



German NGO Network against
Trafficking in Human Beings

Kurfürstenstraße 33
10785 Berlin
Germany
Tel.: + 49 (0) 30 263 911 76
Fax: + 49 (0) 30 263 911 86
Email: info@kok-buero.de
Website: www.kok-gegen-menschenhandel.de

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Submitted by: KOK - German NGO Network against Trafficking in Human Beings

For further information, please contact:

Executive Director: Naile Tanış n.tanis@kok-buero.de

Advisor: Sarah Schwarze s.schwarze@kok-buero.de

KOK is the German NGO Network against trafficking in human beings. KOK currently has a membership of 37 NGOs working to eradicate trafficking in human beings and exploitation and to promote and assert the rights of trafficked persons. It has been established in 1999 and is the only nationwide coordination network of NGOs in Germany and across Europe focusing on this specific issue. The network draws on many years of extensive experience in the field of human trafficking and exploitation, and, in particular, on how to support persons affected by trafficking.

Human Trafficking and the Protection of Victims in Germany

I. Introduction

1. Human trafficking is an extreme form of exploitation which mostly involves some kind of coercion and is often – but not exclusively – related to migration. In the course of an increased international migration, but also related to flight and other forms of migration, people can easily become victims of psychological, structural and/or physical violence as well as human rights violations. One form of these violations is human trafficking. The KOK understands human trafficking as the recruitment by the use of threat, deception or violence for the purpose of exploiting and abusing a person as a source of labour in exploitative activities and services. Persons are trafficked into prostitution, marriage and labour or are subject to other forms of exploitation such as forced begging or the exploitation of criminal activities.

2. The Recommendations from the previous cycle referred to (amongst others) the protection for underaged victims of trafficking (124. 138 Liechtenstein), on efforts in the field

of human trafficking and facilitation of access to justice for the victims (124.147 Greece), on safeguarding the rights of the victims consistent with its human rights obligations (124.141 India).

3. Serious and reliable figures of trafficked persons in Germany do not exist, the only reliable number derives from the National Situation Report on Trafficking in Human Beings which is published yearly by the Federal Criminal Police Office. However, these reports can only reflect a limited picture since they only include cases in which the police opened and closed investigations. Thus, non identified cases, cases in which the victims didn't speak to the police or cases in which the investigation has been discontinued are not recorded. Also there are many cases in which trafficked persons are identified and are in contact with counseling centers but decide against cooperation with law enforcement. Nevertheless they will receive support from the counseling centers but will not appear in the statistic. In addition, victims of trafficking for forced begging or for the exploitation of criminal activities are not included until now since these forms of exploitation have not been recognized as forms of trafficking in the criminal law until October 2016.

4. The Palermo Protocol includes a thorough definition of human trafficking (Art. 3 (a)) and dedicates its second part (Art. 6 et seq.) to the protection of victims of trafficking in persons, states are merely requested to "ensure [...] in appropriate cases" certain measures to protect the victims (Art. 6, 2 of the Palermo Protocol). As a result, there is no legally binding definition of minimum standards for the protection of trafficked persons at a global level.

5. While states seem to be committed to improving the combat against human trafficking in terms of implementing better law enforcement measures, most countries have yet to adopt comprehensive mechanisms to protect and support victims of human trafficking. What is lacking is a rights based approach in the fight against trafficking. We believe that to effectively combat human trafficking, the respect for the fundamental human rights of trafficked persons has to lay at the very heart of any action to be taken. Some international documents already stress the victims' rights and regard them with equal importance as the strengthening of the law enforcement.

6. Since the last UPR Cycle there have been significant changes in Germany. A number of legal changes have a direct or indirect impact on the fight against trafficking and the situation of trafficked persons.

II. Legal Situation in Germany since 2013

7. Germany recognizes human trafficking as a violation of human rights in concurrence with international conventions (such as CEDAW or the Palermo Protocol). Trafficking in human beings and exploitation are criminalized by the criminal law. Through the implementation of the "Law to improve the combat against trafficking in persons and to amend the Federal Central Criminal Register" (implemented the 15th of October 2016), Germany transposed the Directive 2011/36/EU of the European Parliament and the Council of Europe on preventing and combating trafficking in human beings and protecting its victims into national law, albeit with three years delay. As a result of the transposition of the Directive 2011/36/EU into national law, changes have been made regarding the combat against trafficking in persons, however, exclusively concerning law enforcement. A comprehensive reform of the sections on trafficking and exploitation in the German Criminal Code included

the addition of new regulations regarding exploitation and the addition of other forms of trafficking such as forced begging or forced criminality as well as organ trade.

8. There have been improvements regarding the financial support of victims of trafficking. Instead of receiving social benefits according to the Asylum Seekers Benefit Act, trafficked persons, who are willing to testify and who are due to legal or other obstacles not able to leave the country (§§25 Abs. 4a, 4b and 25 Abs. 5 AufenthG (Residence Act)), are now entitled to receive social benefits according to the Social Security Code II and XII, which substantially improves their situation through higher benefits and support.

9. Through the implementation of the “Law to redefine the right of residence and the conditions of residence”, further improvements have been made regarding the residency of trafficked persons.

- a) The first issuing of the residence permit for trafficked persons who agreed to cooperate (according to §25 Abs. 4a Satz 1 AufenthG) received an obligatory character. Previously this decision regarding the granting of the residence permit lied within the discretion of the authorities. Additionally it is now granted for one year (previously six months).
- b) § 25 Abs. 4a Satz 3 AufenthG (Residence Act) was newly introduced, which determines that trafficked persons who cooperate with the prosecution might receive an extension of their resident permit for humanitarian or personal reasons or out of public interest.
- c) Family reunification is already possible during the court cases.
- d) There is a (restricted) possibility of visiting the so-called integration courses.

10. The third “Act to Reform the Protection of victims’ Rights” implements certain rights for victims of crime in criminal proceedings, e.g. better information rights.

III. Main Issues of Concern

11. Despite the above-mentioned improvements, there are still numerous flaws and shortcomings in terms of adopting comprehensive mechanisms to protect and care for the victims of human trafficking.

12. General lack of protection of victims and exclusive focus on law enforcement

Generally, the implementation of a human-rights-based approach in the combat against trafficking - which puts the rights and protection of the victims in the center - is still missing. The transposition of the Directive 2011/36/EU exclusively led to developments regarding the German Criminal Code. There is still need for action regarding defaults concerning support structures, victims’ rights, and measures for awareness raising training as well as the development of an overall strategy framework for the combat of trafficking in persons, in which focus has to lie on the human rights of the victims.

13. Lack of a comprehensive strategy against all forms of trafficking and exploitation

There is still no comprehensive strategy against trafficking and exploitation on national level which includes all forms of trafficking. The responsibilities are divided between different ministries: The ministry for family affairs, senior citizens, women and youth is the one being

responsible for trafficking with a focus on sexual exploitation as well as for child trafficking, the ministry for labor and social affairs is responsible for trafficking for labor exploitation. Other forms of trafficking are not allocated yet.

14. Lack of legal provisions for minor victims of trafficking

Despite some improvements regarding minor victims of trafficking in the German Criminal Code, there are still no appropriate legal regulations within the AufenthG (Residence Act). Minor victims of trafficking are legally treated like adults. The extremely challenging situations of minors, who are victims of trafficking, as well as the best interest of the child are currently not considered within the framework of measures against trafficking. As in the case of adult trafficked persons, the residence permit for victims of trafficking, and with it access to the necessary and adequate support structures, are dependent on cooperating with law enforcement. Additionally, the existing regular child protection system is not adequately equipped and trained to deal with trafficked minors.

15. Lack of an unconditional residence permit for non-EU nationals

According to § 25 Abs.4a AufenthG (Residence Act) victims of trafficking are being granted a residence permit during criminal proceedings only if they decide to cooperate with law enforcement and abandon any contact with the incriminated persons. Although through the newly introduced § 25 Abs. 4a Satz 3 AufenthG (Residence Act), it is now possible to receive an extension of the resident permit for humanitarian or personal reasons or due to public interest, an initial will to cooperate with law enforcement as well as the recognition of the importance of the testimony is the precondition to receive a residence permit.

By this, the persons who are victims of trafficking are in danger of being instrumentalized by the interests of law enforcement. Access to support, protection and the enforcement of their rights after the so called “reflection period” of three months depends on their residence status and hence their willingness to cooperate.

During the “reflection period” trafficked persons only receive services under the German Asylum Seeker Benefits Act (Asylbewerberleistungsgesetz, AsylbLG), which guarantees only a bare minimum of sustenance. Only if they cooperate with law enforcement and their cooperation is seen as necessary a residence permit according to § 25 Abs. 4 a can be issued and with that, access to social benefits is possible.

Access to justice must, from our point of view, not only include law enforcement of the perpetrators but also give trafficked persons the possibility to access their rights, e.g. right to compensation and unpaid wages.

16. Lack of adequate accommodation

Although a certain structure of specialized counseling centers exist in Germany which offer a wide range of services to trafficked persons and, amongst others, also provide or organize accommodation is not guaranteed that all trafficked persons receive adequate accommodation. There is a severe lack of sufficient adequate accommodation options which meet the needs of trafficked persons (in terms of security and anonymity, for example). Existing facilities, such as safe houses or women’s shelters, are generally oversubscribed and insufficiently funded. The counseling centers often do have to find individual ad hoc solutions and organize the funding. Many of them work with a focus on female victims; some also provide services to

male victims. However, finding accommodation for male victims of trafficking in human beings even proves to be more difficult as there are very few appropriate options. This also applies to minor victims of trafficking.

IV. Challenges and Recommendations

17. To effectively combat human trafficking, a human-rights-based approach is necessary. Additionally, actions taken by the German government should not mainly concentrate on law enforcement, but to an equal level on the rights and protection of trafficked persons. Such an approach has to be implemented in measures and regulations taken to address trafficking in human beings.

Based on these considerations the KOK demands:

18. Comprehensive strategy against all forms of trafficking and exploitation

A comprehensive strategy against all forms of trafficking in human beings and for the protection and safeguarding the rights of the victims should be developed and implemented on national level. This might for example happen in the framework of a national action plan involving all relevant stakeholders. It should define measures and goals for the next five years with the help of civil society. The measures outlined in the action plan should not be limited to criminal law and anti-trafficking aspects but should explicitly cover support options and the rights of trafficked persons. All implemented measures should be evaluated with regard to their efficiency.

19. Special regulations for minor victims of trafficking

According to international documents such as the Council of Europe Convention on Action against Trafficking in Human Beings, regulations (e.g. the issuance of a residence permit for child victims of trafficking) that focus on the best interest and well-being of the child (Art. 14 pass. 2) have to be implemented. Minor victims of trafficking should be granted a residence permit based on the best interest and the well-being of the child and independent of the willingness to cooperate and of the criminal proceedings in general. Safe and adequate accommodation and support structures for minor victims have to be established.

20. Unconditional right to residency

Persons, who are victims of trafficking, should be entitled to a right to residency on the basis of humanitarian reasons for the suffered human rights' violations, irrespective of collaborating with law enforcement or not. At least, access to social benefits should also be granted during the "reflection period" since the Asylum Seeker Benefits Act does not cover necessary things like therapies, medical treatment beyond the treatment of acute illnesses and pain or costs for translation. Trafficked persons usually have no financial resources and no accommodation, particularly in the initial phase after the exploitation relationship has ended, with some not even having the opportunity to take their own possessions or clothing with them. The question of whether they are entitled to social benefits must thus be answered as a matter of urgency. Additionally, sufficient possibilities for further training and access to education should be provided for as long as they reside in Germany. Generally, victims of trafficking should be entitled to a right to unlimited residency.

21. Safe and adequate accommodation for all victims of trafficking

The severe lack of adequate accommodation is to counteract and a sufficient funding has to be provided. Safe and adequate accommodation options are needed for victims of all forms of trafficking and exploitation, i.e. female victims, male victims, minors, families, LGBTI*.

22. General Improvement of the Protection and support of trafficked persons

It is the state's responsibility in order to effectively combat human trafficking to improve the prosecution of traffickers and, at the same time, to provide for sufficient counselling services and accommodation options for victims of all kinds of trafficking, women, men and children/minors. This obligation includes the financial support of specialist counseling centers.

23. Encourage the visit of the Special Rapporteur on trafficking in persons, especially women and children, within the framework of the open and permanent invitation extended to special procedures

KOK supports the recommendation no. A - 124.63. by Belarus to invite the Special Rapporteur on trafficking in persons, especially women and children. Despite the standing invitation to all special thematic procedures, the KOK and its member organisations would welcome an explicit invitation and a visit from the Special Rapporteur. In our opinion, it is important for the Rapporteur to be informed about the general situation, the specific measures that have been implemented thus far and the difficulties that have been encountered in the process of combating human trafficking and protecting the rights of trafficked persons in Germany. This is particularly important given the fact that Germany is a destination country. Further, the KOK and its partner organisations would be very interested in the Rapporteur's views and suggestions in order to improve future research and measures.

In its report of the 71st session the Human Rights Council affirmed that it is "...*convinced* of the need to protect and assist all victims of trafficking with full respect for the human rights and dignity of the victims." and "*urges* states to establish or strengthen national programs and to engage in bilateral, subregional, regional and international cooperation, including by forging regional initiatives or plans of action to address the problem of trafficking in persons in accordance with a victim centred approach." (A/HRC/A/71/53)

The special rapporteur on trafficking in persons, especially women and children in her report calls upon states to "Grant non-national victims of trafficking residence status and assistance, not to be made conditional on the initiation of criminal proceedings or their cooperation with law enforcement authorities." (A/HCR/A/71/303)

The KOK calls on the Government of the Federal Republic of Germany to

- Establish a human-rights-based approach to combat human trafficking. The rights of trafficked persons must be in the centre of all measures against trafficking in Persons.
- Ensure the protection of trafficked persons and adequate treatment/support according to their specific needs based on legally binding provisions, allowing for a right to residency,

adequate accommodation as well as for access to counselling services and compensation claims.

- Implement specific regulations for minor victims of trafficking that are in accordance with the best interest and the well-being of the child.
- Encourage states to take the expertise of NGOs working in the field of fighting human trafficking into account and to establish mechanisms of cooperation between the different partners involved (e.g. specialized counseling centers, the national and regional governments and the police).