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## **German NGO Network against Trafficking in Human Beings - KOK e.V.**

### **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany**

***Third evaluation round***

**09.03.2023**

## Preface

This report was drawn up by KOK.

Most of the specialised counselling centres supporting individuals subjected to trafficking in human beings and exploitation and other organisations dealing with these issues are members of KOK.

In order to respond to the questions, KOK's member organisations were surveyed and their expertise gathered.

ECPAT Germany and the Internationaler Sozialdienst ISD (German branch of the International Social Service) also contributed to the drafting of the report, notably the responses to those questions relating to child trafficking.

In this report, we respond to selected questions that are of particular relevance to KOK and its members on the ground.

Major shortcomings remain in key areas identified by GRETA in the previous evaluation round as requiring urgent improvement.

These areas include:

- Development and adoption of a national anti-trafficking action plan (this has not yet been done)
- Ensuring that all those potentially affected by trafficking in human beings benefit from the reflection period and have access to support services during this period regardless of whether or not they are willing to cooperate and before they give a statement to the law enforcement authorities
- Expanding the competences and resources of organisations such as NGOs in order to achieve better identification of potential trafficked persons, including through the use of uniform indicators and guidelines and by giving them a formal role in the identification process
- Ensuring that all trafficked persons are able to exercise their right to compensation and that they receive information about their rights
- Providing support services for individuals affected by all forms of trafficking in human beings, including safe accommodation facilities, including for male trafficked persons and unaccompanied minors who have been separated from their parents
- Training and up-skilling, in particular for law enforcement authorities, the judiciary, public prosecutor's offices and courts

During the reporting period, these recommendations for immediate action were either implemented in a very rudimentary manner or not at all.

## Note:

The majority of legal texts, administrative regulations and guidelines use the term 'victim'. The use of this term is controversial, especially in the context of sexual violence. Its use in everyday language suggests an element of passiveness, weakness, vulnerability and powerlessness, and it can be perceived as degrading the individual in question.

Instead, it is necessary to identify and use terms that empower trafficked persons and emphasise their ability to play an active role, without stigmatisation. KOK therefore avoids using the term 'victims' and instead prefers the term 'trafficked persons',

This report will therefore use the term 'trafficked persons'. The term 'victim' will only be used in direct or indirect citations from guidelines, legal texts and administrative regulations

## Part I - Access to justice and effective remedies

### 1. Right to information (Articles 12 and 15)

- 1.1 How, at what stage and by whom are presumed victims and victims of THB informed of their rights, the relevant judicial and administrative proceedings, and the legal possibilities for obtaining compensation and other remedies, in a language that they can understand? Please provide copies of any information materials developed to inform victims of THB, including any materials specifically developed for child victims, in the languages in which they exist.

If trafficked persons have contact with a specialised counselling centre, they are informed by the counsellors about their rights and options. If possible, the counselling sessions are held in their mother tongue, if necessary with a language mediator/interpreter present. The persons concerned are informed of their rights and relevant judicial and administrative proceedings as soon as possible, but this also depends on their emotional, psychological and physical condition.

Depending on the needs of the trafficked person and the further procedure agreed with him/her—in particular if the person decides to cooperate with the police—they are referred to a solicitor specialised in relevant legislation and victim's rights, who provides further information about rights and obligations in criminal proceedings.

Generally, there is an obligation to inform all victims of crimes about their rights and possibilities for obtaining support under Article 406i of the German Code of Criminal Procedure [Strafprozessordnung]. In practice, however, specialised counselling centres report that when trafficked persons are referred to them by the police, the initial interview has usually already taken place and the trafficked persons are often not sufficiently informed about their rights or are not informed at all. For example, the right to a reflection and stabilisation period is often not granted. This is the case in particular if the public authority has little experience in the field of trafficking, for example local police authorities, customs or the federal police.

In general, the information victims of human trafficking receive about their rights from stakeholders outside specialised counselling centres depends on various factors. First of all, it is essential that trafficked persons are recognised as potential victims of trafficking.

Most of the federal states (13 out of 16) have concluded various types of cooperation agreements in the form of conventions, contracts and decrees which govern the collaboration between the specialised counselling centres and the police in cases of trafficking in human beings. The majority of these agreements specify that the police must involve the specialised counselling centres in cases of suspected trafficking with the agreement of the trafficked persons or at the very least that they must inform trafficked persons about their right to counselling and the range of services offered by specialised counselling centres. Some specialised counselling centres have expressed the criticism that trafficked persons tend to just be given a flyer. It is not known whether trafficked persons actually receive information about the services offered by the specialised counselling centres, for example, about the fact that they are non-governmental organisations, that anonymity is guaranteed, that testifying is not a prerequisite for accessing counselling, etc. Some of the specialised counselling centres believe that it would be better if the police contacted them or involved them directly, with the agreement of the trafficked persons.

According to the specialised counselling centres, when the police come across trafficked persons it very much depends on the context of the operation as to whether they are recognised as such. Namely, they are more likely to be identified as trafficked persons in the case of outreach work in brothels or on the streets or in connection with planned raids in red-light districts or on construction sites than if they come into contact with the police incidentally in connection with other types of operations. Incidental contact in particular is thought to be less likely to lead to identification of trafficked persons; in such cases they are often registered as suspects in a crime and prosecuted.

If trafficked persons are recognised as such, access to their rights and referral to specialised counselling centres depends primarily on whether the police (or other public authorities) are sufficiently trained for first contact and whether the local specialised counselling centres are even known to them. This is often not the case. Especially in the non-specialised police departments and in rural areas, there is hardly any knowledge about the specialised counselling centres and the rights of trafficked persons.

When a case of trafficking is identified by the police, but they do not possess the relevant knowledge about the rights of trafficked persons and access to local specialised counselling centres, this can lead to those individuals being questioned prematurely before they have received any information about their rights and/or before they have gained access to support.

As far as KOK is aware no specific material for trafficked minors has been developed by public authorities or is distributed by the police.

## **2. Legal assistance and free legal aid (Article 15)**

**2.1** How, by whom and from what moment is legal assistance provided to victims of trafficking? How is legal assistance provided to children?

Where legal assistance and representation are required, many specialised counselling centres rely on existing links with lawyers. These lawyers often have good, long-standing relationships with the specialised counselling centres. Due to the experience gathered with certain procedures, the employees of the specialised counselling centres can now clearly recognise whether a legal advice voucher or legal advice cheque from Weißer Ring<sup>1</sup> is needed or whether a lawyer can be appointed immediately via an accessory prosecution without the need for a legal advice voucher or cheque. However, the situation is different in a certain number of federal states, where there are very few long-standing relationships between specialised counselling centres and individual lawyers. Counselling centers report that there are not many lawyers that cover multiple relevant areas of law and, in particular, are available to represent trafficked persons in criminal proceedings.

Assistance for children:

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<sup>1</sup> Weißer Ring is an independent support organisation for victims of crime. The organisation helps, for example, by issuing assistance cheques that can be used to pay the victim's fee for an initial visit to an attorney of the victim's choice. See also 2.3.

A child must appear before the family court if they have reached the age of 14 or, where warranted, if they are under the age of 14. In order to safeguard the child's interests, a guardian ad litem must be appointed for the child under the prerequisites set out in Section 158 of the German Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit]. The guardian ad litem safeguards the interests of the child in the proceedings and advises the child as to the object, procedures and possible outcome of the family court proceedings. For reasons of protection, a child is permitted—in addition to their own hearing—to be questioned as a witness within the scope of collecting evidence.

As witnesses to a crime of which they were the victim, trafficked children are entitled to legal assistance which allows them to obtain advice during criminal proceedings (Sections 397a and 406h of the German Code of Criminal Procedure). The costs of this are borne by the State. They must be informed of their rights, to the extent that they are able to understand these rights. Moreover, trafficked children have a right to free (professional) psychosocial support before, during and after criminal proceedings (Section 406g, para. 3, first sentence of the German Code of Criminal Procedure). In order to claim psychosocial support for the proceedings, an application must be made to the court with jurisdiction (Section 162 of the German Code of Criminal Procedure). Trafficked persons are also witnesses entitled to private accessory prosecution and as such have a right to be assigned counsel (Sections 397a and 406h of the German Code of Criminal Procedure).

In the suspected cases of trafficking brought to the attention of the International Social Service, trafficked children from other countries did not receive legal assistance. The focus of the measures was on general protection and determining what the prospects were for the children in question. In certain cases in the past where the ISD was contacted, it was deemed that the only prospect for the child was a prompt return to their country of origin. These children were either quickly returned to their country of origin, or they disappeared. The protective intervention was then concluded, and as far as the ISD is aware no criminal proceedings were initiated. The ISD was not informed of whether any (further) criminal investigations were conducted.

## 2.2 Do all presumed victims of THB have access to legal assistance, irrespective of immigration status or type of exploitation?

In principle, all people in Germany have access to legal assistance, including trafficked persons—irrespective of their immigration status or the type of exploitation. However, in practice there are a number of barriers that impede or prevent trafficked persons from accessing legal assistance. For more details, please see the response to question 11.

## 2.3 What are the conditions for access to free legal aid for victims of THB, including children? For which types of proceedings is free legal aid available? Is free legal aid available to help victims claim compensation and execute compensation orders? Please provide the text of the relevant provisions.

Prior to court proceedings it is possible to apply for a legal advice aid voucher from the competent district court in accordance with Section 1 of the German Legal Advice Aid Act

[Beratungshilfegesetz]. Legal advice aid is intended for low-income individuals who require legal assistance or out-of-court representation.

However, even if a legal advice voucher is provided lawyers often charge a EUR 15 fee that is payable by the individual themselves (cf. item 2500 in the List of Applicable Fees as appended to the German Attorney Remuneration Act [Rechtsanwaltsvergütungsgesetz mit Vergütungsverzeichnis]), although this fee may be waived in some instances.

In cases involving criminal or administrative offences, legal advice aid is only granted for the purpose of legal counsel, not representation. Alternatively, it is possible to obtain a legal advice cheque from victim-support organisation Weißer Ring which allows individuals to access a free initial consultation with a lawyer. Counsellors at the specialised counselling centres assess the situation together with the trafficked persons concerned and decide on what measures are necessary.

If criminal proceedings are launched, then trafficking in human beings falls under the category of offences which give rise to a right to be assigned counsel in accordance with Section 397a, para. 1 of the German Code of Criminal Procedure. This means that trafficked persons can apply for a lawyer to be appointed to assist them. They do not have to bear the costs of this; they are normally borne by the State. (For more information, see point 2.5.)

Legal aid within the meaning of Sections 114 et seq. of the German Code of Civil Procedure [Zivilprozessordnung] is available in the case of proceedings before the civil, administrative, labour and social courts where one of the parties to proceedings is unable to afford a lawyer or the court fees for the proceedings. In criminal proceedings, private accessory prosecutors may also be granted legal aid if they are not assigned a lawyer. Legal aid is a type of social benefit in the area of access to justice to which special legal provisions apply and serves to ensure equality of legal protection. Trafficked persons are also eligible to apply for legal aid. Where legal aid is granted, the costs of proceedings (court fees and the cost of the beneficiary's own lawyer) will be borne either in full or in part by the State, depending on the level of income of the beneficiary. If an individual must pay some of the court fees themselves due to the fact that they have a small amount of financial assets available, they are bound by a payment obligation towards the State which can be honoured in instalments. Applicants must then notify the court on their own initiative of any change in their place of residence and of any increase in income of more than EUR 100 per month (see Section 120a of the German Code of Civil Procedure). Failure to provide this information without good reason can be grounds for any legal aid granted to be withdrawn.

Applicants must meet a host of criteria in order to be granted legal aid, which renders it harder to obtain in practice. Applicants must prove that:

1. they do not have sufficient income to pay the procedural fees themselves (situation of need);
2. they have a good enough chance of winning the case (likelihood of success); and
3. the case is not frivolous.

If they lose their case, the party who has been granted legal aid must also pay the costs of the opposing party.

It can therefore be said that trafficked persons do not truly have access to legal advice free of charge. Regardless of the circumstances, trafficked persons or counsellors must find a way to cover the costs of legal advice or representation. In many cases, this presents a real challenge. For

example, not all lawyers accept legal advice cheques from Weißer Ring, which in itself is a limiting factor. Moreover, in order to qualify for a legal advice cheque from Weißer Ring applicants sometimes need to have already been allocated a police incident number or case number.

The special cost provisions for first instance proceedings before a labour court provide that every party must bear the costs of their own lawyers, regardless of the outcome of the case (cf. Section 12a, para. 1 of the German Labour Courts Act [Arbeitsgerichtsgesetz]). If the parties come to a settlement, the court fees will be waived. Otherwise, the court fees must usually be borne by the losing party. The costs of court interpreters are borne by the unsuccessful party (unless there is a reciprocity agreement with the country in question, which means that the costs are waived). These costs are not waived in the event of a settlement. The special cost provisions for first instance proceedings before a labour court and/or the potential for legal aid paid out to be subsequently recovered frequently cause those seeking counsel in cases of labour exploitation to refrain from filing a claim. This is especially true when the outcome of the proceedings is uncertain, or it is unclear whether any favourable judgment could be enforced in practice. Other potential options for obtaining funds for legal proceedings are largely unavailable to employees in exploitative working relationships, for example through legal expenses insurance or membership of a trade union. Consequently, any legal advice provided must entail a very careful assessment of the risk of initiating proceedings, which must be discussed in detail with the client. Before even filing a claim, it is also necessary to consider and calculate the likelihood of enforcing payment of the wage claim, if granted.

**2.4 Are there lawyers specialised to provide legal aid and represent victims of THB in court? What regulations, if any, are applicable to the provision of such legal aid/representation?**

In Germany, there are no legal firms that specialise in the rights of victims or who have a recognised specialisation in trafficking in human beings and exploitation. The lawyers who assist trafficked persons tend to be specialists in criminal law and have acquired expertise in the field of trafficking in human beings over time. According to the specialised counselling centres, one of the problems encountered is that these lawyers are often well-versed in matters of criminal law but are less or not equipped to deal with questions relating to the residence status of their clients or their rights under social law. Moreover, there are very few lawyers with expertise in trafficking in rural areas and cities where trafficking in human beings is relatively unheard of.

**2.5 How is the provision of legal assistance and free legal aid for victims of THB funded? Do victims have to pay a fee to obtain legal assistance or start a procedure, or are there other financial barriers in place? If yes, please specify the amount(s).**

See also the response to question 2.3.

If a trafficked person decides to cooperate with the law enforcement authorities and proceedings are initiated under Sections 232 et seq. of the German Criminal Code [Strafgesetzbuch], then they are classed as witnesses who are eligible to bring an accessory prosecution. Furthermore, the offences covered by Sections 232, 232a and 232b of the German Criminal Code give rise to a right to be assigned counsel, which means the parties may apply to have a lawyer appointed to assist them. They do not have to bear the costs of this; they are normally borne by the State. The losing party must only bear the costs and essential expenditure of the private accessory prosecutor if this is ordered by the court, cf. Section 472, para. 1 of the German Code of Criminal Procedure.

However, the problem is that this provision does not apply to the criminal offence of labour exploitation in accordance with Section 233 and Section 180a (Exploitation of prostitutes) of the German Criminal Code. Those affected by labour exploitation and exploitation for the purpose of prostitution will only be assigned counsel if they are under the age of 18 or are unable to sufficiently defend their own interests. Moreover, in proceedings involving trafficked persons the charges are often filed under a different offence—usually because it is easier to provide evidence for these offences, unlike the offences under Sections 232 et seq. of the German Criminal Code—which then does not give rise to a right to assignment of counsel, such as coercion (Section 240 of the German Criminal Code) or wage extortion (Section 291 of the German Criminal Code). In these cases, trafficked persons can only be granted legal aid under Section 397a, para. 2 of the German Code of Criminal Procedure if the relevant conditions are met.

A particular difficulty for those affected by labour exploitation is initiating proceedings before a labour court. Lawyers' fees must be borne by the parties; although they may apply for reimbursement of costs in the event of a favourable outcome, they still have to pay the up-front costs themselves. Moreover, there is a risk that the trafficked persons will have to pay the court fees in the event that they lose the case. In the case of a settlement, the court fees must be borne by both parties.

However, it is important for trafficked persons to receive good legal support from the very beginning. It is possible in theory to obtain financial support for legal representation other than in the case of assignment of counsel for private accessory prosecutors, but this proves difficult in practice for the reasons outlined under question 2.3.

### **3. Compensation from the perpetrators (Article 15)**

**3.1** What measures are in place to enable courts to award compensation to victims of THB, including children, from the perpetrators as part of criminal proceedings? What is the role of prosecutors in this respect?

It is possible for courts to also rule on compensation claims during criminal proceedings. This is referred to as a 'consolidated civil and criminal procedure' and is governed by Sections 403 et seq. of the German Code of Criminal Procedure. This particularly benefits those affected by crimes where the violation of their rights has also led to damages liable for compensation in accordance with civil law. Such damages claims would normally be dealt with in separate civil proceedings, but the consolidated procedure allows them to be ruled on as part of the same proceedings. Although the consolidated civil and criminal procedure does get applied in practice, the promised compensation often fails to materialise. According to the specialised counselling centres, this is because in many cases the perpetrators do not have any above-board assets and/or are receiving welfare benefits. As a result, even when it is ruled that a trafficked person is assigned compensation they may still not receive that compensation from the perpetrators, or they may only receive a small amount.

There is currently no stopgap solution such as a State fund or similar mechanism that would bear the costs of claims in the event that a perpetrator is not in a position to pay.

One specialised counselling centre has also reported that in at least one federal state, applications for consolidated civil and criminal procedures filed by lawyers are rejected by the courts in the

majority of cases.

Another problem associated with this provision is that there are relatively few criminal proceedings relating to trafficking in human beings, so it is often not possible to obtain compensation through a consolidated procedure in the first place.

Opting for civil law proceedings in these cases not only results in the lowest likelihood of actually obtaining compensation, but is also subject to the problems explained above in relation to finding funding for legal representation.

**3.4** When foreign victims of THB are removed from or choose to leave the country where the exploitation took place, what measures are in place to enable them to obtain compensation and other remedies?

There are no specific measures in place for trafficked persons from third countries to obtain compensation or other legal remedies. In theory, they could also file a claim for compensation from abroad. However, in doing so they would be faced with a great deal of red-tape and a number of organisational hurdles that they would have to tackle either by themselves or with the support of the specialised counselling centres. For example, difficulties may arise if the court orders the party to be present at proceedings. The court may waive this requirement if the party would have to travel a long way or on other grounds, but this only happens in exceptional cases. The presence of the party's representative alone is often insufficient, in particular if they do not have as much knowledge of the circumstances as the claimant. Consequently, enforcing these claims across national borders is an extremely complex and onerous process for both trafficked persons and specialised counselling centres.

**3.5** What procedures are in place to ensure effective access to compensation for victims of THB for the purpose of labour exploitation? Can such victims bring civil claims for compensation and/or recovery of unpaid wages and social contributions on the basis of tort, labour, employment or other laws? Please specify the relevant measures. Can victims of THB working in irregular employment or without a contract claim unpaid wages and other compensation and if yes, how is the amount of unpaid wages and other compensation established?

Individuals affected by labour exploitation are able to claim compensation and/or payment of outstanding wages and initiate proceedings before a labour court. However, finding a source of funding to cover the fees for legal counsel and representation in such cases can be problematic. This is an issue because getting a good lawyer on board as soon as possible in the process is essential when a trafficked person is not in possession of an official employment contract or they have only scarce documentation or evidence of the hours they have worked and the jobs they have performed. This is where funding problems hit hardest, see response to question 2.3.

Even trafficked persons who are in Germany illegally are technically still able to make a claim. However, undocumented workers and persons present in the country illegally often refuse to pursue this avenue when they are informed of the—legally contentious—reporting obligation of the labour courts vis-à-vis the immigration authorities (Section 87 of the German Residence Act [Aufenthaltsgesetz]). This reporting obligation is a major barrier to court enforcement of wage claims in the case of undocumented workers, although the possibility that investigations might be initiated by customs authorities into unpaid social security contributions also acts as a serious deterrent in most cases.

**3.6 What training is provided to build the capacity of relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges, to enable victims of THB to obtain compensation and other remedies?**

Overall, specialised counselling centres stress how important it is to carry out continuous training and awareness-raising work among professionals working with trafficked persons, e.g. police forces, lawyers, immigration authorities, federal border staff, schools, social educators, teachers, Youth Welfare Office staff, professionals working in refugee accommodation and shelters, Federal Office for Migration and Refugees staff, and professionals working for other counselling centres with overlapping mandates.

KOK as well as the specialised counselling centres carry out training (about 2–3 times per year) for various types of professionals, e.g. police and federal police officers, the Federal Office for Migration and Refugees, embassy staff, students and social workers etc. and on various aspects of THB. The right to compensation for trafficked persons is always included in this training. However, special training sessions for law enforcement staff on how to obtain compensation and other remedies are not carried out by KOK or other civil society stakeholders.

Legal professionals such as lawyers sometimes participate in this training. Prosecutors and judges in particular are extremely hard to reach to organise training sessions, which poses a great problem as only very few cities have specialised state prosecutors for trafficking and exploitation. Very often state prosecutors and judges have a very high workload and limited resources to participate in training. Furthermore, in most federal states in Germany judges have no obligation to undergo further training once they have started working as a judge.

Overall, training and awareness-raising regarding trafficking in human beings and exploitation are still lacking in Germany among the relevant groups of professionals. To our knowledge, no specific training is provided on special topics like obtaining compensation or other remedies.

In recent years in particular, a number of other bodies have become potential first points of contact for trafficked persons, such as the Federal Police Force or the Financial Control of Undeclared Work Department. Some training has been provided to these bodies, for example by the Service Centre against Labour Exploitation, Forced Labour and Human Trafficking and/or KOK. However, there is still an urgent need for more training and awareness-raising on the subject of trafficking in human beings and in particular regarding the rights of trafficked persons. Neither the Service Centre, KOK nor the specialised counselling centres have the necessary resources to fully meet this demand in the near future or to cover aspects such as the very complex matter of compensation for trafficked persons in the comprehensive manner required in order to bring about real improvements in the enforcement of compensation claims.

#### 4. State compensation (Article 15)

4.1 Do the eligibility criteria for State compensation schemes for victims of crimes exclude some victims of THB (e.g. due to irregular residence status, nationality, nature of the offence)? Does access to State compensation depend on the outcome of the criminal case and on failure to obtain compensation from the offenders?

In 2024, the current Crime Victims Compensation Act [Opferentschädigungsgesetz] will be replaced by a reformed social compensation law (German Social Code, Part 14). The barriers that currently impede access for trafficked persons have been removed as part of the reform, meaning that psychological violence will in future be classed as a form of violence under compensation law, and third-country nationals will be treated exactly the same as German crime victims. As for the benefits themselves, particular mention should be made of the facilitated access to outpatient treatment at trauma clinics. However, in practice it appears that this option is often not used because it is difficult to find funding for interpreters or no interpreters are involved as providing therapy with an interpreter present is very challenging.

In terms of the procedures, the introduction of a reduced burden of proof as regards the causal link between the offence, the health impairment and the long-term consequences are sure to prove especially beneficial.

It remains to be seen how well the new provisions will be enforced in practice. Moreover, the existing provisions will continue to apply until the new law comes into force. A transitional mechanism or solution for hardship cases that would apply until the entry into force of the new legislation to help trafficked persons who are excluded from the current provisions should have been introduced, but did not materialise.

Some of the eligibility criteria for benefits under the still applicable Crime Victims Compensation Act restrict access for trafficked persons. For example, the Act does not consider psychological violence a form of violence, although perpetrators often exert pressure on trafficked persons not through physical violence, but using more subtle methods and psychological violence in order to perpetuate the exploitative situation.

Accessing benefits under the Crime Victims Compensation Act is difficult for anyone, let alone trafficked persons. Very few applications are filed in practice, and the amount of compensation granted is low. In addition, the protracted procedures involved in such claims—up to several years—are extremely stressful for those affected and the chance of a positive outcome is slim.

According to statistics gathered by Weißer Ring, in 2021 only 27.44% of all individuals nationwide who filed an application under the Crime Victims Protection Act were actually recognised as victims of an act of violence in accordance with Section 1 of that legislation. Of those who were recognised, a mere 29.97% on average received basic benefit payments under the Crime Victims Protection Act, which corresponds to 8.22% of the total number of applicants.<sup>2</sup> According to statistics collected by Weißer Ring, the figures have been at a similarly low level for some years now.

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<sup>2</sup> [https://weisser-ring.de/system/files/domains/weisser\\_ring\\_dev/downloads/oegstatistik202103983262\\_0.pdf](https://weisser-ring.de/system/files/domains/weisser_ring_dev/downloads/oegstatistik202103983262_0.pdf) (only in German)

## 5. Sanctions and measures (Article 23)

5.1 Please describe the legislative and other measures adopted by your country which allow to: i) confiscate or otherwise deprive perpetrators of the proceeds of criminal offences, or property of an equivalent value to those proceeds; and ii) identify, trace, freeze or seize rapidly property which is liable to confiscation, in order to facilitate the enforcement of a later confiscation. Do these measures allow the identification, tracing and seizure of property into which the proceeds of illicit activities have been converted?

Asset forfeiture in accordance with Section 73 of the German Criminal Code:

Sections 73 to 76b of the German Criminal Code govern the possibility of asset forfeiture, a process which was reformed in 2017 for various reasons including victim protection. Since the reform, courts have been able to order confiscation of the proceeds of criminal offences accrued by perpetrators. Any economically valuable asset can be confiscated, including cash and real estate.

The aggrieved party's claims are usually satisfied during enforcement proceedings following a judgment. If an item obtained through crime is still available, it will be confiscated by order of the court and returned to the aggrieved party.

Otherwise, the court will order seizure of a monetary amount equal to the value of the original item. Once the judgment is final, the assets seized in order to guarantee this alternative compensation must be liquidated and the proceeds transferred to the aggrieved party/parties.

However, in practice it often occurs that no assets can be seized in cases of trafficking in human beings, meaning that trafficked persons do not receive any compensation.

5.2 In what way do victims of THB benefit from seized and confiscated assets of perpetrators of THB? Do the confiscated assets go directly to victims, to a compensation fund or scheme for victims of trafficking or to other programmes for the assistance or support of victims of THB? Please provide information on seizures and confiscations of assets in THB cases and how they were used.

See also the response to question 5.1.

In Germany, there is no compensation fund or special compensation scheme for trafficked persons, nor are there any official programmes for supporting trafficked persons that are funded through seized assets.

5.4 What is the average duration of court proceedings in THB cases? In which circumstances are such cases given priority? Do you have a system to fast-track human trafficking-related prosecutions in order to improve the trial process and reduce the burden on victims and witnesses, including children? What safeguards are in place to ensure that judges deal with cases of THB without undue delay?

According to the specialised counselling centres, there are no special measures in place for fast-tracking proceedings relating to trafficking in human beings and preventing delays. In one federal state, it has been reported that it is usually only those cases that appear to have a high likelihood of success from the outset that are even put before court. The specialised counselling centre in

question reported that in these cases, the proceedings do not usually last long (approx. 2–4 months).

We have had a report from another federal state that trafficking in human beings is usually only one aspect of the prosecution's case alongside other aspects such as murder, violation of the German Narcotics Act or benefit fraud, which draws out proceedings. This is true in particular of more complex cases involving organised crime rings. However, even proceedings involving single perpetrators can last several months.

Measures to facilitate the process for trafficked persons are often not taken. For example, pre-recorded examinations are not possible in many places purely for technical reasons. Moreover, according to one specialised counselling centre even when an individual's examination has been recorded, they often still have to testify again in person in the main proceedings (especially in contentious cases) as the principle of oral presentation is invoked.

In cases where the welfare of a child is at risk, proceedings are fast-tracked and accelerated, whereby an initial appointment is supposed to take place within one month from the start of proceedings involving all relevant parties (family courts, youth welfare offices, lawyers, experts, guardians ad litem).

The German Act Combating Sexual Violence Against Children [Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder], which entered into force in July 2021, contains a number of measures intended to safeguard children during judicial proceedings. For example, it mandates that cases under the German Penal Procedure Code involving victims who are minors must be fast-tracked and sets out special requirements for the qualification of prosecutors and judges in juvenile courts.

KOK is not aware to what extent these measures are being implemented in practice in cases of trafficking in human beings involving minors. Overall, as far as both KOK and the ISD are aware there are very few cases of trafficking in human beings involving minors in Germany.

## **6. Ex parte and ex officio applications (Article 27)**

**6.1** What is the procedural position of a victim of THB in criminal proceedings? What steps are taken to assist victims of THB, including children, to enable their rights, interests and views to be presented and considered during the criminal proceedings against offenders? Who is entitled to assist victims of THB in court? Can victims of THB be represented by NGOs in criminal proceedings?

Trafficked persons have certain rights and obligations in criminal proceedings, depending on their role (as witness/joint plaintiff). Some of the protection rights of trafficked persons, e.g. psychosocial support during the trial, video questioning, exclusion of the public from the proceedings or the removal of the accused from the courtroom are not regularly implemented. Whether and to what extent trafficked persons can assert their rights in criminal proceedings varies greatly and depends on the knowledge and commitment of the judicial personnel as well as the technical equipment

Counsellors at the specialised counselling centres support their clients during the criminal proceedings if they so wish. The criminal offences of trafficking in human beings and exploitation can be subject to private accessory prosecution, i.e. trafficked persons are entitled to representation by a lawyer as an accessory prosecutor.

According to interviews with counselling centres conducted for the KOK project on the rights of trafficked persons during criminal proceedings<sup>3</sup>, trafficked persons are only accompanied during questioning by the police in a few federal states. Accompaniment by the staff during questioning is only provided at the express request of the person concerned, but not as a rule, as specialised counselling centre staff do not have the right to refuse testimony in court and therefore risk being questioned as witnesses in the criminal proceedings themselves and thereby having to break their confidentiality.

Trafficked persons have the right to psychosocial support during court proceedings (Section 406g of the German Code of Criminal Procedure).

In particular, children and adolescents are entitled to psychosocial support during the proceedings in cases involving violent and sexual offences. However, an application must be filed with the court, which will order that they be accompanied during the trial if the requirements are met.

Adults who are subject to violent or sexual crimes may also be entitled to psychosocial support during the trial,

subject to the due discretion of the court.

However, in cases of trafficking in human beings this is not applied often for various reasons. In a few federal states (e.g. in Baden-Württemberg), however, psychosocial support is regularly applied for and granted by the court in most cases.

Counselling centre staff also accompany trafficked persons during trials, and supporting their clients during proceedings is an essential part of their work. However, this is not the same as the psychosocial support during court proceedings as provided for in the corresponding law.

Trafficked persons are not always protected against victimisation, intimidation and disrespectful attitudes on the part of police officers and judges interviewing them. They are sometimes treated as though they were on trial themselves, or had acted wrongfully. Trafficked persons are often expected to be able to show evidence of a level of rationality that is impossible due to their circumstances. For example, trafficked persons from very poor regions may be told that they should have had a real plan of action before setting off abroad. In some cases, the plausibility of their testimony is called into question due to the culture they may belong to or to the gender identity they ascribe themselves.

Overall, hearings are very rarely recorded and hearings by way of audio-visual transmission are carried out even more rarely. Some federal states simply lack the equipment to do so. In most cases, defendants are not asked to leave the courtroom, despite a provision allowing this, as judges fear this could be used as grounds for an appeal.<sup>4</sup>

All rights of victims are also relevant to child victims of THB. Psychosocial support and child-sensitive proceedings are becoming more and more common in Germany, but as far as we know there are no specific measures for trafficked minors in place.

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<sup>3</sup>[https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/2021\\_09\\_15\\_Summary\\_report\\_The\\_Rights\\_of\\_Trafficked\\_Persons\\_during\\_Criminal\\_Proceedings.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/2021_09_15_Summary_report_The_Rights_of_Trafficked_Persons_during_Criminal_Proceedings.pdf)

<sup>4</sup>[https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/2021\\_09\\_15\\_Summary\\_report\\_The\\_Rights\\_of\\_Trafficked\\_Persons\\_during\\_Criminal\\_Proceedings.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/2021_09_15_Summary_report_The_Rights_of_Trafficked_Persons_during_Criminal_Proceedings.pdf)

6.2 If the authorities fail to discharge their obligation to effectively investigate and prosecute suspected cases of trafficking, what possibilities for redress exist for victims of THB and their families? To what extent have victims of trafficking, including children, access to complaint mechanisms, such as Ombudsman institutions and other national human rights institutions?

Germany does not yet have an ombudsperson or ombudsman institution, nor does it have a complaints mechanism for trafficked persons, including children.

6.3 What reporting and complaint mechanisms are in place for victims of trafficking who are in an irregular migration situation and/or in detention?

There are no safe complaints mechanisms for trafficked undocumented migrants. Although they are able to access the court system in theory, for example in order to bring proceedings against exploitative employers, in practice they are unable to exercise their rights as a result of Section 87 of the German Residence Act, which provides that public bodies and authorities (with the exception of schools and educational institutions) are obliged to notify the immigration authorities if they become aware of a person who is residing in the country illegally. This provision makes it essentially impossible for individuals living in Germany illegally (including trafficked persons) to make a complaint safely as it always entails the risk of being reported and suffering the consequences this brings in terms of their residence status.

That said, it is possible for trafficked persons to be granted a temporary residence permit if the offences in question were committed in Germany, or if they testify as witnesses in trafficking proceedings in Germany and their cooperation in criminal proceedings is deemed relevant by the judiciary.

One specialised counselling centre has reported that the situation at Frankfurt Airport is particularly challenging at present, as asylum seekers who make a verbal request for asylum but are unable to provide a valid passport or equivalent or do not come from a country designated as safe by the Federal Government must go through asylum proceedings under the 'airports procedure' prior to an entry decision being made by the Federal Police Force. In practice, this means they must undergo asylum proceedings while still in the transit area of the airport. This procedure is usually carried out very quickly, and those affected may not leave the transit area during this time. The decision on whether to grant asylum is made within a few days, but at the latest within 19 days. It is hugely difficult for very vulnerable refugees to enforce their right to asylum in this situation and in such a short space of time. Trafficked persons in particular require special support in order to make it through police questioning and their hearing before the Federal Office for Migration and Refugees without retraumatisation, and in order to explain the background to their situation.

In Addition, the accommodation and support for particularly vulnerable asylum seekers stipulated by the EU Reception Conditions Directive is not usually provided; instead those affected are held in detention-like circumstances and often suffer severe psychological distress due to the uncertainty of their situation and their isolation from the outside world. This makes it extremely difficult to identify trafficked persons and to ensure they are able to exercise their rights and access appeal proceedings. One problem with the procedure is that Section 18a, para. 1, fifth sentence of the German Asylum Proceedings Act [Asylverfahrensgesetz] prescribes the following sequence of events: 'An in-person hearing of the foreign national before the Federal Office shall

take place immediately. Immediately thereafter, the foreign national shall have the opportunity to make contact with a legal counsel of their choice, unless they have already arranged legal counsel themselves in advance of the hearing.'

However, since most trafficked persons know little about how legal counsel works in Germany and do not have any relevant contacts, they are usually only able to contact a lawyer once the hearing has been conducted. It cannot be assumed that the average trafficked person is aware what role certain pieces of information about their journey and in particular about the trafficking situation can play during the hearing; many do not mention the trafficking at all out of shame, a lack of knowledge about their rights or fear of the perpetrators or legal consequences (e.g. if they have entered the country illegally). It is difficult for specialised counselling centres to enter the transit area and national provisions such as the granting of a reflection period or even the regular deportation procedure are not applied since by means of a legal fiction the individual is deemed not to have entered the country yet when in the transit area of an airport.

6.4 Can victims of THB bring claims against the State or its officials for: i) direct involvement in THB; ii) failure to prevent THB or protect them from THB? Have there been cases where State agents or persons acting on behalf, or at the direction, of the State were found responsible for engagement in THB and/or failure to prevent it or protect victims from THB by third parties? Please provide information on any prosecutions against diplomatic and consular staff for alleged involvement in THB.

In Germany, no prosecutions have been brought against diplomatic and consular staff for alleged involvement in THB and exploitation, since diplomats enjoy immunity and cannot be prosecuted by German law (unless they are German).

When domestic workers reach out to the counselling centre in Berlin that specialises in trafficking cases in diplomatic households, the counselling centre organises mediation together with the Federal Foreign Office in order to claim the wages due to the domestic workers. The mediation takes place in the presence of the domestic workers, the employer, his/her supervisor, the Federal Foreign Office and Ban Ying. Sometimes the mediation leads to an agreement, in which the employer or the embassy of the employer agrees to pay part of the claimed salary.

In cases where the employer refuses to undergo mediation, or where the mediation does not lead to an agreement and the wage is not paid, the counselling centre will use alternative options and, with the agreement of the domestic worker, organise a press conference in order to put pressure on the employer and the embassy. Sometimes this works, and the embassy pays after the press conference because of the public pressure.

However, the counselling centre has reported that in the last few years these strategies have not been as successful. They have found that the employer and the embassy often refuse mediation and even seem to ignore the pressure resulting from media attention.

## **7. Non-punishment provision (Article 26)**

7.1 Please indicate what measures are taken to ensure that victims of THB, including children, are not punished for their involvement in unlawful activities (criminal, civil, administrative offences), to the extent they were compelled to do so, providing any concrete examples of their implementation.

Section 154c of the German Code of Criminal Procedure provides that in the case of criminal offences that trafficked persons have committed or been compelled to commit in connection with trafficking in human beings, public prosecutors may refrain from prosecution; this is therefore a discretionary provision, although a more binding provision is necessary if legal certainty is to be provided. As such, it is down to individual public prosecutors to decide whether or not to prosecute trafficked persons. Moreover, the public prosecutor must decide in each case whether the offence in question was too grave to refrain from prosecution. However, this law is only applicable to criminal offences subject to a prison sentence of less than a year or a monetary fine, meaning that a threshold for excessively grave offences is already in place. In summary, the law creates a huge amount of uncertainty for trafficked persons, as there is no guarantee that it will be applied by public prosecutors.

Moreover, this law only allows public prosecutors to refrain from prosecution, not courts or judges. Once a case is pending before court, judges are no longer able to suspend proceedings in accordance with this law.

If the public prosecutor does decide to refrain from prosecution at some point, they may still re-initiate proceedings if the factual circumstances have changed and this will not result in double jeopardy.

Nevertheless, Germany considers the Non Punishment Clause to be implemented with this regulation.

During an investigation by KOK into the rights of victims during criminal proceedings, most of those interviewed (in particular public prosecutors) confirmed that defendants who have committed criminal offences in connection with trafficking in human beings do sometimes have investigations launched against them. Common grounds for investigations include residing in the country illegally, using counterfeit identity documents and performing undeclared work. According to lawyers and the specialised counselling centres, although sentences are sometimes handed down this tends to be the exception rather than the rule. In particular, they reported that charges tend to be dropped if the trafficked persons in question testify as witnesses in criminal proceedings. The public prosecutors interviewed stressed that they do use the various options for stopping proceedings where possible (Section 170, para. 2, Section 153 and Section 153a of the German Code of Criminal Procedure).

However, attempting to halt proceedings on these grounds can be problematic due to one of the supreme principles of German penal procedure law, namely the legality principle in criminal proceedings. The public prosecutor is under an obligation to initiate investigations if they have sufficient information about a (potential) offence entailing reasonable suspicion and the law does not prescribe otherwise. An exception to this is when the non-punishment principle enshrined in German law applies. However, public prosecutors are still very cautious about overriding the legality principle and are highly likely to initiate investigations in the first instance. It may be assumed that in practice only a small number of trafficked persons are not subject to any prosecution proceedings at all as they will usually at least be initiated, even if they are later suspended.

Sometimes, public prosecutors are unaware of the provision and its connection with cases of trafficking in human beings or have only had to apply the rule in a small number of cases. It is important to raise awareness about this provision so that it is applied more often.

Based on their experience on the ground, specialised counselling centres report that trafficked persons are sometimes sentenced for offences they have committed while in a situation of exploitation. For example, one specialised counselling centre informed us of a case where a trafficked person did not explain that they had been in a situation of exploitation until they appeared before court, where they were being charged with two counts of document forgery. This gave rise to the aforementioned problem whereby the court was unable to suspend proceedings on the basis of the non-punishment principle.

7.2 Can persons who have breached national laws in the course, or as a consequence, of being trafficked have access to remedies for victims of trafficking, including State compensation?

Yes, in theory these trafficked persons also have access to compensation. However, in practice they face the same barriers in obtaining compensation as described in response to the questions in section 3.

## 8. Protection of victims and witnesses (Articles 28 and 30)

8.1 How are victims of THB protected in practice against potential retaliation or intimidation before, during and after legal proceedings? How is the assessment of the needs for protection performed and who recommends the application of the protection measures? Who is responsible of the implementation of the protection measures?

Based on interviews conducted as part of a KOK study into the enforcement of the rights of trafficked persons in criminal proceedings<sup>5</sup>, it was found that trafficked persons themselves are the primary source of information when it comes to assessing risks to their safety. It was reported that the investigating authorities usually perform a risk analysis, which they then use to decide whether to initiate a witness protection programme or operative protection measures due to evidence of exceptional cross-border risks.<sup>6</sup> According to the interviews, these individuals are usually put in accommodation far from the location where the offence was committed. However, gaps in security can still occur depending on whether trafficked persons comply with the agreements made with the specialised counselling centres as well as the way in which they use social networks and their phone<sup>7</sup>. Indeed, in accordance with Section 25, para. 4a, second sentence, second indent of the German Residence Act their leave to remain in the country is contingent upon them severing contact with the perpetrators.

It is reported that addresses or telephone numbers that are meant to be kept secret are sometimes accidentally revealed, for example because addresses are not redacted from investigation

<sup>5</sup> Cf. The Rights of Trafficked Persons during Criminal Proceedings – A Study of the Implementation of the EU Anti-trafficking Directive 2011/36 in Germany, [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/2021\\_09\\_15\\_Summary\\_report\\_The\\_Rights\\_of\\_Trafficked\\_Persons\\_during\\_Criminal\\_Proceedings.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/2021_09_15_Summary_report_The_Rights_of_Trafficked_Persons_during_Criminal_Proceedings.pdf)

<sup>6</sup> Cf. Lower Saxony Ministry for Social Affairs, Health and Equality (2020) 'Circular regarding the protection of trafficked persons subject to sexual exploitation and forced prostitution, collaboration for the protection of trafficked persons subject to sexual exploitation and forced prostitution' <https://www.ms.niedersachsen.de/gewaltschutz/frauenhandel/menschenhandel-zur-sexuellen-ausbeutungund-zwangsprostitution-13328.html> (only available in German).

<sup>7</sup> Sometimes the specialised counselling centres also help trafficked persons obtain new mobile phones and SIM cards (as is the case in Baden-Württemberg).

files/court files (e.g. on medical certificates) or because when permission is given to access files access is also accidentally granted to expenses documents (e.g. containing flight bookings for witnesses coming to Germany to testify). According to those surveyed, it is common practice in many federal states to instead provide the address of the offices of the specialised counselling centres, the Regional Criminal Police Offices or the law firm appointed to represent the trafficked person.

When it comes to the general safety of trafficked persons it was reported that in Berlin, for example, it is possible to apply for a ban on disclosure of information about trafficked persons when they are registered with the Citizens' Office. However, this can be difficult as police confirmation is required and the ban only applies for an initial period of two years; in the event that a longer period is required, a new police confirmation must be obtained in order to extend the disclosure ban by another two years. Such a confirmation can be hard to obtain after two years.

Safety issues apparently tend to arise most often in rural areas where the locations of the women's shelters may have been identified. Staffing shortages at these women's shelters means that there is not always someone present to supervise, resulting in gaps in security.

Security gaps were also reported in asylum accommodation, where trafficked persons were subjected to threats. It is allegedly very difficult to reassign these individuals to different accommodation facilities in many cases.

Those surveyed reported that the facilities used for main proceedings in their area are equipped with witness rooms or other places in the court building that witnesses can retire to. In some cases, trafficked persons were also said to be escorted to the court by the police. Multiple interviewees reported that individuals associated with the defendant sometimes turned up as spectators to proceedings in order to intimidate or attempt to intimidate witnesses. In some cases, the individuals in question tried to intimidate the witness by merely standing in front of the court room or waiting for the witness on their way to or from the court room. One public prosecutor reported that on their way to the courtroom to testify, some trafficked persons were forced to walk a gangway between two rows of hostile individuals, some of whom were even issuing threats. An employee at one of the specialised counselling centres mused whether it had not merely been a matter of luck that the risks facing trafficked persons receiving counselling from her centre had never materialised. Another employee even reported that she was followed when in the car with a trafficked person, who was then abducted on the street and never seen again.

According to those interviewed, most trafficked persons perceive hearings as a stressful experience. However, some experienced feelings of relief or even pride during or after being questioned. It appears that many trafficked persons also appreciate the fact that an official body is prepared to listen to what they have to say. Many find renewed strength after being able to talk about what happened to them during main proceedings in the presence of the defendant. It is therefore not the case that hearings are only ever a stressful experience for trafficked persons.

However, they can become particularly stressful when trafficked persons are given the impression that they are the ones on trial, for example when they are asked questions that suggest that they acted wrongfully. It is said that some of the people who conduct these hearings are not aware of what life is like for trafficked persons or are not willing to put themselves in their shoes. For example, they may present a trafficked person with what they believe to be a rational argument, but which does not take account of the reality of the trafficked person's situation, like when trafficked persons from very poor regions are told that they surely must have had a real plan of

action before setting off abroad. The manner in which questioners address trafficked persons is also described as being accusatory on some occasions. In cases where the testimony given by a trafficked person does not provide sufficient grounds for suspicion, it is even said that these individuals are sometimes treated unkindly. Another source of stress is the fact that those investigating may be very familiar with the milieu in which the offences were committed and may use the relevant jargon ('pimp speak'), even when questioning trafficked persons. This can be perceived as intimidating and does not help to draw out information.

A pre-recorded examination in accordance with Section 58a of the German Code of Criminal Procedure involves recording a video of a witness being questioned so that they do not have to undergo the strain of being questioned multiple times, including during main proceedings.

Those interviewed reported that pre-recorded examinations are a rarity, despite the fact that they are necessary in some cases for psychological reasons or if it is likely that the trafficked person may not be contactable in connection with future criminal proceedings or that they may exercise their right to refuse to give evidence in the main proceedings.

However, there is some scepticism about whether the less experienced investigating judges who perform these examinations will actually ask the right questions. Although pre-recorded examinations are certainly thought to be less stressful for trafficked persons as it means they do not have to testify again in the main proceedings, they are regarded as unsuitable for reaching a conviction, for example. They allegedly fail to give a direct enough impression of the individual's emotions, feelings and reactions. A counterargument to this is that decisions should not be made on the basis of the emotions a person displays. Some trafficked persons may have grown resilient or may have managed to come to terms with what happened; this should be regarded in a positive light and not dismissed as damaging to their credibility.

In certain federal states such as Mecklenburg-Western Pomerania and Brandenburg, pre-recorded examinations are impossible simply because they do not have the necessary technical facilities.

There are alternative options, such as closed hearings, removal of the defendant from the courtroom and remote examinations.

In this respect, the study found that applications for hearings to be closed to the public are rare. Moreover, they are normally only approved in cases involving witnesses who are minors.

Applications for removal of the defendant from the courtroom are made only infrequently by lawyers and public prosecutors. Removal is said to usually only occur when the defendant agrees to it, as removing the defendant from the courtroom can be taken as grounds for a procedural error. Such procedural errors may under some circumstances be considered absolute grounds for an appeal on points of law in accordance with Section 338, para. 5 of the German Code of Criminal Procedure, meaning that the verdict must be overturned. The public prosecutors and lawyers interviewed stressed that they would rather not run this risk.

Applications for remote examinations are rarely made, and are only likely to be approved in cases involving trafficked persons who are minors. It is harder to gain approval in the case of adults, but it is possible with the help of a report drawn up by a psychologist appointed and recognised by the court. There are only a few federal states, e.g. Baden-Württemberg or in a few cases Berlin where this has been allowed.

Some of those interviewed suspected that trafficked persons would provide better testimonies if the defendant was not in the room.

## 8.5 When victim protection is provided by NGOs, how are NGOs resourced and supported to perform this function and how do the police and the prosecution co-operate with NGOs?

The funding sources of the specialised counselling centres (which are all NGOs) vary. Many receive funding from the respective ministries in the individual federal states that are responsible for the topic of women and/or integration/migration. In addition, most counselling centres receive donations and raise third-party funds (e.g. for additional projects). Funding is mainly project-based, which means that the counselling centres have no long-term financial security. This also applies to safe shelters, which some counselling centres operate.

The challenges for the counselling centres have risen sharply in recent years, e.g. due to the coronavirus pandemic or most recently due to the war in Ukraine and the associated refugee movements.

There has been some funding made available for special projects in view of these developments (e.g. for technical equipment and online counselling during the pandemic or for raising awareness among Ukrainian refugees). However, little has changed in terms of the basic funding of the counselling centres, which is often very tight and only allows for part-time employment of counsellors, for example.

In some cases, the funding of specialised counselling centres through the federal states is limited to certain forms of exploitation or target groups (e.g. only cases of sexual exploitation or counselling of women only). Therefore, the specialised counselling centres often have to raise additional funds or find ad hoc solutions in individual cases, e.g. in order to provide counselling and accommodation for victims of other forms of exploitation or for men or transgender persons.

The cooperation between specialised counselling centres and the police is laid down in so-called cooperation agreements in most of the federal states. There is no national referral mechanism in Germany, but the cooperation agreements can be seen as a similar mechanism. These cooperation agreements were created based on the model of 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', which was developed in 1997 at national level and reviewed in 2008. 13 out of 16 federal states now have such cooperation initiatives in the form of agreements, decrees or contracts. Many of them now include new cooperation partners and/or have had their content expanded since they were first drawn up.

The cooperation schemes are aimed at adults. They still do not automatically include all forms of exploitation and do not always include all relevant stakeholders working across all forms of exploitation. Most existing agreements cover at least trafficking in human beings for the purpose of sexual exploitation; some include labour exploitation or refer generally to trafficking in human beings without mentioning specific forms. Up to now, the other forms of exploitation have not explicitly been included. This stems *inter alia* from the fact that, in many cases, responsibilities for other forms of trafficking (e.g. exploitation of begging or criminal activities) have not been clarified, or that there are no support structures to which persons having experienced any form of trafficking in human beings can be referred to.

At least some of the cooperation agreements are being revised and expanded to include these other forms of trafficking. This is the case in Berlin, for example.

In recent years, the Financial Control of Undeclared Work Department (Finanzkontrolle Schwarzarbeit – FKS) and the Federal Police have increasingly been involved in human trafficking cases. This is considered a positive development, but there is a real need for awareness-raising,

for example with regard to the human rights provisions that must be respected and guaranteed vis-à-vis potential victims and with regard to specific rights of trafficked persons such as the reflection period. Moreover, in many regions long-term cooperation schemes are still to be established among authorities and civil society stakeholders that would allow identified trafficked persons to be effectively referred to support structures.

Initial steps have already been taken in this direction and good measures have been set in motion: this involved some of the existing cooperation agreements being expanded but, above all, new agreements being developed. The Federal Ministry of Labour and Social Affairs, for example, drew up a joint framework agreement with the German Trade Union Confederation and the Financial Control of Undeclared Work Department on the issue of labour exploitation and forced labour. In addition, together with the Federal Police, KOK has drafted a declaration of intent to cooperate, which is now to serve as a template for cooperation at the level of the federal states. It describes in which cases and in what way the Federal Police and the specialised counselling centres cooperate in suspected cases of trafficking in human beings and is intended to improve the identification and protection of trafficked persons and enhance cooperation between counselling centres and the Federal Police.

According to reports from the specialised counselling centres, cooperation with the public prosecutors' offices has been very difficult so far. In most federal states and cities/municipalities, cooperation is only on a case-by-case basis. Apart from a few exceptions, there are no specialised prosecution offices for human trafficking and exploitation. Therefore, there is no person or office who is primarily responsible and with whom a cooperation structure could be established.

Whether there is good cooperation with the police and the judiciary very often depends on the knowledge and commitment of the persons involved.

Where formalised cooperation agreements exist and the stakeholders involved regularly exchange information (e.g. in round tables or working groups), cooperation usually works better.

KOK regularly organises round table meetings and workshops at national level with police and also with staff of the Federal Office for Migration and Refugees and staff of the counselling centres to discuss new trends and developments, to exchange views on cooperation needs and possibilities and to strengthen trust and cooperation between the different stakeholders.

**8.6** How do you ensure that child victims of THB are treated in a child-sensitive way and are provided with protection before, during and after judicial proceedings in accordance with the Council of Europe Guidelines on Child Friendly Justice? Are interviews with children conducted in specially designated and adapted spaces by professionals trained to interview children? What measures are taken in order to ensure a limited number of interviews?

Trafficked minors:

Trafficked persons are witnesses entitled to private accessory prosecution and as such have a right to be assigned counsel as victims (Sections 397a and 406h of the German Code of Criminal Procedure). Children and young people require special protection during the entire criminal proceedings, and therefore have special rights:

- Separate examination of defendants and trafficked minors who are acting as witnesses, Section 247 of the German Code of Criminal Procedure.

- Pre-recorded examination, Section 247a of the German Code of Criminal Procedure, strict avoidance of multiple examinations.
- Exclusion of the public from the hearing, Section 171b of the German Courts Constitution Act [Gerichtsverfassungsgesetz].
- Questioning during the main hearing only by the judge.
- Age-appropriate examination in rooms designed to be suitable for children; in matters involving the protection of youth, youth courts have jurisdiction, Section 26 of the German Courts Constitution Act.
- Maintaining the secrecy of the minor's residential address; provision of an address to which documents can be served is sufficient, Section 68 of the German Code of Criminal Procedure (e.g. address of the law firm of the legal counsel, office of the specialised counselling centre). However, it must be borne in mind that the criminal court will view the registry office information for serving the summons to the main hearing and will duly note the address in the file. That said, it is possible to file an appeal with the criminal court and the public prosecution office so that the address is not noted in the file.
- Application for written confirmation of the filing of charges, confirmation is useful for measures relating to accommodation, social welfare benefits, interactions with the aliens' registration office and measures in connection with the protection against violence legislation.
- Information on the status of the proceedings, upon request the notification is to be translated, Sections 406d, 397 and 171 of the German Code of Criminal Procedure, Section 187 of the German Courts Constitution Act.
- Right to information on rights outside of the criminal proceedings (Section 406j of the German Code of Criminal Procedure) in easy-to-understand language (assertion of claims for compensation for pain and suffering, provisions of the protection against violence legislation, compensation claims for damages, psychosocial support for the proceedings) as well as the right to information about authorisations in the criminal proceedings as per Section 406i of the German Code of Criminal Procedure.
- Child victims of trafficking have a right to free psychosocial support before, during and after criminal proceedings.

Children's homes have been set up in various cities in Germany over the past decade based on the Barnahus concept, the target group of which includes trafficked minors (see PROMISE project of the Council of the Baltic Sea States). The services provided by the children's home run by the Berlin Charité hospital ('Childhood-Haus') are also aimed at minors affected by sexual exploitation/trafficking in human beings. It is not known whether other children's homes in Germany also target trafficked minors.

## **10. International co-operation (Article 32)**

10.4 What forms of international co-operation have proven to be particularly helpful in upholding the rights of victims of trafficking, including children, and prosecuting alleged traffickers?

KOK is a member of numerous international networks such as the La Strada International NGO Platform and the Platform on International Cooperation on Undocumented Migrants (PICUM), Global Alliance against Trafficking in Women (GAATW) and has found this to be very beneficial. These

networks allow exchanges to take place about current developments, trends and best practice in the different countries and also give members the opportunity to learn from one another, in particular regarding the enforcement of the rights of trafficked persons. In addition, members can turn to the networks if they have any questions or need support with respect to specific cross-border cases and will usually quickly receive help, information and contact details.

Moreover, KOK has accepted two organisations that are not based in Germany (from South Tyrol and Switzerland) as exceptional members, with whom other members can exchange views and to whom they offer support by providing information and contacts in specific cases of trafficking.

The network of the International Social Service (ISS) and collaboration between the central authorities under the Hague Convention on Protection of Children and the Brussels IIb Regulation<sup>8</sup> (clarifying matters of parental responsibility) can also be useful in enforcing the right to protection of trafficked children.

**10.5** What international co-operation measures are in place to ensure protection and assistance to victims on return from your country to their countries of origin following their participation in criminal proceedings?

There are no official measures in place. If trafficked persons (must) return to their country of origin after criminal proceedings and are currently receiving support in Germany from a specialised counselling centre (or they contact a specialised counselling centre after the criminal proceedings), then the latter will make the necessary arrangements in consultation with the individual in question. These arrangements include being picked up by an employee of a local counselling centre upon arrival and receiving further advice and support from a counselling centre.

The Dublin Regulation continues to pose problems when enforcing the right to protection of trafficked persons, as those individuals who must return to the country responsible for asylum proceedings often find themselves back in a country where they were (also) subject to exploitation, and perpetrators often operate through networks. There have been numerous reports from on the ground of asylum proceedings being initiated in cases where trafficked persons have cooperated in criminal proceedings or have made a statement during investigations but these did not result in criminal proceedings, meaning they were unable to obtain a residence permit. In many of these cases the Dublin Regulation is applicable, resulting in the consequences described above for trafficked persons.

On 1 April 2022, Frontex launched the Joint Reintegration Service (JRS) programme. According to the homepage of the Federal Office for Migration and Refugees, this programme offers personalised reintegration assistance for individuals who must return to their country of origin. The EU agency is thereby taking over certain aspects of the former ERRIN project, which came to an end on 30 June. The Federal Office for Migration and Refugees is still responsible for coordinating reintegration assistance at national level. However, confidential sources have reported that although the booking tool provided by Frontex works perfectly, the rest of the programme does not.

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<sup>8</sup> COUNCIL REGULATION (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction

Frontex is also currently setting up a European Return Centre, which will offer Member States a full range of services from preparation and follow-up of an individual's return to carrying out the return itself. However, as far as we are aware the JRS is not yet operational despite already receiving EU funding.

The programme is only open to individuals with no prospects of remaining in the EU and not to those who wish to return voluntarily and therefore have a longer-term residence permit in Germany. The programme 'Starthilfe Plus' (supplementing REAG/GARP by the IOM), on the other hand, has seen drastic cuts to its resources in order to avoid double-funding. From a civil society perspective this is a far worse situation: whereas the IOM is publicly accountable since it is a UN organisation and is also trying to build a reputation as an organisation that is 'closer to the people', Frontex is responsible for monitoring and controlling the EU's external borders and as such KOK does not believe it can be expected to demonstrate the necessary sensitivity for identifying particularly vulnerable individuals and ensuring their protection upon return to their home country.

Although the return process for vulnerable persons will in theory continue to be organised by the IOM's REAG/GARP programme, it is unclear who decides that a returning individual is vulnerable and when (who carries out the assessment, and is the effectiveness of the support monitored?). KOK is extremely concerned that trafficked persons may be returned to their country of origin via this programme if they are not identified as the victim of a crime.

## 11. Cross-cutting questions

### 11.1 What steps are taken to ensure that victims of THB have equal access to justice and effective remedies, irrespective of their immigration status and the form of exploitation?

The specialised counselling centres constantly strive to raise awareness among professionals to improve identification and ensure that trafficked persons are recognised and granted access to protection and their rights.

They also offer counselling and awareness-raising services in different areas in order to reach as many potentially affected people as possible and to increase knowledge among professionals who might come into contact with them. This takes place through training for authority staff and outreach work, or through counselling and awareness-raising services for example in shelters for refugees, both for potentially affected persons themselves and for the staff in the shelters.

The reflection period should ensure that trafficked persons are at least temporarily protected from deportation and can assert their basic rights, regardless of their residence status.

However, the granting of the reflection period is by no means assured everywhere. There are various hurdles to overcome and reasons why it is not granted, and how it is dealt with varies greatly from region to region.

A problem that occurs in almost all federal states is that the immigration authorities require confirmation from the police or public prosecutor's office that there are signs of human trafficking in a case in order to grant the reflection period. This contradicts the actual intention of the cooling-off period, according to which the persons concerned should first stabilise themselves and make an informed decision as to whether or not they want to contact law enforcement authorities.

In addition, many authorities are not aware of the reflection period; even those who have only recently become active in the fight against trafficking in human beings (e.g. Financial Control of

Undeclared Work Department or Federal Police) do not apply the regulation, presumably due to a lack of knowledge about the regulations and indicators of trafficking in human beings.

In many cases, this poor implementation of the reflection period prevents trafficked persons from accessing justice and compensation.

In general, a residence permit for trafficked persons is still contingent upon them giving a statement in criminal proceedings (as well as the relevance of the statement for the proceedings). This means that there are currently no measures in place to enable all trafficked persons, regardless of their residence status, to access protection and their rights.

In this context, it is positive to note that the current federal government has spoken out in favour of introducing a right of residence for trafficked persons irrespective of their testimony in its coalition agreement.

Another problem is the reporting obligation under Section 87 of the German Residence Act, according to which authorities are obliged to report any person believed to have an irregular residence status to the immigration office.

The fear of being reported prevents trafficked persons and exploited persons from accessing health care services, for example, or from bringing cases of exploitation before labour courts and claiming outstanding wages or compensation.

There is a non-punishment clause in German law and the prosecutor's office has the discretion to waive prosecution or punishment, but due to the wording of the law the provision provides no legal certainty for trafficked persons.

### 11.2 What steps are taken to ensure that criminal, civil, labour and administrative proceedings concerning victims of THB are gender-sensitive?

Many specialised counselling centres try to ensure in advance that female trafficked persons also have female interpreters at their disposal, that they are heard by female special representatives for victims of trafficking in human beings in the asylum procedure or are questioned by female police officers. However, this is not always successful, in which case counsellors accompany those affected to appointments with authorities and law enforcement.

When the counselling centres accompany male victims, they make sure that they are interviewed by male experts and accompanied by male interpreters. In general, the decisive factor here is what the persons concerned prefer and what they feel comfortable with.

Some counselling centres report that, in their experience, the issue of gender sensitivity is not sufficiently taken account of in the judiciary or in court proceedings.

According to reports from the counselling centres, interviews with authorities, the police and the judiciary itself are rarely gender-sensitive, regardless of whether they are conducted by a man or a woman. The situation is even more difficult for transgender persons, where there is an even greater lack of sensitivity.

### 11.3 What steps are taken to ensure that procedures for obtaining access to justice and remedies are child-sensitive, readily accessible to children and their representatives, and give weight to the child's views?

There is a working group on child sensitive justice within the German National Council on Combating Sexual Violence against Children and Young People which published a set of guidelines in July 2021 on child-sensitive criteria in the context of criminal proceedings. How this will be translated into good practice is still to be evaluated. <https://www.nationaler-rat.de/de/ergebnisse>

## Part II – Country-specific follow-up questions

12. Please provide information on new developments in your country since GRETA's second evaluation report concerning:

- emerging trends of trafficking in human beings (new forms of exploitation, new recruitment methods, vulnerable groups, gender-specific aspects of trafficking, child trafficking);

Due to the federal structure of Germany, it is difficult to make general statements regarding developments and emerging trends, as the situation can vary widely from one federal state to another.

The key trends and concerns described in KOK's contribution to the last evaluation largely persist and have not yet been addressed effectively or in a measurable way by the German government. This includes, for example, the issue of human trafficking in the context of asylum, addressing other forms of human trafficking beyond trafficking for the purpose of labour or sexual exploitation and the still insufficient support structures, and trafficking in minors.

There is still no national anti-trafficking action plan, nor is there a coordinating body in place at national level. In the current budget drawn up by the German Federal Government there is no additional funding earmarked for such coordination, despite the fact that there is an urgent need to create a coordinating body and establish a national action plan. It is difficult to quantify the success of anti-trafficking efforts in Germany without clearly defined goals and the monitoring of indicators.

However, major progress has been made with respect to the creation of a national rapporteur, a role which has now been assigned to the German Institute for Human Rights. The creation of such a national reporting mechanism in Germany enjoys the support of all the various stakeholders involved in combating trafficking in human beings and in supporting trafficked persons. The rapporteur began its work in early November, and KOK has great expectations with regard to its initial activities, findings and especially its reports about trafficking in human beings in Germany.

The statistics published by the German Federal Criminal Police Office in its Federal Situation Report on Trafficking in Human Beings show that over the past three years there have been no major changes to the nature of trafficking in Germany. Sexual exploitation remains the most frequently reported form of trafficking, and women still make up the majority of trafficked persons. These findings are confirmed by the KOK Data Report, an analysis of the specialised counselling centres participating in the data collection process that has been published annually since 2021. There are many reasons for this, such as insufficient awareness raising about other forms of trafficking in human beings and the fact that the support structure in place does not target all types of trafficking and does not receive adequate funding.

However, there are some discrepancies between the conclusions published in the two reports. For example, the Situation Report of the German Federal Criminal Police Office reports that German and European nationals make up the majority of trafficked persons, whereas the KOK Data Report found that the majority of trafficked persons originate from West African countries, in particular Nigeria.

Regarding trafficking of minors there have also been important developments: the German National Council on Combating Sexual Violence against Children and Young People (established in 2019 by the Federal Ministry for Family, Senior Citizens, Women and Youth and the Independent Commissioner for Issues of Child Sexual Abuse) has completed its first phase of work and in June 2021 published a joint statement in which key steps needed to combat child sexual abuse and exploitation are highlighted. The National Council already held a meeting in 2022 and has set up an agenda for the current legislative period, which designates combating child trafficking as a key action area for the years 2022 and 2023.

KOK is a member of the National Council and of the specific working group on combating child trafficking.

Some trends have been reported from several counselling centres from different regions of Germany:

#### **Forms of exploitation:**

The main forms of trafficking in human beings that members of the KOK counselling centre network deal with remain sexual exploitation (highest proportion) and labour exploitation, which primarily occurs in the areas of cleaning services, hospitality, care and domestic help.

Some counselling centres also deal with cases of begging and forced criminal activities.

There is still a considerable lack of sensitivity and attention regarding these forms of exploitation in Germany, especially among authorities and law enforcement. This makes it very difficult to identify those potentially affected. In addition, the existing support structure is either not sufficiently equipped to adequately deal with these other forms of exploitation or does not have the necessary mandate to do so.

No established support structures or referral mechanisms are yet in place for these forms of exploitation, nor do the existing (and newly emerging) cooperation agreements specifically refer to or include these forms of exploitation. This makes it much more difficult to identify those affected. Counselling centres therefore believe that a high number of cases go unreported.

#### **Impacts of the pandemic:**

The measures to combat the pandemic play a major role in the fight against human trafficking and in the work of the counselling centres, too.

Against the backdrop of the pandemic, the situation has once again worsened for many people in precarious employment, especially for migrants, and also for people in exploitative situations. For example, quarantine orders had to be followed by people living in poor-quality accommodation and with limited access to health care. Many had no social or financial protection in case of job loss due to coronavirus regulations (e.g. closure of hotels and restaurants).

The coronavirus-related restrictions had and are still having an impact on the counselling work of the specialised counselling centres for trafficked persons.

Direct face-to-face counselling and therapy and outreach work has partly been suspended. It has either been impossible or only possible to a limited extent to accompany trafficked persons to

appointments with the authorities, which has had detrimental effects for the victims in many cases (for example delays in the enforcement of social benefits).

Despite the adverse circumstances, specialised counselling centres managed to continue their counselling work at least in a pared-down form or via online or telephone counselling. In many cases, however, the necessary technical, spatial and human resources were and in many cases are still lacking, for example if there are not enough or there are not sufficiently large counselling rooms that match with authorities' regulations for handling the pandemic or if there is no technical equipment for online or video counselling and no funding to acquire such equipment.

The restrictions have also had major consequences for trafficked persons: left without access to safe accommodation, specialised facilities, health care and psychological support, the risk of revictimisation and exploitation increases massively.

In addition, it has been acknowledged that the restrictions also made and still make it much more difficult to identify potential victims, as the frequency of police controls has been reduced dramatically, for example, or because it was harder to contact counselling centres.

Coronavirus ordinances and the associated closure of prostitution establishments as well as the discontinuation of opportunities for sex workers to offer their services have resulted in a sudden lack of income for people in prostitution. Quite a few women have returned to their countries of origin, but many have also stayed in Germany and found themselves struggling to make ends meet. This not only applied to migrants but also to sex workers of German origin. Many have been at risk of or affected by homelessness; some had to live in the now closed brothels. During the first wave of the pandemic in spring 2020, registered sex workers were at least able to apply for emergency assistance to allow them to cover rent for their flats, which they often did. If they were eligible, they could also apply to receive an unemployment allowance. However, this was usually not enough to cover their financial liabilities. According to the counselling centres, it has also become much more difficult for sex workers to apply for and receive these benefits for sex workers over time. In addition, sex workers who are not registered have had even less access to support services.

According to counsellors, the situation for sex workers grew even worse in the following months.

Due to contact restrictions authorities and law enforcement reduced their regular work significantly, which had a major impact on the situation of trafficked persons but also on the fight against trafficking. Criminal proceedings were stopped, there were hardly any police controls and authorities interrupted the processing of applications, e.g. for residence permits, social benefits and asylum applications.

Many counselling centres reported that while the measures to combat the pandemic were in place, prostitution went underground. For example, an increasing number of sex workers started offering their services out of flats or hotels. To a large extent, this has remained the case even after the measures were lifted. Many brothels have not reopened. As a result, counselling centres and the police have less access to potential trafficked persons which gives rise to the fear that identifying victims and providing them with information on protection and support options will become more difficult.

#### **Technology-facilitated THB:**

In Germany, too, the counselling centres have observed the international trend that trafficking in human beings is increasingly taking place with the help of technology.

Traffickers are adjusting their business models to the 'new normal' created by the pandemic, especially through the abuse of modern communication technologies. They use the internet and other information and communications technology (ICT) throughout every phase of the exploitation process, in particular when seeking new recruits on social media platforms, but also in order to control trafficked persons while they are being exploited and exert pressure on them after they have escaped the exploitative situation.

KOK conducted a study on the impact of internet and social media in human trafficking in Germany in order to provide an initial overview on the topic and highlight practical experiences in Germany. The study concludes, and this is also confirmed by exchanges with the counselling centres, that the topic of digitalisation of trafficking in human beings has proven to be very important for all stakeholders and also decisive with regard to strategies to combat trafficking in human beings. Most stakeholders are aware of the relevance of the topic, but there is not yet a comprehensive awareness of the subject of digital and technology-facilitated violence in all its forms within government agencies or society at large, and as such law enforcement authorities and specialised counselling centres have so far not always deemed it necessary to develop or expand their capabilities in this area. The technical skills needed to respond appropriately to technological challenges in relation to IT security and the digital modus operandi of traffickers are lacking. Another major obstacle in practice is the uncertainty surrounding how to obtain digital evidence, which can prevent trafficked persons from exercising their rights to protection from violence. Germany must urgently accelerate the digitalisation of its public administration, bolster knowledge and capacity-building and at long last step up and face the immense complexity of this crime by facilitating collaboration between departments, authorities and countries, including structurally. A certain number of international and German approaches are already going in the right direction, but stakeholders must act more quickly.<sup>9</sup>

For further information, please also refer to KOK's responses to the Questionnaire for civil society organisations on online and technology-facilitated trafficking in human beings submitted to GRETA in May 2021.

### **Countries of origin:**

#### *Trafficking from Vietnam*

Law enforcement agencies, the media and specialised counselling centres have increasingly become aware of trafficked persons (or rather potential trafficked persons) from Vietnam in recent years. On the one hand, due to the Corona pandemic massive job and income losses have exacerbated poverty and inequality, disproportionately hurting those with no adequate social protection coverage, and the options for legal migration have decreased. On the other hand, there is growing migration pressure not only in Vietnam but in many other countries.

One challenge in this regard is that, according to previous experience of prosecution authorities and counselling centres, Vietnamese victims are very difficult to identify. Prosecution authorities also report that trafficked persons from Vietnam are hardly ever willing to testify against the perpetrators.

This problem frequently affects minors, too. Even if identified and taken into care by the youth welfare offices or the youth services as potential victims of exploitation and human trafficking,

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<sup>9</sup> Please also refer to the study *Trafficking in Human Beings 2.0 - Digitalisation of Trafficking in Human Beings in Germany: Developments and Courses of Action*, KOK e.V., [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Publikationen\\_KOK/KOK\\_Study\\_Trafficking\\_in\\_Human\\_Beings\\_2.0.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Study_Trafficking_in_Human_Beings_2.0.pdf)

they regularly 'disappear' from the shelters and are no longer reachable for further counselling and care.

There is still insufficient awareness-raising and sensitisation being carried out among the relevant stakeholders, but also a lack of strategies and ideas on how to better reach this group of trafficked persons in order to provide them with protection and support and to enable the prosecution of the perpetrators.

However, initial efforts are already under way. For example, the Federal Criminal Police Office is currently conducting a project on the scale of trafficking in Vietnamese nationals in Germany and the most prevalent forms of trafficking involved.

In a joint workshop between the specialised counselling centres and the Federal Criminal Police Office in 2021, it was also discussed why it is so difficult to access this group of victims and how better cooperation can be achieved in order to reach and assist them.

#### *Trafficking from West African countries*

In many specialised counselling centres, the majority of clients still come from West African countries, mainly Nigeria. Some counselling centres recently reported an increase in cases involving victims from Guinea and Cameroon.

A major problem in connection with trafficked persons from Nigeria continues to be that they are returned to other EU countries (predominantly Italy) under the Dublin Regulation, even if the exploitation originally took place there. If the scene of the crime is not in Germany, cross-border investigations are hardly ever carried out. As a result, trafficked persons cannot make use of the protection rights for victims of human trafficking in Germany, but have to go through the asylum procedure.

Regarding trafficking from Guinea, the counselling centres have reported specific problems in the countries of origin such as the high prevalence of FGM\_C or the widespread occurrence of forced marriages, child and early marriage. As a result, there are even stronger women-specific reasons for fleeing and push factors that make those affected particularly vulnerable.

#### *So called 'safe countries' as countries of origin*

The situation of those affected who come from countries classified by the federal government as 'safe countries of origin', such as Albania, is also problematic. The victims often do not testify because they are too afraid of the perpetrators and the consequences for themselves and their families. However, they are not entitled to a residence permit for trafficked persons. Due to the classification of their country as a safe country of origin, they also have no possibility of acquiring protection through the asylum procedure.

It should be noted, however, that such trends and developments are often partly due to the fact that there are projects and activities that focus more attention on a specific phenomenon or target group. The German Federal Criminal Police Office, for example, was involved in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) Action Days.

Other developments:

- Many specialised counselling centres observe that prostitution is increasingly taking place in areas that are difficult to access. This development has become particularly pronounced since the pandemic and the introduction of containment measures (such as the temporary closure of brothels and prohibition of sexual services), and many specialised counselling

centres have observed that prostitution is shifting to areas such as hotels or private homes. This makes it more difficult for the counselling centres to gain access and to do outreach work, making the already difficult task of identification even harder.

- In recent years, organised ritual abuse and its consequences have increasingly become the focus of stakeholders who deal with issues of sexual exploitation, abuse of children and young people and with trafficking in human beings. Some of the specialised counselling centres for trafficked persons organised under KOK have also handled cases of this specific form of violence. Although fairly limited in number, they have proved particularly challenging in practice for counselling centres. However, not much is currently known about this form of violence and it is seldom examined by academia.
  - As a consequence of the war in Ukraine and the resulting migratory movements to countries including Germany (comprising mostly women and children in the first few months), discussions quickly began regarding the risk of trafficking in human beings and exploitation and the need to inform refugees about these risks and the available counselling and support structures. Some of the specialised counselling centres responded extremely quickly, distributing flyers and other information material at train stations and other points of arrival. KOK also launched a project on the subject aimed at awareness raising and prevention for potential trafficked persons and at bolstering cooperation structures with a special focus on refugees from Ukraine in Germany. As part of this project, flyers were produced in multiple languages containing information about the risks of trafficking and available support structures, a social media campaign was organised to inform refugees about their rights and potential signs of exploitation as well as power imbalances and relationships of dependency with regard to private accommodation in particular, and a study was also carried out. This study involved surveying specialised counselling centres about their experiences in recent months with refugees from Ukraine who may have been affected by trafficking in human beings. The final report sets out the measures being taken in Germany to raise awareness and prevent trafficking in human beings as well as highlighting the current needs of specialised counselling centres. To date, the number of cases of trafficking in human beings and exploitation in connection with the war in Ukraine reported by specialised counselling centres in Germany stands in the lower double-digit region. This largely aligns with the experience of the specialised counselling centres, who report that cases of trafficking in human beings and exploitation often go unreported and that it is difficult to obtain reliable figures. Even though it is too early to properly appraise the situation in relation to trafficking in human beings and exploitation in Germany in connection with the conflict in Ukraine, KOK is calling for lessons to be learned from current and past migratory flows.
- the legislation and regulations relevant to action against THB (e.g. criminalisation of THB, identification and assistance of victims of THB, recovery and reflection period, residence permit, supply chains, public procurement);
  - the institutional and policy framework for action against THB (bodies responsible for co-ordinating national action against THB, entities specialised in the fight against THB, national rapporteur or equivalent mechanism, involvement of civil society, public-private partnerships);

The number of criminal cases against traffickers is still very low, especially when it comes to forms other than sexual exploitation. That said, there are very few proceedings even in this area, but the effects of the pandemic have exacerbated this.

The Ministry of Justice commissioned an evaluation of the criminal provisions relating to human trafficking in the German Criminal Code in 2021. One enlightening result was that the reformed criminal offences have not led to an improvement in prosecution. There are still very few proceedings, especially on forms of THB other than sexual exploitation. They are still considered too complex for application beyond legal theory. The design of the non-punishment clause in German law is also considered to be inadequate, as it is discretionary and subject to several legal prerequisites.

From October 2019 to April 2021, KOK carried out a project examining the newly introduced criminal offences relating to trafficking in human beings and their tangible impact on criminal proceedings. The study analyses the implementation of Directive 2011/36/EU in Germany in 2016 from a human rights perspective and provides insights into systematic gaps. The project included observation of a court case on human trafficking and a series of accompanying interviews with various stakeholders (judiciary, law enforcement and civil society). Like the aforementioned evaluation issued by the ministry, KOK's findings confirmed that there have not been more criminal proceedings since the reform of the criminal offences relating to trafficking in human beings in the Criminal Code. Overall, there were very few court cases on human trafficking during this period. Of this very small number of proceedings, most were related to sexual exploitation, a much smaller proportion to labour exploitation, and there were virtually no proceedings on the other forms of exploitation. The report points out that the rights of trafficked persons are not sufficiently taken into account in criminal proceedings. In this respect, the report highlights that the corresponding provisions of EU Directive 2011/36 have not been sufficiently implemented and calls for improvements.

In recent years, the specialised counselling centres and KOK have had to deal with various new stakeholders in the field of combating human trafficking and supporting trafficked persons. These include the Financial Control of Undeclared Work Department and the Federal Police. In addition, counselling centres have increasingly cooperated with authorities and institutions/organisations in the field of refugees and asylum, e.g. shelters for refugees.

Cooperation and the development of cooperation structures varies widely. In some municipalities or federal states there is more openness and commitment than in others. Very often, the counselling centres have to initiate cooperation and promote their involvement.

In some federal states, work has been done on establishing cooperation structures to combat trafficking in children, based on the cooperation concept 'Protection and Assistance in Trafficking in and Exploitation of Children' published by the Federal Ministry of Family, Senior Citizens, Women and Youth.

- the current national strategy and/or action plan for combating trafficking in human beings (objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results);

In the 2021 coalition agreement, the German Federal Government stated its intention to establish a national anti-trafficking action plan. There is still no national strategy or nationally harmonised package of measures for combating trafficking in human beings in Germany. It is not clear what negotiations will take place regarding such an action plan, who will be involved and when they will occur. In addition to an action plan, a coordinating body will be needed at national level that will assist with and coordinate the implementation of the measures set out in the action plan. However, no additional funding has been earmarked in the current budget for such coordination.

- recent case law concerning THB for different forms of exploitation.

In general, the number of investigations into trafficking in human beings and exploitation in Germany is relatively low. According to the Federal Situation Report of the German Federal Criminal Police Office, the majority of proceedings concern sexual exploitation and there are not many regarding other forms of exploitation. As such, there is even less case law on other forms of trafficking in human beings. In Germany, the judicial system as a whole is chronically overloaded, so complex and difficult proceedings such as those concerning trafficking in human beings and exploitation are a rarity. On top of that, many courts were only able to work in a limited capacity during the Covid-19 pandemic, resulting in a large backlog of cases.

The specialised counselling centres report that it is still the case that most public prosecutors do not initiate proceedings regarding labour exploitation in particular but also exploitation for the purpose of forced begging or involving criminal activities as the legal provisions are too complex and it is very difficult to provide evidence of such offences as this is largely reliant on the testimony given by trafficked persons. This means that proceedings are often suspended or the charges are changed to other ancillary offences that are easier to prove such as coercion, wage extortion, failure to make social security contributions or similar.

Moreover, there are still very few specialised public prosecutors' offices that have the relevant experience and training with regard to cases of trafficking in human beings. State offices of criminal investigation are more likely to at least have special departments that are responsible for the subject of trafficking for the purpose of sexual exploitation and sometimes even labour exploitation. However, as far as KOK is aware there are currently no specific focus on or targeted police departments for other forms of trafficking.

13. Please provide information on measures taken in your country in respect to the following recommendations made in GRETA's second evaluation report:

- harmonise the institutional framework and co-ordination structures for action against THB at federal and Länder level, in particular the referral processes for victims of human trafficking (NRMs);
- finalise the setting up of an independent national rapporteur;
- strengthen the prevention of trafficking for the purpose of labour exploitation, in particular in at-risk sectors, public procurement and supply chains;

The specialised counselling centres always try to reach vulnerable groups and potentially at-risk persons and inform them about the risks of human trafficking and about support options through various channels. With regard to labour exploitation, especially in hard-to-reach and at-risk areas such as private care or domestic services, the counselling centres try to find innovative ways to preventively educate people about (labour) rights in Germany and the dangers of human trafficking.

For example, some post information and the contact details of the counselling centre on social media channels targeting certain communities. However, these are occasional initiatives that also depend on whether counselling centres have resources (financial and human) for prevention work. One counselling centre is active in a project that promotes fair placement and good working conditions for care workers from Eastern Europe.

Apart from these occasional activities and projects KOK and its member organisations (the specialised counselling centres for trafficked persons) regularly conduct training for various professional groups which is also intended to contribute to prevention by raising awareness among professionals. These include, for example, the police, authorities, the Federal Office for Migration and Refugees, staff in shelters for refugees, staff of the Violence against Women helpline or other counselling centres. The training usually includes awareness-raising on the topic of human trafficking in Germany in general and also draws attention to the different forms of exploitation, including labour exploitation.

KOK has increased its communication and exchanges with representatives of the Financial Control of Undeclared Work Department and in this context has repeatedly pointed out the importance of victims' rights for trafficked persons and the support structure.

In summer 2021, the German Bundestag adopted the Supply Chain Due Diligence Act [Lieferkettensorgfaltspflichtengesetz]. The adoption of this act is an important step towards making the German economy fairer and more sustainable. However, extensive lobbying by business groups during the legislative process has resulted in major shortcomings in the law: it only applies to a small number of very large companies, the due diligence obligations are limited to the lower end of the supply chain and above all there is no provision regarding compensation of those affected by human rights violations.

- provide adequate assistance, including safe accommodation, adapted to the specific needs of male victims of trafficking;

The issue of providing accommodation for male victims is still very problematic. The accommodation structure for these individuals is essentially non-existent; the counselling centres have to find individual solutions on a case-by-case basis. Often, trafficked men have to be accommodated in hotels or in accommodation for refugees or for the homeless.

This means a lot of organisational work for counselling centres and insufficient protection for those affected.

- improve the identification of, and assistance to, child victims of trafficking, including by paying particular attention to unaccompanied and separated foreign children;

The National Cooperation Concept 'Protection and help in cases of trafficking in and exploitation of children' (<https://ecpat.de/wp-content/uploads/2020/11/BKK-englisch.pdf>) is a nationwide set of recommendations for the development of cooperation mechanisms to combat exploitation and trafficking of children at the level of the federal states. It provides a framework for regional cooperation mechanisms containing action-oriented measures and recommendations for organisational and communicative structures, which enable ongoing cooperation and collaboration at local level that does not depend on a single person. In order to implement these cooperation mechanisms in the federal states, workshops and conferences are organised for staff of the youth welfare service, police, justice, counselling centres and others. The participants learn about child trafficking and how to identify and support affected children. Building up regional self-organised interdisciplinary networks is of utmost importance in addressing the topic and one of the main goals of the regional workshops. The regions and federal states are also supported in the process of building up sustainable cooperation mechanisms.

There have already been good results. For example, round tables on combating child trafficking have been set up in some of the federal states, in which the various stakeholders involved exchange information.

Large gaps remain despite these good approaches, especially in the support structure. The existing accommodation facilities of the child and youth welfare services have repeatedly proven to be unsuitable for children and adolescents affected by human trafficking. Even the existing specialised counselling centres are usually only able to advise trafficked children from the age of 14 onwards, alongside the responsible youth welfare offices. Specialised counselling centres and shelters are needed here.

Youth welfare offices, child and youth welfare services as well as law enforcement agencies and the police must be made more aware of the issue of trafficking in minors. Not only should the different forms of exploitation play a role (e.g. in order to better identify children affected by exploitation for begging or criminal acts) but also the rights of the trafficked persons. Current developments such as the increasing digitalisation of trafficking in human beings in Germany and their implications must be taken into account.

All in all, there have been many new organisations and initiatives in Germany in recent years that have dedicated themselves to the fight against human trafficking and the support of trafficked persons. Such initiatives can also be found in the field of trafficking in minors and are becoming increasingly active. The problem is that some of these stakeholders do not act according to professional standards and sometimes bypass existing support structures.

These organisations and initiatives work, for example, with volunteers who neither have sufficient expertise on the topic of human trafficking in Germany and the corresponding cooperation and support structures, nor do they have the appropriate training to work with trafficked persons (who may be traumatised, for example). In some cases, the organisations have a free church or evangelical background. In their work with trafficked persons, it is not always clear how this affects the interaction and to what extent missionary approaches may even flow into the work.

Trafficking in human beings affecting minors:

In Germany there are still no specialised counselling centres run by the child and youth welfare support system that specifically target trafficked minors and can be called upon from the very beginning for the purpose of identification or in cases of suspected trafficking in order to provide advice and support.

That said, certain cases have been referred to specialised counselling centres for trafficked women which have been able to provide support to the girls in question.

Furthermore, there is still no specialised, safe accommodation available for trafficked minors in Germany. The National Council against Sexual Violence Committed against Children and Adolescents has taken it upon itself to improve the configuration and capacities of specialised services and facilities based on the recommendations of the German Association for Adequate Housing of Minors Affected by Trafficking in Human Beings and Exploitation. An analysis was initiated by ECPAT on this subject in recent months.

- ensure that all victims of trafficking, in particular children, can fully benefit in practice from the entitlement to a renewable residence permit, without prejudice to the right to seek and enjoy asylum.