



**Bundesweiter Koordinierungskreis
gegen Frauenhandel und Gewalt an Frauen
im Migrationsprozess e.V.**

KOK - Statement on the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA

**KOK e.V.
Kurfürstenstr. 33
10785 Berlin
Tel.: + 49 (0) 30 / 26 39 11 76
Fax: + 49 (0) 30 / 26 39 11 86
e-mail: Hinfo@kok-buero.de
[Hwww.kok-buero.de](http://www.kok-buero.de)H**

KOK - Statement on the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA

Introduction:

The KOK - German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration - constitutes the only national, as well as Europe-wide, point of coordination with this focus and successfully networks all NGOs working with this subject area in Germany. The KOK organizes all specialized counseling centers for human trafficking victims in Germany, encompassing furthermore, many other Organizations working and dealing with the subject.

The KOK principally welcomes the proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, dated 25.03.2009, with the objective of not only improving prosecution but also improving the recognition of the role of trafficking victims¹ during criminal proceedings. We further take stand in support of the Statement of the Group of Experts on Trafficking in Human Beings set up by the European Commission from the 29.04.2009.

In its statement the KOK brings forth the problems and recommendations as viewed from the field of practice. In detail, we take stand as follows:

1) Article 1: Criminal law provisions regarding human trafficking

The KOK appreciates the fact that the Provision aims at harmonizing and standardizing the differing national legislations. Thus far, as per the opinion of the Commission, the international legal framework for combating human trafficking has been insufficiently and inconsistently implemented. Thus it is expected, that the new Framework Decision will further and better international collaboration through the alignment of approaches, and lead to a strengthening of international cooperation. To be noted equally positive, is that additional forms of exploitation such as exploitation of activities associated with begging and exploitation of people in "illicit activities" shall be identified and included in the Framework Decision, although we think the latter should be construed more precisely. In our understanding, per criminal code unlawful activities are at hand if the activity stands in contradiction to the legislation, whereby legislation comprises the entirety of all legal norms.

2) Article 6: Non-application of sanctions against victims

The KOK would like to indicate that the exact content of this provision has not been paraphrased clearly or sufficiently enough. In general, the KOK advocates that the principal of non-punishment of victims should apply for all crimes committed in direct connection with their falling victim to human trafficking, i.e. when the affected person has been forced to commit these crimes. In such cases, the KOK demands that the "non-punishment clause" be introduced as a binding provision for all Member States.

1 The Framework Decision utilizes the terminology "victim", which we will maintain here for reasons of consistency. We would like to denote though, that some experts view this term as problematic preferring the use of the term "person affected by human trafficking" instead.

3) Article 7: Investigation and prosecution

Article 7 of the Framework Decision aims at allowing ex officio initiation and completion of criminal proceedings - independent of the report of an accusation by the victim her/himself or withdrawal of declaration. The KOK holds that in this case, the following points must be considered: from the moment victims begin cooperation with law enforcement and proceedings are initiated against their traffickers they are likely putting themselves, as well as their family, in a situation of great danger. Should a victim withdraw her/his declaration and the proceeding be continued nonetheless, as aimed at in Article 7, proper assistance and protection measures must be initiated or/and further ensured since threat can continue.

The further mentioned aim in Article 7 of increasing measures for sensitization, awareness raising and training of law enforcement, public officials and other authorities and institutions involved in and responsible for criminal prosecution is highly welcomed by the KOK. We would like to recommend including the specialized counseling centers and organizations for victims of human trafficking in such schoolings and trainings.

4) Article 9: Protection of particularly vulnerable victims of human trafficking in criminal proceedings

The KOK welcomes the proposal that particularly vulnerable victims endangered to a high degree should receive specific protection measures. However, if Article 9 is to be interpreted as such, that this specific treatment and protection is only applicable to the group of particularly vulnerable victims, it is not comprehensible in our view, since this would imply that there is such thing as "less or not-vulnerable" victims who do not need to be granted such high protection measures. Victims of human trafficking are generally directly endangered and deserve a right to appropriate specialized protection. The KOK believes all victims of human trafficking should be granted unobstructed and unconditional access to free legal counseling, legal representation, and the right to claim for compensation. Victim protection measures must be ensured for all victims of human trafficking before, during and after criminal proceedings. Even though protection measures must always be decided upon on a case-specific basis, there should not be any artificial division into different groups which in consequence would deny a certain group specific measures.

5) Article 10: Victim support

According to Article 10 Number 1 victims of human trafficking require support before, during and after criminal proceedings. Article 10 Number 4 specifies the measures necessary during proceedings. The KOK principally welcomes all cited measures of victim support. However, the KOK would like to point out a time gap not considered in Article 10, namely: the one month so-called reflection period (Section 50, para. 2a AufenthG). The KOK has been demanding for several years now, that a categorical victim support be granted on account of human rights aspects alone, independent of the victim's willingness to cooperate with law enforcement, whilst at the same time pointing out that this would additionally highly increase the chances of gaining witnesses for proceedings. This especially applies to the reflection-period.

The reflection period should not however be counted into, or mistaken as, the time period before a criminal proceeding, since it is only in the reflection period that the victim decides for or against cooperation. Hence no criminal proceedings have been initialized at this point. Article 10 should thus urgently be amended by the time constituting the reflection period and be applicable independently of the victim's willingness to cooperate in proceedings.

Article 10 Number 2 states that law enforcement agencies are responsible for the identification of victims when they recognize indications of human trafficking. The KOK suggests specifying what these indications might be. Furthermore, the KOK notes that counseling centers for victims of human trafficking also counsel and identify victims who are not in contact with law authorities but are nonetheless entitled to support measures. The KOK therefore recommends amending Article 10 so as to allow specialized counseling centers to carry out such identification processes.

In accordance to Article 10 Number 3 an active cooperation between law enforcement authorities and counseling centers is desired and encouraged to enable a timely identification of victims. In Germany there is a Cooperation Agreement in place on a national level which functions as a recommendation for the federal states to further develop and create their own cooperation concepts and measures. Such cooperation agreements have successfully proven to have positive effects on victim identification and support. Unfortunately, victim support organizations are usually insufficiently funded and suffer limited personnel and material capacities, which inhibits steady and consistent cooperation work. Hence, the KOK demands the sufficient, consistent and adequate financing of counseling centers.

6) Article 12: Prevention

The KOK positively notes that Member States are held to promote and establish regular trainings for police officers. However, not only police officers come into contact with potential and/or presumed victims. Other professional groups, such as employees of foreigners' registration offices, informal labor inspectors, the public prosecutions department, joint plaintiffs, judges, counseling centers and embassies may also come into contact with potential victims and should therefore also go through awareness raising trainings.

The KOK further notes that NGOs, as opposed to public institutions, often do not have sufficient means to finance such trainings. In consequence, the KOK asks that Article 12 Number 2 concerning the training of counseling center staff, be complemented by a clause requiring Member States to not only promote regular trainings but also provide for adequate funding possibilities.

7) Article 13: Monitoring

The Proposal envisions Member States to account for measures to establish National Rapporteurs or equivalent monitoring mechanisms. The KOK welcomes this, but would like to indicate that ground laying principals must be considered when establishing such posts. First of all, the post should be politically- and party- independent and dispose of sufficient financial resources. In addition, it would be useful if the posts in all Member States are similar in regard to structure and prerequisites. This would create a basis of equal standards, which would allow for a better assessment of, and comparison between, the Rapporteur posts and ultimately the reports themselves. The KOK furthermore recommends that the establishment of National Rapporteurs should be interdisciplinary and take into regard all forms of human trafficking. A doubling of already existing monitoring structures should be avoided, in any case these institutions must be included in the establishment process. The establishment of such posts should moreover happen independently of legislative periods.