

The German Prostitution Act: Consequences for Sex Workers

Presentation by Stephanie Klee from HighLights-Agentur, Berlin, Germany

I greet all my colleagues, friends and everyone else present. And I wish for you—as well as for myself—that this conference and its results be heard, especially by the politicians and authorities in Europe, but also by people in our business—colleagues, brothel-keepers, our clients and all others concerned.

When I took part as a prostitute in the World Congress in Brussels in 1986, I felt great to be in the “hallowed” halls of the European Parliament and I was very impressed by the mere fact that I had been invited.

Still, at that time I never would have thought that we activist whores and callboys would be heard by politicians, or have a say and an influence on laws and the behaviour of authorities. But history has taught me something else!

Now in Germany we have had the so-called Prostitution Act since January 1, 2002. Its real name is the *Act on the Regulation of Prostitutes' Legal Affairs*. [In German, “*rechtsverhältnisse*” is about legal relationships between contractors, as well as legal situations in general.] I repeat: *Act on the Regulation of Prostitutes' Legal Affairs*. Not an “Act on Prostitution,” nor an “Act About Everyone Concerned in Prostitution.” It is expressly called the *Act on the Regulation of Prostitutes' Legal Affairs*.

In Germany we had fought for this for more than 20 years, and our demand has always been to *abolish all discriminating laws and all special regulations*. Our dream was that prostitution businesses could be treated just like other types of businesses. Therefore we were, on one hand, disappointed by

the Prostitution Act. It didn't go far enough for us—it was too little.

The Act contains exactly three articles. Article 1 has three paragraphs.

Paragraph 1: The “immorality” of prostitution is abolished. That means that whores and callboys now have the legal *right* to the payment clients agreed to. Clients can no longer refuse to pay the agreed-upon fee (such as after a quarrel, for instance, or because they claim to not have been satisfied).

In purely legal terms a prostitute can now provide the service first and demand the money afterwards—just as in other businesses. This also applies to payment within employment relationships. It sets the foundation so that whores and callboys can now

decide if they want to work as independent contractors (just like independent journalists or lawyers), or as employees with employment contracts.

To work as an independent contractor means that you are responsible for everything yourself:

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Yet it was a festive and cheerful crowd.

PHOTO: Maj Christensen



CENTRE PHOTO: Stephanie Klee (credit: A. Sorfleet)

Human Rights, Labour and Migration, Brussels (2005)

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payment of taxes, insurances, advertisements, prospects for clients, and, of course, also for your work performance.

If you have an employment contract with a brothel, you can receive a regular wage (paid once a month, if you wish), and the employer pays your wage taxes to the tax authority, as well as fees for such employee benefits as sick-leave, unemployment, health-care insurance, and pension plan.

In practice, these provisions have had little effect on our work. To date there have been few employment contracts. The reasons for this are that:

- Our colleagues do not want it. We are used to getting paid every day, or after every guest.
- Brothel-keepers do not want it, since the law limits their rights as an employer in relation to their employees. If an employee is lazy or does not feel like working, the employer cannot command her to work. (See “Paragraph 3,” below.)
- Neither whores nor brothel-keepers have any experience with work contracts and social insurance. They are suspicious as to whether it all works like they are told, or if there is some catch hidden somewhere.

Paragraph 2 (of Article 1) says that a whore or a callboy may not waive his or her demand for payment from a client. In my view this is not a good solution because if, for instance, a woman works in a bar she may be collecting large sums of money from clients. If it should happen that one client does not pay, she might refrain from demanding payment for such reasons as:

- she is not willing to appear publicly in court, or

Protesters began to launch from the steps into the street.

PHOTO: Maj Christensen



- she is not willing to pay the costs of taking the matter to court.

Paragraph 3 (of Article 1) states that brothel-keepers have a *limited right of commandment* (limited rights in terms of authority, as I mentioned earlier), yet they still must fulfil the duties of employers whose employment relationships are subject to mandatory social insurance (such as paying wages, deducting taxes and paying for social insurance). This is a new rule which does not apply to any other type of business!

Article 2 is about modifications to the Criminal Code [*German Penal Code – “Strafgesetzbuch” (StGB)*]. The earlier provisions about “procurement of prostitution” (§ 180a *StGB*) and “pimping” (§ 181a *StGB*) were not completely abolished. However, they were softened a little which is an improvement. These changes were needed in order to allow for employment contracts, regulated hours and workplaces, and good working conditions (such as atmosphere, prices and ensuring condom availability). Before the new law, elements of a business such as a nice atmosphere were used shut down workplaces with good working conditions. So this is a huge improvement.

Article 3 says that the law enters into force on January 1, 2002.

This is the law — it is no more and no less. It is quite small, and it is very, very far from our initial demands. But, we saw this law as a beginning. We saw it as a first step from which further steps would follow. It was important to us that the positive effects of the Prostitution Act (the law signalled a paradigm shift in legal judgement) might be transferred to other laws such as the laws on permits for restaurants and other businesses, the planning and zoning laws, the law on public order, the regulations on restricted areas, the policing laws and the immigration law.

Through years of discussions with politicians we have understood that politics is always a matter of compromise and power, and that it is particularly difficult for a politician to imagine herself in the place of a prostitute, a brothel-keeper, or in the prostitution business. The Green Party (which at that time had a position in Government) were only able to come through with this tiny law against the Social Democratic Party Government and the Christian/Conservative parties in opposition.

What are the practical changes since January 1, 2002? Until now I have only described the law to you. What may look like one thing on paper can often look quite different in reality. I will start with the negatives, in order to end on a positive note.

Negative Effects

Politicians and authorities have made a huge mistake in not making the Prostitution Act widely known. Therefore hardly anyone in the business knows about it. After three and a half years the authorities are still not committed to making information about the law reach the people in the business. Too many whores, callboys and brothel-keepers do not know their rights according to the law, nor do they know how to use the law.

In addition, authorities have not consistently implemented the law into other legal levels. When they do, they use it only in a negative way; not in a positive way.

For example: Before, the planning and zoning authorities usually did not care much about our business, but nowadays they examine our businesses very closely. Things such as whether a brothel is situated in a residential area, or a mixed area, have suddenly become very important matters. Brothels which may have been there for five, ten or 15 years without any trouble with the neighbours are now being closed down. Please note that prostitution is not mentioned once in the planning and zoning laws, and the Prostitution Act in no way effects the planning and zoning laws.

Germany is a federation, which means that the laws are interpreted differently in different states (there are 16 states in total). Therefore, what may be possible in Berlin (our capital) may well be prohibited in Munich (Bavaria).

For example: In Berlin it is completely possible to receive a licence to operate a bar with prostitution. Alcohol can be served and consumed, exotic dancing and table-dancing is allowed, and you can offer prostitution— either in a room in the back of the premises, or in the house next door. For this, there is only one permit required—held by one person—and the authorities cannot arbitrarily repeal the permit. In Bavaria, however, none of this is possible. Of course there are plenty of such bars in Bavaria, but they are just tolerated by the authorities. The consequences are that



PHOTO: Maj Christensen

“Sex Workers Rights = Human Rights” led the procession.

these businesses have no legal rights, and can be closed down at any time. Therefore, as a brothel-keeper, you have no safe existence, no legal protection, and you live and work in perpetual insecurity. And that also applies to our colleagues who work there.

We have the impression that the authorities see us as guinea pigs. [In German: *“als ob wir der Spielball der Behörden sind.”* Translation: “as if we are the play-ball of the authorities.”] We must endure new regulations copied from other types of business, even though they have no clue about our industry or our business structures. They push us from one problem to another without consulting us.

For example: The tax authority in Bavaria requires that every brothel-like business have work contracts with the sex workers. One consequence is that the brothels must pay VAT (Value-Added Tax) and income tax, as well as wage taxes for money that employees have earned, which they receive directly from customers and then take home. Whereas the brothel-keeper only gets the rent for the room, he is still responsible for the taxes related to the employees’ earnings.

In Stuttgart, the brothel-keepers have been made accomplices to the tax authority. Brothels are required to collect a standard daily tax from sex workers (from € 12 to € 25 each), regardless of the sex worker’s income that day.

Some cities such as Cologne and Gelsenkirchen have imposed an additional “amusement tax” based on the size of the room which must be paid by the brothel-keeper or sex worker (or both). These different taxes are applied carelessly without regard for the structure of the business. And

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PHOTO: A. Sorfleet

See the sight, as sex workers unite!

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after that, taxes are collected ruthlessly which, in many cases, leads to businesses going bankrupt or simply giving up.

The business of prostitution has not moved forward either. Those in the business do not trust the authorities and the politicians. After decades of discrimination no trust remains, instead there is fear that the small positive changes from the Prostitution Act could be repealed. If parts of the Prostitution Act were repealed and the old provisions about procurement and pimping were reintroduced, the only thing left would be to reinstate the “immorality” of prostitution law. Recent conservative political trends in Germany have led to fears that — even in our country — laws to punish the clients of “involuntary” prostitutes are being considered in response to human trafficking.

The CDU/CSU (Christian Democratic Union/Bavarian Christian-Social Party) Faction already have finished a law proposal that would make these transactions punishable with fines or up to five years’ imprisonment. With regard to punishing clients, I ask myself: How can a client recognise an “involuntary” prostitute? Does she have a sign on her forehead? And how will the police find these clients?

I fear a witch hunt. This along with endless regulation of prostitution businesses, would force us to withdraw once more, not act in public, and serious [In German, “*seriös*” means “respectable, reputable, with good intention”] people in the business will have to make way for the not-so-serious.

Positive Effects

As to the *positive* effects of the Prostitution Act, I see only three instances. However, they are three very important ones.

1. The mere fact that whores and callboys now have a legal right to collect their fees from customers (even if some workers still demand their money upfront):
 - strengthens self-confidence in some sex workers
 - promotes a positive understanding of the profession and professional conduct
 - slowly improves professionalism, along with possibilities for education; and
 - fosters respect for sex workers from clients, brothel-keepers, police and other authorities.

Increasingly more men and women are bringing their cases to court. This means sex workers are no longer silently swallowing the decisions of authorities, and are instead seeking their rights.

2. As new people enter prostitution with this law in place, there is a new generation of whores and brothel-keepers for whom paying taxes is normal, who want to operate legally, and who distance themselves from criminal activity such as using violence and force.
3. I see great advantages in the Prostitution Act for two groups among our migrant colleagues:
 - migrants who have residency and work permits can work in prostitution with an employment contract without problems with authorities
 - migrants allowed to work as independent contractors can now work as independent contractors for prostitution businesses as well. This works well, for instance, for all new EU citizens.

Expulsion from Germany solely because of involvement in prostitution is not possible anymore!

I am sorry to say that the Prostitution Act means no improvement for the large majority of other migrant colleagues working illegally, but this problem pertains to immigration laws. And in this respect, the EU is closing its borders rather than opening them. Temporary work contracts

like those issued for seasonal farm workers, or a Green Card solution like that used for workers in the information technology area, could be positive steps in future.

I am very unsatisfied with the law and its effects and the few positive changes. I often lose my patience. However I do believe that we will one day have equality — equality in terms of the conditions for prostitution businesses as compared to other businesses.

Only three and a half years have passed since January 1, 2002 and that is too short a time to successfully combat decades — or centuries — of discrimination. **But if we do nothing, if we say nothing and do not become involved, things will get even worse for us.**

My plea to all sex workers, brothel-keepers and customers is: commit yourselves to professionalising prostitution, and to tying it closer to the formal economy. And I plead for greater commitment on the part of non-governmental organisations, authorities and politicians to support our businesses.

Thank you for your kind attention. ☐

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Prostitutes, WE Salute YOU!

*H*otel conference rooms used for the workshops and plenaries were renamed to commemorate some of history's more (in)famous sex workers who stood up for our rights and influenced society.

Paulo Henrique Longo

(1964-2004)

Born in Rio de Janeiro, Paulo Longo was a rentboy before he became a clinical psychologist. He also wrote a regular newspaper column about gay rights. Longo was coordinator of Programa Pegação, a project for male sex workers where



he began as an outreach worker in 1989. In 1991 he co-founded the Network of Sex Work Projects, a global coalition of sex workers and advocates.

Throughout his career he denounced unethical research. He was known for his eloquent speeches about sex workers' rights which he gave at countless AIDS conferences, UN public health meetings and international forums. In 2003, Rio de Janeiro City Council honoured him for his work defending human rights for gay, bisexual and transgendered people — and sex workers.

Paulo Longo died of a heart attack at the age of 40.

PHOTO: <http://www.webzip.com.br/longo>

Grisélidis Réal

(1929-2005)

Born in Lausanne, Switzerland, Réal was a writer, a mother, a courtesan and a social worker. In 1939 she attended the School of Decorative Arts in Zurich. She also studied classical piano.



Her prostitution career began in Germany in 1960. In 1973 she became a militant activist when prostitutes occupied Chapelle Saint-Bernard in Montparnasse, France. She became known as "*Catin Revolutionnaire*" ("Revolutionary Whore") and co-founded *Aspasie*, the first prostitutes' association in Switzerland. She started the International Centre of Documentation about Prostitution at her home in Geneva. Réal considered prostitution "*an art, and a humanist science.*" She authored several books including: *Le Noir Est une Couleur* (1974), *Carnet de Bal d'une Courtisane* (1984), and *La Passe Imaginaire* (1992). In her later years Réal wrote poems about her battle with cancer that, curiously, moved audiences to laughter. She died at the age of 74.