
UPR submission
UPR - Federal Republic of Germany
44th Session - 9 November 2023

Submitted by:

German NGO Network against Trafficking in Human Beings – KOK e.V.
on 24/03/2023



The German NGO Network against Trafficking in Human Beings

The German NGO Network against Trafficking in Human Beings - KOK e.V. is the association of 43 organisations, including the vast majority of specialised counselling centres for victims of human trafficking and exploitation and other organisations that deal with this issue as well as with violence against migrant women.

As an interface between politics and practice, KOK e.V. has the mandate to pass on experiences from practice to politics and administration at the federal level and to represent the interests of its member organisations.

Submission of KOK on recommendations regarding trafficking in human beings:

- 155.162 Strengthen its **policy to counter child trafficking** through concrete measures in the framework of the implementation of concepts developed at the national level and in international cooperation in this area (Belarus);
- 155.160 Establish a **human rights-based approach to combating human trafficking**, for instance by providing nationwide support systems especially for the under-aged by taking measures, which include establishing a national identification and referral mechanism to enable victims to obtain residence permits and to access rights attached thereto (Kenya);
- 155.158 Establish a **human rights-based approach to combating human trafficking**, with the rights of victims being the centre of all relevant measures (Bahrain);
- 155.159 Establish a **human rights-based approach to combating human trafficking**, with the rights of victims being the centre of all relevant measures (Hungary);
- 155.157 Further **sensitize authorities at all levels — federal, regional and municipal — with a view to recognizing and identifying cases of trafficking and exploitation of children**, and enhance ways and means to guarantee adequate protection for, and comprehensive assistance to, the victims (Austria);
- 155.156 **Ensure human traffickers are prosecuted for “trafficking” and sentence those convicted with punishments reflecting the severity of the crime**; and institute a public awareness campaign about forced labour, to include the protections available for victims (United States of America);
- 155.152 Continue the **endeavours aimed at guaranteeing the adequate protection and assistance for potential and existing victims of human trafficking in minors** (Romania);
- 155.153 Reinforce **measures combating human trafficking in minors so that the root causes of child prostitution and child pornography can be identified and tackled** (Poland);
- 155.155 Continue **efforts to combat human trafficking**, especially of women and children (Morocco);
- 155.149 Continue measures to **combat human trafficking** (India);
- 155.150 Continue efforts to **combat human trafficking** (Tunisia);
- 155.151 Continue efforts to **combat human trafficking, ensure the rights of victims and provide protection and assistance to them** (Qatar);
- 155.161 Continue efforts to **rehabilitate victims of trafficking** (Lebanon);
- 155.163 Continue strengthening **efforts against trafficking in human beings and enhancing the protection of its victims** (Bulgaria);



Preface:

Since the last report to the Human Rights Council, Germany has continued to address the issue of trafficking in human beings and has initiated a number of measures to improve the fight against trafficking.

However, the recommendations from the last UPR cycle have only been partially implemented. There are still major gaps in many areas, which are identified below:

Recommendations 155.160 | 155.158 | 155.159

Measures against human trafficking in Germany are still planned from the perspective of law enforcement. Prosecution and criminalisation (e.g. of demand) are at the centre of political as well as many public and media debates as mechanisms against human trafficking. Too little attention is paid to the position of trafficked persons as legal subjects. The residence of trafficked persons, and thus access to most rights, is still linked to their cooperation in criminal proceedings and the usability of their testimony. The coalition agreement of the federal government provides for an improvement here by creating a right of residence independent of the willingness to cooperate. However, this has not yet been implemented. Overall, a human rights-based approach must be central in the fight against human trafficking in Germany.

In addition to residence, other rights of trafficked persons must be better enforced. For example, very few trafficked persons actually succeed in enforcing their claims for compensation, damages for pain and suffering and lost wages.

The systematic identification of trafficked persons in the asylum procedure does not take place. This means that (potential) trafficked persons and vulnerable groups often are not able to make use of their right to protection.

Germany must adopt an anti-trafficking policy approach that focuses on the rights of trafficked persons. This starts with the identification of trafficked persons and includes their right to residence, protection, support and counselling, compensation, participation in society and family reunification. This should be clearly described in a national action plan against human trafficking - yet to be developed.

Recommendations 155.160 | 155.158 | 155.159 | 155.152 | 155.153

The Federal Criminal Police Office's situation report on human trafficking has established for years that a large proportion of trafficked persons are under 21 years of age. The state has a special duty to protect these victims. Nevertheless, in Germany there are neither special legal regulations geared to the special situation of minors nor concrete and binding agreements on cooperation between the various actors in child trafficking cases. The identification of minors as trafficked persons is also still very incomplete. Especially the less known forms of exploitation, such as exploitation of begging or criminal acts, are often not recognised. The special situation of underage trafficked persons and their legal right to protection of the best interests of the child must be taken into account.



Germany must create needs-based special support structures for trafficked children and minors. Accommodation in the existing child and youth welfare system is not suitable. This is also shown by the fact that, in the experience of counsellors and experts, trafficked minors regularly disappear from the facilities. Needs-based accommodation must also include the group of 18 to 21 year olds who are still in need of protection.

Clear standards for age assessment procedures based on the best interests of the child are necessary.

Sensitisation and training of actors in child and youth welfare as well as the police and judiciary in order to recognise underage victims of all forms of exploitation and to be able to initiate needs-based protection measures.

Recommendation 155.156

The legal provisions for combating trafficking in human beings, especially the corresponding regulations for criminal prosecution in the Criminal Code, are not fit for practice. This is also the conclusion of the evaluation of the criminal offences of human trafficking and exploitation reformed in 2016 by the Criminological Research Institute of Lower Saxony (KFN). According to the KFN, the complex and sometimes inadequately integrated network of regulations plays a role here.

As a result, there are relatively few criminal proceedings on human trafficking and exploitation in Germany. Very often, the cases are switched to offences that are easier to prove, e.g. coercion, wage usury or evasion of social security contributions. This is especially true of proceedings concerning forms of exploitation other than sexual exploitation. However, proceedings are not regularly brought in this area either. In addition, there is the problem of personal evidence, the burden of proof lies almost exclusively with the trafficked persons. On the other hand, there is little incentive for them to file a complaint and testify against the perpetrators. Criminal proceedings are usually very stressful and often endanger the victims and their families. The police, judges and public prosecutors are often not sufficiently trained in dealing with victims of violence and/or traumatised persons, so questioning is often extremely stressful for the victims. Many proceedings are discontinued or, as described above, crimes that are easier to prove are avoided. This is associated with great uncertainty for victims with regard to their residence, which is linked to the criminal proceedings. Claims for compensation following criminal proceedings are also rarely carried out. All in all, there are great risks and burdens for trafficked persons in cooperating in criminal proceedings, while there are hardly any recognisable advantages for them in exposing themselves to these burdens.

The criminal offences of human trafficking and exploitation need to be improved. In particular, the focus on personal evidence should be relaxed. Of course, the testimony of the trafficked person plays an enormously important role, but other aspects of evidence should also be taken into account. In addition, the position of trafficked persons must be strengthened before and during criminal proceedings. This includes having trained judicial staff and interpreters in the court proceedings.



Overall, greater attention by law enforcement agencies to combating trafficking in human beings is necessary. The establishment of specialised units and focal prosecution offices is an important step in this direction and should happen in all federal states.

Successful criminal proceedings take place above all when those affected are well protected and supported. Therefore, also for better criminal proceedings, strengthening victims' rights is crucial.

Recommendation 155.155 | 155.149 | 155.150

At the federal level, different ministries are responsible for different aspects related to the issue of human trafficking. An overall political coordination that better links the various measures and participants - also at the state level - does not yet exist in Germany; neither does an action plan against human trafficking and exploitation that refers to all forms of human trafficking and includes all groups of trafficked persons.

Human trafficking manifests itself in different areas and touches on different areas of law.

An overall strategic approach at the political level to combat human trafficking and to enforce the rights of trafficked persons must be developed.

The strategy must have a human rights orientation, i.e. focus on the enforcement of the rights of trafficked persons, at least on an equal footing with criminal prosecution.

This requires the development of a National Action Plan. This must specify clear goals and measures as well as indicators to measure the achievement of these goals.

Recommendation 155.151 | 155.161 | 155.163

Many existing regulations, such as the linking of the right of residence to the testimony of trafficked persons, are mainly aimed at obtaining stable witnesses and usable testimony in criminal proceedings. This approach falls short and ignores the fact that trafficked persons are legal subjects: They are not only victims of a crime, they are also holders of rights. This must be recognised.

Securing livelihoods for trafficked persons is also highly problematic in some cases. For example, trafficked persons from third countries who are in the waiting and stabilisation period to which they are entitled (toleration title) only receive benefits according to the AsylbLG. These are not sufficient, e.g. for medical care. For the EU citizens concerned, there are only sub-legal regulations on the receipt of benefits. In practice, there are different regulations for different groups of affected persons.

The support structure for trafficked persons mainly consists of specialised counselling centres for trafficked persons, many of which are not adequately and securely funded. In addition, there are not enough counselling centres that can provide comprehensive counselling and support to trafficked persons (women, men, children, trans persons) who



are affected by different forms of trafficking. There is also a lack of safe shelters.

In general, access to protection, assistance and rights for trafficked persons should be recognised as an essential part of the fight against trafficking:

There should be uniform regulations for adequate livelihood benefits for trafficked persons.

Consistent application of the reflection and stabilisation period (§ 59 para. 7 AufenthG) is necessary. Assessments by specialised counselling centres on the existence of indications of human trafficking and exploitation should be taken into account when issuing the reflection period.

The right of residence on humanitarian grounds for trafficked persons, irrespective of their willingness to cooperate in criminal proceedings must be established quickly.

All trafficked persons and victims of exploitation should be provided with uniform and sufficient assistance that meets their needs (e.g. medical or therapeutic care).

Trafficked persons should be granted the right to social and cultural participation. The preconditions for this are, for example, securing a livelihood, access to language learning, access to education and to the labour market.

