

Trafficking in human beings

Labour exploitation

Sexual exploitation

**Forced criminal activities
and begging**



German NGO Network against
Trafficking in Human Beings

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1. Introduction

Trafficking in human beings is defined as a situation whereby a person's predicament is used to trap them in an exploitative situation. This can take various forms and occurs in different areas:

- Exploitative employment relationships
- Sexual exploitation
- Exploitation in marriage
- Forced begging
- Forced criminal activities
- Forced removal of organs

Trafficking in human beings is not only a severe offence but also constitutes a serious human rights violation and a breach to the dignity and the integrity of the human being.

For many years, specialised counselling centres working with trafficked persons have addressed trafficking for sexual exploitation alongside cases of trafficking in human beings for labour exploitation or exploitative employment relationships. In recent years, we have seen an increasing number of cases in which persons are exploited by being coerced into begging or criminal activities.

This brochure is **part of a range of information brochures**. Each one aims to take a closer look at a form of exploitation and to provide information about the counselling options and support structures available to trafficked persons in Germany. In particular they will present the **services and work carried out by KOK's members**.

This brochure focuses on the phenomenon of forced criminal activities and forced begging.

2. Trafficking in human beings for the purpose of forced criminal activities and forced begging

When talking about **trafficking in human beings for the purpose of forced begging**, we are referring to situations in which a person's personal or economic predicament or helplessness arising from being in a foreign country is exploited to make them engage in begging. They are forced to hand over all or most of their earnings. Their freedom is limited to the point where they can no longer decide freely whether they want to engage in this activity or not. A major difference between trafficking in human beings for the purpose of forced begging and other forms of exploitation is that begging only happens in public spaces, so these persons are being exploited in public view. In these cases, trafficked persons even have to actively approach third persons/strangers for financial support. The main challenge is to identify whether the person is being forced to beg and is therefore being exploited, or has "chosen" to beg, e.g. for economic reasons, and so can retain their earnings. Soliciting passers-by for financial assistance is not prohibited in Germany, although certain geographical restrictions do apply. Begging can take many forms, for example by asking directly for money, selling small objects for a much higher amount than they are worth, or offering services, such as cleaning windshields.¹

However, other indicators can point to **forced begging**, including:

- Persons being under constant surveillance by other people who get involved as soon as any contact is established;
- Trafficked persons begging for hours at a time, whatever the weather;
- Persons being taken to and picked up from the place where they beg; or
- Persons having infirmities or disabilities which they display despite the cold.²

Based on the experience of specialised counselling centres and of the police, these can all be signs of forced begging. However, they do not automatically constitute evidence. Reports from other European countries reveal that minors or persons with disabilities are particularly affected by this form of exploitation.³

With regards to visibility, the situation of **forced criminal activities** is an entirely different matter. In this form of exploitation, trafficked persons are made to engage in offences (e.g. theft, drug traffic or credit card fraud). The aim of perpetrators is to obtain financial gain through criminal activities without committing them themselves. The fact that these are criminal offences is then used at a later stage by perpetrators to ensure trafficked per-

sons do not refuse to engage in such activities or seek support. Affected persons are therefore in a particularly precarious situation, as contact with authorities often occurs as a result of committing criminal offences. They are then primarily viewed as criminals and the presence of exploitation may be overlooked. It can therefore be assumed that persons trafficked for forced criminal activities often avoid any contact with police forces more than other trafficked persons.

All forms of trafficking in human beings result from **many factors** that can explain why someone may fall into exploitation. Perpetrators exploit **various predicaments** or threaten trafficked persons. Such reasons include:

- False promises regarding job and livelihood opportunities
- Lack of knowledge regarding their rights and the legal situation in Germany
- Need to support their family in their country of origin
- Alleged debts which have to be paid off
- Predicament regarding the economic situation or residence status which is used by the perpetrators
- Fear of prosecution because of having committed criminal activities
- Confiscated documents
- Isolation, e.g. due to the lack of language skills and contacts
- Use of violence, threats, humiliation, control, pressure or coercion

In the case of all forms of trafficking in human beings, **migrants** that come to Germany from countries with weak economies are not the only targeted group. Although they do face a higher risk than **residents in Germany**, there are cases of trafficking and exploitation in the latter group. Contrary to popular belief, the legal definition of trafficking in human beings does not require a border to be crossed.

It is also important to **draw a distinction between trafficking in human beings and people smuggling**. Smugglers help migrants cross national borders illegally and derive a profit from this activity, sometimes using deception and violence. However, contrary to trafficking in human beings, they derive a profit from borders being crossed and not from exploitation through a certain activity. It is possible, however, that one criminal offence merges into the other and that a smuggled person is then also trafficked and exploited.

There is **very little understanding** of the real extent of **trafficking in human beings for the purpose of forced begging and criminal activities** in Germany. Although trafficking in human beings for the purpose of sexual exploitation and labour exploitation have been provided for in German law since 1973 and 2005 respectively, forced begging and criminal activities were only included as a form of trafficking in human beings in 2016, when criminal offences were reviewed, and EU Directive 2011/36 was implemented. This legal reform broadened the scope and restructured the offence of traf-

ficking in human beings. KOK was not aware of any ongoing criminal proceedings regarding this form of trafficking in human beings at the time this brochure was compiled. Very few affected persons have turned to a specialised counselling centre or other support services. Among the persons who seek support, many **have experienced more than one form of exploitation**, e.g. by being forced to engage in prostitution and theft.

CASE STUDY

Forced to beg

A tip-off from abroad has made the German police aware that a Romanian gang is recruiting members of poor families and taking them to Germany, where they are exploited by being forced to beg in various towns. The beggars are housed in cars or tents just outside the town, even in winter. Every morning, the trafficked persons are taken to various towns and forced to beg in groups of two. They are picked up again in the evening. Their earnings are taken away from them and transferred to Romania.

3. Legislative developments internationally

Crucial advances have been made in the legal framework at the international, European and national levels in recent years to address trafficking in human beings.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the **United Nations** Convention against Transnational Organised Crime Protocol (also known as the “Palermo Protocol”), entered into force in 2003. This Protocol is the first international treaty that specifically addresses trafficking in human beings within the scope of the international fight against crime. However, it does not explicitly refer to trafficking in human beings for the purpose of forced begging and criminal activities.

At the European level, an additional and more detailed Convention was agreed in 2005 – **the Council of Europe** Convention on Action against Trafficking in Human Beings (CETS No. 197). For the very first time, the Convention placed the protection and support of trafficked persons on a par with the prosecution and combating of trafficking in human beings. This Convention also only makes implicit mention of trafficking in human beings for the purpose of force begging and criminal activities.

These forms of exploitation were explicitly mentioned for the first time in 2011, when the member countries of the **European Union** agreed on a directive on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU). The Directive provides for minimum standards with regard to anti-trafficking measures and support for trafficking in human beings, while also committing EU member countries to add forced criminal activities and begging, as well as trafficking in human beings for the purpose of organ removal, to the list of forms of trafficking in human beings that are liable to result in prosecution (alongside sexual and labour exploitation).

4. Legal provisions in Germany

Since the criminal legislation reform in 2016, the relevant provision regarding trafficking in human beings has been Section 232 of the **German Criminal Code** [*Strafgesetzbuch*]. Forced labour is now covered in Section 232b and labour exploitation in Section 233. Section 233a of the German Criminal Code provides for cases of exploitation using unlawful restraint. Forced begging and criminal activities are accounted for as an offence under Section 233 of the German Criminal Code on labour exploitation.

Broadly speaking, criminal law provisions regarding **trafficking in human beings** and **labour exploitation** now cover three activities:

- **Recruiting** (trafficking in human beings): pursuant to **Section 232 of the German Criminal Code**, the German Criminal Code also defines as **trafficking in human beings** situations whereby a person's personal or economic predicament or helplessness arising from being in a foreign country is exploited, and whereby this person is recruited, transported or accommodated with the aim of exploiting them.
- **Initiating** an exploitative activity (forced labour): actually initiating an exploitative activity, i.e. causing the trafficked person to engage in begging or continue to engage in it, is provided for by **Section 232b of the German Criminal Code** ("Forced labour").

Initiating criminal activities is provided for by **Section 26 of the German Criminal Code** ("Abetment").

- **Exploitation** (labour exploitation): forced criminal activities or begging are provided for by **Section 233 of the German Criminal Code** ("Labour exploitation") as a form of exploitation, provided perpetrators identify and exploit the victim's precarious situation and the associated limited freedom. Cases where the person is also deprived of their freedom are provided for by **Section 233a of the German Criminal Code** ("Exploitation by use of unlawful restraint").

All activities can but must not automatically be carried out by the same person. All provisions include an **age of consent**, which means that the deeds are all liable to prosecution if the trafficked persons are **under 21**, even if there was no exploitation of an individual's situation of predicament. Cases in which (serious) **physical violence** and/or the **victim is a minor** and/or the perpetrator is a **member of a gang**, for example, are considered to be **aggravated**, and therefore result in harsher sentences.

CASE STUDY

Forced theft and credit card fraud

A criminal network is active in various cities across Europe, forcing women to buy specific products including Rolex watches and Chanel handbags in expensive shops using forged credit cards. The perpetrators remain within eyeshot to watch over them. Li, from Malaysia, who was under threat because her family had debts to repay, was one of the women forced to commit this offence. She was arrested using the forged credit card and was handed a four-year prison sentence for organised fraud.

Cissek-Evans, M. "Begging and the exploitation of criminal activities" in KOK (2015) Trafficking in human beings in Germany – An Overview from a Practical Standpoint, p. 118.

Identifying a person as a victim of trafficking in human beings is necessary to be able to prosecute perpetrators, and is also crucial for trafficked persons themselves.

In order to improve the protection and support they are offered, trafficked persons were granted specific rights, such as a reflection and stabilisation period. During this time (usually three months), trafficked persons from a foreign country can stabilise, seek support from counselling centres and take a decision regarding their willingness to cooperate with prosecuting authorities. Alongside these rules and other regulations regarding residence permit rights, other rights during criminal proceedings are contingent upon prosecution for trafficking in human beings.

5. The non-punishment clause

The fact that the trafficked persons expose themselves to prosecution is a particularly relevant feature in the case of trafficking in human beings for the purpose of forced criminal activities. It is used by perpetrators to trap trafficked persons into exploitative situations. Because they fear retaliation from the perpetrators, not to mention prosecution, it is unlikely they will turn to the police to report the offence committed against them. This fear can also prevent them from seeking protection, advice and support from counselling centres and from enforcing their rights. This is why it is regularly stressed how important it is not to prosecute trafficked persons for offences committed in relation to trafficking in human beings.⁴ International legal instruments which are binding for Germany offer the possibility to drop charges. German law also provides for such cases, albeit under very precise conditions. In cases of suspected trafficking in human beings, the appropriateness of prosecuting trafficked persons must be very carefully assessed. It must be noted that trafficked persons can have a very reduced degree of criminal responsibility. Realistically, the person may not have any other option than to obey and to commit these offences. This protection measure is not meant to offer blanket immunity against prosecution, but to protect the human rights of victims, avoid any further victimisation, and encourage them to testify against the perpetrators during criminal proceedings.⁵

6. KOK's work

The German NGO Network against Trafficking in Human Beings – KOK e.V. was founded in 1999 and advocates for the rights of trafficked persons and female migrants facing violence. KOK is the only coordination network in Germany or Europe with this focus and is considered to be a model of successful networking.

One of the main **goals** pursued by KOK and its member organisations is to improve the living conditions of trafficked persons and to help them assert their rights.

KOK brings together **most specialised counselling centres in Germany working with trafficked persons** as well as other organisations addressing this issue.

KOK member organisations are:

- Specialised counselling centres and shelters for trafficked persons
- Projects for female migrants
- Counselling centres for sex workers
- Women's shelters and specialised safe houses
- Women's and human rights groups and lobbying organisations
- Umbrella organisations representing charities

KOK's work takes an intersectional approach, i.e. with the knowledge that there are many different forms of discrimination that may co-exist and reinforce each other. KOK's work focuses on representing women's and, in particular, migrants' interests. Moreover, thanks to its experience, KOK offers expertise in all groups of trafficked persons.

16 4 See for example OSCE (2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, <http://www.osce.org/secretariat/101002>, 22 April 2013; GRETA (2015) 10: Report on Germany, margin note 204: <https://rm.coe.int/1680631c3a>.

5 See KOK Information Service 2016, p. 9–10.

The **KOK Office** focuses primarily on the following **areas**:

- Promoting national and international networking among specialised counselling centres and other NGOs
→ **Networking events, workshops, conferences**
- PR and media work
→ **Publications, newsletters, website, etc.**
- Raising awareness and educating about trafficking in human beings and violence against women in the migration process
→ **Training courses, touring exhibition, etc.**
- Participating in committees and networking
→ **Interministerial and interdisciplinary working groups**
- Political lobbying and policy advice
→ **Position papers; policy advice at the regional, national and European levels**

KOK is funded by the Federal Ministry of Family, Senior Citizens, Women and Youth.

7. Specialised counselling centres for trafficked persons

Specialised counselling centres offer trafficked persons holistic counselling and support, including counselling with regard to their social, residence and civil rights, but also to their work situation, along with any other issues, including psychosocial support. They also offer help finding accommodation or medical assistance, as well as assistance during criminal proceedings. Counselling centres offer support and counselling regardless of an individual's nationality and residence permit situation. Due to the circumstances in which they were created, many KOK member specialised counselling centres work primarily with **women**. The vast majority also occasionally counsel **men and whole families**.

Specialised counselling centres that only offer services to trafficked women refer any male clients to other counselling centres, such as trade-union organisations, if available. Counselling centres also support and counsel trafficked **minors**.

The counselling centres' **vision of their mission** as well as their **mandate** is what defines the target groups and forms of trafficking in human beings they work with. Some organisations consider themselves responsible for all forms of exploitation, including forced criminal activities and begging. Others, however, see their main mission as advising and supporting persons trafficked for the purpose of sexual exploitation and, in some cases, labour exploitation. However, they also offer counselling in individual cases relating to other forms of exploitation. It has not been possible to establish active outreach in cases of begging and forced

criminal activities. Besides the specialised counselling centres' own vision of their work, the financial and human resources at their disposal are also crucial for the target groups they are able to support.

Nevertheless, specialised counselling centres are a **focal point for all forms of trafficking in human beings**, as they can refer trafficked persons to other organisations (if available) or offer joint support. The challenge in this respect is that there is no actual model of services to identify and support persons trafficked for the purpose of forced begging or criminal activities either at the regional or national levels. Administrative and political responsibilities are also unclear.

Specialised counselling centres offer comprehensive and holistic counselling for trafficked persons, alongside **training and information events** to prevent trafficking in human beings and raise awareness on this issue. These include:

- Information events for vulnerable persons
- Networking events for various stakeholders, e.g. police, lawyers or relevant public authorities
- Discussions with pupils or teachers

KOK member organisations and their local branches



8. Networking and cooperation

KOK member counselling centres are located all over Germany, with at least one centre in almost every federal state (with the exception of Thuringia). They often cooperate with various regional and local stakeholders. Their focus and target groups tend to vary, but through effective networking, counselling centres can offer each other support and complement each other's activities.

The “Bund-Länder Arbeitsgruppe Menschenhandel”, the **working group of national and regional experts on trafficking in human beings**, was established in 1999 under the auspices of the Federal Ministry of Family, Senior Citizens, Women and Youth. It created a scheme to improve cooperation among stakeholders and the protection of trafficked persons with the “Cooperation scheme for cooperation between specialised counselling centres and police for the protection of victims of trafficking in human beings for the purpose of sexual exploitation”.

There are currently 13 federal states with such a **cooperation agreement**. Depending on regional structures, other relevant institutions or stakeholders may be involved in these cooperation agreements, besides specialised counselling centres and the police. However, most of these cooperation agreements do not explicitly mention forced begging or criminal activities as forms of exploitation. Some refer to trafficking in human beings as a general concept and therefore include, at least in theory, these forms of exploitation. Overall, many of these cooperation agreements need to be re-

viewed, as they often refer to trafficking offences as defined by the German Criminal Code prior to the 2016 reform.

To accompany the cooperation agreements, **round tables** regarding the issue of trafficking in human beings are held in the various federal states and are often coordinated by regional governments. In some cases, round tables have also been arranged at council level. Here again, it is necessary to extend such networking events to other stakeholders to be able to cover different forms of exploitation.

To implement appropriate safeguarding measures for trafficked children in Germany, the Federal Ministry of Family, Senior Citizens, Women and Youth is collaborating with child welfare organisation ECPAT and KOK to develop recommendations on cooperation between youth welfare authorities, police forces, specialised counselling centres and other stakeholders in order to identify and protect victims of trafficking in children. This cooperation scheme is entitled “Protection and support in cases of trafficking in, and exploitation of, children”.

To strengthen cooperation, KOK organises three general meetings for its members, as well as an annual **networking event** for its members and other organisations, allowing German-speaking counselling centres (from Austria, Switzerland and Luxembourg, as well as Germany) to discuss current issues at stake and to develop cooperation initiatives.

9. What needs to be done

Germany faces major challenges with regard to identifying and supporting persons trafficked for the purpose of forced criminal activities and begging.

Responsibilities at all levels **must be clarified** to address effectively these specific forms of exploitation. Currently, it often remains undetermined **which ministry or police department** is in charge of these forms of trafficking. Among **counselling organisations**, responsibilities are also unclear, and there are simply no centres with enough means and resources to extend their services to new target groups.

Specialised counselling centres for trafficked persons wishing to take on this responsibility **on a regular, long-term basis** must be granted additional means to **extend their mandate, carry out conceptual work and increase their resources** in order to be able to offer support to persons trafficked for this purpose. Alternatively, **new support structures** must be established, or **existing structures extended**.

To **identify** persons trafficked for the purpose of forced criminal activities and to protect them from being criminalised, **prosecuting authorities must receive comprehensive and continuous training**. Such training schemes must help avoid stereotyping and focus on the rights of trafficked persons. The option of **dropping charges against trafficked persons** must be used when appropriate.

Networking with stakeholders who have had little to do with trafficking in human beings but potentially come into contact with vulnerable persons must be improved, e.g. services such as shelters for homeless people, youth welfare organisations or self-organised migrants' groups.

Cooperation schemes and round tables should be extended to include the issue of trafficking in human beings for the purpose of forced criminal activities and begging and involve new partners if necessary.

It is necessary to establish an **interdisciplinary exchange** regarding appropriate means of identifying and supporting persons trafficked for this purpose. New strategic approaches are necessary. Experience sharing at the international level would be useful to **learn from other countries**.

General principles for all forms of exploitation:

Trafficked persons must receive comprehensive and effective **information regarding their rights** as well as support to assert them. Trafficked persons must have **access to their rights independently of any criminal proceedings** and cooperation with prosecuting authorities.

Trafficked persons must be offered a **legal opportunity to reside and work in the country**, even beyond the duration of the criminal proceedings and regardless of their willingness and ability to testify.

Opportunities to claim **unpaid wages and compensation** must be improved.

Moreover, in order for trafficked persons to be offered support and counselling, **specialised counselling centres must receive the necessary funding.**

Existing **cooperation networks** must be extended to include all forms of trafficking in human beings and support all target groups. New networks must be established if necessary in regions or federal states where no support structures are available. Effective, trust-based collaboration between authorities, NGOs and trade unions is crucial to identify and support trafficked persons and must be strengthened.

Finally, **training courses** on trafficking in human beings must be organised to raise awareness among as many stakeholders as possible who may come into contact with vulnerable persons.

Further information

- **KOK:**
<http://www.kok-gegen-menschenhandel.de/en/home.html>
You will find a list, including links, to all KOK members as well as other counselling centres
- **KOK Information Service 2016: (German only)**
https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Informationsdienst/KOK_Informationsdienst_2016.pdf
- **German Federal Criminal Police Office:**
https://www.bka.de/EN/CurrentInformation/AnnualReports/TraffickingInHumanBeings/traffickinginhumanbeings_node.html
- **European Union:**
www.ec.europa.eu/anti-trafficking/
- **Interpol (2014) Child trafficking for exploitation in forced criminal activities and forced begging:**
https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/child_trafficking_for_exploitation_in_forced_criminal_activities.pdf
- **OSCE:**
www.osce.org/secretariat/trafficking
and
<http://www.osce.org/secretariat/232541>
Specifically regarding the non-punishment clause:
(2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking:
<http://www.osce.org/secretariat/101002?download=true>

-
- **Council of Europe:**
www.coe.int/t/dghl/monitoring/trafficking/default_en.asp
 - **UNODC:**
<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menu>
 - **UN Special Rapporteur on trafficking in persons:**
www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx

Contact and donations

Provisions made for adequate support or for secure accommodation of trafficked persons are insufficient in Germany. This needs to change through lobbying and PR activities.

We need your support – every donation helps.

Account for donations:

Evangelische Bank eG

IBAN: DE43 5206 0410 0003 9110 47

BIC: GENODEF1EK1

Donation Line: 0900 – 156 53 81 (only within Germany)

For each phone call, €5 (including a €0.75 phone service charge) will be donated to KOK. The amount will appear on your next phone bill. KOK is happy to issue a donation receipt.

Donate while shopping online:

You can support KOK directly by simply donating while shopping online via the website www.wecanhelp.de

KOK is funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.



Federal Ministry for
Family Affairs, Senior Citizens,
Women and Youth

The **Trafficking in human beings** information brochure also has a version on **Trafficking in human beings – labour exploitation** and **Trafficking in human beings – sexual exploitation.**

30 Also available in German.

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Kurfürstenstraße 33, 10785 Berlin, Germany

Tel.: +49 (0) 30 / 263 911 76

Fax: +49 (0) 30 / 263 911 86

info@kok-buero.de

www.kok-gegen-menschenhandel.de/en/home