



## ALTERNATIVE REPORT

concerning the implementation of the  
Council of Europe Convention  
on Combating Trafficking in Human Beings

**Gemeinsam gegen Menschenhandel e.V.**

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## I. Introduction

Gemeinsam gegen Menschenhandel e.V. (GGMH) is an alliance of more than 40 organizations, initiatives and committed individuals who work against human trafficking in various ways throughout Germany. Based on the understanding that sexual exploitation violates a person's basic human dignity, GGMH places a special focus on preventing and combating forced prostitution.

Member organizations: Some member organizations of the alliance are active in the area of prevention, for example by educating in schools about "loverboys" or training airline and hotel staff on how to look for signs of human trafficking. Other organizations work in the area of victim protection and victim assistance. Through outreach work they identify victims of trafficking and forced prostitution, support women who want to leave (poverty-driven) prostitution or escape sexual exploitation in developing new perspectives on life, and accompany them on their way to a self-determined life.

In particular, the alliance engages in the following areas:

- Public relations to raise awareness for this serious human rights violation;
- Education and prevention in Germany as well as in the countries of origin;
- Victim protection and victim assistance by supporting member organizations who are engaged in frontline work, running shelters and specialized counseling centers and/or a "Freedom Business". A "Freedom Business" provides jobs to vulnerable persons and victims and thus secure their own income.
- Improvement of the legal framework in Germany by supporting measures that lead to increased criminal prosecution of traffickers as well as protection and compensation for victims. This includes political action and initiatives;
- Nationwide and international networking with specialized counseling centers and other relevant organizations;
- Identification and pooling of existing resources within the alliance.

Because the alliance has a focus on combating trafficking for sexual exploitation and all forms of sexual exploitation, we will primarily address issues related to this form of exploitation in our statement, which is based on our expertise and the expertise provided by our member organizations.

## **II. The Impact of German Prostitution Legislation on Preventing and Combating Trafficking in Human Beings (Article 5).**

Based on our assessment, there are major deficiencies and a great deal of negligence in preventing and combating human trafficking in Germany. Neither the German legislation regarding human trafficking nor the German prostitution legislation appear to be suitable for effectively combating human trafficking for the purpose of sexual exploitation as well as all forms of sexual exploitation. There are various indications of this, which will be discussed below.

### **2.1 The connection between prostitution and human trafficking**

According to many experts, prostitution and human trafficking are usually inseparable (e.g. *UN GA, Res. 63/156, Preamble; DIAKA, 2023*). This is demonstrably the case in Germany as well. Successful intensive police investigations in brothels show the close connection between human trafficking, organized crime and so-called "regular" prostitution in Germany. For example, investigations into a brothel in Augsburg showed that the brothel operator regularly ordered women from a wholesaler in southeastern Europe. He could order them as if from a catalog - according to size, hair color, age and other physical characteristics. The women were delivered on time and there was even an exchange guarantee. The wholesaler worked with several recruiters from Romania and Hungary. These specialized in recruiting naive young girls with no social ties. Experts such as the retired senior criminal counselor Helmut Sporer emphasize that sufficient supply, especially for larger brothels, is only possible if there are connections to corresponding sources such as smugglers and human traffickers who can guarantee such organized supply (*Sporer, 2021*). This has also been proven in the case of the large brothel "Paradise" in Stuttgart. After the operator initially presented the "Paradise" for years in talk shows as a model brothel, he was, after extensive investigations, convicted of aiding and abetting human trafficking and pimping (*Bilger, 2020*). This close interlocking of "regular" prostitution with human trafficking and organized crime cannot be ignored.

Accordingly, the German Institute for Applied Crime Analysis, DIAKA<sup>1</sup> (2023), states that "an effective legislation regarding (regular) prostitution implies measures against human trafficking, whereas non-functional regulation of prostitution promotes human trafficking." (*Cho et al., 2013 and Jakobsson/Kotsadam, 2013*). Therefore, this report considers both the issue of human trafficking and Germany's approach to prostitution.

### **2.2 Challenges in German Prostitution Legislation**

The German Prostitution Act (ProstG) came into force on January 1, 2002 with the aim of strengthening the legal position of prostitutes, reducing discrimination and giving them access to the social security system (*Bundestagsdrucksache 14/5958*). Further goals were to improve working conditions, to make it easier for prostitutes to exit prostitution, and to reduce the criminal aspects associated with prostitution (*BMFSFJ,*

2007b, 6[2]). Since then, prostitution is no longer considered "immoral" and is officially recognized as a service industry.

In 2005, an evaluation of this legislation commissioned by the federal government already showed that the law did not achieve any of these goals and that only the comparatively small group of registered and voluntarily-working prostitutes could benefit at all from the ProstG (BMFSFJ, 2005:286f.). Women who were working illegally, for example women without a residence permit or who violated the tax registration requirement, could not benefit from the law. It was not until 2017 that the federal government reacted to this problem by introducing the Prostitution Protection Act (ProstSchG).

The explanatory memorandum to the Prostitution Protection Act points out the particular threat to fundamental rights in the context of prostitution, and shows that the lawmakers also recognize and acknowledge the close connection between prostitution and organized crime:

*"...prostitution [is] an area in which fundamental rights such as sexual self-determination, personal freedom, health as well as personal rights of those involved are under particular threat. [...] The lack of official supervisory instruments leads to intransparency and favors criminal structures that take advantage of this deficit." (Bundestag Printed Paper 18/8556:1). "It is about legal measures [...] to combat crime in prostitution such as human trafficking, violence against prostitutes and exploitation of prostitutes and pimping. This is what the Prostitution Protection Act is supposed to accomplish" (ibid.:1).*

The previously missing protection should thus be guaranteed by the introduction of the ProstSchG. However, there is still no protection for people in prostitution:

#### **a.) Negligence in the implementation of the law undermines good intentions**

Germany, through striking negligence in implementing the law, fails, even by its own logic, to take adequate action against human trafficking and sexual exploitation. The protection of people in prostitution should be ensured in particular by requiring them to register with the authorities and providing them with health education and information about support structures. This should create an opportunity to identify trafficked and forced prostitutes. In addition, under the new law, prostitution establishments should require a business plan and an operating license.

- According to DIAKA (2023, p.2), even six years after its introduction, the implementation of the ProstSchG has not yet been accomplished nationwide, especially in Berlin. This is also consistent with the perception of GGMH member organizations.
- The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), in cooperation with the Federal Statistical Office, used a figure of 200,000 prostitutes as a basis for the draft law on the Prostitution Protection Act from an overall view of various sources (c.f. Bundestagsdrucksache 18/8556, p. 38f). However, only about 24,900 prostitutes were registered at the end of 2020 and only about 23,700 at the end of 2021 (Federal Statistical Office, 2022). This large discrepancy has not led to any reactions or consequences.

- Similar discrepancies exist with regard to brothel-type establishments – especially in Berlin. As part of the EU-funded project GIPST, in which various member organizations of GGMH were involved, a corresponding mapping in Berlin found approximately 400 prostitution sites. This roughly corresponds to the estimates of professional associations (400 to 500 locations), which was the basis of a Written Inquiry of the FDP dated June 11, 2019 (*cf. Bundesamtdrucksache 18/19905*). As of May 2019, only 206 applications for an operating permit had been submitted, 11 permits had been issued, and 9 prostitution sites had been denied a permit or received a closure order. Thus, with the exception of the 11 that were granted permits, the majority of prostitution sites continued to operate undisturbed without a permit, at least until 2019, and it can be assumed that not all prostitution sites have been recorded and controlled to date, as only 43 sites were validly registered in Berlin, even as of Dec. 31, 2020. The fact that many of the prostitution sites have not filed an application is mainly due to the fact that the vast majority of existing prostitution sites are not eligible for a permit: According to the Senate Department for Urban Development and Housing, "it is estimated that more than half of the operating sites are located in urban planning areas where they are not permitted according to building planning law" (*Runder Tisch Sexarbeit, 2019*).

The question arises as to how many of these prostitution sites are actually in operation at present, why they do not register, and what condition they are in. (*cf. Bundesamtdrucksache 18/19905*)

When assessing the situation, factors such as the safety of the examiners must also be considered. At a training session for case workers in this area, a case worker from a smaller city explained that she was afraid to deny applications because she had to sign them with her own name. One brothel in particular was extremely suspicious to her. However, she did not dare to deny it an operating license because she felt threatened and was afraid of repression. (*Conversation 1*)

In its explanatory memorandum, the federal government noted the "lack of official supervisory instruments" as a cause of intransparency and the favoring of criminal structures that take advantage of this deficit. Therefore, it can be assumed that the lack of activity of official supervisory instruments in Germany also continues to facilitate human trafficking and sexual exploitation. It further demonstrates the lack of interest on the part of the state or some federal states to take effective action against it. (*Bundesamtdrucksache 18/15684*)

Based on the findings of his study commissioned by the FEMM Committee on "The Differing EU Member States' Regulations on Prostitution and their Cross-Border Implications on Women's Rights," scientist Di Nicola recommends either the introduction of the Equality Model (Nordic Model) to effectively combat human trafficking in the EU (and thus, in addition to decriminalizing people in prostitution, creating exit opportunities and educating the public), or – in those countries that still prefer to maintain a regulation-based model – a consistent "prosecution of prostitution clients who purchase unregulated prostitution services [...] with rigorous control of the legal market to prevent trafficking victims from entering the legal market." (*European Parliament, 2021*) Neither is the case in Germany.

**b.) The legislation is inadequate and still not tailored to the situation as it is found in Germany.**

Germany tries to regulate prostitution through its legislation. The aim therefore is to enable voluntary, "regular" prostitution on the one hand, and to protect people in prostitution and prevent human trafficking and exploitation on the other hand.

German legislation is based on the understanding that prostitution is an "autonomous decision to engage in a risky activity" (*BMFSFJ, 2007:6f.*). In this context, the legislator defines this autonomous decision as follows: "Voluntariness, in the context of the right to sexual self-determination, means that individuals are free to decide the "if," the "when," and the "how" of a sexual encounter." (*ibid.:9*). However, in its evaluation of the Prostitution Act (ProstG), the federal government describes it as a "social reality that many prostitutes find themselves in a social and psychological situation in which it is questionable whether they can really decide freely and autonomously for or against this activity" (*ibid.:9*).

This assessment is also consistent with the experiences of many of our member organizations. At least 80 percent of prostituted persons in Germany are migrants, especially from Eastern Europe, Asia, South America or Africa (*Giertz et al., 2020; Sporer, 2013:5; TAMPEP, 2007:223*). Among them are many (often young) women who are pushed to migrate and to engage in prostitution, especially due to economic constraints and lack of prospects in their home countries (*Bernitz et al., 2018:90; Wege, 2015:86*). They often leave behind young children or entire families in their country of origin, whom they have to support through their prostitution activities (*Howe 2015:38; Giertz et al., 2020*). It is not uncommon for family members to act as their pimps (*Franke, 2020:79; Schmitt 2007:15; Le Breton 2011:207; Hinz/Petrova 2013:137-139*).

Accordingly, poverty prostitution is particularly widespread in Germany. As Niesner (2014) very aptly pointed out in her statement as an expert in the Committee on Human Rights and Humanitarian Aid, these are often "women who have decided or had to decide within their limited means to work in the milieu, work under extremely degrading and inhumane conditions, are exploited and forced by pimps and human traffickers, and cannot (yet) get out" (*Niesner, 2014*). According to Niesner (2014), typical characteristics of people in poverty prostitution include lack of education and vocational training, lack of language skills, early experiences of violence, vulnerable livelihoods, and poor health care. These circumstances make them particularly vulnerable to exploitation and trafficking (*ibid.*). Many are unable to negotiate prices and demand their rights, which ultimately leads to serving a very high number of clients at dumping prices and engaging in risky sexual practices (*ibid.*). As a result of the precarious living conditions, experiences of violence in any form are part of the women's life situation and, according to Wege (2021), "point to the everyday struggles for survival in the red light milieu." Neither the old law nor the new legislation has changed anything about this situation. As before, this corresponds to the situation that many of our member organizations encounter in their frontline work. The majority of people in prostitution are thus either victims of sexual exploitation and human trafficking or extremely vulnerable to it.

### **c.) Even the obvious victims of human trafficking and/or exploitation are not protected by the legislation**

Victims of human trafficking often do not identify themselves as such. There can be many different reasons for this, such as fear of the perpetrators, who often threaten not only them but also their families in their home countries (e.g. Franke, 2020:89). Even if there are usually offers of safe accommodation for the victims (mostly through NGOs), the police have few possibilities to protect the families in the home country (*ibid.*:88f.). Other reasons are shame, language barriers, lack of knowledge of their rights or lack of trust in authorities (Bartsch T. et. Al., 2021:37). It is known that one of the perpetrators' strategies is to deliberately undermine the victims' trust in the police, for example, by telling them that the police cooperate with organized crime. (Franke, 2020:81). In addition, many victims simply do not feel as victims. Some are exploited by their own families and do not know anything else – the experience of being a victim of trafficking and/or exploitation is part of their normal life (*ibid.*, p.79f.). According to the Berlin police, in certain countries entire villages have developed permanent structures of prostitution and pimping. Thus, some lack the inner distance to the events and cannot recognize that they are caught in an exploitative system (*ibid.*:80). In addition, victims whose family is involved in their trafficking can lose their entire social system by testifying. Others are afraid to lose their partner – this is especially true for victims of the so-called “loverboy” method. These and other circumstances can be the reasons why victims of human trafficking and/or sexual exploitation refrain from filing a report with the police.

However, in the German legal system, a statement by the victim is required in most cases in order to convict the perpetrator. According to a former Berlin prosecutor, one of the reasons for this is that the objective elements of the crime in such cases, e.g. coercion or the exploitation of a state of helplessness in connection with a stay abroad, can only be proven if the victims are willing and able to testify that they felt helpless or that they were dependent on the perpetrator because they knew no one in Germany. These elements often cannot be proven in any other way. But, according to the prosecutor, even if the helplessness and dependence of the victim can be proven, it is certain that the victim did not voluntarily pursue prostitution and should be considered a victim of trafficking (Franke, 2020:74).

These legal circumstances lead to the fact that there are women working legally in street prostitution, who both the police and NGOs (members of GGMH) assume to be trafficked persons and/or victims of sexual exploitation. However, since it is not possible for the police to intervene without a corresponding statement from the trafficked persons, officers take the approach of building trust first and hope that one day they will come forward voluntarily (*ibid.*:81). According to the experience of our member organization Neustart e.V. in Berlin, for example, frontline workers hardly have any opportunities to get in touch with the women in question. The women are often not allowed to talk to social workers for any length of time and additionally, they lack knowledge of German or English. These circumstances strongly challenge the widespread assumption in Germany that liberal German legislation gives support organizations better access to those affected by human trafficking, and that legal models such as the Equality Model (Nordic Model) pose a danger because they "push affected persons into illegal status." The motion by two parliamentary groups in the Bundestag claims, for example that "a ban on prostitution sanctioned by criminal law opens up an uncontrollable market that eludes transparency and prosecution of perpetrators" (*Landtagsdrucksache NRW 17/10851:2*). However, this assumption



completely overlooks the fact that there is already a large dark field in Germany under the given conditions and a market that cannot be controlled. (*see also above the figures on registrations of prostitutes and brothel-type establishments*). The precarious situation in brothels described above rather suggests that the legal sex industry provides a suitable cover for organized crime, human trafficking and sexual exploitation.

#### **d.) The COVID-19 pandemic made the precarious situation of people in prostitution visible to public eyes**

According to our member organization SOLWODI, which studied the impact of the COVID-19 pandemic on female adult victims of human trafficking for the purpose of sexual exploitation, the pandemic again highlighted how "dangerous, undignified, and precarious the situation of women in prostitution is" (*n.d, 2020*).

The shutdown of brothels in Germany showed once again that the majority of women working in prostitution are migrants who are not eligible for state social assistance. (*ibid.*) Due to the COVID-related brothel closures, they found themselves completely destitute and homeless on the streets and in urgent need of help. (*Giertz, et al., 2020*) Our member organizations, many of whom work frontline, reported high levels of homelessness, poverty, and need for exit programs. Many of them provided women with basic necessities during this time (food, clothing, hygiene supplies...) and tried to place them in emergency shelters.

In their report concluding their investigations, SOLWODI (*2021*) also notes that women in prostitution (presumed victims of human trafficking included) were forced by brothel operators into private apartments or onto the street. Others were imprisoned by their abusers. Still others found lodging with a sex buyer where they could sleep in exchange for sex (*Wells, 2021:5*).

Many women returned to their home countries. In part, this happened in an alarmingly well-planned manner. In the border area of Romania, according to statements of residents to DIAKA (*2023:3*), an obviously organized transport took place by providing omnibuses. This report coincides with statements of our Berlin member organization Neustart e.V., which observed that many women from the street prostitution in Kurfürstenstraße disappeared at the same time.

DIAKA points out that here the "governmental conclusion to the question [was] missing as to why the women, who undoubtedly had considerable income before (with 1,000,000 johns daily according to the federal government's communication), were so obviously destitute and helpless" (*DIAKA, 2023:4*). It can be assumed that many were not allowed to keep the money for themselves, but either had to spend it on horrendous rents in the prostitution sites or had large portions taken from them by pimps. DIAKA laments that the federal government did not react to this in any way (*ibid.:4*).

On the contrary, as of April 2021, Berlin made it even more difficult to inspect prostitution sites. Now, according to the new version of the General Security and Order Law (ASOG), an inspection is no longer possible at any time, regardless of suspicion, as before, but only if there are concrete indications of criminal acts, since prostitution sites may now no longer be classified as crime-ridden places (kbO) - a decision that lacks any logic (*van Offern, 2022; Kopietz, 2020*).

## 2.3 Impact of German prostitution legislation on demand (Article 6).

In terms of preventing trafficking, the CoE Convention calls on states "to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (*Art. 6*)." This agreed-upon wording, as interpreted by the OSCE, establishes a concept that goes beyond "demand for trafficking" or "demand for sexual exploitation" and addresses demand that fosters exploitation that in turn leads to trafficking. With respect to sexual exploitation, this creates an obligation to address demand that extends beyond the knowing exploitation of trafficking victims to any act that encourages the exploitation of the prostitution of others. (*OSCE, 2021:11*)

Considering that most of the trafficked persons in Germany are sexually exploited and that the victims are mostly (93%) women and girls (*cf. BKA, 2022*), it must be stated that Germany does not take sufficient measures to combat demand where it promotes sexual exploitation - that is, primarily with regard to the area of prostitution.

First of all, Germany neglects to ensure sufficient awareness among the population, for example by means of their own awareness campaigns or by funding awareness campaigns that NGOs use to highlight the role of demand.

It is no secret that prostitution is an "economic sector [that] is characterized to a very high degree by asymmetries in gender relations. Prostitutes are overwhelmingly female; [...] On the demand side, male customers dominate and determine the market, but without taking responsibility for the situation of the prostitutes. In contrast, women, as far as is known, demand professional sexual services to a vanishingly small extent; also, offers targeting women as customers are the exception (*Bundesratsdrucksache 156/16*)." This is how the German Bundesrat put it in 2016 in the explanatory memorandum to the draft law for the Protection of Prostitutes Act (*ProstSchG*).

In order to hold clients more accountable, the German government took an important legislative step in 2021 by strengthening Section 232a (6) on the criminal liability of persons who use the services of trafficked persons ("punishability of johns"). While the burden of proof previously rested heavily on the police, who had to prove to a john that he could have known that the prostituted person in question was a victim of human trafficking, since the strengthening of the law this burden of proof now rests on the john himself: He must prove that it was impossible for him to recognize that the person in question was a victim of human trafficking. The strengthening of the law was a step in the right direction, but there is still a lack of awareness of this fact among the general public. Many people are not aware that clients can be punished, and there is also a lack of information about the characteristics that clients can use to recognize that the person whose services they are using might be a victim of human trafficking.

Accordingly, implementation continues to be difficult: Since the paragraph was first introduced in 2016, there was not a single case until the law was tightened. And even two years after the strengthening of the paragraph, according to the current Federal Report on Human Trafficking, there has so far been only one case in which a john was charged/investigated (*BKA, 2018:14; Bartsch et al, 2021:67*).

## **2.4 Lack of awareness for the vulnerability of refugees – especially in the context of the Ukraine war**

Human trafficking from Ukraine to Germany has increased with the outbreak of the Russian war against Ukraine. It is well known that people in war and refugee situations are particularly vulnerable to violence, human trafficking and exploitation. This became clear at the beginning of the crisis, when large crowds gathered at German train stations and many private helpers also offered support to those arriving. Neither refugees nor helpers were registered at the time, so circumstances were opaque and the whereabouts of vulnerable people could not be tracked.

It is generally positive that refugees from Ukraine did not have to apply for asylum in Germany but could directly obtain a residence permit for a longer period of time. However, unlike the Federal Office for Migration and Refugees (BAMF) which has a certain expertise in human trafficking in the area of asylum due to trainings and the appointment of special representatives, this does not apply to the foreigners' authorities, which have taken over the registration of refugees from Ukraine. According to the BAMF, there were requests from the relevant foreigners' authorities to the experts from the BAMF, who then sent people there - this did not happen in a planned and strategic way, but only in individual cases. (*cf. Fischer, 2022*)

An indication that there is little awareness among the population regarding the vulnerability to human trafficking among refugee women was the news that in the small town of Burbach in the district of Siegen-Wittgenstein in North Rhine-Westphalia, a brothel is being established right next to a refugee shelter (less than 1 km away). The mayor, who was well aware of the problem, was unable to put a stop to this because of the legal situation in Germany. (*cf. Osthoff, 2022*) The fact that vulnerable refugees have indeed ended up in prostitution establishments was confirmed by reports from member associations of our alliance (e.g. Neustart e.V. in Berlin), who since winter 2022 in their frontline work in brothels increasingly met Ukrainian women who had come to Germany because of the war and hardly spoke a word of German.

In the area of prevention, it therefore remains important to provide the refugees with information in Ukrainian and to create easy access to residence, services and employment opportunities. In addition, a complete registration of all refugees should be ensured – this has not been done so far.

Also, for helpers and providers of housing there should be not only (as at present) the possibility, but also the obligation to register, in order to prevent abuse as much as possible.

In order to identify and help trafficked and exploited Ukrainian refugees as early as possible, Germany should also implement a National Referral Mechanism (see Section 2.5) as soon as possible.

## 2.5 Lack of national coordination in the fight against human trafficking

To date, there is no **National Action Plan** coordinating federal and state efforts to combat human trafficking. This is of particular importance in a country with a federal structure, as the individual states differ greatly in their approach and cooperation between the authorities is extremely difficult.

A National Action Plan also serves the purpose of setting goals and regularly checking whether the goals set are actually being achieved. If targets are missed, a course (e.g. a legal situation) can be corrected if necessary.

Closely related to this is the importance of an **independent reporting body**, as has existed in many countries for some time. In Germany, such a body is only just being established. For this reason, Germany still has no reliable figures and data on the topic of prostitution, which is the area in which most identified trafficked persons are exploited in Germany. This applies not only to data on the number of prostitutes, but also to other areas such as court databases. According to a former prosecutor from Berlin, there is no database in Berlin from which information and know-how from cases and judgments already heard in the area of human trafficking and/or sexual exploitation can be obtained. Such a reporting body could also make a great contribution to informing decisions by the legislature.

Equally important is a functioning **national referral mechanism** that regulates and coordinates cooperation between the various stakeholders. Germany does not yet have such a mechanism either. This would be essential - especially in a large and federally structured country like Germany - if we are to prevent victims from "falling through the grid" or getting "lost" in the attempt to transfer them to a relevant authority or body.

In many German states, there are cooperation agreements between the police and some specialized counseling centers for this purpose. Germany-wide cooperation with other actors, such as the Federal Office for Migration and Refugees (BAMF), or at least corresponding cooperation within the federal states, hardly exists.

In addition, access to such cooperation for specialized counseling centers is currently neither transparent nor regulated according to defined criteria. In our view, this is an urgent matter. The government should define the criteria that specialized counseling centers must fulfill, and there should be a regulated process of recognition, especially in view of Germany's size and federal structure.

Currently, there is an association of specialized counseling centers in Germany, the Bundesweiter Koordinierungskreis gegen Menschenhandel (KOK), which can work well with each other and with government institutions. There are good contacts and a trust-based cooperation, as confirmed by both sides again and again. This is of course very beneficial to the idea of a national referral mechanism.

It should be noted, however, that it is often members of the KOK who become part of a local or regional cooperation with authorities, while other specialized counseling centers have a more difficult time or are excluded. However, the KOK is not a neutral institution, but an association, and membership in the KOK is - as is usual with an association - the result of a majority decision of the general meeting and not the result

of an examination according to professional criteria. Thus, political opinions - e.g. the attitude towards the Equality Model - can very easily play a major role for membership. Due to political differences, certain specialized counseling centers can thus be excluded from membership in the KOK - and thus from cooperation in the sense of an existing structure that could be beneficial to a national referral mechanism. This is clearly not in the interest of those affected, as they may not be able to benefit from the existing structures, depending on who identifies them or who they decide to trust.

## **2.6 Recommendations**

- 1. Development of a national action plan in collaboration with specialized counseling centers/NGOs at national and regional level.**
- 2. Establishment of a national referral mechanism that considers and involves as many relevant stakeholders as possible at the national, regional and local levels - especially those who operate frontline.**
- 3. Development of criteria for specialized counseling centers.**
- 4. Establishment of an independent reporting body, incorporating the experience and data of a broad variety of specialized counseling centers/NGOs.**
- 5. Full registration of refugees from Ukraine and full registration of people providing assistance and shelter.**
- 6. Training of all relevant public bodies that come into contact with vulnerable groups of people (e.g. immigration authorities, see above).**
- 7. Awareness-raising among the general population about human trafficking through government campaigns or through governmental funding of NGO-initiated education campaigns.**
- 8. Consistent implementation of the current ProstSchG (including consistent registration of brothel establishments) and sufficient resources for the police (in the interest of combating organized crime in the red-light milieu).**
- 9. Rapid review and, if necessary, improvement of the current legal situation, e.g. by means of decriminalization of people in prostitution, improvement of measures to combat demand in connection with sexual exploitation (punishment of johns, sex purchase ban).**
- 10. Adequate funding for counseling centers for people in prostitution with a focus on entry prevention, exit assistance and work integration measures.**

### **III. Access to Justice**

#### **3.1 Intangible Costs of Criminal Charges as Barriers to Access to Justice - The Situation of Victim Witnesses.**

Victim-witnesses of human trafficking usually find themselves in extremely precarious situations and multivariate problematic situations when they are freed or are able to escape from the exploitative situation (*Küblbeck, 2017*). This is already true for most women exiting prostitution, and much more so for trafficked persons (*Steffan, 2015:19*). The experience of our member organizations shows that a considerable number of them have suffered multiple traumas due to rape, sexual exploitation, physical and psychological violence and are in need of psychological support (*cf. also OSCE, 2010*). However, most of them do not have health insurance and thus their access to the health care system is extremely limited.

Furthermore, they usually have no income and access to the labor market. Even for EU citizens it is really difficult due to the fact that they often have little to no (German) language skills and low levels of education (*see also the comments above on poverty prostitution*). Many of those coming from third countries do not have a residence permit, and often they lack documents altogether (*ibid.*). If victims cooperate with law enforcement, they are granted a residence permit for the duration of the criminal proceedings, but regardless of the outcome, they must subsequently apply for asylum if they wish to remain in Germany beyond the proceedings. This state of uncertainty about their future has an extremely unfavorable and destabilizing effect on their psychological wellbeing, especially, because they are already traumatized. Deportation to the home country means for them a return to the environment in which they became vulnerable to trafficking and exploitation. Sometimes the procedures take several years, so that the state of uncertainty prevails over a long period of time (*see also Herz, 2005; Kilchling, 2017*).

To make matters worse, in human trafficking cases, the testimony of victim witnesses often stands against that of the defendants in the absence of other evidence (*Stelly and Thomas, 2016*). Consequently, the credibility of victim witnesses plays an important role in the outcome of the trial and is regularly under strong attack by the defense (*Franke, 2020; Herz, 2005*). This behavior of the defense, as well as the fact that victims have to face the defendant and speak openly about their trafficking experiences, puts a great strain on traumatized victims and can lead to secondary victimization.

Such circumstances pose major obstacles for victims to file charges and cooperate with law enforcement agencies (*Bartsch T. et. al., 2021:37*). Consequently, these factors play a major role in access to justice and will therefore be given special consideration in the following sections.

### 3.2 Lack of criminal prosecution

According to the Federal Criminal Police Office (BKA) (2022), human trafficking is a surveillance crime, and thus belongs to the fields of crime "in which investigation procedures are typically initiated by police activities or surveillance and not by victims filing reports on their own initiative" (BKA 2022:7). In recent years, victims filed charges in only 20-30 percent of cases without any assistance (see *Federal Situation Reports 2019-2022*). (For possible reasons for this, see above and point 2.2(c).) This means that the identification of victims of trafficking is very much dependent on police checks and thus on the resources made available for this purpose, as well as on raising awareness among other actors who come into contact with possible victims.

This circumstance leads to large differences in the numbers of completed investigations between the individual German states. While there were 48 completed investigations in Berlin in 2021, for example, there was only one in Brandenburg (BKA, 2022:6). This is not because there are fewer victims in Brandenburg. In the experience of member organizations, many of the women rotate in prostitution and can be found in both Berlin and Brandenburg. However, the police each set priorities due to a lack of resources (BKA, 2019). For example, Carsten Moritz, head of the anti-trafficking unit at the Federal Criminal Police Office, said in an interview with our executive director that at times the police focus particularly on areas such as curbing burglaries or counterterrorism, so there are correspondingly fewer resources available for combating human trafficking (Franke, 2018). Even at the end of 2021, almost half of the German states did not participate in a Europe-wide crackdown on human trafficking in bars and brothels (Wienand, 2021).

In 2021, there were a total of 291 completed investigations in the area of human trafficking for the purpose of sexual exploitation (incl. forced prostitution, exploitation using deprivation of liberty, exploitation of prostitutes and pimping) with a total of 417 victims (BKA, 2022). In Germany, a shadow figure of 1:9 is assumed, which means that at least 90% of all victims remain undetected and with them the perpetrators (Bartsch T. et. al., 2021: 37).

A large-scale file analysis published in 2018 by the Criminological Research Institute of Lower Saxony (KFN) shows that, moreover, of the cases registered by the police, only a fraction generally reach court. Thus, of a total of 798 suspects, only 167 had to answer for their crimes in court proceedings (Zietlow/Baier 2018:41). The number of convictions is then even lower. In relation to the number of registered suspects, only about one in six suspects was convicted (*ibid.*:11). This results in a great deal of impunity on the perpetrator side. If one applies the business model presented by the OSCE (2010) to this situation, which states that human trafficking is driven by high profit and low risk, one must conclude that the conditions in Germany are extremely favorable for perpetrators. High demand (see above), which leads to high profits, is combined with a low risk of being held accountable for it.

## 3.3 Court proceedings

### 3.3.1 Lack of training and further education

The topic of human trafficking plays at best a marginal role in the regular training of judges, and the topic of victim protection is also generally only marginally addressed at the relevant universities. Regardless of the extent to which further training opportunities on this topic are offered at all, it remains to be noted that all further training for judges takes place on a voluntary basis, since the independence of judges is codified in the Basic Law as freedom from instructions and personal independence (Articles 20 and 97 GG). Accordingly, judges are only subject to the law and cannot be obliged to undergo further training or to complete a specific training course. A judge from Berlin commented on this by stating that a judge must already have a special interest in the topic of human trafficking in order to participate in such special training courses, since human trafficking cases are not that common (*Franke, 2020:71*). Since even in Berlin – a city that is considered a hotspot for human trafficking – there is no specialized criminal division for the topic of human trafficking, judges rotate. Thus, any judge can be confronted with a human trafficking case, and the competencies of the respective court entrusted with a case in dealing with these cases vary greatly and are sometimes accordingly very meager.

Yet the legislation on trafficking in human beings is very complex and convoluted, which makes it very difficult to apply. In his assessment of the reform of §§ 232 et seq. StGB, Renzikowski (2017), a legal expert in this field, concluded that "through the maze of §§ 232 ff. StGB, the prosecution will find a more or less winding path. The judge will make their own judgment, as the job title indicates" (*Renzikowski 2017:366*). Trafficking cases are thus not only challenging due to the difficult and regularly occurring testimony versus testimony constellation and the problematic situation of the victims, but also the legal framework is extremely challenging.

Presiding over court proceedings as a judge without further training in this area is to be regarded as extremely difficult. In the context of a study in Berlin (*Franke, 2020*), in which relevant actors such as police, special prosecutors, judges, lawyers for the plaintiff's side, psychosocial counselors, and specialized counseling centers were interviewed, a female police officer, for example, who had already testified several times in human trafficking cases, stated with regard to the court: "I have already experienced judges, or associate judges who have asked me questions, where I had the feeling, hmm, they didn't really understand what human trafficking actually means." (*Franke, 2020:71*).

Accordingly, the KFN also found it very difficult to find experts among judges for an expert interview on the topic of human trafficking for their study. They even received refusals from people who had been named by the state judicial administration as experts for their study - repeatedly on the grounds that they did not know enough about this area of crime. (*Bartsch T. et. al., 2021:38*)



### **3.3.2 Limited implementation of statutory victim protection measures in court proceedings – risk of secondary victimization.**

The victim protection measures set out in the law are often not implemented in practice (*Franke, 2020*).

It is well known that victim-witnesses have to be very tough in order to survive the trials well. They are often questioned intensively for hours – first several times at the police station, then in court – and have to describe their experiences repeatedly and from a variety of different perspectives. It has been described as a defense strategy to throw the victim-witnesses off track and to get them to contradict themselves. Some of the witnesses seem to be able to handle this, others not. The latter may experience impaired psychological well-being, ranging from panic attacks to an actual breakdown, resulting in the need for therapy in a psychiatric hospital. (*Franke, 2020*)

Despite these risks of secondary traumatization (*see also Kilchling 2017*), victim protection measures under Section 48a of the Code of Criminal Procedure are rarely applied even to highly vulnerable victims of trafficking, often due to a lack of resources and court overload (*Franke, 2020*).

In Berlin, for example, it is common practice for victim-witnesses and non-detained perpetrators to meet each other in the hallway before the trial or to be seated together in the hallway during breaks. At one trial observed as part of a study, victim-witnesses were seated next to the two perpetrators without any other visual protection, with only about one meter between them. The attorney for one of the victim-witnesses, who was a joint plaintiff, advocated for her client and was able to sit between the defendants and the traumatized victim-witness as a partial privacy screen after an argument with the judge. All other victim-witnesses had no legal representation and had to continue to sit virtually next to the defendants during their testimony. In order to explain why this was the case, the judge said that in his court, witnesses always sit like that. (*Franke, 2020*)

After the joint plaintiff, as the main prosecution witness, had been interrogated extremely intensively and relentlessly for a whole day by two of the four attorneys for the defendants, another day of hearings was scheduled. On this day, the witness was initially unable to appear because she suffered from panic attacks. When she finally did appear, the trial got so out of control, according to the prosecutor who was present, that the judge sent the witness out and yelled at all the trial participants. He was obviously overwhelmed with conducting the trial and dealing with vulnerable victim-witnesses. (*Franke, 2020*)

Witnesses and perpetrators who are not already in custody encounter each other in the hallway before the trial. There is also a witness room, but in the aforementioned case, it was only used by the joint plaintiff before the trial began. All other witnesses had already come into contact with the perpetrators in the hallway and were even approached by the perpetrators' lawyers. During court breaks, all perpetrators and victim-witnesses were in the hallway outside the courtroom. There were many opportunities there to exert influence on the victim-witnesses and make them feel uncomfortable or even unsafe. It was obvious that the witnesses, who showed up without lawyers, had no information about the proceedings. One of the witnesses came

to court at the wrong time on multiple occasions because she had not been informed that her testimony had been postponed to another date. (Franke, 2020)

At none of the hearings was the public excluded, even though extremely intimate questions were asked. (Franke, 2020)

### **3.4 Recommendations**

- 1. Secure residence for trafficked persons – Accelerated issuance of residence permits and long-term solutions.**
- 2. No deportations of potential victims of trafficking.**
- 3. Implementation of victim protection measures for trafficked persons in all criminal proceedings.**
- 4. Improvement of international cooperation, e.g. in requests for legal assistance, harmonization of criminal offenses within the EU and improvements in asset recovery.**
- 5. Mandatory training content and further training for judges or the establishment of specialized court chambers for human trafficking cases.**
- 6. More resources for effective prosecution of trafficking and sexual exploitation cases and strengthening the police in terms of their control capabilities.**

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