

**Comments of the German NGO network against trafficking in human beings –
KOK
on the independent evaluation report of the
German Institute for Human Rights on the implementation of selected OSCE
commitments regarding human rights and democracy in Germany on the
occasion of the German OSCE chairmanship 2016**

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The KOK – German NGO Network against Trafficking in Human Beings fights for the rights of trafficked persons and migrant women who have experienced violence. KOK is the only coordination office with such a focus not only in the federal republic of Germany, but also across Europe, linking the majority of German NGOs working in this field. Besides the specialised counselling centres for victims of trafficking, KOK also cross-links other organisations working in this area in Germany.

KOK is thankful for the opportunity to comment on the evaluation report¹ and highly appreciates the fact that out of all the possible topics with relevance to human rights and democracy, it is human trafficking that was chosen as one of the main themes. Within the evaluation of the topic of human trafficking, the report focuses on the subject of *human trafficking for the purpose of labour exploitation, trafficking in children, as well as data collection/ National Rapporteur or equivalent mechanisms.*

¹ German version of the report can be downloaded here: [www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere Publikationen/Die Umsetzung ausgewaehlter OSZE-Verpflichtungen zu Menschenrechten und Demokratie in Deutschland Unabhaengiger Evaluierungsbericht .pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Die_Umsetzung_ausgewaehlter_OSZE-Verpflichtungen_zu_Menschenrechten_und_Demokratie_in_Deutschland_Unabhaengiger_Evaluierungsbericht.pdf) .

The goal of the evaluation report of the German Institute for Human Rights is “to capture relevant political and human rights challenges”. In this regard, KOK regrets the fact that the subject of further forms of exploitation, such as forced begging and exploitation of criminal activities or organ trafficking, are only briefly treated. Even though such forms of exploitation have indeed still not been incorporated in the Criminal Code, they already play a role in reality and such cases have already been encountered by counselling centres for trafficked persons. In addition, due to the comprehensive reform of the relevant criminal acts which is to be implemented soon, stakeholders will soon have to attend to these forms of exploitation and those affected by them. According to KOK, this will present a great challenge to all relevant actors in Germany.²

Comments on selected items of the report:

1. Introduction, 1.1. OSCE commitments:

KOK shares the view that in combating human trafficking, a human rights-based approach is vital, which ensures that the rights and interests of the trafficked persons are integrated into all aspects of anti-trafficking actions. The KOK appreciates the fact that the states of the OSCE are committed to this approach.³

Even though there have been improvements in regards to the rights of trafficked persons to a certain extent in the past years in Germany (e.g. residence law), one cannot observe a human rights-based approach, which puts the rights of trafficked persons at the center of all measures. The primary focus of political and administrative measures is regrettably still criminal prosecution. This is clearly manifested in the process of the implementation of the EU Directive 2011/36 in Germany. In this process a comprehensive reform of the criminal law has been carried out, however, many provisions included in the Directive with regards to the rights, assistance and protection of trafficked persons have been disregarded.

Recommendation:

KOK recommends actions and strategies against human trafficking must focus equally on the rights of trafficked persons and the implementation of these rights on one hand and on aspects of criminal prosecution on the other.

2. Legal and institutional settings in Germany:

a. The legal settings are correctly described. With regards to the description of provisions concerning residence permit (pp. 76), and especially the reflection and stabilisation period for trafficked persons (legally codified as suspension of deportation), the

²See the results of the KOK symposium from 15-16.10.2015 „10 Jahre Europaratskonvention gegen Menschenhandel – Stillstand oder Fortschritt“ <http://www.kok-gegen-menschenhandel.de/symposium-10-jahre-europaratskonvention.html>.

³See pp. 73 of the GIHR report.

following should be correct and added: During the suspension of deportation for a minimum of three months, trafficked persons are **not** granted access to social benefits, as it says in the report. Trafficked persons have access merely to the benefits stated in the Asylum Seekers Benefits Act. In the subsequent paragraph of the report, however, the matter is correctly described.

We would like to point out two problems from a practical standpoint in connection with the reflection period: The first issue is that the length of the suspension of deportation is predominantly limited to a period of three months, even though according to the Directive this is only the minimum period. Most trafficked persons need much longer to stabilise and to recover. This is especially true for trafficked persons under the age of 18; according to specialised counselling centres, minors need a significantly longer period of time to stabilise than adult trafficked persons.

Another issue is, as mentioned shortly in one sentence on pp. 76, that it is the law enforcement authorities that are responsible for the identification of trafficked persons. KOK reckons that this violates the goals of the reflection and stabilisation period. As a matter of fact, the crucial point of this provision is not having to make a statement to the police. Since the police are usually considered to be responsible for such matters, the immigration authorities often demand authentication of evidence of human trafficking from law enforcement authorities in order to suspend deportation. An authentication from counselling centres for human trafficking alone does not suffice. These are mentioned in the administrative regulations on the Residence Act⁴, but only limited. This results in the following problem: When the immigration authorities request the law enforcement authorities to provide authentication of evidence of human trafficking, the latter is obligated to act based on the principle of legality. Therefore, trafficked persons are under significant pressure to make a statement or at least to provide some details to the police. Thus, trafficked persons do not get the time entitled to them to reflect and to contemplate, whether they would like to make a statement.

Recommendation:

In order to grant trafficked persons a reflection and stabilisation period in reality, we recommend imposing regulations, which would assure that statements made by specialised counselling centres to the immigration authorities suffice for granting a reflection and stabilisation period.

Furthermore, the time period granted should extend the minimum of three months. This shall apply especially for minor trafficked persons.

b. As correctly noted in the report, the precondition for obtaining a residence permit is to cooperate in criminal investigations– is also applies to minors. KOK believes that this

⁴www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/AufenthG_VwV.pdf?__blob=publicationFile (see: 50.2a.1.2 in German only).

violates the UN Convention on Children's Rights. The states of the OSCE have also committed to pay special attention to the rights of children, including their rights to receive special protection against all forms of violence and exploitation.⁵ The best interest of the child, participation, non-discrimination, survival and development shall define the framework for all interventions concerning children.⁶ This is not provided for by current provisions regarding residence permits for trafficked persons in Germany, which apply equally to minors and adults. Neither are minor victims entitled to a residence permit regardless of their cooperation, nor are they granted a longer reflection and stabilisation period. Consequently, the focus of the interventions is not the best interest of the child and the special needs of trafficked persons.⁷

Recommendation:

There should be special regulations for children and minor trafficked persons concerning residence permit, which would reflect their vulnerability and focus on the best interest of the child.

c. Support structures, pp. 77: “The federal states of Germany are responsible for the organisation and financing of support structures for trafficked persons. These are relatively well-developed for female trafficked persons.” It is correct that specialised counselling centres are predominantly financed by the relevant state ministries in the federal states. Whether the state ministries are legally obligated to fund the support structures, or whether the responsibility may lie on the federal level is legally debated.⁸ The phrasing that counselling centres are **relatively** well-developed for female trafficked persons can be misunderstood. It is indeed true that Germany has a well-networked support structure system of counselling centres for trafficked persons. (They counsel and support mainly women who have experienced different forms of human trafficking and exploitation.) However, both the human and material resources of these counselling centres are very limited. Often, there are only one or two employees in counselling centres, who work only part-time. They are constantly struggling to sustain their funds and an expansion of the human and financial resources is often difficult or can only be achieved for a limited in time during additional projects. Nevertheless, the demands placed on the counselling centres

⁵ See OSCE Human Dimension Commitments pp. 192.

⁶ Decision No. 13/04 of the Council of Ministers from 07.12.2004.

⁷ see legal statement KOK regarding changes to the Residence Act (German only) www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/stellungnahmen/Kurzstellungnahme_zum_Gesetzesentwurf_zu_Bleiberecht_und_Aufenthaltsbeendigung_BR-Drs.642_14.pdf

⁸ www.frauenhauskoordination.de/fhk-materialien-service/rechtsinformationen/detailansicht/artikel/argumentationshilfe-zum-rechtsanspruch-auf-leistungen-zu-schutz-und-hilfe-fuer-gewaltbetroffene-perso.html; <http://www.frauenhauskoordination.de/fhk-materialien-service/stellungnahmen/detailansicht/artikel/die-situation-des-hilfesystems-bei-gewalt-gegen-frauen-am-beispiel-der-frauenhaeuser-2013.html>; <https://www.frauen-gegen-gewalt.de/stellungnahme/stellungnahme-zum-bericht-zur-situation-der-frauenhaeuser-der-fachberatungsstellen-und-anderer-unterstuetzungsangebote-fuer-gewa.html>.

continuously grow (e.g. through the refugee situation in Germany or the so-called “new types of exploitation”, which the counselling centres are increasingly confronted with). There are states in Germany with one single counselling centre, which is responsible for the entire state. For example, the entire state of Mecklenburg-Western Pomerania has merely one counselling centre at its disposal with only one employee, who is responsible for all matters concerning human trafficking in the entire state.

Recommendation:

The human and financial resources of the existing support structure system need to be secured corresponding to the demands placed on the counselling centres. Furthermore, the support structure should be expanded to cover victims of **all** forms of human trafficking.

3. Outlining of the problem, pp. 77 ff. item 2.2:

The following is described on pp. 78: “The identification of children used for begging or forced to commit crime poses a particular problem.” The statement is correct; however, these additional types of exploitation apply, of course, not only to children, but also to adults. This is not mentioned in the report. The identification of adults used for begging or forced to commit crime poses similarly a problem, which complicates their access to their rights and to receive support (see Item 9 for a detailed description).

Recommendation:

There should be a uniform approach by all interventions again human trafficking and the support of trafficked persons, which incorporates all types of human trafficking and exploitation, together with the various groups of trafficked persons.

4. Evaluation of the implementation of OSCE commitments – Raising awareness as a prerequisite for identifying trafficked persons, item 3.1.2., pp. 79 ff:

KOK shares the view that raising the awareness of all relevant stakeholders is an important prerequisite for identifying trafficked persons. In this part of the report, especially on page 80, awareness raising trainings for different occupational groups are presented. In addition, we believe that there are other significant target groups for awareness-raising measures, such as specialised migration centres, counselling centres run by trade unions, language schools etc. There are no systematic trainings for these groups, even though they also may come in contact with trafficked persons, making them important places for identification. Regarding the training offered by the Federal Criminal Police it is to be mentioned that the Federal Criminal Police used to offer courses on trafficking for sexual exploitation twice a year and on trafficking for labour exploitation once a year. These offers were reduced in 2016 to only one course on trafficking for sexual exploitation. According to the information the KOK was able to obtain, it has not been decided whether further reductions will follow. A further decrease in trainings offered would be very regrettable, as we hold the view that the

thematic focus of these courses should actually be considerably extended in order to comply with the pending legal changes of the Criminal Code.

In regards to the courses offered to the employees of the Federal Office for Migration and Refugees, the following must be added: It is not only in question, whether regular decision-makers are adequately trained, but also uncertain, whether specialised decision makers, who received special training on human trafficking during a project that took place in 2011/2012, continue to receive further training. It would also be recommendable, if specialised counselling centres and specialised decision makers regularly shared their practical experience with each other.

Recommendation:

All stakeholders and occupational groups that come in contact with trafficked persons or potential victims of human trafficking should have the opportunity to regularly receive special training on the different forms of human trafficking. With relevant changes to the Criminal Code about to come into force, comprehensive training courses and funding thereof are of particular importance.

5. Support Structures: 3.1.3: pp. 81 ff.:

The following is asserted on p.82: “Particularly the placement of male victims of human trafficking for labour exploitation poses a massive problem.” Practical experience indeed shows that this is a reoccurring problem and there are no concepts or established proceedings and structures to provide support. Nevertheless, it is unclear – or better said, it still hasn’t been evaluated – how large exactly the demand for placement actually is. It should be investigated, whether the phenomenon in question is indeed a “massive” problem, so that a corresponding proposal for support could be developed.

It should also be noted here that there has been a growing number of offers for the support of victims of trafficking for labour exploitation and victims of labour exploitation lately in Germany – beside the counselling centres incorporated in KOK, there are counselling centres run by trade unions – and the subject appears more frequently on the political agenda. Nevertheless, these are not comprehensive offers that would provide each group of trafficked persons the specific support they need. A further issue is that women are often not regarded as a group of victims of trafficking for labour exploitation. KOK reckons that more awareness needs to be raised about the fact that women are also victims of labour exploitation, e.g. in areas that are difficult to access, such as domestic care or working in private households – and special measures are necessary for this purpose.⁹

⁹ See KOK’s study (German only) <http://www.kok-gegen-menschenhandel.de/kok-informiert/website-news/detailansicht-website-news/artikel/kok-erstellt-studie-zum-thema-arbeitsausbeutung-von-frauen.html>

Recommendation:

Support, counselling and accommodation for victims of trafficking for labour exploitation should be ensured corresponding to the requirements of the different groups of trafficked persons. Sufficient funding for specialised consulting services are necessary for this purpose.

6. Compensation and wages 3.1.4, pp. 82 ff:

“Background discussions with some randomly selected counselling centres for trafficked persons and counselling centres run by trade unions for mobile workers give the impression that the statutory accident insurance plays a minor role in the area of trafficking for labour exploitation. It is more frequently applied for in the field of activity of counselling centres run by trade unions.” KOK is unable confirm this statement. We find it unrealistic to make such an assessment based on four phone calls. To the contrary, this form and possibility of compensation through the statutory accident insurance was discussed in a broader context for the first time within a study coordinated by KOK entitled “Trafficking for the Purpose of Labour Exploitation in Germany – Developing Sustainable Support Structures for Exploited Persons” (2011). In the meantime, the counselling centre KOOFRA has successfully carried out a procedure for a female client.¹⁰

7. Employment agencies, item 3.1.5. pp. 84 ff:

“Before a placement, the governmental employment agency verifies based on written documents, whether the position meets the legal requirements – in other words, if it is legal.” In order to avoid any misunderstanding, we would like to emphasize here that the verification itself is based only on written documents and not the real conditions. Thus, an adequate level of protection from labour exploitation cannot be provided even through placement through the governmental International Placement Services of the German Federal Employment Agency (*staatliche Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit, ZAV*).

8. Trafficking in children, item 3.2. S. 85 ff:

On pp. 88 it is described that “in order to improve the cooperation, the Federal Working Group on Trafficking together with relevant stakeholders developed the cooperation concept “Protection of Children and Adolescents from Sexual Violence and Exploitation””. We would like to emphasise the fact, that the development of this concept is based on an initiative by KOK and ECPAT. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in cooperation with KOK and ECPAT organised a workshop for this purpose in 2015.

With regards to the subject of trafficking in children, it is to be noted, as already discussed under Item 2, that legal regulations are lacking and partially also support structures and networks, which would do justice to the high level of vulnerability of trafficked children and

¹⁰ <http://taz.de/Rechte-von-Sexarbeiterinnen/!5314684/>.

minors. Some stakeholders, e.g. public authorities, lack awareness and knowledge of human trafficking in general and trafficking in children in particular.

Recommendation:

All regulations and measure must focus on the best interest of the child. Relevant stakeholders should be adequately trained in order to be able to identify trafficked children and minors. In addition, networking and cooperation, for example between youth welfare organisations and counselling centres, should be developed and consolidated in order to be able to provide the necessary protection and support.

9. Further forms of labour exploitation, item 3.2.3, pp. 89 ff.

This part of the report highlights the high level of vulnerability of children, who could become victims of not only sexual exploitation, but also of other forms of human trafficking. Furthermore, the report stresses the lack of protective and support mechanisms provided for children. KOK agrees with this assessment. However, it should be pointed out that this issue concerns not only children and minors. Also adults, who became victims of trafficking for the purpose of forced begging or for exploitation of criminal activities, are currently not sufficiently identified as trafficked persons. As a result, their rights as trafficked persons and access to protection and support are often denied. Since the activities in question are not yet considered as forms of human trafficking liable to persecution in Germany, there are no effective regulations for these trafficked persons. As a matter of fact, these trafficked persons are often treated as perpetrators, rather than the victims of a criminal offence. In addition, responsibility for these forms of exploitation has not yet been allocated to actors neither on the political level nor within relevant authorities and the police. The existing counselling centres provide support to these trafficked persons to some extent. However, they are doing so due to a lack of alternatives, reaching the limits of their capacity with regards to human and financial resources.

Recommendation:

The allocation of responsibilities (both at a political and ministerial level) for these forms of human trafficking must be carried out immediately in order to meet the anticipated requirements after the legal reform of the crime of human trafficking. The trafficked persons need to be identified and protected from criminalisation. Furthermore, they require access to protection and support.

In order to satisfactorily deal with the upcoming changes, advanced training should be offered to governmental and non-governmental offices and organisations.

10. Summary, pp. 92 ff:

KOK agrees by and large with the overall evaluation of the report described in the summary. We especially find fault with the lacking human rights-based approach, which still hasn't been adequately put into practice. We would like to note the following to the remark on pp. 92 regarding the aim that the legislative reform aims to improve criminal prosecution: We believe that improving criminal prosecution does not only depend on changes in criminal law. Criminal prosecution of human trafficking has been largely unsuccessful not only due to the difficult applicability of the relevant provision. The reluctance of trafficked persons to testify has also been playing a decisive role. Through criminal proceedings, trafficked persons could often find themselves in considerable danger or jeopardize their relatives. Moreover, they expose themselves to a very stressful and lengthy court procedure, which may lead to re-traumatisation. In return, the procedure does not promise any positive effects for their personal situation and future (e.g. limited period of stay with restricted possibilities, payment and compensation claims that are difficult or often impossible to enforce etc.).

It is also to be noted in this regard that a human rights-based approach, which would focus on the interests and the rights of trafficked persons to the very same extent as criminal prosecution, should be mandatory in the fight against human trafficking.