influenced by the “social purity movement” led by middle-class evangelical Christians and other social purists in the United States and several countries in Europe like Great Britain, France, Germany and the Netherlands (Limoncelli, 2006). It had as its goal the eradication of “vice”, which meant especially prostitution and other forms of sexual immorality. Based on the point of view that females are naturally pure, pious and submissive, prostitution was seen as “white slavery”. This meant a perspective of white women being held against their wills and by the means of drugs, force and deceit being forced into prostitution. It elicited a picture of men being the crazed offender who exploit defenceless females (Zimmermann, 2011). This turned the issue of prostitution, which was seen up to this point as a taken-for-granted aspect of an urban society into a social problem. The solution was a pure abolitionist approach: prostitution was ought to be erased from the public sphere by criminalizing it. One can see that in many countries prostitution was illegal during this period (Mattson, 2016).

After the second World War, and with it the newly formulated “Universal Declaration of Human Rights” (1948), new activists pled for a decriminalization of prostitution, in order to not punish victims of poverty (Mattson, 2016). Instead of focussing on the social problem and the “purity” of the society, the focus turned towards protecting vulnerable groups. In addition to that, the broad international consensus which rooted in the newly established supra-national organizations about banning prostitution formed a further push on countries to homogenize their policies on prostitution. Though the goal was the criminalization of profiteers, thus especially those who reaped the profit of slavery, the prostitutes were in the end the suffering party (Kilvington, Day and Ward, 2001).

Until 1998, most of the European countries had common *de jure* laws on prostitution, though the *de facto* implementation differed between and within countries in the European Union: Prostitution was decriminalized in nearly all countries, though exploitation of prostitutes in form of brothels or other sex businesses was prohibited (Mattson, 2016).

Mattson (2016, p.5) divides this history of governing prostitution into two parts: The old debate, which happened before the 2<sup>nd</sup> World War mostly abolishing prostitution and the new debate taking place after the 2<sup>nd</sup> World War, during which prostitution was widely decriminalized. He introduces three main differences in the characteristics of the old and new debate on prostitution politics:

First, the gender of politicians is mentioned. Whereas the old prostitution discourse was mainly led by male police and government officials, the later legal decision making process was also stimulated by females.

Secondly, policy options polarize in the current debates between legalization and abolition. Approaches of organizing the sex-sale with the means of municipal ordinances and admissible areas like Red Light Districts vanished. In lieu thereof, turned into a divergent discussion of either complete acceptance or complete abolishment. Mattson claims that this discussion is surrounded by broad philosophical terms and thus underestimates the chaotic realities. The policy is forced into two neatly separable categories, which do not help in reality.

A third way in which the current policies diverge from the former debate is the involvement of the civil society and government organisations. Both form a web of actors in which NGOs, state agencies and international governmental organisations exchange information and work together. The former debate was more fuelled by middle-class social movements.

With the turn of the millennium, this discussion was even intensified by a fourth factor. Kilvington, Day and Ward (2001) add to those differences the concern of HIV infections. Since the outbreak of the disease in the 1980s, safer sex regulations are being debated upon. Aiming the reduction of disease transmission, advice, health care and condoms are provided to the prostitutes. Such harm minimizing programmes are based upon a good contact with the prostitutes. There is a potential of conflict if abolitionist and regulationist state policies lead to less contact with state officials, social and health workers and the prostitutes. They also mention the change in Europe's social and economic situation on a local and international basis. The increasing number of single parents and the reduced state benefits in parts of the EU increased availability of potential prostitutes. Greater freedom of movement within and into Europe increased mobility and transformed and scaled up parts of the sex industry into larger and transient sectors (Kilvington et al, 2001).

These changes and the attempt to harmonize European law resulted in some national politicians taking actions. Around the turn of the millennium, political decisions concerning prostitution were made along this divergence (Mattson, 2016).

## 2.2 Timeline of recent developments on prostitution policies within Europe

Following, the most important recent developments on prostitution policies within Europe are given and put into a timeline. A graphic to further illustrate the dates can be found at the end of this chapter.

The debate on prostitution started to emerge in the 90s (Mattson, 2016). In 1993, the Maastricht treaty took effect and created another level of integration within the European Union. A common border policy was established. In addition, the foundation for a homogenization of social policies and topics like immigration and social welfare was laid. Also judicial and police cooperation was agreed upon in this treaty (cf. European Union, 1992).

In the same year TAMPEP was founded, a European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers. It aimed to give a voice to migrant sex workers by providing a community development and participation model (cf. TAMPEP, 2017).

In 1997, the Daphne Initiative was launched by the European Union. It entailed a one-year funding line of three million € for NGO projects in order to protect women, children and young people from violence. Some projects also supported prostitutes and victims of human trafficking. The Programme was renewed in 1998 and 1999 with a budget of five million €. From 2000 to 2003 the budget was twenty million Euro over four years, followed by the Daphne II (2004-2006 with 10 million €) and Daphne III (2007-2013 with 16.7 million Euro) Programme. From 2014 onwards, the Programme was integrated as a part of the European Rights, Equality and Citizenship Programme (cf. European Commission, 2017).

One year later, The EU established the STOP project in order to study the coordination of anti-trafficking activities throughout the EU (Mattson, 2016). On international level, the UN's International Labor Organization calls for a recognition of sex work in order to extend the worker's labour rights and improve their working conditions (Raymond, 1999).

In 2003 the OSCE (Organization for Security and Co-operation in Europe) set up the Office and post of Special Representative and Coordinator for Combating Trafficking in Human Beings. Aiming to

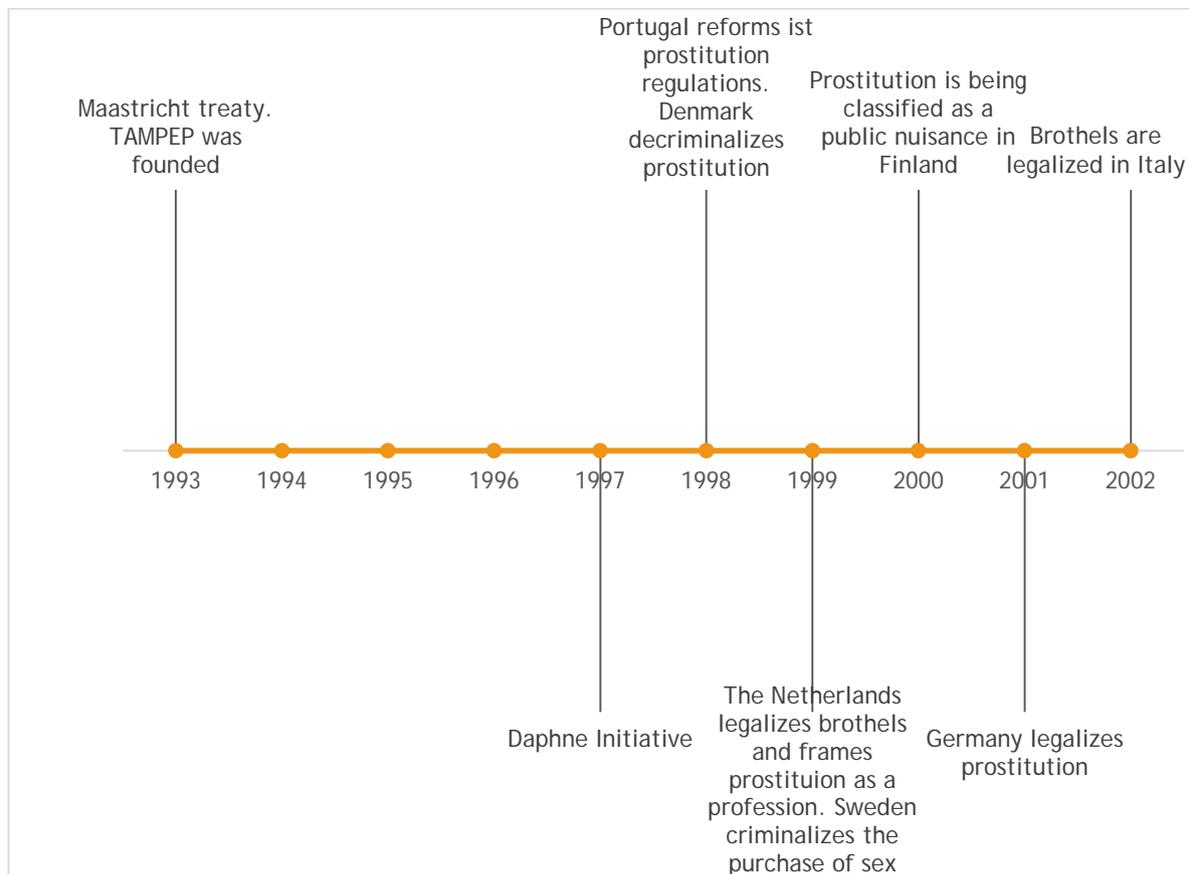
fight human trafficking and forced prostitution, it supports of participating States to develop and implement effective policies. The OSCE states that nearly all countries are destination, transit and/or origin countries for human trafficking. (cf. OSCE, 2017)

In 2004 with the Eastern enlargement, ten new members mainly from Eastern and Central Europe, joined the European Union. Since Bulgaria and Rumania are member states of the EU, their citizens are able to travel without a visa and are allowed to settle anywhere within the European Union. Studies and reports from Germany reveal that an essential share of the currently employed prostitutes are from these countries. (Czarnecki et al, 2014)

In the same year, members of the European Parliament were accused of being influenced by the international sex industry. Hearings are being hold. (Mattson, 2016)

Also in some European countries, law was changed: In 1998, Portugal reformed its prostitution regulations while Denmark decriminalized prostitution. The following year, the Netherlands legalized brothels and framed prostitution as a profession (Mattson, 2016). During the same year, Sweden criminalized the purchase of sex. Sweden was the first country within the EU who introduced this step by enforcing the ‘Sexköpslagen’ (sex purchase law) (Levy and Jakobsson, 2014). One year later prostitution was being classified as a public nuisance in Finland (Mattson, 2016). In 2001, Germany introduced the below discussed new ‘Prostitutionsgesetz’ (law on Prostitution), in which prostitution is not an immoral act anymore. Prostitution is being legalized. (Czarnecki et al, 2014). In 2002 brothels are legalized in Italy (Mattson, 2016).

Concluding, this shows that since the 1990s, the overall debates on prostitution policies in all member states’ governments are ongoing (Mattson, 2016).



**Figure 2: Most important recent developments of prostitution policies within Europe**

### 2.3 Current situation

The debate on prostitution across European countries pushed European law makers into talking about a position. In 2014 the European Committee on Women's Rights and Gender Equality drafted a motion for a European Parliament Resolution. Taking former policy documents and reports into account, they drafted statements based upon recent research about prostitution. It is expressed amongst others that prostitution is a form of slavery and thus incompatible with a person's Human Rights. They also indicate certain traits of prostitution: Prostitution is a gendered phenomenon on a global scale and it is interlinked with gender inequality, organized crime, human trafficking, extremely violent crime and corruption. Furthermore, is the sale of sex a reduction of intimate acts to their monetary value and degrades a person to an object for the use of a client. Sexual services are offered by mostly vulnerable people from which a vast majority would like to change their occupation but feels unable to do so. Another statement concerns the markets. The buyers highly contribute to the maintenance of the demand and prostitution markets fuel trafficking in women and children and exacerbate violence, especially in countries which follow the regulative framework. Regulation and legalisation primarily benefits the pimps. (cf. European Parliament, 2014)

Furthermore, a minimum age of 21 is pledged for as well as further research and more reliable data on prostitution and human trafficking.

The motion supports the Nordic Model, as it calls out for a shift of the criminal burden towards the Sex Purchasers. (cf. European Parliament, 2014)

This non-binding resolution was agreed upon by the European Parliament in February 2014 and submitted by Mary Honeyball (van Rij, 2014).

One can see that this notion tends to favour the Nordic model and takes a rather abolitionist attitude. The lack of a critical reflection on the evaluation in Sweden and many non-neutral statements like "... gender inequality and sexual subordination cannot be fought effectively by assuming a gender symmetry in sex industry activities which does not exist." (cf. European Parliament, 2014) shows a certain bias.

## 3 Legal framework in Germany

### 3.1 History

In the law-makers' view from 1973, prostitution was a necessary evil within the society (Renzikowski, 2007) and seen as an immoral act (Kavemann, Rabe and Fischer, 2007). Though it has been claimed that prostitutes did not freely decide to take up this occupation, it could not be prevented due to practical reasons: It was simply not feasible to spend governmental budgets on confining prostitution and furthermore it was hard to control the milieu of prostitution. Therefore, the law did not prohibit prostitution in itself, as the prostitute was seen as the weakest link: She or he was a victim of circumstances around her or him. (Renzikowski, 2007) The practice of prostitution was meant to be confined by dint of criminalizing those circumstances: Pimping in all forms was prohibited and defined as "promoting prostitution". All contracts related to prostitution like tenancy agreements or contracts between a prostitute and his or her client were voided because of the assumption of the immorality within prostitution. (Kavemann et al, 2007) On top of that, prostitution was meant to be locally restricted and not visible in order to avoid conflicts within the society (Renzikowski, 2007). By-laws establishing exclusion zones were established with the goal to "protect public decency and young people" (Kavemann et al, 2007). Prostitution was therefore seen as an unconscionable act through which the prostitutes did not have any rights on administrative law or any other civil protection. The judicial fundament of health controls in order to minimize health risks was laid, but did not explicitly address only prostitutes. (Renzikowski, 2007)

The new law on prostitution in 2002 was aiming to improve the work- and life-circumstances of prostitutes. Unconscionability was countermanded and in the course of that the fundamental discrimination of prostitutes was removed. (Czarnecki et al, 2014) There was a shift in paradigms from the protection *of* prostitution to the protection *in* prostitution (Lembke, 2010). This entailed that prostitutes could sue the client for the agreed monetary transaction. Furthermore, they could choose between self-employment (thus managing the insurance and tax-payment independently) and a dependent employment relationship in which the brothel-owner takes care of tax-payment and the regular insurances through a contract of employment. Brothel-owners were de-criminalized. In reality, not much of the law was enforced in practice. (Klee, 2005) Apart from that there were no noteworthy changes for further improvement of the circumstances of prostitutes (Czarnecki et al, 2014).

### 3.2 Current situation

In October 2016, this law of 2002 was replaced by the new 'Prostitutionsgesetz'. Prior to that there was a public official hearing where many experts had the chance to point out how realities concerning prostitution look like and what to be taken care of when formulating a new law. (cf. Bundestag, 2016) This law requires amongst others a licence for brothel-owners and other sex-selling locations. Previously convicted persons are not able to gain an operating licence anymore. In addition, every licensee needs to explain the brothel's concept in order to prevent unhuman work circumstances. Flat-rate-brothels and other sexual practices which are contrary to the prostitutes' self-determination, its advertisement and advertisement for sex with pregnant women is prohibited.

Prostitutes need to register at the municipality every two years and are obligated to follow a health consultation every year. The following information is required for a prostitute's registration: The full name, place and date of birth, the nationality, the registered address and the counties and communes in which prostitutes are intending to work. The health consultation takes place in a specialized Counselling Centre. For Sex Workers under 21, the time-period for registration is annually and the health check has to take place every six months. In addition to that, Safer Sex in form of the usage of condoms is mandatory. Penalties for perpetrating the law range from reprimands to monetary fines (cf. Prostitutionsgesetz of 2016).

## 4 Working conditions of prostitutes in Germany

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In this section a look is taken at the current situation and work circumstances of prostitutes in Germany. Beforehand it needs to be said that there is currently a broad mixture between different topics: Prostitution is often equalised with human trafficking and sexual exploitation. Defining prostitution is difficult as the spectrum spreads from a victim of human trafficking to an independently working woman. In between grey zones like online and webcam sale of sex, gay prostitution (which is rarely found back in the current discussions), escorts or love mobiles and other forms of prostitution are found. It is hard to draw an adequate picture of such a heterogeneous group. The “Roundtable on Prostitution” concludes that there is not a typical prostitute. A differentiated pictures of prostitution shows big differences (Zimmermann-Schwartz, 2014). This chapter can only show part of the reality based on the point of view of different stakeholders with diverse interests.

### 4.1 Levels of prostitution

It is difficult to offer reliable statistics on prostitution in Germany. The “Round Table Prostitution North Rhine Westphalia”, a participative platform where the police, ministries, social workers, prostitutes, scientists and other stakeholders aim to create a basis of knowledge on prostitution by exchanging information states that the often quoted number of 400.000 prostitutes working in Germany is an estimation and not very reliable. Also the given statistical value of 10% male prostitution cannot be backed up (Zimmermann-Schwartz, 2014). The question on whether prostitution significantly increased or decreased after the introduction of the new law in 2002 cannot be answered.

### 4.2 Social circumstances

As the new ‘Prostitutionsgesetz’ was only introduced in 2016, it will take some time until an efficient implementation can be achieved. To further explore the current circumstances of prostitutes in Germany, we will take a look at the different points of views of several stakeholders who framed and influenced the decision-making process.

A study by Schröttle and Müller (2004) about the life situation, security and health of women in Germany focuses in one subpopulation on prostitutes. Concluding from their research, the following problems are closely interconnected with the background of women working in prostitution:

- ❖ The over-indebtedness of women
- ❖ The isolation of women
- ❖ Homelessness
- ❖ Health

There are also influences on the women which need special attention: The double life many women are forced to lead due to discrimination form a high psychological risk. Problematic family structures, violence within the family and relationship problems can often be found (Schröttle and Müller, 2004). This is in line with what came out of an open hearing in June 2016, where experts had the chance to give their point of view both orally and by answering a questionnaire beforehand. This material was published on the governmental website, accessible for the public. (Bundestag, 2016) For this occasion, Anja Kasten was invited to represent the professional association for sex workers, the “Berufsverband erotische und sexuelle Dienstleistungen e.V.”. She explains that many prostitutes have a dual life due to discrimination within the society, friends and the family. As many prostitutes work avocational in another field of work, they fear losing the non-prostitution job once a discovery

of their occupation as a prostitute happens. Especially a registration would harm the privacy of prostitutes and therefore supports the risk of losing their reputation and their work place. (Bundestag, 2016) Also the “Round Table Prostitution North Rhine Westphalia” found that prostitutes often face stigmata and taboos (Zimmermann-Schwartz, 2014).

Furthermore, Schrötle and Müller (2004) found that partners of prostitutes often draw a profit from the women’s earning and use force (withdrawal of affection, psychological or physical violence) to maximize their profit. On top of that women often experienced sexual abuse in their childhood and therefore learned how to view their body as an object: returning sexual violence is seen as a pattern from which they feel they cannot escape. Also the psychological transformation of the pimp to a “loving protector” is experienced as problematic. A lack of social contacts and recognition has negative effects on the self-esteem. Wolfgang Heide, a gynaecologist working in “Amelie”, an outreach clinic in Mannheim stresses that a majority of the prostitutes does not have what he calls “a life”. They live in the brothels, do often not know where they are, sleep little and are always available for customers. They are moved throughout Europe and rarely leave their places. His experience is that most of the women have no health insurance. Many have infections in their genitalia and persisting abdominal pain. The maternity leave for pregnant women is six weeks before giving birth. (Bundestag, 2016)

Schrötle and Müller (2004) interviewed 110 prostitutes within Germany, mostly working within a Club-, Apartment- or brothel-setting. They found that 41% of the prostitutes interviewed had experienced physical or sexual violence. Nearly 40% were beaten up and 34% were threatened with a weapon. Nearly half of the sample was raped one or more times.

43% of this subpopulation had experiences with sexual abuse in their childhood or adolescence. Around a half were sometimes or often physically punished by their parents. One in four of the interviewed indicated suicidal thoughts, one in three told about panic attacks or anxiety. Nearly half (44%) of the sample had no higher or educational school certificate which could partly be explained by the young age average of 34 years. Only about half of the women were in a relationship, which lays under the average of 70% of the main study. The percentage of females with physical or psychological complaints is in nearly all categories for prostitutes above the main study level.

Though this study is due to the methodological challenge of accessibility of prostitutes not generalizable, it shows the direction of a prostitute’s working conditions in Germany.

Also Anita Heiliger (n.d.) analyses the reality of German prostitutes. She draws a rather negative picture of this job. Most of the prostitutes she mentions have irreparable psychological problems. Sexual pleasure is not important to a prostitutes, rather the fast earned money triggers females to start this occupation.

Another aspect is the nationality of the prostitutes: The representing interest groups for prostitutes who were asked to hand in a point of view on the new Prostitutionsgesetz beforehand consisted of three different occupational unions: The “Berufsverband erotische und sexuelle Dienstleistungen e.V.” (the professional association of erotic and sexual services), the “Bundesverband Sexuelle Dienstleistungen e.V.” (the federal association of sexual services) and the “Unternehmerverband Erotik Gewerbe Deutschland e.V.” (The business-owners’ association of erotic businesses for Germany). The first one represents a three-digit number of members who are or were active prostitutes, whereas the two latter represent mostly owners of brothels or other sexual businesses. The fact that the majority of prostitutes – namely foreigners from Eastern Europe, as often indicated by all stakeholders – are underrepresented shows the difficulties of reaching them. Also by interviewing a member of the first occupational union, the problem of representing prostitutes appeared: A majority of Sex Workers are foreigners and often have a hard time to form unions due to language barriers. (Bundestag, 2016)

Leni Breymaier, working for the Non-Governmental Organization (NGO) “SISTERS – für den Ausstieg aus der Prostitution e.V.” (Sisters- for exiting prostitution, based and working in Stuttgart) gives a perspective based on her regular work with prostitutes. She states that women she has encountered work up to 16 hours a day. The price for penetration into all orifices of the body in Stuttgart costs 30€ In the rest of Germany, this price is around 25€ A room for selling sex in Stuttgart costs around 120€ to 160€ daily, meaning a woman needs to have four to six clients in order to pay her fixed costs. Generally, the women she encounters are originally from Southeast Europe. They do not know enough German in order to communicate with the client. (cf. Bundestag, 2016)

Lutz-Ulrich Besser, a doctor for psychiatry and psychotherapy explains the high psychological stress to which prostitutes are exposed. He also describes how low the level of control for sexual businesses is and that this has possible negative effects on individuals working in prostitution. He calls prostitution a ‘killing of souls’. He differentiates between females who offer their body for money and are able to express their sexual self-determination and those who are trapped in what he calls an ‘organized and legalized form of humiliation of people’. He also points out the difficulties for reliable statistical data for the latter group. (Bundestag, 2016)

Finally, a high risk lies in the prostitution due to poverty. As most of the prostitutes are not health insured, the access to health services is limited (Zimmermann-Schwartz, 2014).

### 4.3 Voluntariness

Heike Rudat from the union of German criminal investigators and working as an investigator in the area of prostitution in Berlin for 10 years explains that most of the prostitutes she encountered do not have a chance of a free choice against selling sex. Admitting that there are individuals who independently and self-determining with whom and how the sexual act should take place, she sees the majority of prostitutes being females who – due to economic and other reasons – do not have the chance to make this free choice. In addition, it is stated that females are freely moved throughout Germany. There is a demand for what she calls “new and fresh” women and the police has often difficulties with tracing those movements (cf. Bundestag, 2016).

This is supported by Leni Breymaier, who claims that for around 90% of the prostitutes she encountered, some kind of force (for example due to poverty) plays a role during her work. They do not have a free choice against sexual acts. Also Andrea Hitzke from an NGO against human trafficking (KOK- Bundesweiter Koordinierungskreis gegen Menschenhandel e.V.) sees a majority of prostitutes being without alternatives. Females from Eastern Europe are generally forced into prostitution due to a lack of finances. (Bundestag, 2016)

The official statistics on human trafficking for sexual exploitation in Germany are decreasing during the last years. In 2015, 364 successfully concluded preliminary proceeding of human trafficking were noticed, that is a decrease of 7% (392 convicted crimes in 2014) in comparison to the year before. How this decrease can be explained remains unclear as the dark figure is assumed to be much higher (BKA, 2015). The table below shows the annual developments during the last years and supports the above mentioned findings that most of the exploited prostitutes are originated in Eastern Europe.



Figure 3: Victims of Human Trafficking for the purpose of sexual exploitation in Germany

#### 4.4 Governmental Efforts

Helmut Fogt, representative of the umbrella organisation of communes differs between inhabited and uninhabited areas. He especially stresses the vulnerability of street prostitutes working in uninhabited area. They are often not regulated by the communes as no institution is responsible for prostitution in those areas.

The point of views of different Ministries like Federal Government Departments of certain counties but also Ministries and governmental networks of other governance levels within Germany are characterized by a rather analytical approach.

Governmental actors often demand further research, definitions and discussions about specific aspects of the topic. The debate is surrounded by many prejudices, prostitution is often synonymous with human trafficking, addictions, AIDS and migration due to poverty. Definitions are missing about what a prostitution location is, as well as the question about how to distinguish between the need for permissions for different locations (Brothels, love-caravans or private flats). Also the concrete implementation of the new law adopted in 2016 on a municipality-basis needs further adjustments. The missing investments and capacities of really implementing policies is also complaint about. Better access to educational institutions is stressed. (cf. Bundestag, 2016)

## 5 Legal framework in Sweden

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In this chapter, a look is taken at the legal framework in Sweden. Sweden was the first country within the EU which introduced the ‘Sexköpslagen’. In 1999, the Prohibition of the Purchase of Sexual Services Act 1998, section 408 came into practice:

“A person who obtains a casual relation in return for payment will be sentenced – unless the act is punishable under the penal code – for the purchase of sexual services to a fine or a term of imprisonment not exceeding six months. For attempting this offence, a person will be sentenced in accordance with Chapter 23 of the Penal Code.” (translated by Scoular, 2004)

This law is based on the assumption that prostitution in itself harms a person’s human rights and aims the decrease of overall prostitution. Kajsa Claude (2010) summarizes this in the following statement: “The Swedish law was controversial when it was enacted in 1999, because it challenges and criminalizes an age-old male right to look at women’s bodies as if they were goods to be bought and sold. The law cannot be understood without a perspective on Sweden’s equal opportunity policy in recent decades. Many years of discussions and work for women’s rights are the basis for the current legislation. In a gender-equal society, men do not regard women as merchandise.” (Claude, 2010, p.6).

In order to understand the current situation, one has to focus on how this law came into existence.

In 1995, the Commission on Prostitution proposed the criminalisation of purchasing sex, which was finally passed as a part of the “Kvinnofrid”-Act (Violence Against Women) in 1998 (Hubbard et al, 2008). Sweden had a largely homogenous feminist movement which was responsible for the formulation of the law. The law on prostitution was a further step towards gender equality in Sweden. (Scoular, 2004) Female’s human rights and their equality is – from a Swedish perspective – disparate with prostitution. Prostitution is seen as degrading the woman towards a commodity which can be sold, bought or sexually exploited (Ekberg, 2004). Prostitution is therefore seen as the ultimate expression of male violence. This homogeneous feminist movement was unique in the European context. There was no Workers’ Union of sex workers, thus any public opposition against the implementation of the ‘Sexköpslagen’ was rare. It was broadly accepted by the public and seen as the best solution by mostly all stakeholders (Scoular, 2004). The following developments stress this homogenous attitude also within high-ranking political levels.

In 2001 The Swedish government declared that there would be no need for studying and reflecting upon the law. Two years later, Deputy Prime Minister Margareta Winberg criticises the brothel politics during the Olympics in Athens. In 2004 Estonia proposed to legalize sex work. It failed due to Swedish criticism. The ‘Sexköpslagen’ was renewed in 2005, although two years later the First Government admits a lack of prosecutions. In 2009 Norway and Iceland adopted the Swedish model which was supported by Swedish officials (Mattson, 2016).

The lack of internal debate on the legislation is criticised by scholars. It is currently widely celebrated as a success for the gender equalization process but lacks statistical substance to back-up the claimed positive social effects. It could not be shown that overall prostitution and human trafficking significantly decreased (Mattson, 2016). Also the evaluation process is criticized. Levy and Jakobsson (2014) stress that both, the debate and the evaluation process were asymmetrical and biased.

In order to enforce the law, the police needs clear evidence of the occurrence of a sexual contact. If this can be achieved, a penalty of 50 days (or a fine equivalent to the person’s earnings within this time) can be set. Recidivists can get a penalty up to 150 days (Hubbard et al, 2008).

## 6 Working conditions of prostitutes in Sweden

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Levy and Jakobsson (2014) claim that the criminalization of prostitution in 1999 has led to stigmatization, social exclusion and marginalization. That is also why it is very difficult to give a proper reflection of the reality of Sex Workers in Sweden.

### 6.1 Levels of prostitution

First of all, the ‘Sexköpslagen’ had the goal of decreasing the overall levels of prostitution, based on the assumption that prostitution is harming the Sex Worker (Claude, 2010 and Danna, 2011). There are no reliable statistics to support the achievement of this ambition (Östergren and Dodillet, 2011). The National Board for Health and Welfare summarized this fact in their evaluation of the ‘Sexköpslagen’:

“It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the “hidden prostitution” – we are even less able to make any statements.” (Eriksson and Gavanas, 2008)

Shortly after the implementation of the law, there was a decrease in street prostitution of around 30-50% according to the first official evaluation (Ekberg, 2004 and Donna, 2011). This decrease could partly be explained by a shift of prostitution to different locations, for example indoor or via the internet. Levy and Jakobsson (2014) argue that some public sex work was re-located to more hidden spaces because there were less clients who were willing to buy sex openly. This might be interconnected by new upcoming technologies like the mobile phones, which enabled prostitutes to contact their clients or vice-versa in a non-public way. They also state that there is no data at all available for indoor or online prostitution. Hubbard, Matthews and Scoular (2008) did a study of Stockholm in which they found out that off-street Sex Work is only surveilled by authorities if there is a suspicion of human trafficking. That is why they call this sector literally ‘hidden’.

To sum it up: It is not possible to show that prostitution either decreased, increased or stayed on the same level as before.

### 6.2 Changes of the conditions in prostitution

The drop of Clients, who were willing to publicly purchase Sex due to their criminalization, led to a number of changes of the circumstances within prostitution. Competition between Prostitutes increased, leading to animus behaviour between them. In addition, some were forced into committing illegal activities like stealing in order to acquire the money they were lacking as prostitution became less lucrative. On the other hand, some prostitutes also narrated an increase of the price for sexual services (Levy and Jakobsson, 2014). This is not confirmed in the interviews done by Östergren in 2004. There, only a decrease in the price is mentioned.

Also Street Prostitution became more dangerous (Danna, 2011). Sex workers have less time to find out whether the customer is reliable or not (Östergren, 2004). Extended negotiations about the prices are not possible anymore and the prostitute’s bargaining position towards the customer got weakened. Furthermore, customers are unwilling to leave their contact information, as they fear to be

identified. They have been cases in which sex workers have been raped and could not claim their money, as they did not know the identity of the Customer (Levy and Jakobsson, 2014). This is in line with the findings of Danna (2011), in which -though no data is available for an increase of violence- a sex worker's association stated that violence had increased since the introduction of the law. It is claimed that the law scares away regular instead of violent purchasers. Non-violent clients seem to prefer to contact a prostitute via the internet, therefore a street prostitute is forced to accept violent clients. Also Östergren (2004) found out that this greater percentage of violent clients entails more perverted sexual activities. Condoms are refused more often, violent forms of sex or sex with feaces and urine is demanded. Since it is difficult to gain hard evidence, the customer can just deny the sexual act. The police did not report any increase in prostitution (Danna, 2011).

On the other hand, it is also reported that thefts against purchasers of sex by prostitutes increased, since their legal power was taken away by the law (Danna, 2011).

But not only the physical effects play a role, also psychological challenges like exclusion and stigmatization emerge. Scouler (2004) argues, that especially the 'whore' stigma has led prostitutes to be extendedly marginalized, taking away a woman's agency. This stigmatization often forms the biggest problem for the prostitute (cf. Bundestag, 2016). Interviews amongst Sex Workers done by Östergren (2004) point out how negatively the Law is perceived by those affected. It discriminates the Workers while they are increasingly confronted with danger. They are often seen as addicted, mentally ill, weak or dirty and in all cases victimized. Due to this stigmatization, they do not feel respected by society. On the other hand, Wahlberg, an employee of the Swedish National Police Board argues that "there's no way of getting around the fact that the stigmatization of prostitutes will not go away simply by legalizing the activity" (Claude, 2010). We therefore cannot conclude that there is a causal relationship between criminalization and stigmatization of prostitution.

### 6.3 Human Trafficking

Dodilett and Östergren (2011) created a table of the cases of human trafficking in Sweden within the last decade.

Year	Reported	Convicted
2003	21	2
2004	29	0
2005	44	7
2006	26	11
2007	15	2
2008	15	0
2009	31	0
2010	31	?

Figure 4: Number of people reported and convicted for trafficking for sexual purposes

These numbers do not indicate that human trafficking is a big problem in Sweden. As statistics about the situation before the implementation of the Law in 1999 are not available to the researcher's knowledge, it cannot be concluded that the Criminalization of Prostitution had a negative or positive impact on human trafficking. On the other hand, it is argued that the Seksköpslagen formed an

obstacle to prosecuting human traffickers and generally individuals or groups which profit of the sexual exploitation of a prostitute (Östergren, 2004). Clients were sometimes able to testify against exploiters in legal cases. This is no longer the case since they are committing a crime by themselves now.

#### 6.4 Health and Counselling Services

As mentioned above, a displacement towards off-street locations took place. This relocation enlarged the gap between the police, health and counselling services and the prostitutes. Prostitutes feel “hunted” by the police, media and social workers and hesitate to contact the police (Östergren, 2004). Also the health service centres’ goal changed: it is not to simply set a framework for safer sex by distributing condoms or other health services, as harm reduction tends to keep prostitutes within the problem and does not help to get the out of prostitution. None of the social services of Sweden distributes condoms and Danna, 2011). The law led to another paradigm-change within social work. Prostitutes are seen as traumatized and in need of help, as prostitution is seen as violence against women. Social services were able to offer help towards prostitutes and clients who wanted to stop. The public service ‘Prostitutionsenheten’ for example offers therapy services and supports the prostitutes with the administrative work to gain social income. Between 2000 and 2003, 130 people were treated by this service and around 60% stopped working as a prostitute (Danna, 2011). On the other hand, Danna claims that one can observe this only being true for people with the desire to stop prostitution. Prostitutes are sometimes negatively judged by social workers. There are cases of prostitutes taking part in the therapy which aimed to uncover sexual violence in their childhood, while they never experienced such (Danna 2011). The change towards viewing prostitution as a harm to sex worker is interlinked with an authoritarian approach, as the voluntary prostitute does not really exist within this policy.

Crowhurst, Outshoorn and Skilbrei (2012) argue that the backbone of the law was the social intervention aiming to support people exiting prostitution. This has not been the case in Sweden. Social Services lack the capacity to offer sufficient help in order to get prostitutes out of this occupation. The strategy of exercising the law in a proper way – namely with social interventions – was not put into place.

#### 6.5 Governmental budget

When the law was introduced, no special funds were given to social services (Subrahmanian, 2007). In 1999, the budget for fighting human trafficking was 7,000,000 crowns, which was increased to 30,000,000 for a period of three years from 2004 to 2006. Stockholm got an amount of around three million crowns for this project which was spent on infrared cameras and other surveillance gadgets, mobile phones and computers in order to be able to look online for advertisement of prostitution and on the increase of police presence and monitoring of suspected locations for human trafficking and prostitution (Danna, 2011).

#### 6.6 Demand for prostitution

“[The Law] presuppose[es] that a real change in gender relations calls for a radical reconsideration of men’s responsibility in prostitution. The basis of such a reconsideration is that prostitution must be defined as a male issue; that prostitution is about men’s sexuality, not women’s.” (Mansson, 2001, p. 135). In order to enhance gender equality, the law was also aiming to change men’s attitude towards women. Those customers do not form a homogenous group. (Claude, 2010) It is estimated that around 13% of men in Sweden aged 18 or older have at least once purchased sex in their life (Mansson, 2001).

Dodilett and Östergren (2011) summarize that the law failed to deter male customers. For most of the clients, the purchase of sex was not interlinked with the fact of it being a crime. In addition, many men purchase sex abroad so the law does not apply to them. Eriksson and Gavanoas (2008) mention a decrease in potential clients “cruising” through the streets to look for sex workers.

The statistics given below indicate the numbers of convicted and prosecuted clients per year, showing that the law succeeds in persecuting the clients. Recent numbers are not available.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Prosecuted	94	92	86	110	300	156	460	163	189	187	352	1251
Pleaded guilty	5	7	18	22	52	26	47	88	51	48		
Sentenced	6	18	30	20	30	27	56	38	39	25		
Total	11	25	48	44	82	53	103	126	92	76		

Figure 5: Numbers of convicted and prosecuted clients

## Discussion and Conclusion

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This paper has looked at the legal framework on prostitution in Sweden and Germany and its effects. In Germany prostitution was officially legalised in 2002, whereas Sweden chose the course of criminalising the purchase of sex in 1999. Here, purchasers of sex are punished. Before the findings are being discussed, it needs to be said that within the study of Public Policy Analysis, it is often hard to establish specific causalities. Prostitution policy aims to protect vulnerable groups of the society and are dependent on many different factors. (Knill and Tosun, 2012, p.174 ff.) Legalization or Criminalization of prostitution and its purchase are not implemented solely, but interwoven within a package of regulations. When policymakers decide for the regulation framework, issues like the registration of sex workers, health insurance or control by the police occur. Within the prohibition framework migration and social services play amongst other issues a role. Those package regulations but also its framing and implementation highly define the work circumstances of prostitutes, while legalization or prohibition set the broader political idea. The basic difference between prostitution in Sweden and Germany are the underlying paradigms: Is prostitution sex slavery or a profession? Can the relationship be seen as “Johns” and victims or as sex workers and their clients? (Dodillet 2004)

Prostitution in Germany is both publicly but also hidden available. It is characterized by migration and poverty prostitution. Many prostitutes who work in Germany are from Eastern Europe, badly integrated and have a poor knowledge on the German language (Bundestag, 2016). Most of them are not well educated on their rights neither is a majority insured (Bundestag, 2016). One research shows, that there is a high correlation with violence and prostitution in Germany (Schrötle and Müller 2004). Prostitutes in Sweden are often not seen in public, but work hidden (Eriksson and Gavanas, 2008). There are often stigmatized and seen as ‘victims’ of their circumstances (Levy and Jakobsson, 2014). Customers chose more often to go abroad in order to buy sex (Dodillet and Östergren 2011).

Both countries failed to provide adequate statistics on the levels of prostitution. On top of that in both countries human trafficking is a rather small number. Both, the government of Germany as well as the government of Sweden invest into decreasing social problems related to prostitution. Still, some general differences can be mentioned: The policy making process was highly different in Germany and Sweden. The process of the development of a law on prostitution in Sweden was characterized by a rather homogenous group of feminists with the goal of supporting gender equality. Prostitutes were not involved in this process and there was not a lot of opposition against the implementation of the law (Scoular, 2004). In the German policy making process of 2002, but also in 2016, prostitutes were represented and public debates were being held (Bundestag, 2016). Hereby, the focus of the government in Germany lies much more on providing information (Zimmermann, 2011) whereas the Swedish government puts most of its efforts into the control of the prostitution sector (Levy and Jakobsson, 2014). Furthermore, it was shown that legalisation of prostitution often leaves more space for the agency of a woman. It also prevents women from being victimized. The prohibition framework in Sweden has led to a victimization of prostitutes (Levy and Jakobsson, 2014).

Both, legalization and prohibition are claimed to lead to more control. Whether this is in fact the case depends on the factors mentioned above. Criminalization of prostitution gives power to the police and helps to decrease prostitution which is displaced to the public. Contrary, it is claimed to increase underground prostitution and takes away the agency of the prostitute (Eriksson and Gavanas, 2008). Legalisation on the other hand makes it in the case of Germany hard for the police to control the milieu. There are not enough resources to discover possible underlying and not obvious situations of force like pimping or low self-esteem due to sexual abuse in a prostitute’s past (Bundestag, 2016). On the other hand, it is easier for social institutions in Germany to reach the women as prostitution is much more publicly available than in Sweden.

Policies around the subject of prostitution have turned into some kind of war between contrary religious, ethical, feminist, economic or other interest groups. (Renzikowski, 2007) In this whole debate, prostitutes are often not involved like in Sweden.

New questions arose: Reliable statistical data is hard to gain on an activity like prostitution. One needs to focus on qualitative research, to fully understand the issues involved in prostitution in order to involve prostitutes in the policymaking process. What do sex workers themselves want? In how far are they educated and know about their rights and possibilities? On top of that, “Prostitutes” is a term for a highly heterogeneous group of people. A detailed analysis of the reachability of different subgroups is needed. In addition to that, more research needs to be done on the effectiveness of social and health services.

Furthermore, more international exchange on experiences and implementation practices needs to be done. How could an international cooperation in times of movement of labour look like?

Finally, for both frameworks, social services should be mentioned. As most of individuals working in prostitution are in reality marginalized and vulnerable, this population needs special attention.

Social and Health Services need monetary investments in order to meet the needs of prostitutes.

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## ANNEX

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Notes from a phone call with Charlie, coordinator of members of the “Berufsverband erotische und sexuelle Dienstleistungen e.V.” on 12.01.17

- Number of members is not public, but it is a three-digit number
- The newly introduced compulsory registration on flats has very negative results on small private brothels in flats
- Charlie studies sociology and prostitutes herself because you can earn a lot of money
- Members of the “Berufsverband erotische und sexuelle Dienstleistungen e.V.” are mostly German-speaking. East-Europeans have a hard time to form unions due to the language barriers.