
Written submission to the Human Rights Committee concerning the seventh periodic report of Germany

13.09.2021

**submitted by
German NGO Network against Trafficking in
Human Beings – KOK e.V.**

1. Introduction

This report has been compiled by KOK e.V. - German NGO Network against Trafficking in Human Beings. The KOK e.V. was founded in 1999 and advocates for the rights of trafficked persons and female migrants facing violence.

One of the main goals pursued by KOK and its member organisations is to improve the living conditions of trafficked and exploited persons and to help them assert their rights.

The KOK network consists of 39 member organisations, including:

- Specialised counselling centres and shelters for trafficked and exploited persons
- Projects for female migrants
- Counselling centres for sex workers
- Women's shelters and specialised safe houses
- Women's and human rights groups and lobbying organisations
- Umbrella organisations representing charities

The brief submission intends to present the human rights situation from an NGO perspective and refers to the List of issues prior to reporting (CCPR/C/DEU/QPR/7) as well as the 7th Periodic report submitted by Germany (CCPR/C/DEU/7).



2. Specific points based on the list of issues prior to reporting (LoIPR)

2.1 General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

Paragraph 2 LoIPR: please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected (...).

As the seventh periodic report of Germany presents in some detail, new legislation in regard to human trafficking has been implemented in Germany in 2016.¹ Explicit goals are *inter alia*: to improve protection of victims of trafficking and prosecution of perpetrators. However, whether the legislative changes have been successful is questionable. Already in the law-making process, much criticism has been expressed.²

One of the most important points from our perspective is the sole focus on criminal law. Victim protection provisions included in the Directive 2011/36/EU and the Council of Europe Convention on Trafficking have been left out almost completely.

A recent study KOK³ reveals that rights of trafficked persons during criminal proceedings as provided for in the EU Anti-trafficking Directive 2011/36 are not fully guaranteed and respected:

One of two issues relevant in this context is the prevalent fear trafficked persons face regarding prosecution for law infringements they may have committed. Currently criminal proceedings are initiated categorically against the affected person in the event of any relevant evidence. A consequent application of the so called “non-punishment clause” is not given in Germany. This provision requires Germany to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they have been compelled to do so. Article 154c German Code of the Criminal Procedure:

*If the victim of coercion, extortion or of human trafficking (sections 240, 253 and 232 of the Criminal Code) reports such an offence (section 158) and if, as a result, a less serious criminal offence committed by the victim comes to light, the public prosecution office may dispense with prosecution of the less serious criminal offence, unless expiation is imperative due to the severity of the offence.*⁴

¹ Act to Improve the Combating of Human Trafficking and to Amend the Federal Central Criminal Register and Book Eight of the Social Code (*Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches des Sozialgesetzbuches*) of 14.10.2016. Online at: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%2527bgbl116s2226.pdf%2527%255D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl116s2226.pdf%27%5D_1631279163557.

² For example: Prof. Dr. Renzikowski: Stellungnahme, 15 June 2016, KOK e.V.: Stellungnahme, 6 June 2016, online at: <https://kripoz.de/Kategorie/stellungnahmen/menschenhandel-stellungnahmen/>.

³ KOK e.V. (ed.) (2021) Summary report KOK Study: Rights of Trafficked Persons during Criminal Proceedings - A Study of the Implementation of EU Anti-trafficking Directive 2011/36 in Germany, online at: <https://www.kok-gegen-menschenhandel.de/en/news/kok-news/new-kok-study-rights-of-trafficked-persons-during-criminal-proceedings-a-study-of-the-implementation-of-eu-anti-trafficking-directive-2011-36-in-germany>; German full report: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen/KOK/Untersuchung_Rechte_von_Betroffenen_von_Menschenhandel_im_Strafverfahren_web_2021_07_07.pdf.

⁴ Article 154c German Code of the Criminal Procedure (Strafprozessordnung), online at: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1401.



Secondly, trafficked persons are not always protected against victimisation, intimidation and disrespectful attitudes on the part of police officers and judges interviewing them. They are sometimes treated as though they were on trial themselves, or had acted wrongfully. In some cases, the plausibility of their testimony is called into question due to the culture they may belong to or to the gender identity they ascribe themselves to. Overall, hearings are very rarely recorded and hearings by way of audio-visual transmission extremely seldom carried out. Some federal states simply lack the equipment to do so. In most cases, defendants are not asked to leave the courtroom, despite a provision allowing this, as judges fear this could be used as grounds for an appeal.

2.2 Specific information on the implementation of articles 1-27 of the Covenant

Paragraph 4 LoIPR: *Please respond to the concerns about the difficulties in access to justice for victims, especially larger groups of affected persons or foreign plaintiffs (...)*

The KOK has several concerns about the difficulties in access to justice for foreign plaintiffs/victims.

One of the aspects concerns the lack of separation of access to services and justice from immigration law enforcement by a so-called “fire wall”, as recommended by the European Commission against Racism and Intolerance (ECRI).⁵ This concern was also expressed by the Committee on Economic, Social and Cultural Rights⁶:

“The Committee is concerned that section 87 (2) of the Residence Act (Aufenthaltsgesetz) obliges public authorities to report undocumented migrants to immigration authorities, which can deter irregular migrant workers from seeking services, such as health care, that are essential for the enjoyment of their rights and from reporting crimes, including domestic violence and sexual and gender-based violence (arts. 2 (2) and 12).

27. The Committee recommends that the State party establish a clear separation (“firewall”) between public service providers and immigration enforcement authorities, including through repealing section 87 (2) of the Residence Act, to ensure that irregular migrant workers can access basic services without fear”

Secondly, according to article 59, paragraph 7 German Residence Act, victims of trafficking and exploitation have the right to be granted a recovery and reflection period. According to this provision, the foreigner may remain at least three months in the country in order to decide whether he/she wants to cooperate with law enforcement and testify in criminal proceedings. The recovery and reflection period can be extended. In practice however, possible victims of trafficking are often not informed about the existence of the recovery and reflection period and deported before they had a chance to be identified as victims or get support by support

⁵ European Commission against Racism and Intolerance (2016): ECRI General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, Recommendation 3 and 4; <https://reliefweb.int/sites/reliefweb.int/files/resources/REC-16-2016-016-ENG.pdf>

⁶ Committee on Economic, Social and Cultural Rights (2019): Concluding Observations on the sixth periodic report of Germany, E/C.12/DEU/CO/6, 27. November 2018, para. 26-27.



organizations.⁷ Access to justice from abroad and obtaining outstanding pay for example is extremely difficult.

2.3 Violence against women, including sexual and domestic violence (arts 2, 3, 6, 7 and 26)

Paragraph 11LoIPR : (...) *please report on availability of adequate funding for and access to shelters and other support services for all victims, regardless of their immigration status.*

Access to justice and protection in cases of violence against women can generally be difficult, it is however particularly a problem for women with irregular residence status. For women staying in Germany irregularly it is hardly possible to report violence perpetrated against them to the police. In doing so, they risk that their personal data is being shared with immigration authorities according to article 87 section 2 German Residence Act, which might trigger immigration enforcement procedures (see above).

The Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) has taken a number of measures to identify victims of human trafficking, such as creating standard operating procedures and indicator lists for case officers. Special staff for victims of trafficking were trained and are consulted in asylum procedures. Although improvements regarding victims' rights have taken place, setbacks and systematic gaps remain. E.g. a comprehensive system for identification of particularly vulnerable groups is not in place. Neither are newly revised minimum standards for the protection of refugees and migrants⁸ in refugee accommodation centres compulsory.

2.4 Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10, 13 and 17)

Paragraph 24 LoIPR: *Please also address the concerns (...) that temporary residence is afforded to foreign victims of human trafficking only if they cooperate with the police.*

The German report states at this point, that "(t)he Federal Government does not agree that foreign victims of human trafficking are often afforded temporary residence only if they cooperate with the police."⁹ The KOK is surprised by this statement as article 25 section 4a German Residence Act explicitly requires such cooperation:

"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 the foreigner's information,

⁷ see Council of Europe, Group of experts on action against human trafficking, GRETA/2019/07, para. 177 -185.

⁸ see Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Unicef (ed) (2021): Minimum standards for the protection of refugees in refugee accommodation centres
<https://www.bmfsfj.de/bmfsfj/meta/en/publications-en/minimum-standards-for-the-protection-of-refugees-in-refugee-accommodation-centres-184704>

⁹ CCPR/C/DEU/7, 195.



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- 2. the foreigner has broken off contact to the persons accused of having committed the criminal offence and*
 - 3. the foreigner has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.*

For many years now the KOK demands a residence permit for victims of trafficking independent of their willingness or ability to testify as a witness in the criminal proceedings. The provision is highly problematic as victims, who are threatened by the perpetrators may refrain from such testimonies due to fear or the court does not consider the person's presence to be appropriate.

