

Central findings of the evaluation of the Act to Regulate the Prostitution Business and to Protect Persons working in Prostitution (Prostitute Protection Act – ProstSchG)

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Prostitution is an activity protected under the Germany's Basic Law. Contrary to some opinions, it does not breach any constitutional provisions or international law provisions per se. In particular, prostitution does not breach the guarantee of human dignity afforded by the Basic Law provided that it is carried out voluntarily. Prostitution can only be considered involuntary under the law, which is the only relevant basis in this context, if a decision not to engage in prostitution is linked to personal disadvantages that no-one should have to accept, whatever specific form they may take.

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In view of the risks that can be associated with working as a prostitute, the state also has a duty to protect all those who engage in prostitution voluntarily as defined by the law. The ProstSchG was passed in order to fulfil this duty of care. The legislator's primary objectives were to strengthen and protect the sexual self-determination of prostitutes, protect their health, improve the working conditions in prostitution establishments and improve the regulatory-law tools for monitoring prostitution carried out as a business. Behind this terminology, some of which is very abstract, lie specific objectives that the legislator wishes to achieve with the ProstSchG. To meet those objectives, the legislator introduced a registration system for prostitutes, a condom requirement and advertising bans, a permit system for prostitution business operators as well as rules on monitoring.

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The evaluation of the ProstSchG was carried out by way of legal doctrine research as well as using extensive empirical surveys. The empirical studies were based on a sophisticated mixed methods design. Over 2,300 prostitutes, 800 staff working at authorities, 3,400 clients of prostitutes and 280 prostitution business operators were reached in the quantitative written surveys. In light of extensive recruitment measures and a myriad of different ways of entering prostitution, in the course of the evaluation we succeeded in interviewing an extraordinarily wide range of people engaged in prostitution in Germany. Because there are no reliable insights regarding the population of prostitutes working in Germany, it is not possible to assess conclusively the representative nature of the evaluation. Overall, however, the evaluation provides in-depth insights into target groups that are difficult to reach using social science methods. The results of the quantitative survey are certainly reliable for the groups surveyed.


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The evaluation found that there were significant indicators to suggest that the objectives pursued by the ProstSchG had been achieved to a large extent. This is the case especially for certain objectives linked to the registration system. There are strong indications that the system is successful in informing prostitutes of their rights, educating them about health risks associated with prostitution work and letting them know about options for getting support during difficult life situations. The same is true of objectives pursued by the permit and monitoring system. Based on the data obtained, it can be assumed that the working conditions for prostitutes in authorised prostitution establishments have improved, as have the possibilities for state monitoring of such establishments. At least in part, the condom requirement has also shown the desired effect. Contrary to the commentary circulating long before the completion of this assessment, the ProstSchG therefore cannot be considered a failure. In fact, the Act has had considerable success.

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From the perspective of the evaluators, however, the efficacy of the ProstSchG can be increased significantly. There are still some marked weaknesses in the Act and in the implementation of the Act, most of which can, however, be remedied. In particular, the following weaknesses have been identified:

- a. There is room for improvement in the acceptance of the registration system by prostitutes. So far, only some prostitutes are taking part in the registration system. The main reasons for this are an unwillingness to disclose prostitution work to an authority as well as concerns about the security of the registration data stored by the authorities. This is because a significant percentage of prostitutes have experienced discrimination in various life situations solely due to their profession. As a consequence, people who work in prostitution don't admit this even to their close relatives. The evaluators take the view that the discrimination and stigmatisation of prostitutes already described in numerous studies must urgently be counteracted using state measures. And for some people working in prostitution, the bureaucratic obstacles associated with the registration procedure are also too high. Possibilities for lower-threshold access to the registration system need to be considered for these cases. In addition, some people working as prostitutes are excluded from the registration system for reasons relating to, for instance, immigration law, and so they are excluded from the offers of help and assistance provided. This runs counter to the objective of the Act.
- b. Furthermore, a number of other parts of the Act do not best serve its overarching objective of 'protecting prostitutes'. The Act was also shaped by other interests, for example the interest of the tax authorities to simplify the taxation of prostitutes. These side interests distract from the efforts to improve the protection of prostitutes, which is the actual focus of the Act.

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- c. For now, prostitution is a profession that can be carried out without any prior training. In view of this fact, the registration system must also function as a means to inform persons registering about all of the actual relevant matters relating to prostitution work. The aim of the registration system must be to enable all those willing to register to take informed decisions about commencing prostitution work, which is subject to certain risks. In legal and practical terms, the registration system still falls short of this goal in certain areas.
- d. The decision by the legislator to also allow adolescents to engage in prostitution in principle is in line with the regulations made in other areas of the law for 18 to 20-year-olds. In light of the particular stage of life that adolescents are in, however, prostitutes in that age group should be given even more emphasis going forward, both under the law and in real-life settings (i.e. by the competent ProstSchG authorities). At the same time, the interference in the rights of prostitutes necessitated by the registration system should be kept to a minimum in the case of those people who have been working in prostitution for a long time and are therefore familiar with all of the risks involved. On the whole, the registration system should in the future be geared even more closely to the respective individual needs of the persons required to register.
- e. There is considerable potential for improvement in the implementation of the Act as regards basic and further training for case officers in ProstSchG authorities. A significant percentage of case officers have not yet received special training or taken part in further training on the ProstSchG. Furthermore, implementation of the Act could be professionalised further by means of increased centralisation, especially within the federal states (*Länder*), of the registration system in particular. In some *Länder*, small municipalities are currently responsible for the tasks under the ProstSchG. This means that some case officers responsible for the ProstSchG only get to handle a small number of cases. As a result, they lack experience. This is likely one of the reasons why – contrary to the will of the legislator – it is rare for the registration system to succeed in identifying prostitutes who are affected by human trafficking and/or exploitation and therefore need protection by the state.
- f. From the perspective of the case officers responsible, the regulations put in place with the ProstSchG regarding the permit system for prostitution establishments and their monitoring have proved practicable and sufficient in the main. However, there are still problems in relation to implementation of the Act. For example, it is difficult to detect prostitution establishments operating without a permit. Also, applicants feel that the permit system is very bureaucratic and takes a very long time in some cases. And because the initiation of contact for prostitution is increasingly shifting online, we also need to consider regulations for that channel, in particular for what are referred to as ‘prostitution platforms’. An additional consideration in this regard is that the increasing shift to online means that specialised counselling centres for prostitutes are also likely to find it more difficult to access their clients.

- g. Parts of the regulations in the ProstSchG still need to be better aligned with regulations from other areas of the law. This was demonstrated using the examples of construction law and criminal law in the course of the evaluation.

Last but not least, two of the further findings that came to light as part of the evaluation study are worthy of mention. Firstly: Those people surveyed who are ‘very close’ to the realm of prostitution because they are directly involved in prostitution have a different perspective on the matter than those who are significantly further removed from it. On average, the views of the prostitutes and prostitute business operators surveyed are much more positive than the staff working at authorities, who are more removed from the business, as far as central points in the debate around prostitution are concerned (for example the degree of self-determination of prostitutes and conduct of clients in respect of prostitutes). Secondly, the study showed that the way in which prostitution is depicted in the media is heavily influenced by narratives centred around criminality and that there is a comparative lack of nuance when regarding prostitution as a means of earning a living. It is not possible to conclude at this stage whether there is a link between these two findings. Further research should be carried out in this regard.