

Chapter 2

A History of Prostitution

Today, when reading §§180b and 181 of the penal code (*Strafgesetzbuch*, StGB)⁴ of the Federal Republic of Germany (FRG), one finds only the word "repealed" (Bohlander, 2008). Voluntary prostitution is legal in Germany, which means that sex workers have the same rights and duties as all other employees. They may enter the German social insurance system as well as the pension and health insurance systems. Moreover, they are entitled to employment contracts with the owners of brothels and may receive unemployment benefits upon dismissal from an employer.

However, many reforms and discussions had to be overcome before reaching this situation for legalized prostitution. The phrase that prostitution is the oldest profession in the world is common and often used. Proof of brothels in Germany dates back to the Middle Ages (Lacroix and Helbing, 1995, p. 32); for example in Hamburg in 1292 (Hügel, 1865, p. 149), Berlin in 1410 (Hügel, 1865, p. 150), and Munich in 1439 (Lacroix and Helbing, 1995, p. 33). In general, there was a much larger supply within cities, where brothels had the aim of protecting the morals and decency of the cities' inhabitants (Schulte, 1994, p. 12) by giving men a place to fulfill their needs (Röhrmann, 1846, p. 19). The industrialization of the profession transformed prostitution into a guild with normal rights, but also led to the public stigmatization of women (Schulte, 1994, p. 13).

In the Middle Ages, society's toleration of commercial sex consumption was determined by an individual's standing within society. The clergy, for example, seemed to have had a non-negligible demand – to the point where bishops in the 15th century saw a necessity to forbid their priests from ascending the pulpit just after coming out of a prostitute's bed (Lacroix and Helbing, 1995, p. 3). Likewise,

⁴ The StGB is based on the penal code of Prussia (*Preußisches Strafgesetzbuch*, PStGB) which governed northern Germany till the end of World War II.

it was common for the noble to have at least one mistress, in addition to the right to cheat on their wife and/or mistress by consuming commercial sex (Lacroix and Helbing, 1995, p. 19). Leopold II (1747-1792), for example, told his "forgiving companion" that the freedom of morals was a "privilege of the throne"⁵ (Lacroix and Helbing, 1995, p. 19, own translation).

The history of the Middle Ages is interesting in its own right. However, the predominant focus of this section begins on January 1st, 1846, when German legislators' struggle with prostitution reached a new level. A good overview of the development of the legal paragraphs concerning prostitution and pimping is given in Hartmann (2006). The work discusses legal changes since 1870 and will be referred to throughout the following chapter. In addition, there are various sources describing the opposing arguments for and against prostitution in Germany during the respective time periods.

In the following, Section 2.1 considers the years through 1899 and, in particular, focuses on the works of Röhrmann (1846), Jeannel (1869), and Lacroix and Helbing (1995) to help to describe external influences on prostitution. Section 2.2 continues with the first years of the new century. The pre-World War I period was especially full of new positions and developments on the issue; the question of prostitution was even addressed during the unstable years of the Weimar Republic. Sauerteig (1999), Evans (1976), and Roos (2002) give great insight into society during these years. The development of prostitution during the Nazi regime is discussed in Section 2.3. Even if there were no controversial discussions during this time period, it is very important for understanding the German self-image and should thus not be neglected. Although sources about the Nazi regime and its handling of prostitution are rare, Timm (2002), Roos (2002), and especially Paul (1994) provide good overviews. Section 2.4 focuses on prostitution laws in the GDR. Although literature dealing with prostitution in the GDR is even rarer than literature about the Nazi regime, Falck (1998) and Korzilius (2005) give descriptive overviews about this topic. The legal situation was very different in the eastern and western parts of Germany after the country's division. The rebuilding of West Germany after World War II until reunification in 1990 follows in Section 2.5, which is mainly based on Tröger (1986) and Heinz-Trossen (1993). The last major revolution in the German society happened not too long ago with the fall of the Berlin Wall in 1989. The reunification of the two separate countries had implications for prostitution, which is discussed in Section 2.6. The slow but steady harmonization of prostitution laws is thoroughly discussed in Leopold et al. (1994) and Leo (1995). The equalization of prostitution was intended around the turn of the millennium. Section 2.7 concludes by assessing the current situation in

⁵ "Er hatte seiner nachsichtigen Gefährtin eingeredet, dass Freiheit der Sitten ein Vorrecht des Thrones sei; [...]" (Lacroix and Helbing, 1995, p. 19)

Germany, which is profoundly discussed in Kavemann and Rabe (2009a) and the Bundesministerium für Familie (2007). Finally, Section 2.8 briefly summarizes the entire chapter.

2.1 Prostitution During the German Industrialization

At the border of the 20th century, societal norms required women to enter marriage as a virgin, which made premarital sex with a woman other than a prostitute difficult. In general, marriage was still an institution mainly driven by the large influence of the church, which also still had an influence on the state and society at large. The middle class was mostly prudish⁶ and sex was not part of regular life (Schulte, 1994, pp. 123), or even part of married life. Instead, prostitution was seen as an indispensable factor to protect marriage (Havelock, 1911, pp. 34) and husbands⁷ preferred to keep up the appearance of their wife as a pure woman and realized their sexual desires with their servants⁸ or prostitutes (Schulte, 1994, pp. 137).⁹

As the number of years people spent in school increased, so did the age at which people decided to get married. However, since many young men did not want to wait until their wedding night to engage in sexual intercourse for the first time, the demand for prostitution services increased as well (Mosse and Tugendreich, 1913, pp. 524). This was a controversial development since society saw prostitution as a necessary evil that should be banned from sight. Röhrmann (1846, p. 18), a contemporary witness, argues that although the legislation was unable to prevent prostitution within a society¹⁰ – only morality needed to fill this seemingly void –

⁶ The prudery of the society led to an intolerable situation: Each woman who was alone on the streets after dawn risked being registered as a prostitute, which would then immediately destroy the woman's reputation (Konieczka, 1986, p. 118).

⁷ Even Freud (1924, pp. 3) mentions that husbands demand prostitutes as they do not want to bother their wives with their sexual desires.

⁸ Havelock (1911, p. 61) describes that from his point of view, the initiative was mostly coming from the servants' side. From today's point of view, this shall be questioned.

⁹ Needless to say that they expected strict monogamy from their wives (Schulte, 1994, pp. 32, 169) and that pregnancy amongst the servants was a valid ground for dismissal (Konieczka, 1986, p. 116).

¹⁰ "[...] so finden wir, daß Gesetze dagegen so wenig ausgerichtet haben und überhaupt ausrichten können, als z. B. ein Gesetz gegen das Spiel oder die Trunkenheit ausgerichten kann. Hier kann nur eine höhere Macht entscheiden, unter welcher sich der Riese Gesetz ebenfalls beugen muß, - das ist die öffentliche Moral. Daher sind diejenigen Gesetzgebungen in praxi immer am meisten glücklich gewesen, welche die Prostitution - dieselbe als ein nothwendiges Uebel ansehend - duldeten und sich nur auf gewisse Beschränkungen und Vorsichtsmaßregeln reducierten, um der

it should in no case support prostitution.¹¹ This was a common opinion of the time. Even the police favored a regulated market for commercial sex as it not only gave them the chance to supervise the practice, but also kept prostitution relatively hidden from the public (Evans, 1976, pp. 117). While many argued for the toleration of prostitution so it could be regulated, others argued that the practice protected decent women from male lust,¹² as lust was only socially acceptable for men. Sensuality was seen as a driving force of turning females into prostitutes, together with poverty, poor education, and the desire for luxury.¹³

Late in 1845, Friedrich Wilhelm IV, the king of Prussia, ordered a ban on all brothels throughout large parts of Prussia.¹⁴ Prior to this ban, prostitutes had to either work in brothels that were tolerated by the law or under the supervision of the police (Hartmann, 2006, pp. 15). Unregistered prostitutes risked imprisonment. The highest sanctions were levied if the prostitute was infected with venereal diseases. This sheds light on the motives of the legislators: the prevention of diseases (Hartmann, 2006, pp. 15).

One must bear in mind that the circumstances prior to the beginning of the 20th century were completely different from those we face today. Penicillin was not yet invented¹⁵ and thus, there was a constant fear of being infected by a venereal disease (see, e.g., Röhrmann, 1846, p. 21).¹⁶ Sauerteig (1999, p. 34) describes that an infected person was treated by being rubbed with mercury, which of course led to the poisoning of the patient.¹⁷ The first condom made from rubber was

sittlichen Verwilderung möglichst einen Damm entgegenzusetzen oder die mit der Prostitution verbundenen syphilitischen Krankheiten möglichst zu isolieren und der weiteren Ansteckung vorzubeugen." (Röhrmann, 1846, p. 18)

¹¹ "Nach der Forderung der Philosophie, wie nach den Principien der Moral darf der Staat, als eine auf sittlichen Basen ruhenden Gemeinschaft, kein Laster autorisieren oder demselben Vorschub gewähren." (Röhrmann, 1846, p. 53)

¹² "Als ein bekannter Mann das Bordell verließ, hat des Cato göttlichen Urteil gesagt: 'Sei der Tugend halber gepriesen! Denn wenn scheußlich Lust dir hat schwellen lassen die Adern ist es recht, wenn der Jüngling herab hier steigt und nicht fremde Frauen verführt'." (Q. Horatius Flacus, 1972, pp. 15)

¹³ "Die Hebel der Prostitution sind hiernach Armuth, und aus ihr entspringend vernachlässigte sittliche Bildung, böses Beispiel, überwiegende Sinnlichkeit und wenn wir hierzu noch die Verführung und den Hang zum Luxus und Wohlergehen, welche beide wieder auf eine schlechte Jugenderziehung zurückführen, hinzunehmen, so dürften die moralischen Ursachen erschöpft sein, welche das Weib im Allgemeinen zur feilen Dirne machen." (Röhrmann, 1846, p. 31)

¹⁴ The law came into effect on January 1st, 1846.

¹⁵ Penicillin was invented in 1928 by Alexander Flemming.

¹⁶ As venereal disease, one defines syphilis, gonorrhea, ulcus molle, and lymphogranuloma (Sauerteig, 1999, p. 28).

¹⁷ Sauerteig (1999, p. 34) explains that patients infected with syphilis were treated with mercury and guaiac. After 1910, salvarsan was also used.

not produced until 1855;¹⁸ however,¹⁹ it was not socially accepted and, moreover, not widely distributed. Other reliable protection from both venereal diseases and unplanned pregnancy was not offered, and thus the only defense against disease was for sellers and buyers of commercial sex to look for signs of infection on the prostitute.

Among contemporary doctors, Jeannel (1869) is only one example who published an entire book on the topic to address the fear of venereal diseases. In his publication, Jeannel (1869), a medical doctor from Paris, discussed the dangers of venereal diseases, their connection to prostitution, and possible instruments for containment. As a doctor, Jeannel (1869) mainly feared the spread of venereal diseases and did not concern himself with questions of morality. To fight against high rates of infection, he was willing to accept controlled prostitution as this would keep infection rates at a lower level, assuming a well organized control system (Jeannel, 1869, p. 136).²⁰ A sufficient control system could only be implemented with regular examinations of the prostitutes. Jeannel (1869, pp. 214, 216) also stated that the only possible way to make a reliable diagnosis was to look for visible signs of an infection, for which he suggested chair and instrument as shown in Figure 2.1a and 2.1b.

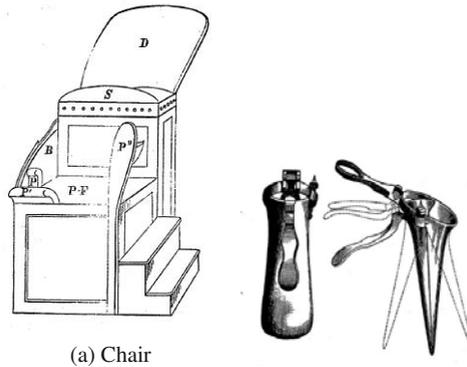


Fig. 2.1: Chair and Instrument for Medical Examination

¹⁸ Condoms made from rubber were purchasable in Germany since the late 19th century. However, they were very expensive for decades (Sauerteig, 1999, p. 281).

¹⁹ See, e.g., Jeannel (1869, pp. 223, 283) who questioned the impact condoms had and who states that they were unnatural; a common attitude at the time.

²⁰ "Die heimliche Prostitution ist das fessellose Laster, welches ohne Grenzen die moralische und physische Verschlechterung verbreitet, die überwachte Prostitution das in die Schranken des Möglichen gezwängte Laster zum Schutze der öffentlichen Gesundheit." (Jeannel, 1869, p. 136)

Jeannel (1869) was quite detailed in his examination of the medical process that should be followed. From the payment of doctors to the duties of the doctors' assistants (Jeannel, 1869, pp. 213), he reviewed and discussed all matters and concluded with a suggestion of how new laws should be formulated for the upcoming years of social change (Jeannel, 1869, pp. 277). Nevertheless, Jeannel (1869) viewed prostitution as something unnatural, immoral and only justifiable by the bible: "Neither was the man created for the woman; but the woman for the man" The Bible (1769, 1 Cor. 11:19). Finally, he also argued that prostitution should be suppressed because it was harming the public health (Jeannel, 1869, p. 81).²¹

The majority of people thought that preventing the society from high infection rates was only possible by fighting against prostitution (Sauerteig, 1999, pp. 14).²² Nevertheless, the presence of prostitutes within high society was as vast as Röhrmann (1846, pp. 47) reported.²³ When brothels were closed to appease the desires of society, the market changed considerably and prostitution became even more visible to the public.

"One of the most distinctive features of the urban culture of the nineteenth century - [...] - was the existence of prostitution on a scale so widespread and so obvious as to cause considerable alarm to contemporaries." (Evans, 1976, p. 106)

Röhrmann (1846, p. 48) also supported the claim that the streets were full of women selling sex following the ban on brothels.²⁴ While Berlin's population grew at an extraordinary rate – in fact, it had the fastest growing population in all of Europe (Hellpach, 1939, pp. 13) – the supply of commercial sex grew at an even faster pace, doubling between 1859 and 1871 (von Oettingen, 1874, p. 180). Röhrmann (1846, pp. 39) estimates a similar amount of prostitution as he asserts that Berlin's population in the late 1840's was approximately 360,000 with over 15,000 prostitutes. With slightly more men than women in the population, this estimation suggests that almost 9% of females worked as prostitutes. Other sources report even higher rates of prostitution after the closing of the brothels (Hügel, 1865, p. 179). Within two years, the number of registered prostitutes doubled (from 600 in 1845 to 1,250 in 1847) and the number of syphilis-infected

²¹ "Die Prostitution gefährdet die öffentliche Gesundheit. – Endlich muss die Prostitution unterdrückt und überwacht werden, weil sie die öffentliche Gesundheit gefährdet durch die Verbreitung ansteckender Krankheiten." (Jeannel, 1869, p. 81)

²² As the fight against prostitution did not lead to a decrease of infections, this view changed after the turn of the century (Sauerteig, 1999, p. 15).

²³ "Es gibt keinen öffentlichen Ort, keine öffentliche Gesellschaft ohne Vergnügen, wo nicht prostituierte Frauenzimmer in Menge angetroffen würden, ja die Hauptrolle spielen." (Röhrmann, 1846, p. 48)

²⁴ "Das ist Alles um so ärger geworden, seitdem die Bordelle aufgehört haben, aus dem sehr natürlichen Grund, weil der Verdienst der Bordelle auf die Straßendimen übergegangen ist." (Röhrmann, 1846, p. 48)

people amongst the entire population increased by 50% (from 1,225 in 1845 to 1,814 in 1847) (Hügel, 1865, pp. 170). A similar trend was visible amongst soldiers (from 551 infected in 1845 to 678 in 1847). The reason for higher rates of infection can be traced to the higher share of secret prostitution occurring on the streets.²⁵ Prior to the ban, women working in brothels were monitored by the police who could order them to have medical examinations (Hartmann, 2006, p. 15). Jeannel (1869, p. 204) reports that prostitutes had to be checked by a doctor at least once a week. This instrument of disease containment dissolved as the prostitutes' whereabouts became unknown, which led the supreme commander of the military to request that the ban on brothels be overturned (Hügel, 1865, p. 170)

In 1851, the brothel ban was lifted and the PStGB, which had the goal of fighting prostitution and all its characteristics, was established. All prostitutes who were caught not following the regulations set up by the police were sent to prison for eight weeks with the option of being transferred to a workhouse afterwards (see §146 PStGB).²⁶ Although differences with the preceding law seem to be lacking, the attitude towards prostitution had become even more repellent. Prostitution was now illegal except for those women who followed the rules of the police.²⁷ The non-existence of local bans did not mean that selling commercial sex was legal (Hartmann, 2006, pp. 40) and all so-called gray areas were abolished. In addition, all actions supporting prostitution were forbidden and procuring could lead to the loss of civil rights (Gleiß, 1999, pp. 48). Despite these circumstances, 20 new brothels opened in Berlin right after the lifting of the ban (Hügel, 1865, p. 170). However, many women still preferred working on the streets instead of entering a brothel because they were more independent and were less suppressed on the streets (Schulte, 1994, pp. 50). Although often more convenient, many women only went to work in a brothel if they had no other choice, either because of trafficking or they owed money to the brothel owner – the systematic accumulation of debts was one way to tie women to the brothel owner (Schulte, 1994, pp. 52).

Among all prostitutes, former waitresses and servants formed the largest groups (Schulte, 1994, pp. 68).²⁸ Craftsmen and farmers earned less money during the

²⁵ Dickinson (2007, p. 217) estimates that registered prostitutes account for only 10 to 20%.

²⁶ §146 PStGB:

"Weibspersonen, welche den polizeilichen Anordnungen zuwider gewerbsmäßig Unzucht treiben, werden mit Gefängnis bis zu acht Wochen bestraft.

Das Gericht kann zugleich verordnen, daß die Angeschuldigte nach Beendigung der Gefängnisstrafe in ein Arbeitshaus gebracht wird. [...]"

²⁷ But even for them, prostitution was not legal employment and they could not claim any rights, not even being paid for their service, related to that (Gleiß, 1999, pp. 67). The contemporary witness Havelock (1911, p. 89) agrees with that interpretation since a prostitute sells something unsalable. Accordingly, no buyer-seller-relationship can arise.

²⁸ The third biggest group was probably the one of female factory workers. To work in a factory was much more desirable compared to working as a servant (Schulte, 1994, p. 73). Often,

years of industrialization. Thus, in order to have fewer mouths to feed, many sent their daughters to the cities to find work (Schulte, 1994, p. 68).²⁹ There was a large demand for servants in the cities and these young women worked up to 16 hours a day and were only allowed to leave the house every second Sunday (Schulte, 1994, pp. 74). As soon as these young girls (Schulte, 1994, p. 79) arrived at the train station, people tried to persuade them to work in prostitution (see, e.g., Schulte (1994, p. 50) or Schneider (1921, pp. 119)), often under the control of the police (Schneider, 1921, pp. 24, 56, 77, 78, 120, 133). This seemed to be a much easier way to survive and earn money – if they resisted and went back to their workplace, they still had to evade their employer's desires.

The vice squad published a report at the end of 1867 on the behavior of the prostitutes during the current year, focusing mainly on prostitution of waitresses. Women worked up to 20 hours a day as bartenders (Schulte, 1994, p. 103) where they did not get paid by the owner but earned their money by flirting with the guests and selling sex instead of drinks (see, e.g., Lacroix and Helbing (1995, p. 114) and Röhrmann (1846, pp. 117, 235)). The vice squad reported that this submarket seemed to be substantially shrinking, which might have been due to the country's higher rate of unemployment (cited from Lacroix and Helbing (1995, p. 99)). In addition, the report found that the majority of prostitutes followed the obligation to see a doctor regularly.

Apart from that, the police felt left alone with the growing problem of prostitution – participation from society was not expected (cited from Lacroix and Helbing (1995, p. 102)), but the number of prostitutes still increased rapidly: At the beginning of 1867, medical examinations were an obligation for 995 prostitutes in Berlin. By the end of the same year, the amount increased by almost 50% to 1,447. The Berlin police supervised 10,860 women at the beginning of 1867, which increased to 12,491 within 12 months. Moreover, they arrested 15,982 people for crimes related to prostitution (Lacroix and Helbing, 1995, pp. 102), which equates to almost 44 arrests per day, despite having fewer than 50 holding cells in the city (cited from Lacroix and Helbing (1995, p. 100)). In general, Dickinson (2007, pp. 208) finds that "the criminality rate for moral offenses rose much more rapidly than that for all crimes."

Victors of the Austro-Prussian War, Prussia became part of the North German Confederation and established Berlin as its capital. Money and jobs returned to the city and eventually the demand for prostitution also increased (Lacroix and

factory workers prostituted themselves only seasonally or part-time (see, e.g., Schulte (1994, pp. 98) and Konieczka (1986, pp. 114)) and worked in their regular profession again afterwards. In general, the working class was much more open for premarital sex, which made prostitution not as interesting as it was for the middle class (Schulte, 1994, p. 94).

²⁹ Havelock (1911, p. 40) agrees that poverty was a reason to engage in prostitution but it could not justify such behavior according to him.

Helbing, 1995, p. 105). The North German Confederation was founded, which existed for only a few years. However, a penal code valid for all of its states was introduced during this time period. The first draft included imprisonment of up to six months for professional prostitutes. This was in reaction to a petition from the Evangelical Church given to the *Reichstag* in 1869 and signed by 15,048 people (Reichstag des Norddeutschen Bundes, 1869, p. 619). The focus of the petition was to fight against the moral decline of the society by making prostitution illegal again (Lacroix and Helbing, 1995, pp. 106). In reaction, the confederation's jurists gave a counterargument that it cannot be the duty of a penal code to check the morals of a society (Häberlin, 1869, pp. 63). In the final version of 1869, the sentence was lowered to six weeks imprisonment. In their petition, the Evangelical Church also discussed the increase of prostitution in Germany – particularly in Berlin. Their main claim was that because prostitutes were willing to pay higher rents for apartments in order to conduct their business, rents also increased for the rest of the population. Furthermore, prostitution was occurring in residences occupied by families, which was considered detrimental to those communities (cited from Lacroix and Helbing (1995, p. 108)). Another complaint of the petition was that commercial sex sellers were advertising more (cited from Lacroix and Helbing (1995, p. 109)), a fact Jeannel (1869, p. 109) also highlights. In his book, we find examples of advertisements, such as French business cards (Jeannel, 1869, p. 109), as shown in Figure 2.2.



Fig. 2.2: Example for a Buisness Card of a Brothel in Paris

Decades after the ban of brothels, the different standing of men and women was still apparent. Divorce was still demonized, especially by the church, and seen as a possible driving force into the market for commercial sex. Statements on the number of prostitutes in Berlin, which had around 1.8 million inhabitants at the time (Lacroix and Helbing, 1995, p. 104), vary: The number of waitresses who worked as prostitutes, which was declining in 1867, rose steadily – by 1890

there were 2,022 waitresses registered as prostitutes (Lacroix and Helbing, 1995, p. 114). Overall, 4,039 women were registered as prostitutes, but contemporary witnesses estimated that there were over 50,000 in Berlin alone (Bebel, 2012, p. 196). Compared to the number of 13,500 sellers in Berlin stated in Lacroix and Helbing (1995, pp. 110), this is a rather high estimation. In Germany as a whole, there were around 180,000 prostitutes (see, e.g., Lacroix and Helbing (1995, pp. 115) and Sauerteig (1999, p. 58)), which is approximately the same number estimated for today (see, e.g., Domentat (2003, p. 45) and SOFFI K. (2005a, p. 239)).

The still ongoing industrialization and fast growing population led to worse living conditions for the poor in Berlin as well as the entire country (Rebenich and Mommsen, 1997, p. 396). "From 1850 onwards, Germany was undergoing the most rapid and profound transition to an industrialized economy and an urbanized society that had been experienced by any nation up to that date" (Evans, 1976, p. 127), and it seems that the country was struggling with its self-image. Prostitution and sexuality had a symbolic character when it came to this redefinition (Evans, 1976, p. 127). On the one hand, large dances were held where men dressed up as women and showed their sexual preference for other men (Lacroix and Helbing, 1995, pp. 118). On the other hand, the church still had a huge influence on the population, government, and, if nothing else, on Kaiser Wilhelm II (Rebenich and Mommsen, 1997, p. 396). The loss of morality was feared, as the church³⁰ and its representatives "regarded prostitutes as instruments of the Devil, immoral seductresses whom the state had the duty, not to control, but to persecute" (Evans, 1976, p. 121). Prostitution was visible for everybody in Germany; in the large cities as well as in smaller cities (Lacroix and Helbing, 1995, pp. 122). The government considered only allowing prostitution in designated areas (Lacroix and Helbing, 1995, p. 117), which led to strong protests. According to the protesters, this would be similar to a reintroduction of brothels and a protection of prostitution through the state (Lacroix and Helbing, 1995, p. 117), which was unacceptable for many.

A problem not yet discussed in its entirety is that of pimping.³¹ Pimps gained importance in the commercial sex sector during the last ages (Schulte, 1994, p. 39). The first accounts of pimps come from the 18th century, but at this time they were still acting as a prostitute's lover and less as her oppressor (Schulte, 1994, p. 39). This new relationship of course reversed the traditional role allocation: Women worked for money and men lived from their income (Schulte, 1994, p. 43). To a large extent, Section 2.2 focuses on this new situation.

³⁰ A common opinion was that the industrialization and, with it, increasing employment of women led to a moral decline of society as women started to have contact with less moral people (Sauerteig, 1999, p. 48).

³¹ Pimping was discussed already in the aforementioned petition of the Evangelical Church (Lacroix and Helbing, 1995, p. 112) and in the report of the vice squad (Lacroix and Helbing, 1995, p. 102).

2.2 From Heinze to Hitler

At the end of the 19th century, the discussion about the legal situation of the commercial sex sector was characterized by the so-called *Lex Heinze*, a regulation included in the penal code of the Reich (*Reichsstrafgesetzbuch*, RStGB), the successor of the PStGB. In 1891, a man named Gotthilf Rudolph Heinze was accused of murder. During the trial, it became public that Heinze was the pimp of his own wife, Anna.³² The public interest in the case was immense. A driving force behind this interest might have been the emperor himself as he "was attempting to cut a figure as a benevolent and progressive ruler concerned for the welfare and morality of the working classes" (Evans, 1976, p. 126). No matter where the extreme public interest came from, it ensured pimping was integrated into German law.³³ After almost ten years of discussion, the *Lex Heinze* stated that a man who earns at least part of his living through the exploitation or habitual support of a professional prostitute would be sent to jail for at least one month.³⁴ Section two of the same paragraph – §181a RStGB – said that if the man was the prostitute's husband or if he tricked her into this profession, the sentence would be raised to at least one year. Finally, a conviction could also result in the denial of a person's civil rights. The discussions must have been long and difficult as completely different attitudes were represented. Some parties had the opinion that prostitution should be eliminated entirely (Reichstag, 1898, pp. 397), while others thought that only the prostitutes' clients should be punished (Reichstag, 1898, p. 5140). More-

³² What exactly happened is hard to judge from today's point of view. Lacroix and Helbing (1995, p. 134) report that Heinze killed a night watchman during a burglary, which is specified to have been a robbery of silver in a church (Evans, 1976, p. 119). Hartmann (2006, p. 72) mentions that the murder was committed during Heinze's work as a pimp. One thing is certain: Heinze killed the night watchman Braun and the trial took place in 1891 and 1892. Heinze and his wife were sentenced to 15 and 10 years imprisonment respectively (Lacroix and Helbing, 1995, p. 134).

³³ Until the outbreak of World War I, pimping was already responsible for 10% of all moral offenses (Dickinson, 2007, p. 212).

³⁴ §181a RStGB:

"(1) Eine männliche Person, welche von einer Frauenperson, die gewerbsmäßig Unzucht treibt, unter Ausbeutung ihres unsittlichen Erwerbes ganz oder theilweise den Lebensunterhalt bezieht, oder welche einer solchen Frauenperson gewohnheitsmäßig oder aus Eigennutz in Bezug auf die Ausübung des unzuchtigen Gewerbes Schutz gewährt oder sonst förderlich ist (Zuhälter), wird mit Gefängniß nicht unter Einem Monat bestraft.

(2) Ist der Zuhälter der Ehemann der Frauenperson, oder hat der Zuhälter die Frauenperson unter Anwendung von Gewalt oder Drohungen zur Ausübung des unzuchtigen Gewerbes angehalten, so tritt Gefängnißstrafe nicht unter Einem Jahr ein.

(3) Neben der Gefängnißstrafe kann auf Verlust der bürgerlichen Ehrenrechte, auf Zulässigkeit von Polizeiaufsicht sowie auf Ueberweisung an die Landespolizeibehörde mit den im §362 Abs. 3 und 4 vorgesehenen Folgen erkannt werden."

over, others thought prostitution should be decriminalized and did not belong in the penal code at all (Hartmann, 2006, p. 93).

The *Lex Heinze* added another main innovation – §181b RStGB was rewritten and now excluded the landlord of a prostitute. Until then, a landlord always had to fear imprisonment as he was technically supporting the prostitute. The idea behind the new §181b RStGB was that prostitution would no longer be forced out onto the streets since under the old law, landlords would not rent an apartment or room to a prostitute (Hartmann, 2006, pp. 80). The presence of prostitution on city streets was not tolerated as it affected the morals of the entire society. Moreover, it could lead to prostitutes turning to work with pimps (Hartmann, 2006, pp. 80). However, the intention of §181a RStGB was not to protect prostitutes, but rather to fight against the evils of pimping (Hartmann, 2006, p. 84). The opponents of the new law claimed that it was equivalent to licensing brothels again, which had already been discussed at length and forbidden since 1876. Finally, the supporters won and §181b RStGB came into effect.³⁵

The public focus was, however, on other parts of the *Lex Heinze*. §184 RStGB was rewritten and forbade large parts of *unmoral art* in theater, literature, and art, which was strongly supported by the Catholic Center Party (Evans, 1976, p. 120). Protests from artists, liberal politicians, and scientists led to the foundation of the *Goethebund*, a union formed by well-known and respected men fighting against the banning of *unmoral art* (Rebenich and Mommsen, 1997, pp. 396). The members of the *Goethebund* probably would have agreed with Evans (1976, p. 126) who saw the *Lex Heinze*

"as one of a series of strongly repressive laws against subversion, revolution, industrial and social unrest, and moral decay, in which the government was attempting to assert its control over German society as the ever-accelerating pace of social change threatened to throw it off."

The final version of §184 RStGB was meant to legally protect children and young persons against pornographic writings (Rebenich and Mommsen, 1997, p. 401), or at least the government tried to convince the opponents that this was their intention.³⁶

³⁵ §181b RStGB:

"Die Vorschriften der §§180, 181a finden keine Anwendung auf die Vermietung von Wohnungen an Frauenpersonen, welche gewerbsmäßig Unzucht treiben, sofern damit nicht eine Ausbeutung des unsittlichen Gewerbes der Mietherin verbunden ist."

³⁶ §184 RStGB:

"Mit Gefängnis bis zu einem Jahre und mit Geldstrafe bis zu eintausend Mark oder mit einer dieser Strafen wird bestraft, wer unzüchtige Schriften, Abbildungen oder Darstellungen feilhält, verkauft, verteilt, an Orten, welche dem Publikum zugänglich sind, ausstellt oder anschlägt oder sonst verbreitet, sie zum Zwecke der Verbreitung herstellt oder zu demselben Zwecke vorrätig hält, ankündigt oder anpreist;

In 1898, during the discussions about the *Lex Heinze*, movements were formed, which demanded an end to the state regulation of prostitution. The goal of these movements was to destroy the market for commercial sex as a whole and, by doing so, they hoped to overcome the existing double standard for male and female moral behavior (see, e.g., Sauerteig (1999, pp. 60), Kontos (2009, p. 153), and Gleß (1999, p. 72)).³⁷ The International Movement for the Suppression of State-Regulated Vice (*Deutscher Zweig der Internationalen Abolitionistischen Föderation*) claimed that the double standard for morality was an "enslavement of the female sex as a whole" (Evans, 1976, p. 122). Although the abolitionist activists and the Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands*, SPD) defined *moral* very differently, they agreed upon one fact: The pure existence of the market for commercial sex should be prevented. Instead of being concerned about the moral implications, prostitution was "a symbol of the corruption of the society" and "the evil consequences of the capitalist system" (Evans, 1976, p. 124) for the SPD. This was claimed as the market for commercial sex is traditionally organized in a way that contests the ideal of social equality. Usually, women working in prostitution are part of the lower class who have to sell themselves to members of the higher class (Evans, 1976, p. 124). In essence – the rich suppress the poor.

The *Lex Heinze* was a far-reaching alteration of legislation concerning the commercial sex sector (Hartmann, 2006, p. 276) and marked "the beginning of real public concern in Germany for the problem of prostitution" (Evans, 1976, pp. 119) at the onset of the 20th century. This public concern was expressed by the formation of different associations. The Morality Association (*Sittlichkeitsverein*) and the Association for the Protection of Young Persons (*Verein Jugendschutz*) fought against moral decline by establishing homes for female domestic servants and sending priests to brothels; the associations originated in the Protestant Church (Evans, 1976, pp.120).

In 1899 and 1902, members from both sides (abolitionist activists as well as members of the *Sittlichkeitsverein*) attended the congresses regarding the fight against venereal diseases (Sauerteig, 1999, p. 63). All agreed that "[...] VD had

unzüchtige Schriften, Abbildungen oder Darstellungen einer Person unter sechzehn Jahren gegen Entgelt überläßt oder anbietet;

Gegenstände, die zu unzüchtigem Gebrauche bestimmt sind, an Orten, welche dem Publikum zugänglich sind, ausstellt oder solche Gegenstände dem Publikum ankündigt oder anpreist;

Öffentliche Ankündigungen erläßt, welche dazu bestimmt sind, unzüchtigen Verkehr herbeizuführen.

Neben der Gefängnisstrafe kann auf Verlust der bürgerlichen Ehrenrechte sowie auf Zulässigkeit von Polizeiaufsicht erkannt werden."

³⁷ A very interesting discussion on the moral double standard in general can be found in Haerberle (1985, pp. 315).

become a metaphor for the moral decline of a German society heading towards physical and cultural degeneration" (Sauerteig, 2001, p. 77). Prostitution was a major point of discussion during both congresses as it was a major source of infection (see, e.g., Sauerteig (2001, p. 77) and Blaschko and Fischer (1913, p. 509)). Some speakers claimed that an obligation to work in a brothel might help keep infection rates at a lower level (Sauerteig, 1999, p. 64). At the end of the first congress, however, it was agreed that women should not be forced to attend medical examination, but motivated to do so voluntarily (Sauerteig, 1999, p. 64). A straightforward outcome from the meetings was the foundation of the German Association to Fight Venereal Diseases (*Deutsche Gesellschaft zur Bekämpfung der Geschlechtskrankheiten*, DGBG) in 1902 (Sauerteig, 1999, p. 89). Despite the founding of the DGBG, qualified recommendations were not offered (Sauerteig, 1999, p. 67). The infected were more or less expelled from society, as one saw the infection as self-inflicted (Sauerteig, 1999, pp. 143): Maids lost their jobs if they became infected (Sauerteig, 1999, p. 142), health insurance paid less sick pay (Sauerteig, 1999, p. 144), and many hospitals did not treat the infected anymore as they were overwhelmed (Sauerteig, 1999, p. 126).³⁸ Due to the miserable hygienic conditions, the *Charité* in Berlin was even boycotted.³⁹

At the same time, the government started to work on drafts for a new regulation that would equate the infected with other sick people (Sauerteig, 1999, p. 150). The major goal of this legislation was to free a person infected with a venereal disease from its many taboos and, with that, reach a higher share of voluntary treatments (see, e.g., Reichstag (1903, pp. 8247, 8255, 8256, 8264, 8261, 8262)). This seems to have been fulfilled as treatment rates significantly increased after the regulation came into effect in 1911 (Sauerteig, 1999, p. 151).⁴⁰ Since 1899, the handling of infections had officially changed: Sex education lectures were given for high school graduates and for 16-year-olds. Handbills were issued since 1904, exhibitions on hygiene were featured since 1911, and movies were shown since 1916 (Sauerteig, 1999, pp. 189). Importantly, since 1908, medical treatment was costless for prostitutes (Sauerteig, 1999, p. 159) in order to decrease the number of hidden infections,⁴¹ especially among unregistered prostitutes (Sauerteig, 1999, p. 381). To reach that goal, each prostitute who voluntarily came for regular treatments was no longer recorded (Sauerteig, 1999, p. 388). The hope was to reduce the rate of infections by raising the standard of sex education within the population

³⁸ A major problem was that there was just not enough space and there was no possibility to separate the patients (Sauerteig, 1999, p. 128).

³⁹ Among other driving factors, this led to the beginning of construction projects within the *Carité* in 1897 (Sauerteig, 1999, p. 131).

⁴⁰ The rate of moral offenses among all offenses also increased: This rate rose between 1882 and 1913 by 1.5% and reached a total of 3.5% in 1913 (Dickinson, 2007, p. 212).

⁴¹ Prostitutes were still viewed as the primary source of infections (Sauerteig, 1999, p. 381).

(Sauerteig, 1999, pp. 231). However, this was not equivalent to portraying a positive view towards sexuality. Abstinence was still demanded and sexuality often linked to fear (Sauerteig, 1999, pp. 225). Nevertheless, venereal diseases were discussed in public⁴² and the costs for treatments did not have to be covered solely by these infected (Sauerteig, 1999, p. 159). These were major steps towards greater acceptance within society (Sauerteig, 1999, p. 226).

"German VD policy in the late nineteenth and early twentieth centuries can be characterized as being both pragmatic and interventionist. On the other hand, there was a clear shift from a health policy dominated by moral considerations during the nineteenth century towards a pragmatic approach from the turn of the century onwards." (Sauerteig, 2001, p. 87)

The outbreak of World War I in 1914 brought irrevocable changes for the German society. Any advertisements for contraceptives were illegal due to the *Lex Heinze*, as this encouraged an immoral lifestyle (Sauerteig, 1999, p. 290). However, from 1916, soldiers were required to protect themselves from infections (Reichstag, 1918, p. 1698). Although parts of society and morality associations demanded that the military should be an example for the population and that soldiers should wait to engage in intercourse until marriage (Evans, 1976, p. 125). The government, however, had a different opinion and once again began supervising the prostitutes' activities in order to protect the country's military strength (Reichstag, 1918, pp. 1710). In addition, brothels for troops were introduced in the beginning of World War I (cited from Reichstag (1918, pp. 1710)). Estimations of 330,000 prostitutes at that time in Germany suggest that it was not difficult to find women willing to work there (see, e.g., Sauerteig (1999, p. 58) or Evans (1976, p. 108)).

During World War I, the infection rates increased, especially amongst the youth as their guidance could not be ensured anymore (Sauerteig, 1999, p. 258) and so the rules were tightened again. Any woman having sex with somebody other than her husband, no matter if the sex was commercial or not, feared high sanctions (Evans, 1976, p. 127). In addition, sanctions were feared by those infected with a venereal disease who had sexual intercourse after a doctor explained the disease to them (Sauerteig, 1999, p. 366), which was an obligation as well. Many soldiers died during the war and there was a large surplus of women. One feared that this might increase the infection rates again as a male provider was no longer present in many cases (cited from Sauerteig (1999, p. 86)). Hospitals were flooded with infected patients who were mostly from urban areas. Still, the government saw the only chance of dealing with the difficult situation was through supporting the infected to undergo voluntary treatment (Sauerteig, 1999, pp. 342) and so infor-

⁴² Before, sexuality and everything related to that topic was the biggest taboo of society (Konieczka, 1986, p. 105).

mation centers were introduced.⁴³ Although these led to more voluntary reports (Sauerteig, 1999, p. 177), they also increased the supervision of the infected by the government (Sauerteig, 1999, p. 185).

The end of the war also commenced the beginning of the Weimar Republic in Germany. Due to World War I, none of the drafts written between 1906 and 1914 for a new penal code made it through the legislative process. With the entry of Social Democrats and pro-decriminalization politicians into the government, the fight against the moral double standard began once again (Evans, 1976, p. 128). As unstable as the Weimar Republic might have been, it nevertheless introduced an important law with respect to prostitution. The Law to Fight Venereal Diseases (*Gesetze zur Bekämpfung der Geschlechtskrankheiten*, GeschlKrG) intended to prevent society from increasing rates of infection and protect it from visible prostitution (Gleß, 1999, p. 78). This law was only possible due to the female representatives who were able to vote and be elected for the first time in 1918. The major points of the GeschlKrG were the following: Firstly, that anybody who had sex with full knowledge of his or her venereal disease was sent to prison. Secondly, prostitutes were obliged to a medical examination and subsequent treatment. Lastly, only doctors were allowed to treat venereal diseases. The government's idea was that prostitution itself should be unpunished (Hartmann, 2006, p. 138). Feminists demanded an expansion of the social security system to fight prostitution (Reichstag, 1923, p. 11421) and the abolition of the moral double standard (Roos, 2002, p. 70). In 1919, all female members of the national assembly requested that prostitution would no longer be regulated by the police, but rather by institutions of social welfare (Hartmann, 2006, p. 139). The self-image of a democratic nation was consolidated after World War I. Thus, the far reaching power and autonomy of the police did not fit that image (Roos, 2002, p. 70). This, together with the fact that regimentation of prostitution did not help contain the spread of venereal diseases, made strong points towards the abolition of the same. Societies develop and change and so did the German society. Promiscuity was no longer a rarity and thus, the focus of being infected with a venereal disease also changed (Roos, 2002, p. 70). Together with discussions about promiscuity, the contraceptive question came back into the limelight. Morality associations, churches, and conservatives claimed that the allowance of contraceptives was equivalent to the allowance of extramarital sex (Sauerteig, 1999, p. 280). The SPD and others, on the other hand, wanted to educate the population about sex and propagate the usage of condoms (Sauerteig, 1999, pp. 263). From 1922, brochures were issued for men, explaining the impact of condoms (Sauerteig, 1999, p. 305). In brothels, condoms were already often used, although women feared offering them to clients as it was often seen as an admission of an infection (Sauerteig, 1999, pp. 292). In general,

⁴³ The first one opened in 1923 in Munich (Sauerteig, 1999, p. 377).

the goal was always to protect the male population (Sauerteig, 2001, p. 82) and so the service of disinfection introduced in 1920 was for men only (Sauerteig, 1999, p. 302).

In 1923, the *Reichstag* finally agreed to the impunity of prostitution; however, some restrictions were made. Prostitution was not allowed to take place close to churches, schools, and apartments where children under the age of 18 lived, and could be forbidden in towns smaller than 10,000 inhabitants. For the SPD, the law represented a step towards the equality of men and women (Reichstag, 1923, p. 11313). Female representatives, however, still hoped to abolish the double standard of only men being allowed to practice polygamy (Reichstag, 1923, pp. 11418). Regardless, many had the opinion that it was not the duty of a penal code to regulate the customs or morals of a society (Reichstag, 1923, p. 11320).⁴⁴ Eventually, passing legislation in the Weimar Republic became cumbersome and so the *Reichsrat* enacted a veto against the proposal. In 1927, after another two years of struggle, the law came into effect, almost unchanged compared to earlier proposals.⁴⁵ Prostitution itself was neither regimented nor criminalized in Germany and women who voluntarily reported their infection could even receive financial aid (Roos, 2002, p. 71). Nevertheless, women who "knowingly spread venereal diseases" still had to fear sanctions (Evans, 1976, p. 128). Prostitution may no longer have been under the watch of the police, but the obligation of medical treatment if infected made up for this decline in organized supervision (Sauerteig, 1999, p. 360). In addition, the

⁴⁴ "Die Aufgabe des Strafgesetzbuches ist es, die Allgemeinheit und ihre Glieder gegen Schädigungen einzelner zu schützen. Die Aufgabe des Strafgesetzbuches ist es aber nicht, die einzelnen zu sittlichem Verhalten zu zwingen, weil sittliches Verhalten nicht erzwungen werden kann." (Reichstag, 1923, p. 11320)

⁴⁵ §180 RStGB:

"[...] (2) Als Kuppelei gilt insbesondere die Unterhaltung eines Bordells oder eines bordellartigen Betriebes.

(3) Wer einer Person, die das achtzehnte Lebensjahr vollendet hat, Wohnung gewährt wird auf Grund des Abs. 1 nur dann bestraft, wenn damit ein Ausbeuten der Person, der die Wohnung gewährt ist, oder ein Anwerben oder ein Anhalten dieser Person zur Unzucht verbunden ist."

§361 RStGB:

"6. wer öffentlich in einer Sitte oder Anstand verletzenden oder andere belästigenden Weise zur Unzucht auffordert oder sich dazu anbietet; [...]

6a. wer gewohnheitsmäßig oder zum Zwecke des Erwerbes in der Nähe von Kirchen oder in der Nähe von Schulen oder anderen zum Besuche durch Kinder oder Jugendliche bestimmten Oertlichkeiten oder in einer Wohnung, in der Kinder oder jugendliche Personen zwischen drei und achtzehn Jahren wohnen, oder in einer Gemeinde mit weniger als fünfzehntausend Einwohnern, für welche die oberste Landesbehörde zum Schutze der Jugend oder des öffentlichen Anstandes eine entsprechende Anordnung getroffen hat, der Unzucht nachgeht."

jurisdiction made it clear that women selling sex for money were acting immoral in any case (Hellwig, 1928, pp. 326).⁴⁶

The police, as well many mayors, tried to influence the law and outlaw street prostitution once again (Roos, 2002, p. 73). However, without the risk of being prosecuted, prostitutes formed an association similar to a union in order to collectively fight for their rights (Roos, 2002, pp. 73).

2.3 The Nazi Regime

Of course, discussions about prostitution were only smoldering in the background, but they represent how different political opinion was in the late 1920s.

"On the left, indeed, attempts were now made to organize the prostitutes and form them into a trade union to defend their rights; while at the opposite end of the political spectrum, sexual freedom, nude bathing, the striptease shows of Josephine Baker, the public availability of contraceptives, the decline of the birth-rate and the "crisis of the family" joined the problem of uncontrolled prostitution as indicators of the collapse of the standards under the impact of industrialization." (Evans, 1976, p. 129)

The dissatisfaction of the right wing increased over the years. They, together with religious groups, believed that the government was unable to clean the streets and maintain morality. With the formation of the government led by Franz von Papen as Reich chancellor (*Reichskanzler*), there was a systematic shift to the right (Roos, 2002, p. 78). Papen later became the vice chancellor of Hitler, although they belonged to different parties. Among other points of criticism, the unsolved prostitution problem helped the Nazis gain votes, especially among the conservatives (Roos, 2002, p. 68). "The Nazis were keenly aware of the propagandistic potential of the issue of prostitution and used the backlash against the 1927 reform to advance their own political agenda" (Roos, 2002, p. 78). Work on the GeschlKrG legislation was still underway when on January 30th, 1933, Adolf Hitler and the Nazis seized power in Germany. In the years before the seizure, the Nazis gained popularity due to the high unemployment rate, the world economic crisis, and the consequences of the Versailles treaty. The regime would last ten years, three months, and nine days.

Part of the Nazi ideology was that sexuality, reproduction, and marriage were all the same (Timm, 2002, p. 231). "Female sexuality was functionalized to serve the

⁴⁶ However, the number of arrests declined between 1926 and 1929 by almost 50%, whereas the amount of arrests for pimping remained constant (Dickinson, 2007, p. 218). Four years after the implementation of the GeschlKrG, 61% of those arrested for moral offenses were men (Dickinson, 2007, p. 219).

needs of the nation"⁴⁷ (Timm, 2002, p. 246) and in order to build a large population of Aryan(-soldiers);⁴⁸ the Nazis were even willing to accept illegitimate children (Timm, 2002, p. 246). The distinction between women and prostitutes was very important for the Nazi's self-understanding:

"There thus emerged a contrast between acceptable and unacceptable sexual behavior for women - a contrast that contained an ambiguous and contradictory image of female sexuality but that in some sense also gave all women a similar role in Nazi society. True mothers of the *Volk* and members of the "national community," so Nazi propaganda taught, contained their sexual expression entirely within the private realm. Their sexuality was inextricably linked to motherhood, and their sole public function was to act as educator and spiritual guide to their families - to produce, in other words, new citizens and soldiers. The prostitute represented both a contrast and a mirror. She was defined as having abnormal sexual instincts that demanded her exclusion from the society at large. But, like "respectable" women, she was also prevented from expressing sexuality in public; she was confined to a brothel. And, like "respectable" women, her sexual services were also subjected to demands of the state." (Timm, 2002, p. 246)

The propaganda book of Hitler *Mein Kampf* also discusses the problem of prostitution, which he calls a "shame of humanity" (Hitler, 1925, p. 179, own translation).⁴⁹ At the seizure of power, "the Nazis continued to present themselves as guardians of conventional sexual morality" (Roos, 2002, p. 80). The Christian churches hoped that the Nazis would finally bring morality back to the German nation (Conway, 2001, pp. 21). Just four months after Hitler's appointment as *Reichskanzler*, the paragraphs of the StGB concerning prostitution were rewritten and the comparatively moderate GeschlKrG lost its validity due to the *lex posterior* (Hartmann, 2006, p. 198). In contrast to before, a prostitute could be arrested if she offered her services in a conspicuous manner (Hartmann, 2006, p. 198).⁵⁰ This criteria was already fulfilled if the woman was infected by a venereal disease. Thus, many raids took place followed by forced medical examinations. Many women were arrested just because they had no male company. If arrested more than once for the same offense, women risked being registered as a prostitute (Paul, 1994, pp. 11). The legislative process was much faster than it had been in democratic Germany. Thus, the Nazis quickly reintroduced the regimentation in 1933 (Hartmann, 2006, p. 202). Without any legal basis, many cities started to ban prostitution from public places, reintroduce quartering, and open licensed brothels soon after the seizure of power (Roos, 2002, pp. 84). Churches fought against licensed brothels,

⁴⁷ A consequence of the Nazi regime was that all information centers for questions concerning sexuality were closed down (Aresin, 1991, p. 74).

⁴⁸ Harsh penalties were administered if a woman aborted an Aryan child (Aresin, 1991, p. 75).

⁴⁹ "Die Prostitution ist eine Schmach der Menschheit, [...]" (Hitler, 1925, p. 179)

⁵⁰ §361 Nr. 6 RStGB:

"Mit Haft wird bestraft, wer öffentlich in auffälliger Weise oder in einer Weise, die geeignet ist einzelne oder die Allgemeinheit zu belästigen, zur Unzucht auffordert oder sich dazu anbietet."

but had already lost too much of their power to be influential (Roos, 2002, p. 86). After 1937, the restriction that only towns with less than 15,000 inhabitants were allowed to forbid prostitution was lifted. Now all cities could declare themselves as off-limit areas independent of their size (Hartmann, 2006, pp. 203, 213). After the enacted decrees of September 1939, brothels were more or less controlled by the police, street-walkers were brutally repressed, and people who often changed their partner (*Häufig wechselnder Geschlechtspartner*, HwGs) feared punishment (Roos, 2002, pp. 88).

The double moral standard was carried to the extreme during the Nazi regime.⁵¹ On the one hand, the Nazis did not want prostitution to be visible on the streets or in everyday life (Sauerteig, 1999, p. 418). Especially during the prewar years, prostitutes were sent to concentration camps (see, e.g., Höß (1963, p. 117), Bock (1980, pp. 83, 96), and Timm (2002, pp. 228, 234)) and "streetwalkers were subject to very harsh penalties, [...]" (Timm, 2002, p. 237) justified by the much broader state of affairs and as they were classified as habitual offenders.⁵² On the other hand, prostitution was seen as a necessity to fight homosexuality (Timm, 2002, p. 224) and,⁵³ in the case of foreign workers, preserve the purity of the Aryan blood (Paul, 1994, pp. 117). Timm (2002, p. 251) gets to the heart of it when saying that "policies were directed at reducing the visibility of prostitution rather than at reducing their numbers." Brothels were tolerated and licensed in the Third Reich (Timm, 2002, p. 240) and "prostitutes were henceforth available to any German man who found his way to a state-run brothel" (Timm, 2002, p. 242). Accordingly, red light districts were accepted as they gave the police the opportunity to supervise the prostitutes (Timm, 2002, p. 238). "For the Reichsführer SS and other Nazi leaders, the need to provide German men with a 'safe' sexual outlet was paramount, superseding concerns about 'immorality'." (Roos, 2002, p. 90)

During World War II, the barracking of prostitutes was allowed again (Hartmann, 2006, p. 214), which led to less rights for the prostitutes and an extended selection for the customers (Paul, 1994, p. 134). Brothels were founded exclusively for the *Wehrmacht* (Timm, 2002, p. 247) as the government thought regular sexual intercourse would make better soldiers and thus might help win the war

⁵¹ The Nazi double moral standard is even more apparent on the issue of condoms. Venereal diseases were still a problem and people discovered that condoms protected against them. With a healthy Aryan race being a goal of the regime, the usage of condoms was supported. On the other hand, the use of condoms as contraceptives was not tolerated. Although Hitler was an enemy of birth control (Hitler, 1925, pp. 179), at least here, common sense won and the usage of condoms went unpunished.

⁵² In Schoppmann (1997, p. 205), we find an explanation of what habitual offenders were and Höß (1963, p. 278) states that prostitutes belonged to that group.

⁵³ During the Nazi regime, around 3,000 men were sentenced for homosexuality per year (Dickinson, 2007, p. 232).

(Timm, 2002, p. 252). In addition, the rates of infection increased again (cited from Paul (1994, p. 101)); the supreme command hoped to prevent even higher rates by medically examining the women. As it was the soldiers' obligation to remain healthy – they had to use condoms in the brothel (Sauerteig, 1999, p. 418). Roos (2002, p. 87) states that "the vital importance of regulated prostitution for Germany's military goals ultimately overruled concerns about the need to eradicate 'vice'." Needless to say, racial segregation took place (Roos, 2002, p. 88) and women were not voluntarily working in the brothels (Timm, 2002, p. 247). In western countries such as France, the brothels were overtaken by the Nazis. In all other countries, the *Wehrmacht* founded their own brothels (Paul, 1994, pp. 102).

World War II brought many forced laborers to Germany against whom the German women had to be protected (Boderach, 1984, p. 6069). Thus, brothels were built in neighborhoods exclusively for forced laborers (cited from Roos (2002, p. 88)). Because the laborers were mostly foreign, the women had to be of the same nationality as the majority of the forced laborers at the particular place (Paul, 1994, p. 125). Women working in such brothels were forced to pay rent for their room and it is questionable if they ever received the remainder of their salary (Boderach, 1984, p. 6069).

From 1942 on, brothels in the concentration camps were common. There were two kinds of brothels: The first was for the members of the Nazi police (*Schutzstaffel*, SS) (Bornemann and Broszat, 1970, p. 172) and the second, maybe more surprising one, was for the prisoners (Paul, 1994, pp. 23). In 1942, the command for building a brothel for the prisoners was given by Heinrich Himmler, the country's SS-leader (Paul, 1994, p. 23). The reason for constructing such brothels was at first to reward those who worked better than their fellow prisoners (see, e.g., Höß (1963, p. 260) and Kaienburg (1990, pp. 147, 332)). The consequence from rewarding only some led to a split between the prisoners, which was the second reason for building brothels (see, e.g., Paul (1994, p. 28) and Kaienburg (1990, p. 448)). The Nazis did not want the prisoners to form into a cohesive unit, but rather to compete against each other. Finally, the Nazis even earned a profit with the brothels.⁵⁴ The women who worked in these brothels were sent there from the concentration camps for women. Many had been sent to the camps for offenses against morality (see, e.g., Paul (1994, pp. 18) and Lagergemeinschaft Ravensbrück (2001)); some had already been working as a prostitute and others never had a sexual experience before (Paul, 1994, p. 34). Some of the women even volunteered to work there (Paul, 1994, p. 33) with the hope of gaining a faster release – especially during the early years, many had been promised to be released after three to six months (see, e.g., Kaienburg (1990, p. 411) and Paul (1994, p. 38)).

⁵⁴ The price for one visit was 2 Reichsmark (RM). The prostitutes' share was 0.45 RM, the one for the jailer 0.05 RM. Thus, the SS earned 1.50 RM on each visit (Paul, 1994, pp. 70).

Since the living conditions were much better in the brothels, women had a slightly better chance of surviving (Paul, 1994, p. 33). Nevertheless, almost none of the women were released, but rather sent back to the concentration camp in which they came from after a few months (cited from Kaienburg (1990, p. 411)). It was, however, true that the food in the brothels was mostly better than anything the women had eaten in months. They did not have to work in terms of regular forced labor, but they were forced into different kinds of work. Each woman had around eight customers per day (Paul, 1994, pp. 47, 55), always controlled by the SS (Paul, 1994, p. 54), and suffered equal to the other prisoners.

"One gets callous. Life itself does not count anymore because they destroyed everything relevant for you as a human being. It started when they took me away from the manor, when they brought me to Rostock and from Rostock to Ravensbrück. One becomes apathetic, what can I say ... one has a feeling ... nothing can shock you anymore. No reaction from stimuli at all, they could have done with us what they wanted. We knew that we were at their mercy and that there was no way to oppose. We just told ourselves the sooner the better. That's how far we were, not only me." (The contemporary witness Mrs. W. in Paul (1994, p. 57, own translation))⁵⁵

It was also common to use concentration camp brothels for men who were arrested for being homosexual. In the brothels, they had to prove that they now preferred sex with women and were "healed" (Höb, 1963, p. 120) – further proof that homosexuality was not accepted in the Third Reich.

We have seen that Nazi Germany embodied different kinds of brothels. Those in the cities and for the *Wehrmacht* served the goal of fighting homosexuality (Paul, 1994, p. 132), supporting the productivity of men (Timm, 2002, p. 224), and fighting against high infection rates (Sauerteig, 1999, p. 420). The second reason applied to forced laborers and concentration camp prisoners (Timm, 2002, p. 227). The purity of the blood was often the declared goal, but not always practiced: It was reported that many Jewish women were forced to work in brothels (see, e.g., Paul (1994, p. 103) and Roos (2002, p. 88)). In 1942, there were around 500 brothels for the *Wehrmacht*, 60 for the forced laborers, and nine in concentration camps (Paul, 1994, p. 135). Keeping in mind that women were often not able to work in the brothels longer than a few months, Paul (1994, p. 135) suggests that during the Nazi regime, 43,140 women were forced to work in prostitution. Eventually,

⁵⁵ "Man wird abgestumpft. Das Leben zählt einfach nicht mehr, denn sie hatten einem als Mensch alles kaputt gemacht. Das fing schon in dem Moment an, wo sie mich von dem Gut weggeholt hatten, als sie mich nach Rostock brachten und von Rostock aus nach Ravenbrück. Man wird gleichgültig, wie soll ich sagen ... man hat eine Empfindung ... es erschüttert einen nichts mehr. Reizlos bis zum geht nicht mehr, die hätten mit einem machen können, was sie wollten, wir wussten wir waren denen ausgeliefert, man konnte sich ihnen nicht widersetzen. Wir haben uns nur gesagt, je eher, desto besser, soweit waren wir, nicht nur ich allein." (Die Zeitzeugin Frau W. in Paul (1994, p. 57))

the Third Reich ended with the loss of the war and with that the Allies started to participate in the German legislative process.

2.4 Prostitution in the GDR

Soon after the end of the Second World War, the Russian sector of Germany started to separate itself from the rest of the country. Until 1968, the StGB was equivalent to the FRG. However, a revision of the statute in 1958 brought the StGB-GDR⁵⁶ closer to the agenda of the Socialist Unity Party of Germany (*Sozialistische Einheitspartei Deutschlands*, SED), the only political party of the GDR.

Generally speaking, the discussion about prostitution in post-World War II Germany was driven by two factors. First, after the huge destruction of the country, all workers were needed to rebuild the country. Working hard was seen as part of the reparation and those who did not engage were directly questioning the ideology (Korzilius, 2005, p. 6). Consequently, they were treated as social outcasts from the law and government (Korzilius, 2005, pp. 18). Full employment was reached in 1947 (Korzilius, 2005, p. 21) and from then on, labor shortages were constant in the GDR (Korzilius, 2005, p. 696). Nevertheless, the desire to survive these years of hunger led to a partial acceptance of prostitution. The post-World War II years were characterized by food shortages and hunger. There were very few men under the age of 50 (Korzilius, 2005, p. 21) and almost everybody was suffering from hunger. The distinction between prostitution and promiscuity was often blurred during this time since women would have sex with an officer with the hopes that he would marry her and rescue her from the hopeless situation. Sex was not only offered in exchange for money, but as well for a place to sleep and something nutritious to eat (Korzilius, 2005, p. 27). This was the reason why sex with a soldier was so tempting, as women were able to get food stamps and fuel (Naimark, 1995, p. 93).

The second factor affecting the prostitution debate was the fear of high infection rates (Falck, 1998, p. 36). Venereal diseases were again spreading⁵⁷ and the military government concentrated on containing the situation (Hesse, 1991, p. 51) by forcing people infected with syphilis to stay in a hospital (cited from Falck (1998, p. 24)) and to accept medical treatment (Korzilius, 2005, p. 88). The So-

⁵⁶ The penal code of the GDR had the same name as the one of the FRG. To avoid any confusion, the penal code of the GDR will be denoted by StGB-GDR.

⁵⁷ In 1946, there were around 100 infections with syphilis per 10,000 inhabitants (Falck, 1998, p. 27). For the same year, Günther (1991b, p. 165) counts 984 cases of gonorrhoea for the Soviet Zone, whereas there were only 135 cases in 1989. In Thuringia, the rate of syphilis infections rose by 335% and for gonorrhoea by 95% (Hesse, 1991, p. 52).

viets banned sex with German women as their fear was that those women were the sources of infections (Korzilius, 2005, p. 89). In 1946, the containment policy became even more stringent. Now, infected prostitutes and women who infected a member of the military had to either pay a fine or were sentenced to forced labor (Korzilius, 2005, pp. 69). Two years later, the law stated that people who knew about their infection and still had intercourse with another person could be imprisoned for up to three years (Falck, 1998, p. 26).

With the founding of the GDR in 1949, the social standing of women and their integration into the work process changed. The focus of the socialist government was on the support and creation of national production. The fact that half of the population did not work outside the home because they were either taking care of children or simply because society did not accept them as part of the working population was counterproductive when it came to the reconstruction and strengthening of the GDR (Korzilius, 2005, p. 21).⁵⁸ Thus, women were integrated, equal rights were part of society – even children born in and out of wedlock had the same rights (Falck, 1998, p. 50).⁵⁹ Although sexist views were not rare in the early years of the GDR (Kuhlmann, 1989, p. 193), the acceptance of premarital sex and the sexual self-determination of women were steps towards an enlightened society (Falck, 1998, pp. 58). Still not tolerated was being a HwG.⁶⁰ This could lead to forced medical examinations (cited from Falck (1998, p. 56)), which, in practice, only women were sentenced to attend (Falck, 1998, pp. 60). Even if not engaging in prostitution, HwG persons had to constantly fear being sent to a workhouse (Korzilius, 2005, p. 110), which was a very staunch sanction (Falck, 1998, p. 35).

After the direct consequences of the war, such as hunger and reconstruction, were overcome, the public's view on prostitution also changed and the partial acceptance of the practice vanished. For women, the higher earning capacities of the commercial sex sector gained importance (Falck, 1998, p. 39). For the party functionaries, prostitution was the worst expression of asocial behavior (Korzilius, 2005, p. 201) as the women engaging in the commercial sex sector did not participate in the regular labor market (Korzilius, 2005, p. 273). Work was a legal duty and non-performance led to legal consequences (Korzilius, 2005, p. 696). Asocials were outlawed in society and the police often caught prostitutes as a consequence of information given from residents (cited from Korzilius (2005, pp. 314)). However, during the late 1950s, the penalty of being sent to a workhouse was imposed

⁵⁸ After some years, the GDR had an impressive amount of childcare facilities. Places were available for almost all children and more or less costless (Fuchs, 1991, p. 98).

⁵⁹ One should not conceal that even with the great childcare facilities, women had to bear the double burden of household and labor work in the GDR (Fuchs, 1991, p. 100).

⁶⁰ One could say that no kind of relationship other than heterosexual marriage was accepted by society (Hohmann, 1991, p. 20). For example, homosexuals were not equated to heterosexuals until 1988 (Hohmann, 1991, pp. 21).

less often (Korzilius, 2005, p. 204) and the focus was less on the fight against moral decline and more on combating capitalism (Korzilius, 2005, p. 257).

"One could – of course somewhat roughly – say that during the 1950s the transformation of the society itself, the class struggle, tied up the powers of the civil security, while during the 1960s the education of the workforce came more into focus." (Korzilius, 2005, p. 321, own translation)⁶¹

After the building of the Berlin Wall in 1961, the socialist state was finally completely separated from the rest of Germany. With a purely socialist state without any influence from the capitalists, the common wisdom was that prostitution would simply vanish from society (see, e.g., Korzilius (2005, pp. 196, 206, 405, 483)). The commercial sex sector as a whole did not fit into the self-image of the newborn socialist country and some even thought that prostitution was a profession only a woman suffering from a personality disorder would choose (Korzilius, 2005, p. 205). However, the state did not punish these women too harshly despite the demands of other contemporaries for even harsher sanctions (Korzilius, 2005, p. 206).

Discussions eventually emerged on the question of including a paragraph concerning asocials in the new penal code (Korzilius, 2005, p. 257). The draft of 1966 again included prostitution (Korzilius, 2005, pp. 377). In 1968, the new penal code of the GDR came into effect which made prostitution illegal.⁶² A person not working or working in the commercial sex sector could now receive up to two years of imprisonment.⁶³ Little can be said about the political discussions prior to this legislation, as the GDR was not known for controversial political debates. The result, however, was very different from the one in the FRG. There, the process of liber-

⁶¹ "Es kann also – freilich etwas vergröbend – gesagt werden, daß in den fünfziger Jahren die Umgestaltung der Gesellschaft selbst, der eigentliche Klassenkampf, hauptsächlich die Kräfte der Sicherheitsorgane band, während in den sechziger Jahren die Erziehung der Arbeiterschaft in den Vordergrund rückte." (Korzilius, 2005, p. 321)

⁶² Before that, it had only been illegal if the young were affected (Falck, 1998, p. 35).

⁶³ §249 StGB-GDR:

"(1) Wer das gesellschaftliche Zusammenleben der Bürger oder die öffentliche Ordnung und Sicherheit beeinträchtigt, indem er sich aus Arbeitsscheu einer geregelten Arbeit entzieht, obwohl er arbeitsfähig ist, wird mit Verurteilung auf Bewährung, Haftstrafe oder mit Freiheitsstrafe bis zu zwei Jahren bestraft.

(2) Ebenso wird bestraft, wer der Prostitution nachgeht oder in sonstiger Weise die öffentliche Ordnung und Sicherheit durch eine asoziale Lebensweise beeinträchtigt.

(3) In leichten Fällen kann von Maßnahmen der strafrechtlichen Verantwortlichkeit abgesehen und auf staatliche Kontroll- und Erziehungsaufsicht anerkannt werden.

(4) Ist der Täter nach Absatz 1 oder 2 oder wegen eines Verbrechens bereits bestraft, kann auf Freiheitsstrafe bis zu fünf Jahren erkannt werden.

(5) Zusätzlich kann auf Aufenthaltsbeschränkung und auf staatliche Kontroll- und Erziehungsaufsicht erkannt werden."

alization already started and with that the workhouses were abolished (Korzilius, 2005, pp. 385).

A buttress of female self-confidence was the wide acceptance of the birth control pill.⁶⁴ From 1972 onward, the pill was costless for women over the age of 16 in the GDR (Falck, 1998, p. 91). However, even before this, it was a very popular contraceptive and at least 40% of all women in the GDR took it regularly (Aresin, 1991, p. 91).⁶⁵

Unfortunately, a side effect occurred that was not desired: The infection rates of venereal diseases increased again (cited from Falck (1998, p. 92)). Already in the fifties, an important innovation had been discovered: The curative effect of antibiotics for the treatment of venereal diseases (Korzilius, 2005, pp. 201). Declining rates of infection followed (Korzilius, 2005, p. 202), but succeeding generations became, unfortunately, less cautious at the same time (Korzilius, 2005, p. 202).⁶⁶ The population felt that unwanted pregnancies were the worst to fear and thus condoms were, with the wide distribution of the pill, often not used (Falck, 1998, pp. 169).

In the sixties, as the treatment of venereal diseases became easier and with fewer side effects, people were now concerned about what a prostitute did to herself. Were her personal rights violated first by selling sex for money (Falck, 1998, p. 73) and second by having to publically register if infected? From 1961 onward, in order to stay abreast of these social changes, people infected with a venereal disease were no longer listed by their full name, but rather only by their initials. The exception were HwG persons (Falck, 1998, p. 74). They could, according to §23 StGB-GDR, still be forced to attend medical treatments.⁶⁷

⁶⁴ The legalization of abortion in 1972 was the last step of the government towards family planning (Falck, 1998, p. 92) and with that women gained greater control over their bodies. Of course, abortion should, in contrast to contraceptives, not serve as an active instrument of family planning but be an exception (Aresin, 1991, p. 88).

⁶⁵ To remain independent from imports, the GDR even produced its own medicinal composition after 1965 (Aresin, 1991, p. 91).

⁶⁶ This was especially problematic after the first HIV/AIDS cases were diagnosed. Its emergence negatively influenced people's view on sex. Although unwanted pregnancies were no longer a matter of concern and gonorrhoea could be healed quicker than the flu, the fear of HIV/AIDS persisted (Günther, 1991b, p. 173). The government, however, tried to keep the problem quiet – the first article on HIV/AIDS was not published in the GDR until 1987 (Günther, 1991b, p. 170).

⁶⁷ §23 StGB-GDR:

"Bei Personen, welche an Orten, die für den Aufenthalt dringend Krankheitsverdächtiger bekannt sind, angetroffen werden und die den Verdacht des Umgangs mit solchen Personen erregen, können der Rat des Kreises, Abteilung Gesundheits- und Sozialwesen, oder dessen Beauftragte

a) die Personalien sofort feststellen,

b) die unverzügliche Vorlage einer ärztlichen Bescheinigung über den Gesundheitszustand und bei Nichtbefolgung die Untersuchung in einer staatlichen Behandlungsstelle verlangen."

Although prostitution was illegal, it was often used by the state security (*Staats-sicherheit, Stasi*) to collect compromising proof against high-ranking men from East and West (Falck, 1998, p. 114). Many prostitutes followed the orders of the *Stasi* for mainly two reasons. First, there was actually no way of escaping them once they decided that a woman could be useful. Second, working with the toleration of the *Stasi* was just like working legally as a prostitute (see e.g. Dietl (1997) and Falck (1998, p. 147)). The greatest fear of a prostitute was no longer to be caught by the police, but the possible moral judgment of the society (Falck, 1998, p. 170). Apart from the information benefits the *Stasi* gained from prostitutes, the state also earned profits in monetary terms from prostitution. Prostitution was tolerated in hotels that were exclusively established for visitors from capitalistic countries, where a fee was levied for a guest that was accompanied by a woman to his room (Falck, 1998, p. 145). As almost all companies, the hotel chain *Interhotel* was state property.

Women who worked as a prostitute in the GDR did so in order to earn additional wealth and not because they had to find a way to survive (Falck, 1998, p. 142). All women were secured by state and government. Everyone had a job and, if not, could easily find one.⁶⁸ There was no existential need to prostitute themselves. Nevertheless, the monthly earnings from commercial sex were, compared to the living costs, very high. A former prostitute states in a television documentary (Falck, 1998, p. 147) that she earned around 50,000 Mark-East per month, whereas the monthly minimum spending for a four persons household was around 1,000 Mark-East (Korzilius, 2005, p. 538). A different contemporary witness claims that she earned up to 45,000 Mark-East per service and that she spent 27,000 Mark-East per month on clothes alone (Dietl, 1997).

Generally speaking, prostitution in the GDR was very different from elsewhere. Violence was not a big problem when working the streets (Falck, 1998, p. 169) and pimps were, in fact, not active in the GDR (Falck, 1998, p. 19). Of course, a husband sometimes knew about his wife's additional income (Falck, 1998, p. 40) and sometimes the prostitute's whole family benefited from her work (Falck, 1998, pp. 189). Nevertheless, the existence of the stereotypical violent and forceful pimp cannot be confirmed. Street prostitution was only visible in Berlin and Leipzig (Falck, 1998, p. 163), but the supply in Leipzig was only mentionable during trade fairs (Falck, 1998, p. 152). In Berlin, street-prostitutes only sold around three services per night (Falck, 1998, p. 165) and as the supply was very little,⁶⁹ they could even pick their customers (cited from Falck (1998, p. 166)). As women had the

⁶⁸ The level of employment among the female population was around 92% (Fuchs, 1991, p. 98).

⁶⁹ One assumes that there were around 3,000 prostitutes in 1988 in the entire GDR which had around 16.7 million inhabitants (8.7 million of them female) (Fuchs, 1991, p. 96).

advantage of scarcity,⁷⁰ they did not have to sell sex practices they did not want to offer (Falck, 1998, p. 168). Even price wars among the sellers were uncommon (Falck, 1998, p. 168) and men were always willing to pay a high price for services as compared to living costs (Falck, 1998, p. 19).

Regardless of the benefits, sanctions remained very harsh if caught working as a prostitute. After imprisonment, control measures were often used to monitor the offender (Korzilius, 2005, p. 618) and workplaces as well as living spaces were assigned (Korzilius, 2005, p. 625). A repeat offender could even be expelled from his or her place of residence (Korzilius, 2005, p. 622). Prostitution was taboo within the GDR (Falck, 1998, p. 202) and during the Honecker era,⁷¹ the fight against the asocial regained importance (Raschka, 2000, p. 45). For example, in preparation for the tenth World Festival Plays of Youth and Students in Berlin in 1973, 14,164 criminal offenses due to §249 StGB-GDR were registered (Korzilius, 2005, p. 447). Prisons and sanatoriums in which prostitutes were often sent were much too crowded (Korzilius, 2005, p. 445) before the numbers of inmates declined over the following years (Korzilius, 2005, p. 447).⁷²

However, one should note that §249 StGB-GDR was at the border of the two parts of the GDR's penal code. One part was designed to be an impartial penal code as we have today. The other part, however, was designed to influence and guide society (Korzilius, 2005, p. 675).⁷³ With the fall of the Berlin Wall, a staunch symbol of socialism, the situation dramatically changed for everybody, including prostitutes.⁷⁴

2.5 The West: Between Reconstruction and Reunification

Just like in the East, the situation in the rest of post-war Germany was dire. The Allies abolished the Nazi laws on prostitution, except for the one concerning its

⁷⁰ Unlike the FRG, prostitution declined to a large extent in the sixties in the GDR. Looking back, this was probably driven by the new self-confidence of women caused by their ability to financially stand on their own feet (Falck, 1998, pp. 88).

⁷¹ Head of state of the GDR from 1976 until 1989.

⁷² Günther (1991a, p. 66) claims that sexuality as a whole was taboo. However, when comparing other aspects of sexuality, it seems that the GDR was much more enlightened than the FRG. For instance, in the later years of the GDR, 99% of youth admitted to engaging in premarital sex (Starke, 1991, p. 218), with young women experiencing sexual intercourse for the first time earlier than men, although women typically had fewer partners (Schnabl, 1991, pp. 130).

⁷³ After reunification, the judges decided that §249 StGB-GDR did not belong to the second part. Thus, the condemned could not demand reparations (Korzilius, 2005, p. 710).

⁷⁴ Please see Section 2.6 for the further discussion.

regimentation (Hartmann, 2006, p. 215). However, compared to the progressive laws of the Weimar Republic, the fight against immorality became even stricter (Freund, 2001, p. 205). Hunger was the most urgent problem in post-war Germany (Tröger, 1986, p. 97) and German women had to pay the price for the crimes their compatriots committed all over the world (see, e.g., Nave-Herz (1997, p. 35) and Tröger (1986, p. 105)) – exactly how many were raped during the post-war years is still unclear (Tröger, 1986, p. 99). Marriage and prostitution were institutions that protected women against rape (Tröger, 1986, p. 98).

The authorities feared what happened so frequently (Freund, 2001, pp. 205) – German women had affairs with foreign soldiers in order to survive (Heinz-Trossen, 1993, p. 51). According to the authorities, this was the main reason for the increasing infection rates in post-war Germany (Freund, 2001, p. 207). In 1945, just after the end of the war, the Allies declared a goal of lowering infection rates amongst the population. Their fight against venereal diseases seemed unorganized at best as out of 4,667 women examined in Hamburg, only 391 were infected (Freund, 2001, p. 210). The following year, 1,062 cases of syphilis were reported and in 1947, the number had more than tripled (Freund, 2001, p. 213). Promiscuity was seen as very close to prostitution and, "as had already been the case in Weimar and Nazi Hamburg, the fight against prostitution and the spread of VD was continued to be highly gendered" (Freund, 2001, p. 217). Husbands acted as pimps, sending their wives to soldiers to earn cigarettes in return for sex. This behavior was widely accepted (cited from Freund (2001, p. 207)). In contrast, it was not acceptable for women to sell sex to feed their children, although thousands of women had to take this path (Tröger, 1986, p. 99). Although women were the focus of the authorities when it came to the fight against venereal diseases, the "first years after the Second World War [were] a period in which German women experienced a certain sexual and social emancipation" (Tröger, 1986, p. 98). Divorce rates increased and, as everybody's (wo)manpower was needed, role allocation was less traditional (Freund, 2001, p. 208). The emancipation was unintended and came to an end in the late 1950s when women again began to marry early in life (Tröger, 1986, p. 115).

In 1953, a reissue of the *GeschlKrG* came into effect (Heinz-Trossen, 1993, p. 53), which had the goal of simultaneously improving German morals and hygiene (Heinz-Trossen, 1993, p. 54). In fact, this law was used to regulate prostitution as they had to be able to prove their health at any given time (Heinz-Trossen, 1993, p. 57). If their health was questionable, they could immediately be sent to the hospital (Heinz-Trossen, 1993, p. 57). The isolation ward was known to be more like a jail than a place to recover (Freund, 2001, p. 216).

In 1960, a bill was drafted that suggested that the habitual practice of prostitution services would no longer be a necessary condition to be punished as a prostitute. Also, it would not be necessary anymore to prove a concrete danger for the young. In addition, all cities, independent of their size, would have the choice

of either allowing or forbidding prostitution (Hartmann, 2006, p. 225). However, due to the end of the legislative session, the draft was never enacted. The alternative draft of 1966 differed from the prior as it had the aim of supporting sexual self-determination instead of banning all forms of prostitution (Hartmann, 2006, pp. 230). Banning seemed to be impossible either way, as one estimated around 200,000 prostitutes in Germany during the late 1960s (Stallberg, 1988, p. 11). These discussions carried through until 1969.⁷⁵ Delays affected the legislation especially because a realignment of the StGB was intended, which led to a series of various discussions, revisions, and further discussions (Hartmann, 2006, p. 235).

The 1970 law seemed to be a step back in the process of liberalization as the necessity of a habitual practice of prostitution was deleted from the StGB in this year and with that the state of affairs again broadened (Hartmann, 2006, p. 241). Additionally, each city now had the legal instrument to fight street prostitution, as restricted areas could be determined independent of the city's size (Hartmann, 2006, p. 241).

The late 1960s had still been characterized by a new understanding of sexuality. For the first time, sexuality was discussed in public and, accordingly, public attitudes changed. Pre-marital sex was no longer a rarity and in a sense, even somewhat accepted (Leopold et al., 1994, p. 8). But the 1970s contained very diverse attitudes towards sex. There were demands to focus more on the behavior of the customers and to allow barracking of prostitutes. These demands were rationalized with two arguments: First, that better protection against the venereal diseases could be ensured, and second, that working in supervised areas would increase the prostitutes' safety (cited from Hartmann (2006, p. 243)). The latter argument was especially supported by the very efficient social insurance system which claims nobody should be forced into prostitution. Therefore, women were assumed to have chosen this profession voluntarily (Hartmann, 2006, p. 244). The DGBG supported this demand in order to weaken the double moral still present in law and society. In contrast, associations of the Protestant Church had moral concerns and wanted to widen the prohibitions (Hartmann, 2006, p. 261). These very diverse attitudes were present between all parties and within society, but the goal to find an agreement led to controversial, but objective discussions (Hartmann, 2006, p. 264).

The government followed the public trend and in late 1973, one of the widest-reaching reforms concerning prostitution and morality (Hartmann, 2006, p. 265) finally came into effect. Before this, sexual practices, such as group sex, were forbidden if participants were married because a husband was not allowed to drag his wife into sexual activities outside of their own marriage. This prohibition was dropped. Moreover, adolescents over the age of 16 were now allowed to have

⁷⁵ Until then, prostitutes could also be sent to prison or a workhouse (Heinz-Trossen, 1993, p. 58).

sexual intercourse without the possibility of their parents being sentenced for it (Hartmann, 2006, p. 256). Concerning the rights of prostitutes, the jurisdiction first agreed that a contract between a landlord and a prostitute was valid (Leopold et al., 1994, p. 57). In a second step, tenancy agreements between the brothel owner and the landlord were no longer void (Leo, 1995, pp. 119). The legislature abandoned the invalidity as brothels gave the prostitutes an alternative to working on the streets and working, in the worst case, with a pimp (Leo, 1995, pp. 119). The operation of brothels was still prohibited (Gleß, 1999, p. 104), but was only prosecuted if actions were taken that restricted the prostitutes' sexual self-determination (Hartmann, 2006, p. 251).⁷⁶ Those who brought customers to the prostitutes, such as taxi drivers, were not included in the law (Leo, 1995, p. 193). In addition, prostitution would be an administrative offense (Hartmann, 2006, p. 259) and only punished after various violations. Prostitution was no longer forbidden, however, it was not tolerated in prohibited areas (Gleß, 1999, p. 101).⁷⁷ Various violations could still lead to a prison sentence and prostitution could not take place close to minors (Gleß, 1999, p. 102). Nevertheless, a concrete hazard for the youth had to be proven – a possible hazard was not sufficient anymore for a ban (Hartmann, 2006, p. 259). The most drastic restriction concerning brothels was that any action facilitating the prostitutes' working conditions was prohibited since it was considered to help keep women in prostitution (Gleß, 1999, pp. 104).

A prostitute who followed all restrictions given by the legislator had nothing to fear; her actions were not prohibited (Gleß, 1999, p. 107). The idea that harassment rates would increase if prostitution was generally forbidden (cited from Leo (1995, p. 64)) ensured its existence within society. However, prejudices still existed. For instance, prostitutes were also always suspected to be infected with a venereal disease. Since the *GeschlKrG* was still valid, prostitutes always had to carry a health certificate (Gleß, 1999, p. 111). This way, the authorities could still keep an eye on the otherwise permitted prostitution. Most the laws enacted in 1973 remained valid until 2002 (Hartmann, 2006, p. 241).

The aforementioned changes in the *StGB* were important for the 1970s. All legal assets were deemed worthy of protection, but not morality anymore (Ren-

⁷⁶ §184a *StGB*:

"Wer einem durch Rechtsordnung erlassenen Verbot, der Prostitution an bestimmten Orten überhaupt oder zu bestimmten Tageszeiten nachzugehen, beharrlich zuwider handelt, wird mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bestraft."

§184b *StGB*:

"Wer der Prostitution in der Nähe einer Schule oder anderen Örtlichkeiten, die zum Besuch durch Personen unter achtzehn Jahren bestimmt ist, oder in einem Haus, in dem Personen unter achtzehn Jahren wohnen, in einer Weise nachgeht, die diese Person sittlich gefährdet, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft."

⁷⁷ However, the prohibition areas often did not fulfill the necessary conditions and were invalid (Leo, 1995, p. 201).

zikowski, 2009, pp. 133). The legislator wanted to protect sexual self-determination rather than the understanding of morality for some parts of society (Renzikowski, 2009, p. 134). The described changes concerning prostitution were not so far reaching (Renzikowski, 2009, p. 134). However, the number of prosecutions continued to decline, another indication that prostitution was seen as a necessity for society (Renzikowski, 2009, p. 135). During the 1980s, administrative offenses were prosecuted less strictly – only 1,500 cases were reported and this number dropped over the next ten years to only 100 (Leopold et al., 1994, p. 73). An annual turnover between six and 10 billion DM was estimated for the commercial sex sector during the 1980s (Kaiser, 1996, p. 797).

In general, this decade was characterized by the attempt to digest newfound social liberties. Following the example of the gay rights movement, lesbianism became more public (Gammerl, 2010), which led to the splitting of the feminist movement and the formation of smaller interest groups. Additionally, equalization of men and women became more important and the first Minister for Women's Affairs was appointed in 1986. Women's rights were institutionalized and financed by government funding – a development not all (mostly autonomous) activists appreciated, which slowed down the movement in the late 1980s (Hertrampf, 2008). Sexuality was discussed in the public and *Bravo* renamed its most popular column to *Speak Out! (Sprich Dich aus!)*. In addition, the *Dr. Sommer-Team* was born.⁷⁸

In January 1980, the Green Party (Bündnis 90/Die Grünen) was founded. The roots of the party can be found in the ecology movement which had a huge platform in the 1980s in Germany – the fear of nuclear power was enormous (see, e.g., Bundeszentrale für politische Bildung (2011)) – but the women's movement was also influential for the foundation of the party (Die Grünen, 2010). Accordingly, it is not surprising that feminist views were common among the fellow party members and that Die Grünen would be the first party to draft a bill on the equalization of prostitution.⁷⁹ In 1983, Die Grünen were elected into the *Bundestag* and in 1985 the first government coalition was formed in Hesse.

In 1981, the Federal Administration Court (*Bundesverwaltungsgericht*) prohibited peep shows. The reason for the ban was, according to the *Bundesverwaltungsgericht* (1981), that the dignity of women working in the shows was hurt. This was not caused by the sole act of dancing naked, but by the disparagement of the performance. Women were reduced to being a good, which was seen as representing the commercialization of women in general. The legal operation of a peep show was not allowed in Germany. Apart from that, no innovations in the legislation or views concerning prostitution were made in the 1980s in the FRG. However, due

⁷⁸ The column itself was first published already in 1969.

⁷⁹ This is discussed in detail in Section 2.7.

to the upheavals of the 1970s and those to come during the 1990s, Germany was still engaged in a steady process of redefinition.

2.6 When Two Become One

On November 9th, 1989 the Berlin Wall fell and the process of reunification began. As previously discussed, prostitution was rare within the GDR. However, with the collapse of socialism, the supply of prostitution increased and the result was a price competition amongst women (Falck, 1998, p. 198). Drugs, which had been less concern in the GDR, entered the country and, thus, some women had to prostitute themselves to be able to pay for their addiction (Falck, 1998, p. 202). Now everybody had to compete for jobs and follow the rules of a market economy. What seems to be desirable, on the one hand, complicated the exit from prostitution on the other (Falck, 1998, p. 201).

"Occupational skills, if present, were not accepted after years of sector-abstinence. Even general proof of work experience during the past years could not be given, as prostitution was not real employment and morally stigmatized. Prostitutes had no access to retraining programs, as their profession did not qualify them for social insurance." (Falck, 1998, pp. 201, own translation)⁸⁰

Hohmann (1991), a contemporary sexologist, called for a fight against prostitution after the fall of the Berlin Wall. A new state, consisting of GDR and FRG, was born, which was, according to him, a golden opportunity to influence society. In the FRG, however, the opinion at that time was that ruling out the possibility to work as a prostitute was just another discrimination of the female population and that the market will regulate demand and supply independently (Hohmann, 1991, p. 37). In contrast, according to Hohmann (1991), almost all prostitutes in the GDR entered this profession due to a lack of social opportunities and not as an expression of their free will.⁸¹ His main claim was that people were demanding a state built on socialistic principles that could never accept prostitution and its side-effects (Hohmann, 1991, p. 37). Although he was not the only one defending

⁸⁰ "Berufliche Qualifikationen, sofern vorhanden, werden nach mehrjähriger Berufsabstinenz selten anerkannt. Selbst ein allgemeiner Nachweis über die berufliche Tätigkeit in den letzten Jahren kann nicht erbracht werden, da Prostitution nicht als Erwerbstätigkeit gilt und zudem moralisch stigmatisiert ist. Prostituierte haben keinen Zugang zu Umschulungsmaßnahmen, da sie nicht sozialversicherungspflichtig arbeiten können." (Falck, 1998, pp. 201)

⁸¹ One reason to believe this is that Korzilius (2005, p. 547) finds that the majority of the asocials could be found in the lower class of the GDR. Although this class did, at least according to the government, not even exist.

this viewpoint, the battle was lost. By 1990, the first store for erotic supply had already opened on the grounds of the former GDR (Hohmann, 1991, p. 31).

After the fall of the Berlin Wall, the legislature again promoted that every action supporting prostitution was illegal (Leopold et al., 1994, p. 57). It is interesting to note the continuing presence of double standards during the 1990s. In 1990, Die Grünen drafted a bill concerning the legal discrimination of prostitution, which they saw as a form of discrimination against women in general (Die Grünen, 1990, p. 1). The intention behind the bill was to legalize what was already in a legal gray-area (Die Grünen, 1990, p. 1).⁸² As a major innovation, Die Grünen (1990, p. 13) proposed a bill that would allow prostitutes to sue their customers if they did not pay the agreed fee, hold health insurance, sign working contracts with brothel owners, and receive all the usual employee benefits (i.e., vacation entitlement, occupational safety, social protection, etc.), in addition to being taxed as self-employed workers. The party's description of the bill explains various, often feminist,⁸³ reasons why further discrimination of prostitution was not acceptable for the party and why these innovations were needed.

On the one hand, prostitution was immoral and could, in the sense of the legal definition, not be called a profession (Leo, 1995, p. 58). Health insurance was inaccessible for prostitutes when they named their true profession (Leopold et al., 1994, p. 28). However, agents came to the brothels to sell insurance to the prostitutes and pushed them to report a wrong profession (Leopold et al., 1994, pp. 266).⁸⁴ In addition, the refusal to pay for an immoral service was legally justifiable. Thus, customers could by no means be forced to pay for a service (Leo, 1995, pp. 222). A further point of discussion involved whether or not prostitutes could be forced to deliver services (Leo, 1995, pp. 225). Not a point of discussion, however, was that immorality could not create advantages. Thus, prostitutes had to pay income tax (Leo, 1995, p. 113); the Treasury taxed prostitution as income from services which led to the highest possible tax share (Die Grünen, 1990, p. 8). Thus, not even the necessary expenditures could be deducted from the gross income (Die Grünen, 1990, p. 9). The only service the government offered them was to pay for the forced tests of venereal diseases (Leopold et al., 1994, p. 19). Except for prostitution associations, nobody ever mentioned that it might be in the prostitutes own interest to protect themselves against venereal diseases and HIV and that they actually did not play such big role when it came to transmission rates (Leopold et al., 1994, pp. 26) – in 1990, only 0.5% of all prostitutes were infected

⁸² Even before 2002, prostitution was not illegal in Germany. It was, however, highly regulated (Müller, 2008, p. 16).

⁸³ In the first draft of Die Grünen, a feminist point of view had been taken. Later, this was dropped as it seemed to be hindering to a new law (Müller, 2008, p. 18).

⁸⁴ By reporting a wrong profession, the women risked that they had to pay back all services received (Leopold et al., 1994, p. 134).

with HIV (Heinz-Trossen, 1993, p. 82). Finally, all arrangements that created a better and safer atmosphere for the women were forbidden according to §181a StGB (Gleiß, 1999, pp. 104). Better working conditions were unintentionally created for pimps since prohibited areas made it much easier for them to control women (Leo, 1995, p. 62). According to Die Grünen (1990, pp. 6), it was critical that the violation of moral principles worsened the working and living conditions for prostitutes. This was the case as prostitutes had no possibility to find protection from anybody else other than pimps. To find a way back into the legal labor market, women had to leave their pimp. This led to horrendously high payments for women of up to 20,000 DM (Die Grünen, 1990, p. 9). Keeping in mind that most women had to have at least three to four customers per day (Die Grünen, 1990, p. 9) in order to cover their fixed costs (such as rent for a room, contraceptives, cosmetics, etc.), one understands how difficult it was to save such a large amount of money. Pimping was never tolerated in Germany and the legislature went so far as to forbid anybody from living on a prostitute's income. Unfortunately, this also included the uninvolved husband or boyfriend (Leopold et al., 1994, p. 143). As a last point of the double moral standards, customers were allowed to ask for services in prohibited areas (Leo, 1995, p. 208), but prostitutes were not allowed to advertise (Leo, 1995, p. 240). Needless to say, inconspicuous prostitution was always and everywhere tolerated (Leo, 1995, p. 203). Fortunately, the *exaggerated prudish* resident should not be protected (Leo, 1995, p. 199).

Prostitution was and is an economic sector and plays a role when it comes to Gross Domestic Product (GDP). Die Grünen (1990, p. 5) state that two thirds of all men demanded prostitution and 250 million services were sold per year, which were worth 12.5 billion DM in total. For the old states,⁸⁵ Leopold et al. (1994) give a great overview of the market. In their study, they investigated different cities and talked to public health offices, aid organizations, and police officials.

It seems that the market for commercial sex was already very diverse throughout Germany in the 1990s. In Hamburg, for example, almost one third of prostitutes worked on the street, one third in apartments, and the last third in brothels (Leopold et al., 1994, p. 64). The same ratio was true for Stuttgart (Leopold et al., 1994, p. 167). In Munich, almost half of prostitutes worked on the streets, whereas in Frankfurt/Main only 250 out of 2,000 worked there (Leopold et al., 1994, pp. 140, 191). 90% of Frankfurt's prostitutes worked for a pimp (Leopold et al., 1994, p. 143). The data on earnings is, of course, very questionable. In Frankfurt/Main, women reported earnings between 1,000 DM and 10,000 DM per month (Leopold et al., 1994, p. 145). The prices per service varied, too. In Frankfurt/Oder, one had to pay around 80 DM per 15-minute service (Leopold et al., 1994, p. 214). In

⁸⁵ In alphabetical order: Baden-Wuerttemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, and Schleswig-Holstein.

Leipzig, the price rose by 20 DM for the same service and women there reported monthly earnings between 4,000 DM and 30,000 DM (Leopold et al., 1994, p. 222). As the majority of women in Dresden worked in escort services, they charged even higher prices with 75 DM to 300 DM per service (Leopold et al., 1994, p. 240).

The largest market for commercial sex could be found in Hamburg with around 10,000 active prostitutes (Leopold et al., 1994, p. 63), followed by Berlin where, for the first years after the reunification, Leopold et al. (1994, pp. 85) estimated up to 5,000 prostitutes and 500 brothels.⁸⁶ Dortmund and Frankfurt/Main were estimated to have around the same number of women selling sex. The reason for the comparably large amount might be that Frankfurt/Main is the German exhibition city and Dortmund is located right in the middle of the most populous part of Germany, the Ruhr region. Both cities stated to have around 2,000 prostitutes (Leopold et al., 1994, pp. 119, 139). The same number applied for Stuttgart, but the reason was quite different: Earning opportunities were nowhere higher in Germany than in Swabia (Leopold et al., 1994, p. 166).⁸⁷ Munich stated to have only 1,200 prostitutes but this number should be doubted, at least during the Oktoberfest weeks (Leopold et al., 1994, p. 189). The drop in numbers when looking at the new states⁸⁸ is significant (Leopold et al., 1994, p. 256). For Rostock and Dresden, 100 prostitutes were reported, and for Leipzig around 180 (Leopold et al., 1994, pp. 204, 220, 239). The first prostitution business in the East was established in caravans next to highways (Leopold et al., 1994, p. 259). Caravans can be seen as the precursors of brothels: They help to create a customer base without the high fix costs of a brothel (Leopold et al., 1994, pp. 256). All together, around 200,000 prostitutes in Germany seem to be a reliable number for the time after the fall of the Berlin Wall (Heinz-Trossen, 1993, p. 118). 200,000 people who, according to the legislature, violated their own human dignity (Leo, 1995, p. 27), something that can never be tolerated in Germany. The legislature did not question whether this position was supported by the constitution (Leo, 1995, p. 36).

With a reunified government led by the Christian Democratic Union (CDU)/Christian Social Union (CSU),⁸⁹ the abolition of the violation of moral principles was not immediately possible. However, the society had changed. Already during the 1970s, prostitute movements started in Germany and, in 1985, the first congress for prostitutes took place (von Galen, 2004, p. 6). These movements prepared the

⁸⁶ Before the reunification, there were around 3,000 prostitutes in West-Berlin (Leopold et al., 1994, p. 86).

⁸⁷ Leopold et al. (1994, p. 169) state that it might have been difficult to find any sexual service for less than 100 DM in Stuttgart in the 1990s.

⁸⁸ In alphabetical order: Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, and Thuringia.

⁸⁹ Due to the reunification, the legislative period was shortened.

ground for notable changes – in 1995, the joint conference of all ministries of women and equality requested from the government to improve the situation for the prostitutes (von Galen, 2004, p. 8). As a consequence, Die Grünen, the SPD, and the Party of Democratic Socialism (PDS) all handed in independently created bills that were rejected by the *Bundestag* due to the CDU/CSU majority in early 1998 (Müller, 2008, p. 18). In late summer 1998, Die Grünen and the SPD won the election and stated the goal to improve the situation for prostitutes in the coalition agreement (von Galen, 2004, p. 10). Two difficulties arose. First, the bills written by Die Grünen were much more far reaching than the ones published by the SPD. The negotiations to find a compromise were long and tough (von Galen, 2004, p. 10). In addition, Germany is a federally organized state. As the CDU still had the majority in the *Bundesrat*, which has to agree upon all new laws concerning legislative changes for the states, any jurisdictions belonging to the responsibility of the states could not be touched (Kavemann, 2010, p. 214).⁹⁰ A request brought in by the United Nations (UN) committee in 2000 finally started the process of legislation (Müller, 2008, p. 18).

Before the legislative procedure was finished, the jurisdiction had already changed. Since 2000, the violation of the moral principles had been questioned by the courts (Kavemann, 2010, p. 213). One year later, on October 19, 2001, the ProstG,⁹¹ which made prostitution as a whole unpunished and equalized to other professions (Hartmann, 2006, p. 270), was adopted by the *Bundestag* with the support of the SPD, Die Grünen, the Liberal Democratic Party (FDP), and most of the PDS, but not the CDU/CSU (Dodillet, 2006, p. 97).

Renzikowski (2009, p. 139, own translation) states that "all this can be expressed, sloganized as a turning away from the 'protection against prostitution'

⁹⁰ For example, police laws.

⁹¹ §1 ProstG:

"Sind sexuelle Handlungen gegen ein vorher vereinbartes Entgelt vorgenommen worden, so begründet diese Vereinbarung eine rechtswirksame Forderung. Das Gleiche gilt, wenn sich eine Person, insbesondere im Rahmen eines Beschäftigungsverhältnisses, für die Erbringung derartiger Handlungen gegen ein vorher vereinbartes Entgelt für eine bestimmte Zeitdauer bereithält."
§2 ProstG:

"Die Forderung kann nicht abgetreten und nur im eigenen Namen geltend gemacht werden. Gegen eine Forderung gemäß §1 Satz 1 kann nur die vollständige, gegen eine Forderung nach §1 Satz 2 auch die teilweise Nichterfüllung, soweit sie die vereinbarte Zeitdauer betrifft, eingewendet werden. Mit Ausnahme des Erfüllungseinwandes gemäß des §362 des Bürgerlichen Gesetzbuchs und der Einrede der Verjährung sind weitere Einwendungen und Einreden ausgeschlossen."

§3 ProstG:

"Bei Prostituierten steht das eingeschränkte Weisungsrecht im Rahmen einer abhängigen Tätigkeit der Annahme einer Beschäftigung im Sinne des Sozialversicherungsrechts nicht entgegen."

towards the 'protection within prostitution'.⁹² The law came into effect on January 1st, 2002 after almost 30 years of legislative process (Bundesministerium für Familie, 2007, p. 4).

2.7 The Act of Regulating the Legal Situation of Prostitutes

The Bundesministerium für Familie (2007, p. 4) states that the moral and ethical change of the society was decisive for the change in legislation; a liberal social model was adopted (Müller, 2008, p. 17). In general, the Bundesministerium für Familie (2007, p. 5) distinguishes between four different opinions about prostitution. First, prostitution can be seen as a violation of human dignity – a view the CDU still adopts (Müller, 2008, p. 11). Before the ProstG came into effect, the German legislature saw prostitution as a violation of morality (Müller, 2008, p. 12). In sharp contrast, the PDS saw prostitution as a profession like any other (Müller, 2008, p. 12). The fourth point of view was adopted by the legislature in the ProstG – prostitution is an autonomous decision for a risky profession (Bundesministerium für Familie, 2007, p. 6). Thus, prostitution shall neither disappear, nor shall it be revalued in Germany (Bundesministerium für Familie, 2007, p. 6).

The declared goal was to eliminate all discrimination against prostitutes (Kavemann, 2010, p. 214). A binding contract between a sex worker and her customer is only obligatory for one side: The prostitute can demand her wage, but the customer cannot demand additional services if the supplied services were not satisfactory (Kavemann, 2010, p. 215). This unequal treatment was intended by the legislature in order to ensure the sexual self-determination (Bundesministerium für Familie, 2007, p. 13).

If working in a brothel, the sex worker can negotiate a contract with the owner of the brothel. However, she must always be allowed to refuse a customer or certain services (von Galen, 2004, p. 48). Only the working time and the place of work can be determined by the brothel owner (von Galen, 2004, p. 77). The evaluation of the ProstG⁹³ showed that only 1% of the respondents actually had a working contract with the owner of the brothel (SOFFI K., 2005b, p. 268); the vast majority worked on a commission basis (72.8%) (SOFFI K., 2005b, p. 55). 60% of prostitutes were critical of working contracts (SOFFI K., 2005b, p. 55). Likewise, the brothel owners probably see even more problems with a working contract as they have little

⁹² "All das lässt sich schlagwortartig als Abkehr vom 'Schutz vor der Prostitution' hin zum 'Schutz in der Prostitution' bezeichnen." (Renzikowski, 2009, p. 139)

⁹³ The *Bundestag* gave the order to evaluate the ProstG after three years (Bundesministerium für Familie, 2007, p. 3).

influence on the work of women (Bundesministerium für Familie, 2007, p. 16). Here, the Bundesministerium für Familie (2007, p. 79) sees a need for action, especially because a higher share of legally operated brothels would lead to easier proof of exploitation (Renzikowski, 2009, p. 142). Brothel owners are often interested in working legally, they just wish, as any other businessman, to use all their possibilities (Winter, 2009, p. 224). Due to the regulations of safety at work, the brothel owner must pay for all medical examinations concerning venereal diseases (von Galen, 2004, p. 62). In reality, this does not happen too often as, in 2001, the GeschlKrG lost its application and was replaced by the Infection Protection Law (*Infektionsschutzgesetz*, IfSG). Since then, medical examinations are costless and anonymous for prostitutes (Müller, 2008, p. 25). Just like any other employer, the brothel owner has to register prostitutes for social insurance (von Galen, 2004, pp. 45). Women can now enter public health insurance stating their true profession. Although recourse claims are possible if lying about one's profession, only 7.4% of the respondents were registered as prostitute (Bundesministerium für Familie, 2007, pp. 24). One possible explanation is that the women wish to remain anonymous (Bundesministerium für Familie, 2007, p. 25). Entering a private health insurance contract is still often not possible for prostitutes, as the private companies' risk assessment is too high for prostitution (Bundesministerium für Familie, 2007, p. 25).

A special position applies for prostitutes when it comes to questions concerning employment. In contrast to other employees, prostitutes can receive unemployment benefits immediately, even if they voluntarily terminated their position (von Galen, 2004, p. 98). In addition, prostitution is the only legal profession in which the employment office is not offering vacant positions (von Galen, 2004, pp. 98). The reason is that the legislature did not intend to treat prostitution as a job like any other and so general considerations prevent job placement into prostitution (Bundesministerium für Familie, 2007, pp. 28). The Treasury now has to tax prostitutes either as employed or self-employed (von Galen, 2004, p. 174) and the sales tax must be paid by the sex workers themselves (von Galen, 2004, p. 176). Often the so-called *Stuttgarter Verfahren* is used where the women pay a flat-rate tax of 25 € per day.⁹⁴ By the end of the year, they hand in their tax declaration and then either get money back or have to pay in addition (Bundesministerium für Familie, 2007, p. 72).⁹⁵ With the *Stuttgarter Verfahren*, the Treasury makes sure to receive any payments at all as one expects that only very few women pay their taxes (SOFFI K., 2005b, p. 174). The Federal Audit Office estimates that the

⁹⁴ The amount varies between 10 € and 30 € per day. 25 € is used most often (Ernst-Pörksen, 2009, p. 247).

⁹⁵ Very few communities see the 25 € per day as a real flat-rate tax. Only in Ulm, the women pay nothing in addition. All other authorities view the amount as a tax estimation (Ernst-Pörksen, 2009, p. 247).

Treasury loses taxes of 2 billion € per year from the commercial sex sector (Bundesrechnungshof, 2003, p. 30). Often prostitutes state too little income in their tax declaration (Ernst-Pörksen, 2009, p. 241), which is mostly due to the fact that they see no possibility of paying the full amount (especially not the full amount of the Value Added Tax (VAT) (Ernst-Pörksen, 2009, p. 241)). The majority of women want to participate in the tax system as they feel more a part of society if they do. However, the fear of high additional claims for previous years from the tax office often prevents entry (Ernst-Pörksen, 2009, p. 243).⁹⁶

The ProstG does not include any regulations, it just declares that prostitution shall be unpunished in the FRG (Bundesministerium für Familie, 2007, p. 61). In general, only prostitution is tolerated by the law; pimping is still forbidden (Kavemann, 2010, p. 223). The fact that none of the legal texts regulating areas touching the market for commercial sex (such as building law, law on restaurants, etc.) have been rewritten is problematic. Accordingly, huge discrepancies arise and one often has to reference the government's legal commentaries for clarification instead of referring to the ProstG itself (Kavemann and Rabe, 2009b, p. 305). There is especially a need for action from the building authorities as, for example, rest areas are not yet dictated by the state and there are no minimum standards for brothels (Müller, 2008, pp. 25). This often leads to very poor working conditions for women (Winter, 2009, p. 226). The possibility to change a work place is only given in liberal cities as there are often more brothels and, accordingly, more working alternatives for the women (Winter, 2009, p. 227). Additionally, brothels often need to be built in industrial areas as authorities still expect disturbances for other residents (Müller, 2008, p. 29). Forbidden areas are still possible for prostitution. However, the legislature made clear that the opinion of society concerning prostitution has changed. Thus, the restrictions should not be too harsh (Bundesministerium für Familie, 2007, p. 74). The same is true for advertisements: Only those violating concrete legal rights should be prohibited (Bundesministerium für Familie, 2007, p. 76). In addition, regulations concerning migration to Germany for prostitutes were also untouched (Bundesministerium für Familie, 2007, p. 7), although estimations claim that approximately 50% of prostitutes in Germany are foreigners (Die Grünen, 2004, pp. 21). Until all these obscurities and uncertainties are ruled out, the Bundesministerium für Familie (2007, pp. 79) admits potential for improvement.

Three years after the ProstG came into effect, Kavemann and Rabe (2009a) published a compilation describing the market for commercial sex from various points of view, including abstracts from the aforementioned evaluation by SOFFI

⁹⁶ The fear is often unfounded as the prosecution of all tax evaders in the commercial sex sector would be far too expensive for the tax office (Ernst-Pörksen, 2009, p. 245).

K. (2005b). SOFFI K. (2005b, pp. 191) describes that 56% of respondents⁹⁷ are full-time prostitutes. The time they had spent in prostitution varied between one and 40 years, with earning capacities between 500 € and 5,000 € per month and within that 3% top earners (SOFFI K., 2005b, p. 193). The majority of the women earn between 1,500 € and 2,000 € per month (SOFFI K., 2005b, p. 193). In general, the self-image of the women is characterized by feeling as an underdog within society (see, e.g., SOFFI K. (2005b, pp. 200)) and due to that they hope for changes in society's attitude towards prostitution after the ProstG (SOFFI K., 2005b, pp. 200). However, one quarter is planning to be truthful about their profession in the future (SOFFI K., 2005b, p. 196). One of the major problems with the ProstG is that women who already had the weakest position in society (e.g., those without residence permit) face even bigger problems now (Kavemann and Rabe, 2009b, p. 307).

Besides the official study carried out by the Bundesministerium für Familie (2007), some other works were published during the last years on questions concerning prostitution in Germany. The study by Brückner and Oppenheimer (2009) focuses mainly on violence in prostitution. The number of respondents is relatively small (N=72), but this is a general problem when analyzing a shadow market. Brückner and Oppenheimer (2009, p. 155) shockingly find that 78% of the respondents experienced violence, with 68% of those experiencing life-threatening violence and 18% experiencing rape.⁹⁸ Not surprising is that Brückner and Oppenheimer (2009, p. 157) find that women working in prostitution experience violence more often than women working in a different profession. Additionally, women who were forced into prostitution are more often victims of violence than women who are voluntarily working in the commercial sex sector (Brückner and Oppenheimer, 2009, p. 156). Finally, pimps are responsible for violence in 31% of the cases (Brückner and Oppenheimer, 2009, p. 156). Here, too, a better acceptance of prostitution would lead to better possibilities of helping the victims (Brückner and Oppenheimer, 2009, p. 165).

Declining rates of violence involving prostitution can be seen in the pilot project on *Geestmünder Straße* in Cologne.⁹⁹ The city of Cologne offered a new area for prostitution outside of the prohibited areas. *Geestmünder Straße* was picked in 2001 as a consensus between authorities and prostitutes (Rossenbach et al., 2009,

⁹⁷ There were 305 responses from questionnaires and 18 from interviews (SOFFI K., 2005b, p. 191).

⁹⁸ Steffan and Kersch (2004, p. 48) report that on *Geestmünder Straße*, 55% claim that they had experienced rape.

⁹⁹ As the area is so limited, Steffan and Kersch (2004) are able to describe the women in great detail: They are on average 29.5 years old (Steffan and Kersch, 2004, p. 40) and 38.6% entered the profession when they were between 15 and 18 years old (Steffan and Kersch, 2004, p. 47). 23% entered the profession voluntarily (Steffan and Kersch, 2004, p. 47).

p. 270); the area is used very frequently and there is almost no street prostitution in downtown Cologne anymore. Neither drug dealers or pimps are allowed to enter the area and the police frequently check on the women and their safety (Rossenbach et al., 2009, p. 272). Consequently, the women now have a more positive image of the police, violence is rapidly declining, and the share of reported attacks has risen (before women never talked to the police) (Rossenbach et al., 2009, pp. 276). In addition, the number of voluntary contacts with the health authorities and social workers increased (Rossenbach et al., 2009, pp. 277, 281). Although there is more competitive pressure on such a limited area, the working conditions have improved to a large extent (Rossenbach et al., 2009, pp. 278, 279). Perhaps surprising is that the women almost immediately followed the police to the new work location even though most women there consume drugs and *Geestmünder Straße* is far away from any supply (Rossenbach et al., 2009, p. 276). The customers followed the women to the new area.

Since January 1st, 2002, Germany has created a liberal system concerning prostitution (see, e.g., Müller (2008, p. 17)). While neither indoor nor outdoor prostitution is forbidden, the exploitation of prostitutes is strictly prohibited (Müller, 2008, p. 10). Legally, the classification of prostitution as a violation of moral rights is no longer valid, but in the perception of the people it is relevant. The ProstG was a huge step towards the equalization of prostitution (Kavemann, 2009b, pp. 100), but many more steps need to follow to achieve social acceptance of this profession. As a first step, the political goal to achieve that should be expressed (Kavemann and Rabe, 2009b, p. 309).

2.8 Summary of Chapter 2

The period of time we have been looking at in this chapter captures more than 160 years. It is not surprising that society and legislation have changed drastically during such a long time period; this can be observed in many different fields. However, perceptions regarding sexuality and prostitution might be one of the areas that experienced the most drastic changes.

Around the turn of the 19th century, the fear of venereal diseases was decisive when it came to the laws concerning prostitution. Prostitution was viewed as a major source of infection (see, e.g., Blaschko and Fischer (1913, p. 509)) and, since a reliable cure was not yet invented, the regimentation was strict, even though morals were often loose, especially within the cities. Prostitution was visible everywhere and its presence even increased after brothels were closed down (Röhrmann, 1846, p. 48). With the *Lex Heinze*, prostitution became a center of focus and pimping found its way into the German penal code from which it was never deleted. The

supply of commercial sex had increased during the preceding years (Lacroix and Helbing, 1995, p. 115). Although a removal of taboos would have been necessary to overcome, the most important problem of that time – venereal diseases (Sauerteig, 1999, p. 151) – connected sexuality to fear (Sauerteig, 1999, pp. 225). The Weimar Republic brought the GeschlKrG, which remained valid until 2001. Prostitution was not criminalized, but women had to be able to prove their health – an obligation that ensured the monitoring of the industry (Gleß, 1999, p. 80). The seizure of power of the Nazis in 1933 destroyed any further reforms, and sexuality as well as prostitution, in particular, were exploited (Timm, 2002, p. 246). What served as a resource for strengthening the Nazi armed forces (Timm, 2002, p. 252), later served as a resource to obtain information for the *Stasi* (Falck, 1998, p. 147). The party and society of the GDR forwarded emancipation – in contrast to the FRG. There, women went back into their traditional role after society overcame the worst consequences of the war (Tröger, 1986, p. 115). But the regimentation of prostitution was eliminated more and more in West Germany (Gleß, 1999, p. 101) and it cannot be a surprise that the bill to equalize prostitution as a whole was first brought up by Die Grünen in 1990. After years of discussion and legislative process, the ProtsG came into effect in 2002.

The legislature's intention was not to treat prostitution like every other profession (Bundesministerium für Familie, 2007, p. 6); however, all the rights that other employees enjoy are also valid for prostitutes. This started the process of equalization. Many problems and injustices are still present and up to this point, the strive toward equalization has been a very long journey.



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