



Franciscans International

A voice at the United Nations

HUMAN RIGHTS COUNCIL

**16th Session of the Working Group on the
Universal Periodic Review (UPR)**

Stakeholder's Submission on:

The Human Rights Situation in

GERMANY

Submitted by:

Franciscans International (FI)

(NGO in Consultative Status with ECOSOC)

Submitted in Geneva, October 2012

Introduction

1. This stakeholder's report represents the follow-up to the 2009 UPR of Germany and it highlights key concerns relating to the issue of *trafficking in human beings for sexual exploitation*.
2. This submission has been prepared taking into consideration numerous factors including reliable data and information gathered by Franciscans and partners in Germany involved in the issue.
3. Franciscans International (**FI**) is an International NGO established in 1989. FI places respect for human dignity, equitable and sustainable sharing of environmental resources, and peace at the heart of its action. FI supports Franciscan partners working at the grassroots in approximately 160 countries in every part of the world and it operates as a bridge between them and the UN. The advocacy strategy for Franciscans International (FI) is built around two main pillars: the invaluable input of Franciscans working at grassroots; and UN policies and activities. FI uses the UPR as the driving mechanism that links grassroots to the UN. FI has had General Consultative Status with the ECOSOC since 1995.

1. Background

4. The Act Regulating the Legal Situation of Prostitutes (Prostitution Act)¹ is a German Federal law entered into force on 1st January 2002 which aims at removing the immorality label of prostitution, regulating it, and improving prostitutes' social and working conditions. The Act establishes, for example, that the prostitutes must agree on their compensation for providing sexual service, that they are regularly insured in the statutory health insurance, unemployment and pension insurance, and the employer's right to give them instructions is restricted. Another aim of the Act is to make it easier to leave prostitution and, as such, it provides that "Prostitutes should have the possibility of exiting prostitution, for example, by taking up opportunities to join retraining schemes."²
5. The Prostitution Act therefore provides for substantial modifications of the German Penal Code (Strafgesetzbuch, StGB). Paragraphs 180a (exploitation of prostitutes) and 181a (pimping) of the StGB have been changed to the extent that the creation of a prostitution work environment is no longer a punishable offense, unless exploitation takes place. As a result, since 2002 the beneficiaries of prostitution are no longer prosecuted in Germany, the setting up of brothels and other establishments for prostitution is legal.
6. The exploitation of prostitutes, trafficking, and the prostitution of minors remain criminal offences.

2. Evaluation of the Prostitution Act

7. A 2007 study carried out by an independent research institute and commissioned by the BMFSFJ (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth) to be used as the basis for the Federal Government report on the impact of the Prostitution Act, has shown that "*Since the Act came into force, neither the benefits expected nor the negative effects feared have manifested to the extent originally assumed.*"³

¹ Federal Law Gazette I 2001, p 3983; FNA 402-39.

² Prof. Dr. Barbara Kavemann, *Findings of a study on the impact of the German Prostitution Act*, Berlin September 2007, p. 4.

³ *Id.*, page 14.

8. However, a 2012 study⁴ published by the German Institute for Economics has found that the legalization of prostitution, in Germany, has led to an increase of trafficking of human beings within the country. This study starts with a quantitative analysis indicating a positive correlation between the legal status of prostitution and inward trafficking, which is followed up by evidence from case studies. The authors found confirmation that in countries with liberal prostitution laws, such as Germany, the phenomenon of human trafficking is magnified: the legalization of prostitution led to an increased demand and thus to an increase of the illegal market. In Germany, where prostitution is legal, the market is sixty times larger than in Sweden, where prostitution is prohibited. At the same time, Germany has about sixty-two times as many victims of human trafficking as Sweden.

9. It is now evident that the Prostitution Act failed in practice. The conclusions of these two studies are supported by the direct observation of Franciscans and partners working on this issue, throughout Germany.

3. Specific Concerns

3.1 Conditions of Work

10. Franciscans and partners observed that the working conditions in prostitution are deplorable. Girls coming from all over the world, predominantly from Eastern Europe, are often victims of human trafficking, come from poor and disadvantaged families and, if interviewed, often pretend to have agreed voluntarily to prostitution.

11. In these brothels, women are classified in catalogues, so as to make it easy for customers to place “orders.” They are subject to complete control through an elaborate system of video cameras and security personnel; they have to remain entirely naked on the premises and are allowed to make calls or leave only with the approval of the management. Women work up to sixteen hours a day and are usually forced to share a single mattress with up to three other women.

12. Given these factors, as well as the low profits made compared to the huge number of clients they are obliged to serve, it becomes obvious why big brothels are not attractive for autonomous and independent prostitutes.

13. In a 2007 interview with EMMA⁵ the Head of the Commissioner’s Office for Human Trafficking stated that, according to his experience, 95% of all women in prostitution fulfill the definition of constrained prostitution. However, because they are now used to it they do not consider themselves as victims. It is therefore not surprising that only 610 victims of constraint-prostitution were registered in 2010 in the statistics of the Criminal Investigation Department.⁶

3.2 Lack of Assistance and Contractual Guarantees

14. Franciscans and partners have observed that there is no comprehensive support offered to constrained prostitutes in Germany. The issue is not given enough space in the public discourse and political engagement is therefore insufficient. The lack of proper health care and support offered to them worsens their situation. Often women do not have medical insurance and hospitals do not treat prostitutes without medical insurance. They only do so in cases which are life-threatening.

⁴ Cho, S.-Y., Dreher, A. and Neumayer, E. (2012). “Does Legalized Prostitution Increase Human Trafficking?”. Economics of Security Working Paper 71, Berlin: Economics of Security.

⁵ <http://www.emma.de/home/>

⁶ Federal statistics for Human Trafficking of the BKA.

15. Contrary to the expectations linked to the Prostitution Act, in 2012 not even one percent of all prostitutes in Germany has an employment contract. Prostitution is still not recognized by society and prostitutes are discriminated against, stigmatized, and marginalized. Many prostitutes therefore want to remain anonymous and lead a stressful double life.

16. Within the prostitution business there is no job description, no minimum standards, no education, and no institutions offering specific advice and assistance as is the case in other professions. Lobbies, such as the Association of Sexual Services (FSS) in Berlin are still in their nascent stages. Business registrations, labour inspections, building regulations, licensing requirements, social security checks to establish *de facto* dependent employment and to secure its benefits for employees, maternity leave, working hours, sick pay, and unemployment insurance all lack in this sector.

4. Case Studies

4.1 Stuttgart

17. In Stuttgart, “dosshouses” and brothel rooms are rented to prostitutes for up to 300 Euros per month per square meter. In the city, in 2011, the proportion of the newly arrived foreign prostitutes was estimated at 89%⁷. The majority arrived from Romania, Bulgaria and Hungary and belongs to the Roma group. In most cases, these women do not come to Germany alone; they are accompanied by members of their family who then collect their earnings.

18. The Eastern European women who work as prostitutes today do not have anything in common with the professional prostitutes working fifteen years ago. The average prostitutes from Eastern Europe are around twenty and have two or three children in their native countries. For them prostitution is the only way out of poverty.

19. With the legalization of prostitution, the possibility of investigating many cases of suspected trafficking was lost. Since 2002, the burden of proof lies entirely upon the victims who are expected to act as witnesses and make specific statements against their pimps and traffickers. However, because they often live under conditions similar to slavery they are threatened further to prevent them from making statements against their traffickers. Often they revoke their statement the very next day.⁸

20. In addition to the physical effects of working as prostitutes, these women suffer from massive psychological problems. In Stuttgart, women can be seen bringing bags of anti-depressants, sleeping drugs and other medicines when they come back from their short visits to their home countries. Sleeping troubles, fear, stress and depression, suicide and auto-aggressive behaviors are not rare among them.

4.2 Herten, North Rhine-Westphalia

21. During 2010, in the city of Herten, Franciscans observed that young women coming from Roma families were often forced into prostitution. The asylum home of the city has been detected as the center of this business. Minors as young as twelve or thirteen are picked up by luxurious cars in front of the asylum home and disappear. The Franciscans noted that, after an average period of about five months, the families of these girls appeared wealthier and in some cases they were able to find a proper apartment outside the asylum home. Given the fact that these families are not allowed to work while waiting to be granted asylum, their money may very well come from the exploitation of the girls.

22. Cases of men (between forty and fifty years old) coming from Belgium to buy young girls (for 500 Euros) from their parents have been also discovered.

⁷ Dienstzweig Prostitution der Landespolizeidirektion Stuttgart

⁸ Statement of W.Hohmann, Head of Department for prostitution in Stuttgart, 2012.

23. In 2011, the number of African women, mainly from Nigeria and Ghana, arriving pregnant at the asylum and refugee counseling centre in Herten where Franciscans and partners work, have increased. These women usually arrive from two transit camps in Schöppingen and Hemer and, given their condition, have the right to benefit from health care and give birth in Germany. It has been a consistent trend that these women have a mobile phone through which they are always in contact with a supposed male friend, originally coming from their country, but with German citizenship. Some weeks after their arrival, the women usually declare that the father of the new born child is the same man they have been in contact with on the phone. As a result, their baby is entitled to German citizenship and they have the possibility of staying legally in the country to take care of their child. This method of acquiring a temporary residence permit for the mother through the German citizenship of the child is consistently used by organized criminals operating in the trafficking of women for sexual exploitation .

5. Conclusion and Recommendations

24. In 2009, on the occasion of its UPR and with particular reference to the issue of trafficking in human beings, Germany noted *that it works towards improving the situation of victims, notably women, inter alia through witness protection programmes. Joint task forces between the Federal Government and the Länder on trafficking of women, [...] have been established*“. However, evidence shows that since 2009 the issue of trafficking linked to prostitution has not been properly addressed.

25. Franciscans International recommends the Government of Germany to:

a) Modify the Prostitution Act so as to ensure that the competent authorities perform regular controls with the aim to ensure that prostitution businesses are no longer used as dummies for illicit activities related to trafficking in human beings;

b) Raise the age at which women can choose to go into prostitution to twenty-one, thereby uniforming the Prostitution Act with § 232 of the German Penal Code (StGB) which punishes human trafficking for the purposes of sexual exploitation of youth up to twenty-one years old.

b) Allocate adequate financial resources to ensure the quality and the continuity of the assistance and protection services delivered to victims of trafficking in persons;

c) Develop policies and integrated assistance models for victims of trafficking promoting cooperation and synergy of action between the different stakeholders involved, such as state institutions and civil society organisations specialising in assistance and protection services for victims of trafficking in persons.

d) Provide for adequate training for all law enforcement officials dealing with prostitutes and victims of trafficking in general.