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# Impact of Prostitution Policies in Receiving Countries on Trafficking in Human Beings for the Purpose of Sexual Exploitation at the Examples of Germany and Sweden

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## 1. Introduction

One of the most fiercely fought over debates in feminism is that of sex. Sex in form of pornography, prostitution and everything in between. While the phenomena of mass pornography entered the debate more recently, that of prostitution did so a lot earlier. In fact the debate about prostitution is one of the oldest and one of the most dividing ones in feminism. While the one party considers prostitution as an accompanying evil of patriarchy and poverty - always being forced upon women and a form of violence against them - the other one acknowledges the existence of voluntary prostitution and assumes women have a right to consciously choose prostitution as a way to make money. The one party consequently wants to erase prostitution in order to protect women while the other wants to legitimate „sex work“ as a profession like any other for the very same reason.

A phenomena that is in parts connected to prostitution is that of human trafficking. Trafficking in persons occurs for a variety of purposes but always with the same result. Be it cheap labour, forced begging, prostitution - the trafficked person will always be exploited in one way or another.

Trafficking for the purpose of sexual exploitation, however, makes up the biggest part of this reasons and therefore links the problem of human trafficking to that of prostitution. Although the frames have changed several times in which this phenomena is seen and in which it was fought, feminists have always been united in the fight against trafficking in human beings. As activists wanted to fight human trafficking for the purpose of sexual exploitation but were divided in their opinion of prostitution the obvious solution was to keep the issue of prostitution out of the debate about fighting trafficking.

In current research it seems to be the dominant paradigm to view prostitution and human trafficking for the purpose of sexual exploitation as two separate social phenomena to be handled individually. Although it is acknowledged that human trafficking has to be considered when dealing with prostitution insofar as a varying amount of prostitutes are in fact victims of trafficking, the connection in the other way (the influence of prostitution laws on trafficking) has only marginally been tackled - probably not least in order to avoid the highly emotional and morally charged debate about prostitution when dealing with human trafficking. In my paper I want to examine if this connection can be made, at the examples of two EU countries that are exemplary for the two above mentioned approaches to prostitution - Sweden representing the abolitionist approach and Germany representing the liberal legalising approach. Both countries share the prohibition of trafficking in human beings for the purpose of sexual exploitation. After an introduction into the theoretical approaches behind prostitution and a detailed description of the legal situation in the United Nations, the European Union, Germany and Sweden, I will examine statistical data about trafficking in human beings in both countries and try to find connections between the legislative changes of

both countries and the case numbers of human trafficking. A final conclusion will complete the assessment.

## 2. Theory

This section will provide the methodological and theoretical background to the paper. After clarifying the methodological approach and ruling out other variables, I will give an overview over the theoretical development of approaches towards prostitution and the current research situation.

### 2.1 Methodological Approach

This paper will be a comparative research study, looking at a difference between two social systems (the prostitution policies of the two states Sweden and Germany) and comparing it to another variable present in both systems (human trafficking). For this I will use a secondary analysis of quantitative data (provided by the governments of the two states) as I do not have sufficient resources to establish the required data on my own. The data concerning Sweden is issued by the Swedish National Council for Crime Prevention, a government body that is i.a. responsible for producing Sweden's official crime statistics. The data concerning Germany is issued by the corresponding German government body, the *Bundeskriminalamt*.

The extent of trafficking into a country is influenced by a variety of factors, not least its geographic situation. As shorter transport ways decrease the amount traffickers have to spend on each trafficked person (and therefore increase their revenues) countries in advantageous geographic positions are more likely to be the target of traffickers than countries where transportation costs are higher. In reality this means that Germany with its geographic position at the heart of Western Europe is from a transportation cost perspective more easily accessible than for example Sweden in Northern Europe.<sup>1</sup> As I do not intend to examine the absolute amount of trafficking into Sweden and Germany, but only the figures relative to each other considering the introduction of the new prostitution laws, the level of the absolute figures is not relevant to my analysis. I can therefore neglect factors that influence the absolute amount of trafficking into a country as I am only interested in the relative level focusing on the introduction of the new legislation on prostitution. In order to also rule out other factors that could influence the level of trafficking, possible temporary factors that do not constitute the background to the absolute amount of trafficking (like for example

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<sup>1</sup> Ball et al. (2008)

geography) but that only occur temporarily approximately during the implementation of the new prostitution laws have to be examined. Possible temporary factors could be a Europe-wide decrease in trafficking due to a variety of reasons, a simultaneous modification of legislation concerning specifically human trafficking or other legislation that affects trafficking in one way or another, or political factors like a war or armed conflict. The first and third factors can be ruled out immediately as there was no armed conflict or war in 1999 that affected either Sweden or Germany, nor the Central and Eastern European Countries (as the main supply countries), and no Europe-wide decrease in trafficking. In Sweden the legislation on human trafficking was amended in 2002, three years after the new prostitution laws came into force, while in Germany four years after the new prostitution laws the laws on human trafficking were amended. A simultaneous change of both laws did not occur. Therefore I assume that the change in prostitution laws can be examined as a single variable that might influence human trafficking for the purpose of sexual exploitation.

## 2.2 From Regulation to Abolitionism and Back

One cannot talk about prostitution without mentioning the two prime approaches that have developed for handling the phenomenon. At the beginning of the 19th century, during Napoleonic times, the regulatory model was introduced throughout Western Europe. Prostitution was in principal allowed but strictly regulated in order to protect „innocent women“ and families.<sup>2</sup> It was seen as a „necessary evil“ - as its existence was unavoidable the only possibility to protect „normal“ society was to keep prostitutes operating under state control in a state system of licensed brothels. Prostitutes working there had to submit to control mechanisms, like regular medical examinations and restrictions in movement. In the course of the 19th century and with the introduction of a new „science of sexuality“ prostitutes were seen as sexually deviant and as spreaders of sexually transmitted diseases - accordingly the focus of who needed protection changed from „innocent women“ and families to clients, especially men in the military. In this situation of alleged necessary prostitution and negative view on prostitutes a counter-movement developed - the abolitionist movement. This started as a campaign carried by Swiss and English protestants demanding the repeal of the British 1864 Contagious Diseases Act which forced prostitutes to undergo regular medical check-ups (especially pelvic examinations) and which was seen as immoral and unconstitutional. This campaign was joined by feminists, middle-class reformers and working men for a variety of reasons. Feminists under the leadership of Josephine Butler (1828-1906) criticised the fact that the Act saw prostitutes as the single transmitters of venereal diseases and did not

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<sup>2</sup> Locher (2007)

include the clients of prostitutes as well. In their view this was an expression of double morality. They introduced into the discourse the novel view of prostitutes as victims who needed to be rescued and rehabilitated rather than punished. Men on the other hand were made responsible for the problem of prostitution because of their unhampered sexual lust.<sup>3</sup>

At this point it has to be mentioned that abolitionist feminists connected the fight against prostitution with the fight against trade in human beings, as this was seen as an accompanying phenomenon. Their strategy was two-fold: On the one hand they opposed the official tolerance of prostitution and on the other hand they condemned the trafficking in women and their slavery in brothels - the anti-trafficking norm had a directly link to the anti-prostitution norm.<sup>4</sup> At the beginning of the 20th century prostitution in Western Europe increasingly became prohibited, albeit to a different extent in individual states. Abolitionism remained the dominant frame in most countries until the end of the 20th century, when more liberal ideas were introduced in many countries of Western Europe.

The liberal approach claims that women have a right to prostitute themselves and sees prostitution as a legitimate work. A denial of the woman's right to prostitute herself equals a violation of her human rights.<sup>5</sup> Instead of seeing the prostitute as a victim of structural violence and prostitution as a reinforcement of male dominance and female subordination like the abolitionist approach, it sees the prostitute as a sovereign and independent human being able to decide freely whether to work in the sex industry or not and prostitution as a legitimate profession. The liberal approach does not deny the fact that there are women being exploited in the business but calls for regulation and legitimation of prostitution in order to fight criminal acts. It blames the approach of prohibiting prostitution for actually increasing criminality and pushing the sex industry underground where it is more difficult to control it. Mirroring the two different paradigms, each approach uses different language for the issue. While abolitionists keep the terms *prostitute* and *prostitution*, liberals demand a renaming and speak of *sex worker* and *sex work*. Additionally while the abolitionist discourse frequently mentions the prostitute is *selling herself* (or her body), liberals speak about the prostitute as *providing sexual services*. So the language each party uses already frames the issue in a different way. It is therefore difficult to talk about the topic and at the same time remain neutral, as already the way how the issue is described reveals a more abolitionist or a more liberal opinion. In

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<sup>3</sup> Locher (2007)

<sup>4</sup>Locher (2007)

<sup>5</sup> Locher (2007)

this paper I decided to keep the terms *prostitute* and *prostitution* as it is the older terminology and was used during abolitionist times as well as earlier times of regulation and might therefore be more neutral than the new terminology explicitly introduced into the discourse by one party of activists.

Considering trafficking in human beings there are no conflicting opinions of whether or not to fight it. Human trafficking is handled as a crime by abolitionists and liberals alike. The framework in which trafficking is and was fought, however, changed over the years. At the end of the 19th century the dominant discourse was that of „white slave trade“, reflecting the dominant class and racial assumptions.<sup>6</sup> Although trafficking started to be regarded as an international criminal activity, only white women and girls were recognised as victims. At the beginning of the 20th century and especially after the two World Wars at level of the United Nations trafficking was re-framed to be an issue of threatening the dignity and worth of the human person. The term „white slave trade“ was abolished due to its racist and too narrow approach concerning victims. On UN level this dominant frame only changed in 1993, when with the UN World Conference on Human Rights in Vienna the slogan „Women’s Rights are Human Rights“ entered the debate and therefore paved the way for putting trafficking in human beings into a rights-frame, hence seeing it as a violation of human rights of (mainly) women. In 1995 on the Fourth World Conference on Women in Beijing the frame was further adjusted to seeing trafficking as another form of violence against women (and therefore as a violation of their human rights).<sup>7</sup> On EU level, however, since the problem of trafficking increased drastically in the 1970’s and 1980’s the dominant framework remained that of illegal immigration until after the conference in Beijing, and only started to change in 1996 when the Commission for the first time issued a Communication on trafficking in women. The difference between handling trafficking in a human rights framework and an illegal immigration framework lies in the approach towards the subjects of trafficking. In a human rights framework they are seen as victims of a crime that have to be protected, while in an illegal immigration framework they are being criminalised together with the traffickers as they are breaking a country’s laws by entering it illegitimately. While in the latter subjects of trafficking have no right to stay in the foreign country, in the former they might be protected as victims of a crime and it might even be possible for them to be allowed to stay. Today, the dominant framework both on UN and EU level is that of human rights and violence against women.

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<sup>6</sup> Locher (2007)

<sup>7</sup> Locher (2007)

### 2.3 Current Research Situation

Current researchers mainly handle the two phenomena human trafficking for the purpose of sexual exploitation and prostitution individually. Although it is acknowledged that human trafficking has to be considered when dealing with prostitution insofar as a varying amount of prostitutes are in fact victims of trafficking, the connection in the other way (the influence of prostitution laws on trafficking) has only marginally been tackled. Concerning human trafficking for the purpose of sexual exploitation research mainly focuses on countries of origin, especially on structural explanations why from certain countries more women are trafficked than from others. Especially research on Central and East European countries is extensive (not least because they make up the main supply countries since the break-down of the Soviet Union in 1990). Worth mentioning here are the study of Alexandra Geisler „Gehandelte Frauen - Menschenhandel zum Zweck der Prostitution mit Frauen aus Osteuropa“ (Geisler 2005) and Chris Corrin's „Transitional Road For Traffic: Analysing Trafficking in Women from and Through Central and Eastern Europe“ (Corrin 2005), as well as Jo Goodey's „Sex Trafficking in Women from Central and Eastern European Countries: Promoting a ‚Victim-Centred‘ and ‚Women-Centred‘ Approach to Criminal Justice Intervention“ (Goodey 2004). Another research-block is concerned with the policy-side of human trafficking, that is how policies on human trafficking have evolved internationally and regionally. Concerning the regional level, Birgit Locher has studied the evolution of policies on human trafficking in the EU in detail in her study „Trafficking in Women in the European Union - Norms, Advocacy Networks and Policy-Change“ (Locher, 2007). The so far only study that focuses on the demand side of human trafficking for the purpose of sexual exploitation (i.e. clients of trafficked prostitutes) comes from an Italian team of researchers, namely Andrea Di Nicola, Andrea Cauduro, Marco Lombardi and Paolo Ruspini, who in their study „Prostitution and Human Trafficking - Focus on Clients“ (2008) try to profile the clients of trafficked prostitutes.

### 3. The International Context: United Nations and European Union

Of course, in the globalised world of today, countries do not completely stand alone - a bit more so in the field of domestic politics but much less in the field of international criminality. International organisations like the United Nations and regional organisations like the European Union do shape national policies actively (through open agreements) and passively (for example through the pressure of gaining or keeping power in an international context or a „if we agree to this point others will agree to that point“-mentality). Therefore in order to get a thorough picture of German and Swedish legislation on prostitution and human trafficking one has to keep in mind the

international context of UN and EU. This will integrate Swedish and German legislation into the broader picture and help understand the developments at the national level.

The United Nations does not have the power to enforce the agreements and conventions that are set at UN level. If a country refrains from ratifying a convention, then nothing can make them do so. Even so, conventions are agreed on at UN level and are an accepted (if not *the* main) source of international law.<sup>8</sup> Until the end of the 20th century one UN convention agreed on in 1949 constituted the main provision for international assessment of human trafficking - the „Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others“.<sup>9</sup> Its preamble says

*„Prostitution and the accompanying evil of traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person.“<sup>10</sup>*

The convention obviously does not distinguish morally between the two phenomena prostitution and human trafficking but puts it both on the same level of inhumane activities. This is why it earned much critique from the international community and why until today less than half of the UN member states (73 out of 192) have ratified it. Interestingly neither Sweden nor Germany did ratify the convention. The problem was not the condemnation of human trafficking but to agree on a singular approach to prostitution as the member states displayed all kinds of different approaches from total prohibition to (near-)total liberation. The link of the anti-trafficking norm to an anti-prostitution norm as early feminists had done (as I said above), was on international level rather obstructive to the fight against trafficking.

In December 2000 the UN „Convention on Transnational Organised Crime“ was adopted, which included the „Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children“. This protocol included the first international definition of human trafficking that included trafficking in women for sexual exploitation. Its focus lay on the element of exploitation in human trafficking rather than the movement across borders. It also refrained from including a certain normative approach to prostitution into the text. In order to combine forces for the fight against trafficking in human beings the seemingly unsolvable debate about the „right“ approach to prostitution was excluded.<sup>11</sup> As the definition goes:

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<sup>8</sup> Woyke (2008)

<sup>9</sup> www.un.org (last visited 10.10.09)

<sup>10</sup> www.un.org (last visited 10.10.09)

<sup>11</sup> Locher (2007)

*„Trafficking in persons‘ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.“<sup>12</sup>*

It was also clearly stated that the protocol’s purpose should be among other things the protection of victims „with full respect for their human rights“<sup>13</sup>, introducing a victim-centred approach into the discourse. The convention also clarified the difference between trafficking in and smuggling of human beings.

*„Smuggling in migrants‘ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.“*

While in the first definition the focus lay on the exploitation of human beings, in the second definition the focus lies on illegal crossing of borders and illegal entry into a state. The main difference between trafficking and smuggling is that trafficking involves the purpose of exploitation - theoretically the criminal activity does not end after the illegal immigration but continues in the exploitation of the human being in the foreign country. Currently 117 out of 133 member states have ratified the protocol (147 out of 150 member states have ratified the convention to which the protocol belongs).<sup>14</sup> Apart from the EU’s individual member states, a member of the European Commission also signed the protocol on behalf of the European Union as a whole.

In the European Union itself collective action on the subject came rather late. Although the European Parliament had passed several resolutions before 1996, its inferior position in the power balance of the European institutions meant that actual change could only be made when the Commission became involved. It did so in 1996 in the spirit of the two above mentioned UN world

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<sup>12</sup> www.unodc.org (last visited 10.10.09)

<sup>13</sup> www.unodc.org (last visited 10.10.09)

<sup>14</sup> www.unodc.org (last visited 10.10.09)

conferences when it issued its first „Communication on Trafficking in Women and the Sexual Abuse of Children“. Consequently, in 1996 and 1997, two initiatives dedicated to the fight against trafficking were created - the STOP programme in 1996, whose aim was the enhancement of law-enforcement bodies of the EU member states through for example trainings and exchange programmes, and the DAPHNE Initiative in 1997 which basically was a fund to support projects that addressed the immediate consequences of trafficking in human beings (in the EU).<sup>15</sup> While the STOP programme was initially set to run over a period of four years until 2000 and was then extended until 2002, the DAPHNE programme currently still exists as DAPHNE III until 2013. At the time of these initiatives the only legal basis on which action against violence against women could be based was Article 119 of the Maastricht Treaty on gender equality. This changed with the adaption of the Treaty of Amsterdam (which came into force in 1999), where explicit reference was made to trafficking in the broader frame of the creation of an „area of freedom, security and justice“. Although trafficking in persons was only mentioned as one of a series of crimes to be combated by the EU (next to terrorism, offences against children, illicit drug&arms trafficking, corruption and fraud), the new treaty nonetheless created a proper legal base for further measures against it. In order to be better prepared to fight the crimes mentioned, the treaty demands

*„(...) closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), (...) closer cooperation between judicial and other competent authorities of the Member States [and] approximation, where necessary, of rules on criminal matters in the Member States (...)“<sup>16</sup>*

The treaty also lays down a catalogue of how common action in the field of police cooperation should look like. In general the Treaty of Amsterdam made some important changes concerning the third pillar of the EU, the intergovernmentally organised policy field of Justice and Home Affairs (now Police and Judicial Cooperation in Criminal Matters). The treaty transferred the areas of illegal immigration, asylum, visas and judicial cooperation to the first pillar (European Community), which is organised supranational and gives most competencies to the EU. The third pillar was then renamed Police and Judicial Cooperation in Criminal Matters. In this pillar, as mentioned above, the Member States transferred very little sovereignty to EU level. The Treaty of Amsterdam nonetheless strengthened the position of the Union by giving the EU a new tool at hand - that of framework decisions. The aim of these framework decisions is the harmonisation of

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<sup>15</sup> Locher (2007)

<sup>16</sup> Treaty of Amsterdam, via [www.europa.eu](http://www.europa.eu) (last visited 10.10.09)

legislation of the Member States. They are binding as to the result to be achieved, but leave the methods of implementation to the member states.<sup>17</sup> In 2002, the Commission proposed a framework decision focusing on combating trafficking in persons with the aim to finally find a Europe-wide approach to trafficking, which was then issued by the Council of the European Union. The framework decision explicitly mentions trafficking for the purpose of sexual exploitation and gives a definition of trafficking in persons closely related to the definition of the United Nations mentioned above. The aim of harmonisation of legislation is clearly seen in Article 3 of the framework decision:

Article 3.1:

*„Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.“<sup>18</sup>*

The text also mentions the protection of and assistance to victims of human trafficking and states that the prosecution of offences should not be dependent on the testimony of the victims of the offence. It also defines children as particular vulnerable victims and asks for the implementation of measures that provide the family of the child victim with appropriate assistance.

In 2004 the Council issued a Directive concerning resident permits issued to third-country nationals who are victims of trafficking in persons and willing to cooperate with the authorities. This was a huge step forward as it goes far beyond the simple definition of the crime. It attempts to harmonise the Member State's approaches to dealing with the victims of the crime. Although the Directive does not explicitly sets time scopes it does provide for a „reflection period“ of the victim in which it should recover and be able to make an informed decision as to whether to cooperate with the authorities or not. During this period the victim should be granted a minimum standard of living and be save from being deported.

The Treaty of Lisbon, which is currently still in the ratification process, will abolish the pillar structure. Instead, competencies of the European Union will be clearly divided in areas of exclusive competence, shared competence and supporting competence, each with clearly stated procedures. The fight against human trafficking as part of the creation of the „area of freedom, security and justice“ falls into the second category, that of shared competences. The Lisbon Treaty also includes

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<sup>17</sup> Chalmers, Tomkins (2007)

<sup>18</sup> <http://eur-lex.europa.eu> , 2002/629/JHA (last visited 10.10.09)

the Charter of Fundamental Rights, which in Article 5 prohibits explicitly the trafficking in human beings.

#### 4. The Legal Situation in Sweden and Germany

##### 4.1 Germany

Germany, like many other Western European countries, used a regulatory approach to prostitution until the beginning of the 20th century. Prostitutes had to register and to submit to regular health checks. During the Nazi regime prostitutes were seen as asocial and sent to concentration camps, but still in the second half of World War II brothels were erected in concentration camps in order to increase productivity of forced labourers.<sup>19</sup> After the end of the war in the Federal Republic of Germany prostitution was not explicitly prohibited but seen as an offence against good moral order. Contracts prostitutes made with their customers were null and void (which consequently led to the fact that prostitutes of course could not sue a customer unwilling to pay). The „furtherance of prostitution“ (i.e. pimping, running a brothel etc.), however, was explicitly prohibited and as such a criminal offence. Advertisement of prostitution was also prohibited. Here, not only the subjects actually advertising (prostitutes or brothels) but also the person responsible for the advertising medium was made liable.<sup>20</sup>

On January 1st, 2002, the new Prostitution Act came into force. This basically legalised prostitution by removing the label of being „against good moral order“. In Article 1 of the new Act it says that if sexual acts are carried out for a fee priorly agreed on, this agreement is legally effective.

Consequently the prostitute can sue the customer for payment of sexual acts already carried out. Article 1.2 specifies that only the prostitute has the right to sue, in order to safe her from forced delegation of the claim to third parties (i.e. pimps).<sup>21</sup> In Article 1.3 it is made clear that the employer has only limited decisional authority over the employee, which basically aims at securing the right to sexual self-determination of the prostitute, i.e. the right to reject certain clients and certain sexual practises if necessary. It also makes clear that this limited decisional authority does not have any consequences on the legality of the employment. Article 2 specifies the limits to legalisation. Although pimping and running a brothel is not prohibited any longer, keeping a prostitute in economic or personal dependency is. This is punished with imprisonment of up to three years or a fine. Also prohibited is the support of prostitution of minors.

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<sup>19</sup> <http://www.reuters.com/article/lifestyleMolt/idUSL0144799320070710> (last visited 10.10.09)

<sup>20</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

<sup>21</sup> <http://www.hamburg.de/contentblob/117008/data/prostitutionsgesetz.pdf> (last visited 10.10.09)

The Act according to the German government is aimed at improving the working conditions and security of prostitutes.<sup>22</sup> According to the government a prostitute is threatened by numerous factors. Working independently on the street, threats stem from clients, competing prostitutes or third parties who make use of the remoteness of the „workplace“ and half-legality of the prostitutes doings. This situation makes prostitutes turn to pimps and brothel-owners for safety, which again leads to additional threats of exploitation. From the altered legislation and the legalised framework of prostitution the government expected a positive influence on this situation, as prostitutes could then rely on the police for safety and no longer needed to turn to non-state actors to protect themselves.<sup>23</sup> The government also hoped to reduce prostitution-related criminality through a kind of market-mechanism: If the costs of avoiding prosecution were too high compared to the revenues in legal prostitution business, then actors would turn to the legal sector and therefore criminality would be reduced.<sup>24</sup> (What is not included in this equation is the revenues of illegal prostitution, i.e. exploitation of prostitutes.) A third factor of the considerations was that the resources previously used for the prosecution of „minor“ furtherance of prostitution could now be used for prosecution of serious criminal offences, like human trafficking.

Actually, the fact that prostitution is made a legal employment - not against „good moral order“ anymore - not only gives the prostitute the legal possibility to sue customers unwilling to pay and therefore reduces the dependency of prostitutes on pimps or other male superiors for making clients pay. It also gives prostitute the right to become part of social security systems. Working in a legal business she can enter compulsory health insurance and pension insurance. Statistics of social insurance agencies, however, have shown that after the introduction of the Prostitution Act the number of applications of prostitutes into the systems tended towards zero.<sup>25</sup> As with everything in this area this statement has to be handled with care, as in a survey already more than 80% of questioned prostitutes were insured, either through their main employment (prostituting themselves as a side job) or because they are registered as unemployed (registered unemployed persons in Germany already are insured).<sup>26</sup>

Apart from legalising prostitution the new Act also secures the right to sexual self-determination of prostitutes and explicitly prohibits exploitation of prostitutes, which further aims at improving working conditions for prostitutes. From a theoretical point of view, the Act sees the phenomenon

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<sup>22</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

<sup>23</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

<sup>24</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

<sup>25</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

<sup>26</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

of prostitution as a given and unalterable social reality which needs to be regulated by the state in order to improve the situation of prostitutes. The approach in some way resembles that of the 19th century as it sees prostitution as unavoidable and therefore tries to put it under state control, but differs in the reasons *why* it needs to be controlled. While in the past prostitutes were seen as deviants of which society needed to be protected, today prostitutes are protected by the state in order for them to freely work in the business which they allegedly (and legally) chose freely.

In Germany the criminal offence of trafficking in human beings for the purpose of sexual exploitation was introduced into the body of legislation in 1998. Article 180b of the Criminal Code explicitly defined and prohibited sexual exploitation:

*„Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine. Whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person’s stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person, shall be similarly punished.“*

An offence fell under the definition of „serious“ trafficking, implying higher penalties, when the above mentioned influence on another person included force, threat of appreciable harm or trickery, or when the perpetrator exerted trafficking professionally.

In 2005 the legislation on trafficking was altered in order to react appropriately to the new UN Protocol on Trafficking in Human Beings and to the framework decision of the EU of 2002 that were both mentioned above. The punishment for trafficking was raised to a sentence between six months and ten years, while the sentence for serious cases remains between one and ten years. The definition of serious trafficking was extended to include child victims (which before was part of the paragraph about „regular“ trafficking in human beings) and serious physical abuse of the victim. Also newly included into the Criminal Code was the furtherance of trafficking in human beings (sentenced with imprisonment from three months to five years, or in serious cases from six months to ten years), and trafficking in human beings for the purpose of labour exploitation.

#### 4.2 Sweden

In Sweden the regulatory approach to prostitution was abolished in 1918. Prostitution then was legalised but in the middle of the century a support system started to develop with the aim of

helping prostitutes finding a way out of the business. Measures included permanent government funding of municipal prostitute projects, counselling and retraining possibilities.<sup>27</sup> Although during a phase of legalised prostitution, these measures already indicate the abolitionist view of prostitution being an undesired phenomenon and prostitutes as victims that have to be protected and supported. In 1999, when the new legislation on prostitution came into force, the Swedish government explained their standpoint:

*„Prostitution is not a desirable social phenomenon. The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives.“<sup>28</sup>*

Following this notion the Swedish government decided to revise their legislation on prostitution and to alter it appropriately. The basis for the new law is the new definition of prostitution as one form of male violence against women and children, as stated in the legislation on gross violation of a woman's integrity.<sup>29</sup> Consequently, the Swedish Penal Code prohibits the purchase of sexual services:

*„A person who [...] obtains a casual sexual relation in exchange for payment shall be sentenced for the purchase of a sexual service to a fine or imprisonment for at most six months.“<sup>30</sup>*

In 2005, the legislation was extended to also include payments that have been promised or made by somebody else. The approach to fight prostitution by criminalising the demand side is an expression of the abolitionist worldview of the lawmakers. Supporting prostitution is also prohibited.

According to the Swedish Penal Code „anyone who promotes, or encourages or improperly exploits for commercial purposes casual sexual relations entered into by another person in exchange for payment is guilty of a criminal offence and shall be sentenced to imprisonment for at most four years for the crime of procuring.“<sup>31</sup> Therefore operating a brothel as well as pimping or simply helping a buyer find a prostitute, next to other actions promoting prostitution, is a crime in Sweden.

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<sup>27</sup> Kilvington, Day, Ward (2001)

<sup>28</sup> Kilvington, Day, Ward (2001)

<sup>29</sup> Swedish Ministry of Industry, Employment and Communications Fact Sheet (2005)

<sup>30</sup> Swedish Ministry of Industry, Employment and Communications Fact Sheet (2005)

<sup>31</sup> Swedish Ministry of Industry, Employment and Communications Fact Sheet (2005)

The aim of these laws is the eradication of prostitution via the eradication of demand for prostitution.

In Sweden, the criminal offence „trafficking in human beings for sexual purposes“ was only introduced into the body of legislation in 2002. Before 2002, this kind of crime fell under the Aliens Act defined as the assistance of illegal immigration. The introduction of trafficking in persons for the purpose of sexual exploitation as an explicitly mentioned criminal offence into Swedish legislation reflects the general shift of framing in the European Union from an illegal immigration frame to a human rights and violence frame mentioned above. So, according to the Swedish Penal Code a person is liable for trafficking in human beings if it „through the use of unlawful coercion or deception, by exploiting a person’s vulnerability or by any other similar improper means recruits, transports, harbours, receives or takes other similar actions towards a person and thereby gains control over that person“ for several different purposes. Explicitly mentioned are exploitation for sexual purposes, forced labour or the removal of organs, or other exploitations „in ways that cause distress for that person“.

## 5. Statistical Data of Human Trafficking

The UN estimates that annually about 120.000 women and children are trafficked into the European Union and forced into prostitution. For Germany, it is estimated that annually about 15.000 women and children are trafficked into the country. The number of cases actually finding their way into the crime statistics are much lower. On the one hand, this is due to the fact that one case can include more than one victim. In 2003 for example, in 306 cases there was only one victim while in nine cases there were more than twenty registered victims.<sup>32</sup> On the other hand, the area of trafficking in human beings naturally implies a high dark figure due to structural problems. Victims of trafficking are strangers in a foreign country, without passports and often without knowledge of the foreign language. Without speaking the language, being illegal in the country and without knowledge of the legal system the threshold of reporting to the police becomes extremely difficult.<sup>33</sup> The fear of their tormentors and at the same time the fear of being punished under the foreign legal system additionally contribute to the difficulties.

Since the 1970’s trafficking in human beings is rapidly increasing. The main supply countries have since then changed more than once. In the 1970’s and 1980’s trafficking was mainly a North-South

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<sup>32</sup> <http://www.bundeskriminalamt.de/lageberichte/mh/2003/mh2003.pdf> (last visited 10.10.09)

<sup>33</sup> Goodey (2004)

phenomenon.<sup>34</sup> In the 1970's victims mainly came from East Asia (especially Thailand and the Philippines), while in the 1980's they mainly came from Latin America and the Caribbean (especially Brazil, Columbia, Chile, Dominican Republic and Ecuador). The collapse of the Soviet Union in 1990 and the resulting transformation of the Central and Eastern European Countries (CEEC) resulted in an immense rise of trafficking and a shift of the main supply countries from the South to the East.

The following table shows the number of cases of human trafficking for the purpose of sexual exploitation in Germany from 1997 until 2008. Until 2005 the legal basis for these were Article 180 and 181 of the German Criminal Code, after the change of legislation in 2005 it was Article 232 of the German Criminal Code, both describing the criminal offence 'trafficking in human beings for the purpose of sexual exploitation'. As I said above, these numbers do not describe victims but criminal cases with unspecified numbers of victims.

| <b>Year</b>        | <b>1997</b> | <b>1998</b> | <b>1999</b> | <b>2000</b> | <b>2001</b> | <b>2002</b> |
|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Number of offences | 1091        | 1011        | 678         | 1016        | 746         | 827         |
| <b>Year</b>        | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> |
| Number of offences | 850         | 820         | 621         | 712         | 655         | 704         |

**Table 1:** Number of cases of trafficking in human beings in Germany according to year

The number of cases in Germany are as I said above on a higher level than that of Sweden. What catches the eye on first sight is the deviant value of the year 1999. While the years 1997, 1998 and 2000 all display case numbers above 1000, the year 1999 displays the third-lowest value of all twelve years (678). The sharp increase in cases from 1999 to 2000 (to 1016) is then followed by a sharp decrease to the year 2001 (746). Although the figures are slightly rising from 2001 to 2003 (to 850), in the five years after that the number of cases never rise above that level again. The actual number of cases lies between 1091 in 1997 and 621 in 2005, which matches a mean average of 811 cases per year. On first sight a downward trend seems apparent. While the years 1997, 1998 and 2000 are the only ones with case numbers above 1000, the years 2005 and 2007 are the only cases where the number of cases is below 700 (with the exception of 1999). It seems that higher case numbers tend to appear in earlier years, while lower case numbers are more likely to be in later years. Actually the mean average of the years 1997 until 2002 lies with 895 above that of the years

<sup>34</sup> Locher (2007)

2003 until 2008, which have a mean average of 727. The fact that the mean average of the first half of the years displayed is 167 points higher than that of the second half, clearly shows a decreasing trend. However, the number of cases in the first half of the years fluctuates a lot more than those of the second half as the standard deviation reveals. The standard deviation describes the mean deviation from the mean average, a high standard deviation therefore describes a high fluctuation in numbers while a low standard deviation describes numbers that are more similar to each other and display few and small variations. While the standard deviation of the first half of the years is 167,59, that of the second half of the years is with 90,5 much lower (in comparison, the standard deviation of all years is 190,5). The intervals between lowest and highest values confirm this finding. While the difference between the highest and lowest value of the first half of the years amounts to 413, that between highest and lowest value of the second half of the years amounts to 229. In comparison, the difference between highest and lowest value of all years is 470.

Concerning the situation in Sweden, the Swedish National Police Board estimates that annually about 400-600 women are trafficked into the country.<sup>35</sup> As the criminal offence „trafficking in human beings for the purpose of sexual exploitation“ was only introduced into the Swedish legislation in 2002, cases falling under this definition only started to be recorded in 2003. The following table shows the cases of assistance of illegal immigration without specification of the purpose, as recorded by the Swedish National Council for Crime Prevention. For the years since 2003 the numbers include the cases of human trafficking for the purpose of sexual exploitation (showing the individual figures of trafficking in brackets) as this offence was, previous to individual mentioning, already part of the offence of assistance of illegal immigration.

| <b>Year</b>        | <b>1997</b>   | <b>1998</b>   | <b>1999</b>    | <b>2000</b>     | <b>2001</b>     | <b>2002</b>     |
|--------------------|---------------|---------------|----------------|-----------------|-----------------|-----------------|
| Number of offences | 28            | 70            | 121            | 113             | 109             | 114             |
| <b>Year</b>        | <b>2003</b>   | <b>2004</b>   | <b>2005</b>    | <b>2006</b>     | <b>2007</b>     | <b>2008</b>     |
| Number of offences | 84<br>(62/22) | 92<br>(63/29) | 121<br>(77/44) | 162<br>(135/27) | 503<br>(488/15) | 278<br>(263/15) |

**Table 2:** Number of cases of assistance of illegal immigration / human trafficking in Sweden according to year

Therefore figures of Sweden can only be analysed in this context under reservations as the actual criminal offence that is topic of the table concerning Germany has only been monitored in Sweden

<sup>35</sup> [www.sweden.se](http://www.sweden.se) (last visited 10.10.09)

since 2003, as mentioned above. Before this, human trafficking has only been considered under illegal immigration aspects, which of course includes additional offences. The assistance of illegal immigration does not specify for what purposes this assistance occurs and when the relation to the illegal immigrant ends. Therefore human trafficking for the purpose of sexual exploitation is only a partial aspect of the displayed figures until 2002, which ranges from being nearly half of the cases of illegal immigration (in 2004) to being only a mere thirty-seconds of the cases (in 2007). For the purpose of this analysis I assume that, as human trafficking for the purpose of sexual exploitation from 2003 until 2005 ranged about half to one third of the numbers of assistance to illegal immigration and only after 2005 becomes almost marginal due to the sharp rise of cases of assistance to illegal immigration, the cases of human trafficking for the purpose of sexual exploitation which have been prosecuted as assistance to illegal immigration ranged about the same percentages.

On first sight, an immense increase of assistance of illegal immigration becomes apparent. While the lowest number (28) is displayed in the first year of the interval (1997), the highest number (503) is the second last year of the interval (2007). The year 2007 is at the same time the most obvious deviation of the numbers, apart from this year there seems to be a steady increase in cases. Only in 2003 and 2004 do the cases fall considerably below previous numbers. The mean average confirms the impression of an immense increase. While the mean average of the first half of the years is 93, that of the second half of the years is 207. Although the sharp deviation of the value of 2007 has to be kept in mind. If this value is excluded, the mean average of the other years of the second half of the interval is with 147 about a quarter lower. The standard deviation reveals that the increase itself increases, that is, the later the years the sharper the increase in cases. While the standard deviation of the first half of the years has a value of 36,4, that of the second half of years is with a value of 203,94 about five times as high. Even if the sharp deviation of 2007 is not included, the standard deviation of the latter half is then with a value of 99,81 still about three times as high.

Concerning the cases of human trafficking for the purpose of sexual exploitation the peak of cases is not in 2007, as could be expected, but already in 2005. The cases steadily increase from 2003 until 2005 and then steadily decrease until 2008, whereby the number of cases in 2008 lies slightly below the number of cases in 2003. While the difference between lowest and highest number of cases is 29, the mean average has a value of 25. The standard deviation has a value of 10,9. The fact that the standard deviation of the period from 2003 until the peak in 2005 has with 13,9 almost the same value as the standard deviation of the period from 2005 until 2008 (13,7) shows that the distribution of cases is almost a perfect parabola, which deviates from the tendency of the cases of assistance to illegal immigration as they more or less steadily increase.

## 6. Analysis and Discussion

Concerning the question if the introduction of the new legislation on prostitution actually has an impact on trafficking in human beings for the purpose of sexual exploitation, the development of the figures after the introduction in comparison to the figures before is of special interest. In Germany the new legislation on prostitution, which legalised the practise as well as certain types of furtherance, came into force in 2001. The criminal offence of trafficking in human beings for the purpose of sexual exploitation existed since the beginning of the interval in question but had been amended in 1998 and 2005. As mentioned above, one of the considerations of the government for legalising prostitution had been the hope of decreasing human trafficking through on the one hand a market-oriented approach („illegal behaviour is not as profitable any more“) and on the other hand the shift of resources from less severe furtherance of prostitution to illegal human trafficking. Actually, while there is a sharp fall in cases in human trafficking from 2000 to 2001, cases after 2001 increased again and remained on a higher level until 2005 where the number again fell sharply. The overall tendency, however, seems to confirm the government's expectations as the number of cases of human trafficking for the purpose of sexual exploitation decreases (as was mentioned above). If including the first minor change of the legislation on trafficking (in November 1998), it is striking, however, how each change in legislation either concerning prostitution or trafficking results in a sharp decrease of the number of cases in the following year. (The same year if the new legislation came into force at the beginning of the year). Actually the three sharpest decreases coincide with a change in legislation. This could simply be a coincidence, but as this is the case three times and actually one of the biggest deviations in numbers happens just after the first amendment of trafficking legislation in November 1998 (from a level of above 1000 before and after, to 678 in 1999) there must be an explanation for this. It is likely, however, that there are different reasons depending on which legislation (that of trafficking or prostitution) has been altered as they have basically different consequences. Concerning the tightening of laws on trafficking, for two reasons a rise in case numbers after the introduction could be expected. First of all, as each amendment includes more offences this should result in more cases falling under the legislation on trafficking. Secondly, the acknowledgement of the seriousness of the problem (through the view that it is necessary to amend the existent legislation) should be accompanied with an increase in resources for fighting it, which would lead to more detected cases. However, this is not the case. Just the opposite: The case numbers drop after both tightenings. This means either that the cases of human trafficking have actually decreased or that less cases have been detected. Both possibilities could be the result of a deterrent effect of the expectation of a change in legislation on traffickers. When they know a tightening of legislation is due in a country they might fear easier detection and

higher penalties and therefore choose another country as destination or exert even more caution while operating *in* the country. As the numbers after each amendment rise again in the second year after implementation, this effect does not seem to be lasting.

The decreasing effect of the introduction of the new legislation on prostitution seems to be more long-lasting. Although the number of cases also rises again in the second year after implementation it never again rises to the level of cases before 2001. So in opposition to the introduction of stronger laws on trafficking, whose effect seems to be only short-termed, the effect of the introduction of the new laws on prostitution seems to be long-term. Does this finding confirm the hopes of liberals and legislators that legalisation of prostitution has a positive (i.e. lowering) effect on human trafficking? On first sight it seems like that. On the other hand, this trend simply shows that less cases of human trafficking have been detected, it does not say anything about the actual amount of trafficking. After the legalisation of prostitution, some opponents argued that the new legislation actually would make the prosecution of human trafficking more difficult, as it would be more difficult to access brothels.<sup>36</sup> Under the new law brothels are primarily legal businesses, and so only with a clear initial suspicion of exploitation it is possible for the police to enter these businesses without the permit of the brothel owner. But, as was mentioned above, especially in the area of human trafficking it is difficult to gather evidence as the threshold of victims to turn to the police is high. Accordingly, in a survey made for the German government in order to assess the consequences of the new prostitution laws, one third of questioned police stations claimed that the abolition of the criminal offence „furtherance of prostitution“ had made the prosecution of human trafficking more difficult, as they used this law to access and control brothels and detect cases of human trafficking.<sup>37</sup> Accordingly, two thirds did not agree to this. But as prostitution and human trafficking is not spread equally across Germany (big cities with well-known red-light districts like Hamburg, Cologne or Berlin have a higher amount of prostitution than smaller cities) and the origin of the police stations in comparison to their assessment of the new legislation is not examined, these results again have to be handled with care. It is at least possible that the impression on whether or not the new prostitution laws had an influence on the combat of human trafficking depends on the amount of prostitution the police station have to deal with in the first place. A police station of a region with one established and well-known brothel and a manageable amount of street prostitution might find it easier to control the legal amount of prostitution and be aware of trafficking developments than a police station of a city like Hamburg with an ever-changing red-light district with numerous brothels and a large amount of street prostitution. Unfortunately, as the survey does not clarify this

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<sup>36</sup> [www.emma.de](http://www.emma.de) (last visited 10.10.09)

<sup>37</sup> <http://www.bmfsfj.de/doku/prostitutionsgesetz/pdf/bundesreg.pdf> (last visited 10.10.09)

issue, these are only speculations. But as one third of questioned police stations do acknowledge a negative influence of the new prostitution laws on the prosecution of human trafficking, it is at least possible that this aspect has an influence on the development of the actual case numbers and therefore the seemingly downward trend of human trafficking. Therefore what is safe to say is that the introduction of the new prostitution laws had an influence on human trafficking. However, if the decreasing influence is only in the numbers, and therefore actually supports human trafficking as the case numbers go down (through the increased difficulty of detecting cases of human trafficking), or the influence is on the actual amount of human trafficking, is ultimately a matter of opinion as the only way to numerical assess human trafficking is by case numbers of detected incidents.

The case numbers for Sweden are more difficult to assess. While unfortunately there are no numbers of cases of human trafficking from 1998 until 2002, a rise in case numbers of assistance of illegal immigration is obvious. In 1999, when the new law on prostitution was introduced, case numbers of assistance of illegal immigration for the first time rise (considerably) above 100. However, the case numbers from 1997 to 1998 already have more than doubled. All in all the case numbers from 1997 until 1999 have become four times as high. Therefore case numbers of assistance of illegal immigration have increased already before the new prostitution laws came into force. After the introduction the level remains more or less the same until 2002. (Always keeping in mind that assistance to illegal immigration does not equal trafficking in human beings completely.) In July 2002, the criminal offence „human trafficking for the purpose of sexual exploitation“ is newly introduced into the Swedish criminal code. It seems that the new prostitution laws have virtually no influence on trafficking in persons (until 2002 as part of assistance of illegal immigration). It is of course possible that the proportion of human trafficking for the purpose of sexual exploitation compared to other cases of assistance to illegal immigration has changed after 1999, but unfortunately there is no way of reading that into the numbers. There is the additional problem of human trafficking having a high dark figure as is shown by the fact that the national police force estimates the number of victims of human trafficking for the purpose of sexual exploitation at 400 to 600 women in 2003, while actually only 22 cases (which of course could include more than one victim) have been detected.<sup>38</sup> However, according to a study of the Swedish National Board of Health and Welfare the Swedish police claims that the new prostitution laws indeed do have a positive effect on human trafficking. In the accompanying report they state that „the new law against purchasing sex is impeding the establishment of trafficking in Sweden.“<sup>39</sup>

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<sup>38</sup> Report of the Swedish National Board for Health and Welfare 2003

<sup>39</sup> Report of the Swedish National Board for Health and Welfare 2003

Through telephone taps the police found out that traffickers and pimps have more difficulties to find clients as the demand for sexual services has decreased and they cannot put the women on streets any more as the risk of discovery is too high. Some of them actually move their business to the neighbour countries Norway and Denmark, as the report states.<sup>40</sup>

The case numbers of human trafficking confirm these statements. After a peak in 2005 the case numbers decrease until a level even lower than that level that prevailed at the introduction of the offence. This could be evidence for an actual success in the fight against trafficking. As no police station complains about more difficult circumstances for the prosecution of trafficking through the new law, like in Germany, and especially keeping in mind the findings of the police mentioned above, it is likely that the decrease in case numbers reflect an actual decrease of trafficking in Sweden. However, it is too early to actually claim a lasting effect.

The analysis of the case numbers of human trafficking in Germany and Sweden have shown that the initial expectations are not as easily confirmed or disproved as expected. On first sight the numbers seem to confirm the claims of liberals. In Germany case numbers of human trafficking go down, while in Sweden assistance to illegal immigration goes up. The liberal approach of legalising prostitution seems to produce better results than the abolitionist approach of criminalising clients of prostitutes. When looking closer, this claim cannot be maintained, but on the other hand cannot be clearly proven wrong either. What is clear at least, is that in Germany, legalisation of prostitution did have an effect on human trafficking. The numbers show that this effect was positive, i.e. case numbers went down. However, considering statements of police stations, the actual amount of human trafficking could also have been increased due to the difficulties the new legislation imposes on prosecution of trafficking. In Sweden on the other hand, the results are even less clear, not least due to the fact that case numbers especially of human trafficking for the purpose of sexual exploitation are available only starting from 2002. Including statements from the police, the criminalisation of clients indeed did have a positive effect on trafficking and actually decreased the amount of human trafficking in the country. This, however, is not evident from analysing case numbers alone.

All in all, the approach of using criminal statistics on case numbers of human trafficking for analysing the connection of prostitution laws and human trafficking has proven to be very difficult, if not impossible. There turned out to be numerous flaws in this approach. First of all, there is the obvious problem that recording of data concerning human trafficking in Sweden only started in

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<sup>40</sup> All from Report of the Swedish National Board for Health and Welfare 2003

2002. The compromise I made by using data on assistance of illegal immigration, to get at least a broad overview of the developments, is flawed and bears problems of accuracy and usefulness in general. Secondly, there is the problem of having to use numbers of *detected* cases, which might not say much about the actual reality as was hinted in the analysis. The number of detected cases might be dependent on completely different factors than the amount of trafficking in reality. It could be the case, for example, that resources for combating a crime had been reduced which reduced the numbers of detected cases as less money could be spent on it. This does not mirror the actual reality of the crime and the amount of criminal offences might in fact actually rise due to lesser action of combating it. In this case the statistics of detected cases would lead into a totally different direction. A third problem that is related to this is the problem of actually finding data about the actual situation of trafficking. This is virtually impossible due to the underground nature of the business. If the „real“ situation of trafficking can only be guessed, however, then drawing a line and proving or disproving a connection from prostitution laws to human trafficking is only possible with great reservations. Tendencies and probabilities do most likely point into the right direction, but ultimately only long-term analysis of a longer period than the 10 years period I used will be able to offer clear and concrete results.

## 7. Conclusion

The above explanations have shown that the prostitution policies in receiving countries indeed do have an effect on the amount and prosecution of human trafficking. However, just exactly how this influence is shaped is much more difficult to assess. Both countries examined claim that their approach to prostitution helps reducing human trafficking in their respective countries. Both country's statistics of case numbers of human trafficking seem to confirm this claim. At this point the analysis' result would have been „it does not matter if prostitution is legalised and handled as a business like any other, or if prostitution is tried to be extinguished by criminalising clients - both approaches reduce the amount of human trafficking“ or simply that the legislation on prostitution does not have any influence on the amount of human trafficking, which is simultaneously decreasing in the last years in both countries. Considering statements of both country's police forces, however, I did not come to these conclusions. Combining the findings of the analysis of the statistics of case numbers with the impressions of the police I conclude that the legal handling of prostitution does have an influence on human trafficking. In Germany the influence on human trafficking is not directly but indirectly through an influence on prosecution of human trafficking. For a considerable minority of (questioned) police stations the new legislation makes it more difficult to detect cases of human trafficking. If the prosecution becomes more difficult, than this

could indeed have the opposite effect of human trafficking, i.e. a flourishing business instead of a decrease. However, these are only speculations as the actual amount of human trafficking in Germany can only be roughly guessed. With the change in government in September 2009 yet another change in legislation about human trafficking could soon enter into force. The conservative CDU (as main governing party) advocates the introduction of the criminalisation of clients of forced prostitutes. Clients should then be prosecuted if they acted grossly negligent by ignoring the fact that they used a forced prostitute (i.e. if they normally could have known that the woman was forced to provide the sexual service). It might be difficult to prove that clients indeed could have known that the woman was forced to prostitute herself, but the new law nonetheless might be a good step in the right direction.

In Sweden, the government's consequent approach of wanting to eradicate the phenomena of prostitution obviously leads to less men carrying out their (alleged) desire of buying sex (or maybe even prevents them from having this desire in the first place), which is expressed in the increased difficulty of traffickers to find clients that the telephone taps of the Swedish police have shown. If more men are deterred from buying sex for fear of prosecution, the market for trafficked prostituted women in this country becomes smaller. This, however, does not lead to a reduction in trafficking in general (as a world-wide phenomenon) but to a shift in trafficking. If Sweden as one of twenty-seven countries in the European Union employs this approach than the problem of trafficking will not be reduced, but forwarded to another of this twenty-seven countries. If the effect of trafficking in Sweden in fact is long-lasting, however, is too early to assess. The government's official assessment and report of the success of the new prostitution laws, including the influence on human trafficking, is due in 2010 and will hopefully shed more light on this topic.

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