

KOK e.V. – German NGO Network against Trafficking in Human Beings

Evaluation Report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties to the treaty

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Second Evaluation Round

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(GRETA) on 06.05.2014

Preface

This report has been compiled by German NGO Network against Trafficking in Human Beings – KOK e.V.

The KOK e.V. was founded in 1999 and advocates for the rights of trafficked persons and female migrants facing violence. KOK is the only coordination network in Germany or Europe with this focus and is considered to be a model of successful networking. One of the main goals pursued by KOK and its member organisations is to improve the living conditions of trafficked and exploited persons and to help them assert their rights. KOK brings together most specialised counselling centres in Germany working with trafficked persons as well as other organisations addressing this issue.

KOK member organisations are:

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

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

The preparation of this report has been supported by the KOK member organisations that have been consulted and whose expertise has been obtained in order to answer the questions.

Additional support, in particular regarding the questions on trafficking in children, has been provided by ECPAT Deutschland e.V. – der Arbeitsgemeinschaft zum Schutz der Kinder vor sexueller Ausbeutung (www.ecpat.de) and by Internationaler Sozialdienst (ISD), the German section of the International Social Service ISS.

The report focuses on selected questions that are of particular importance to KOK and its member organisations.

A. Follow-up questions

1. Please provide information on developments since GRETA's first evaluation report on your country in the following areas:

- the main forms of trafficking in human beings (THB) and emerging trends observed in your country (for example, any new types or sectors of exploitation, recruitment methods, countries of origin or destination of the victims);
- any changes in your country's laws and regulations relevant to action against THB;

- the institutional framework for action against THB, in particular: any changes in respect of the composition and functions of the bodies responsible for co-ordinating national action against THB, the involvement of NGOs in co-ordinating bodies, the entities specialised in the fight against THB, and the establishment of a national rapporteur or other mechanism for monitoring the implementation of anti-trafficking strategies, policies and activities;
- an overview of the current national strategy and/or action plan to combat trafficking in human beings (duration, objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results).

KOK's answer:

Main forms of trafficking in human beings and emerging trends:

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. These forms of trafficking in human beings have only been classified as offences since October 2016, and it is not always clear whose responsibility they fall under. As such there are no established cooperation, referral and support structures in place, which makes it more difficult to identify trafficked persons. Counselling centres therefore believe that a high number of cases go unreported.

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 the other.

However, some trends have been reported from several counselling centres:

Increasing numbers of trafficked persons from third countries involved in asylum proceedings:

There has been a strong increase in the number of trafficked persons involved in asylum proceedings in some parts of Germany in recent years. Some specialised counselling centres have reported that they could not cope – or struggled to cope – with the sheer number of cases. The figures they provide show that the cases of refugees trafficked during their voyage significantly increased in some regions of Germany when the country saw a nationwide increase in incoming refugees. However, it is striking to note that there have hardly been any identified cases of trafficking in human beings over the course of displacement from countries like Syria, Iraq and Afghanistan. Most trafficked persons referred to or seeking support from specialised counselling centres come from countries in West Africa, especially Nigeria. With regard to the place of exploitation, the majority of trafficked persons are exploited en route; a smaller proportion of them are exploited in the country of origin or here in Germany. Nevertheless, recruitment usually took place in the country of origin. This plays a significant role, especially during asylum proceedings at a later stage, as trafficked persons may be at risk if they return to their country of origin.

There are also increasing reports of cases in which exploitation took place in Italy and in

which the persons fled to Germany as a result.

Some of the counselling centres have launched dedicated projects or measures to reach refugees that were potentially trafficked.¹

Areas concerned by other trends reported from specific federal states and/or regions:

Two specialised counselling centres in Berlin have reported dealing with increasing numbers of trafficked minors. According to counselling centres in Berlin and Frankfurt, there has been a significant rise in cases in which grooming was used to push trafficked persons into prostitution. In most cases, these persons were recruited in online chat rooms.

Counselling centres in Berlin and Brandenburg have also reported seeing more and more trafficked persons from China. The majority were exploited in brothels, some of which were managed by Chinese nationals.

The federal state of Mecklenburg-Vorpommern has reported a strong increase in case numbers. As above, they mainly involve sexual exploitation. However, figures of labour exploitation have also gone up.

The federal state of Baden-Württemberg has also registered a substantial rise in the number of cases, with sexual exploitation as the leading form, as well as a rapidly growing number of cases involving displaced persons. According to one counselling centre, cases of labour exploitation have stabilised. However, they do not envisage being granted any funding for their work in this field.

The main countries of origin of trafficked persons reported from the ground are Romania, Bulgaria, Poland, Hungary and countries in West Africa (especially Nigeria).

Involvement of NGOs in coordinating bodies:

Today, Germany still has neither national, government-led political coordinating body responsible for addressing trafficking in human beings, nor corresponding bodies in its federal states. According to the government/relevant ministries, the creation of such a coordinating body at national level, as well as a national rapporteur, is being discussed.

KOK acts as the body coordinating the work of specialised counselling centres in the field of trafficking in human beings.

KOK also represents the interests of specialised counselling centres, and as such acts as an advocate for stakeholders on the ground to address the issues faced by trafficked persons. It therefore has a seat on various national bodies. These include the various working groups that bring together the federal government and the federal states [Bund-Länder-Arbeitsgruppen]; one addresses trafficking in human beings, while another looks at

¹ KOK has addressed this issue extensively in its project “Flucht und Menschenhandel – Schutz- und Unterstützungsstrukturen für Frauen und Minderjährige” [Flight and trafficking in human beings – support structures for women and minors], which was funded by the organisation Diakonisches Werk. See https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Projekte/KOK_PolicyPaper_2017_WEB.pdf

trafficking in human beings and labour exploitation, and there is a working group addressing the protection of children and young people from sexual exploitation and violence (this has a variety of subgroups, e.g. child trafficking).

There is no national anti-trafficking action plan.

Recommendations:

- Developing a comprehensive national strategy addressing trafficking in human beings and enforcing the rights of trafficked persons which takes into account all forms of trafficking and exploitation.
- Establishing a political coordinating body responsible for all forms of exploitation.
- Establishing an independent national rapporteur involving civil society and addressing all forms of trafficking in human beings. Its independence should be enshrined in law and its roles and responsibilities clearly outlined to distinguish it from political organs and other official representatives, making it a valuable addition to the existing system.
- The networking and coordination efforts carried out by KOK for its specialised counselling centres play a crucial role in civil society's work to support trafficked persons. This work must receive appropriate funding.

Our recommendations with regard to trafficking in human beings in the context of displacement/asylum:

- A national framework must be established to systematically identify particularly vulnerable target groups, including trafficked persons.
- Asylum seekers must receive comprehensive information regarding their rights and the consequences of their grounds for fleeing their country for their asylum proceedings despite shortened asylum proceedings.
- Training courses and events must be organised nationwide for all relevant stakeholders to raise awareness and make sure trafficked persons can be reached and informed about their rights before their interview takes place.
- Refugees must be offered low-threshold services, as developments in support structures for trafficked persons have shown that measures such as meet-ups for women can help gain the trust of female refugees and establish contact with trafficked persons.

B. Cross-cutting questions

Gender equality (Articles 1.1.b, 5.3 and 17)

2. What specific measures are taken in your country to address the gender dimension of THB and incorporate gender equality into the policies to prevent and combat THB and to protect and promote the rights of victims, including through the empowerment of women and girls?

KOK's answer:

To KOK's knowledge, there are currently no specific measures addressing the gender dimension of trafficking in human beings.

On the whole, strong distinctions continue to be made between the various forms of trafficking in human beings and exploitation as well as between different groups of trafficked persons, with frequent stereotypical classifications. While trafficking in human beings for the purpose of labour exploitation and serious labour exploitation in specific industries has tended to be associated with men, sexual exploitation is usually associated with trafficked women. Because of this, women are often not identified as having experienced other forms of exploitation and are therefore often not targeted by counselling/support services (outside of specialised counselling centres). Although the only comprehensive national statistical data on trafficking in human beings to date (namely the report of the German Federal Criminal Police Office) does mirror this classification, and most persons trafficked for the purpose of sexual exploitation are indeed women, this stark categorisation reflects neither the reality nor the experience of specialised counselling centres. There are also cases of women trafficked for the purpose of labour exploitation and other forms of exploitation, just as men also sometimes face sexual exploitation.

In KOK's experience, most measures follow, at least in part, these gender stereotypes, e.g. when a counselling centre receives funding to support women but the funding excludes the field of labour exploitation. Specific measures and political strategies to identify women trafficked for the purpose of labour exploitation have not yet been established to our knowledge, apart from services provided by counselling centres and individual trade-union organisations.

KOK has worked extensively on this topic and produced a study, "Menschenhandel zum Zweck der Arbeitsausbeutung und schwere Arbeitsausbeutung von Frauen – ein nicht gesehenes Phänomen" [Trafficking in human beings for the purpose of labour exploitation and serious labour exploitation of women – an invisible phenomenon], in 2016.² A conference with Bread for the World and KOK also addressed this issue.³

With regard to trafficking in human beings as experienced by persons fleeing their country, the minimum standards established to protect women and children living in refugee shelters⁴ must be upheld, as these specifically address the gender dimension. These were updated and extended to all groups of refugees in summer 2017. Nevertheless, these standards still provide for special protection measures in shelters for women who may have been trafficked, which have been implemented in some federal states.⁵

² https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Studie_MH_A_Frauen.pdf

³ <http://www.kok-gegen-menschenhandel.de/termine/news/fachgesprach-menschenhandel-zur-arbeitsausbeutung-von-frauen/>

⁴ <http://www.gewaltschutz-gu.de/>

⁵ http://www.gewaltschutz-gu.de/weitere_materialien/gewaltschutzkonzepte_berichte_und_andere_veroeffentlichungen/

Recommendations:

- Trafficking in human beings and exploitation must be addressed through a holistic approach; stereotypical gender classifications and subdivisions, including among authorities, ministries and civil-society stakeholders, must be deconstructed and avoided in future.
- Gender-sensitive support measures are necessary; they must also avoid any stereotypical classifications to reach all trafficked persons and offer appropriate support and protection.
- More information and measures to raise awareness regarding trafficking in human beings and labour exploitation, labour rights and other rights need to be provided to women who may have been trafficked, especially in unregulated industries subjected to limited scrutiny, such as domestic help, au-pairs or (private) care.
- Overall, all stakeholders supporting trafficked persons and addressing trafficking in human beings must adopt a gender-sensitive approach to avoid stereotypes in their work.

Non-discrimination (Article 3)

3. What measures are taken to ensure that trafficked persons who are members of ethnic minorities have access to the rights specified in the Convention?
4. What specific measures are taken to ensure that trafficked persons who are irregular migrants or migrant workers are identified as victims of THB and have access to the rights provided for in the Convention?
5. What measures exist to ensure that male victims of trafficking are identified and provided with assistance and protection, including safe accommodation, as provided by the Convention?

KOK's answer:

Regarding questions 3 and 4:

To our knowledge, no special measures have been taken by specialised counselling centres working specifically with members of ethnic minorities or irregular migrants.

KOK specialised counselling centres deliberately organise the services they offer in order to make them accessible to all trafficked persons, including members of ethnic minorities or persons holding no residence permit according to the criteria developed within the KOK network. The use of interpreters and cultural mediators who either work for the counselling centres or work on an ad hoc basis is one of the key measures in this respect. Counselling centres also use flyers and information materials in various languages and/or material developed specially for an illiterate audience using pictures and icons, e.g. for outreach work.

KOK counselling centres have agreed on four principles that they regard as integral to their mission and therefore serve as a guideline for professional services, including an antidiscriminatory, antiracist and antisexist approach.

Due to financial constraints, it is often not possible to develop and implement strategies and measures that take into account the specific needs of ethnic minorities, however much their needs are recognised.

Professionals on the ground have indicated that the situation has deteriorated in the case of some minorities. This is particularly true for members of the Roma community from the former Yugoslavia, but also for trafficked persons from other countries now considered “safe” in the wake of stricter migration laws. This group can be seen as particularly vulnerable to exploitation and violence. Due to legislative developments in Germany with various asylum packages, nationals of certain countries who have fled countries deemed “safe” must now remain in reception centres. This isolates them from the rest of the population and makes it more difficult for them to access independent counselling centres. It is by no means guaranteed that persons who have fled a country deemed “safe” have access to their rights if they become or have been victims of trafficking in human beings.

Trafficked persons who do not hold a residence permit still face the problem of possibly being reported by public authorities in accordance with Section 87 of the Residence Act [Aufenthaltsgesetz].

Regarding question 5:

To KOK’s knowledge, there are no measures in place to ensure male victims of trafficking for the purpose of sexual exploitation or other forms of exploitation are identified. Germany has several counselling centres that support male prostitutes.⁶ Services aimed specifically at (young) men trafficked for the purpose of sexual exploitation and victims of violence, such as the counselling centre “Hilfe für Jungs” in Berlin, are almost entirely absent in other regions.

There are regional variations with regard to counselling, support and accommodation options for men who have been trafficked or exploited through labour. Some federal states offer counselling and support services, e.g. through counselling centres close to trade union movements.

However, as most of them focus on labour exploitation and rarely on trafficking in human beings, their advice tends to be geared towards labour law. Although their services are not gender-specific, some of them focus on traditionally male industries, such as construction, transport and logistics.

Some KOK counselling centres also offer services to men. This is sometimes deliberate, but often trafficked men are simply counselled by these counselling centres due to a lack of alternatives.

Overall, it should be noted that counselling and support services for trafficked men are

⁶ See <https://www.prostituiertenschutzgesetz.info/beratungsstellen/>

insufficient and not nearly widespread enough.

Accommodation for male victims of trafficking is also found to be lacking. KOK published a study⁷ on accommodation available to trafficked persons on 18 October 2017. One of its main findings was that Germany does not offer adequate accommodation either for trafficked women or for trafficked men and children. The study also examined the situation for men and revealed that no federal state in Germany offers specific accommodation for trafficked men. Due to a lack of alternatives, in practice specialised counselling centres often have to resort to case-by-case solutions (see answer to question 35).

Recommendations:

- Specialised counselling centres need secure and sufficient funding to continue providing and developing low-threshold services and to reach ethnic minorities more efficiently.
- Funding for special information material geared towards specific groups.
- Counselling centres need enough interpreters and cultural mediators, for which funding must be available.
- Support and funding for counselling centres also or particularly directed at trafficked men, or those wishing to extend their services to male victims of trafficking in human beings, must be available.
- Abolishing mandatory reporting by public authorities as provided for in Section 87 of the Residence Act.

Training of relevant professionals (Articles 10 and 29)

6. Please describe how the needs for training of professionals in the area of action against THB are identified and met, with an indication of the categories of staff that receive such training, whether the training is obligatory or optional, the content and focus of the training, and the funding provided for training activities. If the impact of training has been assessed, please provide details.

KOK's answer:

KOK does not know how the requirements for professional training are identified and met. Most counselling centre staff members are social educators, social workers or psychologists. There is no training course dedicated to trafficking in human beings. Some universities offer specific lectures, e.g. the Alice-Salomon University of Applied Sciences in Berlin with its seminar "Criminology and criminal law: prostitution and trafficking in human beings",⁸

⁷ Czarnecki, D. (2017), "Unterbringung von Betroffenen von Menschenhandel geSICHERt?" [Is accommodation for trafficked persons really secure?], edited by KOK,

https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Studie_Unterbringung_2017_18.10.pdf

⁸ See press release: hellersdorf/aktuelles/pressemitteilungen/2017/pressemitteilung.592288.php

which is part of the bachelor's degree in Social Work.

KOK has developed a handbook aimed at helping counselling centre staff, especially during the induction phase.⁹ It is regularly updated by KOK.¹⁰

Professionals often engage in continuous development by their own means, e.g. regarding legal and thematic developments or methodological developments in social work. However, they often lack the time and resources to undergo training.

KOK also organise an annual training and networking event to inform and train representatives on specific issues.

Overall, specialised counselling centres stress how important it is to carry out continuous training and awareness 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.

Specialised counselling centres often carry out training events for various types of professionals, e.g. police officers, educational facilitators, staff members and special representatives working for the Federal Office for Migration and Refugees, embassy staff, etc. Training courses are also organised for refugee shelter professionals in some federal states. Training depends on the capacities of specialised counselling centres and on demand. EPCAT regularly carries out trainings for various occupational groups on the issue of trafficking in children.

Professionals on the ground see such training events as an opportunity to address important topics besides basic legal knowledge, namely the issue of the cultural background of trafficked persons, their rights, evidence/identification of cases of trafficking in human beings, existing support structures and the services they provide, as well as the issue of trauma suffered by trafficked persons.

Overall, training and raising awareness regarding trafficking in human beings and exploitation are still lacking in Germany among the relevant groups of professionals. This is particularly true in the case of labour exploitation and of other forms of exploitation.¹¹ More training and more comprehensive training is needed in this respect.

⁹ <https://www.kok-gegen-menschenhandel.de/publikationen/news/handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel/>

¹⁰ https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/aktualisierung-handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel-1/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=4ef1fc6fb2cb1b7c24b0f978bb11f339

¹¹ For a more detailed discussion of this point, see “The implementation of Selected OSCE Commitments on Human Rights and Democracy in Germany. Independent Evaluation Report on the Occasion of the German OSCE Chairmanship in 2016”, GIHR, 2016, p. 80 et seq.

Moreover, some professionals report that some forms of trafficking in human beings fall under the remit of general prosecutors' offices, and not of specialised units within prosecutors' offices. This can mean that some public prosecutors only handle a case of trafficking in human beings for the purpose of labour exploitation once in their career, and therefore lack the specific knowledge.

On the positive side, the number of training events organised for Federal Office for Migration and Refugees staff (especially special representatives in charge of trafficking in human beings) has increased.

Training events on trafficked minors are particularly important, as this target group needs specific support. Various training events are indeed provided in a limited extent: Multiprofessional workshops, conferences, inhouse trainings for specific organisations and online training courses. They are often carried out within the scope of specific projects, e.g. with the project funded by the Ministry of Family, Senior Citizens, Women and Youth (BMFSFJ) and ECPAT "Training on protecting children from sexual exploitation" [Schulungen zum Schutz von Kindern vor sexueller Ausbeutung] in Germany, the EU project "ReACT – Reinforcing Assistance to Child Victims of Trafficking" co-funded by ECPAT project groups in five EU countries (Belgium, the Netherlands, Great Britain, France and Germany).

However, Youth Welfare Office staff and professionals working for youth welfare organisations are not systematically trained in this respect, although the latter are usually the primary stakeholders involved in Germany. Training for "competent social welfare professionals"¹² regarding the issue of trafficking and exploitation is currently also lacking.

Recommendations:

- Funding for training at specialised counselling centres working in the field of trafficking in human beings.
- Including trafficking in human beings in the training curricula of relevant groups of professionals (e.g. lawyers, prosecuting authorities, officers working for the authorities, police officers, etc.) or at least providing basic knowledge of the issue.
- Regular and (if possible) compulsory training courses for judiciary, prosecution, Federal Police and customs staff.
- Regular training courses for regular interviewers (as opposed to special representatives in charge of trafficking in human beings) and decision-makers involved in asylum proceedings.
- Training of prosecution officers in charge of trafficking in human beings, especially regarding trafficking in human beings for labour exploitation and other forms of exploitation.
- Placing trafficking in human beings under the remit of specialised units within

¹² "Insoweit erfahrene Fachkräfte": According to the Social Security Code VII, seq. 8a they have to be consulted for the risk assessment in cases of endangerment of the child's welfare.

prosecutors' offices.

- Training of Youth Welfare Office staff and professionals working for youth welfare organisations.

Special measures concerning children (Articles 5, 10, 11, 12, 14, 15, 16, 28 and 30)

7. Please describe whether and how trafficking in children is specifically addressed in your country. If there are institutions responsible for taking the lead in combating trafficking in children and a specific national referral mechanism for child victims of trafficking, please provide details.

KOK's answer:

To date, there is no specific referral process in the case of trafficked children.

The Federal Ministry of Family, Senior Citizens, Women and Youth is currently preparing a federal cooperation plan entitled "Protection and support in cases of trafficking in, and exploitation of, children" [Schutz und Hilfen bei Handel mit und Ausbeutung von Kindern], which has been developed by the Federal Ministry and ECPAT Germany with the support of KOK and the collaboration of experts and professionals from the ground.

The plan holds itself out as a national recommendation for developing new cooperation mechanisms at federal-level or extending existing ones. It provides terminological distinctions, legal and political frameworks, includes all forms of exploitation recognised as trafficking in human beings, specifies potential cooperation partners and outlines responsibilities and procedures.¹³

In terms of raising awareness about trafficking in, and exploitation of, children, there are not any activities or campaigns at national or federal-state level.

With the exception of Berlin, no Office for Criminal Investigation at federal state level has dedicated police stations specialised in handling cases of trafficking in minors.

Some (still rare) federal states have established round tables on the issue of child trafficking:

Lower Saxony/Hanover:

Working with the coordination centre "Kinderschutz und frühe Hilfe" in Hanover, the state capital, specialised counselling centre Kobra has worked continuously since 2015 to establish a regional network on child trafficking.

Its aim is to raise awareness among, and promote ties between, professionals in the field of child trafficking. It addresses all forms of trafficking in human beings, e.g. forced prostitution

¹³ For more details and for information on the proposed procedure supporting the implementation, see the Federal Government's report.

and forced labour, but also other forms of exploitation such as forced criminal activities and begging or forced removal of organs. Up to now, participants have included representatives of specialised counselling centres, experts from local social services from Hanover, the youth protection centre (“Kinderschutzzentrum”) from Hanover, the city’s integration management services, the coordination centre on immigration from Eastern Europe “Zuwanderung Osteuropa”, also from Hanover, and police representatives, among others. The last meeting took place in February 2018.

Nürnberg:

Since 2017, Nürnberg has been establishing a working group on trafficking in human beings to bring together stakeholders working within this field. Up to now, the federal programme “Willkommen bei Freunden – Bündnisse für junge Flüchtlinge” was in charge of setting it up; the Human Rights Office in Nürnberg will be taking the lead from autumn 2018. The working group will be addressing, identifying and protecting trafficked persons with a special focus on trafficked minors within the asylum context. Participants include the city council, the Human Rights Office, the Specialised Department for Refugees, as well as the public prosecutor’s office and police forces, the Federal Office for Migration and Refugees, IOM, UNHCR, specialised counselling centre Jadwiga, the Bavarian Red Cross, Johanniter-Unfall-Hilfe, and other social counselling centres and youth welfare organisations. Its work in 2018 was focussed on developing local protection structures, e.g. through training professionals working with asylum seekers.

Recommendations:

- Further funding for ECPAT networking meetings.
- Establishing more round tables addressing the exploitation of children all over the country.
- Implementing the national cooperation plan “Protection and support in cases of trafficking in and exploitation of children” [Schutz und Hilfen bei Handel mit und Ausbeutung von Kindern] in all 16 federal states.
- Dedicated police stations in all federal states on the model of Berlin.
- Raising awareness in schools and youth centres through professionals of specialised counselling centres and funding of relevant projects.
- Raising awareness among Youth Welfare Office staff and professionals working for youth welfare organisations.

8. What practical measures are taken to reduce children’s vulnerability to trafficking and create a protective environment¹⁴ for them, including through:

¹⁴ The concept of a protective environment, as promoted by UNICEF, has eight key components:

- protecting children’s rights from adverse attitudes, traditions, customs, behaviour and practices;
- government commitment to and protection and realisation of children’s rights;
- open discussion of, and engagement with, child protection issues;
- drawing up and enforcing protective legislation;
- the capacity of those dealing and in contact with children, families and communities to protect children;

- a. ensuring registration of all children at birth, in particular from socially vulnerable groups;
- b. raising awareness of THB through education;
- c. training professionals working with children.

KOK's answer:

Regarding point a.

All children born in Germany are registered with the local registry office at birth.¹⁵ However, in cases where the parents do not hold documentation that is deemed correct or verified, delivery of birth certificates or passports is often difficult, which makes it impossible to prove the child's identity. This issue was addressed at length during a panel discussion organised by KOK, "Exchange of experience and first assessment of the support structure for (unaccompanied) minor refugees victim to or at risk of trafficking".

Participants stressed that there are gaps in the registration of new-born children of asylum seekers. A missing birth certificated can also make it difficult to access sufficient health care for new-born babies. The German Institute for Human Rights has published a relevant leaflet: "So registrieren Sie Ihr neugeborenes Kind – Informationen für Geflüchtete" [How to register your new-born baby – information for refugees], available here: <http://www.institut-fuer-menschenrechte.de/publikationen/show/so-registrieren-sie-ihr-neugeborenes-kind/>

Regarding points b and c.

According to various specialised counselling centres and the ISD, the German section of the International Social Service (ISS), child and youth welfare staff often have little or no knowledge of child trafficking and of the specific needs of affected children.

Cases of trafficked minors fall under the remit of the child protection system, which requires stakeholders to follow strict legal guidelines. However, in many cases, this does not do justice to the very specific situation of those affected, e.g. regarding security aspects. Due to lacking knowledge regarding trafficking and exploitation of children, victims are often not identified as such which leads to inappropriate risk assessment and inadequate protection measures.

Moreover, many trafficked minors are traumatised and therefore need adequate counselling and support. In most cases, accommodation is also inappropriate, as victims are housed in regular child or youth welfare institutions.¹⁶

There is no comprehensive training regarding this issue for professionals in Germany.

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- children's life skills, knowledge and participation;
 - putting in place a system for monitoring and reporting abuse cases;
 - programmes and services to enable child victims of trafficking to recover and reintegrate.

¹⁵ The GIHR published information for refugees on this topic in 2016.

¹⁶ See "Unterbringung von Betroffenen von Menschenhandel geSICHERt?" [Is accommodation for trafficked persons really secure?], edited by KOK, 2017, p. 14 et seq.

Reinforced action is needed to raise awareness for trafficked minors within support structures (Youth Welfare Office staff and professionals working for youth welfare organisations, authorities, police, judiciary and other counselling centres) and among potentially trafficked minors.

Various approaches have already been implemented.

The organisations ISD/Deutscher Verein für öffentliche und private Fürsorge e.V. (DV) have developed various training courses on child trafficking during professional events, especially for child and youth welfare staff, in order to highlight its relevance for child protection.

ECPAT regularly holds regional networking events to bring together relevant stakeholders, train them with regard to trafficked minors and provide networking opportunities. ECPAT also offers webinars on the same topic geared toward specific target groups, e.g. lawyers, legal guardians, etc. It has also prepared special material geared towards children, e.g. a brochure along with a video entitled “I need help”, which has been made available in 13 languages and includes important information along with the contact details of counselling centres and helplines.

Specialised counselling centres are also helping close these gaps. Some have carried out training events and programmes for several years or provide information material for potential victims, often with a focus on grooming and the online risks. This is the case for IN VIA or FiM, among others, who carry out awareness-raising events in schools. Some specialised counselling centres have developed dedicated campaigns, services or materials. This is the case for specialised counselling centre Kobra, in Hanover, which has created various information materials (such as its film “What are you prepared to do for love”), which they also use for information events. The Mitternachtsmission in Heilbronn is another example, with its prevention initiative RESPEKT [“Respect”], which carries out workshops and seminars to raise awareness on various topics, e.g. grooming and existing support services, in schools and youth clubs and among professionals working with youngsters.

Recommendations:

- It is necessary to inform and raise awareness among all relevant stakeholders who deal with (also potentially) trafficked minors. In view of the state’s duty to protect, this is particularly true for Youth Welfare Office staff and professionals working for youth welfare organisations including the “competent youth welfare professionals”.
- Guidelines for Youth Welfare Office staff should be developed which include the issue of trafficking and exploitation of children.
- More information must be provided to counselling centres dealing with children, children’s charities, accommodation staff and, if necessary, other stakeholders.
- There must be sufficient training opportunities, and for this to be possible, specialised counselling centres, NGOs and other organisations providing relevant training must have sufficient resources.
- Other forms of exploitation such as forced criminal activities or begging must also be covered by training events.

9. Please explain what methods are used to verify the age of a presumed victim of trafficking where the age is uncertain and there are reasons to believe that the person is a child. Would such a person be presumed to be a child until the age verification is completed?

KOK's answer:

The addition of Section 42f to the German Social Code, Part VIII [SGB VIII], has enshrined binding guidelines in the form of the age verification procedure, which is based on three principles: the best interests of the child, respect for human dignity, and physical integrity.¹⁷ When (temporarily) taking into care a foreign national, the Youth Welfare Office must determine their age, either by consulting their identity documents or any similar documents clearly proving the person to be a minor, or by evaluating and determining their age using “qualified observation”.

The Youth Welfare Office must also resort, at its discretion, to any other sources, such as any available documents, other forms of evidence or information, interviewing relevant parties or witnesses, calling upon experts or obtaining written or electronic statements from relevant parties, experts and witnesses that it deems necessary to investigate the facts.

“Qualified observation” implies assessing the person’s physical appearance, but also taking into account and providing an overall evaluation on the basis of evidence regarding the individual’s development stage provided during the initial interview.¹⁸ This observation does not follow any national guidelines, a point which should be improved by the aforementioned federal cooperation plan.

If in doubt, the Youth Welfare Office can be required by the person, their legal representative or ex officio to carry out a medical examination in order to estimate the age of any person alleged to be under 18 (Section 42f para. 2 sentence 1 of the German Social Code, Part VIII).

A precise age assessment is possible neither through medical, psychological nor pedagogical means. All these methods only provide an estimate and have a margin of error of 1 to 2 years.

Usually, until the end of the age determination, the Youth Welfare Office remains the central actor or victims are accommodated in a clearing house. Thus, measures of child and youth welfare should take effect up to the age assessment.

¹⁷ See recommendations on dealing with unaccompanied refugees, National Working Group of Youth Welfare Offices at federal state level [*Bundesarbeitsgemeinschaft Landesjugendämter*], 2017, p. 36 et seq. http://www.bagjgae.de/downloads/128_handlungsempfehlungen-zum-umgang-mit-unbge.pdf

¹⁸ National Working Group of Youth Welfare Offices at federal state level [*Bundesarbeitsgemeinschaft Landesjugendämter*] has developed a practical questionnaire. Its use is recommended (Appendix 3: Documentation during care-taking procedures in accordance with Section 42 of the German Social Code, Part VIII, and Appendix 4: Examining conditions for (temporary) care).

Recommendations:

- Age assessment through qualified observation should be sufficient.
- Medical age assessment examinations should be avoided as they cannot provide certainty and represent a disproportionate measure (e.g. X-rays or genital examinations).
- In cases in which a person is not clearly identifiable as being over 18, it should be presumed that s/he is a minor.

10. What steps are taken in your country to ensure that the rights of the child and his/her best interests¹⁹ are duly taken into consideration, in particular when it comes to:

- a. identification of child victims of trafficking;
- b. appointing a legal guardian, organisation or authority which shall act in the best interest of unaccompanied minors identified as victims of trafficking;
- c. locating the child's family;
- d. ensuring that the identity or details allowing the identification of a child victim of trafficking are not made publicly known through the media or by any other means;
- e. access to appropriate and secure accommodation, education and health care;
- f. issuing residence permits for child victims of trafficking;
- g. providing counselling and information in a language that the child can understand, legal assistance and free legal aid prior, during and after legal proceedings, including to claim compensation;
- h. carrying out best interests determination, including risk assessment, prior to any decision on the return of child victims to their country of origin, and ensuring the child's safe return in accordance with the best interests of the child;
- i. special protection measures for children.

KOK's answer:

Regarding point a. – identification

Understanding of child trafficking and specific exploitation situations in the case of children is often found to be lacking, which means that vulnerable individuals are not always identified as such and an adequate vulnerability/risk assessment cannot always be carried out. Trafficked children therefore sometimes remain unidentified.

Stakeholders also do not know enough about other forms of exploitation, such as forced

¹⁹ "The best interests of the child" means that any situation should be looked at from the child's own perspective, seeking to take the child's views into consideration and with the objective of ensuring that his/her rights are respected. Any decision concerning a child should therefore be guided by what is objectively best for that child, given her/his age and maturity.

criminal offences and begging. Awareness must be raised among these stakeholders in order to identify and protect persons trafficked for these purposes. These are, according to the experience of other countries, often minors. Such stakeholders include police forces, for example, as they are likely to come into contact with trafficked children or youngsters if they are caught stealing or are picked up while begging.

Up to now, they often do not realise that such children or youngsters can be affected by trafficking in human beings.

The measures mentioned in question 8 enforced by various organisations alongside the federal cooperation plan aim to improve identification, address the best interests of the child and, ultimately, to improve the protection and support of trafficked minors.

Regarding point b. – appointing a legal guardian

The procedure involves the family court revoking parental responsibility (Section 1674 of German Civil Code), setting up guardianship and appointing a legal guardian.

The legal guardian is the unaccompanied minor's personal point of contact. It is therefore critical to train legal guardians regarding protection against child trafficking and exploitation.

As the legal representative, an unaccompanied minor's guardian is only committed to their ward's wellbeing and is only subject to the Family Court's supervision.

However, in practice, the appointment of guardians is far from perfect: either the Family Court is not called upon quickly enough or it is not deemed necessary to appoint a guardian, sometimes because exploitation and/or trafficking in human beings or relevant evidence is not recognised as such. Youth Welfare Offices, Family Court judges and guardians need to be provided with information on minors and trafficking in human beings and to collaborate with each other, as proposed by the Federal Ministry of Family, Senior Citizens, Women and Youth's cooperation plan.

Regarding point c. – locating the child's family

The Youth Welfare Office or the Family Court can involve the International Social Service or the Central Authority of the Federal Office of Justice²⁰ in cases where parents or relatives of the trafficked child are abroad or further clarification is needed. Relevant authorities/child welfare authorities abroad are then informed that the child's welfare is under threat and asked to verify the family's circumstances and to provide a technical assessment. It is critical in such cases to shed light on the circumstances of the child's exploitation and the role of any relatives.

The German Federal Criminal Police Office can also intervene through international collaboration.

²⁰ Central Authority for the Brussels II a-Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility) and for the 1996 Hague Child Protection Convention (Convention of 19 October 1006 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for Protection of Children).

Regarding point e. – appropriate accommodation

To begin with, trafficked children are usually housed in care institutions managed by child and youth welfare organisations. At present, there are no specialised accommodation options for trafficked minors. It is therefore crucial that care institution staff are informed of the trafficked child's particular situation of vulnerability as soon as the child is taken into care and that their specific security needs are taken into account.

Generally speaking, existing accommodation options in general care institutions managed by child and youth welfare organisations cannot fulfil the needs and do justice to the trafficked minor's situation.

In specific cases, minors can be placed in specialised safehouses, temporary shelters or, if no better solution can be found, a private rental accommodation approved by the Youth Welfare Office. Girls are sometimes accommodated in shelters for women or girls. Minors who have come to Germany unaccompanied often stay in "clearing-houses" which offer special support.

Much of the time, the problem is that children/youngsters who have experienced serious violence/exploitation often find it difficult to comply with rules, which means that they are likely to be violent, use drugs or run away. This often causes conflict with child and youth welfare institutions needing to uphold their rules, and this can result in them being turned out after repeated breaches and living on the street.

Regarding point h. – best interest determination

Knowledge of child trafficking and specific exploitation situations in the case of children are often found to be lacking, which means that vulnerable individuals are not always identified as such and a vulnerability/risk assessment cannot be carried out adequately (see point a.). Moreover, Youth Welfare Office staff and criminal investigation authorities often lack practical guidance to ensure a child's safe return to their country of origin in accordance with the best interests of the child. This loophole should be closed by implementing the Federal Ministry of Family, Senior Citizens, Women and Youth's cooperation plan.

When determining child's best interests, the Youth Welfare Office or the Family Court can request assistance from the International Social Service or the Central Authority to verify the child's identity and personal history, to contact legal guardians and relatives and check on their situation. On the basis of the foreign authorities' report, the further course of action can then be decided upon, i.e. whether it is in the child's best interests to return to their country of origin, to be transferred to a third country or to remain in Germany, and if their protection and continued support can be ensured. The International Social Service can give support in form of coordinating and supporting any such return, and continued support for the child and their family in the country of origin or in a third country alongside the foreign authorities.

Recommendations:

- It is crucial to put in place special, secure and adequate accommodation options for trafficked minors and to integrate them into youth welfare support systems.

- A multidisciplinary approach is necessary.
- Social integration and resource mobilisation must also be strengthened in accommodation structures.
- KOK's study²¹ states guidelines for accommodation programmes which should be discussed and adapted if necessary.

C. Questions related to specific articles

Definitions (Article 4)

13. Have any difficulties been experienced in your country in identifying and prosecuting cases on the ground of trafficking for the purpose of forced labour or services, slavery and practices similar to slavery or servitude? If so, please provide details.

KOK's answer:

The body in charge of monitoring illegal employment is the "Finanzkontrolle Schwarzarbeit", which is a sub-department of the tax authorities, alongside the Trade Supervisory Offices. These two authorities are in charge of identifying instances of illegal employment, verifying compliance with work permits, minimum wage, health and safety, and working hours legislation. They are not explicitly in charge of identifying potential cases of trafficking in human beings, which makes identification sometimes very difficult.

Some organisations close to trade union movements have implemented measures to improve identification, e.g. training courses for professionals monitoring illegal employment, information materials for potential victims, etc.

Raids can only help identify trafficking in some industries. In fields closed to scrutiny, it is much more difficult to detect cases of trafficking in human beings, e.g. domestic help, private care, au-pairs, as private homes enjoy particular protection and access for checks is highly restricted.

Identifying trafficked persons in these fields has been very difficult or has only been possible through self-identification. There are no strategies or initiatives planned to rectify this.

Domestic staff working for diplomats represent another issue, as the latter are covered by diplomatic immunity and are rarely held accountable. There are various measures in this respect to counter potential forms of exploitative employment. Because most diplomatic representations are in Berlin, local organisation Ban Ying has been fighting for the rights of domestic workers working for diplomat households for several years, e.g. by organising information events for domestic workers every year, publishing information brochures for employers and employees, and counselling and supporting domestic workers denied access to their labour rights (e.g. by carrying out mediation with current or past employers to

²¹ <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>

obtain compensation).

One of the major challenges is the lack of staff and resources within the police forces and the authorities, who therefore cannot successfully identify trafficked persons.

Specialised counselling centres also often lack the resources to be proactive and reach out to those who work in fields in which regular checks are not possible.

Prosecuting cases has also been extremely challenging. This has been mostly due to the strict criteria imposed by criminal legislation, which has made it very difficult to prove cases of trafficking for the purpose of labour exploitation. The 2016 criminal offence reform partly aimed at improving this and at increasing conviction rates. However, it is doubtful whether this target has been reached, as the legal definition of exploitation through employment as provided for in Section 232 of the German Criminal Code requires reckless pursuit of profit on the part of the perpetrator. It is feared²² that this additional condition protecting families employing foreign low-paid carers will make it very difficult to provide evidence.

A frequent problem encountered when prosecuting cases of trafficking in human beings is that witnesses must testify. However, this is often very dangerous for trafficked persons, since in doing so they not only put themselves at risk but also their relatives. Proceedings are also often long and testing for affected persons. The outcome, i.e. the conviction of the perpetrators, is often not seen as a primary goal by trafficked persons, who tend to focus on compensation, the payment of unpaid wages and finding new prospects in their lives.

Recommendations:

- Funding new bodies charged with working on these issues.
- Determining responsibilities at national and federal level.
- Introducing labour inspection visits geared towards enforcing labour rights and preventing exploitation.
- Raising awareness among various stakeholders.

14. How does your country's law define "abuse of a position of vulnerability" and what are the criteria for evaluating the vulnerability of a person subjected to THB? Please provide any relevant examples where the means used in THB offences involved an abuse of a position of vulnerability.

KOK's answer:

For a definition and criteria on the "abuse of a position of vulnerability", we refer to the Federal Government's report. In practice, the factors most likely to be seen as evidence of

²² See Prof. Renzikowski's statement during the bill hearing:

www.bundestag.de/blob/426552/4f8e9016061a4d4b18e41b3bbcc3b166/renzikowski-data.pdf, p. 10.

²³ See https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/das-sog-asylpaket-ii-und-das-gesetz-zur-erleichterten-ausweisung-auslaendischer-straftaeterinnen-sind-seit-dem-17-maerz-in-kraft/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=e2016f65a28c70a8f55066f52eb97fce

abuse of a position of vulnerability include:

- Failing command of language
- No knowledge of residence, labour and social rights in Germany
- No knowledge of support structures in Germany
- No personal/identity documents
- Dependency due to debts
- Threats to relatives in the country of origin
- In the case of trafficked Nigerians, frequent use of juju/voodoo spells
- Lack of confidence in authorities
- Emotional dependency/psychological instability.

Support by specialised counselling centres is not contingent upon any of these criteria. Their principles require them to intervene either if support is sought by a client or upon referral by another counselling centre.

17. Can the exploitation of criminal activities be considered as a purpose of THB according to your country's law? Please provide any examples from case law.

KOK's answer:

Yes, for the legal basis, see the Federal Government's report.

To our knowledge, there are no legal precedents.

Recommendations regarding questions 16 and 17:

- All stakeholders involved in anti-trafficking and supporting trafficked persons must be aware of all forms of exploitation.
- The responsibilities for the different forms of exploitation must be clarified (political stakeholders, authorities, support structures).
- Potential funding of model projects wishing to work on these fields/continuing funding and extending the mandate of existing projects and counselling centres.
- Raising awareness among the general public that these forms of exploitation also qualify as trafficking in human beings.

Prevention of THB (Article 5)

18. Is the impact of awareness-raising campaigns and other measures to prevent THB evaluated and how are the results taken into account? Please provide copies of any impact evaluation reports.

KOK's answer:

Specialised counselling centres have limited financial means with which to carry out campaigns and similar measures. They also usually lack the resources to evaluate such measures.

Recommendations:

- Such campaigns and evaluations urgently need to be funded.
- Sufficient resources must be provided to plan and carry out campaigns adequately.
- In order to ensure the best outcomes for these campaigns, funding must be available to

implement and extend support structures for persons affected by all forms of trafficking in human beings, e.g. mechanisms that can deal with an increase in numbers of (self-)identification or in requests from the public due to increased awareness.

20. How do your country's migration legislation and policies seek to prevent THB by enabling lawful migration?

KOK's answer:

To our knowledge, no existing specific legislation and policies enable lawful migration that would prevent trafficking in human beings.

For many years, KOK and civil society have demanded the creation of more lawful migration options, especially for persons with few or no qualifications.

The rise and change in refugee movements in 2015 in particular have, on the contrary, led to stricter migration policies, especially for third-country nationals.

The 2016 Asylum Packages I and II aimed to limit migration to Germany and accelerate the deportation of persons not granted protection. These Asylum Packages were sharply criticised by civil society.²³

To take an example, the Asylum Packages included a measure defining "safe countries of origin", i.e. countries in which state persecution is not to be expected. Nationals from these countries are only granted protection provided applicants can disprove the presumption that they are not under threat. If the new evidence is insufficient to rebut the legal presumption, the asylum application is rejected as "manifestly unfounded".²⁴ This presumption is viewed as problematic by KOK and other organisations²⁵, who reject the notion of a one-size-fits-all classification of "safe countries of origin".

The shortened proceedings set out in the Asylum Package II pose a specific problem when it comes to providing support for trafficked persons. Newly created special reception centres handle the applications of specific groups of asylum seekers, e.g. from countries considered as "safe" or with high chances of qualifying as refugees, and hold accelerated asylum proceedings. This makes it very difficult, or even impossible, to identify trafficked persons. The creation of reception centres and special deportation custody units and the extension of grounds for detention pending deportation can also make it more difficult to reach affected persons.

The experience of counselling centres shows that trafficked persons are not recognised as such unless they have a stabilisation period and can access local support systems. In many

²³ See https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/das-sog-asylpaket-ii-und-das-gesetz-zur-erleichterten-ausweisung-auslaendischer-straftaeterinnen-sind-seit-dem-17-maerz-in-kraft/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=e2016f65a28c70a8f55066f52eb97fce

²⁴ <http://www.bamf.de/DE/Fluechtlingsschutz/Sonderverfahren/SichereHerkunftsstaaten/sichere-herkunftsstaaten-node.html>

²⁵ <https://www.proasyl.de/thema/von-wegen-sicher/>

cases, they do not even turn to specialised counselling centres.

One specialised counselling centre gave the following examples of positive first steps regarding policies and measures towards lawful migration and integration:

The national suspension of the “priority check” for access to the labour market for asylum seekers and holders of a notice of temporary stay (2016 Integration Act) is seen as a positive development. However, suspension has been set at just three years to begin with.

The joint GIZ and German federal employment agency programme “Triple Win”²⁶, which provides jobs for trained carers from the Philippines, Serbia, Bosnia-Herzegovina and Tunisia in Germany, could serve as a model. The programme is expected to deliver high quality and support professionals throughout the entire migration process.

Apart from these particular examples, it remains very difficult to gain access to the German labour market and therefore take lawful and safe migration options, especially for people with low qualifications.

EU citizens have the right to free movement and have access to the German labour market. However, exploitation does also occur in these situations. This is one of the issues covered by the project “Fair Mobility”.²⁷ Please refer to the trade-union counselling centres’ report for more information.

Recommendations:

- Creating more lawful migration options and access opportunities to the German labour market for persons with low qualifications.

Measures to discourage the demand (Article 6)

22. What preventive measures to discourage demand that fosters different forms of exploitation has your country adopted, in particular in the areas of:
 - a. educational programmes;
 - b. information campaigns and involvement of the media;
 - c. legislation (including in the areas of public procurement, disclosure requirements and anti-corruption);
 - d. involvement of the private sector.

KOK’s answer:

There are hardly any campaigns by specialised counselling centres directed at the demand side. Most campaigns and activities focus on trafficked persons and potential victims and aim to inform them of available support services and how to access them.

Regarding demand, one example is www.stoppt-zwangsprostitution.de, by specialised

²⁶ <http://www.triple-win-pflegekraefte.de/>

²⁷ <http://www.faire-mobilitaet.de/>

counselling centre FiM in Frankfurt, which reaches out to clients of sex workers. The website was launched in 2006 for the Football World Cup and has been regularly updated since. It provides information on forced prostitution and exploitation in the prostitution industry, calls upon clients to remain watchful, and provides information on support structures.

Specialised counselling centre Ban Ying also has a campaign on “responsible punters”. The website www.verantwortlicher-freier.de raises awareness about forced prostitution and signs of situations of helplessness, and provides information on support options.

Regarding demand in the field of products whose manufacturing could involve labour exploitation, there are occasional campaigns. KOK is aware of a campaign launched by terre des hommes, “Sklaverei ist in Mode” [“Slavery in fashion”], for example, which focuses on fair textiles.²⁸

23. Please describe the measures taken in your country to prevent trafficking for forced labour or services, inter alia, by means of labour inspection and labour administration, monitoring of recruitment and temporary work agencies, and monitoring of supply chains.

KOK's answer:

The “Triple Win” programme, jointly organised by GIZ and the German federal employment agency, mentioned in the answer to question 20, is a positive example of this type of measure.

The specialised service FairCare is another noteworthy positive example. This is the result of a joint project between Diakonisches Werk Württemberg, Verein für Internationale Jugendarbeit Württemberg (vij), Evangelische Frauen in Württemberg (efw), Diakonie Poland and AIDRom Romania. The project ended in 2013 and FairCare has been an independent provider within vij since the beginning of 2014. It aims to provide serious services as an intermediary and to provide lawful and fair employment opportunities to Eastern European professionals in domestic work. Specialised counselling centre FIZ also offers counselling for foreign professionals involved in exploitative situations.

A national action plan adopted in 2016, “Economy and human rights” [Wirtschaft und human rights], aims to ensure human rights standards for companies along their supply chains, including living wages. The action plan was criticised by civil society for various reasons, including for not being binding.²⁹

Identification of the victims (Article 10)

27. Is there a national referral mechanism (NRM) or an equivalent system for identification and referral to assistance of victims of trafficking, both nationals and foreigners, for any form of exploitation? If so, please specify the bodies involved in it and their responsibilities. If an NRM existed in your country at the time of the first

²⁸ <http://www.sklaverei-in-mode.de/>

²⁹ <http://www.institut-fuer-menschenrechte.de/publikationen/show/stellungnahme-zoeegerliche-umsetzung/>

evaluation, please indicate any changes that have been made to it in the meantime.

KOK's answer:

There is no national referral mechanism in Germany. The nearest such mechanism would be the cooperation agreements that exist in federal states. These cooperation agreements were created 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. Thirteen out of 16 federal states now have such cooperation initiatives, in form of agreements, decrees or contracts.³⁰ Many of them now include new cooperation partners and/or have seen their content extended since their initial development. These cooperation agreements already existed at the time of the first evaluation.

Inspired by this model, the Federal Ministry of Family, Senior Citizens, Women and Youth has collaborated with ECPAT, KOK and the German Federal Criminal Police Office to develop a cooperation scheme for trafficked minors which should be implemented as of 2018 in various federal states (see detailed answer to question 7).

The aforementioned cooperation schemes aimed at adults still do not automatically include all forms of exploitation or 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 and 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.

In many federal states, existing cooperation agreements have been reviewed and customised.

However, one of the problems is that, in many cases, responsibilities have not been clarified for the other forms of exploitation, or that there are no support structures to which persons having experienced any form of trafficking in human beings can be referred to.

The advantage of the German system is that a low-threshold access to counselling centres is always ensured. Official identification on the basis of specific criteria is not initially necessary; if police forces or authorities suspect any evidence of trafficking in human beings, the cooperation agreements require that they refer them to the specialised counselling centres. The cooperation agreements set out which stakeholders are responsible for which cases and how information is to be provided.

From KOK's point of view, it is necessary to strengthen and develop the role of specialised counselling centres in recognising and identifying cases of trafficking in human beings. The cooperation decree in Lower-Saxony³¹ can be seen as an excellent example as it strengthens their role in the process of granting trafficked persons a reflection and stabilisation period. The Act Reforming the Protection of Victims' Rights [Opferrechtsreformgesetz] and related regulations require authorities to refer persons who have experienced violence to

³⁰ See KOK's detailed report to GRETA from 15.05.2014, p. 12 et seq.

³¹ https://www.ms.niedersachsen.de/download/50436/Erlass_vom_31.07.2014.pdf

counselling centres at an early stage. Federal Office for Migration and Refugees staff are required by internal guidelines to refer trafficked persons to counselling centres.

Recommendations:

- Existing cooperation agreements should be reviewed and, if necessary, extended.
- To establish efficient referral mechanisms, a low-threshold support system with sufficient resources must be in place to deal with referrals. In order to make this possible, existing specialised counselling centres and other counselling centres must have sufficient funding or new bodies must be created.
- All relevant stakeholders likely to come into contact with persons who have (possibly) experienced various forms of exploitation should be involved in monitoring or creating programmes.
- Round tables and similar committees at federal-state or council level are important parts of referral mechanisms to promote regular exchanges between relevant stakeholders. Such events continue to be organised on a regular basis and governmental structures must take the lead.
- Existing cooperation agreements must be reviewed in order to examine whether they need to be extended or new agreements need to be concluded.
- Special representatives in charge of trafficking in human beings within the Federal Office for Migration and Refugees must be involved in existing round tables/committees and in cooperation mechanisms to identify trafficked persons and provide optimum counselling and support.

28. Are there any formalised indicators for the identification of victims of THB for different forms of exploitation and how is their use by different professionals ensured in practice in your country?

KOK's answer:

To our knowledge, there are no general formalised indicators for the identification of trafficked persons which have been agreed upon and can be used by the various stakeholders. Specialised counselling centre professionals and KOK have jointly developed lists of indicators that apply to the various forms of exploitation. However, these are not formal checklists. They simply include a series of signs that have, in our experience, been potential indicators of trafficking in human beings.

There are other lists of indicators which have been developed by various specialised counselling centres and have been used during their training courses. Such lists are a crucial part of the cooperation agreements at federal-state level described in question 27. They are usually annexed to the agreements.

Authorities such as the Federal Office for Migration and Refugees or the German Federal Criminal Police Office also sometimes have their own lists of indicators.

However, there are no such agreements and shared lists in the case of forced criminal activities and begging.

Recommendations:

- Extending indicator lists (and/or cooperation agreements) to other forms of exploitation in order to raise awareness and improved identification.

29. What is considered as "reasonable grounds" to believe that a person is a victim of THB and which bodies have competence to identify victims upon "reasonable grounds"? Please provide examples from practice.

KOK's answer:

Reasonable grounds to believe that a person is a victim of trafficking in human beings are often based on the indicator lists appended to most cooperation agreements at federal-state level and on the legal definitions of criminal offences. According to specialised counselling centres, various grounds can apply in practice, including:

- Evidence from surveillance, e.g. interception of communications
- Observations during raids, e.g. the victim has no freedom of movement
- Credibility of trafficked persons' testimonies
- Credibility of third parties' testimonies

From the standpoint of governmental benefit providers, proof of a formal complaint or, in certain cases, of accommodation in a shelter for trafficked persons, can be sufficient. However, this depends on the agreement applicable in the given federal state.

Support by specialised counselling centres is not contingent upon specific indication or on reasonable grounds to believe that a person has experienced trafficking in human beings. Centres offer advice to all clients seeking assistance and refer them to appropriate counselling centres.

To apply for benefits, a residence permit, funding for accommodation for trafficked persons or formal identification (e.g. on the basis of reasonable grounds) is usually necessary.

To grant a reflection period in accordance with Section 59 para. 7 of the Residence Act, the immigration authorities usually require proof from the police or prosecuting authorities that there are indications of trafficking in human beings. An assessment from specialised counselling centres is usually not sufficient, except in Lower-Saxony, where this point is specifically set out in the cooperation decree.

Investigating this point falls within the remit of the Criminal Police Offices at federal-state level, relevant specialised police units, the German Federal Criminal Police Office or, at a higher level, prosecutors' offices.

Recommendations:

- As in Lower-Saxony, when deciding whether to grant a reflection period, authorities should take into account the assessment of specialised counselling centres as to whether there are any indications of trafficking in human beings.

30. What measures are taken in your country to encourage self-identification of victims

of THB?

KOK's answer:

Overall, specialised counselling centres go to great lengths to guarantee low threshold services to ensure self-identification of trafficked persons. Specialised counselling centres act in the interests of trafficked persons and make it clear that they do not do anything without their consent. This is crucial with regard to self-identification, as it means that clients can be sure that they will not be talked into anything if they decide to share their experience.

Various other relevant measures have been implemented by specialised counselling centres in a number of ways. Frequent methods include:

- Dissemination of information materials or other documents including the specialised counselling centre's details (e.g. flyers, information cards or other items such as plaster boxes).
- Walk-in consultations offered by specialised counselling centres.
- Outreach work by specialised counselling centres, especially in the field of sex work, to inform potential clients about the counselling centre and its services.
- In some cases outreach work in deportation centres.
- Targeting, and networking with, potential multipliers, e.g. authorities, accommodation structures and groups of professionals likely to come into contact with potential victims.
- More specifically in the case of grooming: workshops in schools organised by various specialised counselling centres; developing material specifically for this purpose: Kobra, in Hanover, for example, has created a DVD for school workshops entitled "What are you prepared to do for love?"
- General PR and media work.

Depending on their capacity and resources, some specialised counselling centres carry out information campaigns and raise awareness in the form of projects. A few examples:

Ban Ying Berlin:

Collaboration with migrant organisations: specialised counselling centre Ban Ying has launched a platform with the title "Empowerment of Migrant Women at Risk of Exploitation, Trafficking and Enslavement" to bring together self-organised migrant groups and projects supporting migrants in Berlin.³²

VIJ Stuttgart:

The "Verein für Internationale Jugendarbeit" (of which the counselling centre FIZ is a part) association in Stuttgart was one of the cooperation partners involved in the project OPEN, which advised women from Romania and Ukraine before they put into action their decision to move to Germany. They have been warned against risks such as trafficking in human

³² <http://www.ban-ying.de/publikationen>

beings and forced prostitution and informed about lawful residence options in Germany.³³ The project ended in June 2017, some of the project partners are currently looking for funding.

Recommendations:

- Low-threshold services provided by specialised counselling centres such as outreach work must be financially secured.
- Funding for materials aimed at trafficked persons to raise awareness and inform them of support structures.
- Raising awareness among authorities and their staff about trafficking in human beings and exploitation as well as about support structures.

31. What measures are taken in your country to identify victims of THB during the examination of asylum applications and during return of persons whose applications are rejected? How is communication ensured between the authorities responsible for identification of victims of trafficking and immigration and asylum authorities when there are reasonable grounds to believe that a person who is irregularly staying in the country is a victim of trafficking?

KOK's answer:

The experience of specialised counselling centres has shown that identifying cases of trafficking in human beings during asylum proceedings poses a considerable challenge for all stakeholders. Trafficked persons are identified either by counselling centre staff members or by decision-makers or interviewers in asylum proceedings. If the specialised counselling centre suspects a case of trafficking in human beings, it can turn to the special representative in charge of trafficking in human beings within the Federal Ministry for Migration and Refugees, provided there is one. Special representatives are trained decision-makers who then take over the asylum interview and/or take decisions regarding the protection status. The client can be accompanied by a professional from the specialised counselling centre during the interview. If during the course of an asylum interview there is any suspicion of trafficking in human beings, internal guidelines require the interviewer to call in the relevant special representative. The asylum seeker is also informed about the existence of a counselling centre for trafficked persons and the counselling centre about the case.

Many new staff members joined the Federal Office for Migration and Refugees in the past few years. As a consequence, trafficking in human beings is not on the radar of many decision-makers and interviewers who have not received training in this field and do not recognise trafficking indicators. It can therefore be assumed that many trafficked persons remain unidentified and do not receive appropriate support. The Federal Office for

³³ <http://www.vij-wuerttemberg.de/unsere-angebote/fraueninformationszentrum/open-for-young-women.html>

Migration and Refugees is currently working to improve the situation.

The cooperation between specialised counselling centres and special representatives for victims of trafficking in human beings within the Federal Office for Migration and Refugees has not always worked well in all regions. This is partly due to the fact that there are not enough trained special representatives acting as points of contact. However, the Federal Office for Migration and Refugees is working hard to make progress on this point.

A joint workshop organised by KOK and the Federal Office for Migration and Refugees with the participation of representatives from specialised counselling centres working with trafficked persons and special representatives for trafficking in human beings within the Federal Office for Migration and Refugees from their local offices has strengthened cooperation in practice. This was the first national workshop of this kind.

Experience has shown that exchanges between specialised counselling centres and special representatives must be intensified and continued if identification of and support to trafficked persons are to be improved.

Recommendations:

- The cooperation and exchange of experience between special representatives for victims of trafficking in human beings and specialised counselling centres at national level must be ensured.

Protection of private life (Article 11)

32. What measures are taken by relevant professionals to protect the confidentiality of information and protect the personal life and identity of victims of THB, including as regards storing of their personal data? Are there any conflicts of interest between professional ethics, on the one hand, and the obligation to report an offence, on the other hand? If so, how are these conflicts resolved in practice?

KOK's answer:

All counselling centre staff members are bound to confidentiality in accordance with Section 203 of the German Criminal Code. This duty is limited by the obligation to reveal information in cases of justified emergencies in accordance with Section 34 of the German Criminal Code and of preventing impending danger for life, limb, freedom and health, and in case of knowledge of serious offences in accordance with Section 138 of the German Criminal Code.

However, professionals working for specialised counselling centres do not have the right to refuse to give evidence before court. KOK views this as a significant obstacle for practical work as this puts a strain on the relation between counsellors and clients. Giving testimony before court in cases involving organised crime would also be potentially dangerous.

Clients' personal data is treated confidentially and is not disclosed to third parties. Part of

the data is stored anonymously for statistical purposes. The type of storage used by specialised counselling centres varies between centres (electronically or on paper-based files).

The project “dataACT – data protection in anti-trafficking action” (2013-2015) was jointly developed by KOK and La Strada International to strengthen data protection in the case of trafficked persons. The project’s aim was to reinforce their right to privacy, autonomy and data protection in Germany and other European countries. One of the aspects of this project was to elaborate data protection standards in cases of trafficking in human beings for specialised counselling centres, which were then presented to counselling centres during workshops and training courses and are now enforced by these same stakeholders.³⁴

A consent form for data collection and use was also created as part of the project to obtain authorisation to process and disclose clients’ personal data and information and to inform them about their rights regarding data protection.³⁵ This template is available to counselling centres in German, simplified German and English from KOK.

Specialised counselling centres also try to convince authorities and courts to restrict access to information in order to ensure that clients’ addresses or similar sensitive information are not registered on their files and that all files are handled confidentially.

In many cases, the counselling centre’s address is used as a legal address for the client.

There are positive examples, e.g. in Berlin or Hamburg, where the immigration authorities have special focal points for specialised counselling centres, which enables secure access to files.

This problem is also stressed and discussed by specialised counselling centres and KOK during training courses for prosecuting authorities within the German Federal Criminal Police Office.

Recommendations:

- Creation of a right to refuse to testify for professionals of specialised counselling centres working with trafficked persons.
- Funding for projects such as the dataACT project to continue holding targeted training courses and measures to raise awareness.

Assistance to victims (Article 12)

33. When assistance to victims is provided by non-state actors, how do your country’s authorities ensure compliance with the obligations under Article 12 of the Convention, in particular when it comes to:

³⁴ <http://www.dataact-project.org/materialien/standards.html>

³⁵ <http://www.dataact-project.org/startseite/detailansicht/artikel/einverstaendniserklaerung-zur-veroeffentlichung-und-weitergabe-personenzogener-daten-und-information.html>

- a. funding;
- b. victim's safety and protection;
- c. standards of assistance and their implementation in practice;
- d. access to medical treatment, psychological assistance, counselling and information;
- e. translation and interpretation, where appropriate?

KOK's answer:

Regarding point a.

Financial support received by trafficked persons for their maintenance depends on their residency status. Third-country nationals that are within their reflection period receive payments as per the German Asylum-Seekers Benefits Act [Asylbewerberleistungsgesetz] and restricted benefits for medical and therapeutic treatment, travel costs and interpreters' fees.

After the reflection period, if the individuals choose to cooperate with prosecuting authorities and their statements are considered relevant to the proceedings, they are granted a residence permit as per Section 25, para. 4a of the Residence Act [Aufenthaltsgesetz]. This means they are entitled to benefits in accordance with the German Social Code, Parts II/XII.

According to an internal guideline directive from the German Employment Agency, affected EU citizens³⁶ are generally entitled to payments in accordance with the German Social Code, Parts II. In practice, however, problems sometimes arise when implementing this.

From experience, it can sometimes take four to six weeks for trafficked persons to have their requests approved. They have no funding/way of supporting themselves until this is clarified. Some will have left the country – it must then be decided how to finance them retroactively.

Funding for trafficked persons once criminal proceedings are concluded is also sometimes challenging as payments cease immediately; at the same time, however, some trafficked persons will not yet have been able to stabilise themselves to the extent of securing their social status.

Regarding point b.

The cooperation agreements at federal-state level also contain regulations for the safety and protection of trafficked persons. Safe accommodation is an important aspect of protection. For the most part, trafficked persons are put up in women's shelters/safehouses. Realistically, however, as there is an insufficient number of accommodation options, both for men and for women and children, new solutions must often be sought out and organised on a case by case basis. Other possibilities are often used instead, e.g. hotels/B&Bs, shared accommodation for women, homeless shelters etc.

³⁶<https://www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mdi5/~edisp/l6019022dstbai377919.pdf?ba.sid=L6019022DSTBAI377922>

We actually see this diverse range of accommodation as an advantage. In any event, funding the various accommodation possibilities must be secured to make sure professionals can fall back on appropriate, safe accommodation, thus guaranteeing those affected with the required security.

We refer to our answer to question 35, as well as to the KOK study entitled “Unterbringung von Betroffenen von Menschenhandel geSICHERt?” [Is accommodation for trafficked persons really secure?]³⁷, as it describes the current situation in Germany.

When trafficked persons report an offence, the police assume active responsibility for their protection. Protected accommodation is usually provided/organised by specialised counselling centres. If their safety is an issue, they can also be accommodated anonymously in another town/city or federal state.

The specialised counselling centre also puts in place other safety measures, such as non-disclosure notices regarding personal information.

Regarding point c.

The specialised counselling centres have their support standards and, as part of their KOK membership, have adopted common standards and guidelines for supporting trafficked persons. These can be found in the counselling centres’ handbook for training and quality assurance³⁸.

The specialised counselling centres’ own support standards have also partly been recorded and implemented in various schemes. The specialised counselling centres evaluate these standards at larger intervals, provided the resources are available to do so. Some support standards are also part of the cooperation agreements at federal-state level.

Regarding point d.

Specialised counselling centres provide trafficked persons with access to healthcare. In reality, however, this can also be challenging. During the reflection period, trafficked persons from third countries have access to the healthcare system as per the Asylum-Seekers Benefits Act, which only covers the costs for emergency medical treatment. However, immediately after their experience with human trafficking, they may require further treatment beyond this.

Access to psychological advice and therapy is, in practice, also difficult. This is, for example, due to a lack of funding or the lack of treatment options, particularly in their native tongues. The specialised counselling centres offer advice and information and will accompany clients to healthcare professionals. However, there is still no comprehensive network of specialised counselling centres for trafficked persons throughout Germany. There is no centre in Thuringia, for example, and in some federal states, such as Schleswig-Holstein and Mecklenburg-Vorpommern, there is only one single specialised counselling centre or their

³⁷ <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>

³⁸ <https://www.kok-gegen-menschenhandel.de/publikationen/news/handbuch-zur-aus-und-fortbildung-und-qualitaetssicherung-fuer-fachberatungsstellen-fuer-betroffene-von-frauen-menschenhandel/>

staff is very limited (e.g. only one position).

The costs for legal advice, e.g. for questions about social, family and residence or employment laws are, in part, not covered.

Regarding point e.

The specialised counselling centres work with various interpreters, which they fund themselves. The counsellors can often provide the clients with advice in their own language or speak another foreign language.

Recommendations:

- Ensuring appropriate support for persons affected by all forms of human trafficking
- Creating a counselling centre in Thuringia
- Increased and continued funding for specialised counselling centres across Germany
- Establishing an emergency fund for needs not covered by the payment system German Social Code, Part II – e.g. quick help as well as assistance after criminal proceedings
- Covering legal costs in cases where no lawyers are appointed or where legal aid is not provided or does not apply.
- Funding for necessary translation costs

34. What specific measures are taken to ensure that the provision of assistance to victims of THB who have been issued a residence permit for the purpose of their co-operation in the investigation or criminal proceedings is not made conditional on their willingness to act as a witness?

KOK's answer:

The specialised counselling centres support those affected independently of their residency status or their willingness to testify as a witness. However, specialised counselling centres cannot offer more than advice to trafficked persons from non-EU countries because all other services – funding for accommodation, maintenance, healthcare etc. – are contingent upon their residency status. Trafficked persons are only granted a residence permit as per Section 25, para. 4a of the German Residency Act – and, therefore, access to all benefits outlined in the German Social Code – if they are willing to testify in court and if their statement is relevant to the proceedings. If they decide not to cooperate, they are usually required to leave the country or explore other ways of staying in Germany, e.g. by seeking asylum or otherwise. In such cases, however, they are also denied the special rights usually granted to trafficked persons.

This does not apply to German citizens affected by human trafficking.

Recommendation:

- Granting a residence permit to trafficked persons on humanitarian grounds and, in turn, access to support and protection services that is not contingent upon their testifying in criminal proceedings

35. What accommodation is available for victims of THB (women, men and children) and how is it adapted to the victims' needs?

KOK's answer:

Accommodation for trafficked persons is not consistently regulated in Germany and presents huge practical challenges. Despite common quality standards across KOK member organisations, there are sometimes huge differences in the way accommodation is organised due to the specific situation in each individual federal state (funding, number of specialised counselling centres, number of women's shelters and safehouses). Accommodation for trafficked men or whole families is particularly an issue. Finding appropriate accommodation for minors is also proving problematic currently. Existing accommodation options, such as homeless shelters for men or child and youth welfare institutions are not equipped to house these target groups.

There are no uniform structures in place in Germany, nor are there regulations for a specialised support system. The Federal Government only provides a legal framework for individual benefits for trafficked persons in accordance with laws on benefits, namely the German Asylum Seekers Benefits Act and the German Social Code, Parts II/XII, in order to guarantee their subsistence. Creating, funding and organising accommodation, however, is the responsibility of individual federal states and councils and, in practice, looks very different. In most federal states, the specialised counselling centres receive funding from the federal state and/or from the council to house trafficked persons, so that they can be accommodated³⁹ in women's shelters or in a safehouse.⁴⁰ Some federal states, such as North Rhine-Westphalia, Rhineland-Palatinate and Baden-Württemberg, have a state fund for the accommodation of trafficked persons that can pay for, for example, a short stay in a hotel or a B&B. However, there are usually not adequate funds and, therefore, mixed financing using their own resources, donations and/or endowed funds is necessary in all federal states and has to be found and negotiated on a case-to-case basis.⁴¹

Additionally, Baden-Württemberg is currently planning to discontinue its regional fund. It is alleged that all trafficked persons are now all entitled to benefits. Experience shows, however, that this is not the case; not all trafficked persons are granted benefits and it sometimes takes a while before they are granted and receive the funds. In these cases, the

³⁹ There is no uniform definition of "sheltered accommodation" or "safehouse", meaning that the facilities are set up according to how each individual specialised counselling centre believes they should be run. See the Federal Government's report on the state of women's shelters, specialised counselling centres and other support services for women affected by violence and their children (2012), p. 11, www.bmfsfj.de/blob/84048/a569e13f4b5782dc9ab63f5ad88239bb/bericht-der-bundesregierung-frauenhaeuser-data.pdf [20 May 2017]

⁴⁰ For a detailed outline of the various types of financing: *ibid.*

⁴¹ In the case of North Rhine-Westphalia: as this state has a high number of cases in trafficking in human beings, as verified in both the annual report of the local specialised counselling centres and the annual report of the German Federal Criminal Office on trafficking in human beings, the annual cost for accommodation for trafficked persons is high despite there being a cost-effective, decentralised accommodation plan. The fund is often already exhausted after only four months. After that point, the responsible stakeholders are the councils with their local social welfare office [Sozialamt], followed by the Job Centre, which spend an estimated amount of € 200,000 to € 300,000 per annum. Source: information provided over the telephone by a specialised counselling centre in North Rhine-Westphalia.

possibility of being able to access a regional fund is absolutely necessary.

Women's shelters are the most common way of accommodating women affected by human trafficking, although there are usually no fixed quotas available for this particular group. In addition, women's shelters have upper age limits for children, which can range from seven to fourteen.

Women's shelters in Germany are reporting a generally worsening shortage of spaces – in September 2017, the situation was identified as more dramatic than ever before⁴². They often have to refuse women affected by violence or can only admit them after a very long wait. This means that resorting to this kind of accommodation for trafficked persons is also just as difficult.

There is no special plan in place to accommodate trafficked minors. They are accommodated in child and youth welfare institutions and sometimes in women's shelters (e.g. in the case of 16 and 17-year-old girls). Institutions and accommodation for boys is lacking, as are those for specific groups like refugees or small children that have been subject to exploitation and child trafficking. They are sometimes housed in hotels or communal accommodation. These options cannot guarantee the specialised protection children require, nor can they conform to legal child protection requirements as per the Convention on the Rights of the Child. Yet, even child and youth welfare institutions mostly do not comply with the special requirements of trafficked and exploited minors.

Youth welfare is a matter of the federal states, with each individual youth welfare office deciding how minors are housed and how this accommodation will be financed and provided. The situation is therefore very different in each of the sixteen German states. Additionally, 18 to 21-year-olds can sometimes receive protection as part of extended youth welfare. This is also handled differently by each state.

Due to a lack of alternatives, specialised counselling centres usually have to find an individual solution for each case. Most of them resort to hotels, B&Bs and other options offered by the support system, above all shelters for the homeless and refugees. These accommodation options cover the client's basic requirements, such as a hot meal and somewhere to sleep, yet they cannot offer trafficked person adequate psychosocial support or protection. They are completely unsuitable for stabilising affected persons during the reflection period. In the case of homeless shelters, there is also the fact that these offer a bed for the night, yet they do not provide the possibility to stay there during the day.

Cases supervised by counselling centres close to trade unions face similar challenges. According to the experiences gained from the German Trade Union Confederation (DGB) "Fair Mobility" project, mobile employees often require short-term accommodation in a

⁴² Cf. open letter from women's shelters, dated September 2017.

http://www.frauenhauskoordinierung.de/fileadmin/redakteure/pdfs/Aktuelles/2017/2017-09-12_Offener_Brief_FHK_Frauenhausplaetze.pdf

hotel or B&B before they leave/move on if they are forced to move out from the accommodation provided or rented to them by their employers without warning. This often occurs after disputes between large groups of men from EU member states and their employers in cases of non-payment of wages.⁴³

Detailed information about the accommodation situation can be found in a KOK study on this topic.⁴⁴

Recommendations:

- Creating more adequate accommodation possibilities for person affected by all forms of human trafficking
- Creating more and securing funding for accommodation options for trafficked women and families
- Creating shelters for trafficked men
- Developing a special accommodation plan for trafficked children and teenagers
- Basing the accommodation on the needs of trafficked persons
- Finding solutions to fund various accommodation options

36. What measures are taken to ensure that services are provided to victims on a consensual and informed basis?

KOK answer:

The specialised counselling centres work to specific guidelines, one of which is that nothing is done without the consent of the trafficked person (see also our answer to question 33 c). One of the specialised counselling centres' quality standards stipulates that clients must be made fully aware of the aims, operating principles, possibilities and limitations of their services. The support options and possible courses of action must be presented in a manner which the client can clearly understand.

Providing comprehensive information using the services of interpreters also forms part of the specialised counselling centres' principles.

The specialised counselling centres' work focuses on enlightened psychosocial support based on the client's consent, e.g. through:

⁴³ Cf: "Unterbringung von Betroffenen von Menschenhandel geSICHERt?" [Is accommodation for trafficked persons really secure?], published by KOK, 2017, <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>.

⁴⁴ The answers to question 35 are taken from Czarnecki, D. (2017), "Unterbringung von Betroffenen von Menschenhandel geSICHERt?" [Is accommodation for trafficked persons really secure?], published by KOK, https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Studie_Unterbringung_2017_18_10.pdf

- Developing the trust relationship
- Psychological stabilisation
- Integrating their traumatic experiences
- Developing future perspectives
- Help facing day-to-day life, support in widening their social circle
- Strengthening their feeling of self-worth
- Promoting self-responsibility, as well as the ability to own their actions
- An open ear regarding various topics – e.g. the offence, emotional attachment to people from the world of the perpetrators, their background/life history, family situation, fears and current problems
- Crisis intervention – e.g. for problems in overcoming experiences of violence, loneliness, homesickness, fears for the future and questions of guilt

One example for how information may be provided is using a consent form signed by the client. This was developed by KOK as part of its dataACT project. Its purpose is to gain consent that counselling centres may process and pass on personal data and obtain information for clients.⁴⁵

In the KOK's view, the consent of trafficked persons must also be guaranteed when cooperating with the authorities. We do not know how and to what extent this occurs.

Recommendations:

- To make sure services have the consent of clients, it is necessary to provide the information in their native tongues or in a language that they understand
- KOK considers it necessary to guarantee their legal claim to have everything translated into their native tongue across all authorities
- Trafficked persons must consent to services in writing and stored, however only if this has been translated into the required language.

37. Is there any follow-up provided after the termination of assistance programmes? Can victims continue to receive assistance, where necessary and taking into account their specific needs resulting from the type of exploitation (including the removal of organs), after the termination of criminal proceedings, and if so what type of assistance?

KOK's answer:

If they need or wish it, the specialised counselling centres may also offer support to trafficked persons after the end of criminal proceedings. They can assist them in extending their residence permit, help them to extend the non-disclosure provision with authorities or are available in the event of a crisis. If clients return to their home countries, counselling centres help them organise their return and form contacts with counselling services at home.

⁴⁵ <http://www.dataact-project.org/startseite/detailansicht/artikel/einverstaendniserklaerung-zur-veroeffentlichung-und-weitergabe-personenzogener-daten-und-information.html>

If they remain in Germany, the specialised counselling centres can help them to become independent and to develop new perspectives.

One problem here, however, is the residency status of non-EU trafficked persons (see answer to question 34). The law does not clearly state what is understood by the “end of the criminal proceedings”. However, the justification given for the bill⁴⁶ also includes cases in which proceedings are terminated before completion (or even before an indictment occurs), as affected persons who have shown themselves to be willing to cooperate should not suffer from obstacles in criminal proceedings (e.g. by not being granted a residence permit). This has, however, not been clearly set out.

In the same way, benefits sometimes stop shortly after the proceedings in the case of EU citizens.

Recommendations:

- Even after proceedings are concluded or terminated, there must be a transitional period in which trafficked persons are granted reintegration benefits.
- What is understood under “end of the criminal proceedings” as per Section 25, para. 4a, sentence 3 of the Residence Act must be clarified.

Recovery and reflection period (Article 13)

38. Please specify in which cases a recovery and reflection period can be granted and who is entitled to it (nationals, foreign nationals). Please describe the procedure for granting a recovery and reflection period, the assistance and protection provided during this period, and any difficulties encountered in practice.

KOK's answer:

Any person exhibiting an indication that they may be or have been subjected to trafficking in human beings are entitled to a recovery and reflection period.

Although this period is legally defined as a departure deadline and/or suspension of deportation according to Section 59, para. 7 of the German Residence Act, but provides trafficked persons the opportunity to stabilise themselves and to decide whether they wish to cooperate with prosecuting authorities and testify in court or not.

As before, there are sometimes issues with granting this departure deadline in practice. It happens time and time again that trafficked persons have to present the immigration authorities with an assessment from the police and/or the public prosecutor's office before the deadline can be granted and before concrete evidence that human trafficking has occurred can be determined – an assessment carried out by the specialised counselling centres is not considered sufficient. This, however, contradicts the deadline's actual purpose and, in turn, the underlying European Directive and Convention, as this means that

⁴⁶ See <https://dip21.bundestag.de/dip21/btd/18/040/1804097.pdf>

trafficked persons must already be in contact with law enforcement authorities in this case and, at least partially, have made a statement, in which case the police have to investigate by virtue of the principle of legality. Please see also the explanations given in the answer to question 29.

There are also additional problems, e.g. if the immigration authorities do not know about or recognise the possibility of granting a reflection period or if the person affected has no documents.

According to Section 59, para. 7 of the Residence Act, third-country nationals are entitled to benefits as per the Asylum-Seekers Benefits Act during the reflection and stabilisation period. However, they are not granted access to the labour market. The Asylum-Seekers Benefits Act only provides for limited benefits and emergency healthcare.

According to an internal guideline from the German Federal Employment Agency, EU citizens are entitled to benefits set out in the German Social Code, Part II and XII, during the reflection and stabilisation period.

The exact procedure can vary greatly from state to state or, indeed, from council to council. Examples of the procedure on the basis of which a reflection period is granted:

Hamburg:

The specialised counselling centres contact (only with the trafficked person's consent) the relevant State Criminal Police Office [Landeskriminalamt], outlines the case (without specifics so that criminal proceedings cannot be entered into without further testimony from the trafficked person) and the evidence that the person has, potentially, been subjected to trafficking in human beings. If the Criminal Police Office agrees with the counselling centre's assessment, the name and personal details of the person are provided. The Criminal Police Office shares this assessment with the relevant point of contact at the immigration office, who can then issue a temporary suspension of deportation [Duldung] as per Section 59, para. 7 of the German Residence Act.

The challenge is that temporary suspension of deportation and the residence permit on humanitarian grounds in accordance with Section 25, paras. 4a and 4b of the German Residence Act is only granted on the basis of the client's willingness to at least consider reporting the crime. This means that specialised counselling centres have little to offer to third-country nationals who are unwilling to do so. The options in these cases are: an initial consultation with a lawyer; psychosocial consultations and, where applicable, emergency healthcare via medical aid projects for undocumented people. In these cases, financial support, protection or further support is not possible.

Berlin:

An individual can only be identified as having been trafficked on the basis of formal identification by the police or the public prosecutor's office. Prosecuting authorities then contact the immigration office to secure a reflection and stabilisation period (temporary suspension of deportation [Duldung]), in accordance with Section 59, para. 7 of the German Residence Act. Distinction is made between EU citizens and third-country nationals when implementing a reflection period, due to freedom of movement regulations within the EU. The departure deadline only applies to third-country nationals. In Berlin, the temporary

suspension of deportation is six months (the legal minimum is three months). The decision as to whether a reflection period is granted falls to the immigration office. Where applicable, the LKA informs the immigration office that there are reasons to believe that the person has been subjected to trafficking in human beings. If necessary, the immigration office then grants this person a reflection and stabilisation period. The experience of Ban Ying, a sheltered accommodation in Berlin, confirms that this possibility is not explained to trafficked women by the police if they are not accompanied by a lawyer or a social worker.

Lower Saxony:

In Lower Saxony, the cooperation decree sets out that a reflection period can be granted on the basis of an assessment of specialised counselling centres as to whether there is sufficient event of trafficking in human beings and whether this can be recognised as such by the immigration authorities without confirmation from the State Criminal Police Office or public prosecutor's office. This regulation is usually implemented effectively. This decree is sometimes not known; however the assessment of the specialised counselling centres is accepted upon presentation of the decree text. KOK consider this an example of best practice and believes it should be adopted in other federal states.

Third-country nationals who were subjected to trafficking in human beings outside of Europe must usually apply for asylum. A reflection period would also be necessary in their case before the asylum interview takes place.

Recommendations:

- Implementing the example of best practice from Lower Saxony in the other federal states, with the assessment from specialised counselling centres on the existence of valid evidence of trafficking in human beings deemed sufficient for granting a reflection period
- Access to adequate healthcare and adequate benefits for subsistence during the reflection period.
- Appropriate knowledge about the rights of trafficked person on the part of the authorities
- Extending the legal reflection and stabilisation period to six months, as in the Berlin model

Residence permit (Article 14)

39. If there is a provision in your country's law that provides for the possibility of issuing a residence permit owing to the victim's personal situation, how is this interpreted in practice? Please provide examples.
40. When a residence permit is issued for the purpose of co-operation with the competent authorities, how is "co-operation" interpreted and what does it consist of in practice?

KOK's answer:

Trafficked persons must testify before prosecuting authorities and the public prosecutor's office must instigate preliminary proceedings.

As soon as the police or the public prosecutor's office receive a report of a crime, the proceedings are automatically instigated. However, it can prove problematic if processing by the public prosecutor's office is protracted, the crime is not identified as trafficking in human beings or the proceedings are terminated before indictment.

Victims' rights as granted by law do not apply if such proceedings are not initiated. Trafficked persons and their families are often at risk as soon as they make a statement against the perpetrators and cooperate with the authorities, which is problematic. It is not the responsibility of the trafficked person if no indictment can or will be brought. They should therefore nevertheless be granted a residence permit and, in turn, access to protection and support.

Recommendation:

- Every type of cooperation on the part of trafficked persons should be valued, even if it does not lead to legal action. This should be made clear in the German Residence Act.

41. What measures are taken to ensure that a residence permit is provided to victims of THB in compliance with the obligation under Article 12.6, which states that the assistance to a victim of trafficking should not be made conditional on his or her willingness to act as a witness?

KOK's answer:

This is not provided for in Germany. Trafficked non-EU citizens are only granted a residence permit if they cooperate with prosecuting authorities. Without a residence permit, they are not entitled to benefits outside the three-month reflection period. Specialised counselling centres provide advice to clients irrespective of their residency status. However, if they want to access benefits, accommodation, healthcare etc, they may only do so if they have the relevant residence permit. This is trafficked persons cannot receive financial support unless they hold a residence permit, which, in turn, is only granted if they cooperate in legal proceedings.

Recommendation:

- Ensuring residence permits on humanitarian grounds are granted regardless of whether trafficked persons cooperate in legal proceedings.

Compensation and legal redress (Article 15)

42. Please indicate any measures taken since the first evaluation report to promote effective compensation of victims of THB, in particular when it comes to:
- a. access to information on the relevant judicial and administrative proceedings in a language the victim can understand;

- b. access to free legal assistance and legal aid during investigations and court proceedings;
- c. compensation from the perpetrator;
- d. compensation from the state;
- e. compensation for unpaid wages to victims of trafficking.

Please provide examples of compensation awarded and effectively provided to victims of THB.

KOK's answer:

Regarding points a. and b.

Trafficked persons are informed of their rights and options, including the possibility of compensation, by the specialised counselling centres – this sometimes occurs through an interpreter.

Sometimes, for example in Bavaria, the authorities also provide this information, as victims testifying during proceeding receive an information sheet from the police about the Crime Victims Compensation Act [Opferentschädigungsgesetz] after they testify. This information is provided in English and German. The authorities in other federal states make relevant information leaflets available to trafficked persons, as required by law (German Penal Procedure Code [Strafprozessordnung]). What is open to question is how authorities deal with trafficked persons with insufficient language skills or who need more information in easier or, at least, more comprehensible language.

As part of criminal proceedings in cases of trafficking in human beings, trafficked persons are entitled to legal representation by a lawyer who can resort to consolidated civil and criminal proceedings to claim damages and/or compensation for pain and suffering. Specialised counselling centres also try to provide trafficked persons with free legal representation, e.g. by bearing the costs through legal aid or using advisory aid vouchers in civil law or employment law cases.

But there are many obstacles, meaning that access to free legal aid is not guaranteed in all cases. Often, the first option for assuming legal costs is the advisory aid voucher. In reality, there are a lot of issues with accessing vouchers. In less affluent councils, applications for advisory aid vouchers are sometimes systematically refused. Access to free legal counsels, for example when claiming damages in court, is also very limited. There is the possibility of applying for legal aid, but the request is examined by the court and weighed against the complaint's chances of success. There is the fundamental risk that the court will decide against the applicant, meaning they will have to shoulder the risk of having to pay for the legal aid examination procedure themselves and, therefore, be afraid of claiming their entitlement to it.

In social law proceedings for benefits pursuant to the Crime Victims Compensation Act or to the Statutory Accident Insurance, legal aid and the appointment of a legal counsel is only possible from the point the legal claim is initiated. If the specialised counselling centres cannot support trafficked persons, either financially or substantively, they must pay for their

own legal representation during the application and appeal procedures.

Regarding points c. to e.

In 2017, KOK launched an information service entitled “Rechte der Betroffenen im Fokus?” (“The rights of trafficked person in focus?”, only available in German)⁴⁷ giving an overview of current developments in administration of justice in cases of trafficking in human beings and focusing on the issue of compensation in criminal and civil proceedings.

As per the Crime Victims Compensation Act, compensation for trafficked persons is still denied to those who did not experience direct physical violence. Legal practice does not provide the possibility to extend the conditions set out by the Crime Victims Compensation Act and the entitlements to compensation that go with it to victims of psychological/emotional violence as the legal framework is too restricted. This excludes many trafficked persons. The reforms announced in the last legislature period to transform the Crime Victims Compensation Act into a modern compensation system were not carried out by the German Federal Government. Even though there was a draft bill, the procedure has nevertheless been suspended. A position paper on this was developed by KOK and three other associations.⁴⁸

Employees who suffered an accident at work or who suffer from an occupational disease may make claims under Statutory Accident Insurance. A game-changing precedent regarding payments from the Statutory Accident Insurance was handed down by the Hamburg social welfare court in its ruling on 23 June 2016.⁴⁹ This is, however, the only known case of this kind.

We are also unaware of any civil compensation claims in proceedings concerning trafficking in human beings for the purpose of sexual exploitation in the period under review.

KOK were able to record an increased number of rulings concerning trafficking in human beings for the purpose of sexual exploitation in which claims for compensation were approved. There were ten of them between 2014 and July 2017. Nine of these cases were consolidated civil and criminal proceedings.⁵⁰

Despite positive developments, various obstacles can be identified that have made time and time again claiming compensation in court difficult in the past. Sometimes, if the “private accessory prosecutor” [Nebenklägerin] seeks both the harshest sentence for the perpetrators and their own compensation, this can have an adverse effect on their

⁴⁷ <https://www.kok-gegen-menschenhandel.de/kok-informationsdienst/news/neuer-kok-informationsdienst-aktuelle-entwicklungen-der-rechtsprechung-zu-menschenhandel/>

⁴⁸ <https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/gemeinsame-stellungnahme-zur-geplanten-reform-des-sozialen-entschaedigungsrechts/>

⁴⁹ Hamburg social welfare court, ruling from 23 June 2016, file number [S 36 U 118/14](#)

⁵⁰ An altogether excellent decision came from the Bielefeld State Court (LG) on 8 May 2015 in criminal proceedings on the grounds of trafficking in human beings for the purpose of sexual exploitation. The perpetrator was sentenced to six years and six months. Additionally, in the consolidated civil and criminal proceedings, around € 2,000 in damages and a payment of € 42,200 for pain and suffering to cover the unpaid wages from prostitution was awarded to the private accessory prosecutor, whom he had forced to engage in prostitution for him for approx. three months.

credibility.

In the area of trafficking in human beings for the purpose of labour exploitation, there are still hardly any court rulings and, as a result, no cases of compensation.

Recommendations:

- The credibility of trafficked persons testifying during proceedings may not be brought into question by the fact that they are enforcing their entitlement to compensation.
- Alongside compensating individuals trafficked for the purpose of sexual exploitation, a stronger focus must be placed on those subjected to labour exploitation and other forms of exploitation, e.g. forced criminal activities and begging.
- It must be made easier to enforce wage entitlements in civil proceedings and the right to class actions, which has been suggested by the trade unions for many years, must be implemented.
- To make accessing the courts to claim unpaid wages easier, the courts' obligation to report people with an unlawful residency status to the immigration offices must be abolished as soon as possible.
- An equivalent compensation fund must be set up to make payments to trafficked persons who are unable to receive compensation from the perpetrators.
- The social compensation laws, including the Crime Victims Compensation Act, must be reformed at long last to extend access to compensation to victims of psychological abuse. Their experiences must also be taken into account accordingly into the reform process.

44. Is there a possibility for victims of THB to claim damages and compensation in the country of destination after their return to the country of origin? Please provide any relevant examples.

KOK's answer:

This possibility exists in theory, yet there has been no known case in which this has happened. However, a case in Frankfurt was reported in which this was apparently attempted.

Recommendation:

- Supporting these rights through the relevant measures on the part of the German Federal Government
- Introducing a right to class action so that associations can also claim on behalf of trafficked persons.

Repatriation and return of victims (Article 16)

45. What steps are taken to ensure that the return of victims of THB from your country to another country is carried out preferably voluntarily and in full observance of the duty to ensure their rights, safety and dignity, including the obligation not to return a person to a country where his or her human rights are at risk of being violated (non-

refoulement principle)? How is risk assessment carried out when deciding upon return and repatriation of victims of THB? What is the procedure and what are the modalities of co-operation with the authorities of the receiving state?

KOK's answer:

Specialised counselling centres usually work with trafficked persons to prepare their journey home.

They assist them with residency issues until their departure, in securing financial resources for the duration of their stay in Germany and support them in acquiring a new passport in event that theirs is missing.

At the client's request and with their consent, they will put them in contact with a specialised counselling centre in their native country. This can take a number of forms, e.g. the client can be picked up and greeted upon their arrival, advice and counselling from an NGO in their native country or, if client does not desire this, they can simply be given names and addresses of NGOs in their country of origin.

Specialised counselling centres work with the client to assess risks they may face upon their return to their country of origin and discuss possible measures with them. The risk assessment in their home country is carried out by the regional Criminal Police Office or other authorities tasked with investigations if the trafficked person has testified as a witness in criminal proceedings. The extent to which other authorities perform risk assessments upon repatriation is unknown.

Some professionals on the ground report that trafficked persons are often keen to remain anonymous, so that they do not resort to the REAG/GARP repatriation programme, for instance.

In such cases, the Bahnhofmission (aid organisation located at railway stations) in Munich, for instance, supports specialised counselling centres/trafficked persons by paying for a train ticket.

Recommendations:

- Funding projects that support the cross-border work of NGOs
- Guaranteeing anonymous and safe accommodation options for trafficked persons

Non-punishment provision (Article 26)

49. Is the non-punishment provision incorporated in law and/or prosecution guidelines? If so, please provide the relevant texts. Please give details, including references to case law where relevant, of cases where the non-punishment principle has been applied and the outcome of such cases.

KOK's answer:

Trafficking in human beings is defined as an offence by Section 232 of the German Criminal Code in which prosecution and punishment against trafficked persons can be waived under specific conditions, e.g. if the trafficked person has reported the offences they have

committed.

From the perspective of KOK, however, too much discretion is granted to the prosecuting authorities and the courts by the selected discretionary formulation and the intention to protect victims is not sufficiently fulfilled. Trafficked persons have no guarantee that they will not be prosecuted for crimes that they were forced to carry out as part of the exploitation they endured. Perpetrators also use potential legal consequences for their offences to blackmail the people they are exploiting. In addition, Sections 232a and 232b of the German Criminal Code (“Forced prostitution” and “Forced labour”, nor does Section 26 (“Abetment”, which covers cases in which someone is prompted to commit an offence) are not covered by this provision even though their predicament or helplessness is exploited.

Recommendations:

- Improving possibility for disregarding offences committed within a context of trafficking in human beings; hitherto the German Criminal Code has only provided a discretionary formulation (Section 154c), which, furthermore, requires the trafficked person to report the offences
- Adding a compulsory requirement to drop charges against trafficked persons to Section 154c of the German Criminal Code
- Guidelines for non-punishment, as recommended by GRETA, have not yet been developed
- Extending the rules concerning termination of proceedings to all criminal offences carried out within a context of trafficking in human beings (Sections 232a-233a of the German Criminal Code).
- Whether or not immunity can be granted should also not depend upon whether the trafficked person has report any offenses.

Protection of victims, witnesses and collaborators with the judicial authorities (Article 28)

53. What measures are taken to protect victims, witnesses and NGOs assisting victims during criminal proceedings from potential retaliation or intimidation during the investigation and during and after the criminal proceedings? In how many cases have special protection measures been used in respect of victims and witnesses of THB? Please specify any difficulties in providing victim/witness protection and creating a safe environment for their participation in investigations and court proceedings.

KOK’s answer:

Specialised counselling centres have reported that no special safety measures have been taken to protect their employees apart from those that they decided to implement (e.g. secret address, non-disclosure notices within files even for the name of their employees).

Frequent measures to protect trafficked persons include:

- The use of non-disclosure notices (e.g. at the registration offices, job centres, health insurance companies etc)
- Safe accommodation (women’s shelters, sheltered accommodation)
- Providing alternative addresses

- Provision of an NGO or police escort when clients are interviewed by the police
- Ensuring legal representation
- Ensuring subsistence
- Trafficked persons sometimes have to move (sometimes more than once) on safety grounds.
- NGO and police escort to court proceedings
- In some cases, the police adopt witness protection measures.

The following areas remain challenging:

- When trafficked persons are applying for asylum and are therefore deported to the country in which the perpetrators reside, as per the Dublin Regulation.
- Trafficked persons applying for asylum and subject to the residence requirement many also pose problems as it can be the case that the perpetrators reside in the same area.
- Difficulties can arise if trafficked persons must move to another federal state quickly.
- During the criminal proceedings, trafficked persons are at risk of re-experiencing the trauma if, for example, they have to testify in the presence of the perpetrators and recording their testimony is not possible.
- For the specialised counselling centres: the lack of a right to refuse to give evidence on the part of their employees.
- There are insufficient safe accommodation options.
- In order to offer better protection to trafficked person, they should not be accommodated in the same place as where the exploitation took place. This is not always possible, however, sometimes due to a lack of safe accommodation options.

Increasing digitalisation presents a further problem for protecting trafficked persons: the use of social networks is dangerous and they are usually required not to use their accounts; however, they often continue doing so as it is a big part of their lives.

Trafficked persons can, themselves, be a much larger element of uncertainty, if they do not adhere to rules and agreements.

Recommendations:

- Using tools to protect trafficked persons during the court proceedings, as per the Act to Reform the Protection of Victims' Rights – e.g. through video recordings
- Introducing of a right to refuse to give evidence on the part of the employees
- Cross-border witness protection is necessary.

54. What other measures are taken to promote the participation of victims and witnesses in criminal proceedings and to give testimonies which accurately reflect their experiences and assist courts in establishing the truth? Can a victim of THB be assisted by a social worker, psychologist and/or NGO representative during the investigation and court hearings?

KOK's answer:

Trafficked persons who testify as witnesses can be escorted and supported by an employee from the specialised counselling centre during investigations and court proceedings. This is one of the specialised counselling centres' primary tasks.

Depending on the specialised counselling centres' circumstances, concept and services, the counsellors escort the clients from the time they make their first report/statement in the preliminary and criminal proceedings until the main hearing and offer additional support afterwards.

Alongside this, the law also defines psychosocial support during criminal proceedings. Only children and young persons who have been affected by sexual and violent crimes are entitled to it.

This service demands specific training and some specialised counselling centre employees undertake extra training to become psychosocial support workers in the context of criminal proceedings. External support workers are also brought in. What is problematic is that, on one hand, there is no uniform training in Germany or at least a qualification that is recognised by all federal states. On the other hand, the new legal situation requires that only professionals with this extra qualification can work as psychosocial support workers during criminal proceedings, while social workers who have been active in this field for many years are not permitted to do so. They can, however, accompany the witness as a person of trust.

Generally, psychosocial support workers should provide of knowledge about trafficking or at least they should cooperate with the respective counselling centre.

Trafficked persons often have a very close relationship of trust with the employees of the specialised counselling centres, which is further strengthened by their speaking the same language. Appointing an "external" psychosocial support worker instead is not always sensible in the case of trafficking in human beings. If they wish so, witness may be escorted by a counsellor of their own choosing who does not have to be officially recognised as a psychosocial support worker during criminal proceedings. However, this strict separation between counsellor and psychosocial support worker, as stated by the new regulations, is problematic for the specialised counselling centres. KOK have highlighted this issue in its position paper on the Third Act to Reform the Protection of Victims' Rights.⁵¹

Trafficked persons can fully participate in proceedings through the "private accessory prosecutor" status [Nebenklägerin], which offers many important procedural rights, see Section 397 of the German Penal Procedure Code (the right to consult the prosecution files, the right to be present during the main hearing, the authority to reject a judge or expert witness, the right to ask questions, the right to complain regarding the chief judge and questions, the right to request evidence, the right to submit statements). The private accessory prosecutor can obtain the assistance of a lawyer or have themselves represented by one.

⁵¹ <https://www.kok-gegen-menschenhandel.de/kok-informiert/detail/news/oeffentliche-anhoerung-zum-3-opferrechtsreformgesetz-im-rechtausschuss-des-bundestags/>

In confirmed or suspected cases of child endangerment due to child trafficking and/or exploitation, a guardian ad litem must be appointed for minors. They must have expertise in the various forms of exploitation and understand the protection needs of affected children. The appointment of a guardian ad litem for minors is provided for in Section 158 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction⁵². An appropriate guardian ad litem must be appointed by the court in all civil proceedings involving children if this is necessary to assert their rights.

As a rule, a guardian ad litem must be appointed if there is any evidence that the interests of the child may be at odds with those of his legal representative.

Appointing a guardian ad litem is mandatory in cases of child endangerment in which there is a risk of the child being put into care. The guardian ad litem's role is to determine the interests of the child, to represent the child during the civil proceedings and to inform the child about the court case. This condition is always fulfilled in cases of child endangerment due to trafficking and exploitation. In practice, a guardian ad litem is very rarely appointed for minors by the courts. If the court foregoes the appointment of a guardian ad litem, the ruling must outline the grounds for this decision.

Recommendation:

- Examining the status of psychosocial support workers during criminal proceedings in each federal state: is this effective? Is it accepted? What obstacles are there? How can we guarantee that the specialist psychosocial support is ensured if the specialised counselling centres do not have the means to pay?

⁵² Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamG)

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