



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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## **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany**

First evaluation round

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on states to take appropriate measures, in partnership with civil society and in co-operation with other states.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist states in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## List of Acronyms

AsylbLG	Asylum Seeker Benefits Act ( <i>Asylbewerberleistungsgesetz</i> )
BAMF	Federal Office for Migration and Refugees ( <i>Bundesamt für Migration und Flüchtlinge</i> )
BKA	Federal Criminal Police Office ( <i>Bundeskriminalamt</i> )
BMAS	Federal Ministry for Labour and Social Affairs ( <i>Bundesministerium für Arbeit und Soziales</i> )
BMFSFJ	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth ( <i>Bundesministerium für Familie, Senioren, Frauen und Jugend</i> )
BMI	Federal Ministry of the Interior ( <i>Bundesministerium des Inneren</i> )
BMZ	Federal Ministry for Economic Co-operation and Development ( <i>Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung</i> )
DGB	German Trade Union Federation ( <i>Deutscher Gewerkschaftsbund</i> )
FKS	Financial Monitoring Unit to Combat Illicit Employment ( <i>Finanzkontrolle Schwarzarbeit</i> )
GG	Basic Law ( <i>Grundgesetz</i> )
GVG	Courts Constitution Act ( <i>Gerichtsverfassungsgesetz</i> )
KOK	German NGO network against trafficking in human beings ( <i>Bundesweiter Koordinierungskreis gegen Menschenhandel</i> )
LKA	Criminal police office of a <i>Land</i> ( <i>Landeskriminalamt</i> )
OEG	Crime Victims Compensation Act ( <i>Opferentschädigungsgesetz</i> )
SGB	Social Code ( <i>Sozialgesetzbuch</i> )
StGB	Criminal Code ( <i>Strafgesetzbuch</i> )
StPO	Code of Criminal Procedure ( <i>Strafprozeßordnung</i> )
TPG	Transplantation Act ( <i>Transplantationsgesetz</i> )

## Executive summary

Germany has taken a number of important steps to develop the legal and institutional framework for combating trafficking in human beings (THB). The legal framework has evolved over the years in the light of the country's international commitments. Due to Germany's federal structure, competences in action against THB are divided between the federal and the regional level. The Federal Working Group on Trafficking in Human Beings was set up in 1997, and its mandate and composition have evolved since then. In addition to relevant Ministries, it includes representatives of federal states (*Länder*) and civil society. Most *Länder* have also created co-ordination structures within their territory, accompanied by co-operation agreements between responsible authorities and civil society organisations.

GRETA is concerned that there are differences between *Länder* when it comes to co-operation between stakeholders, the identification of victims of trafficking and providing assistance to them. GRETA urges the German authorities to develop a comprehensive national action plan or strategy against human trafficking. The introduction of a comprehensive and consistent data collection system is also of crucial importance to guide the authorities in the development of THB policies.

While some measures have been taken to address trafficking for the purpose of labour exploitation, GRETA urges the German authorities to take further action to combat this phenomenon. Moreover, they should pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking and improve co-ordination and co-operation measures in this regard.

A variety of awareness-raising activities have taken place in Germany, but they are usually project-based and ad hoc in nature. GRETA considers that the German authorities should continue to raise awareness of different forms of trafficking in a more comprehensive manner. GRETA also asks the authorities to make further efforts to discourage demand for the services of trafficked persons for all types of exploitation, in partnership with the private sector and civil society.

There are no national guidelines for the identification of victims of trafficking. The responsibility to formally identify trafficking victims lies with the law enforcement authorities. In most *Länder*, an agreement clarifies their co-operation with NGOs in the identification process. GRETA urges the German authorities to strengthen the multi-agency approach in the identification process by involving more frontline actors (such as the Financial Monitoring Unit to Combat Illicit Employment and labour inspectors). They should also adopt a more proactive approach and increase their outreach work to identify possible victims of all forms of trafficking. Furthermore, GRETA calls on the German authorities to set up a procedure for the identification and referral of child victims. The identification of victims of trafficking among asylum seekers and irregular migrants in detention facilities should also be improved.

GRETA welcomes the existence of specialised counselling centres assisting victims of human trafficking for the purpose of sexual exploitation. However, GRETA is concerned by the absence of adequate long-term funding for many of them. In contrast, only few counselling centres assisting victims of THB for labour exploitation exist at present. GRETA calls on the German authorities to provide adequate funding to counselling centres and to develop assistance structures for victims of trafficking for the purpose of all types of exploitation according to their needs. Currently there are no structures to accommodate male victims and victims of labour exploitation, and no facilities adapted specifically to trafficked children. GRETA therefore urges the German authorities to provide safe and suitable accommodation to all victims of trafficking and assistance services for child victims of trafficking that address their special needs.

GRETA is concerned that victims of trafficking are not systematically informed about the recovery and reflection period, in particular in cases of labour exploitation and child trafficking. GRETA urges the German authorities to ensure that all possible victims of trafficking are offered a recovery and reflection period.

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The issuing of a special residence permit for trafficking victims depends on their co-operation during criminal proceedings, leaving the victim in a situation of uncertainty before and after such proceedings. GRETA considers that further steps are necessary to ensure that victims of trafficking are able to benefit from a residence permit.

Victims of trafficking only rarely receive compensation from the perpetrators. GRETA stresses that the German authorities should systematically inform victims of their right to compensation and ensure effective access to legal aid. Further, the existing state compensation scheme excludes victims who have not experienced physical violence. Therefore, GRETA urges the German authorities to set up a state compensation scheme accessible to all victims of trafficking.

Moreover, GRETA urges the German authorities to ensure that victims of THB are not penalised for offences committed in the course of or as a consequence of being trafficked.

GRETA considers that specialisation and training of judges and prosecutors regarding THB should be improved, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions. Finally, GRETA asks the German authorities to make full use of the measures available to protect victims and to prevent intimidation during the investigation and during and after the court proceedings.

## I. Introduction

1. Germany deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 19 December 2012. The Convention entered into force for Germany on 1 April 2013.<sup>1</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Germany being in the fourth group of Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Germany to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Germany on 3 February 2014. The deadline for replying to the questionnaire was 3 June 2014. Germany submitted its reply in German on 19 May 2014 and subsequently a translation into English on 6 June 2014.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Germany, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Germany took place from 13 to 20 June 2014, carried out by the following delegation:

- Mr Helmut Sax, Second Vice-President of GRETA;
- Mr Ryszard Piotrowicz, member of GRETA;
- Mr Markus Lehner, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings;
- Ms Johanna Nelles, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with officials from relevant federal ministries and public agencies (see Appendix II). Moreover, the GRETA delegation travelled to six federal states (*Länder*) of Germany (Berlin, Hamburg, Hesse, North Rhine-Westphalia, Rhineland-Palatinate and Saxony) where it met local stakeholders. These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), trade unions and academics. It also met representatives of the United Nations High Commissioner for Refugees (UNHCR). GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit to Germany, the GRETA delegation visited a NGO-run shelter in Berlin accommodating migrant women victims of violence, including victims of trafficking, and a women’s shelter in Frankfurt am Main, which also accommodates victims of trafficking.

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

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8. GRETA is grateful for the valuable assistance provided by the contact person appointed by the German authorities, Ms Nicole Zündorf-Hinte, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Division for the Protection of Women from Violence.

9. The draft version of the present report was adopted by GRETA at its 21st meeting (17-21 November 2014) and was submitted to Germany's authorities for comments on 5 December 2014. The comments were received on 20 February 2015 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at the 22nd meeting (16-20 March 2015).

## **II. National framework in the field of action against trafficking in human beings in Germany**

### **1. Overview of the current situation in the area of trafficking in human beings in Germany**

10. Germany is primarily a country of destination for victims of trafficking in human beings (THB). According to data collected by the Federal Criminal Police Office (BKA), 651 victims of human trafficking were identified in 2010 (515 women, 35 men, 95 children), 672 in 2011 (555 women, 24 men, 90 children), 626 in 2012 (510 women, 11 men, 100 children) and 603 in 2013 (478 women, 54 men, 70 children).

11. The prevalent form of exploitation of the identified victims was sexual exploitation (93% of the victims from 2010 to 2013). The number of victims of labour exploitation appears to be quite low (146 victims). No other forms of exploitation have officially been registered.<sup>2</sup>

12. The principal countries of origin of the identified victims from 2010 to 2013 were Romania (571), Bulgaria (516), Hungary (190), Poland (112) and Nigeria (102). Further, a significant number of German nationals were identified as victims of trafficking (122 in 2010, 138 in 2011, 129 in 2012, 92 in 2013).

13. GRETA notes that the above figures do not reveal the real scale of THB in Germany as they capture only victims of THB identified as part of police investigations (see paragraph 81). The focus in Germany has been on THB for the purpose of sexual exploitation and the existing structures are geared towards detecting and assisting such victims. Even if certain initiatives have been taken at federal and *Länder* level to address the problem of THB for labour exploitation, there is still insufficient attention paid to forms of THB other than for sexual exploitation. There is relatively little knowledge and awareness of the phenomenon of child trafficking, trafficking for forced begging and forced criminal activities. A survey by the Federal Working Group on Trafficking in Human Beings (see paragraph 20), conducted with counselling centres, showed that only a very small proportion (14%) of third-country nationals who had been advised by these centres contacted the police and were counted in the official figures.<sup>3</sup>

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<sup>2</sup> In the period from 2010 to 2013, in 22 cases no specific form of exploitation was registered.

<sup>3</sup> Report of the Sub-Working Group "residential law" of the Federal Working Group on Trafficking in Human Beings on residential law for victims of THB and labour exploitation, July 2013. Available at [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Ergebnispapiere\\_Zusammenfassungen\\_Hintergrundpapiere/Bericht\\_der\\_Unterarbeitsgruppe\\_Aufenthaltsrecht\\_der\\_Bund\\_Laender-AG\\_Menschenhandel.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Ergebnispapiere_Zusammenfassungen_Hintergrundpapiere/Bericht_der_Unterarbeitsgruppe_Aufenthaltsrecht_der_Bund_Laender-AG_Menschenhandel.pdf) (German only).

## 2. Overview of the legal and policy framework in the field of action against trafficking in human beings

### a. Legal framework

14. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Germany is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both ratified in 2006). Germany is also Party to the UN Convention on the Rights of the Child including its Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography and on a Communications Procedure (ratified in 1992, 2009 and 2013 respectively), the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (ratified in 1985 and 2002 respectively), as well as the following conventions elaborated under the International Labour Organisation (ILO): Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) and Domestic Workers Convention (No. 189). Further, Germany is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.<sup>4</sup>

15. As a member of the European Union (EU), Germany is bound by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities, Directive 2004/80/EC relating to compensation to crime victims and Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

16. The provisions criminalising trafficking in human beings were introduced into the German Criminal Code (*Strafgesetzbuch*, StGB) in 2005 and include three sections: 232 (THB for sexual exploitation), 233 (THB for labour exploitation) and 233a (Assisting in human trafficking). Furthermore, the Residence Act (*Aufenthaltsgesetz*) provides for issuing a residence permit for victims of trafficking in section 25, subsection 4a, and for a recovery and reflection period in section 59, subsection 7.

17. Other internal legal acts relating to action against THB include:<sup>5</sup>

- the Code of Criminal Procedure (*Strafprozeßordnung*, StPO) which contains provisions on compensation claims and procedural rights of victims of crimes;
- the Asylum Seeker Benefits Act (*Asylbewerberleistungsgesetz*, AsylbLG) on financial and medical assistance for asylum seekers which also applies to non-EU nationals during the recovery and reflection period;
- Volume II of the Social Code (*Sozialgesetzbuch*, SGB II) on basic social protection for job seekers and Volume XII of the Social Code (SGB XII) on social assistance benefits, which stipulate the entitlements to assistance for German victims, victims who are EU-nationals<sup>6</sup> and non-EU nationals who have been granted a specific residence permit for victims of THB;
- the Crime Victims Compensation Act (*Opferentschädigungsgesetz*, OEG), which determines the conditions for state compensation for persons who have been the victim of a violent crime.

<sup>4</sup> In particular the European Convention on Extradition (ETS No. 24) and its Second Additional Protocol (ETS No. 98); the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocol (ETS No. 99); and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

<sup>5</sup> Some of these laws were amended as from 1 March 2015; these amendments are taken into account where appropriate.

<sup>6</sup> See also paragraph 145.

## b. National Strategy or Action Plan

18. Germany has not set up an action plan or strategy specifically tackling the issue of trafficking in human beings, but the German authorities assert that it is addressed in the Second Action Plan of the Federal Government to Combat Violence Against Women (2007-2013)<sup>7</sup> as well as in the 2011 Action Plan of the Federal Government for the Protection of Children and Young People from Sexual Violence and Exploitation.<sup>8</sup> The latter plan does not have a fixed end date.<sup>9</sup> Concerning the Action Plan to Combat Violence against Women, GRETA notes that it only lists a few measures concerning THB, mostly related to the transposition of relevant European Union norms or the ratification of international instruments.

19. The above-mentioned 2011 Plan of Action for the Protection of Children and Young People from Sexual Violence and Exploitation covers four thematic areas, one of which is entitled “Child trafficking and tourism”, but there is no mention of any specific measures to combat trafficking. Every thematic area is followed by a monitoring group made up of members from the Federal Government and the *Länder* and representatives of research institutions, the business sector and non-governmental organisations. The federal-level working group on monitoring child trafficking meets twice a year at the invitation of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. A monitoring report will be published and the development of a concept paper on co-operation between counselling centres and public agencies for the protection of child victims of human trafficking is under preparation. **GRETA would like to be kept informed of developments concerning the monitoring report and the concept paper.**

## 3. Overview of the institutional framework for action against trafficking in human beings

### a. Federal Working Group on Trafficking in Human Beings

20. Due to Germany’s federal structure, competences in many fields, including action against THB, are divided between the federal and the *Länder* levels. In order to facilitate the co-ordination of activities between all authorities, working groups have been set up for particular policy areas. A Federal Working Group on Trafficking in Women (*Bund-Länder-Arbeitsgruppe Frauenhandel*) has performed a co-ordinating role since 1997. Its focus initially was on sexual exploitation and served to highlight the complexity of this phenomenon. In 2012 the working group was renamed Federal Working Group on Trafficking in Human Beings (*Bund-Länder-Arbeitsgruppe Menschenhandel*) in view of the increasingly broad scope of issues it covered.

<sup>7</sup> Available at: <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/aktionsplan-II-gewalt-gegen-frauen-englisch.property=pdf,bereich=bmfsfj,rwb=true.pdf>

<sup>8</sup> Available at: <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/aktionsplan-2011.property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>

<sup>9</sup> The German authorities also referred to the National Action Plan on the Implementation of United Nations Security Council Resolution 1325 aiming at the increase of participation of women in crisis prevention, conflict management and post-conflict peacebuilding to protect them against gender-based violence and in particular sexual violence in situations of armed conflict, available at: <http://www.new-york-un.diplo.de/contentblob/3814698/Daten/3071274/20121219actionplansresolution1325.pdf>

21. The Federal Working Group on THB functions under the leadership of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and meets at least twice a year. It is composed of representatives of relevant ministries (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Federal Ministry of the Interior, Federal Ministry for Labour and Social Affairs, Federal Foreign Office, Federal Ministry of Justice and Consumer Protection, Federal Ministry for Economic Co-operation and Development), the Federal Government Commissioner for Migration, Refugees and Integration, the Federal Criminal Police Office, one representative each from the technical conferences of *Länder* ministries of the interior, justice, social affairs and equality, the NGOs KOK and SOLWODI, the Federal Association of Non-statutory Welfare, and the German Institute for Human Rights. Depending on the working group's agenda, other experts and institutions may be brought in, such as the German Association of Cities, other federal ministries or *Länder* criminal police offices. If appropriate, subcommittees are put in place, for instance the subcommittee for the development of standards for initial and further training with regard to trafficking in women and the subcommittee on the Residence Act.

22. The tasks of the working group include the exchange of information on activities, analysis of specific problems in combating human trafficking, development of guidelines and, where appropriate, joint action to resolve the identified problems.

b. Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ)

23. The BMFSFJ is the lead agency in the Federal Government on issues relating to all forms of human trafficking. It co-ordinates policies and legislative initiatives on THB at federal level. As action against trafficking in human beings started with activities against trafficking in women, the Division against violence against women within the Department of Equal Opportunities has taken a leading role from the beginning, which it continues to fulfil while federal anti-trafficking activities increasingly cover other forms of trafficking. The Ministry finances the co-ordinating structure of NGOs KOK (see paragraph 33). It has also established and finances the national hotline for women victims of violence.

c. Federal Ministry for Labour and Social Affairs (BMAS)

24. The BMAS is responsible for all labour-related issues at federal level. This covers industrial relations, social security, employment and vocational training, occupational safety and health, labour standards and trafficking of human beings for labour exploitation. The Ministry co-finances pilot projects and mandates research on the latter phenomenon. Moreover, measures under the Crime Victims Compensation Act belong to its competences.

d. Federal Ministry of the Interior (BMI)

25. The BMI is responsible for the Residence Act and public safety and has sectoral supervision of the Federal Criminal Police Office, the Federal Police and the Federal Statistical Office. The BMI is also the supervisory authority of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) which decides, *inter alia*, asylum applications and whether subsidiary/complementary protection is to be granted.

e. Federal and *Länder* Police Forces

26. The Federal Criminal Police Office (BKA) is the central office of the German criminal police and as such the central point of contact for domestic and foreign police and judicial authorities. The BKA facilitates exchanges of information and promotes co-operation in investigative and judicial matters. In exceptional cases, on request from a competent *Länder*-level authority, the BKA itself may carry out investigations where offenders operate on a trans-regional or international basis, where it is necessary to make investigations abroad or where the *Länder* units do not have the capacity to handle the matter effectively.

27. The BKA provides ongoing training (with two to three training courses per year) for federal and *Länder* investigators dealing with human trafficking offences and workshops for staff of counselling

centres, police officers and representatives of other agencies responsible for victims of human trafficking. In addition, the BKA compiles the annual National Situation Report on Trafficking in Human Beings, which comprises statistics reflecting the outcome of police investigations based on data submitted by the *Länder* police forces.

28. The functions of the Federal Police (*Bundespolizei*) comprise, *inter alia*, border security, coastguard services and security at international airports and on German railways.

29. Criminal investigations, including those concerning THB offences, are almost exclusively carried out by *Länder* police units: either by local criminal police units, or by the criminal police office of the *Land* (LKA).<sup>10</sup> Police units dedicated specifically to the fight against THB exist only in some *Länder*; notably the LKA Berlin has one specialist unit focused on THB for sexual exploitation and one unit on THB for labour exploitation.

f. Prosecution Service

30. The prosecution offices function under the authority of the Ministers of Justice of the *Länder*. The detailed organisation of prosecution offices is prescribed by the legislation of each *Land*. In most public prosecution services, THB cases are dealt with by units specialised in organised crime. In general there are no public prosecutors specialising in THB cases (see paragraph 73).

g. Financial Monitoring Unit to Combat Illicit Employment (FKS)

31. The FKS is part of the customs administration which is a federal structure under the authority of the Federal Ministry of Finance. Its main responsibility lies in fighting unreported and illegal employment as well as in verifying if employees are correctly insured in the social security system by their employers. There is no uniform labour inspectorate system in Germany (see paragraphs 131 and following). The FKS is the only structure at federal level to carry out inspections at workplaces, but it has no competence to investigate THB on its own and when indications of THB are discovered by FKS, the unit informs the responsible police service. If appropriate, the FKS implements controls together with the Federal Police or with *Länder* police forces.

h. *Länder* and local authorities

32. Germany is made up of sixteen federated states, known as *Länder* (singular *Land*). Under the German Basic Law (*Grundgesetz*, GG), the *Länder* are responsible for the execution of federal laws. They furnish the protection and support system for THB victims, finance the work of the counselling centres (see below) and set up co-ordination structures on the basis of co-operation agreements. Moreover, most of the *Länder* have set up roundtables on THB, comprising relevant stakeholders. These roundtables are in general chaired by a representative of a ministry of the *Land*. The municipalities are likewise active within their competences in assisting victims, funding of NGOs and carrying out prevention activities. Some cities participate in the *Länder* roundtables and set up local working groups on THB.

<sup>10</sup> The relevant LKA can take over investigative responsibility in cases of serious crime, in particular drug trafficking and organised crime.

i. Non-governmental organisations and other civil society actors

33. The German NGO network against trafficking in human beings (KOK) is an alliance of 37 non-governmental organisations working to combat human trafficking. KOK supports its member organisations, including counselling centres for victims of trafficking or migrant women, immigrant-focused projects, safe houses for women and counselling services for prostitutes. Its role is to act as a national and international interface between counselling services, public and private policy actors and key international organisations. KOK's main activities are networking, both between member organisations and with other players, lobbying, education work and knowledge transfer. The KOK Agency Office has been funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) since 1999. In 2014, 283 345 euros were made available and 302 385 euros in 2015.

34. Counselling centres are NGOs registered as associations which offer advice and support to victims of trafficking in human beings. Most counselling centres are specialised in victims of sexual exploitation, for instance Ban Ying in Berlin, KOBRAnet in Dresden, FIM in Frankfurt, Agisra in Cologne or SOLWODI, which runs several counselling centres across Germany.<sup>11</sup> The counselling centres help with the detection and identification of THB victims and support them in many ways. In most *Länder* co-operation agreements with the police clarify respective roles during the identification process. NGOs also participate in regional round tables. Some NGOs also proactively detect victims of trafficking through outreach work in streets where prostitutes work or by contacting women working in brothels. Moreover, many NGOs are active in training, prevention and awareness-raising initiatives. Some counselling centres specialised in sexual exploitation have also started to support victims of THB for labour exploitation, for example Koofra in Hamburg.

35. German trade unions, and in particular the trade union federation DGB (*Deutscher Gewerkschaftsbund*), are becoming increasingly active in the fight against labour exploitation, e.g. by lobbying for practical and legal measures to reduce labour exploitation, commissioning studies, developing information materials and advising employees. The DGB runs and supports projects, for instance the Alliance against Human Trafficking for Labour Exploitation<sup>12</sup> aimed at gaining knowledge about the phenomenon of labour exploitation and building up structures to fight against it. The trade unions run counselling centres on social and labour laws for migrant workers in different languages. Several of these centres, for instance the six counselling centres run by the DGB-project "*Faire Mobilität*",<sup>13</sup> particularly focus on migrant workers in precarious labour circumstances.

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<sup>11</sup> A list of counselling centres is available at: <http://www.kok-gegen-menschenhandel.de/en/member-organisations-counselling-centres.html>.

<sup>12</sup> See <http://www.buendnis-gegen-menschenhandel.de/en>.

<sup>13</sup> See <http://www.faire-mobilitaet.de/beratungsstellen/++co++79af1b36-e64c-11e2-b489-00188b4dc422>.

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany

#### 1. Integration of the core concepts and definitions contained in the Convention in the internal law

##### a. Human rights-based approach to action against trafficking in human beings

36. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.<sup>14</sup>

37. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of states to respect, fulfil and protect human rights, including by ensuring compliance by non-state actors, in accordance with the duty of due diligence. A state that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>15</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>16</sup>

38. The Convention on action against trafficking in human beings requires states to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

39. GRETA wishes to stress the need for states to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>17</sup>

<sup>14</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>15</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

<sup>16</sup> See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>17</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

40. The German authorities have pointed out that the basic rights which are of particular relevance in the context of trafficking in human beings, such as the inviolability of human dignity, the right to life and to physical integrity, and the freedom of the person, are guaranteed under Articles 1 and 2 of the German Basic Law (*Grundgesetz*, GG). In the framework of the criminal procedure, special rights are conferred on victims of certain serious criminal offences, including THB. They may for instance join a public prosecution as private accessory prosecutor and can obtain free legal assistance. Further, the Residence Act foresees a specific residence permit for victims of trafficking during criminal proceedings<sup>18</sup> as well as the possibility of a residence permit based on humanitarian<sup>19</sup> grounds.

41. The human rights-based approach to action against THB entails transparency and accountability on the part of the state through the adoption of national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the German authorities in these fields.

b. Definitions of “trafficking in human beings” and “victim of THB” in German law

i. *Definition of “trafficking in human beings”*

42. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action (“the recruitment, transportation, transfer, harbouring or receipt of persons”); the use of certain means (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”); and the purpose of exploitation (“at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

43. The offence of THB is defined in three sections of the German Criminal Code (StGB):

**“Section 232: Human trafficking for the purpose of sexual exploitation**

(1) Whosoever exploits another person’s predicament, or vulnerability arising from being in a foreign country, in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to imprisonment from six months to ten years. Whosoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if

1. the victim is a child (section 176(1));
2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

<sup>18</sup> Section 25, subsection 4a, of the Residence Act.

<sup>19</sup> Section 25, paragraphs 3, 4 and 5 of the Residence Act.

- (4) The penalty under subsection (3) above shall be imposed on any person who
1. induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or
  2. gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsections (3) and (4) above imprisonment from six months to five years.

### **Section 233: Human trafficking for the purpose of work exploitation**

(1) Whosoever exploits another person's predicament, or vulnerability arising from being in a foreign country, to subject them to slavery, servitude or bonded labour, or makes him work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be liable to imprisonment from six months to ten years. Whosoever subjects a person under twenty-one years of age to slavery, servitude or bonded labour or makes him work as mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) Section 232(3) to (5) shall apply *mutatis mutandis*.

### **Section 233a: Assisting in human trafficking**

(1) Whosoever assists in human trafficking under section 232 or section 233 by recruiting, transporting, referring, harbouring or sheltering another person shall be liable to imprisonment from three months to five years.

- (2) The penalty shall be imprisonment from six months to ten years if
1. the victim is a child (section 176(1));
  2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
  3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(3) The attempt shall be punishable.<sup>20</sup>

44. GRETA notes that the actions contained in the definition of the Convention, are not part of the definition of THB in sections 232 and 233 StGB. The actions are listed in section 233a of the StGB, which criminalises all actions contained in the Convention when they are used to assist in a crime under sections 232 and 233 StGB. Section 233a is formulated as a catch-all provision which penalises a supportive act to a THB offense even if the latter does not reach the attempt phase (see paragraph 190).

45. Regarding the means, the basic offence under section 232, paragraph 1 and section 233, paragraph 1, contains the element of "exploiting another person's predicament or vulnerability arising from being in a foreign country". This corresponds to the Convention's element "abuse of a position of vulnerability". Further, the aggravating circumstances of paragraph 4 of section 232 (which applies *mutatis mutandis* to section 233) comprise the means "threat of serious harm or by deception".

<sup>20</sup> Translation provided by the Federal Ministry of Justice and Consumer Protection, available at: [http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html). Any discrepancies or differences that may arise in translations of the official German version is not binding and has no legal effect for compliance or enforcement purposes.

46. The other means contained in the Convention, namely “other forms of coercion”, “abduction”, “fraud”, “abuse of power”, “giving or receiving of payments or benefits to achieve the consent of a person having control over another person”, are not explicitly mentioned in the definition of THB in the StGB. In their comments on the draft GRETA report, the German authorities have informed GRETA that the term “deception” in section 232, subsection 4, No. 1, StGB, corresponds to the means “fraud and deception” provided for in the Convention. Moreover, section 232, subsection 4, No. 2, StGB, to which section 233, subsection 3, and section 233a StGB also refer, comprises situations when a person “gains physical control of another person by force, threat of serious harm or deception”. According to the German authorities, this would include abduction. The German authorities have argued that “giving or receiving of payments or benefits to achieve the consent of a person having control over another person” similarly constitutes an act by which the offender gains physical control over the victim. GRETA has not received information which would explain how the means “abuse of power” are reflected in the current definition of the StGB. In order to be fully consistent with the definition of THB in the Convention, **GRETA considers that the German authorities should ensure that all the means included in the Convention are appropriately taken into account.**

47. Sections 232 and 233 StGB cover various forms of exploitation: prostitution, other sexual activities, slavery, servitude, bonded labour, or making a person work “under conditions that are in clear discrepancy to those of other workers”. However, these sections do not refer to “practices similar to slavery” and “forced labour or services” which are forms of exploitation under the Convention. In their comments to the draft GRETA report, the German authorities have noted that servitude and bonded labour, which are mentioned in section 233 StGB, constitute practices similar to slavery. Moreover, making a person work under “conditions that are in clear discrepancy to those of other workers performing the same or similar activity” is generally assumed if an employee has to work for less than two-thirds of the pay received by a comparable employee and is employed under otherwise exploitative conditions. These exploitative conditions can manifest themselves in various ways, for example deduction of excessive fees for smuggling a person into the country, precarious accommodation, isolation by retaining the person's passport and other papers, or withholding of remuneration. The German authorities have provided examples of case law concerning the application of section 233 StGB.<sup>21</sup> Finally, the element of forced labour is covered by section 233, subsection 3, in conjunction with section 232, subsection 4, No. 1, StGB, if the exploitative employment is enforced with the use of force or the threat of force.

48. German legislation does not contain references to THB for the purpose of organ removal. According to the authorities, referring to the Transplantation Act (*Transplantationsgesetz*, TPG), the acts envisaged by the Convention with regard to THB for the purpose of organ removal would in any case constitute the offence of assistance (section 27 StGB) to a criminal offence, i.e. to the illicit trade or removal of organs prohibited under section 17 TPG and sanctioned under sections 18 and 19 TPG. Section 17, paragraph 1, TPG, prohibits any trade in organs or tissue intended for use in medical treatment. Under section 17, paragraph 2, TPG, it is prohibited to remove, transplant or have transplanted organs or tissue that are the object of prohibited trade. GRETA acknowledges the comprehensive legislation on organ transplantation in Germany, but considers that the cited provisions do not target the behaviour envisaged by the Convention when criminalising THB for organ removal. The latter constitutes in itself a severe violation of personal freedom and human dignity and is not an accessory act to another punishable behaviour with regard to organ transplantation.

<sup>21</sup> Trier Regional Court, (2.11.2011), case number 8045 Js 9059/10.5 Kls (exploitation of Czech and German drivers); Düsseldorf Local Court (26.1.2012), case number 106 Ls-50 Js 208/07-58/07 (deaf Polish citizens coerced into begging); Hamburg St. Georg Local Court (22.2.2010), case number 940 Ls 6500 Js 38/09 (494/09), (labour exploitation at a hairdressing salon and attempted sexual exploitation); Augsburg Regional Court (18.2.2008), case number 9KLs 507 Js 121451/07 (exploitation of harvest helpers); Köln Local Court (24.10.2007), case number 523 Ds 451/07 (domestic servitude); Ingolstadt Local Court (10.5.2005): case number 1 Ds 12 Js 6059/05 (exploitation in a specialty restaurant). The judgements are accessible via a case law database of the KOK: <http://www.kok-gegen-menschenhandel.de/kok-informiert/rechtsprechungsdatenbank.html> (in German).

49. On 28 January 2015 the Federal Government adopted a draft law providing for amendments to sections 232, 233 and 233a of the StGB and submitted it to the upper chamber of Parliament (*Bundesrat*). The amendment will add the elements of exploitation of criminal activities, forced begging and removal of organs as forms of exploitation. Noting the forthcoming legislative amendments, **GRETA urges the German authorities to ensure that the definition of THB in the Criminal Code fully complies with the Convention.**

50. According to the authorities, any consent obtained from a human trafficking victim would be irrelevant under German criminal law. As a matter of principle, valid consent requires that the victim is deciding freely.<sup>22</sup> The German authorities could not provide GRETA with case law regarding the question of consent in connection with sections 232, 233 and 233a StGB. However, it is generally recognised that consent achieved through the use of force or threat of harm does not preclude the wrongness of the act. On the basis of case law related to similar criminal offences, it can be deduced that consent in connection with sections 232 and following StGB, acquired through means mentioned in Article 4a of the Convention would be legally meaningless because it would not be voluntary in nature.<sup>23</sup> According to case law, consent acquired through deception would be invalid.<sup>24</sup>

51. Regarding the non-relevance of means in the case of child trafficking, pursuant to the second sentence of paragraph 1 of sections 232 and 233 StGB, the means required in the first sentence of the relevant paragraphs (to exploit “another person’s predicament” or to exploit “another person’s vulnerability arising from being in a foreign country”) do not have to be present to make the perpetrator liable for the offence of THB if the victim is under 21 years of age.

52. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 187-195.

*ii. Definition of “victim of THB”*

53. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

54. According to the German authorities, a “victim of trafficking in human beings” is any natural person who is subject to the criminal offence of trafficking in human beings as defined in sections 232 and 233 and 233a of the StGB.

55. Furthermore, section 25, paragraph 4a, of the Residence Act provides for a special residence permit for THB victims who co-operate in the criminal procedure, and section 59, paragraph 7, of the same instrument, grants a recovery and reflection period to presumed victims. GRETA however notes that the Crime Victims Compensation Act uses a definition of victim which excludes a potentially high number of victims of THB from its benefits because it requires an act of physical violence against the victim, whereas acts of psychological violence are not sufficient to trigger entitlement to compensation (see paragraph 177).

56. The question of the definition of victim of THB is further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA (see paragraphs 124 and following, 137 and 150).

<sup>22</sup> Federal Court of Justice, Decision of 27. 3. 1953 - 1 StR 689/52 = BGHSt 4, 113 = NJW 1953, 1070).

<sup>23</sup> Especially with regard to violence in the case of sexual offences Federal Court of Justice, Decision of 08.12.1982 - 3 StR 397/82. See also the available literature: Leipziger Kommentar-Rönnau, 12th edition, preliminary remarks to §32 StGB, para. 207; Schönke/Schröder-Lenckner/Sternberg-Lieben, 29th edition, preliminary remarks to §§ 32 ff. StGB, para. 48.

<sup>24</sup> Federal Court of Justice, Decision of 21 February 1984 - 1 StR 829/83 = BGHSt 32, 267.

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation
  - i. *Comprehensive approach and co-ordination*

57. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

58. While it comes within the remit of federal jurisdiction to enact legislation in the area of combatting THB and protecting and supporting victims, the implementation of these laws and most THB-related policies falls within the competence of the different *Länder*. In the absence of a national co-ordinating body and a national referral mechanism there are differences between the *Länder* when it comes to the co-operation mechanisms between stakeholders, the procedures of identifying victims and the implementation of assistance to victims.

59. As noted in paragraph 23, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is the co-ordinating agency in the Federal Government on issues relating to human trafficking. The Ministry is very active in developing and promoting policies pertaining to the fight against THB. It chairs the Federal Working Group on Trafficking in Human Beings and finances the work of the KOK (see paragraph 33). The application of the Residence Act falls under the responsibility of the Ministry of Interior and the Ministry for Labour and Social affairs is responsible for THB for labour exploitation.

60. The co-ordination structure between the federal and *Länder* level is the Federal Working Group on Trafficking in Human Beings (see paragraph 20). The working group has developed a concept paper on co-operation between specialised counselling centres and the police in matters of human trafficking (1998, updated 2007), a guidance document for implementing agencies on application of the Crime Victims Compensation Act for victims of human trafficking and a working paper on the standardisation of initial and further training for all relevant occupational groups in the domain of human trafficking for the purpose of sexual exploitation.

61. GRETA commends the activities of the Federal Working Group on Trafficking in Human Beings and the strong involvement of civil society in the co-operation with the federal government. However, the Working Group's work has focussed primarily on THB for sexual exploitation, despite the fact that its mandate was been extended to THB for labour exploitation in 2012. The current composition of the Working Group includes neither NGOs active in combating THB for labour exploitation, nor trade unions, the Financial Monitoring Unit to Combat Illicit Employment or representatives of the *Länder* networking bodies. In general, the introduction of the offence of THB for labour exploitation in 2005 was not followed by steps by the authorities to gather intelligence about the phenomenon and combat it. Despite various initiatives of different stakeholders in recent years, there is still a time-lag in addressing THB for the purpose of labour exploitation in Germany.

62. GRETA welcomes the fact that with the existence of KOK, NGOs have a countrywide networking structure which is funded by the federal government. NGO co-ordination is a key element in combatting THB, all the more so in a federal system. GRETA notes that new civil society actors address issues other than sexual exploitation, notably THB for labour exploitation. At *Länder* level, a few THB roundtables have started to integrate action against THB for the purpose of labour exploitation into their work. This process is leading to a reorientation of the activities of some civil society actors.<sup>25</sup> GRETA considers that this is an opportunity to adopt a comprehensive approach to trafficking and offers the possibility to integrate more actors into existing co-ordination structures, including NGOs working with child victims of trafficking.

63. At the *Länder* level co-ordination takes place through co-operation agreements between stakeholders and a forum of exchange, usually in the form of a roundtable. The *Länder* co-operation agreements have been developed on the basis of the above-mentioned concept paper by the Federal Working Group on Human Trafficking. The concept paper explains the phenomenon of trafficking in Germany and outlines target groups, the role of the relevant agencies and procedures. Based on this paper, the *Länder* set up their own co-operation agreements in accordance with their needs.<sup>26</sup>

64. Most co-operation agreements are concluded between the police and counselling centres, but some include a wider circle of actors. In Hesse, for instance, Foreigners Registration Offices, job centres and social administrations are included. Similarly, in Rhineland-Palatinate, the agreement describes the relevant tasks of the responsible Ministry, Foreigners Registration Offices and the competent social administration. The majority of the co-operation agreements are still restricted to addressing human trafficking for the purpose of sexual exploitation but a number of *Länder* have added THB for the purpose of labour exploitation to their agreements, for example Berlin and Hamburg.

65. The roundtables in most *Länder* include relevant Ministries, police and NGOs. A few *Länder* have adopted structures with a broad spectrum of participants, including those specialised in THB for labour exploitation, for instance Berlin and Hamburg.<sup>27</sup> GRETA notes the setting up of co-operation agreements and roundtables in the *Länder* and that some *Länder* have already developed co-operation on combating trafficking for the purpose of labour exploitation.

66. The topic of child trafficking is not dealt with by the Federal Working Group on Trafficking in Human Beings and there are no links with child-related co-ordination processes, for example the federal-level working group on monitoring child trafficking (see paragraph 19).<sup>28</sup> Action against child trafficking is often limited to the context of sexual abuse, which neglects other exploitative purposes of child trafficking. According to the German authorities, the federal-level working group on monitoring child trafficking established that problems in this area are not adequately addressed by the judiciary and the child and youth services. The needs of children also need to be better taken into account by *Länder* roundtables on human trafficking. Discussions in this working group also showed that more awareness raising on the issue is needed and that co-operation needs to be institutionalised to ensure that information is passed on across relevant professions (counsellors, police, judiciary, guardians, youth services).

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<sup>25</sup> The THB counselling centre Koofra in Hamburg, for instance, has been charged with supporting victims of THB for the purpose of labour exploitation.

<sup>26</sup> Only Bremen, Mecklenburg-Vorpommern and Schleswig-Holstein do not have such an agreement.

<sup>27</sup> In Berlin for, example, the Financial Monitoring Unit to Combat Illicit Employment, a drop-in centre for European migrant workers and several trade union counselling centres for migrants and posted workers have become members of the roundtable.

<sup>28</sup> In their comments on the draft GRETA report, the German authorities noted that the relevant working units for THB and for child trafficking of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) are members both in the Federal Working Group on Trafficking in Human Beings (BLAG) and in the Monitoring Working Group on the topic of trafficking in children.

67. There is no independent evaluation of the impact of anti-trafficking activities. GRETA notes that such an evaluation can assist the authorities in planning future policies and measures to combat THB. Further, the fact that the implementation of anti-trafficking measures is carried out by the *Länder* inevitably leads to differences in the approaches being taken. GRETA notes that considerable advantages could be drawn from appointing an independent National Rapporteur on THB because this institution could identify gaps and best practices, promote research and collect relevant data.

68. **GRETA considers that the German authorities should strengthen and harmonise the institutional frameworks and co-ordination structures for action against THB at federal level, between federal and *Länder* level, between the *Länder* as well as within each *Land*. The aim should be to ensure greater coherence and effectiveness of the actions of all public bodies playing a role in combating and preventing THB in all its forms, and to protect trafficking victims without discrimination, irrespective of their place of residence in Germany.**

69. **Moreover, GRETA considers that the German authorities should strengthen co-ordination between public bodies and NGOs engaged in anti-trafficking action by involving civil society in the development and implementation of anti-trafficking policy, including the evaluation of anti-trafficking efforts, at federal and *Länder* level.**

70. **GRETA also urges the German authorities to take steps to ensure that national action to combat THB is comprehensive, in particular by:**

- **developing a comprehensive national action plan or strategy against THB which addresses trafficking for all forms of exploitation;**
- **paying particular attention to trafficking in children, through dedicated co-ordination and co-operation measures linking existing child protection structures, especially at the *Länder* level, with anti-trafficking expertise from state and non-state actors;**
- **strengthening action to combat THB for the purpose of labour exploitation by involving civil society, trade unions, the Financial Monitoring Unit to Combat Illicit Employment and the private sector, and improving the identification of and assistance to victims of THB for the purpose of labour exploitation.**

71. **In addition, GRETA invites the German authorities to consider the establishment of an independent National Rapporteur or designate another independent mechanism to monitor the anti-trafficking activities of state institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).**

*ii. Training of relevant professionals*

72. Training on THB for all specialised police officers is regularly organised by the BKA. In 2014, three training courses were held at the BKA on the topic of THB for the purpose of sexual exploitation and one on THB for the purpose of labour exploitation. At these courses, a total of 75 police officers received training. In addition, a few *Länder* have developed their own training on THB (for instance the Berlin State Police School and the North Rhine-Westphalia State Office for Police Training, Further Training and Personnel). In some cases smaller *Länder* have their police officers trained in larger *Länder*, for example Bremen in Lower Saxony. Aspects of THB are usually also included in the general training on organised crime and on professional treatment of victims for criminal police officers. Targeted further training measures that take place at local level are not recorded statistically, but the BKA and the *Länder* police forces reported 27 training and further training measures at which 2818 civil servants received training in 2014. The BKA also organises conferences on THB for the purpose of sexual exploitation for federal and *Länder* investigators on a yearly basis. 91 police officers participated in this conference in 2014. In the area of THB for the purpose of labour exploitation, conferences for investigators attended by approximately 30 police officers from the federal and *Länder* level, as well as public prosecutor's offices, trade unions and counselling centres are organised every 18 months.

73. In most public prosecution services THB cases are dealt with by units specialised in organised crime. There are few public prosecutors specialising in THB cases. In Berlin, the public prosecution service has departments responsible for THB for labour exploitation and for THB for sexual exploitation. One of the specialised public prosecutors also acts as Human Trafficking Officer and passes on expertise to colleagues. Further training opportunities for public prosecutors and judges on THB appear to be rare, with the exception of Berlin and North Rhine-Westphalia. The *Länder* mostly refer to the German Judicial Academy, a body which is jointly funded by the Federal Government and the *Länder*. The Academy provides further training for judges in all branches of the court system and for public prosecutors in Germany. North Rhine-Westphalia organises on an annual basis a three-day training entitled "International Trafficking in Human Beings". Since 2012, a total of 29 judges and 52 public prosecutors from different *Länder* have participated in these conferences. In Rhineland-Palatinate, eight public prosecutors took part in workshops and other further training events organised by the Ministry for Integration, Family Affairs, Children, Youth and Women's Affairs in 2013 and 2014 within the framework of the Alliance against Human Trafficking for Labour Exploitation.

74. At federal level, a sub-committee of the Federal Working Group on Trafficking in Human Beings has developed standards for initial and further training with regard to trafficking in women, for all professional groups involved in the area of human trafficking offences. The document was compiled under the leadership of the BKA and with the involvement of representatives of KOK, *Länder* judicial administrations (Dortmund public prosecution service) and the North Rhine-Westphalia Police Initial and Further Training Institute.<sup>29</sup>

75. Within the framework of the "Alliance against Human Trafficking for Labour Exploitation" (see paragraphs 35 and 100) which is funded by the Ministry for Labour and Social Affairs together with the European Social Fund, the project partners conducted training seminars and workshops for staff of the Financial Monitoring Unit to Combat Illicit Employment, Foreigners Registration Offices, job centres, counselling centres, police services, public prosecutor's offices, the labour inspectorate, trade unions, social services and persons participating in language courses.<sup>30</sup>

76. Concerning staff working at counselling centres, KOK has published a training manual which contains guidelines for member organisations. In general little or no funding exists for counsellors to receive further training or acquire supplementary qualifications, although notable exceptions exist e.g. in North Rhine-Westphalia, where the Ministry of Health, Equalities, Care and Ageing provides annual funding for continuing training for the network of counselling centres for victims of human trafficking.

77. Training on the identification of victims of human trafficking in asylum proceedings was provided to case officers as part of a project carried out in 2011/2012 by the Federal Office for Migration and Refugees (BAMF), UNHCR and IOM.

78. GRETA welcomes the training provided for police officers and prosecutors. Nevertheless, given the limited amount of courses, a significant number of investigators dealing with THB cases have not received relevant training, in particular those working outside big cities. GRETA has received only limited information on the available training of other public officials who might come into contact with trafficking victims (e.g. police officers not involved in investigations, officials of Foreigners Registration Offices, staff of detention centres for irregular migrants).

<sup>29</sup> Available at: <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/bund-laender-arbeitsgruppe-frauenhandel,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf> .

<sup>30</sup> See <http://www.buendnis-gegen-menschenhandel.de/aktuelles/fortbildungsangebot-zum-thema-menschenhandel-und-arbeitsausbeutung> (in German).

79. GRETA considers that the German authorities should continue to invest in providing regular training on issues related to THB for different forms of exploitation and the rights of victims of trafficking, to all professionals who may come into contact with victims of THB, in particular police officers, prosecutors, judges, social workers, medical staff, labour inspectors, staff of counselling centres, migration officials, asylum officials and staff of detention centres for irregular migrants. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

iii. *Data collection and research*

80. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims

81. An important source of statistical information on THB is the National Situation Report on Trafficking in Human Beings (*Bundeslagebild Menschenhandel*), which has been compiled annually by the Federal Criminal Police Office (BKA) since 1994.<sup>31</sup> It is based on the outcomes of police investigations and includes statistical data on suspects and victims (number, gender, nationality, age structure, circumstances of recruitment). Data on forms of THB other than sexual or labour exploitation, such as organ trafficking or forced begging, do not appear in criminal police statistics because they are not covered by sections 232, 233 and 233a StGB (see paragraph 43).

82. In addition to the annual BKA report,<sup>32</sup> justice statistics and criminal prosecution statistics are published by the Federal Statistical Office. The BKA and Federal Statistical Office statistics are not comparable due to timing differences in the inclusion of cases and other differences in methodology. Both entities rely on data which is collected at *Länder* level.

83. KOK is currently planning a project for centralised collation and analysis of data from counselling centres. The KOK member organisations have given their consent for the project to go ahead. However, funding still needs to be found for data collection and analysis. The aim is to carry out data collection uniformly and with particular emphasis on respect for data protection standards. KOK has also published a practical guide on “Data protection challenges in anti-trafficking policies” in the framework of the “datACT” project.<sup>33</sup>

84. GRETA notes that regular data collection and reporting on the phenomenon of trafficking in human beings is currently limited to the area of law enforcement. Data on the enforcement of victims’ rights, such as data on the number of reflection periods issued to victims or compensation granted by the state or the perpetrator, is currently not being collected.

<sup>31</sup> Available at: [http://www.bka.de/nn\\_231620/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder\\_node.html?\\_nn=true](http://www.bka.de/nn_231620/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder_node.html?_nn=true) .

<sup>32</sup> The Land North Rhine-Westphalia also publishes an annual situation report on THB; the 2013 report is available at: [http://www.polizei.nrw.de/media/Dokumente/Behoerden/LKA/Lagebild\\_Menschenhandel\\_NRW\\_2013.pdf](http://www.polizei.nrw.de/media/Dokumente/Behoerden/LKA/Lagebild_Menschenhandel_NRW_2013.pdf)

<sup>33</sup> Available at: <http://www.kok-gegen-menschenhandel.de/en/kok-informs/website-news/kok-news/artikel/veroeffentlichung-dataact-herausforderungen-des-datenschutzes-in-der-politik-gegen-menschenhandel.html> (in English).

85. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the German authorities to develop and maintain a comprehensive and coherent data collection system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database. The collection of data should also cover the recovery and reflection period granted to victims of trafficking and the compensation paid to them.

86. Significant research activity on issues related to THB is being conducted by public bodies, civil society and academics. For example, KOK regularly publishes studies, analyses and opinion papers with regard to THB.<sup>34</sup> The BMAS has commissioned a comprehensive study on various aspects of THB for labour exploitation.<sup>35</sup> Also, the Berlin Alliance against THB for labour exploitation has published a comprehensive study of this phenomenon.<sup>36</sup> Within the project “Alliance against trafficking in human beings for labour exploitation” (see paragraph 35) three studies about forms of human trafficking for labour exploitation in North Rhine-Westphalia, Brandenburg and Rhineland-Palatinate have been published.<sup>37</sup> Further, in Rhineland-Palatinate and North Rhine-Westphalia studies on the basis of case files on THB for labour exploitation from the public prosecutor's offices have been conducted.<sup>38</sup> The German Institute for Human Rights also follows developments in the field of THB and publishes relevant research.<sup>39</sup>

#### iv. *International co-operation*

87. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

88. International legal assistance in criminal matters is governed by the Act on International Co-operation in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG). Under the general provision (section 59 IRG), full legal assistance can be provided to any state regardless of whether there is a multilateral or bilateral agreement. The competences for granting or requesting legal assistance and for the provision of information without prior request are laid down in section 74 IRG. They lie in principle with the Federal Ministry for Justice, and can be delegated to federal agencies. The federal government is also entitled to delegate the powers to the *Länder* governments.

89. The competent authorities in Germany can provide information without prior request to the authorities of another country as part of international co-operation in criminal matters. This is stipulated as a general rule in section 61a IRG, which provides that under certain conditions, courts and the public prosecution service are allowed to transmit personal data from criminal proceedings without prior request.

<sup>34</sup> E.g. Trafficking in Human Beings as Human Rights Violation, 2013, available at:

[http://www.kok-gegen-menschenhandel.de/uploads/media/Handreichung\\_Menschenhandel\\_als\\_Menschenrechtsverletzung.pdf](http://www.kok-gegen-menschenhandel.de/uploads/media/Handreichung_Menschenhandel_als_Menschenrechtsverletzung.pdf) (in German).

<sup>35</sup> Development of sustainable support structures for victims of trafficking for labour exploitation, 2011, available at: [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf?\\_\\_blob=publicationFile](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf?__blob=publicationFile) (in German).

<sup>36</sup> Available at: <http://www.gegen-menschenhandel.de/Downloads/BBGM%20Studie%20September%202010.pdf>

<sup>37</sup> Available at <http://www.buendnis-gegen-menschenhandel.de/fachportal?categories=71> (in German).

<sup>38</sup> The report concerning Rhineland-Palatinate is available at [http://www.buendnis-gegen-menschenhandel.de/sites/default/files/faelle\\_von\\_menschenhandel\\_zur\\_arbeitsausbeutung\\_in\\_rlp\\_analyse\\_der\\_verfahrenskten.pdf](http://www.buendnis-gegen-menschenhandel.de/sites/default/files/faelle_von_menschenhandel_zur_arbeitsausbeutung_in_rlp_analyse_der_verfahrenskten.pdf) (in German).

<sup>39</sup> For instance Follmar-Otto/Rabe, Human Trafficking in Germany - Strengthening Victim's Human Rights, 2009, available at: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/study\\_human\\_trafficking\\_in\\_germany.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_human_trafficking_in_germany.pdf) (in English); Rabe/Tanis, Trafficking in Human Beings as Human Rights Violation, 2013 (in co-operation with KOK and the Foundation Remembrance, Responsibility and Future (EVZ)), available at: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Handreichung\\_Menschenhandel\\_als\\_Menschenrechtsverletzung.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Handreichung_Menschenhandel_als_Menschenrechtsverletzung.pdf) (in German).

90. Section 92 IRG regulates the transmission of information, including personal data, to EU member states following a request. According to this provision, federal and *Länder* police authorities can transmit personal data to the investigating authority of another EU member state. The authority for provision of information without prior request to EU and Schengen states is contained in section 92c IRG and relates to all public authorities including police forces.

91. Furthermore, there is a specific enabling clause for the Federal Criminal Police Office for the transmission of relevant information to authorities of other states in sections 14 and 14a of the Act governing the BKA. Requests from the *Länder* are normally communicated abroad by BKA via Interpol channels, Europol or BKA liaison officers abroad and the replies communicated through the same channels. Currently, 66 BKA liaison officers are stationed in 53 localities in 50 partner countries.<sup>40</sup> The mandate of these law enforcement officers includes initiating and supporting investigations as well as monitoring the (organised) crime situation in the host country. The officers support other German law enforcement bodies and represent the German police's interests.

92. Bilateral agreements on organised crime have been signed with selected non-EU states and generally cover combatting trafficking in human beings, for example the agreement on co-operation to combat organised crime, terrorism and other serious criminal offenses with Ukraine.<sup>41</sup> In their comments to the draft GRETA report, the German authorities pointed out the particular practical relevance of bilateral agreements which have been concluded with the United States of America, Canada and India.<sup>42</sup>

93. German police have participated in a number of Joint Investigation Teams (JITs). By way of example, a joint investigation between the LKA Bremen and the police unit in Pleven, Bulgaria, in 2009 led to issuing six arrest warrants. In 2010, the LKA Stuttgart carried out a joint investigation with a police unit in Romania, as did the south-east Hessian police headquarters with a police unit in Bulgaria in 2012.

94. Germany participates in EMPACT<sup>43</sup> projects at the EU-level. The EMPACT THB Group is a multilateral co-operation platform which is part of the intelligence-led policing approach to tackling organised crime, identifying priorities and establishing an international team-work approach to bringing down criminal groups. In this framework, the BKA in 2012 led an EUROPOL-co-ordinated joint European day of action targeting Nigerian criminal trafficking networks which operate across Europe. In the course of the operation law enforcement agencies in nine European countries investigated locations linked to prostitution. This form of international co-operation contributed to gathering new valuable knowledge on Nigerian traffickers' networks and procedures.<sup>44</sup>

**95. GRETA commends the efforts made in the area of international co-operation by the German authorities and invites them to continue developing international co-operation with a view to preventing human trafficking, assisting victims of trafficking, and investigating and prosecuting human trafficking offences, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.**

<sup>40</sup> [http://www.bka.de/EN/TheBKA/Tasks/InternationalFunction/LiaisonOfficers/liaisonOfficers\\_node.html?\\_nnn=true](http://www.bka.de/EN/TheBKA/Tasks/InternationalFunction/LiaisonOfficers/liaisonOfficers_node.html?_nnn=true).

<sup>41</sup> Available at: <http://dipbt.bundestag.de/doc/btd/17/076/1707606.pdf>.

<sup>42</sup> Treaty of 14 October 2003 between the Federal Republic of Germany and the United States of America on Mutual Legal Assistance in Criminal Matters; Treaty of 13 May 2002 between the Federal Republic of Germany and Canada on Mutual Legal Assistance in Criminal Matters. Extradition Treaty of 11 July 1977 between the Federal Republic of Germany and Canada; Extradition Treaty between the Federal Republic of Germany and the United States of America of 20 June 1978; Extradition Treaty between the Federal Republic of Germany and India of 27 June 2001.

<sup>43</sup> European Multidisciplinary Platform against Criminal Threats.

<sup>44</sup> See [https://www.europol.europa.eu/sites/default/files/publications/europolreview2012\\_0.pdf](https://www.europol.europa.eu/sites/default/files/publications/europolreview2012_0.pdf), page 35.

## 2. Implementation by Germany of measures aimed at preventing trafficking in human beings

96. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

### a. Measures to raise awareness

97. Many awareness-raising activities in Germany are run by counselling centres working with victims of THB. Counselling centres focus their prevention activities on children and youth through schools. Such work is done for example, by the NGO SOLWODI in Aachen. In Baden-Wuerttemberg, human trafficking is not specifically addressed; therefore religion or ethics teachers have asked counselling centres to hold prevention activities on an occasional basis. In Lower Saxony, counselling centres carry out prevention activities by diverse means, including the publication of thematic videos and films as well as the organisation of events and discussions in schools and youth clubs.

98. The counselling centre IN VIA's project "Lost in Cyber World" draws attention to the risks of online grooming and is carried out in co-operation with foreign organisations specialised in human trafficking. The project was launched in 2010, and was initially funded by the EU, with the aim of raising awareness amongst children aged 12-16, as well as parents and teachers. Further, in the course of a joint project including the counselling centre Kobra, Hannover's youth welfare services and a shelter for girls, a film was produced to draw attention to the risks of being forced into prostitution by so-called "loverboys".<sup>45</sup>

99. There are also some awareness-raising activities that target potential victims of labour exploitation. An example is the project "OPEN", carried out by the association VIJ which is part of the charitable organisation Diakonie. "OPEN" is a counselling and support programme for young women from Eastern Europe who are looking for employment in Germany. The project aims to prevent human trafficking and labour exploitation by means of counselling in the country of origin. With the organisations Diakonie Bremen and VIJ Stuttgart, Germany also participated in the EU-project "An Informed Person is a Protected One" regarding the prevention of trafficking for labour exploitation, which ran from 2011 to 2013. The activities developed under this project targeted in particular young persons and students.

100. In the framework of the project "Alliance against Human Trafficking for Labour Exploitation", co-ordinated by the educational association "Arbeit und Leben Berlin", a brochure entitled "work-time calendar" was produced which aims to assist migrant workers in recording their working times and informs them of national labour laws.<sup>46</sup> The project also promoted three sub-projects in Brandenburg, Rhineland-Palatinate and North Rhine-Westphalia. The project partner in Brandenburg is the DGB Berlin/Brandenburg, which offers counselling twice a week in Frankfurt/Oder and Potsdam in co-operation with the project Fair Mobility. It targets mainly Central and Eastern European migrant workers and persons with an insecure status of residence in Germany. The project in Rhineland-Palatinate is organised by the Ministry for Integration, Family Affairs, Children, Youth and Women and comprises a teaching module in co-operation with "Arbeit und Leben Rhineland-Palatinate" held at language courses in various adult education colleges. The sub-project in North Rhine-Westphalia is organised by the Diakonie Wuppertal and includes the publication of leaflets on counselling services in places typically visited by potential victims of human trafficking for labour exploitation.

<sup>45</sup> Available at: [www.youtube.com/watch?v=aGBFKkufCcc](http://www.youtube.com/watch?v=aGBFKkufCcc).

<sup>46</sup> The brochure exists in 13 languages and is available at: <http://www.buendnis-gegen-menschenhandel.de/en/information-material/work-time-calender>.

101. The Berlin Alliance against Human Trafficking for Labour Exploitation (BBGM)<sup>47</sup> was a pilot project in the *Land* Berlin addressing THB for labour exploitation running from 2009 to 2012. Activities included training events and conferences for professionals, the distribution of information materials<sup>48</sup> and the publication of studies. In October 2011 the BBGM released a short film on human trafficking, which was broadcast in cinemas and on public transport in Berlin. Further, in 2013 the DGB's "*Faire Mobilität*" project in co-operation with Bulgarian trade unions issued a publication to inform Bulgarian and Romanian workers planning to migrate to Germany for employment of the risks of human trafficking and labour exploitation.

102. Some of the development co-operation projects of the Federal Ministry for Economic Cooperation and Development (BMZ) include prevention work. The projects pursue a dual approach in raising awareness as well as discouraging demand, for example by providing social services to improve the socio-economic situation of disadvantaged groups at risk of becoming victims of traffickers. Under the GIZ<sup>49</sup> and the ZAV<sup>50</sup> "Triple Win" joint project, employees receive preparatory training and German lessons in their home countries, provided by GIZ, before being placed in employment in Germany by the ZAV.

103. GRETA welcomes the variety of awareness-raising actions taken in Germany with regard to THB for sexual and labour exploitation, but notes that a significant part of these activities are project-based and therefore essentially ad hoc in nature. The federal and *Länder* authorities have not developed, in co-operation with civil society, concepts for programmes raising awareness in a systematic, general and comprehensive manner. Moreover, GRETA notes that there are few or no such activities with regard to trafficking of children and other forms of exploitation (such as forced begging, forced criminality, or organ removal).

**104. GRETA considers that the German authorities should continue raising awareness on THB and plan future information and education campaigns in a comprehensive manner, with the involvement of civil society and in the light of the assessment of previous measures, focusing on the needs identified. Moreover, GRETA urges the German authorities to develop measures to raise awareness of trafficking of children and other forms of trafficking (such as for the purpose of forced begging, forced criminality and organ removal).**

b. Measures to discourage demand

105. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>51</sup>

<sup>47</sup> The BBGM was funded by the Federal Ministry for Labour and Social Affairs and the European Social Fund for Germany. The project partners were the Berlin-Brandenburg branch of the German Confederation of Trade Unions (DGB), the Berlin Senate Administration for Labour, Integration, and Women's Affairs, the International Labour Organization (ILO) and the International Organization for Migration (IOM).

<sup>48</sup> The information sheet "Good Work" is available in 14 languages and informs migrant workers about their labour rights and available counselling services.

<sup>49</sup> German Federal Enterprise for International Co-operation (*Deutsche Gesellschaft für Internationale Zusammenarbeit*).

<sup>50</sup> International Placement Services (*Zentrale Auslands- und Fachvermittlung*) by the German Federal Employment Agency.

<sup>51</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

106. A major reform of the German labour market was the adoption of a law introducing a general minimum wage of 8.50 euros per hour as of 1 January 2015.<sup>52</sup> The aim is to guarantee appropriate employment conditions, especially in service sectors which are insufficiently regulated and where minimum wages have been hard to set, e.g. the construction sector, the meat processing industry, industrial cleaning. The adoption of a minimum wage can also be seen as a measure to reduce the demand for cheap labour by deterring employers from paying salaries below the minimum wage.

107. According to the German authorities, the measures to raise awareness of human trafficking referred to in paragraphs 97-102 serve at the same time to discourage demand. Furthermore, particular emphasis was placed on an international campaign to prevent the sexual exploitation of children through sex tourism. On 27 September 2010, the governments of Germany, Austria and Switzerland launched this campaign, which brought together different ministries and law enforcement agencies as well as tourism associations and NGOs. The campaign aims at raising awareness among tourists and informs them about a special e-mail address at the federal states' police offices to report suspected crimes.<sup>53</sup> In January 2013 France and Luxembourg joined the campaign.

108. Another example is the publicity campaign "Responsible Client" ("*Verantwortlicher Freier*") which Ban Ying launched in 2006. By means of a website<sup>54</sup> the counselling centre provides information to clients of sex workers to detect cases of involuntary or exploitative prostitution and encourage them to report such cases.

109. **GRETA considers that the German authorities should make further efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with the private sector and civil society, including trade unions and employers.**

c. Social, economic and other initiatives for groups vulnerable to THB

110. When it comes to vulnerable persons within Germany, the federal government has not developed or implemented any social and economic measures aimed specifically at groups at risk of falling victim to traffickers. However, many general prevention measures against domestic and sexual violence or programmes aimed specifically at girls achieve empowerment in a broader sense, and therefore may contribute to preventing trafficking in human beings.

111. Several *Länder* have referred to empowerment measures to supplement their awareness-raising activities. In Berlin, economic migrants fleeing from emergency situations and young Germans with difficult family backgrounds have been identified as two particularly vulnerable groups and various services are provided to them. With regard to sexual exploitation, reference is made to empowerment-workshops carried out under the Lost in Cyber World project and by the Hydra counselling centre for prostitutes. Materials developed within the framework of the project were integrated in school curricula in Lithuania and Bulgaria and teaching materials were distributed worldwide.<sup>55</sup> In Brandenburg and Rhineland-Palatine, empowerment of groups at risk of human trafficking takes place in the form of a teaching module developed in the framework of the "Alliance against Trafficking for Labour exploitation" project, as well as the provision of training as part of integration and language courses and information materials in a variety of languages.

<sup>52</sup> Available in German at: [http://www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl114s1348.pdf#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl114s1348.pdf%27%5D\\_1414512210116](http://www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl114s1348.pdf#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl114s1348.pdf%27%5D_1414512210116).

<sup>53</sup> In Germany: [stopp-missbrauch@bka.de](mailto:stopp-missbrauch@bka.de)

<sup>54</sup> The website is available at: [www.verantwortlicherfreier.de](http://www.verantwortlicherfreier.de).

<sup>55</sup> The distribution took place through the COATNET network and materials now represent educational resources in youth centres worldwide.

112. In the field of development co-operation, building on experience in countries co-operating with the BMZ, activities are aligned to be specific, inclusive and long-term oriented to promote their effectiveness. The Social Protection and Prevention of Human Trafficking project (SPPHT) aims at promoting the economic empowerment and social inclusion of victims of trafficking and those at risk of trafficking in the western Balkans by means of support in four intervention areas: domestic social structures and policies, decentralised social service providers, direct measures for social inclusion, and establishment of regional co-operation and co-ordination mechanisms. The project is based on methods of co-operation and provides for an impact assessment of each intervention area.

113. From 2011 until 2014 the BMZ supported five projects conducted by private agencies with funding totalling 958 597 euros in the Philippines, Cameroon, Kenya and India. The Ministry also funds a programme in Burkina Faso that, *inter alia*, aims at combatting child trafficking. The programme includes education and awareness activities, as well as a special fund as an alternative financial source for youth and poor families. Further, the BMZ under the PRODEM project fosters dialogue between state institutions and the public in Ecuador and offers counselling services for victims of trafficking. When bilateral programmes for combating human trafficking are being developed, no co-ordination with the Federal Ministry of the Interior, in particular the Federal Criminal Police Office, takes place.

114. Upon the BMZ's initiative, members of the clothing and textile industry, trade unions and civil society created the "Alliance on Sustainable Textiles", which entered into force on 16 October 2014.<sup>56</sup> The Alliance aims at improving the social, economic and ecological conditions along the textile supply chain, in particular in terms of labour conditions in producing countries. In accordance with an action plan, over 60 organisations representing all stakeholders have committed themselves, *inter alia*, to promoting fair wages that secure textile workers' livelihoods. The Federal Government will support the Alliance's shared efforts by means of concrete co-operation projects in core producing countries like Bangladesh, Pakistan, Cambodia, China and Vietnam.

115. Counselling centres working with persons in prostitution and migrant workers also contribute to the empowerment of vulnerable and disadvantaged target groups, for example by offering counselling and information.

**116. GRETA welcomes the measures supported by the German authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the German authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Germany.**

d. Border measures to prevent THB and measures to enable legal migration

117. According to the Convention, Parties shall as far as possible strengthen border controls to prevent and detect trafficking in human beings. All of Germany's neighbouring countries are members of the Schengen area. Hence, the only external Schengen borders are sea ports and airports. The Federal Police is in charge of federal border control, which includes police control of cross-border traffic. If initial suspicion of a human trafficking offence arises during border controls, Federal Police officers are obliged to take all necessary action without delay to prevent the suppression of evidence. After this first response, the case is passed on to the responsible investigating authority, in general the police of the *Land*. GRETA was informed that no data are collected as regards the identification of trafficking victims in the course of border controls.

118. The Federal Police have deployed liaison officers to various embassies of Germany in order to assist embassy and consulate staff with the visa procedure, notably with recognising document fraud. Moreover, liaison officers support airlines abroad (e.g. in Nigeria) in several fields. These officers also give information to the German border police, for instance when suspicion arises that a person could be a THB victim. Federal police officers also participate in Frontex joint border operations.

<sup>56</sup> The Foundation agreement is available in German at: [http://www.bmz.de/de/zentrales\\_downloadarchiv/Presse/Textilbuendnis/2014-10-16-Praesentation\\_Gruendungsakt.pdf](http://www.bmz.de/de/zentrales_downloadarchiv/Presse/Textilbuendnis/2014-10-16-Praesentation_Gruendungsakt.pdf)

119. There are various forms of training and awareness initiatives available for federal police officers. As part of the initial training in all career paths, the curricula include skills for professional treatment of victims and witnesses, which are not restricted to specific types of offence.

120. According to the Federal Foreign Ministry approximately 250 persons recruited from abroad work in Germany as domestic workers in diplomatic households. In order to prevent and identify exploitative situations, the German authorities have put in place the following procedure: the German embassy in the country of origin is expected to hold an extensive interview with the future domestic worker based on a standard interview guidance document. The visa is granted only if a written labour contract fulfilling the minimum conditions for domestic personnel (e.g. concerning working hours, wages) is provided and the embassy of the employer has submitted a *note verbale* assuring that all labour and social rights of the domestic worker will be respected. A standard labour contract for domestic workers has also been made available. The domestic worker has to sign a declaration that he/she has been informed about all these minimum rights and receives an information brochure developed by the NGO Ban Ying.<sup>57</sup>

121. Once in Germany, the domestic worker has to appear at the Federal Foreign Ministry to receive his/her identity document.<sup>58</sup> This requirement provides another opportunity to interview the person alone. The same happens annually when the identity document requires extension. Once a year, the Ministry organises an information session for domestic workers in diplomatic households in Berlin. While commending these measures, **GRETA invites the German authorities to further strengthen efforts to prevent THB among private domestic staff in diplomatic households and encourage participation in the annual information sessions for this target group.**

e. Measures to ensure the quality, security and integrity of travel and identity documents

122. According to the German authorities, most identity documents issued store biographic and biometric data on a microchip in line with the latest International Civil Aviation Organization document security standards. These documents comprise passports for German nationals in accordance with Council Regulation (EC) No 2252/2004, travel documents for foreign nationals, refugees and stateless persons, electronic residence titles for third country nationals as well as identity cards. For documents that do not have a microchip, it is planned to add a printed digital seal as a means of electronic verification.

123. Applications for identity documents are carefully examined. With regard to German nationals, this purpose is served by the population register and the registers of births, marriages and deaths. Foreign applicants must likewise present sufficient proof for the issue of identity documents. Applications are checked against national and EU registers as required from case to case. Germany is active in the EU and ICAO bodies responsible for document security and aims to facilitate passport control for other states by participating in the ICAO Public Key Directory.

<sup>57</sup> The brochure (in English, German, Tagalog and Bahasa Indonesia) is available at: <http://www.ban-ying.de/sites/default/files/Brosch%C3%BCre%20Hausangestellte%202012.pdf>; it also contains the text of the Foreign Office's relevant guidelines and standard forms.

<sup>58</sup> The Residence Act does not apply to private personnel of diplomats. Instead of a residence permit, a protocol ID (*Protokollausweis*) is issued to this group of persons.

### 3. Implementation by Germany of measures to protect and promote the rights of victims of trafficking in human beings

#### a. Identification of victims of trafficking in human beings

124. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

125. In Germany, there are neither national guidelines nor indicators<sup>59</sup> for the identification of THB victims; nor does a national referral mechanism exist. Detection and identification of victims are in the hands of the authorities which act at *Land* or local level, with counselling centres often being involved. If the assessment by police forces and public prosecution services leads them to conclude that a person is a victim of THB,<sup>60</sup> the relevant legal instruments in favour of the victim can become applicable (e.g. concerning residence permit and social benefits).

126. The identification process can be initiated in many ways, for example by: victims or other persons contacting a counselling centre or a victim protection organisation; police controls (e.g. in red-light districts); findings from ongoing investigations; intelligence gathered through outreach work by counselling centres; statements made by the victim to the police or the Financial Monitoring Unit to Combat Illicit Employment (FKS); hospital staff and medical practitioners; women's shelters; in the course of asylum proceedings or during custody prior to deportation.

127. At *Land* level, co-operation between the police, counselling centres and other relevant actors is based on the standard co-operation concept drafted by the Federal Working Group on THB (see paragraph 63) which provides that when the investigating authority suspects a person to be a victim of human trafficking, that person has to be informed of the possibility of receiving support from an independent counselling service. The investigating authority immediately establishes contact with the counselling centre and the special police unit responsible for protection measures. The counselling centre must be granted the right to be present during all interviews of possible victims by the police, the public prosecutor and the court, provided that the victim agrees. As already mentioned in paragraph 64, the existing co-operation agreements generally only cover the issue of trafficking in human beings for the purpose of sexual exploitation.

128. If victims first contact a counselling centre, they are informed about their rights and available support services. If a victim agrees to co-operate with law enforcement agencies, the counselling centre contacts the relevant police unit. Through their outreach work, counselling centres may come into contact with victims of trafficking. For example, the social workers of the counselling centres FIM in Frankfurt and the *Dortmunder Mitternachtsmission*, for example, regularly visit brothels and distribute information material.

<sup>59</sup> In some federal states, like for example Berlin, a list of indicators for the identification of persons who are potentially affected is attached to the co-operation agreement of the *Land*.

<sup>60</sup> All *Länder* co-operation agreements include victim admissibility criteria for the protection schemes and entitle the police forces to decide on an individual's admissibility. The admissibility criteria include: personal circumstances; voluntariness; necessity of testimony; valid threat.

129. The recent establishment of a national helpline for women victims of violence has the potential to enhance the identification of victims of THB. The hotline is available free of charge around the clock and can provide advice to women subjected to any form of violence, including trafficking for sexual or labour exploitation. Interpreters are also available around the clock (currently in 15 languages). The first annual report of the national helpline records substantive initial counselling in 65 cases relating to human trafficking.<sup>61</sup>

130. Concerning THB for sexual exploitation, the relevant stakeholders have established structures and practices to detect and identify victims. However, in general awareness of the phenomenon of THB is significantly lower in rural areas. More developed co-ordination structures, like those in Berlin and Hamburg, have reported improvements in identifying victims and bringing cases to court. GRETA was informed about practical problems that sometimes arise. For example, the absence of reliable interpreters during police raids complicates and even sometimes renders impossible communication with possible victims.

131. GRETA notes that there are considerable gaps in the current practice of identifying victims of THB for the purpose of labour exploitation. This issue has not yet been included in the co-operation agreements at national and regional level. There is no agency with a comprehensive labour inspectorate mandate in Germany, this competence being divided between different bodies. The Financial Monitoring Unit to Combat Illicit Employment is the only structure on federal level to carry out inspections at work places, but it cannot investigate cases of THB. GRETA was informed that most of the cases of THB for labour exploitation are detected as a result of routine controls by the FKS.

132. The organisational set up of labour inspection (*Gewerbeaufsicht*) varies from one *Land* to another. Labour inspection services are either part of the general administrative structure of a *Land* or set up as an independent agency. Labour inspection in Germany generally covers enforcement of occupational health and safety laws in relation to work places in the private and public sector. In addition, labour inspectorates monitor compliance with legislation relating to working time, maternity protection, child labour, protection of adolescent workers and domestic work. Labour inspectors conduct routine visits, visits as part of the investigation of occupational accidents and illnesses and complaint-based visits. Visits may also be conducted to look into specific aspects of health and safety or areas of high risk, such as safety on construction sites or the protection of young workers. The mandate of labour inspectors also covers the aspects of occupational safety and health in the agricultural sector and of home workers. Domestic staff in private households are not covered by the Occupational Safety and Health Act. However, other laws, such as the Maternity Protection Act, the Working Hours Act or the Act on the Protection of Young People at Work also apply to domestic staff in private households. Under certain conditions the basic right of the inviolability of the home may be limited in favour of labour inspectors, in particular in order to ward off an acute danger or threat to public security and order, allowing them to enter and inspect premises even against the will of the owner.

133. GRETA was informed that there is a crucial lack of awareness of trafficking for labour exploitation amongst key authorities like labour inspectors, the police, prosecutors, judges and Foreigners Registration Offices. Although trade unions are well informed about the situation of problematic sectors of the economy, they have only rarely been involved in anti-trafficking co-ordination structures.

134. To date no specific measures or nationwide initiatives have been taken to identify trafficked children. As regards THB for forms of exploitation other than for sexual or labour exploitation (e.g. forced begging, forced criminality) GRETA was informed that these have rarely been a topic of concern between relevant stakeholders.

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<sup>61</sup> The report is available at: [https://www.hilfetelefon.de/fileadmin/hilfetelefon\\_de/Downloads/pdf/Pressemeldungen/Hilfetelefon\\_Jahresbericht\\_150dpi\\_US\\_B2.pdf](https://www.hilfetelefon.de/fileadmin/hilfetelefon_de/Downloads/pdf/Pressemeldungen/Hilfetelefon_Jahresbericht_150dpi_US_B2.pdf) (in German).

135. During asylum procedures, it is the task of the case officer to look for indications of human trafficking. To improve the identification of victims, the Federal Office for Migration and Refugees (BAMF), together with IOM and UNHCR, conducted a project entitled "Identification and Protection of Victims of Human Trafficking in the Asylum System". At the beginning of the project, the identification of Nigerian victims of human trafficking for sexual exploitation was evaluated on the basis of 214 anonymised decisions from asylum procedures. The evaluation showed that case officers were insufficiently aware of the indicators of human trafficking. A number of case officers were trained on indicators of THB and deployed at all BAMF field offices where they passed on their knowledge to colleagues. According to information from the BAMF, between 1 January 2012 and 16 December 2014, a total of 80 persons have been identified as victims of human trafficking in the context of the asylum procedure (7 in 2012, 33 in 2013 and 40 in 2014).

136. The identification of victims of human trafficking is particularly difficult in reception centres and detention facilities for irregular migrants. Due to staff shortages, assistance cannot always be provided adequately and sometimes there is also a lack of appropriate foreign language knowledge or interpreters. Therefore, it is often social workers of counselling centres and not of social services which are the first contact for victims. The social workers' dealings with the potential victims however is complicated particularly in initial reception centres due to the victim's brief stay there and the subsequent move to community housing for asylum applicants.

**137. GRETA urges the German authorities to:**

- **strengthen multi-agency involvement in the identification of victims of trafficking by giving a formal role in the identification process to frontline actors such as NGOs, the Financial Monitoring Unit to Combat Illicit Employment (FKS), labour inspectors and other bodies which may come into contact with victims of trafficking;**
- **provide all frontline staff with harmonised operational indicators, guidance and toolkits for the identification of victims of trafficking subjected to different forms of exploitation;**
- **ensure that the police, FKS, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, including for forms of exploitation other than sexual (labour exploitation, forced begging, forced criminality);**
- **set up a procedure for the identification and referral of child victims of trafficking which takes into account the special circumstances and needs of child victims and involves child specialists, child protection services and specialised police and prosecutors.**

138. Moreover, GRETA considers that the German authorities should improve the identification of victims of trafficking among asylum seekers and irregular migrants in detention facilities, including through training of staff working in asylum and detention centres.

b. Assistance to victims

139. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

140. In Germany, trafficking victims are supported by specialised counselling centres run by NGOs that help them access necessary assistance services. The *Länder* co-operation agreements concluded between police services and counselling centres foresee that when the first contact is made by the investigating authorities with a possible victim, the latter must be informed of the possibility of receiving support from an independent counselling service.

141. There are 48 specialised counselling centres for victims of human trafficking in Germany. The services provided by them include: secure accommodation, medical care, psychosocial counselling, education, help with obtaining a residence permit and social benefits, assistance in dealing with public agencies, support during investigation and criminal proceedings, arranging for legal assistance, accompaniment in court, and support in developing options in Germany. The support by counselling centres is free-of-charge, anonymous, confidential and based on the victim's consent.<sup>62</sup> Counselling centres seek to offer assistance in the victim's native language or through the use of interpreters, if possible. GRETA was informed about the absence of adequate long-term funding for counselling centres.

142. Only some of the counselling centres offer support to victims of THB for the purpose of labour exploitation. Some counselling centres have a limited mandate, while others do not offer services for male victims. In Hamburg, for instance, it was decided that the Koofra counselling centre would advise victims of THB for labour exploitation. The trade unions have piloted the provision of counselling services to foreign workers who are subject to difficult or exploitative labour situations (the project "*Faire Mobilität*" with counselling centres in six major cities) on a project basis. However, these services cannot be offered all over the country.

143. In German law, the scope of assistance a trafficking victim is entitled to essentially depends on that person's residence status. Trafficking victims from non-EU countries were until recently only entitled to receive benefits under the Asylum Seekers Benefits Act (AsylbLG), while EU citizens received higher benefits under the Social Code, similar to German nationals (however see also paragraph 145 below). Since 1 March 2015, victims of THB who are non-EU nationals but hold a residence permit under section 25, paragraph 4a, of the Residence Act (see paragraph 160) are also beneficiaries under the Social Code. The Asylum Seekers Benefits Act continues to apply only to victims of trafficking who have not yet been granted a residence permit, in particular during the recovery and reflection period.

144. The Asylum Seekers Benefits Act guarantees only limited support. Recipients of benefits are eligible for medical care only in emergencies and in the case of acute illnesses. The standard benefits do not cover ongoing medical treatment, essential dental care, travel expenses or interpreting services. Payment of the costs of interpretation and translation, which are particularly necessary for the effective exercise of rights, is subject to very strict requirements. According to NGOs, these costs are covered only in exceptional cases; positive experiences have been reported from North Rhine-Westphalia where translation costs are covered irrespective of the nationality of the victim. Moreover, the claiming of benefits reportedly creates a huge workload for counselling centres because for many benefits a separate request has to be made, for instance for the exceptional granting of a therapy. In some *Länder* basic medical care is provided via health cards or vouchers which are valid for three months, granting their holders direct access to doctors. Only a few *Länder* practice the issuing of a voucher on a case by case basis. According to NGOs, not all doctors accept these vouchers, and extra efforts have to be made to persuade a doctor to accept a voucher, or else the victim has to find a more co-operative doctor.

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<sup>62</sup> According to data submitted by the German authorities and based on figures of 12 *Länder*, 38 victims of trafficking refused assistance in 2010, 58 in 2011 and 170 in 2012. The Bavarian authorities indicated that the persons refusing assistance were predominantly German nationals.

145. GRETA was informed that the guidelines of the Federal Agency of Employment that were supposed to clarify who is a beneficiary under section 7, Volume II of the Social Code, have been interpreted inconsistently. Because of this unclear legal situation, EU citizens who have been granted the recovery and reflection period of three months in order to decide whether to co-operate with the investigating authorities are not guaranteed benefits. In practice, some only receive financial support if they agree to testify in court; others are granted benefits under the AsylbLG with less favourable benefits than under the Social Code; and in other cases they receive benefits under the Social Code.

146. For victims of sexual exploitation, short-term accommodation structures have been established. There are several safe apartments run by counselling centres with undisclosed addresses across Germany. Many counselling centres also co-operate with women's shelters, including in emergency situations. In the long run, depending on the individual's needs, victims are usually accommodated in flats. There are no structures to accommodate male victims of THB and victims of labour exploitation and solutions have to be found on an ad hoc basis.

147. The GRETA delegation visited a protected emergency shelter in Berlin run by Ban Ying, a counselling centre for migrant women. Its purpose is to offer housing and counselling to migrant women in distress, including victims of trafficking. Most women stay for 9 – 12 months and receive psycho-social counselling, legal counselling and support with practical matters such as obtaining identity documents. The shelter can accommodate up to 10 women (three bedrooms and a spare room for emergency referrals) and is always fully occupied. Space constraints result in a growing number of women being referred to another emergency shelter for victims of trafficking based in Berlin, shelters for domestic violence victims, or shelters for the homeless. Until 2014 the shelter was entirely funded by the *Land* Berlin government, but since then public funding has become conditional on NGO co-funding. The shelter is operated by 4 part-time staff members (two social workers and two interpreters). During the visit concerns were raised by staff over the limited number of shelter places, the low number of staffing, including the lack of trained psychologists, and difficulties in ensuring appropriate medical care, in particular in relation to substance abuse, resulting psychosis and post-traumatic stress disorders.

148. The GRETA delegation also visited a women's shelter in Frankfurt am Main which co-operates with the counselling centre FIM. The shelter is sponsored by an association belonging to the municipality and has 32 places for women, mainly victims of domestic violence. It regularly accommodates trafficking victims, usually for six to 12 months before the women move to flats with the support of FIM. The Frankfurt City Council expects a 100% occupancy rate, which sometimes poses problems if women have to be accommodated as a matter of urgency, as there is frequently no spare capacity.

149. The child and youth services are tasked with protecting all minors from harm, including victims of THB, and securing their best interests. In an acute situation when a child is at risk, youth welfare offices may take the child into care under section 42 of Social Code VIII and temporarily place him or her with a suitable person, in a suitable facility or in other accommodation. Unaccompanied minors are given a legal guardian. According to NGOs, housing is a real problem in the case of trafficked children. There are not enough shelters and secure accommodation providing round-the-clock care. Conditions also vary a lot from one *Land* to the other, with some failing to place 16 and 17 year olds in special youth centres. The co-operation between youth welfare offices, legal guardians, police officers and specialised counselling centres in the field of trafficking is not consistently ensured. Further, a lack of training for guardianship services for trafficked children has been reported.

150. **GRETA urges the German authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to:**

- **ensure that assistance to victims is not made conditional on their willingness to act as a witness;**
- **provide adequate funding to maintain the provision of assistance; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;**

- **ensure, if necessary by legislative measures, that all victims of trafficking, including EU citizens, can fully benefit from the rights set out in the Convention;**
- **develop adequate counselling centres across the country for victims of THB for the purpose of all types of exploitation, including labour exploitation and other non-sexual forms of exploitation;**
- **ensure that safe and suitable temporary accommodation is provided to male victims of THB, according to their needs;**
- **ensure that child victims of trafficking benefit from the assistance measures provided by the Convention, including guardianship, interpretation, services, dedicated shelters and medical, legal and psychosocial assistance.**

c. Recovery and reflection period

151. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

152. The German authorities have referred to section 59, paragraph 7, of the Residence Act as corresponding to the recovery and reflection period under the Convention, which reads as follows:

“If the Foreigners Registration Office has concrete grounds to suspect that a foreigner has been the victim of a criminal offence [of THB],<sup>63</sup> it shall (...) set a deadline for leaving the country which will allow the foreigner sufficient time to decide whether he or she is prepared to testify [as a witness in the criminal proceedings]. A period of at least three months shall be allowed for departure.”

153. In practice, victims of THB are issued with an “order to leave the territory” valid for at least three months. As there is no maximum duration set in the Residence Act, some *Länder* report that the period given is longer. In Berlin, a period of six months is granted from the outset. The presumed victims cannot be removed from German territory during this period. The period is sometimes granted to EU nationals who have not yet decided whether to co-operate with the authorities, on the basis that they might otherwise be denied assistance under the Social Code during the first three months following their detection in application of the general rules for EU citizens coming to Germany in search of employment (see paragraph 145).

154. GRETA notes that the purpose of the recovery and reflection period under section 59, paragraph 7, of the Residence Act is not as clearly stated as in the Convention, i.e. to enable possible victims of trafficking to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. In GRETA’s view, consideration should be given to amending the legislation by renaming the “order to leave the territory” in order to reflect the spirit in which the recovery and reflection period should be granted.

<sup>63</sup> The offences referred to are: human trafficking for the purpose of sexual exploitation, human trafficking for the purpose of labour exploitation, assisting in human trafficking, or offences under the Act to Combat Clandestine Employment or the Posted Workers Act.

155. The competent body to decide on the granting of the recovery and reflection period is the Foreigners Registration Office, which takes the decision in co-operation with the competent police or public prosecution service. In *Länder* where the Foreigners Registration Office is part of the co-ordination structure, it sometimes acts on the basis of information provided by the counselling centre. The grounds for issuing a recovery and reflection period must be substantiated, such as by a statement by the victim, a police report or information provided by specialised counselling centres.<sup>64</sup>

156. There are no data on the number of recovery and reflection periods granted to victims of THB in Germany.<sup>65</sup> GRETA was informed that the granting of this period functions generally in a satisfactory manner as regards victims of trafficking for sexual exploitation. In most places the police only confirm the suspected victim status of a person to the Foreigners Registration Office after having spoken directly with the victim. Moreover, NGOs informed GRETA that in the majority of cases, trafficked persons were required to be in contact with the prosecuting authorities in the course of the recovery and reflection period. GRETA notes that this practice bears a potential risk for the wellbeing of certain victims which can be counterproductive. Therefore, when taking the decision if and how to approach a victim during the recovery and reflection period, investigators should take into account the purpose of this period, namely that the victim should recover both physically and psychologically and be in a position to take an informed decision in a reasonably calm frame of mind.

157. GRETA was informed that in cases of labour exploitation and child trafficking, the recovery and reflection period is rarely granted and possible victims are not informed about the existence of this period. This is due to the fact that authorities that come into contact with potential victims of labour exploitation and child protection authorities have not been systematically trained to recognise cases of human trafficking and usually do not form part of the *Länder* inter-institutional co-operative alliances and co-operation agreements against human trafficking.

**158. GRETA urges the German authorities to ensure, in compliance with the obligations contained in Article 13 of the Convention, that all possible victims of trafficking, including victims of THB for labour exploitation and of child trafficking, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Public officials performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.**

d. Residence permits

159. Article 14(1) of the Convention provides for two possibilities for the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

160. In Germany, the issuing of residence permits to victims of THB is regulated by section 25, paragraph 4a, of the Residence Act, which provides for three cumulative conditions for issuing such a permit. It reads as follows:

“(...) a foreigner who has been the victim of a criminal offence pursuant to sections 232, 233 or 233a of the Criminal Code may (...) be granted a residence permit for a temporary stay (...). The residence permit may only be issued if:

1. the public prosecutor's office or the criminal court consider his or her temporary presence on the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information,

<sup>64</sup> Point 50.2a.1.2 of the General Administrative Regulation to the Residence Act stipulates that, besides declarations by the presumed victim and the investigation authorities, information submitted by a counselling centre may also be taken into account.

<sup>65</sup> Hamburg is the only *Land* which has submitted statistics on how often the recovery and reflection period has been granted: 36 in 2010, 54 in 2011 and 24 in 2012.

2. he or she has broken off contact with the persons accused of having committed the criminal offence, and
3. he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.”<sup>66</sup>

161. The residence permits under section 25, paragraph 4a, are issued by Foreigners Registration Offices. According to section 72, paragraph 6, of the Residence Act, the competent Foreigners Registration Office must consult the competent public prosecution service or criminal court prior to a decision. The victim's stay is limited to the duration of the criminal proceedings against the traffickers. Under section 26, paragraph 1, sentence 5 of the Residence Act, the residence permit is issued for six months in each instance. A longer period is permissible in justified cases. The requirements for an extension are the same as for the initial granting of the residence permit. There is no maximum time limit on extensions.

162. Victims who have obtained a residence permit are allowed to take up employment pursuant to section 31 of the Regulation Governing Employment. Subsequent family reunification is not allowed. Victims are not entitled to attend an integration course but have access to vocational training and education.

163. The German authorities have indicated that in parallel with these special provisions for the protection of victims of human trafficking the general provisions of the residence law continue to apply, including once criminal proceedings have come to an end. According to the German authorities, victims of human trafficking do not usually face deportation even after the end of the criminal proceedings. A residence permit can be granted on other grounds, in particular, under section 25, paragraph 3 (if a deportation ban applies), paragraph 4 (urgent humanitarian or personal grounds or substantial public interest), or paragraph 5 (departure impossible in fact or in law) of the Residence Act. A residence permit may also be granted for family reunification or for the pursuit of an economic activity.

164. According to figures provided by the German authorities, from 2008 to 30 April 2014, 419 residence permits were issued to 213 persons under section 25, paragraph 4a, of the Residence Act. A deportation or expulsion order is recorded in the central database in respect of 35 of them. Of these only one is registered as having actually left the country (in 2013).

165. GRETA notes that under the Residence Act the possibility of obtaining a residence permit is linked to a trafficking victim's willingness to co-operate with the law enforcement authorities and the value of their testimony. The uncertainty for victims is very high because the issuing of a permit depends on a prosecution for THB taking place. In many cases, investigations do not lead to criminal proceedings for THB; for instance, it might be the case that the victim's information is not considered valuable for the evidence, or is already known by the police, the perpetrators remain unidentified or the prosecution service decides that there is not sufficient evidence to bring charges of THB.

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See footnote 11.

166. A survey of counselling centres for victims of human trafficking, conducted on behalf of the Federal Working Group on THB in 2013, has shown that a large proportion of victims from third countries decide against contacting the authorities. According to this survey, only 14% of non-EU citizens reported the crimes perpetrated against them to the police.<sup>67</sup> The main reasons given were fear of the perpetrators and legal uncertainty.

167. According to NGOs, although trafficking victims sometimes spend years in Germany until the end of the criminal proceedings, it is very difficult for victims to find a job and accommodation, since the residence permit is usually granted only for six months at a time.

168. Section 25, paragraph 4a, of the Residence Act does not distinguish between adult and child victims. Both groups of victims are required to co-operate with the law enforcement agencies in order to be issued a residence permit. In this context, GRETA notes that the UN Committee on the Rights of the Child has expressed concerns about this situation and has recommended that Germany revises the Residence Act in order to remove any conditions linked to the provision of residence permits to child victims of trafficking.<sup>68</sup> Where there is doubt as to the likelihood of children being adequately protected in their country of origin, their departure is not enforced and many unaccompanied minors remain in Germany until the age of majority. However, their presence in Germany is only accepted pending their expulsion, which implies a worse legal position for a child compared with an adult who is granted a residence permit.

**169. GRETA considers that the German authorities should take further steps to ensure that victims of trafficking are able to benefit from a residence permit in Germany and the rights attached to it.**

**170. GRETA also considers that the German authorities should take additional steps to ensure that child victims of trafficking may be granted a residence permit on the basis of their best interests and not on the basis of their willingness or ability to co-operate with judicial bodies.**

**171. Further, GRETA invites the German authorities to consider reviewing the relevant legislation so as to provide residence permits to victims of THB who are unable to co-operate with the authorities, on the basis of their personal situation.**

e. Compensation and legal redress

172. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the state. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

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<sup>67</sup> Report of the Sub-Working Group "residential law" of the Federal Working Group on Trafficking in Human Beings on residential law for victims of THB and labour exploitation, July 2013. Available at: [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Ergebnispapiere\\_Zusammenfassungen\\_Hintergrundpapiere/Bericht\\_der\\_Unterarbeitsgruppe\\_Aufenthaltsrecht\\_der\\_Bund\\_Laender-AG\\_Menschenhandel.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Ergebnispapiere_Zusammenfassungen_Hintergrundpapiere/Bericht_der_Unterarbeitsgruppe_Aufenthaltsrecht_der_Bund_Laender-AG_Menschenhandel.pdf) (German only).

<sup>68</sup> See document CRC/C/DEU/CO/3-4, 31 January 2014, paragraphs 72, 73.

173. In Germany, victims of human trafficking can claim damages for all material and non-material harm caused by offenders. Such claims are founded in section 823 of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) on liability in damages, in conjunction with sections 249 BGB (nature and extent of damages) and 253 BGB (intangible damage). Damage claims against the perpetrator can be enforced by victims either in a civil action or by bringing a civil claim in the framework of criminal proceedings.<sup>69</sup> When claiming damages in a civil action the victim can apply for legal aid. Under section 114 ff. of the Code of Civil Procedure, any party who, due to their personal and economic circumstances, is unable to pay the costs of litigation, is granted assistance with court costs on application, provided that the action they intend to bring has sufficient prospects of success. Assistance includes payment of court costs and, if necessary, the costs of a lawyer.

174. Official judicial statistics on compensation awarded to victims of THB do not exist, but a survey among counselling centres from 2009 showed that victims of trafficking have only rarely received compensation from the perpetrators.<sup>70</sup> Due to insufficient assets of the perpetrators and failure to seize assets in time, the levels of compensation have been low. In a few cases, victims were awarded between 12 000 and 30 000 euros. In most cases, however, compensation was significantly lower: 1 000 to 4 000 euros.

175. GRETA was informed that many trafficked persons without residence permits who have not been formally identified as victims are deterred from claiming compensation for unpaid wages before labour courts despite the fact that non-EU citizens without a legal residence permit are entitled to do so. The reason is that civil courts (including labour courts) are required to share their data with Foreigners Registration Offices under section 87, paragraph 2, of the Residence Act and the persons concerned fear that the Foreigners Registration Offices would initiate measures terminating their residence in Germany.

176. Victims of violent crime, including victims of THB, can apply for compensation under the Crime Victims Compensation Act (OEG). Following an application, the competent authority<sup>71</sup> verifies the request and decides whether compensation under the OEG is granted. There is no time limit for applications. The compensation includes the cost of medical treatment, payment of a pension that is independent of income and based on long-term effects of the injury, and income-based payments to replace lost wages.

177. Section 1 of the OEG stipulates that any person who, in Germany, has sustained a personal injury as a result of wilful, unlawful physical assault against him/herself shall be entitled, upon application, to compensation on account of the resulting health damage and economic damage. Victims who have experienced psychological but no physical violence are excluded from the scope of the OEG because the law requires a direct "physical assault" against the victim. In their comments on the draft GRETA report, the German authorities informed GRETA that the Federal Government is working on a reform of the state compensation legislation within the framework of which the victims of psychological violence, and particularly those of trafficking in human beings, would be given greater consideration.

178. Foreign nationals can claim compensation under the OEG. Nationals of other EU member states are awarded the same compensation as German nationals, while for third country nationals the scope of compensation depends on the length of their stay in Germany. Non-EU nationals who are expelled or deported, leave the country and no longer possess a valid residence permit, or leave and do not legally re-enter the country within six months, receive the compensation in the form of a lump-sum.

<sup>69</sup> This "adhesive procedure" ("*Adhäsionsverfahren*") is foreseen under sections 403 ff. StPO.

<sup>70</sup> Rabe, Compensation and remuneration for trafficked persons in Germany; in: Human Trafficking in Germany - Strengthening Victims' Human Rights, German Institute for Human Rights, 2009.

<sup>71</sup> According to section 6 OEG, the authorities responsible for the implementation of the Federal War Victims Compensation Act are responsible for the implementation of the Crime Victims Compensation Act.

179. GRETA was informed that the procedures leading to state compensation are usually rather long and have a low success rate. Proceedings can often last two to three years. The competent agencies often wait for the end of criminal proceedings before deciding on the victim's claim. According to information available to counselling centres, only a few victims of THB have been compensated under the OEG. Thus compensation has been paid to women trafficked for the purpose of sexual exploitation, who testified in criminal proceedings, and whose residence in Germany following the conclusion of the proceedings was secure. Compensation was paid for physical injuries. Payments and benefits included pensions of between 130 and 300 euros per month, the cost of therapies, and dental prostheses or other medical services.

**180. GRETA considers that the German authorities should systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the state and the procedures to be followed, and ensure that victims have effective access to legal aid in this respect.**

**181. GRETA also urges the German authorities to ensure that all victims of trafficking, including children, have effective access to state compensation, regardless of their nationality, type of exploitation and without needing to have sustained a physical assault.**

f. Repatriation and return of victims

182. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the state of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore, a victim may not be returned where such action would be in contravention of the state's obligation of international protection, recognised in Article 40(4) of the Convention.

183. In Germany, return of victims of THB to their home countries or to other countries in cases of third-country migration is primarily managed by counselling centres. In many cases, the counselling centres arrange for the payment of travel costs and organise the return journey. They accompany the victim to the point of departure and, if desired, refer them to partner organisations in the home country. The NGO SOLWODI, which runs several counselling centres across Germany, has for instance a network of partner organisations in receiving countries that assist the person concerned after return. The Hamburg counselling centre Koofra also maintains contact with counselling and support organisations in victims' home countries.

184. Victims of human trafficking who voluntarily return receive repatriation support under the federal REAG/GARP programme.<sup>72</sup> In derogation from the general rules for EU nationals in general, the repatriation support is expressly available for EU nationals if they are victims of human trafficking. The programme is administered by IOM on behalf of the Ministry of the Interior and the relevant *Land*. It is implemented in co-operation with local and regional authorities, voluntary welfare organisations, specialised NGOs and the UNHCR.

<sup>72</sup> Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme.

185. In the case of children, before a child is returned to his/her home country, the competent youth welfare office must be informed. The border authority responsible for the return of an unaccompanied minor has to receive assurance via the relevant embassy that he/she will be handed over to a member of his/her family, another person responsible for the care and custody, or an appropriate reception centre. If this is not possible, the border authorities refrain from terminating the minor's residence. Regardless of residence status issues the competent youth office will be involved early on by the border authorities, and a deportation without prior knowledge of the youth office is not legally possible. Between January and November 2014, the German border authorities identified approximately 1000 unaccompanied minors, about 30 of whom were returned or denied entry.

186. **GRETA considers that the German authorities should take further steps to:**

- **ensure that return procedures for victims of trafficking are implemented with due regard for their rights, safety and dignity. This means informing victims about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;**
- **develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration;**
- **ensure compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention.**

#### **4. Implementation by Germany of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### a. Substantive criminal law

187. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

188. The penalty for the basic offences under section 232, paragraph 1 (THB for the purpose of sexual exploitation), and section 233, paragraph 1 (THB for the purpose of labour exploitation), is imprisonment from six months to 10 years. The penalty in case of aggravating circumstances under section 232, paragraphs 3 and 4, is imprisonment from one to 10 years. According to section 232, paragraph 5, in less serious cases the penalties may be reduced. The same rules for aggravation and mitigation apply to section 233 *mutatis mutandis*. The penalty for offences under section 233a (Assisting in THB), paragraph 1, StGB, is imprisonment from three months to five years, and in the presence of aggravating circumstances listed in paragraph 2 of this section, from six months to 10 years.

189. Under section 46, paragraph 2, sentence 2, StGB, the court is required to take account of the offender's prior history, which includes the offender's criminal record in sentencing. According to the German authorities, the unanimous opinion in case law and legal literature is to take into account previous convictions in foreign countries.<sup>73</sup>

<sup>73</sup> See Federal Court of Justice (BGH), decision of 1 August 2007 (5 StR 282/07 and StV 2007 632); BayObLGSt (Bavarian Higher Regional Court criminal cases), judgment of 17 March 1978 (RReg 2 St 429/77 and JZ 78, 449); Schönke/Schröder-Stree, StGB, 28th ed., § 46, at 32; LK-Theune, StGB, 12th ed., § 46, at 174.

190. According to section 23 StGB, any attempt to commit a felony – an unlawful act punishable by a minimum sentence of one year’s imprisonment – entails criminal liability, while other criminal offences (“misdemeanours”) only carry criminal liability if expressly provided for. The aggravating circumstances of the criminal offences of THB under section 232, paragraphs 3 and 4 and section 233, paragraph 3, StGB, are felonies and hence the attempt thereof is punishable. For the remaining offences pertaining to THB, the corresponding criminal liability for attempting to commit them is stipulated in paragraphs 2 of sections 232 and 233 as well as in paragraph 3 of section 233a. Under section 23, paragraph 2, StGB, an attempt may be punished more leniently than the completed offence, in accordance with the mitigation rules set out in section 49, paragraph 1, StGB.

191. Pursuant to section 26 StGB, abetting is subject to penalties equal to those applicable to the abetted offence. According to section 27 StGB, anyone who intentionally assists another person in the intentional commission of an unlawful act is to be convicted and sentenced as an aider. The sentence for the aider is based on the penalty for main protagonist, but is reduced by virtue of section 49, paragraph 1. The act constituting the offence may in certain situations qualify both as aiding under section 232 or 233 StGB and an offence as defined by section 233a StGB. The German authorities are not aware of published decisions on this issue, but the predominant view in the legal literature is that the offence with the more serious sentencing range is applicable and that in the case of section 233a, subsection 2, StGB this section should apply.<sup>74</sup>

192. Germany does not criminalise the use of services of a person with the knowledge that the person is a victim of trafficking in human beings, except in the particular scenario of the sexual abuse of juveniles (section 182 StGB). Under paragraph 1 of section 182, it is a punishable offence to abuse a person below 18 years of age by engaging in sexual activity with that person in utilisation of an exploitative situation, which can apply to victims of human trafficking. This offense is punished by imprisonment of up to five years or a fine. Moreover, the Act to Combat Clandestine Employment criminalises the employment of a foreigner without residence permit who is a victim of human trafficking when the employer knowingly abuses the predicament of the person concerned.<sup>75</sup>

193. The criminalisation of acts relating to travel and identity documents is provided for in sections 267, 271 and 273 StGB (forgery, causing wrong entries to be made in public records, and tampering with official identity documents), section 276 StGB (acquisition of false official identity documents), section 274, paragraph 1, No. 1 StGB (suppression of documents).

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<sup>74</sup> Schönke/Schröder-Eisele, 29th edition, § 233a StGB, para. 10, Lackner/Kühl, 28th edition, § 233a StGB, para. 7 and LK-Kudlich, StGB, 12th edition, § 233a para. 31; on the assumption of a concurrence of offences in these cases Münchener Kommentar-Renzikowski, § 233a StGB, para. 34 and Kindhäuser/Neumann/Paeffgen-Böse, 4th edition, § 233a StGB, para. 7.

<sup>75</sup> Section 10a of the Act to Combat Clandestine Employment, entitled “Employment of foreigners who are not in possession of a visa or valid residence permit, who are victims of human trafficking”, reads as follows: “Any person who, in contravention of section 4 subsection 3 sentence 2 of the Residence Act, employs a foreigner and in doing so exploits a predicament in which the foreigner finds him/herself owing to an act pursuant to section 232 or 233 of the German Criminal Code which a third party has perpetrated against him or her, shall be punishable by imprisonment for a term of no less than three years or a fine” (unofficial translation provided by the German authorities). It was inserted by Federal Law of 22.11.2011 (Official Journal I p. 2258) and entered into force on 26.11.2011.

194. When it comes to corporate liability, German law features a mechanism to impose administrative sanctions on legal persons under regulatory offences law. Under section 30 of the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz, OWiG*), a fine can be imposed on legal persons if their representatives (decision making bodies, members of executive committees and others in managerial positions) have committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person have been violated, or where the legal person has been enriched or was intended to be enriched. There is general consensus that legal persons covered by section 30 OWiG include public law entities but not territorial entities (like the federal state and the *Länder*). The regulatory fine can amount to up to 10 million euros if the criminal offence was committed with intent, and up to 5 million euros in case the offence was committed negligently. The regulatory fine shall exceed the financial benefit that the perpetrator has obtained from committing the regulatory offence. If the statutory maximum (i.e. 5 million or 10 million euros) does not suffice for that purpose, it may be exceeded. The German authorities informed GRETA that they are not aware of cases where fines were imposed against legal persons in connection with human trafficking.

195. GRETA was informed by civil society organisations, public officials and law enforcement authorities that the current wording of section 233 StGB (trafficking for the purpose of labour exploitation) makes this offence very difficult to prove. Section 233 lists several subjective elements which are very difficult to provide evidence for and has been interpreted in a restrictive manner by the Federal Court of Justice. As a result, perpetrators of THB for labour exploitation are often not charged with this offence, but with other offences which are easier to prove and carry significantly lower penalties.<sup>76</sup> There is a consensus between practitioners that the current legislation is ineffective and does not lead to a relevant number of prosecutions and convictions for THB for labour exploitation.

**196. GRETA considers that the German authorities should conduct a thorough and comprehensive assessment of the criminal law provisions concerning THB for the purpose of labour exploitation and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions, with a view to addressing any shortcoming identified.**

**197. Further, GRETA invites the German authorities to consider the criminalisation of the use of services of a victim of THB with the knowledge that the person is a victim of THB, for all forms of exploitation.**

b. Non-punishment of victims of trafficking in human beings

198. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

199. German legislation does not contain a specific provision on the non-punishment of victims of THB. When it comes to applying the non-punishment principle on the basis of existing legislation, the German authorities have pointed to several provisions of substantive and procedural criminal law.

200. In the first place, section 154c, paragraph 2, StPO stipulates that the public prosecution office may dispense with prosecution if a victim of coercion or extortion files charges in respect thereof and if as a result a misdemeanour committed by the victim comes to light (unless punishment is imperative because of the seriousness of the offence). GRETA notes that under this provision the prosecutor has ample discretion when deciding whether to dispense with the prosecution of a victim or not.

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<sup>76</sup> For instance, section 266a StGB (non-payment and misuse of wages and salaries).

201. Another possibility is to apply section 170, paragraph 2, StPO, which stipulates that the public prosecutor's office shall terminate the proceedings if the investigation does not offer sufficient reason for bringing charges. This means, however, that a decision is only taken at the very end of the investigation, i.e. when the prosecutor takes the decision whether to bring charges, leaving the victim in an uncertain situation for a long time. The bringing of charges can also be dispensed with under sections 153 and 153a StPO, by the prosecutor or the judge, because the trafficking victim's alleged guilt is considered to be of a minor nature and there is no public interest in prosecution (the person may be asked instead to pay a sum of money to a non-profit organisation).

202. Aside from the procedural law options for dispensing with prosecution, a coerced act may be not punishable in the first place under the substantive law rules of duress. Under section 35 of the Criminal Code (StGB), a person who, faced with an imminent danger to his/her life, physical integrity or freedom that cannot otherwise be averted, commits an unlawful act to avert the danger from him/herself, generally acts without guilt. However, the application of this provision includes a high degree of uncertainty, because for example it could be argued that the danger could have been averted otherwise.

203. GRETA received contradictory information on the application of the non-punishment principle. When it comes to infringements of the residence law, victims of trafficking are reportedly usually not penalised. However, GRETA was informed that in several cases of labour exploitation of Chinese cooks, the victims had to pay a sum of money in order not to have charges brought against them for a breach of the residence law, in application of section 153a StPO. On the whole, the non-punishment principle does not appear to be guaranteed for victims of trafficking in a coherent manner. This is due to a lack of knowledge of the principle amongst the police, prosecutors and judges.

**204. GRETA urges the German authorities to ensure that victims of THB are not penalised for offences committed in the course, or as a consequence, of being trafficked. The German authorities should assess the implementation by the judicial and other relevant authorities of the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified. In this context, the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment principle to victims of THB should be envisaged.**

c. Investigation, prosecution and procedural law

205. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

206. The German Code of Criminal Procedure is governed by the principle of mandatory prosecution of offences (*Legalitätsprinzip*). Under this rule, the public prosecution service is required to take up investigations provided there are sufficient factual indications of a prosecutable criminal offence (sections 152, paragraph 2, and 160, paragraph 1, StPO). After completing the investigation, the public prosecution service is required to bring charges if the investigation offers sufficient reason for doing so (section 170, paragraph 1, StPO). The public prosecution service thus acts *ex officio*. There are exceptions for specific, generally less severe offences that are prosecutable only upon application by the victim, but THB is not one of them.

207. As concerns the support of victims during criminal proceedings, section 406f, paragraph 2, StPO, stipulates that a victim of a criminal offence may be accompanied by a person they trust during their examination as a witness. This person may also be a member of a counselling centre supporting victims of human trafficking. In general, it is part of the tasks fulfilled by counselling centres to prepare the victim for their participation in the proceedings

208. Germany has in place a comprehensive legal framework concerning both provisional measures (seizure and attachment, sections 111b ff. StPO) for securing proceeds of crime as well as on confiscating instrumentalities (section 74 StGB) and on forfeiting proceeds of crime (section 73 StGB). The provisions on forfeiture and confiscation can also be applied to third parties when the crime has been committed on behalf of the third party and for his/her benefit or in cases where a third party has knowledge of the fact that the property he/she acquired derives from criminal activities (section 73, paragraph 4, StGB).

209. According to the 2013 National Situation Report on Trafficking in Human Beings published by the BKA, assets to the value of 550 000 euros were provisionally secured in 17 criminal proceedings.<sup>77</sup> GRETA notes that despite the existence of the necessary legal framework, the seizure of assets is realised in a disappointingly low proportion of investigations (2% in 2011 and 2012). Moreover, the German authorities informed GRETA that the number of convictions which lead to confiscation of assets was very low: one in 2012, five in 2011 and one in 2010. This also has an impact on the low level of compensations paid to victims of trafficking (see paragraph 174). GRETA stresses that confiscation presupposes the detection, identification and seizure of unlawful assets during the judicial investigation, as well as the introduction of the necessary procedures. **GRETA considers that the German authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.**

210. The use of special investigation techniques requires prior judicial authorisation. The prosecutor can authorise some of these measures (e.g. wiretapping) without prior judicial authorisation when there is a danger in delay. The order issued by the public prosecutor's office becomes ineffective if it is not confirmed by a judge within three working days. The following special investigation techniques and methods may be applied in cases of human trafficking: telecommunications surveillance (pursuant to section 100a, paragraph 1, in conjunction with section 100a, paragraph 2, alinea 1 i) StPO), surveillance of the home (pursuant to section 100c, paragraph 1, in conjunction with section 100c, paragraph 2, alinea 1 g) StPO), and undercover investigations (pursuant to section 110a StPO).

211. The legal requirements for more intrusive surveillance are stricter. According to section 100c StPO, private speech on private premises may be intercepted and recorded without the knowledge of the person concerned if the facts give rise to the suspicion that a person, either as a perpetrator or as an inciter or accessory, has committed a particularly serious criminal offence or has attempted to commit such an offence. In the case of THB, only the scenarios of aggravating circumstances contained in section 232, paragraphs 3 to 5 and paragraph 3 of section 233 StGB qualify for this measure.

212. According to data from the Federal Statistical Office, 192 criminal proceedings were initiated for THB in 2010, 148 in 2011, 162 in 2012, and 135 in 2013. There were 131 convictions for THB (sections 232, 233 and 233a of the StGB) in 2010, 117 in 2011, 128 in 2012 and 93 in 2013.<sup>78</sup> Given the actual number of victims identified, these numbers appear to be rather low.

<sup>77</sup> In 2012: 103 000 euros in 12 proceedings; in 2011: 340 000 euros in 12 proceedings.

<sup>78</sup> Sentences against both adult and juvenile offenders.

213. The figures of the Federal Statistical Office on convictions in 2013 show that 64 persons were convicted of THB for the purpose of sexual exploitation, 11 for THB for the purpose of labour exploitation, and one for assisting in THB.<sup>79</sup> With regard to convictions for THB for sexual exploitation, under section 232 StGB, 95% of the convictions resulted in imprisonment. However, 72% of the sentences of imprisonment were suspended. As for the prison terms, 29% were for up to and including one year, 48% for up to two years, 5% for up to three years, 13% for up to five years, and 5% for five to ten years.

**214. GRETA considers that the German authorities should take further measures to ensure that THB is investigated and prosecuted effectively, resulting in proportionate and dissuasive sanctions. In this context, GRETA considers that there is need for continuing to improve the specialisation and training of judges and prosecutors regarding THB (see paragraph 73).**

d. Protection of victims and witnesses

215. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

216. It is up to the competent police unit (victim protection units, investigating units or witness protection units) in the relevant *Land* to perform a risk analysis for victims of human trafficking. These units usually work in close co-operation with the counselling centre supporting the victim. According to the risk faced by the particular victim of human trafficking, the competent police unit in co-operation with the counselling centre and other public agencies involved decides on appropriate measures to protect the victim. Possible measures to be taken include: securing the home or other places of abode; direct protection; data shielding; secure accommodation; supporting relocation; change of name; accompaniment in court proceedings by the police and support organisations; using the criminal court witness care unit; protection measures before, during and after examination or court appearances, protection in connection with other public appointments that may be known to the offenders; providing security-relevant information to the counselling centre supporting the victim; visits to at-risk individuals and groups, including recommendations on conduct of, and advice on, securing the home; measures against potential offenders (e.g. warning visits).

217. High-risk victims whose testimony is crucial to criminal proceedings can also be placed under a police witness protection scheme, pursuant to the Witness Protection Harmonisation Act (ZSHG). This is subject to specific criteria applicable on a case by case basis. The German authorities have explained that victims of THB rarely fulfil the prerequisites for being admitted to a witness protection programme as stipulated in section 1 ZSHG. From 2009 to 2014, 11 victims of human trafficking were formally placed under witness protection programmes in the *Länder* and by the Federal Police. Instead of including trafficking victims in the witness protection programme, the Federal Criminal Police Office operates a safety system adapted to the needs of the victim based on sections 6 and 26 of the Federal Criminal Police Office Act, in co-operation with special counselling services. From 2009 to 2014, the BKA applied such measures for three trafficking victims. Also at *Länder* level, such individually adapted protection measures for victims are applied. For example, Rhineland-Palatinate reported 18 cases during the above-mentioned period.

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Sentences against adult offenders.

218. The provisions of the StPO include a range of measures to protect crime victims and witnesses. In order to protect the private life and identity of witnesses in court proceedings, they may be permitted to give only an address to which documents can be sent instead of stating their place of residence. Moreover, the witness may be permitted not to provide personal identification data or to provide such data only in respect of an earlier identity (section 68 StPO). Additionally, under sections 171b and 172 of the Courts Constitution Act (*Gerichtsverfassungsgesetz, GVG*), the public can be excluded from court hearings on witness protection grounds.

219. Other provisions relate to witness protection from intimidation during main court hearings. As stipulated in section 247 StPO, the court may order the defendant to leave the courtroom during an examination if there is a fear that a witness might not tell the truth when examined in the presence of the defendant. The same applies if the defendant's presence poses an imminent risk of serious detriment to the health of a witness or if the defendant's presence could lead to a considerable detriment to the well-being of a witness under 18 years of age. Alternatively, if there is an imminent risk of serious detriment to the well-being of the witness if he/she were examined in the presence of those attending the main hearing, the witness can also be examined by live video link.

220. Audio-visual recordings of interviews are allowed under section 58a StPO. Subject to certain requirements, such audio-visual recordings can be shown instead of examining a witness in the main hearing (section 255a StPO).

221. The Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV) contain special provisions for the protection of minors. Point 19 RiStBV stipulates that repeat examination of minors prior to the main hearing is to be avoided where possible in view of the associated emotional stress on such witnesses. Under point 135 RiStBV, minors are to be examined prior to other witnesses where possible, and are to be supervised and, where possible, provided with support in waiting rooms. Furthermore, only the presiding judge examines witnesses under the age of 18 (section 241a StPO).

**222. GRETA considers that the German authorities should make full use of the measures available to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after court proceedings.**

**223. Moreover, GRETA invites the German authorities to review the practical application of legal and other measures to protect victims and witnesses of THB in order to establish whether these measures are effectively being applied in favour of victims and witnesses of THB and actually help to protect them.**

## 5. Concluding remarks

224. GRETA welcomes the steps taken by the German authorities to combat trafficking in human beings and support victims of trafficking, including through the adoption of legislation and the setting up of co-ordination structures at federal level and in most of the Länder, with the involvement of civil society organisations. GRETA also commends the German authorities' efforts in the area of international co-operation.

225. However, there are a number of challenges which remain to be tackled through legislative, policy or practical measures in order to meet the requirements of the human rights-based and victim-centred approach of the Convention (see paragraphs 36 to 39). GRETA stresses the importance of ensuring that all victims of trafficking are identified as such and can benefit from the assistance and protection measures provided for in German law and the Convention. Efforts to proactively identify victims of THB need to be significantly increased. The public funding for victim assistance measures by NGOs should be given a more sustainable basis.

226. GRETA particularly highlights the need to raise awareness and improve victim identification of trafficking for the purpose of labour exploitation. The German authorities also need to pay increased attention to child trafficking, by building co-operation networks between child protection services, NGOs and law enforcement agencies. The identification of victims of THB among asylum seekers and irregular migrants also must be improved.

227. The application of the recovery and reflection period should be reviewed to ensure that all possible victims of trafficking are systematically informed of the possibility to benefit from such a period. Furthermore, efforts should be strengthened to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit, in particular before and after criminal proceedings.

228. Strengthening the effectiveness of investigations and prosecutions of human trafficking-related offences, with a view to securing proportionate and dissuasive sanctions, is another area where further action is needed. Measures should also be taken to ensure that victims of trafficking have effective access to compensation.

229. All relevant professionals who may come into contact with possible victims of trafficking, including law enforcement officials, prosecutors, judges, labour inspectors, migration officials, asylum officials, staff of detention centres for irregular migrants, social workers, medical staff and staff of counselling centres, need to be continuously trained on the need to apply a human rights-based approach to action against THB on the basis of the Convention and the case law of the European Court of Human Rights.

230. GRETA invites the German authorities to keep it informed on a regular basis of the developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

## Appendix I: List of GRETA's proposals

### Definition of trafficking in human beings

1. GRETA considers that the German authorities should ensure that all the means included in the Convention are appropriately taken into account.
2. GRETA urges the German authorities to ensure that the definition of THB in the Criminal Code fully complies with the Convention.

### Comprehensive approach and co-ordination

3. GRETA considers that the German authorities should strengthen and harmonise the institutional frameworks and co-ordination structures for action against THB at federal level, between federal and *Länder* level, between the *Länder* as well as within each *Land*. The aim should be to ensure greater coherence and effectiveness of the actions of all public bodies playing a role in combating and preventing THB in all its forms, and to protect trafficking victims without discrimination, irrespective of their place of residence in Germany.
4. Moreover, GRETA considers that the German authorities should strengthen co-ordination between public bodies and NGOs engaged in anti-trafficking action by involving civil society in the development and implementation of anti-trafficking policy, including the evaluation of anti-trafficking efforts, at federal and *Länder* level.
5. GRETA also urges the German authorities to take steps to ensure that national action to combat THB is comprehensive, in particular by:
  - developing a comprehensive national action plan or strategy against THB which addresses trafficking for all forms of exploitation;
  - paying particular attention to trafficking in children, through dedicated co-ordination and co-operation measures linking existing child protection structures, especially at the *Länder* level, with anti-trafficking expertise from state and non-state actors;
  - strengthening action to combat THB for the purpose of labour exploitation by involving civil society, trade unions, the Financial Monitoring Unit to Combat Illicit Employment and the private sector, and improving the identification of and assistance to victims of THB for the purpose of labour exploitation.
6. In addition, GRETA invites the German authorities to consider the establishment of an independent National Rapporteur or designate another independent mechanism to monitor the anti-trafficking activities of state institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

### Training of relevant professionals

7. GRETA considers that the German authorities should continue to invest in providing regular training on issues related to THB for different forms of exploitation and the rights of victims of trafficking, to all professionals who may come into contact with victims of THB, in particular police officers, prosecutors, judges, social workers, medical staff, labour inspectors, staff of counselling centres, migration officials, asylum officials and staff of detention centres for irregular migrants. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

## **Data collection and research**

8. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the German authorities to develop and maintain a comprehensive and coherent data collection system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database. The collection of data should also cover the recovery and reflection period granted to victims of trafficking and the compensation paid to them.

## **International co-operation**

9. GRETA commends the efforts made in the area of international co-operation by the German authorities and invites them to continue developing international co-operation with a view to preventing human trafficking, assisting victims of trafficking, and investigating and prosecuting human trafficking offences, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.

## **Measures to raise awareness**

10. GRETA considers that the German authorities should continue raising awareness on THB and plan future information and education campaigns in a comprehensive manner, with the involvement of civil society and in the light of the assessment of previous measures, focusing on the needs identified. Moreover, GRETA urges the German authorities to develop measures to raise awareness of trafficking of children and other forms of trafficking (such as for the purpose of forced begging, forced criminality and organ removal).

## **Measures to discourage demand**

11. GRETA considers that the German authorities should make further efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with the private sector and civil society, including trade unions and employers.

## **Social, economic and other initiatives for groups vulnerable to THB**

12. GRETA welcomes the measures supported by the German authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the German authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Germany.

## **Border measures to prevent THB and measures to enable legal migration**

13. GRETA invites the German authorities to further strengthen efforts to prevent THB among private domestic staff in diplomatic households and encourage participation in the annual information sessions for this target group.

## **Identification of victims of trafficking in human beings**

14. GRETA urges the German authorities to:

- strengthen multi-agency involvement in the identification of victims of trafficking by giving a formal role in the identification process to frontline actors such as NGOs, the Financial Monitoring Unit to Combat Illicit Employment (FKS), labour inspectors and other bodies which may come into contact with victims of trafficking;
- provide all frontline staff with harmonised operational indicators, guidance and toolkits for the identification of victims of trafficking subjected to different forms of exploitation;

- ensure that the police, FKS, labour inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, including for forms of exploitation other than sexual (labour exploitation, forced begging, forced criminality);
- set up a procedure for the identification and referral of child victims of trafficking which takes into account the special circumstances and needs of child victims and involves child specialists, child protection services and specialised police and prosecutors.

15. Moreover, GRETA considers that the German authorities should improve the identification of victims of trafficking among asylum seekers and irregular migrants in detention facilities, including through training of staff working in asylum and detention centres.

### **Assistance to victims**

16. GRETA urges the German authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that assistance to victims is not made conditional on their willingness to act as a witness;
- provide adequate funding to maintain the provision of assistance; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- ensure, if necessary by legislative measures, that all victims of trafficking, including EU citizens, can fully benefit from the rights set out in the Convention;
- develop adequate assistance structures across the country for victims of THB for the purpose of all types of exploitation, including labour exploitation and other non-sexual forms of exploitation;
- ensure that safe and suitable temporary accommodation is provided to male victims of THB, according to their needs;
- ensure that child victims of trafficking benefit from the assistance measures provided by the Convention, including guardianship, interpretation, services, dedicated shelters and medical, legal and psychosocial assistance.

### **Recovery and reflection period**

17. GRETA urges the German authorities to ensure, in compliance with the obligations contained in Article 13 of the Convention, that all possible victims of trafficking, including victims of THB for labour exploitation and of child trafficking, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Public officials performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

### **Residence permits**

18. GRETA considers that the German authorities should take further steps to ensure that victims of trafficking are able to benefit from a residence permit in Germany and the rights attached to it.

19. GRETA also considers that the German authorities should take additional steps to ensure that child victims of trafficking may be granted a residence permit on the basis of their best interests and not on the basis of their willingness or ability to co-operate with judicial bodies.

20. Further, GRETA invites the German authorities to consider reviewing the relevant legislation so as to provide residence permits to victims of THB who are unable to co-operate with the authorities, on the basis of their personal situation.

### **Compensation and legal redress**

21. GRETA considers that the German authorities should systematically provide information to victims of trafficking, in a language that they can understand, on their right to compensation from the traffickers and/or the state and the procedures to be followed, and ensure that victims have effective access to legal aid in this respect.

22. GRETA also urges the German authorities to ensure that all victims of trafficking, including children, have effective access to state compensation, regardless of their nationality, type of exploitation and without needing to have sustained a physical assault.

### **Repatriation and return of victims**

23. GRETA considers that the German authorities should take further steps to:

- ensure that return procedures for victims of trafficking are implemented with due regard for their rights, safety and dignity. This means informing victims about existing programmes, protecting them from re-victimisation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child;
- develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration;
- ensure compliance with the non-refoulement obligation under Article 40, paragraph 4, of the Convention.

### **Substantive criminal law**

24. GRETA considers that the German authorities should conduct a thorough and comprehensive assessment of the criminal law provisions concerning THB for the purpose of labour exploitation and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions, with a view to addressing any shortcoming identified.

25. Further, GRETA invites the German authorities to consider the criminalisation of the use of services of a victim of THB with the knowledge that the person is a victim of THB, for all forms of exploitation.

### **Non-punishment of victims of trafficking in human beings**

26. GRETA urges the German authorities to ensure that victims of THB are not penalised for offences committed in the course, or as a consequence, of being trafficked. The German authorities should assess the implementation by the judicial and other relevant authorities of the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, and be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified. In this context, the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment principle to victims of THB should be envisaged.

**Investigation, prosecution and procedural law**

27. GRETA considers that the German authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.

28. GRETA considers that the German authorities should take further steps to ensure that THB is investigated and prosecuted effectively, resulting in proportionate and dissuasive sanctions. In this context, GRETA considers that there is need for continuing to improve the specialisation and training of judges and prosecutors regarding THB.

**Protection of victims and witnesses**

29. GRETA considers that the German authorities should make full use of the measures available to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after court proceedings.

30. Moreover, GRETA invites the German authorities to review the practical application of legal and other measures to protect victims and witnesses of THB in order to establish whether these measures are effectively being applied in favour of victims and witnesses of THB and actually help to protect them.

## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

#### Federal ministries and agencies

- Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
- Federal Ministry of the Interior
- Federal Ministry of Justice and Consumer Protection
- Federal Ministry for Labour and Social Affairs
- Federal Foreign Office
- Federal Ministry for Economic Co-operation and Development
- Federal Office for Migration and Refugees
- Federal Criminal Police Office
- Federal Finance Offices

#### Länder bodies and agencies

##### Berlin

- Senate Department of the Interior and for Sports
- Senate Department of Justice and Consumer Protection
- Senate Department for Labour, Integration and Women's Affairs
- Prosecution Service
- Criminal Police Office
- Foreigners Registration Office
- Office for Health and Social Affairs

##### Hamburg

- Departmental Authority of the Interior and for Sports
- Departmental Authority of Justice and Gender Equality
- Departmental Authority for Labour, Social Affairs, Family Affairs and Integration
- Prosecution Service
- Criminal Police Office
- Foreigners Registration Office

##### North Rhine-Westphalia

- Ministry of the Interior and Local Government
- Ministry of Justice
- Ministry for Labour, Integration and Social Affairs
- Ministry of Health, Equalities, Care and Ageing
- Criminal Police Office
- Police Headquarters, Dortmund

##### Rhineland-Palatinate

- Ministry of the Interior, Sports and Infrastructure
- Ministry for Integration, Family Affairs, Children, Youth and Women
- Prosecution Service, Koblenz

##### Saxony

- Ministry of the Interior
- Ministry of Justice and Europe
- Ministry for Social Affairs and Consumer Protection
- General Prosecution Service Dresden
- Criminal Police Office

**Intergovernmental organisations**

- United Nations High Commissioner for Refugees (UNHCR)

**Civil society organisations**

- Agisra
- Alliance against Human Trafficking for Labour Exploitation
- Amnesty International
- Arbeit und Leben
- Ban Ying
- Caritas Osnabrück
- Counselling Centre for Women Düsseldorf
- Diakonie Deutschland
- Dortmunder Mitternachtsmission
- ECPAT
- Faire Mobilität
- FIM – Women’s Rights are Human Rights
- German Institute for Human Rights
- IN VIA
- KOK
- KOBRAnet
- KOOFRA
- SOLWODI
- Terre des Femmes
- Trade Union of the Police
- Trade Union Federation (DGB)
- Trade Union Construction – Agriculture – Environment (IG BAU)

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Germany**

GRETA engaged in a dialogue with the German authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the German authorities on 22 April 2015 and invited them to submit any final comments. The comments of the authorities of Germany, submitted on 19 May 2015, are reproduced hereafter.



Bundesministerium für Familie, Senioren, Frauen und Jugend, 53107 Bonn

Executive Secretary of the Council of  
Europe Convention on Action against  
Trafficking in Human Beings  
Ms Petya Nestorova  
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ORT, DATUM Bonn, May 19, 2015

## **Comments of Germany on the Report concerning the implementation of the CoE Convention on Action against Trafficking by Germany**

Dear Ms Nestorova,

I would like to grasp the opportunity to thank GRETA for the constructive dialogue during the monitoring cycle. We have received very valuable recommendations to further improve our actions against trafficking in human beings and are looking forward to inform GRETA and the Committee of the Parties in 2017 on the implementation of the recommendations.

However, Germany has a few comments regarding the final report annexed to the letter, which we ask to be published together with the report.

Yours sincerely

Pp

Nicole Zündorf-Hinte

## **Comments of Germany to the Report concerning the implementation of the Council of Europe Convention on Actions against Trafficking in Human Beings by Germany (First evaluation round)**

Germany would like to inform the GRETA expert commission and the Committee of the Parties that additional improvements in residence law are currently planned for victims of human trafficking. The Federal Government has already presented a bill (Act to Revise the Right to Stay and the Termination of Residence, *Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) which was approved by the Federal Cabinet on 3 December 2014. Under the new legislation, victims of human trafficking for reasons of sexual exploitation who cooperate with the law enforcement authorities should as a general rule be granted a residence permit (under the current law the residence permit only may be granted to the victim of human trafficking by the foreigners authorities). It would be possible to renew this residence permit for reasons related to personal circumstances or humanitarian concerns, or in the public interest even after the victim has participated in criminal proceedings against traffickers. Family members would be allowed to immigrate to join persons holding such a residence permit. The new legislation will focus more on the interests of the victim of trafficking, increase legal certainty from the start and make clear that persons who help bring criminals to justice have a reasonable perspective to stay in Germany.

Furthermore, the Federal Government has the following comments:

### **Regarding paragraphs 151 to 158 ("Recovery and reflection period"):**

*"GRETA urges the German authorities to ensure, in compliance with the obligations contained in Article 13 of the Convention, that all possible victims of trafficking, including victims of THB for labour exploitation and of child trafficking, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Public officials performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators."*

The recovery and reflection period referred to in Article 13 of the Convention is reflected above all in Section 59 (7) of the Residence Act (*Aufenthaltsgesetz*, AufenthG), which applies to all victims of human trafficking. This period (called *Bedenkzeit* in German law) is governed as follows: If the foreigners authority has concrete grounds to suspect that the foreigner has been the victim of a criminal offence as specified in Section 25 (4a) or

(4b) (human trafficking for the purpose of sexual exploitation or labour exploitation and promotion of human trafficking; offences under the Act to Combat Clandestine Employment or the Act on Temporary Employment Businesses), it sets a deadline for leaving the country which will allow the foreigner sufficient time to decide whether he or she is willing to testify. This period is at least three months and takes the form of a temporary suspension of removal, which prevents deportation. There is no maximum time limit for the reflection period which is supposed to allow the foreigner sufficient time to be able to decide whether to cooperate with the law enforcement authorities.

In addition, general residence law always applies; the specific residence law provisions to protect victims of human trafficking do not have a blocking effect. In particular, it should be noted that, in accordance with Section 59 (7) of the Residence Act, Germany grants the recovery and reflection period for the victims of human trafficking by extending the deadline for leaving the country. According to Section 59 (1) of the Residence Act, foreigners are in principle to be given seven to 30 days to leave the country. The deadline to leave the country may be prolonged as general rule if appropriate in view of the special circumstances of the individual case, Section 59 (1) sentence 4 of the Residence Act. This provision also applies to victims of human trafficking, especially if it was not possible to determine before the foreigners authority's decision whether the foreigner was a victim.

### **Regarding paragraphs 159 to 171 ("Residence permits")**

*“169. GRETA considers that the German authorities should take further steps to ensure that victims of trafficking are able to benefit from a residence permit in Germany and the rights attached to it.*

*170. GRETA also considers that the German authorities should take additional steps to ensure that child victims of trafficking may be granted a residence permit on the basis of their best interests and not on the basis of their willingness or ability to co-operate with judicial bodies.*

*171. Further, GRETA invites the German authorities to consider reviewing the relevant legislation so as to provide residence permits to victims of THB who [are] unable to co-operate with the authorities, on the basis of their personal situation.”*

Section 25 (4a) and (4b) of the Residence Act provide for special residence rights for victims of human trafficking: They may be issued a temporary residence title.

According to Section 25 (4a) and (4b) of the Residence Act, this title may be issued if the public prosecutor's office or the responsible criminal court considers the person's temporary presence in the federal territory to be appropriate in connection with criminal

proceedings relating to one of the criminal offences listed, because it would be more difficult to investigate the facts of the case without his or her information. And the person in question must declare his or her willingness to testify as a witness in the criminal proceedings. In the case of human trafficking for the purpose of sexual exploitation, the victim must also have broken off contact to the person accused of the crime.

The Federal Government believes that linking the residence permit to the willingness of the person in question to cooperate is necessary not only under European Union law (see Directive 2004/81/EC); based on European law, Section 25 (4a) of the Residence Act is intended to secure the residence of victims primarily with the aim of enforcing the government's claim to prosecute. This link is essential also for reasons of law enforcement. As a rule, it is not possible to conduct criminal proceedings without the victims' testimony. Using residence law to encourage victims to provide testimony also helps protect victims and potential future victims of human trafficking by enabling the authorities to effectively prosecute traffickers.

In addition to these special provisions to protect victims of human trafficking, general residence law always also applies, especially after criminal proceedings have been concluded. In this way, it is possible to deal appropriately with situations in which victims are not able to cooperate with the authorities. For this reason, victims of human trafficking do not, as a rule, have to fear deportation after the criminal proceedings are over. Under current law, residence permits may be issued at any time for humanitarian reasons. In particular, a residence permit may be issued pursuant to Section 25 (3) (a deportation ban applies), Section 25 (4) (urgent humanitarian or personal grounds or substantial public interests) or Section 25 (5) (if departure is impossible in fact or in law) of the Residence Act.

And also the Land Berlin submitted one comment:

The Land Berlin (Senate Department for Labor, Integration and Women) points out that there has been no fundamental change regarding the financing of specialized counseling centers and shelters for victims of trafficking in 2014. From the beginning these institutions have been financed via so called matching funds (*Fehlbedarfsfinanzierung*), i.e. the Land Berlin grants funds to complement the institution's own resources. Up to 2013 the resources of the institutions were in practice often calculated with an amount of € 0. Starting in 2014, due to requirements established by the Berlin Court of Auditors, this is no longer possible. This means, that starting in 2014 e.g. the Ban Ying shelter organization now is obliged to contribute € 100 of own funds, leaving the sum of € 117 900 in complementary funds for the Berlin Senate to pay per annum for the double budget year 2014/2015.