



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**

SECOND EVALUATION ROUND

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Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party.

GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA's country-by-country monitoring deals with all parties to the Convention on an equal footing. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to all parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental. By the beginning of 2014, most of the parties had been or were being evaluated for the first time, whilst the number of parties to the Convention continues to grow.

GRETA decided to launch the second evaluation round of the Convention on 15 May 2014. Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA has decided to examine during this new evaluation round the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. For the second evaluation round, GRETA has adopted a questionnaire to be sent to all states parties which have undergone the first round of evaluation, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to provide, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The 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 GRETA's report, together with eventual final comments made by the national authorities, are made public and sent to the Committee of the Parties to the Convention.

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Germany took place in 2014-2015. Following the receipt of Germany's reply to GRETA's first questionnaire on 19 May 2014, a country evaluation visit was organised from 13 to 20 June 2014. The draft report on Germany was examined at GRETA's 21st meeting (17-21 November 2014) and the final report was adopted at GRETA's 22nd meeting (16-20 March 2015). Following the receipt of the German authorities' comments, GRETA's final report was published on 3 June 2015.¹

2. In its first report, GRETA noted that Germany had developed a legal and institutional framework for combating trafficking in human beings (THB). However, GRETA called on the German authorities to ensure that the definition of THB in the Criminal Code fully complied with the Convention. Further, GRETA urged the authorities to develop a comprehensive national action plan or strategy against human trafficking, and to introduce a data collection system to support the development of anti-trafficking policies. GRETA also considered that the German authorities should raise awareness of different forms of trafficking and make efforts to discourage demand for the services of trafficked persons. Moreover, GRETA stressed the need to reinforce prevention and protection measures addressing the particular vulnerability of children to trafficking, and to improve co-ordination and co-operation measures in this regard. GRETA also called on the authorities to improve the identification of victims of trafficking, including by adopting a proactive approach, increase their outreach work and strengthening multi-agency involvement in the identification process. GRETA welcomed the existence of specialised counselling centres assisting victims of human trafficking for the purpose of sexual exploitation, but noted that only few such centres assisted victims of labour exploitation and called on the authorities to develop specialised assistance structures for victims of trafficking for the purpose of all types of exploitation, as well as for child victims of trafficking.

3. Furthermore, GRETA stressed the importance of offering the recovery and reflection period to all possible victims of trafficking, regardless of the form of exploitation. GRETA highlighted the need to issue a residence permit to trafficking victims who declare their willingness to co-operate during criminal proceedings, independently of whether such proceedings actually take place. In addition, GRETA underlined the importance of improving victims' effective access to compensation and urged the German authorities to provide access to State compensation to all victims of trafficking, regardless of whether they have been subjected to physical violence. Moreover, GRETA urged the German authorities to ensure that trafficking victims are not punished for offences committed as a consequence of being trafficked, and asked the German authorities to fully use the measures available to effectively protect victims and witnesses before, during and after criminal proceedings.

4. On the basis of GRETA's report, on 15 June 2015 the Committee of the Parties to the Convention adopted a recommendation to the German authorities, requesting them to report back on measures taken by 15 June 2017.² The report submitted by the German authorities was considered at the 21st meeting of the Committee of the Parties (13 October 2017). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.³

5. On 5 September 2017, GRETA launched the second round of evaluation of the Convention in respect of Germany by sending the questionnaire for this round to the German authorities. The deadline for submitting the reply to the questionnaire was 5 February 2018, date on which Germany submitted its reply.⁴

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, GRETA(2015)10, available at: <http://rm.coe.int/1680631c3b>

² Recommendation CP(2015)2, available at: <http://rm.coe.int/1680631c38>

³ Available at: <http://rm.coe.int/cp-2017-21-rr-deu-en-pdf/168073fdf2>

⁴ Available at: <https://www.coe.int/web/anti-human-trafficking/germany>

6. In preparation of the present report, GRETA used the reply to the questionnaire by the German authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit to Germany took place from 4 to 8 June 2018 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Helmut Sax, member of GRETA;
- Ms Dorothea Winkler, member of GRETA;
- Mr Markus Lehner, Administrator in the Secretariat of the Convention;
- Ms Ursula Sticker, Administrator in the Secretariat of the Convention.

7. During the visit, the GRETA delegation held consultations with officials from the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection, the Federal Foreign Office, the Federal Ministry of Health, the Federal Ministry of Finance, the Federal Criminal Police Office, the Federal Police, and the Federal Office for Migration and Refugees. The delegation also met with members of the German federal parliament (Bundestag).

8. Further, the GRETA delegation met representatives of the regional governments and relevant public agencies in the federal states of Bavaria, Berlin, Brandenburg and Lower Saxony.

9. Separate meetings were held with representatives of non-governmental organisations (NGOs), trade unions, the German Institute for Human Rights and the United Nations High Commissioner for Refugees (UNHCR).

10. In the course of the visit, the GRETA delegation visited a shelter for women victims of trafficking run by the NGO ONA in Berlin, a shelter for particularly vulnerable migrant women run by the NGO IMMA in Munich, and a municipal accommodation centre for unaccompanied foreign children in Hanover.

11. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

12. GRETA wishes to place on record the co-operation provided by the German authorities during the second evaluation visit by GRETA, and in particular by the contact person appointed by the German authorities, Ms Antje Wunderlich, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Division for the Protection of Women from Violence.

13. The draft version of the present report was approved by GRETA at its 33rd meeting (3-7 December 2018) and was submitted to the German authorities for comments on 9 January 2019. The authorities' comments were received on 8 March 2019 and were taken into account by GRETA when adopting the final report at its 34th meeting (18-22 March 2019). The report covers the situation up to 22 March 2019; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made, the issues which require immediate action and the other areas where further action is needed (see pages 61-67).

II. Main developments in the implementation of the Convention by Germany

1. Emerging trends in trafficking in human beings

14. Germany continues to be primarily a country of destination for trafficked persons, as well as to some extent a country of origin and of transit. According to the annual status reports on trafficking in human beings (THB) of the Federal Criminal Police Office (BKA), the number of identified victims of THB was 583 in 2014, 470 in 2015, 536 in 2016, and 671 in 2017. The majority of the victims identified in the period 2014-2017 were subjected to sexual exploitation (1,950), but the proportion of this type of exploitation has decreased from over 90% in 2014, to 73% in 2017, while at the same time the incidence of identified victims of trafficking for the purpose of labour exploitation has increased (27% in 2017). Trafficking for the purpose of sexual exploitation concerned mostly women and girls (around 97% of the identified victims), while the identified victims of trafficking for the purpose of labour exploitation were mostly male (81% in 2015, 71% in 2016, 86% in 2017). Following the introduction of new forms of exploitation to the offence of THB in the German Criminal Code (CC) in October 2016, there were for the first time two identified victims of THB for the purpose of forced begging in 2017.

15. The main countries of origin of the victims of trafficking for the purpose of sexual exploitation were Romania (494 victims), Bulgaria (366), Hungary (145) and Nigeria (92). As regards victims of human trafficking for the purpose of labour exploitation, the main countries of origin were Romania, Ukraine, Bulgaria, Latvia and North Macedonia. THB for the purpose of labour exploitation occurred mainly in the sectors of construction, hospitality, agriculture, cleaning services and domestic work. The number of German victims of THB identified in the period 2014-2017 was 406. The number of identified child victims in the period 2014-2017 was 513. They were all subjected to sexual exploitation, with the exception of two children who became victims of labour exploitation.

16. GRETA was informed that an increasing number of victims, including children, are recruited via the Internet/social media. Young girls and women in particular are groomed through online chat rooms and fall prey to so-called "loverboys" who manipulate and force them into prostitution. According to the authorities, 99 child victims of trafficking of German nationality were recruited via the Internet in the period 2014-2017.

17. The number of persons seeking asylum in Germany has increased substantially during the reporting period, with a total of 476 510 asylum seekers in 2015 and 745 155 in 2016.⁵ GRETA was informed by counselling centres for victims of THB that some asylum seekers, in particular from Syria, Iraq and Afghanistan, had been identified as victims of human trafficking. Specialised counselling centres for victims of THB reported that the persons being referred to them originated mostly from West African countries, in particular Nigeria. The majority of these victims were exploited on their way to Germany, including in other EU countries, such as Italy, where they first arrived.

18. GRETA notes that the official figures of identified victims of THB do not reflect the real scale of the phenomenon of human trafficking in Germany, due to the absence of a comprehensive and coherent approach to detecting and identifying victims of THB, problems of data collection, insufficient attention being paid to trafficking for purposes other than sexual exploitation, as well as inadequate mechanisms to identify victims of THB among migrants and asylum seekers, including in reception centres.

⁵ European Migration Network, Country Factsheet Germany 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/11a_germany_country_factsheet_2017_en.pdf

2. Developments in the legal framework

19. The German national legal framework relevant to action against THB has significantly evolved since GRETA's first evaluation.

20. Legal amendments made to the Residence Act in 2015 strengthened the right of victims of trafficking to be issued a residence permit for the purpose of their co-operation in criminal proceedings and introduced the possibility for victims of THB to receive a temporary residence permit after the conclusion of the criminal proceedings if humanitarian or personal reasons or public interests require their further presence in Germany. Moreover, legislative amendments in 2015 improved access to social benefits for holders of residence permits for victims of trafficking, by including them within the scope of the German Social Code Book II (SGB II) instead of the Asylum Seekers Benefits Act.

21. With the adoption of the Act to Improve Action against Human Trafficking,⁶ Germany transposed Directive 2011/36/EU of the European Parliament and of the Council of the EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims into national law. The Act, which entered into force on 15 October 2016, abolished the three previous articles of the Criminal Code (CC) related to trafficking in human beings, replacing them with four new criminal offences (see paragraph 221). The criminalisation of human trafficking in the new Article 232 of the CC includes additional forms of exploitation (forced begging, forced criminality and the removal of organs) and comprises the three elements of the Convention's definition of THB (i.e. action, means and purpose of exploitation).

22. Further, a reform of the provisions governing the recovery of assets of perpetrators in 2017 facilitated confiscations and the use of the confiscated items for the compensation of victims of crime, including victims of trafficking.

23. Moreover, legislative changes in 2015 related to the protection of the rights of victims of crimes, including victims of THB, improved access to a lawyer at the expense of the State and to free psychosocial support during court proceedings.

24. The above-mentioned measures are discussed in greater detail in later parts of this report (see paragraphs 187-189, 205, 221-228, 232, 241, 254, 265).

3. Developments in the institutional framework

25. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) continues to act as the federal co-ordinating agency on issues related to human trafficking. The Federal Working Group on Trafficking in Human Beings meets at least twice a year under the leadership of the BMFSFJ, bringing together representatives of relevant federal ministries and agencies, *Länder* representatives, NGOs and the German Institute for Human Rights. In the reporting period, the Federal Ministry of Finance and the Federal Office for Migration and Refugees (BAMF) joined the Working Group as new members. The working group serves as a forum for exchanging information on activities and specific problems in combating human trafficking and for the development of guidelines and joint actions.

⁶ Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code of 11 October 2016, BGBl. I S. 2226.

26. While the overall co-ordination of action against THB in the federal government lies with the BMFSFJ, the responsibility for action against THB for the purpose of labour exploitation is with the Federal Ministry for Labour and Social Affairs (BMAS). Under the leadership of this ministry, a Federal Working Group on Combating Human Trafficking for the Purpose of Labour Exploitation was established in 2015 with the aim of developing by the end of 2016 a strategy to combat human trafficking for the purpose of labour exploitation (see paragraphs 35 and 75). The Working Group comprises representatives of Federal and *Länder* ministries, the Federal Criminal Police Office, the *Länder* criminal police offices, public prosecutors, the Financial Monitoring Unit to Combat Illicit Employment (FKS), social partners and NGOs. Three sub-groups have been set up within this Working Group (see paragraph 75).

27. GRETA welcomes the increased attention to action against THB for the purpose of labour exploitation in Germany, which was one of the key recommendations made in GRETA's first report. However, concerns were raised by a number of stakeholders about risks of duplication due to the creation of two Working Groups, operating in parallel and comprising similar members, and the continuing lack of a harmonised co-ordinating structure at federal level with a mandate to address all issues related to THB for different forms of exploitation. The German authorities have referred to the current federal government coalition agreement, according to which it is intended to strengthen the structures for combating human trafficking and supporting victims. In order to progress with this task, a joint meeting of the Working Groups was planned for April 2019.

28. With a view to creating a specific referral process for cases of trafficking in children, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and ECPAT Germany, in co-operation with other public and civil society actors, has developed a document entitled "Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation"⁷. It was published on 18 October 2018 and provides recommendations for co-operation between youth welfare services, the police, specialised counselling centres and other relevant actors in the identification and protection of child victims of trafficking. The competences for the implementation of this guidance lie with the *Länder*, which will have to take the necessary measures.

29. The German authorities informed GRETA that, in 2016, at the initiative of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and on the basis of an expert report prepared by the German Institute for Human Rights (DIMR),⁸ a joint consultation process of the relevant federal ministries was launched with the aim of considering the creation of an independent national reporting agency (i.e. a National Rapporteur in the sense of Article 29, paragraph 4, of the Convention) and a mechanism to improve co-ordination of all federal measures to combat human trafficking. Civil society and the *Länder* are included in this consultation process via the two above-mentioned Working Groups. The expert report of the DIMR proposed different scenarios for creating such mechanisms. According to the authorities, an agreement in principle was reached to create a national reporting mechanism and a governmental co-ordination mechanism, but the legislative period ended in September 2017 and the discussions have to be renewed following the formation of a new government. According to the authorities, the activities on the further development of the institutional structures at federal level outlined in paragraph 27 also aim at the establishment of a National Rapporteur.

⁷ Available (in German) at: <https://www.bmfsfj.de/blob/129878/558a1d7b8973aa96ae9d43f5598abaf1/bundeskooperationskonzept-gegen-menschenhandel-data.pdf>

⁸ German Institute for Human Rights, Draft Concept for a National Rapporteur on Trafficking in Human Beings and a Human Trafficking Coordination Unit, available (in German) at: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Expertise_Berichterstatterstelle_Menschenhandel_Februar_2016.pdf

30. As explained in the first report, the practical implementation of measures against THB, including prevention, identification of victims, the provisions of assistance to them and the prosecution of THB offences, lies within the remit of the 16 German *Länder*. In many of the *Länder*, co-operation agreements have been concluded between the relevant authorities and specialised counselling centres for victims of THB, which describe the procedures and responsibilities of different stakeholders. Further, most *Länder* have set up co-ordination bodies comprising relevant stakeholders, usually in the form of round tables on THB. However, these agreements and round tables remain mostly limited to the fight against THB for the purpose of sexual exploitation, and some co-operation agreements have not been reviewed for a long time and do not correspond to existing structures and legislation (e.g. in Brandenburg). As a result, THB for the purpose of labour exploitation, new forms of exploitation as introduced in the Criminal Code in 2016, and trafficking in children are often not addressed by the co-operation agreements or round tables on THB. Further, some of the *Länder* are still lacking co-operation agreements or co-ordination bodies (e.g. Thuringia). In other places, the round tables on THB have not been convened for several years (e.g. in Berlin, where the last meeting was in 2014). GRETA notes with concern that trafficking in human beings has not been the subject of sufficient political attention in each of the *Länder*.

31. GRETA considers that the German authorities should continue their efforts to harmonise the institutional framework and co-ordination structures for action against THB at federal and *Länder* level. The aim should be to ensure greater coherence and effectiveness of the actions of all stakeholders in combating and preventing THB in all its forms, and to identify and assist trafficking victims without discrimination, irrespective of their place of residence in Germany.

32. Further, GRETA considers that the German authorities should finalise the setting up of an independent National Rapporteur or designate another mechanism as an independent organisational entity with a view to ensuring effective monitoring of the anti-trafficking activities of state institutions and making recommendations to the persons and institutions concerned.

4. National Action Plan

33. In its first report, GRETA urged the German authorities to develop a comprehensive national action plan or strategy against THB which addresses all forms of exploitation.

34. Germany has not yet developed a national action plan or other strategic document to combat trafficking in human beings in a comprehensive manner.

35. The Federal Working Group on THB for the purpose of labour exploitation has developed a draft strategy for combating THB for the purpose of labour exploitation (see paragraph 75). However, against the background of discussions on the future institutional setup of the fights against THB (see paragraph 29), the adoption and practical implementation of this document is uncertain. The German authorities have referred to a meeting held in June 2018 at which the Federal Ministry of Labour and Social Affairs and representatives of the *Länder* discussed measures against THB to be carried out at federal level and by the *Länder*.

36. According to the authorities, the fight against human trafficking is addressed within the context of various action plans at federal level and *Länder* level. The Federal Government has adopted a National Action Plan for Business and Human Rights 2016-2020, linked to implementing the UN Guiding Principles on Business and Human Rights.⁹ The plan envisages some activities which could contribute to discouraging demand and reducing THB for the purpose of labour exploitation (see paragraph 114). However, there appears to be limited contact and co-ordination between the government bodies implementing this action plan and those fighting THB. Further, a Federal Government Action Plan for combating violence against women and domestic violence is currently being prepared under the leadership of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). In view of the particular gender-specific nature of how women and girls are affected by human trafficking, measures to fight THB are also expected to be included in the Action Plan.

37. In order to ensure that action to combat THB is comprehensive and involves all stakeholders, GRETA once again urges the German authorities to develop a comprehensive national action plan or strategy against THB which addresses all forms of exploitation.

5. Training of relevant professionals

38. The training centre of the Federal Criminal Police Office (BKA) provides training on trafficking in human beings for police officers of the federal and *Länder* police forces. A one-week training module on THB for the purpose of sexual exploitation is held twice a year and a three-day module on THB for the purpose of labour exploitation once a year. In addition to these training courses, the BKA organises other events focussing on THB, for example an annual two-day specialist seminar on human trafficking for the purpose of sexual exploitation. Over the course of five years, 300 police officers at federal and *Länder* level followed the training module on THB for the purpose of sexual exploitation and 145 officers participated in the three-day training module on THB for the purpose of labour exploitation. Around 570 police officers attended the specialised seminar on sexual exploitation. In 2015, the first joint workshop on THB for police officers and representatives of the judiciary was held. A similar workshop was planned for the first quarter of 2018, but it has had to be postponed until the end of 2019/beginning of 2020.

39. Further, in 2016, the BKA organised a multi-disciplinary networking meeting on THB for the purpose of labour exploitation, attended by federal and *Länder* police officers, public prosecutors and representatives of trade unions, specialised counselling centres and the Financial Monitoring Unit to Combat Illicit Employment (FKS). The BKA gave a presentation at the FKS' mid-year meeting in June 2017. Furthermore, the FKS provides input into the BKA's annual training course on THB for the purpose of labour exploitation referred to in paragraph 38. The authorities have also provided examples of the FKS and the Central Customs Authority participating in informational events organised by the BKA, for instance concerning the new offences introduced in the CC in 2017 and the kick-off meeting of the BKA project "THB LIBERI" in 2018 (see paragraph 65).

40. The subject of human trafficking is also part of the training curricula of the *Länder* police forces. In general, bigger *Länder* organise training on THB at their police academies, while smaller *Länder* send police officers to training courses organised by BKA or others. By way of example, in Bavaria, all future criminal police officers take part in a mandatory one-day training seminar on THB which addresses, alongside the core area of sexual exploitation, the exploitation of begging and of criminal activities. The Bavarian State Criminal Police Office provides further thematic training to serving police officers. In Berlin, all police officers are invited to attend bi-annual seminars on THB human trafficking which last up to three days and involve trainers from a variety of backgrounds. In Lower Saxony, the Police Academy has a module on human trafficking. In North Rhine-Westphalia, the Police Office for Initial Training, Further Training and Human Resources offers annually two training activities on combating human trafficking: a five-day basic training and a two-day refresher training.

⁹ Available at: <https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf>

41. Specialised public prosecutors dealing with cases of organised crime, including THB, and judges can follow training on THB at the German Judicial Academy. Since 2014, the German Judicial Academy has held an annual four-day course on "International human trafficking and migrant smuggling" with an average of 20 participants per year. In 2018, the course was cancelled due to lack of sufficient applications and the next course is planned for 2020. According to the authorities, THB is also covered in interdisciplinary annual courses related to foreigners' law, victim protection, organised crime and interviewing victims and witnesses of crime. In some *Länder*, seminars and training courses on THB are offered to judicial staff, for example by the Judicial Academy of North Rhine-Westphalia. In Lower Saxony, the Criminal Police Office organises an annual training event for the members of the co-operation agreement on THB, which is attended by five to eight prosecutors and judges every year. The Brandenburg Judicial Academy organised in 2015 a national conference for judicial employees specialised in THB, which was attended by 22 judges and prosecutors.

42. The NGO ECPAT Germany has developed a multidisciplinary training programme on the issue of child trafficking and conducts two-day regional workshops for 25 to 30 participants from the police, the judiciary, child welfare services, youth support organisations, counselling centres, and legal guardians. The training is supported financially by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). So far, 18 regional workshops have been organised across Germany. In addition, ECPAT organised two specialised seminars for legal guardians on identifying and dealing with victims of human trafficking among child refugees, and one-hour webinars on child trafficking (two for lawyers and four for legal guardians). Further, the International Service Germany has developed training courses on child trafficking for child and youth welfare staff.

43. The Federal Office for Migration and Refugees (BAMF) has reported that all decision-makers in asylum proceedings have completed the EASO module on interview techniques, consideration of evidence and granting of protection. According to the BAMF, since November 2018, all newly appointed decision-makers have received information on the identification of victims of human trafficking as part of their basic training. In addition, decision-makers who fulfil the task of "special representative for victims of THB" have followed the EASO training on interviewing vulnerable groups and a national basic training module on human trafficking. According to the authorities, since July 2018, the BAMF has trained its Asylum Procedure Advisors and Counsellors working in ANKER Centres on the subject of human trafficking. Relevant training is also provided in some *Länder*. For example, in Berlin, as part of the Master Plan on Integration and Security adopted by the Berlin Senate in May 2016, training on combating violence against women and recognising signs of THB is provided to staff of asylum reception centres.

44. The German Network and Co-ordination Office against Trafficking in Human Beings (KOK), which is an alliance of NGOs running specialised counselling centres for victims of trafficking in Germany, regularly organises training on human trafficking for various target groups. For example, in May 2017, KOK and the BKA organised jointly a workshop for prosecutors and staff of counselling centres for victims of human trafficking. In 2016, KOK developed a training manual which is designed to help practitioners and staff of specialised counselling centres in conducting training for external partners on the topic of human trafficking and exploitation.

45. Training is also organised by specialised counselling centres in different *Länder*. By way of example, in Hamburg, the specialised counselling centre KOOFRA provides training to public bodies, social welfare institutions and NGOs on human trafficking for the purposes of sexual and labour exploitation and the support programmes available to victims. KOOFRA has provided training on THB to staff and volunteers working in refugee hostels in November 2018 and held a specialist seminar in March on the support strategy for victims of labour exploitation/forced labour. In Saxony-Anhalt, the specialised counselling centre VERA provides training courses for public officials and social workers, as well as at the police academy.

46. Staff of specialised counselling centres are usually trained social education specialists, social workers or psychologists. The KOK has developed a training manual designed for new staff of counselling centres, which is regularly updated. Staff of counselling centres often follow further training at their own expense because the centres' funds and the time available for staff training are extremely limited.

47. While welcoming the training provided to specialised police officers and prosecutors, GRETA notes that other categories of police officers are not systematically trained on THB. The training is still focussed to a large extent on sexual exploitation and training related to other forms of exploitation, in particular on combating labour exploitation and the co-operation of the relevant actors in this respect, remains disproportionately low.

48. **GRETA considers that the German authorities should increase their efforts to provide regular training on THB for different forms of exploitation and legislative developments to all relevant professionals, including all categories of police officers, prosecutors, judges, inspectors of the Financial Monitoring Unit to Combat Illicit Employment, diplomatic and consular staff, staff of counselling centres, health-care professionals, staff working with children, migration officials, asylum officials and staff working in accommodation centres for asylum seekers.**

6. Data collection and research

49. In its first evaluation report, GRETA urged 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.

50. The BKA produces an annual report on trafficking in human beings and exploitation in Germany, based on available information concerning police investigations, which includes statistical data on suspects and victims, disaggregated by sex, age, form of exploitation¹⁰ and country of origin of the victims.¹¹ The 2016 and 2017 reports also included data on the commercial sexual exploitation of children. In addition, the police forces of some *Länder* produce their own reports, for example North Rhine-Westphalia and Lower Saxony.

51. Justice and criminal prosecution statistics are published by the Federal Statistical Office.¹² As mentioned in GRETA's first report, the BKA and Federal Statistical Office statistics are not comparable due to timing differences in the inclusion of cases and differences in methodology. In order to increase the informative value of the police and the judicial statistics, the current federal government coalition agreement envisages commissioning a feasibility study on their alignment. In their comments on the draft report, the German authorities have indicated that the study has not yet been commissioned.

52. The sub-working group on prosecution and improvement of data collection of the Federal Working Group on Combating Trafficking in Human Beings for the Purpose of Labour Exploitation (see paragraph 75) proposed in 2016 to commission a concept study on the possible use of existing additional sources of data to improve data collection on THB, as well as data protection issues. Further, the sub-group recommended to remove obstacles for the use of data from certain bodies, for example the Financial Monitoring Unit to Combat Illicit Employment (FKS), by other entities, for example police investigators. Finally, it recommended the creation of a national reporting mechanism on THB.

¹⁰ In 2017, the annual BKA report included, for the first time, data on THB for the purpose of exploitation of begging.

¹¹ Available (in German) at:

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Menschenhandel/menschenhandel_node.html

¹² Available (in German) at: https://www.destatis.de/GPStatistik/receive/DESerie_serie_00000107

53. In its first report, GRETA noted that the KOK was planning a project for centralised collation and analysis of data from specialised counselling centres. According to the KOK, the project is currently in a testing phase and only incomplete data is available about the number of victims who have received assistance from such centres. In their comments on the draft report, the German authorities have indicated that any sharing of data by the specialised counselling centres would only take place on a purely voluntary basis.

54. GRETA notes that data collection and reporting on the phenomenon of trafficking in human beings remain limited to the area of law enforcement. As a result, the number of victims reported is limited to those who were identified as part of police investigations and no data is collected on victims of THB identified and assisted by civil society. Data on the enforcement of trafficking victims' rights, such as on the number of reflection periods, residence permits, compensations and repatriations, is also not collected in a systematic manner.

55. In order to create an evidence base for future policy measures, GRETA once again urges the German authorities to set up and maintain a comprehensive and coherent statistical system on THB by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims. Statistics regarding victims should be collected from all main actors and allow 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 provide information for the national data collection.

56. During the reporting period, some research has been commissioned by the federal and *Länder* governments in order to obtain a better understanding of the phenomenon of THB in Germany. Besides the already mentioned study of the German Institute for Human Rights on a Draft Concept for a National Rapporteur on Trafficking in Human Beings (see paragraph 29), the German authorities have referred to a study on the identification of victims of trafficking in the asylum process and during forced return procedures, a criminological and criminal law-based study on forced prostitution with a focus on women from Eastern Europe, and an article in a criminological journal entitled "Victimological analysis of German victims of trafficking".¹³

57. The German Institute for Human Rights annually submits a report on the development of the human rights situation in Germany to the German Federal Parliament on the occasion of International Human Rights Day (10 December). The third edition of the report, which covers the period 1 July 2017 to 30 June 2018, dedicates a specific section to people affected by severe forms of labour exploitation. It notes that migrant workers are at a particularly high risk and examines the economic sectors that are most affected and the barriers which exist in law enforcement.¹⁴

¹³ Hoffmann, Ulrike: Die Identifizierung von Opfern von Menschenhandel im Asylverfahren und im Fall der erzwungenen Rückkehr: Fokus-Studie der deutschen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), 2013 (Working papers / BAMF 56); Witz, Susanne: Importware Frau : Eine kriminologisch-strafrechtliche Untersuchung von Zwangsprostitution in Deutschland mit dem Fokus auf Osteuropäerinnen, 2017; Scheer, Guntram; Dufner, Nathalie: Deutsche Opfer des Menschenhandels zur sexuellen Ausbeutung : Eine viktimologische Betrachtung, in: Kriminalistik 69 (2015) 1, S. 17-25. Other relevant publications of academic research comprise: Christoph Lindner, the Effectiveness of Transnational Measures against Human Trafficking - a Study of the Legal Actions against Modern Slavery in the European Union and the Council of Europe , 2014; Lena Vogeler: Legal prevention of trafficking in human beings for the purpose of sexual exploitation - a legal comparison with special regard to the prostitution policies of Germany and Sweden, 2018.

¹⁴ The full report in German and the Executive Summary in English are available at: <https://www.institut-fuer-menschenrechte.de/menschenrechtsbericht/menschenrechtsbericht-2018/>

58. Under the aegis of the Criminological Research Institute of Lower Saxony, a study was published in 2018 entitled "Trafficking for the purpose of sexual exploitation in Germany - Results of a file analysis of cases registered by the police from 2009 to 2013".¹⁵ Further, the German-Austrian research project PRIMSA (2014-2017) on prevention and combating of human trafficking for the purpose of sexual exploitation,¹⁶ which was funded by the German Federal Ministry for Education and Research (BMBF) and the Austrian Federal Ministry for Transport, Innovation and Technology, developed a multi-use prevention and intervention tool. Project partners in Lower Saxony were the University of Vechta, the Criminological Research Institute of Lower Saxony and the Hanover Police Directorate.

59. During the reporting period, the KOK has continued to carry out research into different aspects of THB. In 2015, the KOK published a new edition of its comprehensive overview on THB in Germany. It provides a detailed description of the situation, both from a legal point of view as well as seen from the practice of counselling centres. It identifies specific problem areas and offers recommendations.¹⁷ Further, a study on the accommodation of victims of trafficking in Germany which examined the situation of female, male and child victims of trafficking, found that trafficked persons rarely have their own and secured living space and made recommendations for improving the situation.¹⁸

60. Another study by the KOK focussed on THB for the purpose of labour exploitation of women with the aim of finding out whether such women are perceived differently by the public, and, if so, what possible causes may lie behind this.¹⁹ The study is mainly based on interviews with experts and established four main factors that can lead to women being perceived less as victims of labour exploitation: media representation, gender stereotyped expectations, accessibility to the labour sectors and access to representation of interests.

61. The authorities have also referred to an on-going two-year project run by the BKA and co-funded by the ISF, entitled "AusMin - exploitation of children in Germany, Romania and Bulgaria", which researched child trafficking for different forms of exploitation. The results of the project will be used to make recommendations for action aimed at improving crime suppression.

62. GRETA welcomes the research carried out on different aspects of THB in Germany and considers that the German authorities should increase their efforts to promote and fund further research in order to explore in depth the extent and nature of THB in Germany, including trafficking for the purpose of labour exploitation, begging, forced criminality, internal trafficking and child trafficking.

¹⁵ Available (in German) at: https://kfn.de/wp-content/uploads/Forschungsberichte/FB_136.pdf

¹⁶ <https://primsa.eu/home-en/>

¹⁷ Available in German at: <https://www.kok-gegen-menschenhandel.de/publikationen/news/kok-buch-menschenhandel-in-deutschland-eine-bestandsaufnahme-aus-sicht-der-praxis/>; and in English at: <https://www.kok-gegen-menschenhandel.de/en/kok-informs/current-kok-publications/detailansicht/news/new-kok-book-human-trafficking-in-germany-an-overview-from-a-practical-standpoint/>

¹⁸ Available (in German) at: <https://www.kok-gegen-menschenhandel.de/publikationen/news/unterbringung-von-betroffenen-von-menschenhandel-in-deutschland-nicht-ausreichend-gesichert-kok-veroeffentlicht-studie-zum-eu-weiten-tag-gegen-menschenhandel/>

¹⁹ Available (in German) at: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_MH-A_Frauen.pdf; excerpts in English available at: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Downloads/Excerpt_from_KOK_study_trafficking_for_labour_exploitation_of_women_web.pdf

III. Article-by-article findings

1. Prevention of trafficking in human beings

a. Measures to raise awareness of THB (Article 5)

63. In its first report, GRETA noted that the lack of systematic awareness-raising activities on THB in Germany and considered that the German authorities should 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.

64. There have been no country-wide campaigns to raise public awareness of THB in Germany in the reporting period. The sub-working group on prevention and public awareness of the Federal Working Group on Combating Human Trafficking for the Purpose of Labour Exploitation noted the need for a country-wide awareness-raising campaign on THB for the purpose of labour exploitation (see paragraph 75).

65. At federal level, information materials on THB have been produced by the BKA, for example on labour exploitation and on human trafficking from Nigeria, and are used for training and awareness-raising purposes. Further, since July 2018, the BKA has been running the project "THB LIBERI", which is co-financed by the EU Internal Security Fund (ISF). The focus of the project is on combating organised structures involved in trafficking of children and adults younger than 21 in Germany and Europe. In the framework of this three-year project, a public awareness campaign is planned, and measures are being considered on how to make girls and young women aware of the "loverboy phenomenon" and the role that the Internet plays in the recruitment of victims. A kick-off meeting took place in 2018, with some 60 specialists from different professional groups.

66. The KOK plays an important role in raising awareness of human trafficking through the development of information materials, a dedicated website (including relevant case-law) and a travelling exhibition on THB. The KOK also organises seminars and conferences, develops relevant publications, as well as publishes press releases and newsletters raising public awareness of THB.

67. The national Violence against Women Support Hotline plays a role in keeping the subject of violence against women, including THB, in the public eye and in informing and educating people about the subject. The helpline provides advice to women and girls who are victims of human trafficking and, with their consent, refers them to an appropriate counselling centre. The hotline is available free of charge 24 hours a day, seven days a week, in 18 languages.

68. Some awareness raising about THB also takes place at *Länder* level. By way of example, in Lower Saxony, the police co-operates with the Broken Hearts Foundation, which initiates projects to attract media attention on combating human trafficking and slavery by organising poster competitions, and developing brochures on labour exploitation, forced prostitution and organ trading.

69. Specialised counselling centres contribute to raising general awareness of THB through the dissemination of information materials and by networking with groups of professionals likely to come into contact with potential victims. However, specialised counselling centres have limited financial means to raise awareness.

70. **GRETA considers that the German authorities should increase their efforts to promote and fund activities aimed at raising public awareness of THB for different forms of exploitation, including new forms introduced in the Criminal Code. The impact of awareness-raising measures should be assessed and used to design future activities.**

b. **Measures to prevent THB for the purpose of labour exploitation (Article 5)**

71. In its first report, GRETA urged the German authorities to strengthen action to combat THB for the purpose of labour exploitation by involving civil society, trade unions, the Financial Monitoring Unit to Combat Illicit Employment (FKS) and the private sector.

72. As already mentioned in GRETA's first report, there are counselling centres for migrant workers providing information on social and labour law, which are mostly run by trade union-related organisations and are financed by public entities, such as *Länder* ministries and municipalities. These counselling centres provide consultations to migrant workers experiencing difficulties and thus contribute to reducing the risk of trafficking and exploitation. The counselling centres mainly assist foreign workers from EU-countries, but several also offer services to non-EU nationals. Their staff speak languages commonly spoken by migrant workers.

73. The organisation "*Arbeit und Leber*"²⁰ runs counselling centres for migrant workers in nine *Länder* and the organisation "*Faire Mobilität*"²¹ in seven *Länder*.²² In Lower Saxony, for example, "*Arbeit und Leber*" runs the counselling centre for mobile employees in four cities (Oldenburg, Hanover, Brunswick and Lüneburg) and has three cars to enable counsellors to travel to meet workers in remote places. The counselling is free-of-charge and anonymous and is provided regardless of the residence status of the migrant worker and the existence of a written labour contract. A total of 5 322 workers were given information and advice in the period 2013-2018; 37% of them were employed in the meat processing and poultry farming sector. Other sectors from which workers seek advice are agriculture, shipbuilding, domestic work, construction and catering.

74. As was the case at the time of the first evaluation by GRETA, there is no agency with a comprehensive mandate for performing labour inspections in Germany and addressing exploitative working conditions, forced labour and THB for the purpose of labour exploitation. The Financial Monitoring Unit to Combat Illicit Employment (FKS), a branch of the federal customs administration under the authority of the Federal Ministry of Finance, carries out inspections at workplaces which focus on detecting and combating unreported and illegal employment and ensuring that employees are insured in the social security system by their employers (see paragraphs 126-128). The FKS' internal instructions were amended in 2017 and now specify that FKS inspectors should pay "foremost attention" to labour exploitation and forced labour. However, the FKS as an agency has no specific mandate to detect and investigate cases of THB for the purpose of labour exploitation.

75. As mentioned in paragraph 26, a Federal Working Group on Combating Human Trafficking for the Purpose of Labour Exploitation was established in 2015 under the Federal Ministry for Labour and Social Affairs (BMAS). The members of this Working Group set up three sub-groups addressing different aspects of combating THB for the purpose of labour exploitation: prevention and public awareness, advice and support for victims, and prosecution and improvement of data collection. Each sub- group has developed a concept paper. The paper on prevention and public awareness notes that, despite a few specific activities, there is no comprehensive preventive action in Germany against THB for the purpose of labour exploitation. It recommends, *inter alia*, to systematically and proactively provide information on labour rights and risks of exploitation to migrant workers in an easily accessible manner, to inform employers about existing criminal law offences in relation to THB, to increase networking between social partners in problematic sectors, and to make better use of the possibilities to take into account labour conditions in public procurement. The recommendations of the three sub-group concept papers have been merged into the draft strategy developed by the Federal Working Group (see paragraph 35).

²⁰ <https://www.arbeitundleben.de/beratungsstellen/beratungsstellen>

²¹ <http://www.faire-mobilitaet.de/beratungsstellen/++co++79af1b36-e64c-11e2-b489-00188b4dc422> .

²² Both "*Arbeit und Leber*" and "*Faire Mobilität*" centres are present in Berlin, Lower Saxony, North-Rhine-Westphalia, and Schleswig-Holstein. There are no counselling centres of these organisations in Mecklenburg-West Pomerania, Rhineland-Palatinate, Saarland and Thuringia.

76. Based on recommendations of the Federal Working Group on Combating Human Trafficking for the Purpose of Labour Exploitation, the Service Centre against Labour Exploitation, Forced Labour and Human Trafficking was established in August 2017 in Berlin on a pilot basis. It is run by the organisation "Arbeit und Leben Berlin", set up jointly by the German Trade Union Federation and the Adult Education Institute (*Volkshochschule*), and financed by the Ministry for Social and Labour Affairs. The Service Centre aims to create co-operation and networking structures amongst stakeholders in the field of combating forced labour and human trafficking (including law enforcement agencies, trade unions, employers' associations, occupational health and safety authorities, employment agencies, migration authorities, ministries, counselling centres and civil society organisations). The Service Centre has two full-time employees and focuses on the following activities: stocktaking and documentation of *Länder*-specific regulations and activities; providing training on legal frameworks, identification of victims and co-operation between relevant actors; providing information materials on labour exploitation, forced labour and human trafficking through an internet-based information platform; promoting international exchange. By way of example, the Centre organised in November 2018 a workshop of the Federal Ministry of Labour and Social Affairs, where public prosecutors discussed the question of effective law enforcement in cases of labour exploitation. According to the German authorities, the funding of the Service Centre has been extended until the end of 2019.

77. According to estimates for the year 2015, about 80% of persons working in private households in Germany were employed illegally.²³ NGOs estimate that some 300 000 persons are employed in precarious circumstances. Domestic work in private households carries a heightened risk of exploitation as domestic care workers are less visible and are isolated from other domestic workers, and there is a close potential victim-perpetrator relationship under one roof. NGOs have pointed out that work inspections usually do not take place in domestic households because access to them is highly restricted.

78. In its first report, GRETA asked the German authorities to intensify their efforts to prevent the exploitation of domestic staff in diplomatic households. At the time of GRETA's visit, 121 domestic staff working in diplomatic households had been registered. According to NGOs, there are some domestic employees who are not registered and therefore work irregularly in diplomatic households. The Berlin-based counselling centre Ban Ying has supported 67 domestic workers over the last 10 years. On the occasion of the personal interview conducted at the Federal Foreign Office when private domestic staff collect their identity cards, they are asked about their working and living arrangements. The authorities informed GRETA that all domestic staff working in diplomatic households receive a personal invitation to the information events organised by the Federal Foreign Office, in co-operation with the counselling centre Ban Ying, which regularly updates a brochure in several languages and disseminates it to foreign embassies.²⁴ For example, 33 domestic staff attended the last meeting during which they were informed of their rights and were given the opportunity to discuss their experiences. In case of problems, the Federal Foreign Office may organise a mediation procedure, but employers may refuse to participate in it and it is reportedly rarely successful.²⁵ In their comments on the draft report, the German authorities have indicated that the Federal Foreign Office investigates any reports about alleged violations of basic standards of domestic staff employed in diplomatic households.

79. GRETA noted that, according to a newspaper report, a German couple, both diplomats and working for the Federal Foreign Office at the Permanent Representation at the United Nations in New York, repeatedly employed domestic workers from the Philippines under exploitative conditions.²⁶ The Federal Foreign Office did not respond to GRETA's request to comment on this report.

²³ KOK, Severe labour exploitation and trafficking in human beings for the purpose of labour exploitation in the case of women – an invisible phenomenon?, page 25.

²⁴ Available at: <http://www.ban-ying.de/publikationen>

²⁵ <https://www.zeit.de/gesellschaft/zeitgeschehen/2018-04/hausangestellte-diplomaten-deutschland-arbeitsbedingungen-ausbeutung-arbeitsrecht>

²⁶ 90 Stunden. Jede Woche, in: Die Zeit, 12. April 2018, p.14.

80. Temporary work is regulated by the Act on the Temporary Supply of Employees. All temporary work agencies in Germany must obtain a license from the Federal Employment Office, regardless of whether they are domiciled in Germany or another country of the European Economic Area, as long as they supply workers to Germany. The supply of workers from third countries is prohibited. A supplier license is denied if the supplier fails to comply with the regulations concerning the employment of foreigners and the provisions of labour and social security law. Private employment agencies are subject to the general trade and commercial law and the special protection provisions of the employee under the Third Book of the Social Code (SGB III), such as the requirement for a written supply contract and a maximum threshold for payments to private employment agencies.

81. The "Triple Win" programme is an example of addressing the needs of the German job market while at the same time ensuring a safe migration process and fair labour conditions for staff hired in third countries. It is jointly organised by the German Corporation for International Co-operation (GIZ) and the International Placement Services (ZAV) of the Federal Employment Agency.²⁷ Under this programme, trained nurses from the Philippines, Serbia, Bosnia and Herzegovina and Tunisia are hired to work in Germany. The project is based on placement agreements concluded between ZAV and the employment agencies in the partner countries. In selecting partner countries, the project takes into consideration whether there is a surplus of trained nurses in order to prevent brain drain. Another example is the specialised service Fair Care of the Association of International Youth Work (VIJ), which is part of the charitable organisation *Diakonisches Werk Württemberg* and provides intermediary services for lawful and fair employment of Eastern European citizens in domestic work.

82. While welcoming the on-going work within the Federal Working Group on Combating Human Trafficking for Labour Exploitation and the setting up of a Service Centre against Labour Exploitation, Forced Labour and Human Trafficking, GRETA notes the absence of activities to raise public awareness of THB for the purpose of labour exploitation. The counselling centres providing advice to migrant workers exist in a limited number of locations and usually do not have a mandate to refer possible victims of trafficking to assistance. The continued absence of a labour inspection body with a clear mandate in relation to THB reduces the effectiveness of the preventive character of inspections.

83. GRETA urges the German authorities to intensify their efforts to prevent THB for the purpose of labour exploitation, in particular by:

- **training relevant officials, including police officers, FKS inspectors, prosecutors and judges, on THB for labour exploitation and the rights of victims;**
- **strengthening the monitoring of recruitment and temporary work agencies;**
- **raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;**
- **ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of human trafficking;**
- **working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business.²⁸**

84. Further, GRETA considers that the German authorities should continue their efforts to prevent THB among domestic staff employed in diplomatic households.

²⁷ <https://www.giz.de/en/worldwide/41533.html>

²⁸ [Recommendation CM/Rec\(2016\)3](#), adopted on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

c. Measures to prevent trafficking in children (Article 5)

85. In its first report, GRETA urged the German authorities to develop measures to raise awareness of trafficking of children.

86. There have been limited awareness-raising activities concerning child trafficking in the reporting period. NGOs stressed the need for reinforced action to raise awareness among staff employed by Youth Welfare Offices and professionals working for youth welfare organisations, as well as the police and the judiciary.

87. The previously mentioned "Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation"²⁹ has the potential of increasing knowledge of the child trafficking phenomenon among state- and non-state actors at regional and local level, which would be an opportunity to step up efforts to raise awareness amongst the general public and especially among children, for example in schools.

88. In addition to organising training (see paragraph 42), ECPAT has prepared a brochure and a video entitled "I need help", available in 13 languages, with information and contact details of counselling centres and helplines.

89. Some specialised counselling centres have carried out training and prepared information materials to raise awareness of child trafficking, including the risks of recruitment via the Internet. By way of example, the counselling centres IN VIA (Berlin-Brandenburg) and FiM (Frankfurt) carry out awareness-raising events in schools. Other counselling centres have developed dedicated campaigns and materials. The Hanover-based specialised counselling centre Kobra has created awareness-raising materials, such as the film "What are you prepared to do for love?". The *Mitternachtsmission* in Heilbronn carries out workshops and seminars to raise awareness on grooming and existing support services in schools and youth clubs and amongst professionals working with adolescents.

90. Germany participates in the international campaign "Do not Look Away", the aim of which is to raise awareness, and prevent sexual exploitation, of children in the tourism industry. The Federal Government works in close co-operation with ECPAT Germany and representatives of the tourism sector. The efforts focus both on an online reporting system and raising awareness amongst travellers and tourists.³⁰ In 2016, a sub-group "Trafficking in Children/Tourism and International Co-operation" recommended its work under the Federal Government-*Länder* Working Group on Protecting Children and Young People Against Sexual Violence and Exploitation, under the responsibility of the BMFSFJ.

91. Article 18 of the German Act on Personal Status requires that the birth of a child in Germany be reported to the responsible registry office. The parents have a legal obligation to report the birth. A birth certificate is issued once the birth has been registered and is required when claiming social assistance or in order to receive health care covered by the health insurance fund. According to NGOs, in cases where the parents do not hold documentation that is deemed correct or verified, issuing of birth certificates or passports is difficult, which makes it impossible to prove the child's identity; furthermore, there are gaps in the registration of new-born children of asylum seekers. The German Institute for Human Rights has published a leaflet entitled "How to register your new-born baby - information for refugees".³¹

²⁹ Available (in German) at: <https://www.bmfsfj.de/blob/129878/558a1d7b8973aa96ae9d43f5598abaf1/bundeskooperationskonzept-gegen-menschenhandel-data.pdf>

³⁰ Reports can be made under: <http://nicht-wegsehen.net/>

³¹ Available in German, English, Arabic and Farsi at: <http://www.institut-fuer-menschenrechte.de/publikationen/show/so-registrieren-sie-ihr-neugeborenes-kind/>

92. In the case of unaccompanied children, a legal guardian is appointed to represent the child in matters concerning their personal welfare or assets. The legal guardian is the unaccompanied child's personal point of contact. NGOs have stressed that it is crucial to train legal guardians on protection against child trafficking. Unaccompanied foreign children are accommodated in child and youth welfare facilities, including live-in facilities and supported forms of living.

93. The BKA reported 8 991 unaccompanied children as missing as of 1 July 2016, with 867 of them being younger than 13 years.³² According to the BKA, of the 9 748 unaccompanied refugee children were registered as missing in 2016, in 8 490 cases the whereabouts of the children were determined in the meantime or the cases were cleared in another way. The BKA notes that there are no reliable figures on the exact number of missing unaccompanied child refugees as one child may be registered under different names in different places due to the lack of identity documents.³³

94. GRETA is concerned about plans to place asylum-seeking children in large-scale accommodation centres for asylum seekers (so-called "Anker"-Zentren). GRETA was informed about the difficult situation in some of Bavaria's reception centres which are already following this model, with significant numbers of asylum seekers, including children, being placed in them, in inadequate conditions, and staff not being adequately trained and qualified to work with children (see also paragraph 132). GRETA stresses the Convention's obligation to reduce children's vulnerability to trafficking by creating a protective environment for them. The authorities have referred to measures implemented by the Bavarian authorities to ensure the safety of persons in asylum centres, including children, by appointing anti-violence co-ordinators in asylum accommodation centres in Bavaria since early 2019.

95. In co-operation with UNICEF, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and civil society organisations started an initiative to protect women and children in refugee reception centres from violence. A document laying down minimum standards for the protection of children, adolescents and women in refugee accommodation centres was published in 2016 and updated in 2017 and 2018.³⁴ Anti-violence co-ordinators have been appointed in many reception centres for asylum seekers to develop anti-violence plans and support the reception centres with their implementation. The anti-violence plans are aimed at assisting the reception centres to comply with the minimum standards for the protection of children, adolescents and women. The German authorities indicated that they do not have precise information regarding the number of refugee centres in which anti-violence co-ordinators have been deployed, because the accommodation of asylum seekers comes under the competence of the *Länder*. However, by the end of 2018, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) had supported anti-violence co-ordination units in approximately 100 refugee centres in order to test the implementation of the minimum standards in practice and to develop practical materials such as checklists and material for participative risk analysis or the participative review of child-friendly places. The minimum standards have been incorporated into the development of individual anti-violence concepts in many *Länder*. UNICEF developed a curriculum for a four-day course for staff in refugee centres on the minimum standards, as well as a manual for trainers.³⁵

³² See: <https://www.dw.com/en/some-9000-refugee-children-reported-to-have-disappeared-in-germany/a-19509994>; <https://www.telegraph.co.uk/news/2016/08/29/fears-many-of-9000-refugee-children-missing-in-germany-may-have/>

³³ https://www.bka.de/DE/UnsereAufgaben/Ermittlungsunterstuetzung/Vermissstensachbearbeitung/vermissstensachbearbeitung_node.html

³⁴ Available at: <https://www.gewaltschutz-gu.de>

³⁵ Available at: <https://www.gewaltschutz-gu.de>

96. Further, in 2016 the Federal Government together with the KfW Development Bank introduced a programme offering interest-free loans to municipal authorities to fund construction works in refugee reception centres in order to implement anti-violence measures. Some 200 million Euros were available and the local administrations could apply by 31 December 2017 for these funds. The authorities indicated that five facilities have received a loan from this programme.

97. In Berlin, a project entitled "Mobile Child Protection Training Team" was launched in 2018. The tasks of the members of this mobile team are to provide comprehensive, obligatory training on the subject of child protection to all employees in refugee centres in Berlin, based on a training concept specifically developed for this purpose, to introduce a standardised procedure for reporting child protection cases and for co-operation with youth welfare offices, and to bring the trained employees into contact with the co-operation partners of the Berlin child protection network.

98. **Referring to Article 5, paragraph 5, of the Convention, according to which Parties to the Convention shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them, as well as the Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019),³⁶ GRETA urges the German authorities to ensure that unaccompanied and separated children benefit from effective care arrangements, including appropriate accommodation, access to education and health care, with a view to preventing human trafficking.**

99. **Further, GRETA considers that the German authorities should increase their efforts to prevent trafficking in children by:**

- **raising public awareness and sensitising and training teachers and child welfare professionals about the risks and different manifestations of child trafficking (including exploitation of begging, forced criminality and forced marriage);**
- **raising awareness of THB as part of school education, including by providing information about the risks of being recruited through the Internet/social networks, the "loverboy" recruitment scenario and the fact that German nationals can also fall victim to THB;**
- **raising awareness of the risks of THB amongst refugee children;**
- **taking measures to ensure the registration at birth of children of asylum seekers.**

d. **Measures to prevent trafficking for the purpose of organ removal (Article 5)**

100. GRETA notes that while human trafficking for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs³⁷ are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.³⁸ Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

³⁶ Adopted at the [127th Session of the Committee of Ministers](#) in Nicosia, Cyprus, on 19 May 2017.

³⁷ Opened for signature in Santiago de Compostela on 25 March 2015; entry into force on 1 March 2018.

³⁸ See ["Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs", Joint Council of Europe/United Nations Study](#) (2009), in particular pages 55-56; ["Trafficking in human beings for the purpose of organ removal in the OSCE region: Analysis and Findings", OSCE Occasional Paper No. 6](#) (2013).

101. In Germany, the donation of human organs and tissues for the purpose of transplantation is governed by the Transplantation Act (TPG) which covers both post-mortem and living donations. Amongst the preconditions for a living donation of organs under Article 8, paragraph 1, of the TPG are that the prospective donor is an adult, is able to give his/her consent, has been informed about the process in detail as well as about the fact that his/her consent is required and that he/she has consented to the removal. The information has to be given by a doctor in a language the donor is able to understand.³⁹ The information must be provided in the presence of a second doctor who is not involved in the removal or transplantation of the organ or tissue and, where appropriate, other experts. The content of the information provided and the donor's declaration of consent must be documented in writing and signed by the person providing the information, the second doctor and the donor. The donor may withdraw his/her consent either verbally or in writing. The removal of a kidney, part of a liver or other non-regenerative organs is only permissible from first or second-degree relatives, spouses, registered partners, fiancé(e)s or other persons who have a particularly close personal relationship with the donor. A living donation may only be performed after the donor and the recipient have declared their willingness to participate in follow-up medical supervision and treatment.

102. An additional requirement for the removal of organs from a living donor is that the Living Donation Commission of the respective *Land* has issued an expert statement confirming that the consent for organ removal was given voluntarily and that there are no indications that the organ is subject to illegal organ trafficking (Article 8, paragraph 3, of the TPG). The Commission must comprise a doctor who is not involved in the removal or transplantation of organs nor supervised by a doctor who is involved in such procedures, as well as a lawyer and a psychologist. The data of the living donor and the recipient, including data collected during in-patient and out-patient treatment, are stored in the national transplantation register. The removal and transplantation of an organ from a living donor may only be performed in authorised transplantation centres. The waiting lists are managed and supervised by the Eurotransplant allocation unit.

103. An independent trust office for transplantation medicine was set up in 2012 by the German Medical Association (*Bundesärztekammer*). Any person can lodge complaints, including anonymously, with this office, concerning any irregularities or problems in connection with organ transplantations. The office has received 13 reports since 2013 concerning persons offering organs on the Internet, mostly outside Germany, but the cases could not be verified. In one case, a doctor reported that a recipient received post-operative treatment, but the suspicion could not be confirmed. The German authorities have indicated that health-care professionals are bound by medical confidentiality and any breaches are subject to punishment under Article 203 of the CC ("violation of private secrets"). A healthcare professional must not reveal any information unless he or she has either been released from the obligation of medical confidentiality or because there is imminent danger for another protected legal interest (such as life or limb) substantially outweighs the obligation of medical confidentiality, pursuant to Article 34 of the CC ("necessity").

104. According to the authorities, the curricula for studies and advanced training of healthcare professionals include relevant criminal law and other legal requirements for organ removal and transplantation. It is not specifically foreseen by law that the members of the Living Donation Commissions receive additional training. However, the Living Donation Commissions regularly meet to exchange views and expert knowledge.

³⁹ Pursuant to Article 8, paragraph 2, of the TPG, the donor also has to be informed about the purpose and type of the surgical intervention; the examinations involved and the right to be informed of the results of the examinations; the measures taken to protect the donor and the scope and potential indirect and delayed impact of the intended organ removal on his/her health; the doctor's obligation of medical confidentiality; the outlook regarding the success of the organ or tissue transplant, the effects regarding the recipient and any other circumstances which the donor deems important in connection with the donation; the collection and use of personal data.

105. Germany has not signed the Council of Europe Convention against Trafficking in Human Organs of 25 March 2015. The German authorities have indicated that the German Transplantation Act contains an extensive criminal law provision regarding the prohibition of organ trafficking. Both the Federal Government and the *Länder* fully support the objectives of the Council of Europe Convention against Trafficking in Human Organs, and therefore took an active role from the beginning of the negotiations. However, from the point of view of the German authorities, at the end of the negotiations, it has not been possible to safeguard the fundamental principle of free and informed consent, and therefore Germany does not intend to ratify the Convention.

106. GRETA considers that the German authorities should strengthen the training and awareness-raising measures aimed at health professionals involved in organ transplantation and other relevant professionals regarding trafficking for the purpose of organ removal.

e. Measures to discourage demand (Article 6)

107. In its first report, GRETA considered 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.

108. Some specialised counselling centres have undertaken steps aimed at discouraging demand. By way of example, the specialised counselling centre FiM in Frankfurt has set up a website which reaches out to clients of persons engaged in prostitution.⁴⁰ It was launched in 2006 at the occasion of the Football World Cup in Germany and has been regularly updated since. The website provides information on the risks of forced prostitution and exploitation in the prostitution industry, and provides information on support structures. A similar website entitled "Responsible client" has been set up by the specialised counselling centre Ban Ying in Berlin.⁴¹

109. The German authorities have referred to legislative measures adopted during the reporting period with a view to discouraging demand, such as the introduction into the Criminal Code of a provision criminalising the use of sexual services from victims of human trafficking or forced prostitution, with the knowledge that the person is a victim (see paragraph 232). The provision foresees the possibility to exempt the user of sexual services from prosecution when he/she voluntarily reports a case of human trafficking or forced prostitution to the responsible authorities or voluntarily facilitates such a report.

110. The Act on Regulating the Business of Prostitution and Protecting Persons Working in Prostitution entered into force on 1 July 2017.⁴² According to the authorities, the aim of this Act is to strengthen the sexual self-determination rights of persons engaged in prostitution, create the legal conditions to ensure favourable working conditions, prevent harmful forms of prostitution and combat crimes such as human trafficking, violence, exploitation of persons engaged in prostitution and pimping.⁴³ The law foresees that the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) will evaluate the effects of the act on a scientific basis five years after its entry into force, taking into account the experience of its practical application. An evaluation report must be submitted to Parliament.

⁴⁰ www.stoppt-zwangsprostitution.de

⁴¹ www.verantwortlicher-freier.de

⁴² The text of the Act is available (in German) at: <https://www.gesetze-im-internet.de/prostschg/index.html>

⁴³ BT-Drucksache 18/8556, p. 33.

111. Core elements of the Act include a requirement to obtain statutory permission to operate a prostitution business and the obligation for all persons providing sexual services to register their work with the authorities. The granting of a license to operate a prostitution business is linked to fulfilling certain minimum requirements. Registration as a person engaged in prostitution is valid for two years (one year for persons who are older than 18 but younger than 21). Registration involves an interview, during which information and consultation are provided on available health and social advice services and how to get help in emergency situations. Prior to commencing work, a health advice counselling session must be attended at the public health service and subsequently repeated at yearly intervals (every six months for persons under 21). Persons engaged in prostitution who fail to register are subject to administrative liability according to Article 33 of the Act.

112. The implementation of the new Act requires the adoption of new legislation at the level of the *Länder* and adaptation of their existing administrative structures and procedures. As a result, the introduction of the modified approach to regulate prostitution had not yet been finalised in many places.

113. Further, Article 10a of the Act to Combat Clandestine Employment (SchwarzArbG) stipulates that any person who, in violation of Article 4, paragraph 3, sentence 2 of the Residence Act,⁴⁴ employs a foreign national and, in doing so, exploits a situation in which the foreign national finds him-/herself as a result of an act committed against him/her by a third party under Article 232a (forced prostitution) or Article 232b (forced labour) of the CC, is punished with imprisonment of up to three years or a fine.

114. With a view to implementing the UN Guiding Principles on Business and Human Rights, Germany adopted a National Action Plan on Business and Human Rights in 2016. The Plan foresees mainly voluntary actions by private companies. The federal government will evaluate its implementation by 2020 and decide whether further legislative action is necessary. In the meantime, the transposition of the EU Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups by Federal law of 11 April 2017 provides that companies with more than 500 employees must use their company or group management report or a separate non-financial report to disclose key information regarding employee, social and environmental matters, respect for human rights and anti-corruption policies. However, it would appear that the reporting requirements do not relate to human trafficking and exploitation in companies' supply chains.

115. In 2016, the Act on the Modernisation of Public Procurement Legislation was adopted. The revised legislation obliges companies executing public contracts to comply with environmental, social and labour law obligations, including collective agreements which have been declared binding by the Federal Government and the payment of the minimum wage. Some *Länder* provided examples of their activities in procurement to guarantee environmental, social and labour standards. In Baden-Württemberg, public procurement contracts must comply with ILO core labour standards. If an offer foresees paying salaries below minimum wages or fails to comply with collective agreements, it must be excluded. In Saarland, an Act Securing Social Standards, Tariff Compliance and Minimum Wages in the Award of Public Contracts was adopted in 2013 and a monitoring authority was established.

116. GRETA considers that the German authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with the private sector, civil society and trade unions.

⁴⁴ Article 4, paragraph 3, items 1 and 2, of the Residence Act read as follows: "Foreigners may pursue an economic activity only if the residence title so allows. Foreigners may be employed or commissioned to perform other paid work or services only if they possess such a residence title" (unofficial translation).

f. **Border measures (Article 7)**

117. Border control is under the responsibility of the Federal Police. Federal police officers receive specialised training on behaviour analysis linked to border control measures and checking of identity documents for document fraud, identity theft and visa falsification. According to the authorities, questioning at the point of entry regarding the purpose of travel and intended travel plans, the type and amount of luggage, and the separate questioning of accompanying persons, could reveal suspicions or contradictions to the information provided when applying for a visa and indicate a potential trafficking case. According to the authorities, police officials from the Federal Police Office regularly attend courses on trafficking in human beings offered by the Federal Criminal Police Office (BKA).

118. The Federal Police has no responsibility to investigate THB. If information regarding human trafficking comes to their knowledge during border control activities, it is forwarded to the responsible police force of the relevant *Land*. The Federal Police does not collect any statistics on the number of possible victims of THB they detect during border controls.

119. The Federal Criminal Police Office (BKA) deploys document and visa advisers in selected countries of origin and transit of irregular migrants arriving in Germany. These police officers provide advice to German embassies and consulates on the authenticity of identity documents and assist them in checking visa applications. They also advise commercial airlines on detecting risks of their transport services being used in the commission of THB offences.

120. **GRETA considers that the German authorities should strengthen their efforts to detect and prevent THB through border control measures and during visa application procedures, including by providing training to staff on detecting signs pointing to a potential trafficking victim. GRETA refers in this context to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders.⁴⁵**

2. Measures to protect and promote the rights of victims, guaranteeing gender equality

a. **Identification of victims of THB (Article 10)**

121. In the first evaluation report, GRETA urged 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 who may come into contact with victims of trafficking, such as NGOs and the Financial Monitoring Unit to Combat Illicit Employment (FKS).

122. The procedures for detecting, identifying and referring to assistance victims of trafficking are set up at *Länder* level, on the basis of co-operation agreements concluded between relevant public and civil society actors, which exist in 13 out of 16 *Länder*. There is no National Referral Mechanism in Germany which would define country-wide standards of interaction between relevant actors in the process of identifying victims of THB. The procedure foreseen in the *Länder* agreements provides that when the investigating authority (i.e. criminal police) 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, and the investigating authority must immediately establish contact with the counselling centre. If the first contact of a possible victim of THB is with a counselling centre, the latter informs the possible victim about his/her rights and the available support services, and if they agree to co-operate with law enforcement agencies, the counselling centre contacts the relevant police unit.

⁴⁵

http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

123. Some of the *Länder* co-operation agreements have been reviewed in recent years to include new co-operation partners (e.g. the regional branches of the Federal Office for Asylum and Migration). However, some of the existing co-operation agreements have a limited scope, covering only trafficking for the purpose of sexual exploitation; many agreements also include labour exploitation and some refer to trafficking in human beings without mentioning specific forms of exploitation, but in general the forms of exploitation which have been recently introduced in the CC (i.e. forced begging, forced criminality and organ removal) are not covered by the co-operation agreements and there are no support structures to which victims of such forms of exploitation could be referred.

124. Among the *Länder* visited by the GRETA delegation, Lower Saxony had the most recently updated co-operation agreement, in 2014, but it only covered trafficking for the purpose of sexual exploitation. The Berlin co-operation agreement dates back to 2008 and concerns only women victims of trafficking, but an annexe with a provisional procedure is to be applied if male victims are detected. In Bavaria, a co-operation agreement has existed since 2004 and the co-operation partners have agreed to also apply it to cases of THB for the purpose of labour exploitation.

125. The specialised counselling centres implement various measures aimed at detecting possible victims of trafficking for the purpose of sexual exploitation, such as dissemination of information materials (e.g. flyers, information cards), outreach work and consultations. In large cities (e.g. Berlin, Hamburg) and urban areas where there are specialised police units, there are regular inspections of brothels and other locations to detect possible victims of trafficking. There is, however, a significant gap between urban and rural areas. In the latter, general awareness of the phenomenon of THB remains low and counselling structures are often far away.

126. When it comes to identifying victims of THB for the purpose of labour exploitation, the authorities have referred to the activities of the Financial Monitoring Unit to Combat Illicit Employment (FKS), which is responsible for monitoring the implementation of the Act on Illicit Employment, the Posting of Workers Act and the Minimum Wage Act. FKS inspectors assess working conditions and check the residence status of employees. As noted in paragraph 74, the FKS' internal instructions were amended in 2017 and inspectors are asked to pay "foremost attention" to labour exploitation and forced labour. Guidelines and questionnaires have been developed for this purpose. In case of detecting possible THB cases, FKS staff should secure evidence and transfer the investigation file to the police via the public prosecution office.

127. However, the capacity of the FKS regional offices to detect THB remains limited. The FKS currently has some 6 800 employees, while according to trade union representatives, it needs at least 10 000 to fulfil its duties. The authorities have referred to plans to increase the FKS staff up to 10 000 by the year 2026. A major reorganisation of the FKS was implemented in 2014. However, some offices still suffer from a severe lack of personnel and vacant management posts. Other offices are well-equipped and can send employees to trainings, including on THB, if they are offered by third parties (BKA, NGOs). However, there is no systematic sensitisation of FKS staff regarding THB. When the responsibility to monitor the new Minimum Wage Act was assigned to the FKS, about 1 600 new posts were created, and the new officials are being trained by the customs authorities. However, the topic of THB has not been included in the three-year initial training of these officials. Furthermore, the FKS mainly concentrates on controlling large workplaces. Small construction sites are hardly ever inspected by the FKS, which can lead to an erosion of labour conditions and an increase in non-payment of wages. The FKS has no statistics on cases of labour exploitation or forced labour it detects, cases of such violations being listed under "other offences" without further specification. The Federal Government adopted on 20 February 2019 a draft bill extending the responsibilities of the FKS and has submitted it to Parliament. The bill foresees to include into the mandate of the FKS the powers to inspect and investigate cases of THB for the purpose of labour exploitation. **GRETA welcomes this development and would like to be kept informed of the adoption of the bill expanding the mandate of the FKS.**

128. For successful detection and referral of cases of THB for the purpose of labour exploitation, co-operation by the FKS and the criminal police is crucial and needs active partners from both sides. In some places, in particular when the FKS is involved in the local co-operation structures, this collaboration reportedly works well. GRETA was informed by counselling centres for migrant workers and trade union representatives that when they report suspicious cases to the FKS and the police, depending on where this happens, the reactions differ from excellent co-operation to complete disinterest, despite the fact that the principle of legality would require investigation in every such case.

129. NGOs have pointed out that in some economic sectors, such as domestic work, private care and *au pairs*, labour inspections cannot take place, as access to private households by inspecting bodies is very restricted. FKS officials are not authorised to enter private households without the consent of the occupant. In cases involving a third party, such as agencies or so-called mediators for domestic work, examinations and preliminary investigations can be carried out if there are indications of false self-employment or non-payment of the minimum wage. Employers in the domestic care sector based abroad who are sending their employees to Germany have to report the place of work to the customs administration when providing outpatient care services, due to their reporting obligations under the Posted Workers Act. According to the BKA's annual situation report, in the 2014-2017 period, 12 investigations into THB for the purpose of labour exploitation in domestic situations were carried out.

130. The Federal Office for Migration and Refugees (BAMF), which operates under the supervision of the Federal Ministry of the Interior, is responsible for the processing of asylum applications and granting of international protection (refugee status or subsidiary protection) or complementary national protection. Cases are processed by the BAMF branch offices all over Germany. In every BAMF branch office, a trained case manager acts as a special representative for victims of THB and serves as a point of contact on issues related to THB, as well as participating in the co-operation structures on THB in the *Länder*. GRETA was informed that the number of staff of BAMF had increased in reaction to the significant increase in the number of asylum seekers during the reporting period (see paragraph 17), and that many new staff had not yet received training in trafficking in human beings. In June 2018, three courses on the subject of human trafficking with 70 participants were carried out. By the end of 2018, 178 BAMF staff had been trained on the subject of human trafficking. The five-day training consists of the EASO module "Interviewing Vulnerable Persons" and a national specialisation element on THB. BAMF staff have been issued with instructions on how to proceed in cases of asylum claims from victims of human trafficking, which include indicators for the identification of victims and procedures for referral to specialised counselling centres for victims of trafficking. If in the course of an asylum interview a staff member of BAMF suspects trafficking in human beings, he/she has to contact the special representatives for victims of THB. The asylum seeker is informed about the existence of a counselling centre for trafficked persons and, with his/her agreement, the counselling centre is contacted. The specialised counselling centres noted that co-operation with BAMF was good in some parts of the country where there were trained special representatives for victims of THB, but this was not the case in other areas. In 2017, a joint workshop was organised by the KOK and BAMF which was attended by representatives from specialised counselling centres for victims of human trafficking and BAMF special representatives for victims of THB. Further, in 2018, two regional networking meetings were held for staff of specialised counselling centres and special representatives of the Federal Office.

131. According to the authorities, there are no reliable statistics on the number of victims of human trafficking identified during the asylum process. GRETA was informed that, in a number of cases, international protection (refugee status or subsidiary protection status) or national complementary protection was granted to Nigerian women who had been sexually exploited in Germany and/or other European states. Reference can be made to administrative court decisions granting refugee status to victims of THB taken by the Administrative Courts of Würzburg⁴⁶ and Wiesbaden.⁴⁷ Furthermore, there are court decisions granting refugee status or national complementary protection to women who might be at risk of being trafficked or forced into prostitution in case of return in their country of origin.⁴⁸

132. Responsibility for accommodating asylum seekers falls with the *Länder*. While in most *Länder* the reception of asylum seekers is organised in small-scale facilities, others have set up large-scale facilities, which comprise all responsible bodies and organisations implementing all steps of the asylum procedure, providing counselling and other services. This is notably the case in Bavaria, where so-called "Anker"-Zentren ("centres for arrival, decision-making and return") have been created. Concerns were expressed to GRETA that these reception centres have a low staff-resident ratio (one staff member for some 150 asylum seekers), which limits the chances of staff identifying victims of THB. Further, visiting NGOs find it more difficult to communicate with asylum seekers in such large reception centres.

133. Some of the *Länder* referred to specific measures to enable the identification of victims of trafficking in asylum reception centres. Thus in Berlin, under the so-called "master plan on integration and security adopted in 2016", a guide for identifying refugees in need of special protection, including cases of THB, was developed. Training is provided to staff in reception centres on the topic of violence against women, where participants are also sensitised to human trafficking and encouraged to contact specialised counselling centres in case of suspicion. In North Rhine-Westphalia, until the beginning of 2019, a programme on counselling and support for women refugees suffering from violence-related trauma had been set up which, *inter alia*, provided financial support to specialised counselling centres for the purpose of identifying victims of human trafficking in asylum reception centres.⁴⁹ The counselling centre for victims of trafficking Jadwiga in Bavaria has set up women's cafés in the asylum reception centres in Zirndorf and Munich in order to provide information to, and establish contact with, asylum-seeking women. Further, the authorities indicated that the Bavarian State Criminal Police Office or the local criminal police departments do on occasion co-operate with the specialised counselling centres Jadwiga and Solwodi, which are present in various asylum reception facilities when it comes to the identification of possible victims of trafficking amongst asylum seekers.

134. Nevertheless, counselling centres informed GRETA that they lack the means to ensure visits to all asylum reception centres or to provide written information to asylum seekers in different languages. Further, as already noted, staff working in reception centres lack training in THB. GRETA is therefore concerned that there is no systematic identification mechanism for possible victims of THB in the context of the reception of asylum seekers.

⁴⁶ Judgement of 19.09.2005 – W 8 K 04.30919 (Ukraine, gender-related persecution)

⁴⁷ Judgement of 14.03.2011 – 3 K 1465/09.WI.A (Nigeria, former victims of human trafficking as particular social group)

⁴⁸ Examples of court decisions: recognition of refugee status in cases of former victims of human trafficking (affirmation of a particular social group): AC Regensburg, judgement of 19.10.2016 - RN 5 K 16.30603 (Nigeria); AC Würzburg, judgment of 17.11.2015 – W 2 K 14.30213 (Nigeria); AC Stuttgart, judgement of 16.05.2014, Az. A 7 K 1405/12 (Nigeria); rejection of refugee status (denial of membership of a particular social group): AC Gelsenkirchen, judgment of 15.03.2013 - 9a 3963/11.A (Nigeria); recognition of refugee status with reference to i.a. risk of human trafficking/forced prostitution: AC Magdeburg, judgment of 14.06.2016 – 4 A 557/15 (Iraq); recognition of national complementary protection to victims of human trafficking or due to risk of becoming victim of human trafficking/forced prostitution in case of return: AC Aachen, judgment of 24.08.2015 - 2 K 2738/13.A (Nigeria); AC Munich, judgment of 15.09.2015 – M 16 K 15.30522 (Armenia); AC Munich, judgment of 28. 04.2014 · Az. M 21 K 11.30680 (Nigeria); AC Würzburg, judgment of 07.04.2014 – 3 K 14.30023 (Ethiopia).

⁴⁹ According to the authorities, the programme was stopped because of falling immigration figures for refugee women, and because many of the women who arrived and who needed specific support had become part of the regular assistance system. The funds released as a result have been used to strengthen the women's support infrastructure. This has been of particular benefit to the specialised counselling centres for victims of human trafficking, as funds have been increased to meet demand.

135. **GRETA urges the German authorities to take further steps to ensure that victims of THB are identified as such in a proactive and timely manner, and in particular to:**

- **strengthen multi-agency involvement in victim identification for all forms of exploitation, by giving a formal role in the identification process to frontline actors and enabling identification independently of the initiation of criminal investigations, by setting up and further developing co-operation agreements and structures in all *Länder*, by including all relevant professionals in these mechanisms, and by providing guidance and training on the implementation of the pertinent procedures to all these professionals;**
- **increase their efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by expanding the mandate of the Financial Monitoring Unit to Combat Illicit Employment (FKS) to cover the detection of victims of THB and their referral to assistance, including in domestic households, and by reinforcing the capacity and training of officials of the FKS and other relevant agencies, providing them with clear instruction on the detection and referral of cases of THB, and involving trade unions and NGOs;**
- **pay increased attention to the proactive detection of victims of trafficking among asylum seekers, by providing training and clear instructions to BAMF staff and staff of asylum reception centres on how to proceed when detecting indicators of THB;**
- **provide specialised counselling centres involved in the identification of victims of trafficking amongst asylum seekers with sufficient resources to enable them to fulfil this task.**

b. Assistance measures (Article 12)

136. In its first report, GRETA urged the German authorities to provide the specialised counselling centres supporting victims of THB with adequate funding and to ensure the quality of the services delivered by them. As most of the counselling centres limited their services to female victims of sexual exploitation, GRETA called on the German authorities to develop counselling centres across the country for victims of THB of different types of exploitation. GRETA also stressed the need to provide safe and suitable accommodation to male victims of THB. Further, GRETA urged the German authorities to ensure that assistance to victims is not made conditional on their willingness to act as a witness.

137. The access of victims of human trafficking from non-EU countries to state-provided social assistance depends on the victim's residence status, which can be linked to their willingness to give evidence. If victims decide to co-operate and are granted a residence permit under Article 25, paragraph 4a, of the Residence Act, they are entitled to benefits in accordance with the German Social Code. According to an internal instruction of the German Employment Agency, trafficking victims from EU countries are generally entitled to payments in accordance with the German Social Code. German victims of THB are entitled to social benefits.

138. The provision of assistance to victims of THB is the responsibility of the *Länder*, which mandate specialised counselling centres to receive victims of trafficking and ensure their access to assistance. The specialised counselling centres receive funding from the *Länder* and other sources to provide counselling to victims of THB and organise financial and material assistance, medical care and safe accommodation. The federal authorities, namely the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, are only involved in funding of the networking body of the specialised counselling centres, the KOK. This funding currently amounts to 315 000 euros per year.

139. The specialised counselling centres for victims of human trafficking have adopted joint standards and principles of providing support to victims, which are reflected in training materials and a manual on ensuring the quality of services. In some cases, the standards applied in supporting victims are also an integral component of the co-operation agreements at the level of federal states. Support provided to victims by the specialised counselling centres is given irrespective of the victim's residence status or their willingness to give evidence as a witness. The counsellors of the specialised counselling centres generally provide victims with advice in their own language or in another foreign language the victim understands. However, there are cases which require interpretation, the costs of which have to be covered by the counselling centres. GRETA's attention was drawn to the need to secure funding for interpretation.

140. Counselling centres for migrant workers (see paragraph 72) may encounter cases of THB for the purpose of labour exploitation. When confronted with such a case, they try to find solutions on a case-by-case basis as they do not have a mandate to assist victims of THB. Counsellors for migrant workers met by GRETA noted that they have neither the personnel nor the financial resources to provide assistance in cases of trafficking for the purpose of labour exploitation. In some *Länder*, no specialised counselling for victims of THB for the purpose of labour exploitation is available.

141. Germany has no national standards for providing accommodation to victims of human trafficking. The responsibility for setting up, financing and running accommodation facilities for victims of THB falls on the *Länder*. According to NGOs, finding accommodation for trafficked persons poses significant practical challenges. There are important differences between *Länder* in the way in which accommodation is organised, depending on funding, the number of specialised counselling centres and the number of women's shelters and shelters for victims of trafficking. In most *Länder*, the specialised counselling centres receive funding from the *Land* and/or the municipality for the accommodation of victims of THB in women's shelters or specialised shelters for victims of trafficking. Some *Länder*, including North Rhine-Westphalia, Rhineland-Palatinate and Baden-Württemberg, have a state fund for the accommodation of trafficked persons that can pay for a short stay in a hotel or a bed- and-breakfast place. However, the funds are often not sufficient and counselling centres have to seek additional funds from donors.

142. A study on the availability of safe accommodation for victims of human trafficking has been conducted by the KOK (see paragraph 59). According to the study report, women's shelters are the most common way of accommodating female victims of human trafficking. However, women's shelters in Germany are suffering from a lack of places and often have to turn down new arrivals. One third of the specialised counselling centres in Germany have access to specialised shelters for victims of trafficking. If an emergency placement is needed and no free places are available, the counselling centres resort to rented apartments, hotels or bed-and-breakfast places.

143. No specialised accommodation exists for trafficked men and therefore specialised counselling centres have to find an individual solution for each case. According to the authorities, existing accommodation options, such as hotels, bed-and-breakfast places and shelters for homeless people, are appropriate for accommodating victims of trafficking. However, GRETA notes that while these accommodation options cover the victims' basic needs, but are not in a position to provide psychosocial support or protection. In the case of shelters for homeless persons, they only offer a bed for the night but there is no possibility to stay during the day.

144. The GRETA delegation visited a shelter for women victims of trafficking in Berlin run by the NGO ONA. The shelter is situated in an apartment and can accommodate up to eight women, together with any children they may have. At the time of GRETA's visit, six women (originating from Benin, Ghana, Latvia, Nigeria and the Philippines) were living there, as well as the child of one of the women. In general, the women accommodated at the shelter are victims of THB for the purpose of sexual exploitation, but a few victims of labour exploitation have also been hosted. The shelter is intended to provide emergency accommodation and some women only stay for a few days, but on average, the stay is about one year. It is financed by the Berlin authorities, including one and a half posts for social workers. Most of the victims are referred by counselling centres or NGOs, and some by the police. The shelter is located at a secret address and mail is received via a letterbox or the address of a counselling centre. ONA staff helps with access to medical care, psychological care and trauma therapy. The social workers accompany the women when they have to go to the employment office and help them with finding an apartment. If the women obtain a residence permit under Article 25, paragraph 4a, of the Residence Act, this provides access to many rights and facilitates the work of the shelter. If a woman from a third country does not co-operate with the investigation, she cannot obtain this residence permit and the shelter can only provide limited support.

145. As concerns victims of trafficking who are asylum seekers, the administrative instruction for the implementation of Article 15a of the Residence Act (on the allocation of foreigners who have entered the federal territory unlawfully) stipulates that foreign victims of trafficking, as well as persons showing indicators of trafficking, "should" not be placed in collective accommodation, but in secure places under conditions adapted to their needs.

146. In Munich, the GRETA delegation visited the housing project Mirembe of the private association Imma e.V. (Initiative for Munich Girls), which provides shelter to particularly vulnerable asylum seeking women suffering from severe physical or mental distress and their children. Mirembe was founded in January 2015 and receives its main financial support from Munich's Social Services Department. At the time of GRETA's visit, 14 women and 13 children were accommodated there. Most of the women were between 20 and 30 years old, mainly coming from Afghanistan, Uganda, Nigeria, Sierra Leone, Tanzania, Senegal, Somalia and Ethiopia. According to staff, six of the 14 women were victims of trafficking. An interdisciplinary team of social workers, psychologists, educators and care givers work at the shelter. Residents are offered social and psychological counselling, as well as recreational activities.

147. GRETA urges the German authorities to provide adequate assistance, including safe accommodation, adapted to the specific needs of male victims of THB.

148. Further, GRETA considers that the German authorities should continue and strengthen their efforts to provide assistance to all victims of trafficking, and in particular:

- **ensure that all victims of THB have effective access to the assistance and protection they need, regardless of whether they co-operate with the law enforcement authorities;**
- **ensure that all assistance measures are guaranteed in practice for victims all forms of exploitation;**
- **secure adequate funding for assistance services provided by NGOs in all *Länder*.**

c. **Identification and assistance of child victims of THB (Articles 10 and 12)**

149. In its first report, GRETA noted that action against child trafficking was often limited to the context of sexual abuse, neglecting other purposes of exploitation. GRETA urged the German authorities to develop co-ordination and co-operation measures dedicated to trafficking in children, by linking existing child protection structures, especially at the *Länder* level, with anti-trafficking expertise from state and non-state actors. GRETA also called on the German authorities to set up a procedure for the identification and referral of child victims of trafficking. Further, GRETA stressed the need to ensure that child victims of trafficking benefit from the assistance measures provided by the Convention.

150. There is limited data available concerning the number of identified child victims of trafficking in Germany. The German authorities have provided figures only on identified child victims of THB for the purpose of sexual exploitation, of whom in 2014-2016 there were 169 (including 34 under the age of 14).

151. The BKA's 2017 annual report on human trafficking and exploitation provides information on different forms of exploitation of children. In 2017, there were 134 investigations completed in relation to the exploitation of children (128 concerning commercial sexual exploitation,⁵⁰ one for labour exploitation, one for exploitation of begging, and four under Article 236 of the Criminal Code which concerns illegal adoptions), involving a total of 171 child victims. In 2017, 43 investigations involving child victims were completed under Articles 232 and 233a of the CC.

152. There is still no specific referral process for cases of trafficking in children in Germany. According to NGOs, there is a lack of understanding of child trafficking, which can result in trafficked children not being identified as such. For example, it was noted that police officers and other stakeholders do not know enough about certain forms of exploitation, such as forced criminal offences and begging, to which children are subjected.

153. As noted in paragraph 28, with a view to filling this gap, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and ECPAT Germany have developed the "Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation",⁵¹ which was published on 18 October 2018, with input from the BKA, the KOK and the German branch of the International Social Service (ISD). It is addressed to youth welfare services, the police, specialised counselling centres and other relevant actors for the identification and protection of child victims of trafficking. The guidance starts by clarifying relevant definitions and setting out the pertinent legal and policy framework. It continues by laying down the aims which should be achieved, the responsibilities of relevant stakeholders, the rights of child victims of trafficking and guiding principles for co-operation. The document concludes with recommendations for successful implementation of a co-operation agreement. A list of indicators and the contact details of relevant agencies and civil society actors are provided in two appendices, where reference is also made that child victims of trafficking should not be punished for offences they were compelled to commit. The competences for the implementation of the Federal Co-operation Guidance lie with the *Länder*. However, GRETA was informed by civil society interlocutors that its implementation was challenging in many *Länder* due to the complexity of the task and the need to provide the necessary resources. **GRETA welcomes the devolvement of the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation.**

⁵⁰ The term commercial sexual exploitation comprises eight offences, one of which is human trafficking.

⁵¹ Available (in German) at:

<https://www.bmfsfj.de/blob/129878/558a1d7b8973aa96ae9d43f5598abaf1/bundeskooperationskonzept-gegen-menschenhandel-data.pdf>

154. The authorities have indicated that since the publication of the Federal Co-operation Guidance, two multi-stakeholder workshops at *Länder* level have been conducted, in Rhineland-Palatinate and Lower Saxony, involving professionals from the child welfare services, specialised counselling centres, BAMF, the police and staff from other child-care organisations, on the topic of trafficking in, and exploitation of, children. ECPAT Germany is planning, in co-operation with the authorities of several *Länder*, additional multi-stakeholder workshops to present the Federal Co-operation Guidance. One workshop is planned for the spring of 2019 in Saxony-Anhalt and another one in Mecklenburg-West in October 2019. Consultation meetings with the Berlin Senate Administration have also taken place, where the implementation process will start with special training for personnel of the youth welfare service.

155. Further, the authorities of the *Länder* Hamburg and Bremen informed GRETA that, on the basis of the Federal Co-operation Guidance, they had initiated a joint venture to raise awareness amongst relevant professional groups (teachers, social workers, police officers, NGOs, health-care professionals, judges, legal guardians for unaccompanied children) and to strengthen multi-disciplinary co-operation. As a first step, the Federal Co-operation Guidance is planned to be presented during an event in Bremen on 28 March 2019 with professionals from both *Länder*. It is intended to subsequently set up round tables in both cities which aim at identifying specific needs and developing models of co-operation and training units.

156. GRETA was informed of some initiatives at *Länder* level in relation to child trafficking. In Berlin, for example, a network for child protection brings together a broad variety of actors⁵² and addresses all aspects of protection of child victims of neglect, ill-treatment, sexual abuse and domestic violence. The network includes front-line organisations which may come across cases of child trafficking, such as the NGO *Hilfe für Jungs*, which works with boys and young men working in prostitution. Berlin is the only *Land* with a dedicated police unit specialised in handling cases of trafficking in children which has contributed, according to the Berlin authorities, to the highest number of identified child victims of trafficking per capita of the population compared to the other *Länder*.

157. In Hanover, the municipal co-ordination office for child protection and early support and the specialised counselling centre Kobra have worked since 2015 on establishing a regional network on child trafficking. Its aim is to raise awareness and promote links among professionals in the field of child trafficking. The network addresses all forms of trafficking, including forced criminality and begging. The participants include representatives of specialised counselling centres, local social services, youth welfare services, the Central Child Protection Office, the city's integration management services, the Co-ordination Office for Migration from Eastern Europe, as well as the police. According to the authorities, regular network meetings are held and, as from 2019, the child trafficking network will be established as a sub-working group of the Municipal Prevention Council of Hanover. Further, at the invitation of Kobra and ECPAT Germany, a multi-professional workshop was held on 6 November 2018 to promote networking between relevant stakeholders, as well as the development of structures related to child trafficking.

158. In Nürnberg, under the leadership of the municipal Human Rights Office, a working group on trafficking in human beings was established in 2017. It brings together a broad variety of stakeholders and addresses the identification and protection of trafficked persons, with a special focus on trafficked children in the asylum context. In 2018, its work focused on developing local protection structures, e.g. through training professionals working with asylum seekers.

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See <https://www.berlin.de/sen/jugend/familie-und-kinder/kinderschutz/netzwerk-kinderschutz/>

159. As concerns assistance for child victims of trafficking, Article 42 of the Social Code Book Eight (SGB VIII) stipulates that, where the welfare of a child is at acute risk, the child welfare services are legally required to take the child into care. Unless a child is handed over to a legal guardian or a person with parental authority, temporary care is transformed into permanent care by the responsible child welfare service. The child welfare service can take all legal action necessary to ensure the child's safety and welfare. The child welfare service is, however, required to appoint a legal guardian or a carer without delay. If necessary, and in accordance with the best interests of the child, this appointment is followed by specific child care assistance (Article 27 of SGB VIII), full-time care (Article 33 of SGB VIII), care in a home or other forms of supervised living arrangements (Article 34 of SGB VIII), or intensive socio-educational support (Article 35 of SGB VIII).

160. Under German law, separating a child from its parents against their will is subject to strict requirements, taking account of the parents' protected rights under Article 6 of the German Basic Law (GG). Under Article 1666 of the German Civil Code (BGB), such separation can only be decided by a court and is only permissible if the child's physical, mental or emotional welfare is at risk and if such risks cannot be mitigated by other means, including state assistance (Article 1666a, paragraph 1, of the BGB). The law stresses that, given the severity of its impact, separating a child from its parents should be the last resort and is only permissible if less invasive means, such as the assistance of the child or youth welfare service, do not suffice in mitigating risk.

161. When it comes to unaccompanied children, pursuant to Article 42a of SGB VIII, child welfare services are required to take a foreign child immediately into temporary care if there is no person with parental authority or legal guardian status resident in Germany. The same procedure applies in case of doubt concerning the person's age, until the child welfare services determine that the person concerned is not a child.

162. The Youth Welfare Office or the Family Court can involve the International Social Service or the Central Authority of the Federal Office of Justice in cases where parents or relatives of the trafficked child are abroad or when further clarification is needed. Relevant authorities abroad would be informed that the child's welfare is under threat, and asked to verify the family's circumstances and to provide an assessment of the circumstances of the child's exploitation as well as the role of any relatives. The German Federal Criminal Police Office can also intervene through international collaboration.

163. NGOs informed GRETA that, in practice, the appointment of guardians does not always function as foreseen by the law because either the Family Court is not called upon quickly enough or it is not deemed necessary to appoint a guardian because the case is not recognised as one of THB or exploitation.

164. There are no specialised accommodation facilities for trafficked children in Germany. Child victims of trafficking are usually housed in care institutions run by the child welfare services, which are usually not adapted to the specific needs of trafficked children. In certain cases, children can be placed in safe houses, temporary shelters or, if no better solution can be found, private rental accommodation approved by the Youth Welfare Office. Girls are sometimes accommodated in shelters for female victims.

165. GRETA stresses the importance of staff working in care institutions being informed of the trafficked child's particular situation of vulnerability as soon as the child is taken into care, so that their security needs can be taken into account. Children who have experienced exploitation often find it difficult to comply with the regulations, which means that they may act violently, use drugs or run away. The latter is in particular the case with girls who have become victims through the so-called "loverboy" method when they cannot get in contact with the perpetrators anymore. Such behaviour often causes conflict with the child welfare services that have to uphold the regulations and can result in the children being turned out after repeated breaches and ending up on the street.

166. In the case of asylum-seeking unaccompanied children, a hearing must be conducted by a specially trained representative for unaccompanied children. If a suspicion of THB arises, this representative must be involved in the decision-making process. If the hearing gives an indication that the asylum seeker is a possible victim of human trafficking, information about the asylum seeker is transmitted to the police. The police or the public prosecutor's office decides whether an investigation should be commenced.

167. The authorities of Baden-Württemberg and Berlin indicated that all unaccompanied foreign children taken into care undergo an assessment of their individual needs and a support plan is drawn up. If, during that process, information comes to light which indicates that the child is a victim of human trafficking, an investigation is initiated. Interviews are carried out by specialised staff, including psychologists and social workers. Attention is said to be paid to possible indicators of human trafficking, including ethnicity, group and gender-related aspects. If there are signs of human trafficking, the criminal police conducts a criminal investigation.

168. In Hanover, GRETA visited an accommodation centre for unaccompanied children and other children taken into the care of the municipality. The centre is intended for children from 14 to 17 years of age and has a capacity of 10 places. It was initially intended for accommodating only unaccompanied children, but following the decrease in the arrival of such children, it started admitting other children a few months prior to GRETA's visit. At the time of GRETA's visit, nine children, all boys, were hosted at the centre, most of them 17 years old; five of them unaccompanied. The children attend school and follow language courses. The centre's staff noted that the appointment of a guardian could take several weeks and that guardians rarely met children, which made it difficult to build a relationship of trust. There used to be cases of children disappearing, but the situation reportedly improved in the course of 2017. In case of a disappearance, the centre informs the police and the child protection authority. Staff had not received information or training on THB. They reported that sometimes children appeared to be under a certain pressure, but no cases of THB had been suspected so far.

169. Age assessment is performed on the basis of any available personal identification papers and a "qualified observation"⁵³ of the person, which implies assessing the person's physical appearance and taking into account his/her development stage on the basis of an interview. The presumption of childhood applies in case of doubt. The judicial authorities stated that if a doubt persists after the inspection of available documents, questioning the person and obtaining information from the country of origin, the public prosecutor requests an official age assessment by a forensic expert which usually involves a review of the person's medical history, a physical examination, including a dental examination with a panoramic radiogram of their upper and lower jaw, an x-ray of the left hand, and a CT scan of the breast bone and collar bone. **GRETA invites the German authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, and taking into account the Convention on the Rights of the Child and General Comment No. 6 (2005) of the Committee on the Rights of the Child.**⁵⁴

⁵³ Article 42 f of Book VIII of the German Social Code.

⁵⁴ [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.](#)

170. **GRETA urges the German authorities to improve the identification of, and assistance to, child victims of trafficking, in particular by:**

- **effectively implementing as a matter of priority the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation, at all levels of government; to this end, federal, *Länder* and local authorities should deploy the necessary financial and staff resources;**
- **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, including by paying particular attention to unaccompanied and separated foreign children;**
- **providing training to stakeholders (including police officers, NGOs, child welfare services, social workers, teachers and health-care professionals), as well as guidance on the identification of child victims of THB for different purposes, including the exploitation of begging and criminal activities, drawing on the indicators provided in the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation;**
- **providing adequate support and services which are adapted to the needs of child victims of trafficking, including by ensuring that there is a sufficient number of accommodation places;**
- **ensuring the timely appointment of guardians for unaccompanied and separated child victims, in line with General Comment No. 6 (2005) of the Committee on the Rights of the Child.**

d. **Protection of private life (Article 11)**

171. The storage of personal data by the police is subject to strict standards under the police legislation of the *Länder* and the Federal Criminal Police Act (BKAG). According to the authorities, police officers investigating cases of human trafficking are trained on how to take the special role of victims in criminal proceedings into account when deciding on whether their data should be stored. Personal data of child victims may not be made public and may only be stored for specific purposes, and their address may be kept secret.

172. By way of example, in Saarland, measures were agreed to minimise access to victims' data and refrain from storing personal data in national databases. The Rhineland-Palatinate authorities mentioned that in case management by the police and other relevant authorities, access to personal data can be blocked in electronic processing systems. In Berlin, in the course of police investigations where an actual or potential risk exists, the address of the victim is not documented in the file, and subsequent delivery of official correspondence such as summons to appear before the public prosecutor or the court is made via the responsible police unit. In general, the address of the specialised counselling centre is very often used for correspondence instead of the personal address of the victims.

173. Concerning the protection of data by counselling centres, personal data of victims of trafficking assisted by them is not disclosed to third parties. Part of the data is stored anonymously for statistical purposes. All counselling centre staff members are bound to confidentiality in accordance with Article 203 of the Criminal Code ("violation of privacy"). In this context, professionals working for specialised counselling centres noted that they do not have the right to refuse to give evidence in court, which is viewed as a significant obstacle as this puts a strain on the relations between counsellors and clients.

174. In the framework of the project “dataACT – data protection in anti-trafficking action” (2013-2015), implemented by the KOK and the NGO La Strada International, data protection standards for specialised counselling centres were elaborated and are currently being applied in Germany.⁵⁵ A consent form for data collection was created as part of this project to obtain authorisation to process and disclose personal data of victims and inform them about their rights regarding data protection.⁵⁶

175. The Public Prosecution Office in its relations with the press and broadcasting companies must assess on a case-by-case basis whether the public interest in full reporting outweighs the individual rights of the accused and the victim, pursuant to guideline 23, paragraph one, third sentence, of the Guidelines for Criminal Proceedings (RiStBV).⁵⁷ Unnecessary exposure must be avoided and the general public’s interest in information can usually be met without mentioning names.

176. GRETA invites the German authorities to continue ensuring the protection of the private life and identity of victims of trafficking.

e. Recovery and reflection period (Article 13)

177. In its first evaluation report, GRETA urged the German authorities to ensure that all possible victims of trafficking, including victims of THB for labour exploitation, are offered a recovery and reflection period. To this end, GRETA recommended that public officials performing identification be instructed to offer the recovery and reflection period without making it conditional on the victim’s co-operation and before the victim makes formal statements to investigators.

178. As explained in GRETA’s first report, the legal basis for granting a recovery and reflection period is provided in Article 59, paragraph 7, of the Residence Act. Pursuant to it, if the Foreigners Registration Office has concrete grounds to suspect that a foreigner has been a victim of trafficking, it sets a deadline of at least three months for leaving the country in order to give the possible victim sufficient time to decide whether he/she is prepared to testify as a witness in the criminal proceedings. The granting of the recovery and reflection period takes place in the form of an “order to leave the territory”, valid for at least three months, with the possibility of extension.

179. There are no data on the number of recovery and reflection periods granted to victims of THB in Germany.⁵⁸

180. The Foreigners Registration Office decides whether to grant a recovery and reflection period on the basis of an assessment of the competent police or public prosecution authority as to whether the person concerned is a possible victim of trafficking. This requires an interview with the possible victim by the police or prosecutor, without this being considered as making a formal statement.

181. According to NGOs, possible victims of THB are often not informed about the existence of the recovery and reflection period. One NGO in Berlin, for example, reported that in their experience the possibility of being granted a recovery and reflection period is not explained to trafficked women by the police if they are not accompanied by a lawyer or a social worker. Even if the required contacts with the investigating or prosecuting authorities in order to be granted a recovery and reflection period do not constitute an official questioning, victims perceive them as such. Further, GRETA was informed that in cases of THB for the purpose of labour exploitation, the recovery and reflection period is not applied because the relevant authorities do not know of this possibility.

⁵⁵ Available (in English) at: <https://www.dataact-project.org/en/materials/standards.html>

⁵⁶ Available at: <http://www.dataact-project.org/startseite/detailansicht/artikel/einverstaendniserklaerung-zur-veroeffentlichung-und-weitergabe-personenzogener-daten-und-information.html>

⁵⁷ Richtlinien für das Strafverfahren und das Bußgeldverfahren, available (in German) at: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_01011977_420821R5902002.htm

⁵⁸ Data on the number of recovery and reflection periods was provided only by Berlin (two persons in 2017) and Bremen (three persons “in the course of the past few years”).

182. In some *Länder*, the procedure for granting the recovery and reflection period is simplified. In Hamburg, for example, the specialised counselling centre, with the victim's consent, contacts the State Criminal Police Office (LKA) and outlines the case. If the LKA agrees with the counselling centre's assessment, the name and personal details of the victims are provided. The Criminal Police Office shares this assessment with its contact point at the Foreigners Registration Office, which grants the recovery and reflection period. In this case, no direct contact of the victim with the police takes place. In Lower Saxony, the co-operation decree provides that a reflection period can be granted by the Foreigners Registration Office on the basis of an assessment by a specialised counselling centre, without a confirmation from the police or public prosecutor's office being required. GRETA regards this procedure as a good practice for granting the recovery and reflection period.

183. During the recovery and reflection period, third-country nationals are entitled to benefits under the Asylum Seekers Benefits Act, which, however, are rather limited and include only emergency health care. In its first report, GRETA had pointed to inconsistencies concerning the range of assistance provided to EU-nationals who were issued a recovery and reflection period.⁵⁹ In 2016, the relevant internal guideline of the Federal Employment Agency was amended to stipulate that EU citizens who have become victims of human trafficking are entitled to benefits under the Social Code II, similar to German nationals.

184. Recalling the recommendation made in the first report, GRETA once again urges the German authorities to ensure, in compliance with Article 13 of the Convention, that all possible foreign victims of 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. Staff performing identification, and in particular staff who may come into contact with victims of trafficking for the purpose of labour exploitation and the recently criminalised forms of exploitation (forced begging, forced criminality), 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 data collection on THB should include the number of recovery and reflection periods granted (see also the recommendation in paragraph 55).

185. Furthermore, GRETA considers that the German authorities should review the current formulation of the recovery and reflection period ("order to leave the territory") in order to reflect the spirit in which the recovery and reflection period should be granted.

f. Residence permits (Article 14)

186. In its first report, GRETA considered that the German authorities should take further steps to ensure that victims of trafficking can benefit from a residence permit in Germany and the rights attached to it. GRETA was concerned that obtaining a residence permit not only depended on the victim's willingness to co-operate with the law enforcement authorities, but also on the value of their testimony for the prosecution for THB. Further, GRETA considered that a residence permit for child victims of trafficking should be granted on the basis of their best interests and not subject to their willingness or ability to co-operate with judicial bodies.

⁵⁹ See paragraphs 145 and 153 of GRETA's first report.

187. In August 2015, Article 25, paragraph 4a, of the Residence Act was amended as follows:

"A foreigner who has been the victim of a criminal offence pursuant to Articles 232 to 233a of the Criminal Code should be granted a temporary residence permit for a temporary stay, even if he/she is required to leave the federal territory. The temporary residence permit may only be issued if:

1. The public prosecutor's office or the criminal court considers the foreigner's presence in 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/her information,
2. The foreigner has broken off contact to the persons accused of having committed the criminal offence, and
3. The foreigner has declared his/her willingness to testify as a witness in the criminal proceedings relating to the offence.

After the conclusion of the criminal proceedings, the temporary residence permit should be extended if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory".⁶⁰

188. The amendment of the Residence Act has brought some notable improvements to the possibility for victims of trafficking to be issued a residence permit. Currently, the residence permit "should" be granted if the person is willing to testify in the criminal proceedings, whereas previously the term used was "may", which gave considerable discretion to the Foreigners Registration Office. Consequently, the granting of a residence permit for the purpose of co-operation with the proceedings has become the rule, and a refusal would need to be thoroughly reasoned (however, see paragraph 190). The new possibility to be issued a residence permit after the conclusion of the criminal proceedings, for humanitarian or personal reasons, encompasses situations where the criminal proceedings are discontinued despite the fact that the victim had declared his/her willingness to give evidence.⁶¹ Following the amendment, the initial residence permit is granted for one year (previously the length was six months) and, after the conclusion of the criminal proceedings, is extended for two years.

189. Another legal amendment in 2015 enhanced the access to social benefits for holders of residence permits for victims of THB by including them within the scope of Social Code II, while previously they received limited benefits under the Asylum Seekers Benefits Act. The immigration authorities can issue work permits to persons with a residence permit pursuant to Article 25, paragraph 4a, of the Residence Act, without approval required by the Federal Employment Agency.

190. NGOs have reported significant discrepancies when it comes to the granting of residence permits under Article 25, paragraph 4a, of the Residents Act. In some *Länder* (e.g. Baden-Württemberg, Berlin), co-operation with the authorities reportedly works well and permits are issued without difficulty, while in Hanover it was reported that it was very difficult to obtain a residence permit. In North Rhine-Westphalia, practices of the Foreigners Registration Office may change from city to city. While in Baden-Württemberg the residence permit is also issued to victims from EU countries, in particular women victims of THB for the purpose of sexual exploitation, this is not the case in other places. Another issue raised by NGOs was that residence permits were only issued in cases of THB for the purpose of sexual exploitation.

⁶⁰ Unofficial translation.

⁶¹ Bundestagsdrucksache 18/4097, page 41, available at: <https://dip21.bundestag.de/dip21/btd/18/040/1804097.pdf#page=1&zoom=auto,-158,842>

191. There is limited data available on residence permits granted to victims of trafficking. According to the authorities, 67 residence permits were issued in 2016 based on Article 25, paragraph 4a, of the Residents Act, and 89 in 2017. However, it is not known how many residence permits were granted to victims of trafficking based on other provisions or whether permits were granted to any victims of THB for the purpose of labour exploitation. Further, there is no information on the number of victims of THB granted international protection.

192. Some *Länder* provided more detailed information. In Berlin, for example, since January 2010, 18 persons have received a residence permit under Article 25, paragraph 4a, of the Residence Act. For six of them, after the criminal proceedings were closed, they were issued residence permits under Article 25, paragraph 3, of the Residence Act (residence permits on humanitarian grounds because a deportation ban applies), following an assessment by the BAMF and the criminal police, due to potential risks in case of return to the country of origin. In the other 12 cases the residence permits were renewed under Article 25, paragraph 4a, of the Residence Act. Another three persons received residence permits under Article 25, paragraph 4b, of the Residence Act. Further, Hamburg reported that 26 victims had received residence permits under Article 25, paragraph 4a, of the Residents Act since 2010. Lower Saxony reported that, on 30 September 2017, nine persons held residence permits under Article 25, paragraph 4a, of the Residence Act (all female, including one child).

193. The authorities have referred to the possibility of issuing residence permits pursuant to other provisions, regardless of whether victims of human trafficking participate in criminal proceedings, notably Article 23a and Article 25, paragraphs 4 and 5, of the Residents Act. The same provisions are applicable as concerns residence permits for child victims of trafficking. These provisions relate to the granting of residence permits in case of hardship (Article 23a), on urgent humanitarian or personal grounds or due to substantial public interests (Article 25, paragraph 4), and in situations where the departure of a foreign person is impossible (Article 25, paragraph 5). GRETA notes that these provisions are not child-specific. In their comments on the draft GRETA report, the authorities have indicated that age and the best interests of the child are important criteria taken into account in the process of determining "hardship" (Article 23a), "humanitarian or personal grounds" (Article 25, paragraph 4) and "legal and factual impossibility" (Article 25, paragraph 5). The authorities could not provide statistics on the number of residence permits which had been issued under these provisions to victims of trafficking during the reporting period.

194. While welcoming the legislative amendments concerning the possibility of victims of trafficking to be granted a residence permit, including on humanitarian grounds, GRETA is concerned by the discrepancies in the application of the relevant provisions.

195. GRETA considers that the German authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the entitlement to a renewable residence permit, without prejudice to the right to seek and enjoy asylum. Additional measures should be taken to ensure that child victims of trafficking are effectively provided with residence permits, in full conformity with Article 14 (2) of the Convention. As regards the collection of data on residence permits granted to victims of trafficking, disaggregated by form of exploitation, age, sex and nationality of the victims, reference is made to the recommendation in paragraph 55.

196. Further, GRETA invites the German authorities to make available effectively in practice the issuing of residence permits to victims of trafficking on the basis of their personal situation.

g. Compensation and legal remedies (Article 15)

197. In its first report, GRETA considered 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. Further, GRETA urged 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.

198. The legal framework for compensation of victims of THB in Germany remains as described in GRETA's first evaluation report.⁶² Victims can claim compensation from the perpetrators during criminal proceedings as civil claimants and/or in a civil court. As concerns the possibility for a victim of trafficking to bring claims for damages and compensation after return to his/her country of origin, the German authorities stated that German courts have jurisdiction concerning claims to all applicable entitlements if the accused is domiciled in Germany, as well as when the defendant is domiciled in another EU member State and the damage occurred in Germany.

199. Information about compensation is usually handed out by the investigation authorities, if necessary, with the use of interpreters. According to the authorities, victims of human trafficking are informed in detail during their initial hearing by the police or public prosecution about the possibility of having a lawyer. The specialised counselling centres also inform victims of their rights, including the possibility of compensation, sometimes through an interpreter. Further, information on claims under the Crime Victims Compensation Act (OEG) is provided in an information sheet available in 29 languages, which is provided to injured persons by the police services.

200. Adult victims of criminal offences are entitled to free legal representation if the offence carries a minimum penalty of one year's imprisonment, pursuant to Article 397a, paragraph 1, no. 1, of the Code of Criminal Procedure (CCP), which covers THB. For child victims, an entitlement to free legal representation arises from Article 397a, paragraph 1, no. 5, of the CCP. The lawyer can represent the victim during the investigation. In cases involving civil law or labour law proceedings, the counselling centres try to arrange free legal representation for victims, for example by using the legal aid system or legal advice vouchers. However, according to the counselling centres, access to free legal aid is not guaranteed, as applications for advisory aid vouchers are sometimes refused.

201. In 2017, the KOK published an analysis of case-law in THB cases from its database, which provided an overview of compensation of victims of trafficking in criminal and civil proceedings.⁶³ It found that compensation claims were approved by courts in an increased number of rulings concerning trafficking in human beings for the purpose of sexual exploitation (10 between 2014 and July 2017). Despite certain positive developments, various obstacles were identified. In the area of trafficking in human beings for the purpose of labour exploitation, there are still hardly any court rulings and, as a result, no cases of compensation.

⁶² See paragraphs 173-179 of GRETA's first report.

⁶³ "Rechte der Betroffenen im Fokus?", available in German at: <https://www.kok-gegen-menschenhandel.de/kok-informationsdienst/news/neuer-kok-informationsdienst-aktuelle-entwicklungen-der-rechtsprechung-zu-menschenhandel>

202. The authorities cited some examples of cases where compensation from perpetrators was awarded to victims of trafficking. In a judgement passed by the Hamburg Regional Court on 16 April 2015 (632 KLS 2/14), a civil damages claim of 104 454 euros was granted within the criminal proceedings. According to information provided by the authorities, the perpetrator, who is serving a prison sentence, has not paid anything to the victims and has initiated private insolvency proceedings. In another judgement passed by the Hamburg Regional Court on 12 May 2016 (628 KLS 15/15), the perpetrators were instructed to pay the victims a "reasonable amount of compensation". The securities deposited originally by the defendants, 4 000 euros, were paid out in September 2016. Further, in a judgement of 18 August 2014 in criminal proceedings concerning THB for the purpose of sexual exploitation, the Constance Regional Court ordered the offender to pay the victims a total of 30 000 euros plus interest. In criminal proceedings before the Augsburg Regional Court involving a case of THB for the purpose of sexual exploitation using the "loverboy" method (10 KLS 103 Js 114093/16, judgement dated 13 November 2017), an in-court settlement was reached between the perpetrator and one of the victims, whereby the offender agreed to pay compensation of 7 500 euros for personal suffering and damages. The authorities had no information on whether the sentenced person actually paid the compensation to the victim.

203. North Rhine-Westphalia reported that, as part of a settlement in one case, a car and money that had been confiscated were transferred by the accused to the victim during the main hearing. Baden-Württemberg reported a case in which a perpetrator of human trafficking had been arrested when entering Germany, following which the money he was carrying and a valuable watch were confiscated and the proceeds in the amount of 20 000 euros were paid in compensation to three victims. The Hamburg authorities informed GRETA that between 2010 and 2016, three victims of human trafficking brought claims for compensation from the perpetrators, and compensation was granted to two of them, but could not be enforced.

204. NGOs have referred to a decision of the Bielefeld Regional Court on 8 May 2015 (9 KLS-16/14) concerning THB for the purpose of sexual exploitation. The perpetrator, who was sentenced to six years and six months' imprisonment, was convicted in the consolidated civil and criminal proceedings and ordered to pay 2 000 euros in damages and 42 200 euros for pain and suffering to the victims.

205. As noted in paragraph 22, the reform of criminal prosecution law concerning recovery of assets entered into force on 1 July 2017. It foresees that the state confiscates the profits from criminal acts which result in personal damage and victims can receive compensation from the assets recovered from the perpetrator by means of a simplified procedure, whereby they need no longer lodge a claim against the perpetrator, but rather only register a claim. Where multiple victims are involved, they all receive the same compensation, whereas this previous procedure was based on a "first come, first serve" basis. The law also provides that victims should be informed about their options regarding compensation. According to the authorities, no statistics showing whether the new rules have already been applied in favour of victims of THB are available. The authorities referred to national annual statistics on securing of assets according to which, in 2017, assets worth 417 090 euros have been secured in the framework of 20 proceedings related to THB, involving 22 debtors.

206. As concerns compensation on the basis of the Crime Victims Compensation Act (OEG), no legal developments have taken place since the first evaluation. State compensation is still not available to those who have not experienced direct physical violence, which is the case of many trafficked persons. Further, restrictions based on the residence status of the victims continue to exist, and the administrative procedures are often lengthy. The legal amendments announced in the last legislative period to transform the Crime Victims Compensation Act were not carried out and the project remains on the government's programme. The KOK and three other NGOs published a position paper on the draft amendment, expressing concerns about the rules on causality and the fact that victims whose presence in the country was irregular at the time of the offence have limited access to State compensation. According to the authorities, a legislative procedure for amending the Crime Victims Compensation Act has been initiated. These amendments are part of a comprehensive legal project which will merge several existing laws, including the Crime Victims Compensation Act, into a new Social Compensation Law for Victims of Violent Crime. The draft bill extends the notion of "violence" to cover "psychological violence". Compensation will no longer be linked to the victims' nationality, but will still depend on having a regular residence status.

207. There is no centralised data collection on compensation requests by victims of THB under the OEG. However, the Hamburg authorities provided statistics on THB cases under the OEG: in the period between 2010 and 2016, seven victims applied for compensation under the OEG; in two cases decisions had been taken, and both claims were rejected. The draft bill creating the Social Compensation Law for Victims of Violent Crime foresees the introduction of new statistics which would also reflect the offences the compensated persons have suffered, including THB.

208. **GRETA urges the German authorities to take further steps to facilitate and guarantee access to compensation to victims of THB, and in particular to:**

- **review the criminal and civil procedures regarding compensation for victims of trafficking with a view to improving their effectiveness;**
- **enable victims of trafficking to exercise their right to compensation, by informing them, in a language they can understand, of the right to compensation and the procedures to be followed, and building the capacity of legal practitioners to support victims to claim compensation;**
- **include victim compensation in training programmes for law enforcement officials, prosecutors and judges;**
- **ensure that all victims of trafficking, including children, have effective access to State compensation, regardless of their nationality or residence status, type of exploitation and without needing to have sustained a physical violence.**

209. **Further, GRETA invites the German authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking (see also the recommendation in paragraph 55).**

h. **Repatriation and return of victims (Article 16)**

210. In its first report, GRETA considered that the German authorities should inform victims of trafficking about existing repatriation programmes, ensure that return procedures are implemented with due regard for the rights, safety and dignity of the victims and, in the case of children, fully respect the principle of the best interests of the child. Further, GRETA recommended developing 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.

211. As explained in GRETA's first report, the return of victims of THB from Germany is primarily managed by specialised counselling centres which assess the risks and assist victims, including by helping them with migration law issues and applying for a new passport if necessary. With the consent of the victim, counselling centres establish contact with NGOs in the countries of origin or provide them with addresses and contact details of such NGOs. The KOK maintains a database of NGOs in EU and non-EU countries.

212. In cases where the victim has testified as a witness in the criminal proceedings, the risk assessment in the country of origin is performed by the relevant criminal police office.

213. Victims of human trafficking who return voluntarily can benefit from the federal REAG/GARP programme,⁶⁴ which is also available to EU nationals. The programme is administered by IOM on behalf of the Ministry of the Interior and the relevant *Land*. In 2017, Germany supported IOM's Consolidate Direct Assistance and Assisted Voluntary Return and Reintegration Services in Egypt (CARE) project with 2.4 million euros.

214. Some *Länder* provided information on the return of victims of trafficking. For example, Hamburg reported that victims of trafficking are informed by the police and an NGO about the risks involved, and repatriation is closely co-ordinated by the criminal police unit and specialised counselling centres, whereby direct contact made with another country is usually established by the specialised counselling centres. The Rhineland-Palatinate Integration Ministry has been operating its own repatriation programme since 2005, which is accessible for victims of trafficking from non-EU countries.

215. As concerns the repatriation of child victims of trafficking, the responsible child welfare services must be informed before any repatriation. The child welfare services assess whether the welfare of the child concerned would be endangered in case of return. When determining the child's best interests, the Youth Welfare Office or the Family Court can request assistance from the International Social Service or the Federal Office of Justice to verify the child's identity and personal history, contact legal guardians and relatives and verify the family's circumstances in order to determine whether it is in the child's best interests to return to their country of origin, and whether their protection and continued support can be ensured. The guardian must give his/her written consent for the child's return in advance. Where appropriate, unaccompanied children can be accompanied by IOM staff and provided with assistance, including at the stage of receiving the child and accompanying him/her until the handover to the person authorised to collect the child takes place.

216. According to NGOs, youth welfare office staff and criminal investigation authorities often lack practical guidance to ensure child victims' safe return to their country of origin. Effective implementation of the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation is expected to contribute to rectify these gaps.

⁶⁴ Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme.

217. As concerns the application of the Dublin Procedure⁶⁵ to victims of THB identified in Germany, the internal instruction of the Federal Office for Migration and Refugees (BAMF) stipulates that, when there is an indication that a person is a victim of trafficking, it must be considered whether the victim would be safer in Germany than in the EU country where the asylum claim was first lodged (for example, in cases of Nigerian victims, Italy or Spain). If the asylum seeker has been exploited in that EU country, Germany is in general considered to be safer for the victims, and the sovereignty clause is applied, which means that Germany becomes responsible for the asylum claim. If the person concerned is a witness in criminal proceedings, the sovereignty clause has to be applied in any case. According to NGOs, the effective implementation of the BAMF instruction varies according to the qualifications, training and sensitisation of decision makers.

218. Counselling centres stated that co-operation with the BAMF to avoid presumed victims of trafficking being returned through the Dublin Procedure generally worked satisfactorily. The counselling centres are contacted if BAMF staff notes indicators of THB. However, several months before the visit of GRETA, there was reportedly more frequent recourse to the accelerated asylum procedure, which gave the counselling centres little time to verify information concerning possible trafficking cases. Some cases were reported where Nigerian women were returned to Italy despite the possibility that they had been exploited there.

219. GRETA considers that the German authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of refugee status to victims of trafficking.⁶⁶ The authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return.

220. Further, GRETA considers that the German authorities should take measures to ensure that the use of the accelerated asylum procedure does not contribute to the *refoulement* of victims of trafficking and failure to identify victims of trafficking.

3. Substantive criminal law

a. Criminalisation of THB (Article 18)

221. In its first report, GRETA urged the German authorities to ensure that the definition of THB in the Criminal Code (CC) fully complies with the Convention. With the Act to Improve Action against Human Trafficking, which entered into force on 15 October 2016, Germany transposed Directive 2011/36/EU into national law. The Act revoked three articles of the CC related to THB⁶⁷ and introduced five new criminal offences: trafficking in human beings (Article 232), forced prostitution (Article 232a), forced labour (Article 232b), labour exploitation (Article 233), and exploitation by means of illegal restraint (Article 233a).

⁶⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). The regulation, known as Dublin III, makes no reference to victims of trafficking, with the exception of Article 6 (3) (c), which refers to children who have been trafficked and to the fact that the best interests of the child must be taken into account. Articles 31 and 32 deal with the exchange of relevant information prior to the execution of a transfer, so in case of a particular vulnerability, a presumed victim of trafficking may be identified.

⁶⁶ [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006](#)

⁶⁷ The previous CC provisions were Article 232 (Human trafficking for the purpose of sexual exploitation), Article 233 (Human trafficking for the purpose of work exploitation) and Article 233a (Assisting in human trafficking).

222. Article 232 of the revised CC (human trafficking) reads as follows:

“(1) Whosoever recruits, transports, transfers, harbours or receives another person, either under twenty-one years of age or by taking advantage of that person’s personal or financial predicament or helplessness arising from being in a foreign country, shall be liable to imprisonment from six months to five years, if

1. that person is to be exploited by way of him:

- a) engaging in prostitution or performing sexual acts on or in the presence of the offender or a third person, or suffering sexual acts on his person by the offender or a third person,
- b) working,
- c) begging, or
- d) committing criminal offences,

2. that person is to be held in slavery, servitude, bonded labour, or under corresponding or similar conditions, or

3. an organ is to be illegally removed from that person.

A person shall be deemed to be exploited by way of him working within the meaning of the 1st sentence No 1(b) above if the work, in serving the ruthless pursuit of profit, takes place under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity (exploitative work).

(2) Whosoever, with respect to another person to be exploited in the manner indicated in subsection (1) 1st sentence numbers 1 to 3 above,

- 1. recruits, transports, transfers, harbours or receives that person by force, by threat of serious harm or by deception, or
- 2. abducts that person or gains physical control over him or encourages a third person to gain physical control over him,

shall be liable to imprisonment from six months to ten years.

(3) In cases under subsection (1) above the penalty shall be imprisonment from six months to ten years, if:

- 1. the victim is under eighteen years of age at the time of the offence,
- 2. the offender seriously physically abuses the victim or, by way of the offence or an act committed during the offence, at least by gross negligence places the victim in danger of death or serious injury, or
- 3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

In cases under subsection (2) above the penalty shall be imprisonment from one year to ten years if the offence was committed under one of the circumstances set out in the 1st sentence numbers 1 to 3 above.

(4) In cases under subsections (1), (2) and (3) 1st sentence above the attempt shall be punishable.⁶⁸

223. The criminal offence of THB in Article 232 of the CC contains all actions that are foreseen in the Convention (i.e. recruitment, transportation, transfer, harbouring or reception of persons).

224. Article 232 of the CC includes as means for the commission of the basic offence of human trafficking “the exploitation of another person’s predicament or helplessness arising from being in a foreign country” which, according to the authorities, corresponds to the means of “abuse of power or of a position of vulnerability” in the Convention. Other means are included in paragraph 2 (use of force, threat of serious harm, deception, abduction, gaining physical control or encouraging a third person to gain physical control over a person) which provides for a higher penalty (six months to 10 years’ imprisonment) than the basic offence (six months to five years’ imprisonment). The means are not a required element if the victim is younger than 21 years.

225. The new list of forms of exploitation under Article 232 of the CC contains all the forms which are foreseen in the Convention, at a minimum, as well as the exploitation of begging and the exploitation of criminal activities.

226. Article 232 of the CC includes in paragraph 3 all aggravating circumstances that are required under Article 24 of the Convention, with the exception of the offence being committed by a public official in the performance of his or her duties. According to the authorities, the principles of sentencing in Article 46, paragraph 2, of the CC foresee that the court shall weigh the circumstances in favour of and against the offender, and the circumstances to be considered include the profession of the offender, if there is a relation between the profession and the offence. In principle this would be the case when the offence is committed by a public official in the performance of his or her duties.⁶⁹ The penalties foreseen for committing THB in one of the aggravated forms is six months to 10 years if the offence falls under paragraph 1 of Article 232 and one to 10 years if the conviction is based on paragraph 2.

227. In addition to Article 232 of the CC, there are two new related offences, Article 232a which criminalises the subjection of another person to forced prostitution, and Article 232b criminalising forced labour, both of which carry the same penalties as the THB offence (i.e. six months to 10 years). Further, under Article 233 (exploitation of labour force), the envisaged penalty is imprisonment of up to three years or a fine. Finally, Article 233a (exploitation by taking advantage of unlawful imprisonment) criminalises the act of depriving a person of his/her liberty with a view to exploiting this person; the envisaged penalty is imprisonment not exceeding three years or a fine.

228. GRETA welcomes the introduction of the new offence of THB and the related amendments to the CC which reflect the Convention’s provisions in a significantly more comprehensive manner. The practical impact of the amended legislation remains to be seen. Legal practitioners and civil society representatives met by GRETA noted that the distinction between the five new related offences was not clear and might be challenging in practice. Doubts were also expressed as to whether the new legislation would facilitate prosecution and conviction of THB offences. The element “serving the ruthless pursuit of profit” in Article 232 of the CC has been criticised as being unnecessary⁷⁰ and potentially difficult to prove. **GRETA considers that the German authorities should keep under review the practical implementation of the new criminal offences related to THB with a view to identifying possible needs for readjustments.**

⁶⁹ See Fischer, *Strafgesetzbuch*, 66th edition, 2019, Article 46, para. 44; Schönke/Schröder-Kinzig, *Strafgesetzbuch*, 30th edition, 2019, Article 46 para. 35; see also BT-Drs. 17/7316, p. 46-47.

⁷⁰ See, for example, MüKoStGB/Renzikowski StGB § 232, para. 56.

229. Forced marriage and illegal adoption are not included among the forms of exploitation related to human trafficking, but are criminalised as separate offences. Forced marriage (Article 237 of the CC) is defined as forcing a person to enter into marriage illegally through the use of violence or the threat of serious injury. Illegal adoption is governed by Article 236 of the CC⁷¹, which, although entitled "child trafficking", is not used to prosecute human trafficking offences committed in respect of children. According to the authorities, there are no known cases of forced marriage or illegal adoption that have been prosecuted as cases of human trafficking.

230. GRETA notes that the offence of "exploitation of prostitutes" (Article 180a of the CC) can be related to THB, but is not included in the provisions of the Residence Act with regard to residence permits and the recovery and reflection period.

b. **Criminalisation of the use of services of a victim (Article 19)**

231. As noted in GRETA's first report, the use of services with the knowledge that the person providing them is a victim of trafficking in human beings is not criminalised in Germany, except in the particular scenario of engaging in sexual activity with children in utilisation of an exploitative situation (Article 182 of the CC). Further, pursuant to the Act to Combat Clandestine Employment, an employer is punished if he/she employs a foreigner without a residence permit who is a victim of human trafficking and the employer knowingly abuses the predicament of the person concerned.⁷²

232. Following the 2016 amendments to the CC, a new provision was added in paragraph 6, first sentence, of Article 232a, which reads as follows:

"Whosoever, in return for remuneration, performs sexual acts upon or allows sexual acts to be performed on his person by a person engaging in prostitution who has been the victim of

1. human trafficking pursuant to Article 232, paragraph 1, 1st sentence, number 1(a), also in conjunction with Article 232, paragraph 2, or
2. an offence pursuant to paragraphs 1 to 5 of this article,

and in doing so takes advantage of that person's personal or financial predicament or helplessness arising from being in a foreign country, shall be liable to imprisonment from three months to five years. A person who voluntarily reports an offence pursuant to the 1st sentence Nos 1 or 2 above committed against a person engaging in prostitution pursuant to the 1st sentence above to the competent public authority or voluntarily causes such a report to be made shall not be liable to punishment pursuant to the 1st sentence above, unless the act had already been discovered in whole or in part at the time and the offender knew or could reasonably have known this."⁷³

⁷¹ Article 236 of the CC ("child trafficking"): "(1) Whosoever in gross neglect of his duties of care and education leaves his child, ward or foster child under eighteen years of age with another for an indefinite period for material gain or with the intent of enriching himself or a third person shall be liable to imprisonment not exceeding five years or a fine. Whosoever in cases under the 1st sentence above takes the child, ward or foster child into his home for an indefinite period and awards compensation for it shall incur the same penalty. (2) Whosoever unlawfully: 1. procures the adoption of a person under eighteen years of age; or 2. engages in procurement activity with the aim of a third person taking a person under eighteen years of age into his home for an indefinite period, and acts for consideration or with the intent of enriching himself or a third person shall be liable to imprisonment not exceeding three years or a fine. Whosoever, as an agent for the adoption of a person under eighteen years of age, grants a financial reward to a person in exchange for the required consent to the adoption shall incur the same penalty. If the offender in cases under the 1st sentence above causes the procured person to be brought into Germany or abroad the penalty shall be imprisonment not exceeding five years or a fine. (3) The attempt shall be punishable. (4) The penalty shall be imprisonment from six months to ten years if the offender: 1. seeks profit or acts on a commercial basis or as a member of a gang whose purpose is the continued commission of child trafficking or 2. by the act places the child or the procured person in danger of a substantial impairment of his physical or mental development" (unofficial translation).

⁷² See GRETA's first report, paragraph 197.

⁷³ Unofficial translation.

233. The above provision introduces the criminalisation of users of services from victims of trafficking for the purpose of sexual exploitation. In order to commit the offence, the perpetrator must be aware of the circumstances which impair the victim's freedom of decision and must assume that the person concerned has been brought to take up or continue prostitution by others. The perpetrator can be exempted from punishment if he/she voluntarily reports the offence. GRETA notes that in its 2017 Concluding Observations on the combined seventh and eighth periodic reports of Germany, the Committee on the Elimination of Discrimination against Women (CEDAW) asked the German authorities to provide an assessment of the new provision.

234. GRETA once again invites the German authorities to adopt legislative measures to criminalise the use of services from a person with the knowledge that the person is a victim of THB, for all forms of exploitation, as stipulated by Article 19 of the Convention.

c. Corporate liability (Article 22)

235. As explained in the first report, pursuant to Articles 30 and 130 of the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz, OWiG*), administrative sanctions can be imposed on legal persons. Fines of up to 10 million euros 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. According to Article 444 of the Code of Criminal Procedure, the involvement of the company occurs via secondary participation in the criminal proceeding or through independent proceedings.

236. The German authorities indicated that they were not aware of any cases where fines were imposed on legal persons in connection with human trafficking.

237. Under the coalition agreement, a reform of corporate liability law is envisaged, introducing the principle of legality (prosecutorial discretion) instead of that of opportunity, as well as a broader range of sanctions, including fines for companies with more than 100 million euros of turnover, of up to 10% of the turnover.⁷⁴ The Federal Ministry of Justice and Consumer Protection is currently drafting a proposal in order to start the legislative process.

238. GRETA considers that the German authorities should continue to take measures to ensure that the liability of legal entities for criminal offences is effectively implemented.

d. Non-punishment of victims of THB (Article 26)

239. In its first report, GRETA urged 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. GRETA also called on the German authorities to assess the implementation 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 adjust, on the basis of such an assessment, the content and/or the application of the relevant provisions, with a view to addressing any shortcomings identified. In this context, GRETA recommended the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment principle to victims of THB.

240. The German authorities have not reported having carried out any assessment of the implementation of the non-punishment provision; furthermore, no guidance has been issued to prosecutors or other relevant professionals.

⁷⁴ Available (in German) at: <https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906>, page 126.

241. Since the first evaluation by GRETA, pursuant to the Act to Improve Action against Human Trafficking, an amendment was made to Article 154c, paragraph 2, of the Code of Criminal Procedure, which now explicitly refers to THB as one of the offences to which it applies and reads as follows:

“If a victim of coercion or extortion or trafficking in human beings (Articles 240, 253, 232 of the Criminal Code) files charges in respect thereof (Article 158), and if as a result a misdemeanour committed by the victim comes to light, the public prosecution office may dispense with prosecution of the misdemeanour, unless expiation is imperative because of the seriousness of the offence.”⁷⁵

242. GRETA notes this amendment, but is concerned that it leaves too much discretion to prosecutors and does not apply to offences related to THB, namely Articles 232a, 232b, 233 and 233a of the CC. Civil society actors point out that the intention to protect victims is not sufficiently fulfilled because trafficked persons have no guarantee that they will not be prosecuted for crimes that they were forced to commit while being trafficked.

243. As a legal basis for the implementation of the non-punishment provision, the German authorities have also referred to Article 35 of the CC concerning duress, as well as Articles 153 and 153a of the Code of Criminal Procedure providing for the possibility of dispensing with prosecution because the trafficking victim’s alleged guilt is considered to be of a minor nature and there is no public interest in prosecution.⁷⁶

244. Furthermore, for victims of human trafficking who were younger than 18 at the time they committed an offence and, under certain circumstances for those who are older than 18 but still not 21, the provisions of Juvenile Criminal Law (Jugendgerichtsgesetz, JGG) apply. This act provides additional possibilities to terminate the proceedings by means of so-called “diversion” (Articles 45 and 47 of JGG), even if the general provisions, such as Article 35 of the CC and the general provisions on dispensing with prosecution do not apply. Specially trained juvenile public prosecutors and judges are responsible for juvenile court proceedings (Article 33 and following JGG). In investigating and assessing the personal life and developmental situation of the accused, the process is assisted by the so-called Juvenile Legal Support Agency (Articles 38 and 43 JGG).

245. Some NGOs expressed concern that the existing legal provisions are not effective to ensure the application of the non-punishment provision to all trafficked persons, and that perpetrators take advantage of this to exploit victims. They indicated that, in cases of breaches of the Residence Act by victims of THB for the purpose of sexual exploitation, the non-punishment provision is sometimes applied, but this is not the case when it comes to THB for the purpose of forced criminality, such as drug trafficking or fraudulently obtaining social benefits.

246. **GRETA considers that the German authorities should take additional measures to ensure compliance with 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, for victims of all forms of trafficking, as provided in Article 26 of the Convention. The German authorities should ensure that the non-punishment provision can be applied to all offences that victims of THB were compelled to commit. In this context, the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment provision to victims of THB should be envisaged.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.⁷⁷

⁷⁵ Unofficial translation.

⁷⁶ See GRETA’s first report, paragraphs 200-202.

⁷⁷ Available at: <http://www.osce.org/secretariat/101002?download=true>

4. Investigation, prosecution and procedural law

a. Measures related to ensuring effective investigations (Articles 1, 27 and 29)

247. In its first report, GRETA considered that the German authorities should ensure that THB is investigated and prosecuted effectively, resulting in proportionate and dissuasive sanctions. In this context, GRETA considered that there was a need to improve the specialisation and training of judges and prosecutors regarding THB. GRETA also stressed that the German authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.

248. As explained in the first report, criminal investigations of THB offences are carried out either by local criminal police units or the criminal police office of the *Land* (LKA). In most *Länder*, investigations in THB cases are assigned to units specialised in tackling organised crime or other units dealing with THB as part of a group of offences. Police units dedicated specifically to investigating THB exist in some *Länder*. For example, the LKA Berlin has two units with some 20 employees who are deployed exclusively on combating human trafficking. In Frankfurt am Main, a special police unit works solely on human trafficking for the purpose of sexual exploitation and related crimes, such as forced prostitution and pimping. In Hamburg, the LKA has established organised crime teams which primarily deal with cases involving human trafficking for the purpose of sexual exploitation. The Saarland police have a special investigation unit which focuses on cases of human trafficking.

249. As regards prosecution services, THB cases are mostly dealt with by units specialised in organised crime. The Berlin public prosecution authorities have established a department responsible for cases of human trafficking and forced prostitution, with two to three public prosecutors working on such cases.

250. If a THB offence was committed on German territory, but the complaint was submitted in the country of residence of a foreign victim of THB, charges brought in the home country do not prevent the initiation of proceedings in Germany. German criminal law applies in such cases, and the German public prosecution authorities are required to take action against all prosecutable offences where there are sufficient factual indications (Article 152, paragraph 2, of the Code of Criminal Procedure). By way of example, in Rhineland-Palatinate, investigations are underway in a case initiated at the request of the Romanian authorities after the presumed victim, who had been engaged in prostitution in Germany, had returned to Romania and submitted a complaint there.

251. The Code of Criminal Procedure (CCP) contains a detailed regulation on the use of special investigation techniques. As explained in the first report, the special investigation techniques which can be used in cases of THB are telecommunications surveillance (Article 100a), home surveillance (Article 100c) and undercover investigation (Article 110a). Controlled deliveries are not allowed in cases of THB. Interception of private speech on private premises without the knowledge of the person concerned and obtaining information on telecommunications connections (Article 100g) are permitted in respect of the aggravating circumstances contained in the following CC provisions: Article 232a, paragraphs 3, 4 or 5, second half sentence, Article 232b, paragraphs 3 or 4 in connection with Article 232a, paragraphs 4 or 5, second half sentence, and Article 233a, paragraphs 3 or 4, second half sentence.

252. Because the use of the internet plays a central role in the recruitment process, the introduction of online surveillance (Article 100b of the CCP) provides a further opportunity to conduct investigations in connection with human trafficking offences committed online. Blocking of websites with illegal content which are operated in Germany is usually performed by the operator or the host in response to activities involving organisations other than the police, for example media authorities. The police have no authority to block an internet site, not even as part of an investigation. Websites which are used to recruit or advertise victims of human trafficking are usually legally-operated platforms for initiating contact with persons engaged in prostitution. Because prostitution is legal in Germany, these platforms are not blocked. In actual or suspected cases of THB, advertisements placed on these websites are deleted with the operator's prior approval. The Baden-Wurtemberg authorities indicated that when information is received concerning child sexual abuse images, the LKA identifies the server location and the registered owner and reports this to the BKA. The principle of "prefer delete to block" applies when referring the case to the respective international prosecution authorities or INHOPE, the umbrella association of globally-operating internet complaint bodies.

253. The German authorities have indicated that financial investigations are usually conducted at an early stage of the investigation by specialist criminal police units. Where necessary, such investigations are also conducted in countries of origin. Several *Länder* stated that financial investigations are a standard investigative measure and that specialised police units have been formed to implement them.

254. As explained in paragraph 205, the Act to Reform Asset Recovery in Criminal Law, which entered into force on 1 July 2017, overhauled the legal provisions governing the confiscation of assets obtained by criminal means in Germany, with the aim of improving the recovery of assets obtained illegally. The temporary confiscation of assets is the legal rule if there are compelling reasons to assume that the requirements for subsequent recovery exist. Temporary confiscation paves the way for mandatory recovery of profits from criminal acts. In addition, extended asset recovery is now possible in connection with all criminal offences. When sentencing a perpetrator for a criminal offence, the courts can confiscate assets and profits obtained through, or as payment for, committing other criminal acts. The other offences need not be named if the court is convinced that the discovered assets stem from criminal acts. In certain cases involving serious crime, extended asset recovery can occur in its own right if the individual affected by the confiscation is neither investigated nor prosecuted for the offence. This applies, *inter alia*, when the proceedings which lead to recovery of assets are based on the suspicion of commercial or gang-based activities.

255. Confiscation of profits gained from criminal acts is usually ordered by the judge passing the sentence. Confiscation may also occur independently, and is mainly considered in cases where the perpetrators are in flight from justice. Confiscation of the profits from criminal acts can also be ordered against a third party if they have gained from the offence. If the proceeds from a criminal act are no longer available for confiscation, the perpetrator, parties to the crime or third-party beneficiaries can be ordered to pay a fine in an amount matching the value of the original proceeds. To prevent an offender from hiding the proceeds of a criminal act before the announcement of a (final) court judgement, the public prosecution office can take preliminary custody of the suspects' assets during the investigation process. If there is a strong suspicion of an offence having been committed, the public prosecutor must take preliminary measures to secure assets.

256. According to information provided by the German authorities, there were 403 investigations in THB cases in 2014, 383 in 2015 and 375 in 2016; 96% of the investigations concerned THB for the purpose of sexual exploitation and the remainder THB for the purpose of labour exploitation.

257. According to Federal Statistical Office data on convictions for THB offences involving deprivation of liberty in 2014-2016 (i.e. before the amendments to the CC), a total of 239 persons were convicted, (35 of them under the juvenile criminal law). Of these 239 convictions, 211 were for THB for the purpose of sexual exploitation (former Article 232 of the CC), 25 for THB for the purpose of labour exploitation (former Article 233) and three for assisting in THB (former Article 233a of the CC). With regard to convictions under standard criminal law, 118 (58%) of the sentences were suspended, while for the cases under the juvenile criminal law, 12 (34%) were suspended. In 2016, of the 54 sentences involving imprisonment, one was for less than six months, four were for up to nine months, 10 for up to one year, 27 for up to two years, five for up to three years, six for up to five years, and one for up to 10 years.

258. In the framework of the project "Alliance against Human Trafficking for Labour Exploitation", which was funded by the European Social Fund and the German Ministry of Labour and Social Affairs, a study entitled "Human trafficking for the purpose of labour exploitation – an evaluation of prosecutorial investigation files and judicial decisions" was published in 2015. The researchers evaluated 91 criminal investigations between 2005 and 2015 in the *Länder* Rhineland-Palatinate, North Rhine-Westphalia, Lower Saxony and Brandenburg. Further, 14 verdicts in cases of THB for the purpose of labour exploitation of German courts handed down from 2005 to 2012 were analysed. The study revealed that only three cases resulted in a criminal conviction. The majority of the investigations were discontinued pursuant to Article 170, paragraph 2, of the CCP because the public prosecution deemed that there was insufficient likelihood of a conviction. According to the research, the decision to discontinue certain investigations was difficult to understand and justify. Special investigative techniques, including telecommunications monitoring, were rarely used. Asset-freezing and asset-forfeiture measures were also seldom used. Concerning the sentences, they ranged from six months' imprisonment to three years and six months' imprisonment. The proportion of suspended prison sentences was 61.5%. In the first instance, the duration of the proceedings varied greatly. Whereas one local court took only two months from the time the crime was reported to pass a verdict, a case appearing before one district court took two years and 10 months from the discovery of the crime before a verdict was passed. In practice, long duration of the proceedings generally has a negative impact on the willingness to testify.

259. GRETA notes with concern the significant proportion of suspended sentences and stresses that failure to convict traffickers and the absence of effective sentences undermines efforts to combat THB and support victims' rehabilitation and reintegration. In order to produce the desired improvement in the criminal justice response to THB, the introduction of new offences in 2016 should be combined with efforts to prioritise the investigation and prosecution of THB cases.

260. **GRETA considers that the German authorities should take further steps to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:**

- **providing adequate human and financial resources to the police and the prosecution to support the prioritisation of the investigation and prosecution of THB cases;**
- **further developing the knowledge and specialisation of investigators, prosecutors and judges to deal with THB cases;**
- **strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation.**

261. **Further, GRETA invites the German authorities to keep under review the application of the new legislation on asset recovery in criminal law with a view to confiscating or otherwise depriving the instrumentalities and proceeds in human trafficking cases, or property the value of which corresponds to such proceeds.**

b. **Protection of witnesses and victims (Articles 28 and 30)**

262. In its first report, GRETA considered 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. GRETA also invited 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.

263. As explained in the first report, it is the duty of the competent police unit in the *Land* to perform a risk analysis concerning victims of human trafficking. This can be a victim protection unit, an investigating unit or a witness protection unit. These units usually work in close co-operation with the specialised 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, decides on appropriate measures to protect the victim. Victims who are at a high risk and whose testimony is crucial to the criminal proceedings can be placed under a police witness protection scheme, pursuant to the Witness Protection Harmonisation Act (ZSHG).

264. There is no information on the application of witness protection measures to victims and witnesses of THB across Germany, but some *Länder* have provided relevant information. By way of example, Rhineland-Palatinate indicated that in one THB case, protection measures were taken in respect of four witnesses, such as taking them to a safe, secret location. In this case, the public prosecution ensured that the witnesses' new addresses were not documented in the investigation files and for the witnesses to be summoned exclusively via the police. The authorities of Berlin reported that only in a few cases additional protection measures were necessary; in one such case the victim was a young girl who was placed in a secure institution in order to be protected from the biker gang involved in her exploitation. In another case concerning escort services involving children operated by Romanian perpetrators, a warning visit was issued by the Romanian police via the BKA after the perpetrator was released from prison and deported to his home town in Romania, where a number of victims also lived. As a general rule and where they are in possession of such information, the Berlin LKA informs victims when perpetrators are released from prison. In Hesse, it was reported that measures for the protection of victims/witnesses of THB were taken in nine cases in 2016, outside the witness protection programme.

265. The Third Act to Reform the Protection of Victims' Rights of 21 December 2015, which entered into force on 1 January 2017, introduced new provisions to the Code of Criminal Procedure in order to improve the level of protection provided for victims of violent crimes, including for victims of human trafficking. Article 406g of the CCP, on psychosocial support during criminal proceedings, creates a legal entitlement to free professional assistance for particularly vulnerable victims in all phases of the criminal proceedings. For other victims of serious violence and sexual offences, courts have to decide on a case-by-case basis whether psychosocial support is to be provided. The entitlement to such support arises irrespective of the victim's income and assets. In addition to the victim's lawyer, a person of trust may also be present during the victim's hearing (Article 406f of the CCP). For example, victims who testify as witnesses can be supported and accompanied by a member of staff from the specialised counselling centre during the investigation and court proceedings.

266. Victims can be fully involved in criminal proceedings as joint plaintiffs. This gives them a range of important procedural rights, such as the right to view files, to be present at the main hearing, to reject a judge or expert witness, to ask questions, to object to the presiding judge's orders and to questions, to ask for evidence and to make a statement (Article 397 of the CCP).

267. The CCP also provides for protective measures for victims during criminal proceedings against possible revenge or intimidation by the perpetrator, such as: restriction on disclosure of the victim's personal details (Article 68, paragraphs 2 and 3); removal of the accused while the witness is examined in criminal proceedings and during the main hearing (Articles 168c, paragraph 3, Article 168e and Article 247); and order for audio-visual hearing of the witness (Article 247a, paragraph 1). Victim protection is also provided under Articles 68 and following of the CCP, through the protection of trusted persons, imposition of a custodial sentence due to danger of collusion and the option to exclude the public under Article 172, no. 1a, of the Courts Constitution Act (GVG).

268. Among the provisions affording special protection to children who give evidence in criminal proceedings are Articles 58a, 241a, 247, 247a and 255a of the CCP and Articles 26, 74b, 171b and 172 of the GVG. These provisions enable special hearing arrangements, such as video and sound recordings and transmissions, exclusion of the accused, exclusion of the public and assignment of the case to the juvenile courts in the case of child victims. The child welfare services and the police implement special assistance necessary measures for child victims at an early stage of the investigation. To this end, guidelines No. 19 and No. 135 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV) set out the respective requirements regarding the need for care when dealing with child witnesses.

269. **GRETA considers that the German authorities should ensure that the existing provisions on the protection of victims are effectively applied to protect victims of THB at the investigation, trial and post-trial stages. In this context, the German authorities should ensure compliance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁷⁸**

c. **Jurisdiction (Article 31)**

270. Pursuant to Articles 3 and 4 of the CC, German criminal law applies to all acts committed on German territory, as well as to acts committed on a ship or an aircraft entitled to fly the federal flag or the national insignia of the Federal Republic of Germany. As concerns offences committed abroad, Article 6, paragraph 4, of the CC stipulates that the principle of universal jurisdiction applies to Article 232 of the CC (trafficking in human beings), i.e. German criminal law applies to the offence committed in other countries irrespective of the perpetrator's and victim's nationality, and irrespective of whether the act is a punishable offence in the place where it was committed. As examples of the application of the principle of universal jurisdiction in THB cases, the German authorities have referred to two cases, a judgment on 4 July 2018 of the German Federal Supreme Court (1 StR 599/17) and judgement of 7 September 2016 of the Higher Regional Court Karlsruhe, (1 AK 34/16).

271. GRETA notes that the applicability of the principle of universal jurisdiction is limited to Article 232 and was not extended to the other related criminal offences that were created, notably Articles 232a to 233a. For these offences, Article 7 of the CC on the applicability of German criminal law to acts committed abroad applies. Pursuant to that, German criminal law applies if the act is a criminal offence at the locality of its commission and: if it is committed against a German citizen; or if the offender was German at the time of the offence or became German after its commission; or if the offender was a foreigner at the time of the offence, is discovered in Germany and, although the Extradition Act would permit extradition for such an offence, is not extradited because a request for extradition within a reasonable period of time is not made, is rejected, or the extradition is not feasible.

⁷⁸ [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

5. International co-operation and co-operation with civil society

a. International co-operation (Articles 32 and 33)

272. In its first report, GRETA commended the efforts made in the area of international co-operation by the German authorities and invited them to continue developing these activities.

273. The police services of several *Länder* indicated that they had resorted to Joint Investigation Teams (JITs) in THB investigations. By way of example, a JIT was set up by the LKA in Baden-Wurttemberg and the Romanian authorities in 2014-2015, concerning a case of THB for the purpose of sexual exploitation. The Romanian police played a significant role in assisting the interviewing by German investigators of Romanian citizens who had been engaged in prostitution in Germany. Further, the Prosecution Office in Berlin set up a JIT with Bulgaria in a case of trafficking in human beings, which helped to carry out an efficient and timely investigation. Nevertheless, it was noted that certain difficulties arise due to the different national legal requirements for qualifying the offence of trafficking in human beings, as well as procedural questions, because of different criminal systems.

274. The BKA has continued its activities under the European multidisciplinary platform against criminal threats (EMPACT). Germany heads the sub-project ETUTU, addressing human trafficking from Nigeria, and also participates in a project on human trafficking from China and in a project on exploitation of children. The Joint Action Days on Human Trafficking conducted in Germany as part of the EMPACT project are co-ordinated by the BKA. Further, the Land Saxony reports that the public prosecutor's office in Dresden closely co-operates with the Czech Republic prosecutor's office, which included participation of German prosecutors in workshops held in Prague.

275. With regard to co-operation in combating THB at multilateral level, the Federal Government has continued to actively co-operate with the European Union, the Council of Europe, the United Nations agencies, the OSCE and the Council of the Baltic Sea States (CBSS). Germany's contribution to the Trust Fund on Contemporary Forms of Slavery, which is contributed from Federal Foreign Office funds, currently amounts to 250 000 euros per year and is part of the contributions to the Office of the UN High Commissioner for Human Rights (OHCHR). Further, the Federal Government is preparing the ratification of the Protocol to ILO Convention No. 29 on Forced Labour.

276. Under Germany's OSCE chairmanship, as part of a joint initiative of the Federal Ministry for Labour and Social Affairs and the Federal Foreign Office, a conference was held in Berlin in September 2016, at which the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings launched a project on Prevention of Trafficking in Human Beings in Supply Chains through Government Practices and Measures. The aim of the project was to develop guidelines for governments to ensure the use of ethical practices in public procurement.

277. In addition, the Federal Ministry for Labour and Social Affairs has participated in projects conducted by the CBSS, including the Project "Adstringo", on human trafficking for the purpose of labour exploitation, and the Project "Strom", promoting a greater involvement of municipal administrations in combating human trafficking.

278. During the German G7 presidency in 2015, the Federal Ministry for Labour and Social Affairs, together with the Federal Ministry for Economic Co-operation and Development, included on the agenda of the summit the issue of fostering good work worldwide through sustainable supply chains.⁷⁹ This resulted in adopting specific measures, such as the creation of the Vision Zero Fund initiative under the ILO, which aims to prevent work-related deaths, injuries and diseases in global supply chains.⁸⁰ The subject of sustainable supply chains was also addressed during Germany's G20 presidency in 2017.⁸¹

279. From 2014 to 2017, Germany funded, to the tune of about 300 000 euros, human rights projects in Bolivia (human trafficking prevention), Cambodia (education and support measures, especially for children, to prevent human trafficking), Kazakhstan (protecting the rights of labour migrants), Malaysia (protecting Rohingya refugees against human trafficking), Thailand (Combating Trafficking in Children) and Ukraine (Providing Protection and Safety for Victims of Human Trafficking).

280. In the framework of crime prevention projects, Germany funded in 2014-2017 THB-related projects worth 4.5 million euros implemented by international organisations in various countries and regions: in the Central African Republic (IOM, building national capacities, raising awareness, preventing and combating THB), Guinea-Bissau (UNODC, project to build national capacities and promote cross-border co-operation), Libya (IOM, refugee aid project), Mauritania (IOM, understanding and combating THB, building capacities of the authorities to detect, ban and prosecute THB), Morocco (IOM, capacity-building for the Moroccan authorities and NGOs), Nigeria (UNODC, study on human trafficking) and Sudan (IOM, capacity-building for improved border controls and identification of victims of human trafficking); other projects concerned more than one partner country or a greater region, for example by the UNODC in Mali and Niger (capacity-building and training for border control and criminal investigation officers) and West Africa (strengthening capacities and co-operation to prosecute the smuggling of migrants in West Africa), as well as by Interpol in Sahel (Burkina Faso, Chad, Mali, Mauritania, Niger, Senegal, combating human trafficking along the Sahel migration route) and West Africa (Benin, Burkina Faso, Mali, Niger, Senegal, Togo, capacity-building in border management).

281. As part of the Federal Government's development co-operation, various development co-operation projects of the Federal Ministry for Economic Co-operation and Development (BMZ), as well as BMZ-funded projects implemented by non-state actors, include measures to combat and prevent human trafficking in co-operating states. Further, at multilateral level, the BMZ supports the ILO as the leading international organisation to implement core labour standards, especially via the ILO's decent work country programmes.

282. The BMZ has provided examples of development co-operation projects in relation to preventing and combating human trafficking, such as a regional project in East Africa to improve migration management in countries of origin and transit countries, including by training public officials on the obligation to protect and to improve protection measures for victims of human trafficking; a project in Bangladesh to support the government in complying with national and international environmental and labour standards, including integration of people with disabilities, in the textile and leather industries; the PRO-Enfant project in Burkina Faso to combat exploitative child labour, trafficking in children and gender-specific violence. Further, in 2018, the BMZ supported projects aimed at strengthening public awareness of trafficking in women and girls, which were implemented by GIZ and the Thomson Reuters Foundation. In two Leadership and Innovation Labs held in Nairobi and London, around 30 decision makers from 25 countries in Africa, Asia and Europe were brought together. The resulting awareness-raising initiatives included articles, radio campaigns and photo exhibitions concerning the topic of THB.

⁷⁹ See Leaders Declaration G7 Summit 7-8 June 2015, Castle Elmau, page 6, available at: <https://www.bundesregierung.de/resource/blob/997532/398764/e077d51d67486b1df34e539f621aff8c/2015-06-08-g7-abschluss-eng-data.pdf?download=1>

⁸⁰ See https://www.ilo.org/safework/projects/WCMS_517539/lang--en/index.htm

⁸¹ See Leaders Declaration G20 Summit 7-8 July 2017, Hamburg, paragraphs 7-9, available at: https://www.g20germany.de/Content/EN/Anlagen/G20/G20-leaders-declaration_blob=publicationFile&v=11.pdf

283. German federal ministries have started several initiatives in sensitive economic sectors to promote sustainable supply chains outside Germany, together with the private sector, NGOs and relevant partners in countries concerned. For example, the "Partnership for Sustainable Textiles", which was already mentioned in GRETA's first report, now comprises 130 members covering about half of the German textiles market.⁸² Further, the "Roundtable Human Rights in Tourism" aims to support companies in the tourism industry, especially tour operators, in their effort to address their human rights responsibility as concerns customers, employees (including subcontractors) and the local population at destinations.⁸³ Another example is the German Initiative on Sustainable Cocoa (GISCO), which is a joint initiative of the Federal Government, the German sweets and confectionary industry, the German retail grocery trade and civil society. It aims to improve the livelihood of cocoa farmers and their families as well as to increase the proportion of sustainably produced cocoa. To achieve these objectives, the members of GISCO closely liaise with the governments of cocoa-producing countries.⁸⁴

284. As concerns the search for missing persons, since 2009 Germany has been a party to the International Convention for the Protection of All Persons from Enforced Disappearance. Under Article 61a of the Federal Law on International Judicial Assistance in Criminal Matters (IRG), information concerning persons at risk in foreign countries may be provided to other countries in the form of "spontaneous sharing of information". Article 92 of IRG contains a special provision for spontaneous sharing of information with EU member states or Schengen-associate countries. Further, if a person is at risk, the BKA or Interpol liaison officers may provide information directly to other countries in order to initiate protective measures. According to the authorities, good connections have been established with officers in other countries, including Bulgaria and Romania, enabling the police in those countries to take timely action.

285. Reports about missing persons can be made at all police stations and to police operations centres. Data on missing children are entered into the national database on missing persons and unidentified deceased. As it is a national database, all federal and *Länder* police forces have access to the data it contains. The harmonised European telephone number for missing children, 116000, as well as the AMBER Alert system are operated by the German NGO Initiative Vermisste Kinder.

286. GRETA welcomes the efforts made by the German authorities in the area of international co-operation and invites them to continue these efforts, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims. Further, GRETA invites the German authorities to improve co-operation in the search for missing children.

b. Co-operation with civil society (Article 35)

287. In its first report, GRETA considered that the German authorities should strengthen the 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.

288. Civil society organisations continue to play an important role in Germany's anti-trafficking system. Civil society organisations are represented in the two federal working groups on trafficking in human beings and in the co-operation structures at *Länder* level.

289. The German NGO network against trafficking in human beings, the KOK, is to a large extent financed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The authorities have indicated that funding provided to the KOK has been increased and approved for the period 2019-2021.

⁸² In relation to the 100 top-selling companies in the German textile retail industry, see: <https://www.textilbuendnis.com/en/>

⁸³ See <http://www.humanrights-in-tourism.net/en/home.html>

⁸⁴ See <https://www.kakaforum.de/en/>

290. NGOs are often involved in training activities of public officials, including at *Länder* and local level. By way of example, in May 2017, the Federal Criminal Police Office, in co-operation with the KOK, held a workshop for employees of the criminal prosecution authorities and staff of the specialised counselling centres for victims of human trafficking, which focused on new forms of exploitation and improved co-operation. In November 2017, the KOK and the Federal Office for Migration and Refugees (BAMF) organised a joint networking meeting with staff from the specialised counselling centres.

291. The Federal Co-operation Guidance on protecting and supporting child victims of human trafficking and exploitation is a good example of civil society actors being strongly involved in the development of new anti-trafficking instruments.

292. Trade unions are represented in the Federal Working group against THB for the purpose of labour exploitation, run counselling centres for migrant workers and set up, with the support of state authorities, the Service Centre against Labour Exploitation, Forced Labour and Human Trafficking.

293. However, GRETA notes with concern the lack of funding provided to civil society organisations for projects linked to preventing and combating THB for the purpose of labour exploitation. The counselling centres for victims of THB for the purpose of sexual exploitation are not funded to deal with this phenomenon. The same is valid for other forms of exploitation, such as forced begging and forced criminality. Further, there are still *Länder*, such as Thuringia, that have no specialised counselling centres for victims of trafficking. GRETA stresses that if additional tasks are given to NGOs, such as training activities or helping with the identification of victims of trafficking amongst asylum seekers, the necessary additional resources must also be provided to them.

294. **GRETA considers that the German authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in co-operation structures, the victim identification process and the development of new policy and practical measures to combat different forms of THB. In this context, GRETA invites the authorities to ensure long-term funding of the anti-trafficking activities of civil society.**

IV. Conclusions

295. Since the adoption of GRETA's first report on Germany in June 2015, progress has been made in some areas.

296. The German national legal framework relevant to action against THB has significantly evolved since GRETA's first evaluation. GRETA welcomes the introduction of the new offence of THB and the related amendments to the CC which reflect the Convention's provisions in a significantly more comprehensive manner.

297. Further, legal amendments made to the Residence Act strengthened the right of victims of trafficking to be issued a residence permit for the purpose of their co-operation in criminal proceedings and introduced the possibility for victims of THB to receive a temporary residence permit after the conclusion of the criminal proceedings if humanitarian or personal reasons or public interests require their further presence in Germany.

298. Moreover, access to social benefits for holders of residence permits for victims of human trafficking has been enhanced by including them within the scope of the German Social Code Book II (SGB II).

299. Legislative changes have also facilitated confiscations and the use of the confiscated items for the compensation of victims of crime, and improved victims' access to a lawyer at the expense of the State and to free psychosocial support during court proceedings.

300. Efforts have been made to provide training to relevant professionals and to expand the categories of staff targeted. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

301. A variety of institutions in Austria have carried out research on different aspects on human trafficking in Germany, including in the areas suggested in GRETA's first evaluation report.

302. GRETA welcomes the increased attention to action against human trafficking for the purpose of labour exploitation, such as the establishment of a Federal Working Group on Combating Human Trafficking for the Purpose of Labour Exploitation and the setting-up of a Service Centre against Labour Exploitation, Forced Labour and Human Trafficking.

303. Other positive developments with a view to creating a specific referral process for cases of trafficking in children include the publication of the "Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation".

304. GRETA also commends the considerable efforts made by Germany in the area of international co-operation, including in the investigation of cases of transnational trafficking in human beings, funding projects in countries of origin of victims of trafficking, and promoting multilateral co-operation in combating human trafficking.

305. However, despite the progress achieved, some issues continued to give rise to concern. In this report, GRETA requests the German authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

Issues for immediate action

- **In order to ensure that action to combat THB is comprehensive and involves all stakeholders, GRETA once again urges the German authorities to develop a comprehensive national action plan or strategy against THB which addresses all forms of exploitation (paragraph 37);**
- **In order to create an evidence base for future policy measures, GRETA once again urges the German authorities to set up and maintain a comprehensive and coherent statistical system on THB by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims. Statistics regarding victims should be collected from all main actors and allow 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 provide information for the national data collection (paragraph 55);**
- **GRETA urges the German authorities to intensify their efforts to prevent THB for the purpose of labour exploitation, in particular by:**
 - **training relevant officials, including police officers, FKS inspectors, prosecutors and judges, on THB for labour exploitation and the rights of victims;**
 - **strengthening the monitoring of recruitment and temporary work agencies;**
 - **raising awareness among the general public as well as, in a targeted manner, among migrant workers, about the risks of THB for the purpose of labour exploitation;**
 - **ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of human trafficking;**
 - **working closely with trade unions, civil society and the private sector to raise awareness of trafficking for the purpose of labour exploitation, prevent trafficking in supply chains and strengthen corporate social responsibility, drawing on the Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 on human rights and business (paragraph 83);**
- **Referring to Article 5, paragraph 5, of the Convention, according to which Parties to the Convention shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them, as well as the Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019), GRETA urges the German authorities to ensure that unaccompanied and separated children benefit from effective care arrangements, including appropriate accommodation, access to education and health care, with a view to preventing human trafficking (paragraph 98);**
- **GRETA urges the German authorities to take further steps to ensure that victims of THB are identified as such in a proactive and timely manner, and in particular to:**
 - **strengthen multi-agency involvement in victim identification for all forms of exploitation, by giving a formal role in the identification process to frontline actors and enabling identification independently of the initiation of criminal investigations, by setting up and further developing co-operation agreements and structures in all Länder, by including all relevant professionals in these mechanisms, and by providing guidance and training on the implementation of the pertinent procedures to all these professionals;**

- **increase their efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by expanding the mandate of the Financial Monitoring Unit to Combat Illicit Employment (FKS) to cover the detection of victims of THB and their referral to assistance, including in domestic households, and by reinforcing the capacity and training of officials of the FKS and other relevant agencies, providing them with clear instruction on the detection and referral of cases of THB, and involving trade unions and NGOs;**
- **pay increased attention to the proactive detection of victims of trafficking among asylum seekers, by providing training and clear instructions to BAMF staff and staff of asylum reception centres on how to proceed when detecting indicators of THB;**
- **provide specialised counselling centres involved in the identification of victims of trafficking amongst asylum seekers with sufficient resources to enable them to fulfil this task (paragraph 135);**
- **GRETA urges the German authorities to provide adequate assistance, including safe accommodation, adapted to the specific needs of male victims of THB (paragraph 147);**
- **GRETA urges the German authorities to improve the identification of, and assistance to, child victims of trafficking, in particular by:**
 - **effectively implementing as a matter of priority the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation, at all levels of government; to this end, federal, Länder and local authorities should deploy the necessary financial and staff resources;**
 - **ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of THB, including by paying particular attention to unaccompanied and separated foreign children;**
 - **providing training to stakeholders (including police officers, NGOs, child welfare services, social workers, teachers and health-care professionals), as well as guidance on the identification of child victims of THB for different purposes, including the exploitation of begging and criminal activities, drawing on the indicators provided in the Federal Co-operation Guidance on Protecting and Supporting Child Victims of Trafficking and Exploitation;**
 - **providing adequate support and services which are adapted to the needs of child victims of trafficking, including by ensuring that there is a sufficient number of accommodation places;**
 - **ensuring the timely appointment of guardians for unaccompanied and separated child victims, in line with General Comment No. 6 (2005) of the Committee on the Rights of the Child (paragraph 170);**
- **Recalling the recommendation made in the first report, GRETA once again urges the German authorities to ensure, in compliance with Article 13 of the Convention, that all possible foreign victims of 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. Staff performing identification, and in particular staff who may come into contact with victims of trafficking for the purpose of labour exploitation and the recently criminalised forms of exploitation (forced begging, forced criminality), 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 data collection on THB should include the number of recovery and reflection periods granted (see also the recommendation in paragraph 55) (paragraph 184);**

- **GRETA urges the German authorities to take further steps to facilitate and guarantee access to compensation to victims of THB, and in particular to:**
 - **review the criminal and civil procedures regarding compensation for victims of trafficking with a view to improving their effectiveness;**
 - **enable victims of trafficking to exercise their right to compensation, by informing them, in a language they can understand, of the right to compensation and the procedures to be followed, and building the capacity of legal practitioners to support victims to claim compensation;**
 - **include victim compensation in training programmes for law enforcement officials, prosecutors and judges;**
 - **ensure that all victims of trafficking, including children, have effective access to State compensation, regardless of their nationality or residence status, type of exploitation and without needing to have sustained a physical violence (paragraph 208).**

Further conclusions

- GRETA considers that the German authorities should continue their efforts to harmonise the institutional framework and co-ordination structures for action against THB at federal and Länder level. The aim should be to ensure greater coherence and effectiveness of the actions of all stakeholders in combating and preventing THB in all its forms, and to identify and assist trafficking victims without discrimination, irrespective of their place of residence in Germany (paragraph 31);
- GRETA considers that the German authorities should finalise the setting up of an independent National Rapporteur or designate another mechanism as an independent organisational entity with a view to ensuring effective monitoring of the anti-trafficking activities of state institutions and making recommendations to the persons and institutions concerned (paragraph 32);
- GRETA considers that the German authorities should increase their efforts to provide regular training on THB for different forms of exploitation and legislative developments to all relevant professionals, including all categories of police officers, prosecutors, judges, inspectors of the Financial Monitoring Unit to Combat Illicit Employment, diplomatic and consular staff, staff of counselling centres, health-care professionals, staff working with children, migration officials, asylum officials and staff working in accommodation centres for asylum seekers (paragraph 48);
- GRETA welcomes the research carried out on different aspects of THB in Germany and considers that the German authorities should increase their efforts to promote and fund further research in order to explore in depth the extent and nature of THB in Germany, including trafficking for the purpose of labour exploitation, begging, forced criminality, internal trafficking and child trafficking (paragraph 62);
- GRETA considers that the German authorities should increase their efforts to promote and fund activities aimed at raising public awareness of THB for different forms of exploitation, including new forms introduced in the Criminal Code. The impact of awareness-raising measures should be assessed and used to design future activities (paragraph 70);
- GRETA considers that the German authorities should continue their efforts to prevent THB among domestic staff employed in diplomatic households (paragraph 84);

- GRETA considers that the German authorities should increase their efforts to prevent trafficking in children by:
 - raising public awareness and sensitising and training teachers and child welfare professionals about the risks and different manifestations of child trafficking (including exploitation of begging, forced criminality and forced marriage);
 - raising awareness of THB as part of school education, including by providing information about the risks of being recruited through the Internet/social networks, the "loverboy" recruitment scenario and the fact that German nationals can also fall victim to THB;
 - raising awareness of the risks of THB amongst refugee children;
 - taking measures to ensure the registration at birth of children of asylum seekers (paragraph 99);
- GRETA considers that the German authorities should strengthen the training and awareness-raising measures aimed at health professionals involved in organ transplantation and other relevant professionals regarding trafficking for the purpose of organ removal (paragraph 106);
- GRETA considers that the German authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with the private sector, civil society and trade unions (paragraph 116);
- GRETA considers that the German authorities should strengthen their efforts to detect and prevent THB through border control measures and during visa application procedures, including by providing training to staff on detecting signs pointing to a potential trafficking victim. GRETA refers in this context to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders (paragraph 120);
- GRETA considers that the German authorities should continue and strengthen their efforts to provide assistance to all victims of trafficking, and in particular:
 - ensure that all victims of THB have effective access to the assistance and protection they need, regardless of whether they co-operate with the law enforcement authorities;
 - ensure that all assistance measures are guaranteed in practice for victims all forms of exploitation;
 - secure adequate funding for assistance services provided by NGOs in all *Länder* (paragraph 148);
- GRETA invites the German authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, and taking into account the Convention on the Rights of the Child and General Comment No. 6 (2005) of the Committee on the Rights of the Child (paragraph 169);
- GRETA invites the German authorities to continue ensuring the protection of the private life and identity of victims of trafficking (paragraph 176);
- GRETA considers that the German authorities should review the current formulation of the recovery and reflection period ("order to leave the territory") in order to reflect the spirit in which the recovery and reflection period should be granted (paragraph 185);
- GRETA considers that the German authorities should continue making efforts to ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the entitlement to a renewable residence permit, without prejudice to the right to seek and enjoy asylum. Additional measures should be taken to ensure that child victims of trafficking are effectively provided with residence permits, in full conformity with Article 14 (2) of the Convention. As regards the collection of data on residence permits granted to victims of trafficking, disaggregated by form of exploitation, age, sex and nationality of the victims, reference is made to the recommendation in paragraph 55 (paragraph 195);

- GRETA invites the German authorities to make available effectively in practice the issuing of residence permits to victims of trafficking on the basis of their personal situation (paragraph 196);
- GRETA invites the German authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking (see also the recommendation in paragraph 55) (paragraph 209);
- GRETA considers that the German authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, GRETA refers to the UNHCR 2006 Guidelines on the application of refugee status to victims of trafficking. The authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return (paragraph 219);
- GRETA considers that the German authorities should take measures to ensure that the use of the accelerated asylum procedure does not contribute to the *refoulement* of victims of trafficking and failure to identify victims of trafficking (paragraph 220);
- GRETA considers that the German authorities should keep under review the practical implementation of the new criminal offences related to THB with a view to identifying possible needs for readjustments (paragraph 228);
- GRETA once again invites the German authorities to adopt legislative measures to criminalise the use of services from a person with the knowledge that the person is a victim of THB, for all forms of exploitation, as stipulated by Article 19 of the Convention (paragraph 234);
- GRETA considers that the German authorities should continue to take measures to ensure that the liability of legal entities for criminal offences is effectively implemented (paragraph 238);
- GRETA considers that the German authorities should take additional measures to ensure compliance with 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, for victims of all forms of trafficking, as provided in Article 26 of the Convention. The German authorities should ensure that the non-punishment provision can be applied to all offences that victims of THB were compelled to commit. In this context, the issuance of guidance to prosecutors and other relevant professionals on how to apply the non-punishment provision to victims of THB should be envisaged (paragraph 246);
- GRETA considers that the German authorities should take further steps to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:
 - providing adequate human and financial resources to the police and the prosecution to support the prioritisation of the investigation and prosecution of THB cases;
 - further developing the knowledge and specialisation of investigators, prosecutors and judges to deal with THB cases;
 - strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation (paragraph 260);
- GRETA invites the German authorities to keep under review the application of the new legislation on asset recovery in criminal law with a view to confiscating or otherwise depriving the instrumentalities and proceeds in human trafficking cases, or property the value of which corresponds to such proceeds (paragraph 261);

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- GRETA considers that the German authorities should ensure that the existing provisions on the protection of victims are effectively applied to protect victims of THB at the investigation, trial and post-trial stages. In this context, the German authorities should ensure compliance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 269);
 - GRETA welcomes the efforts made by the German authorities in the area of international co-operation and invites them to continue these efforts, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims. Further, GRETA invites the German authorities to improve co-operation in the search for missing children (paragraph 286);
 - GRETA considers that the German authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in co-operation structures, the victim identification process and the development of new policy and practical measures to combat different forms of THB. In this context, GRETA invites the authorities to ensure long-term funding of the anti-trafficking activities of civil society (paragraph 294).

Appendix

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 of Health
- Federal Ministry of Finance
- Federal Office for Migration and Refugees
- Federal Criminal Police Office
- Federal Police Office
- Members of the German Federal Parliament (*Bundestag*)

Länder bodies and agencies

Berlin

- Senate Department for Health, Care and Equal Opportunities
- Senate Department for Integration, Labour and Social Affairs
- Senate Department for Internal Affairs and Sports
- Senate Department for Justice, Consumer Protection and Anti-Discrimination
- Senate Department for Education, Youth and Family Affairs
- State Office for Refugee Matters (*Landesamt für Flüchtlingsangelegenheiten*)
- Public Health Department of the district Charlottenburg-Wilmersdorf
- Public Prosecutor's Office
- Criminal Police Office
- Office of the Commissioner for Integration and Migration

Bavaria

- Ministry of Family Affairs, Labour and Social Affairs
- Ministry of the Interior
- Ministry of Justice
- Criminal Police Office

Brandenburg

- Ministry of Labour, Social Affairs, Health, Women's and Family Affairs
- Ministry of the Interior and for Municipal Affairs
- Ministry for Education, Youth and Sports
- Ministry of Justice and for European Affairs and Consumer Protection
- Public Prosecutor's Office
- Criminal Police Office

Lower Saxony

- Ministry for Internal Affairs and Sports
- Ministry for Social Affairs, Health and Equal Opportunities
- Ministry of Justice
- Ministry of Economy, Labour, Transport and Digitisation
- Public Prosecutor's Office
- Criminal Police Office

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- Police Directorate of Hanover
 - Police Directorate of Brunswick

Intergovernmental organisations

- United Nations High Commissioner for Refugees (UNHCR)

Civil society organisations

- Arbeit und Leben
- Ban Ying
- Condrobs
- Dortmunder Mitternachtsmission
- ECPAT
- Faire Mobilität Berlin
- Fraueninformationszentrum (FIZ)
- German Institute for Human Rights
- IMMA/ Mirembe
- Internationaler Sozialdienst (ISD)
- IN VIA Berlin/Brandenburg
- JADWIGA
- KARO
- KOBRA
- KOK (German NGO network against THB)
- Nachtfalter Essen
- ONA
- SOLWODI Berlin
- Terre des Femmes
- Trade Union Federation (DGB)
- Ver.di
- ZORA

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 17 April 2019 and invited them to submit any final comments. The reply from the authorities, submitted on 15 May 2019, is reproduced hereafter.



Bundesministerium
für Familie, Senioren, Frauen
und Jugend



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

Executive Secretary of the Council of
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Schutz von Frauen vor Gewalt

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ORT, DATUM Bonn, den 15.05.2019

**Comments of Germany on the report concerning the implementation of the CoE
Convention on Action against Trafficking in Human Beings by Germany**

Dear Ms Nestorova,

On 17.04.2019, Germany received the final report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. In this context, we would like to thank GRETA for the constructive exchange during the second evaluation process. The report contains very valuable recommendations for further improving our actions against trafficking in human beings.

I would like to inform you, that the German authorities refrain from making any official comments on the report.

Yours Sincerely

Pp

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