Trafficking in human beings

Labour exploitation Sexual exploitation

Forced criminal activities and begging

Organised ritual abuse





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1. Introduction

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

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

Trafficking in human beings constitutes a serious human rights violation and an offence to the dignity and the integrity of the human being.

In the early 1980s women's counselling services began identifying an increasing number of cases of trafficking in human beings for the purpose of sexual exploitation, and the issue started to receive more attention. Specialised support structures have since been established, many of which also deal with cases of trafficking in human beings for the purpose of labour exploitation as well as cases of exploitative working conditions. Recently there has also been an increase in cases of exploitation where people are being forced to go out begging or commit crimes.

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

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

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

When talking about **trafficking in human beings for the purpose of forced begging**, we are referring to situations in which a person's personal or economic predicament or helplessness arising from being in a foreign country is exploited to make them engage in begging. They are forced to hand over all or most of their earnings. Their freedom is limited to the point where they can no longer decide freely whether they want to engage in this activity or not.

A major difference between trafficking in human beings for the purpose of forced begging and other forms of exploitation is that begging only happens in public spaces, so these persons are being exploited in public view. In these cases, trafficked persons even have to actively approach third persons/strangers for financial support. One of the main challenges is to identify whether the person is being forced to beg and is therefore being exploited, or has "chosen" to beg, e.g. for economic reasons, and so can retain their earnings. Soliciting passers-by for financial assistance is not prohibited in Germany, although certain geographical restrictions do apply. Begging can take many forms, for example by asking directly for money, selling small objects for a much higher amount than they are worth, or offering services, such as cleaning windshields.¹

Piotrowicz, R. & Healy, C. (2014) Manual for Law Enforcement Authorities on Trafficking for Forced Begging, p.12.

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

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

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

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

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

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

Such reasons include:

- False promises regarding job and livelihood opportunities
- Lack of knowledge regarding their rights and the legal situation in Germany
- Need to support their family in their country of origin
- Alleged debts which have to be paid off
- Predicament regarding the economic situation or residence status which is used by the perpetrators
- Fear of prosecution because of having committed criminal activities

² See G. Tatzgern, Presentation for the German Federal Criminal Police Office on 7/6/2017 (not published).

³ See Anti-Slavery International (2014) Trafficking for forced criminal activities and begging in Europe.

- Confiscated documents
- Isolation, e.g. due to the lack of language skills and contacts
- Use of violence, threats, humiliation, control, pressure or coercion

Unlike what many believe, the legal definition of trafficking in human beings **does not require a border to have been crossed.**

Anybody can therefore be subjected to all forms of trafficking in human beings, although people who lack language skills, knowledge of their surroundings or an understanding of legal matters or those living in a precarious situation are particularly vulnerable.

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

There is **very little understanding** of the real extent of **trafficking in human beings for the purpose of forced begging and criminal activities** in Germany. Although trafficking in human beings for the purpose of sexual exploita-

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tion and labour exploitation have been provided for in German law since 1973 and 2005 respectively, forced begging and criminal activities were only included as a form of trafficking in human beings in 2016, when criminal offences were reviewed, and EU Directive 2011/36 was implemented. This legal reform broadened the scope and restructured the offence of trafficking in human beings. However, there are still very few investigation proceedings or even convictions in relation to such cases. According to the Federal Criminal Police Office Situation Report on Trafficking in Human Beings, in 2021 1 investigation proceeding were carried out into forced begging and 7 investigation proceedings were opened due to suspected exploitation in relation to forced criminal activities.⁴ Very few affected persons have turned to a specialised counselling centre or other support services. Among the persons who seek support, many have experienced more than one form of exploitation, e.g. by being forced to engage in prostitution and theft.

Federal Criminal Police Office (2022) Bundeslagebild Menschenhandel 2021 (2021 Federal Situation Report on Trafficking in Human Beings), p. 18-19.

CASE STUDY

Forced to beg

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

German Federal Criminal Police Office (2017)

3. Legislative developments internationally

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

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

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

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

4. Legal provisions in Germany

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

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

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

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

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

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

CASE STUDY

Forced theft

A man and three of his children lured five homeless people to Germany from Poland with false promises of employment. Once they arrived in Germany, however, their passports were taken away from them. Over a period of around two weeks, they were forced to commit thefts in supermarkets and chemists by way of threats, physical violence and rape. The perpetrators always gave them precise instructions about what they had to steal. Both women in the group were also supposed to be forced to work as prostitutes in the evenings.

They were told that they owed money for the trip to Germany, and that this was how they would pay it back. The only reason they did not end up working as prostitutes is that no clients came forward.

The trafficked persons were unable to escape their predicament as they spoke neither German nor English and this was the first time they had ever been abroad.

The perpetrators had taken away their identity documents and exerted pressure on them in various ways: they locked them up, beat them if they did not do as they were told, and brutally physically abused them. The few attempts they did make to escape their predicament failed. One of the trafficked persons tried to ask for help when she was arrested by the police for committing a theft. She was given a notice regarding her rights written in Polish, on which she underlined a passage about interpreters and asked to be put in touch with the embassy, but her request was not granted by the police. Instead, she was handed over to one of the perpetrators claiming to be her relative. Other attempts by the group to obtain help, for example by asking compatriots where the Polish embassy was, were also in vain. Police investigations were only launched when one of the trafficked persons was arrested in August 2018 and said during his interrogation that he needed help and was willing to testify in full.

The Berlin Regional Court condemned the four perpetrators to prison sentences of between 6 and 3 years on grounds of trafficking in human beings, labour exploitation, forced prostitution and other offences.

Source: Berlin Regional Court, Judgment of 25 June 2019, case number: (513 Kls) 255 Js 637/18 (38/18), summary available in the KOK Case Law Database (only in German). Identifying a person as a victim of trafficking in human beings is necessary to be able to prosecute perpetrators, and is also crucial for trafficked persons themselves.

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

5. The non-punishment clause

The fact that the trafficked persons expose themselves to prosecution is a particularly relevant feature in the case of trafficking in human beings for the purpose of forced criminal activities. It is used by perpetrators to trap trafficked persons into exploitative situations. Because they fear retaliation from the perpetrators, not to mention prosecution, it is unlikely they will turn to the police to report the offence committed against them. This fear can also prevent them from seeking protection, advice and support from counselling centres and from enforcing their rights. This is why it is regularly stressed how important it is not to prosecute trafficked persons for offences committed in relation to trafficking in human beings.⁵ International legal instruments which are binding for Germany offer the possibility to drop charges. German law also provides for such cases, albeit under very precise conditions. In cases of suspected trafficking in human beings, the appropriateness of prosecuting trafficked persons must be very carefully assessed. It must be noted that trafficked persons can have a very reduced degree of criminal responsibility. Realistically, the person may not have any other option than to obey and to commit these offences. This protection measure is not meant to offer blanket immunity against prosecution, but to protect the human rights of victims, avoid any further victimisation, and encourage them to testify against the perpetrators during criminal proceedings.⁶

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6. KOK's work

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

One of the main **goals** pursued by KOK and its member organisations is to **bolster** and **enforce** the rights of trafficked persons.

Further objectives include:

- Ensuring compliance with national and international standards in all dealings with trafficked persons
- Promoting a women-oriented and humanrights-oriented perspective in policymaking and society as a whole
- Supporting the existing network of specialised counselling centres
- Improving the living conditions of trafficked persons and migrants affected by violence

KOK brings together the **majority of specialised counselling centres** in Germany **working with trafficked persons** as well as other organisations combating this issue, including:

- Specialised counselling centres and shelters for trafficked persons
- Independant projects for female migrants
- Counselling centres for sex workers

¹⁸

See for example OSCE (2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, http://www.osce.org/secretariat/101002, 22 April 2013; GRETA (2015) 10: Report on Germany, margin note 204: https://rm.coe.int/1680631c3a. See KOK Information Service 2016, p. 9–10.

- Women's shelters
- Women's and human rights groups
- Church-sponsored organisations
- Umbrella organisations representing charitable NGOs

KOK also has extraordinary member organisations in Berlin, Switzerland and Italy (South Tyrol).

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 their experience, KOK offers expertise in all groups of trafficked persons.

The KOK Office tends to focus on the following areas:

- Networking at national and international level with specialised counselling centres and other NGOs
 - Organising regular networking events and conferences
- PR work
 - Publications, newsletters, website etc.

- Raising awareness and providing training on trafficking in human beings and violence against female migrants
 - Training courses, talks, touring exhibitions etc.
- Participation in committees and networks
 - Interministerial/interdisciplinary working groups
- Advocacy and policy advice
 - Statements, policy advice at regional, national and European level

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

7. Specialised counselling centres for trafficked persons

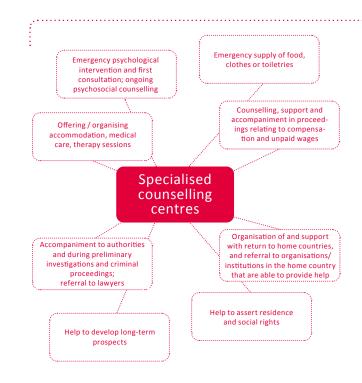
KOK specialised counselling centres offer trafficked persons anonymous, confidential and **holistic counselling and support** that is free of charge and independent of state institutions. They offer a wide range of counselling options and aim to improve sustainably the lives of trafficked persons and help them to assert their rights.

Trafficked persons receive psychosocial support as well as counselling with regard to their legal situation or their social, residence, labour or civil rights from counselling centres, or they are referred to a lawyer. They also offer accommodation or help with finding accommodation. Their scope also includes organising medical assistance and support during criminal proceedings. Very often, counselling centre staff accompany clients to meetings with authorities. If necessary, they also organise return to home countries.

These services are not limited to groups of people from a certain region or country. Counselling centres offer support and counselling regardless of the nationality and residence permit situation.

Councelling center's staff have extensive experience in **psychosocial counselling of trafficked persons** and are aware of the needs of their clients, mostly traumatised women and girls. They

use multilingual counsellors or interpreters to
offer comprehensive, far-reaching and individual
counselling to trafficked persons.



Due to the context in which they were created, many specialised counselling centres who are members of KOK work primarily with **women**, regardless of the type of exploitation they have faced.

Many KOK member organisations now also counsel **men and whole families**.

They also regularly support and counsel **minors** affected by trafficking and act in concert with other stakeholders in the area of child and youth protection.

In addition to comprehensive and holistic counselling for trafficked persons, specialised counselling centres also offer training and information events to raise awareness on trafficking in human beings. These include:

- Prevention training courses
- Training courses for prosecuting authorities
- Information events for vulnerable persons
- Organisation of networking workshops for various stakeholders, e.g. police, lawyers or relevant public authorities
- Discussions with pupils or teachers

For further information about the individual specialised counselling centres, visit the KOK website:

www.kok-gegen-menschenhandel.de/en/kok/ specialised-counselling-centres

KOK member organisations and their local branches



8. Networking and cooperation

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KOK member counselling centres are located all over Germany, with at least one centre in every federal state. At a regional level, they often cooperate with various regional and local stakeholders. Their focus and target groups tend to vary: through effective networking, counselling centres can offer each other support and complement each other's activities whilst plugging many of the gaps in the support system.

KOK organises an annual **networking event** to strengthen ties between non-governmental organisations, allowing German-speaking counselling centres to discuss current issues and build on cooperation initiatives.

One key tool for collaboration is cooperation agreements, which currently exist in 13 federal states. These agreements set out guidelines for collaboration between the stakeholders involved in cases of trafficking in human beings. Depending on the regional structures in place, these agreements may encompass not only the specialised counselling centres and the police, but also other relevant institutions or stakeholders.

However, most of these cooperation agreements do not explicitly mention forced begging or criminal activities as forms of exploitation.

Some refer to trafficking in human beings as a general concept and therefore include, at least in theory, these forms of exploitation. Overall, many of these cooperation agreements need to be reviewed, as they often refer to trafficking offences as defined by the German Criminal Code prior to the 2016 reform.

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

At national level, alongside the Joint Working Group of the Federal Government and the Länder on Trafficking in Human Beings that was established in 1999 under the auspices of the Federal Ministry for Family, Senior Citizens, Women and Youth (BMFSJ) there is also the Joint Working Group on Trafficking in Human Beings for the Purpose of Labour Exploitation.

These working groups provide a forum for ongoing exchange of information and expert knowledge across federal state borders, bringing together the relevant ministries and authorities at national and federal state level as well as non-governmental organisations.

To implement appropriate safeguarding measures for trafficked children in Germany, the Federal Ministry of Family, Senior Citizens, Women and Youth is collaborating with child welfare organisation ECPAT and KOK to develop recommendations on cooperation between youth welfare authorities, police forces, special-

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ised counselling centres and other stakeholders in order to identify and protect victims of trafficking in children. This cooperation scheme is entitled "Protection and support in cases of trafficking in, and exploitation of, children".

Moreover, a **National Rapporteur on Trafficking in Human Beings** was set up in Germany in November 2022. This body is tasked with monitoring compliance with international obligations regarding combatting trafficking in human beings, identifying areas where action is needed and drawing up recommendations for policymakers and the administration. The National Rapporteur is attached within the German Institute for Human Rights.

9. What needs to be done

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

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

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

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

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

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

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

General principles for all forms of exploitation:

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

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

Access to **medical assistance**, including therapy to cope with their ordeal, must be improved for all victims, regardless of their residence status.

Further opportunities for claiming unpaid **wages and compensation** must be provided.

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

Existing and future **cooperation networks must be broadened** to include all forms of trafficking in human beings and all target groups, and cooperation with local authorities, NGOs and trade unions must be enforced.

Finally, **training courses** regarding trafficking in human beings and exploitation must be organised to **raise awareness among a variety of stakeholders** (e.g. tax authorities in charge of illegal employment, the Federal Police Force, job placement and temporary work agencies, regulatory authorities, etc).

Further information

• KOK:

www.kok-gegen-menschenhandel.de/en/ You will find a list, including links, to all KOK members as well as other counselling centres

- KOK Information Service 2016 Forced to commit crimes or beg (German only): www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Informationsdienst/KOK_Informationsdienst_2016.pdf
- Anti-Slavery International (2014) Trafficking for forced criminal activities and begging in Europe: www.antislavery.org/wp-content/uploads/ 2017/01/trafficking_for_forced_criminal_ activities_and_begging_in_europe.pdf
- German Federal Criminal Police Office: www.bka.de/EN/CurrentInformation/ AnnualReports/TraffickingInHuman Beings/traffickinginhumanbeings_node.html
- European Union: www.ec.europa.eu/anti-trafficking/
- Interpol (2014) Child trafficking for exploitation in forced criminal activities and forced begging: www.europol.europa.eu/publicationsevents/publications/child-traffickingfor-exploitation-in-forced-criminalactivities-and-forced-begging
- OSCE: www.osce.org/secretariat/trafficking and
- www.osce.org/secretariat/232541

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• Specifically regarding the nonpunishment clause:

Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking: www.osce.org/secretariat/101002? download=true

- Council of Europe: www.coe.int/t/dghl/monitoring/ trafficking/default_en.asp
- UNODC: www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html
- UN Special Rapporteur on trafficking in persons:

www.ohchr.org/en/special-procedures/ sr-trafficking-in-persons

Contact and donations

Provisions made for adequate support or for secure accommodation of trafficked persons are insufficient in Germany.

KOK intends to change this through its work. **We need your support – every donation helps.**

Account for donations:

Evangelische Bank eG IBAN: DE43 5206 0410 0003 9110 47 BIC: GENODEF1EK1

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

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

Donate while shopping online:

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

KOK is funded by



Federal Ministry for Family Affairs, Senior Citizens, Women and Youth The **Trafficking in human beings** information brochure also has a version on

- Trafficking in human beings Sexual exploitation
- Trafficking in human beings Labour exploitation
- Trafficking in human beings Organised ritual abuse

Also available in German.

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