

Shadow Report CEDAW, 85th Session relating to Germany

by DIAKA – German Institute for Applied Crime Analysis

The German Institute for Applied Crime Analysis, DIAKA e.V. (<https://www.diaka.org/>) is a council of experts based in Munich. The Institute's work includes research, training and public relations – our goal is a society free of human trafficking and sexualized violence.

Our members include experts from politics, criminal police and jurisprudence, human rights organizations, and the media.

Summary

1. Regular prostitution cannot be separated from human trafficking for sexual exploitation (HTfSE). This has been evidenced by police investigations and is acknowledged by the Federal Criminal Police Office in its report on human trafficking.
2. The Paradise case provided evidence of how HTfSE and forced prostitution take place in plain sight and is concealed and protected within the regular prostitution market.
3. All women who work in prostitution are currently legally *presumed* to be voluntarily in prostitution *unless* they say otherwise. This presumption stands in incompatibly with the reality on the ground according to assessments by various experts in the field. This wrong presumption leaves the most vulnerable groups of women unprotected.
4. The Prostitution Law of 2001 and the EU's expansion led to substantial expansion of the prostitution market reaching an industrial scale. With it, the sexual exploitation of prostituted women, HTfSE and forced prostitution soared.
5. While the Prostitutes' Protection Act (2017) was put in place to improve the situation it largely failed in obtaining any positive results. This was because it ignored the protection needs and situation of the large majority of prostituted women, i.e. migrant women.
6. The fundamental cause for the exploitation of prostitution of women lies in Germany's misguided liberal prostitution policy which frames prostitution as a work and prostituted women as selling sex acts voluntarily.
7. As a result of this failed policy choice, the detection rate of persons in forced prostitution is extremely low and estimated to be about 0.3 %. Organized crime including HTfSE, has increased to a level that realistically cannot be controlled by German law enforcement, despite its commitment and willingness to do so.

1 Art. 6 : The exploitation of prostitution of women in Germany

1.1 The connection between prostitution and HTfSE

The view is that ‘regular’ prostitution’ must be strictly separated from ‘forced’ prostitution and human trafficking is widespread. This has had a profound impact on the public understanding of the issue and has led serious misunderstandings.

The reality on the ground shows that prostitution generally cannot be distinguished from forced prostitution and HTfSE as these are frequently intertwined within large segments of the sex industry. The prostitution milieu is generally highly prone to criminality. In fact, forced prostitution, pimping, etc. are *primarily* committed in prostitution locations that have received official administrative approval. This is documented in the Federal Criminal Police Office (BKA) situation report on human trafficking (Chapter 3.1).

Therefore: A separation between "good official" prostitution and "bad illegal" prostitution would wrongly suggest that forced prostitution does not take place in the officially approved brothels. In fact, the opposite is the case. The official facade of a brothel therefore often does not reflect the actual conditions behind the scenes, i.e. the "dark field".

1.1.1 The “Paradise” Case

To illustrate the above, the case of the large brothel "Paradise" in Stuttgart¹ should be mentioned. For years, the brothels operators promoted their business as a model of "clean, legal brothel prostitution" and appeared as guests in many German talk shows. One of the operators even ran his own weekly TV show and acted as a "brothel evaluator". Hence, the "Paradise" was regarded by the public as a modern, social and women-friendly business model (the brothel even had a ‘women's representative’). However, in 2013, undercover investigations were initiated. Behind the facade, a cleverly camouflaged network of serious and organised crime was revealed. Consequently, the brothel operators were inter alia sentenced in 2019 to prison terms of up to 5 years for multiple typical milieu offences such as aiding and abetting serious human trafficking and pimping in 18 cases^{2 3}. Investigators have discovered similar patterns against other large brothels in Germany. It is therefore safe to assume that behind a supposedly clean facade, similar criminal structures prevail in many other brothels in Germany.

¹ The perfect brothel – SPIEGEL – 30.05.2009

² sentence Paradise 27.02.2019

<https://landgericht-stuttgart.justiz-bw.de/pb/,Lde/Startseite/Aktuelles/Urteil+im+Paradise-Prozess/?LISTPAGE=1195716>

³ Paradise sentence

https://www.focus.de/politik/gerichte-in-deutschland/das-paradise-als-hoelle-ein-opfer-anwalt-ueber-den-prozess-gegen-einen-puff-koenig_id_11273671.html

1.1.2. HTfSE and forced prostitution concealed within the prostitution market

Even operators who try to comply with rules are not always able to judge whether a woman in prostitution is under pressure from third parties. The more vulnerable the women, the higher is the probability of criminality, regardless of whether operators are aware or involved in them or not.

The idea that it is possible to neatly separate prostitution from HTfSE and sexual exploitation is therefore wrong. It remains a theoretical construct promoted by groups who have an interest in a positive portrayal of the so-called 'regular' prostitution. A study by the University of Heidelberg also supports the view that liberal prostitution legislation leads to more human trafficking⁴. Jacobson and Kotsadam⁵ arrive at similar results.

Without the official facade of regular prostitution, trafficking would be substantially more conspicuous and perpetrators would have more difficulties concealing their illegal business.

Forums for johns provide an authentic insight in the regular prostitution and the dehumanizing way men who buy sex perceive the women from whom they buy sexual access. Sex buyers exchange their experiences in brothels and with the women, e.g. new "fresh meat offers". Also, OSCE representative Valiant Richey mentions a tenfold increase of demands for Ukrainian women on the net⁶.

1.2 The presumed voluntariness of women in prostitution

Large parts of the political community now agree, as do experts, that the overwhelming majority of women in prostitution neither work voluntarily nor act fully self-determined.

However, paradoxically, all women who work in prostitution are currently legally *presumed to be* voluntarily in the sex industry *unless* they say otherwise.

Particular typical indicators suggest that certain women are victims of HTfSE, but without a clear statement from the women concerned, neither authorities nor aid organisations are able to intervene. Efforts to help are currently limited to offers of counselling, testimony or – where such programmes might be available - exiting prostitution.

As long as legislator assumes voluntariness, no improvement of the situation can be expected because of the problem of evidence. Apart from exceptions (e.g. an act of violence is directly witnessed by a third party), the authorities are limited in their actions to observing the situation and hoping that victim will be willing to testify. However, victims typically refrain from testifying do to fear of reprisals.

⁴ Universität Heidelberg report

https://www.uniheidelberg.de/presse/news2013/pm20130527_prostitution.html

⁵ N. Jacobson, A. Kotsadam, „The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation“, June 2010 European Journal of Law and Economics 35(458)

⁶ https://www.spiegel.de/ausland/menschenhandel-zehnmal-mehr-ukrainerinnen-fuer-sexuelle-dienstleistungen-angeboten-a-c3902082-c4a8-4193-a3bb-1abb031229b8?sara_ref=re-em-em-sh

Clearly vulnerable women, ranging from illiterate women, persons with mental health issues, young women with childlike behaviour, to women with the name of their pimp tattooed on the back of their neck like a brand as "proof of ownership", are thus in the first instance legally considered voluntary and self-employed entrepreneurs. Many of these victim types have even received the official confirmation of registration as prescribed by law, while they are often instructed by their pimps not to reveal their actual situation. In some cases, women have to switch on their mobile phones during appointments with the authorities so that the pimps can monitor the conversations. Such observations clearly suggest that voluntariness is often only pretended.

Thus, offers of exit counselling or health counselling, as important as they may be in individual cases, structurally appear more like an expression of helplessness. The instrument of exit counselling and assistance alone, which is not known from any other sector ("no job like any other"), evidences the dramatic and incomparable nature of this activity.

1.3 The German Prostitution Law

The effects of the legal paradigm shift in 2001 and the EU's eastward expansion led to highly undesirable developments such as prostitution at an industrial scale with general impoverishment of the women and their exploitation, including human trafficking and forced prostitution. A new law was supposed to counteract these intolerable conditions. After years of controversial discussion, the so-called Prostitutes' Protection Act was finally introduced on July 1st 2017.

With the exception of a few positive elements such as the introduction of a permit requirement for brothels and the prohibition of certain operating concepts such as flat rate offers, the law drew criticism from the beginning because it was tailored to the small minority of genuinely self-organised women in prostitution, while it did not regulate problems affecting the vast majority of women in prostitution.

Inter alia, the regulation of compulsory registration for women was a complete failure. While it suddenly created a huge new bureaucratic burden for the administrative authorities, it failed to provide increased security for the women. Even years later, this law has neither led to improved transparency in prostitution, nor has registration been consistently implemented.

The flaws of the law is particularly evident in the fact that there is no possibility for the administrative authorities to refuse a prostitution registration for illiterate or disabled persons.⁷ It thus fails to protect even the most vulnerable group of women.

The government's failure to protect prostituted women is reflected in an elaborate guideline issued by the Ministry of Family, Seniors, Women and Youth (BMFSFJ)⁸. It cites (from page 34 to 48) the extremely serious harms associated with prostitution. The guidelines contain advice as to how to have the anus widened to enable the women to fulfil the sex buyers' sexual preferences (page 38), it advises to avoid wearing long scarfs to avoid strangulation (page 50)

⁷ unless there is a concrete suspicion of relevant criminal offences

⁸ BMFSFJ: Leitfaden zur gesundheitlichen Beratung nach §10 des Prostituierten-schutzgesetzes (ProstSchG)

and it acknowledges the widespread addiction of prostituted women to drugs (page 59). These guidelines testify to the Ministry's full knowledge about the reality of prostitution and shows that this reality is regarded as 'work' in Germany.

1.4 Lack of urgently needed policy measures

Since the German government has always criminalised forced prostitution and human trafficking, it appears to believe that there is no reason to take further measures. However, these would be urgently needed, as the legislation, ie. the Prostitute Protection Act has made it more difficult to convict traffickers by "normalising" prostitution, portraying it as an "ordinary" occupation^{9, 10}. In most cases traffickers and pimps can only be prosecuted based on testimonies by the women they exploit but as mentioned such testimonies are rarely given due to fear of reprisals. This leads to the fact that "the German red-light milieus are gateways ...[of] organised crime".¹¹ This statement by criminal investigator Manfred Paulus in 2018, who has long been active in the red-light milieu, still holds true today, in his opinion as well as that of other experts. Consequently, stricter monitoring of forced prostitution and human trafficking is urgently needed, as evidenced by the high number of murders of prostituted women in Germany.¹², who, according to experts and academics, mostly operate under coercion. The federal government, however, remains inexcusably inactive.

In the field of HTfSE, there are in fact no real improvements. For example, the current situation reports on HTfSE by the Federal Criminal Police Office¹³ only list 291 investigations initiated for both 2020 and 2021. Hence, there has been no improvement at all, rather the contrary: the numbers are shockingly low in view of the overall situation and also reflect a lack of prioritisation in this crime sector. The creation of only one specialised public prosecutor's office in only one federal state is insignificant, since nothing comparable has been done in the other 15 federal states. Furthermore, it must be kept in mind that the few newly created shelters and victim support centres as well as funds for victim assistance do not serve to strengthen the fight against human trafficking, but "only" alleviate the suffering of victims.

2 Prosecution of HTfSE and forced prostitution in Germany

2.1 Dark field and the low detection rate

The general prosecution efforts to combat trafficking in human beings by the German public prosecutor's office are highly inefficient, because the corresponding court proceedings in the past, too often ended with a too low conviction rate of the perpetrators^{10, 14}.

⁹ Helmut Sporer, „Der neue Deutsche Weg. Für eine Neuordnung der Prostitutionsgesetzgebung.“ Hanns Seidel Stiftung, Aktuelle Analysen 93, page 29

¹⁰ Manfred Paulus, „Menschenhandels und Sexsklaverei entlang der Donau“, Weltbild-Verlag, page 139

¹¹ *ibid*, page 126

¹² <https://sexindustry-kills.de/doku.php?id=prostitutionmurders:de>

¹³ <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundeslagebild2021.html>

¹⁴ http://www.economics-human-trafficking.net/mediapool/99/998280/data/Menschenhandel_Deutschland_beim_Opferschutz_nur_Mittelmass.pdf

Sporer¹⁵ arrives at an estimate of a victim detection rate of 0.3% . This estimate is based on:

- a. an estimate of a total of 300,000 prostituted persons
- b. a (very conservatively estimated) share of 50% who are in forced prostitution
- c. 406 recorded victims in 2020.

Of course, this cannot reflect the true number of victims, but suggests a very large dark field of unrecorded crimes. The Criminal Research Institute of Lower Saxony (KFN) concludes in a study from 2021 that 90% of all trafficking cases are not recorded¹⁶. According to the analyses, 83% of the trials were dropped and only 11 to 14% of the perpetrators were convicted. This situation clearly reflect the dramatic shortcomings in Germany and lack of fulfilment of Art 6 CEDAW.

2.2 Comparison with human exploitation in other areas

In 2021, the exploitation of foreign workers in the meat industry relating to working hours, accommodation, hygienic conditions, treatment, etc. became public knowledge. These conditions were in many respects comparable to those of prostituted women in brothels. Within a few months, the government reacted by creating a new Labour Protection Control Act and thus successfully combated the exploitation of the workers. It is therefore completely unacceptable why the Government does not act when it comes to the current situation found in prostitution.

2.3 The role of organised crime

The German police has noted an increasing level of violence in the red-light area. This is particularly prevalent on the Reeperbahn, the red-light quarter St. Pauli, Hamburg.¹⁷ The president of the International Council of the International Society for Human Rights, Prof. Thomas Schirmmacher already pointed this out this development in 2018¹⁸. This problematic situation persists today. In his book, Schirmmacher also quotes Detlev Ubben, then Head of the Human Trafficking Department at the Hamburg State Criminal Police Office, who estimated that there are 95% of all prostituted women were coerced. Despite this, German lawmakers still see no reason to intervene. We deplore the lack of political will to protect women and girls from sexual exploitation. This inaction constitutes a violation of Art 6 CEDAW.

¹⁵ Helmut Sporer, „Der neue Deutsche Weg. Für eine Neuordnung der Prostitutionsgesetzgebung.“ Hanns Seidel Stiftung, Aktuelle Analysen 93, page 42 - 44

¹⁶ situation report of Federal Criminal Police Office (BKA)

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Menschenhandel/menschenhandel_node.html

¹⁷ <https://daserste.ndr.de/panorama/archiv/1996/erste5268.html>, Joachim Wagner, „Milieu war in Hamburg – power struggle over 8.000 Prostitutes“

¹⁸ Thomas Schirmmacher, „Menschenhandel – Die Rückkehr der Sklaverei“, 2018, SCM Hänslers, ISBN978-37751-5335-5, page 119: Prostitution on Reeperbahn, page 109: Officer Detlev Ubben on forced prostitution

In the 2018 trial of the Paradise brothel in Stuttgart, the public prosecutor Peter Holzwarth was convinced that the brothel operation could only run smoothly because rock gangs supplied sufficient prostitutes¹⁹. The presiding judge said, "A clean brothel of this size is not conceivable"²⁰. The conclusion must be drawn that this statement must apply to all brothels of comparable size. The fact that this did not result in a more detailed investigation of such establishments in the following years until today, reveals the inexcusable passivity both of the German executive and the legislative, in regard to the protection from sexual exploitation of women and girls in prostitution. The largely unchallenged activity of human traffickers is known to politicians provided they make the effort to inform themselves through publicly available documentation²¹

General Recommendations

To successfully combat HTfSE, the introduction of a completely new legislation based on the Equality Model including sex purchase ban is an absolute necessity. Given that it would require some time to implement such a new legislation, the implementation of the following temporary immediate measures and regulations are needed as a matter of urgency:

Immediate measures to be taken:

- Better staffing of the police and the public prosecutor's office
- More specialised training in the field of HTfSE
- A change of focus from *retroactive* measures to *preventive* measures. Here, targeted measures such as those listed below (minimum age, vulnerable persons, transparency, etc.) must be made mandatory.
- The aspect of demand for prostitution has so far been completely ignored. Especially the constantly increasing demand for prostitution is a decisive factor for the increase in HTfSE (see the OSCE Report, Discouraging the Demand 2021).
- Establishment of special units in the police and the public prosecutor's office (In the fight against child pornography, this was created years ago with great investigative success. In the fight against trafficking in human beings, this has unfortunately (with only one exception) neither been realised nor planned.
- Public relations work by the Federal Government to raise awareness in society with campaigns, TV spots, posters, etc. against the exploitation of prostituted women need to be put in place. Currently, campaigns addressing HTfSE hardly play any role in any public awareness campaigns while government has successfully invested in – also important – awareness campaigns in other areas such as against smoking and "safer sex".

¹⁹ <https://www.stuttgarter-zeitung.de/inhalt.prozess-gegen-die-betreiber-des-paradise-bordells-freundlich-sauber-und-brutal.a5b8fd38-f846-496f-bc24-71360ceb5dc1.htm>

²⁰ https://www.t-online.de/nachrichten/panorama/kriminalitaet/id_85723286/zwangsprostitution-verkommt-deutschland-zum-puff-europas-.html

²¹ <https://www.berliner-kurier.de/berlin/zwangsprostitution-das-abscheuliche-geschaefit-mit-dem-menschenhandel-li.211675>

- Combating human trafficking effectively requires transparency relating to the results of investigations. This is the only way to draw conclusions about the effectiveness of measures. The situation report on trafficking in human beings by the Federal Criminal Police Office (BKA)¹⁶ only shows the number of preliminary proceedings initiated, but does not provide any information on the outcome of these proceedings. To assess the situation, it would be important to know how many cases were discontinued and the number of convictions and the severity of sentences.

Legal Regulations:

- A minimum age of 21 for prostitution, because younger people are particularly vulnerable to trafficking,
- compulsory registration and de-registration of women in prostitution in every city, because this would improve transparency and thus better protect women from coercion and exploitation,
- a shift of the registration office back to the police, as they have much more far-reaching possibilities to control the prostitution market and protect the women
- a ban on the practice of prostitution for particularly vulnerable persons, such as disabled, illiterate, persons without German language skills, etc., as they are particularly easy to exploit and abuse by traffickers,
- the complete abolition of the right of brothel operators to issue instructions to prostituted women, because these empower the brothel operators and make women prone to further coercion,
- an extension of the special protection provisions for adolescents in §232a/I of the Criminal Code (forced prostitution) to all prostituted women, because women over 21 have so far had less legal protection against human trafficking and are thus discriminated against as second-class victims,
- better investigation possibilities, such as telecommunication surveillance in case of suspicion of pimping, or exploitation of prostituted women, etc.
- a general ban on street prostitution

For further information, enquiries and interviews, the experts of DIAKA German Institute for Applied Crime Analysis are at your disposal.

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The German Institute for Applied Crime Analysis DIAKA e.V. (i.G.) is an expert council based in Munich. The institute's work includes counselling, training and public relations - with the goal of a society free of human trafficking and related sexualised violence. DIAKA works supra-regionally, independently, neutrally, soundly and reality-based.