

Response of the German Institute for Human Rights to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties

June 2014

First evaluation round

Response to Questionnaire

Question 3: Did any non-governmental organisations (NGOs) or other entities of civil society contribute to responding to this questionnaire? If so, please indicate the main activities of each of the NGOs and/or other entities of civil society which contributed.

The German Institute for Human Rights is Germany's independent National Human Rights Institution (NHRI) established in March 2001 on the recommendation of the German Federal Parliament (Deutscher Bundestag).

It is based on the "Paris Principles" which were proclaimed by the United Nations in 1993 as international standards for National Human Rights Institutions. The Institute fully complies with these standards ("A status"). As such, it is politically impartial and acts on its own initiative. The Institute promotes the integration of human rights into domestic and foreign policy decisions and monitors the implementation of international human rights treaties in Germany. Its tasks include providing policy advice, applied research on human rights issues, human rights education, dialogue and co-operation with national and international organizations, documentation and information. The institute collaborates closely with UN human rights bodies, the Council of Europe and the European Union Agency for Fundamental Rights (FRA).

For many years, the Institute is engaged with the issue of human trafficking. Since 2007 it has set a main focus on the enforcement of victim's human rights. As a reference framework, in particular the national implementation of the Europe Convention on Action against Trafficking in Human Beings was considered.

Question 4: Please indicate if, in your internal law, THB is considered as a human rights violation (or only a criminal offence, see section II.3. below).

Human rights are relevant throughout the entire process of human trafficking. A human rights approach towards the combatting of human trafficking in countries of destinations

contains several measures within the framework of the state's duty to protect, respect and fulfil.¹

In the following the main aspects of the Institute's response to the questionnaire are summarized in order to show the lacking implementation of a comprehensive human rights-based approach towards trafficking in human beings in Germany.

Human rights obligate the state, within the framework of its duty to protect, individuals against violations of rights by third parties, to prosecute those violations, and to ensure restitution for the affected persons. According to the 2012 situation report of the Federal Criminal Police Office the criminal prosecution authorities in Germany completed 11 investigations of human trafficking for the purpose of labour exploitation and identified a total of 14 trafficked persons in that context.² Practitioners from law enforcement agencies have been criticizing the lack of practicality of the paragraph for years, which was demonstrated in a study commissioned by the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales, BMAS) in 2009.³ The low official figures clearly conflict with findings from the study mentioned, which stated that at least 480 estimated victims of trafficking for labour exploitation are in need of intensive care per year.⁴

Trafficked persons - like all residents of a state - are entitled to political, economic, social, and cultural human rights and to justice. These rights are independent of whether they have the status of legal resident. Fundamental rights such as the right to health and the right to physical and mental integrity, compliance with strict human rights requirements pertaining to the deprivation of liberty, or the right of access to legal remedies and compensation therefore should not be subject to willingness to cooperate as a witness in criminal proceedings. Nonetheless, at present in Germany, any right of residence is legally or factually linked to the willingness of trafficked persons to cooperate in criminal proceedings (see question 41). Other specific victims' rights like the right to state compensation is in turn linked to possession of a residence permit (see question 42).

Human rights also require not just the granting of entitlements to rights, but also the de facto guarantee of rights. This means that the affected persons are informed of their rights and that it is also possible for them to exercise their rights. In particular, in the areas of child trafficking and labor exploitation no mechanism of victim identification is implemented which leads to the situation, that victims don't receive information about their rights (see

¹ See for further details Petra Follmar-Otto (2009): A human rights approach against human trafficking – International obligations and the status of implementation in Germany. In: Human Trafficking in Germany- Strengthening Victim's Human Rights, p. 33: http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_human_trafficking_in_germany.pdf.

² Federal Criminal Police Office (2012): Annual report on Trafficking in Human Beings, p. 9: http://www.bka.de/nn_231620/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder_node.html?_nnn=true.

³ Claudia Kestermann (2009): Investigation of police and criminal procedures in the field of trafficking for labour exploitation. In: Development of sustainable support structures for victims of trafficking for labour exploitation, p. 81; Federal Ministry of Labour and Social Affairs (editor).

⁴ Dita Vogel (2009): Schätzung der Häufigkeit und Vorkommensweise des Menschenhandels zur Arbeitsausbeutung – Wie viele Betroffene gibt es in Deutschland? In: Study „Development of sustainable support structures for victims of trafficking for labour exploitation“, p. 322 (available only in German): <https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/studie-menschenhandel.pdf?blob=publicationFile>.

question 32). In spite of legal possibilities, compensation is currently provided to only a small group of trafficked persons in Germany. A study in 2009 showed that mainly women who had been trafficked into sexual exploitation received compensation from perpetrators in criminal proceedings. Experts assumed that no more than one-third of women testified in criminal proceedings. They received between €1,000 and €4,000, far less than what the trafficked persons would have been entitled to. More recent data is not available (see question 42).

Human rights do not just require states to take measures against human trafficking. It must also be possible for those measures to be assessed in terms of human rights. A comprehensive evaluation does currently not take place; data collection is so far limited to the area of law enforcement. Data on the enforcement of victims' rights, like for example on the number of victims that was granted the reflection period or compensation and remuneration are not available (see question 10).

Question 7: Does your country have a comprehensive national policy and/or a National Action Plan to combat THB? If so, please indicate its title, date of adoption and duration, main fields of action and the body/bodies responsible for its implementation.

Germany does not have a comprehensive policy or National Action Plan to combat THB.

In 2007 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth developed an "Action Plan II of the Federal Government to combat violence against women."⁵ In 2011 the "Action Plan of the Federal Government to protect children and young people from sexual violence and exploitation"⁶ was adopted. Both Action Plans comprise only a few isolated measures against trafficking for the purpose of sexual exploitation and trafficking of children and refer only to women and children.

At the level of the 16 federal states, the same conditions prevail. Trafficking for sexual exploitation is embraced by the issue of violence against women. No federal state has yet adopted a specific Action Plan to combat human trafficking. Political commitment relating to the issues of trafficking for labor exploitation, organ trafficking, exploiting criminal acts or forced begging of both, the governments on federal and federal state level is lacking.

From the perspective of the German Institute for Human Rights comprehensive Action Plans to combat all forms of trafficking should be adopted on both, the federal and the federal state level. In order to broaden the current criminal law enforcement focus on human trafficking it should be ensured by participation of non-governmental organizations that states also commit themselves to adopt measures strengthening victims' rights.

Question 9: Is there, within your governmental structure, a national body responsible for coordinating all national actors and actions against THB (regardless of the denomination and whether it was set up for this specific purpose or whether this responsibility was

⁵ Action Plan II of the Federal Government to Combat Violence against Women:
http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/aktionsplan-II-zur-bek_C3_A4mpfung-von-gewalt-gegen-frauen,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf

⁶ Action Plan of the Federal Government to protect Children and young People from sexual Violence and Exploitation:
<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/aktionsplan-2011,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>

assigned to an already existing governmental body)? If so, please specify its name, administrative status, annual budget (in euros), human resources, composition and competences. If there is currently no such coordinating body, are there any plans to set one up in the near future? If so, please give details.

On the federal level and in 14 out of 16 federal states, there are inter-institutional cooperative alliances of state and civil society actors who are concerned with the issue of human trafficking. The bodies mainly function as working groups or networking bodies that provide expertise. The members are not sent as representatives of their government agencies and therefore do not have the authority to make binding decisions or coordinate the actions of the government agencies involved.

Federal Level

Representatives of German federal and state ministries as well as non-governmental organisations comprise the joint federal and state-government working group on trafficking in women which was founded in 1997 to monitor national trends in human trafficking in Germany, analyse weak areas, and provide an impetus for changes in practice, for instance through advanced training materials.⁷

In the beginning of 2013, the working group's mandate of trafficking in women has been extended to human trafficking. Nevertheless, the focus of the work of this body still lies on the issue of sexual exploitation. Trafficking for labor exploitation, for the purpose of exploitation of begging, or exploitation of crime have not been previously considered. The topic of child trafficking is processed in separate structures in the context of the implementation of the National Action Plan against child abuse.⁸

The Working Group is quantitatively dominated by state actors from federal - and state ministries and the Federal Criminal Police Office. It lacks ministries that are relevant to the field of labor exploitation, for example the Ministry of Finance as the supervisory body of the authority in charge of financial investigations of illegal work. The group also lacks persons that represent the networking bodies of the federal state level.

Fixed criteria regarding the inclusion of NGOs in the joint federal and state-government working group do not exist. Current NGO members are involved in the field of trafficking for the purpose of sexual exploitation. The working group lacks associations representing the issues of labor exploitation, like for example trade unions.

Federal State Level

The working groups are predominantly engaged in the field of trafficking in women. Child trafficking, as far as obvious, is not a subject matter in any committee. In recent years a few states have expanded their area of authority and included at least the issue of trafficking for labour exploitation. In Berlin, sexual exploitation and labor exploitation are

⁷ <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=73008.html>

⁸ Action Plan 2011 of the Federal Government to protect children and young people from sexual violence and exploitation: <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/aktionsplan-2011,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>

processed in a common body⁹. In Hamburg, the working group of trafficking in women, under the auspices of the state criminal office, has decided to take another path. The group meets twice a year and organizes in turn a session on human trafficking for sexual exploitation and for labor exploitation. In addition, a round table against labor exploitation comprised of representatives of government and non-government agencies was implemented.

Question 10: Is this coordinating body also responsible for the coordination of the collection of administrative data or population survey data on THB? If not, please specify which body/entity has this responsibility

Regular data collection and reporting on the phenomenon of trafficking in human beings is currently limited to the area of law enforcement. Publicly accessible statistics are available in relation to the criminal proceedings of section 232 of the Criminal Code (trafficking for sexual exploitation), section 233 (trafficking for labor exploitation) and section 236 (child trafficking) with a main focus on investigation procedures in the area of sections 232 and 233 of the Criminal Code.

The data published in the annual situation report on trafficking in human beings by the Federal Criminal Police Office (Bundeskriminalamt, BKA) are based on information obtained from police investigations conducted. The report shows data on suspects and victims (number, gender, nationality, age and structure), circumstances of recruitment etc. as part of investigation in trafficking cases. Data on other forms of THB, such as organ trafficking or forced begging do currently not appear in law enforcement statistics, as these phenomena have yet not been legally covered as human trafficking.

The criminal courts collect data with regard to criminal proceedings in the field of human trafficking, which are annually brought together by the Federal Office of Statistics in ongoing professional series.

Data on the enforcement of victim's rights, such as data on the number of reflections periods issued to victims or compensation granted by the state or the perpetrator is currently not being collected.

The German Institute for Human Rights is of the opinion that an independent national rapporteur should be implemented outside executive powers.

Questions 32: At what moment and by whom is the process to identify a potential victim of THB initiated (for example, declaration of the potential victim, statement by a police officer, statement by a NGO etc.)?

In Germany, victims of trafficking are not systematically identified. This is particularly true for victims of child trafficking, labor exploitation, organ trafficking and begging activities.

Numerous specialized NGO counselling centers provide assistance, psychological care, and safe accommodation. They give advice to trafficked persons in matters of criminal,

⁹ Loth, Barbara (2013): Von der Berliner Fachkommission Frauenhandel zur Fachkommission Menschenhandel. Ein Beispiel, S. 55-58. In: Rabe, Heike; Tanis, Naile: Menschenhandel als Menschenrechtsverletzung. Strategien und Maßnahmen zur Stärkung der Betroffenenrechte.

labour and social law. First, it is irrelevant to their work whether persons declare themselves as victims. The official identification becomes necessary if victims want to claim public benefits. This is usually the case after a short time, since the costs of accommodation and daily supply must be covered. Additionally, third country nationals need to be identified as victims by a public authority in order to be issued a residence permit.

According to section 59 (7) of the Residence Act, foreigners authority shall grant at least a three-month time limit for departure to third country nationals, if it has concrete grounds to suspect, that a person of trafficking or labor exploitation is concerned. Evidence can be given by the victim, the law enforcement agencies or the specialized counselling centers¹⁰. In practice, usually the law enforcement agencies, police or prosecution decide when a person is considered a victim of human trafficking. In addition the competent public prosecutor's office shall be consulted prior to setting the deadline for leaving the country pursuant to section 59 (7). The decision whether a person is granted the status as a victim can't be appealed.

Almost the same applies to the situation, when victims of EU-countries claim benefits under the Social Security Code. Again, authorities must confirm the status of a victim of trafficking. This leads to the situation that victims who avoid getting in contact with law enforcement authorities for various reasons like for fear of being deported or fear of prosecution for illegal work do not get identified. As a result they also usually do not claim their rights.

Over the last 15 years counselling centres and the police in most of the federal states have concluded cooperation agreements on the procedure, how to proceed when a case of human trafficking presents. In some federal states, like for example in Berlin, a list of indicators for the identification of persons who are potentially affected is attached to the agreement. In many federal states, the cooperation agreement is focused only on the issue of trafficking in women. So far, neither the trade union counselling centers focusing on combating labor exploitation nor the law enforcement agencies that work against trafficking for labor exploitation like the financial investigation authorities are involved in the regional agreements. The same applies to child trafficking.

Question 37: Please indicate which types of assistance described in Article 12 of the Convention are provided to victims of THB in your country. Please specify who provides the different types of assistance.

The implementation of article 12 poses some problems. Besides the above mentioned shortcoming with regard to the support of EU-citizens and victims of labour exploitation during the reflection period, one further problem should be highlighted:

Victims who are third country nationals and EU-citizens face different systems of social security: Third country nationals are entitled to receive benefits from the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz, AsylbLG). This applies regardless of whether they are still in the process of reflecting their potential cooperation with the state authorities or whether a criminal procedure was opened and they have decided to testify. In the first

¹⁰ Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz vom 26. Oktober 2009, Rz. 50.2a.1.

case their status is illegal and in the second case they were issued a residence permit as a witness and reside lawfully in Germany.

Contrary to the support provided by the Social Security Code, which EU-citizens are supposed to receive, the Asylum Seekers Benefits Act guarantees only emergency support, because the intention is to ensure that there is no incentive for recipients of benefits to request permanent residence in Germany. The monthly support is less than the rate for social assistance. Recipients of benefits are eligible for medical care only in emergencies and in the case of acute illnesses. Recognition of the costs of interpretation and translation, which are particularly necessary for the exercise of rights, is subject to very strict requirements pursuant to section 6 of the Asylum Seekers Benefits Act, and experts in the field say that this occurs only in exceptional cases as a “miscellaneous payment.”

Subsequent to a decision of the Federal Constitutional Court in 2012¹¹ the Federal Ministry of Labour and Social Affairs is currently preparing an amendment to the Asylum Seekers Benefit Act which, as far as known, will not bring change to the situation of trafficked persons.

From the perspective of the German Institute for Human Rights, the lacking legal differentiation between victims issued a residence permit and victims whose deportation has been suspended does not reflect the legal requirements of Article 12 para 3 and Article 13 para 2 in conjunction with Article 12 para 1, b of the Convention. It requires, that at least victims of human trafficking who obtained a residence permit according to section 25 (4a) of the Residence Act receive necessary medical care. In order to implement Article 12 para 3 of the Convention the legislator must at least exclude from the scope of the Asylum Seekers Benefits Act these victims.

Question 40: Please describe how the recovery and reflection period provided for in Article 13 of the Convention is defined in your internal law. Please indicate the minimum and maximum duration of the recovery and reflection period and how your internal law foresees it being adapted to the particular circumstances of victims Reflection and recovery period.

Currently, it is neither by law nor under statutory regulations / instructions etc. ensured, that potential victims of labour exploitation or child trafficking get informed about the reflection period. The period is rarely applied in practice. That's particularly the case, when EU-citizens are affected and / or in cases of labour exploitation.

The reflection period phase is located in the alien's law and by law applicable to both identified and possible victims who do not have a valid residence permit for Germany. It consists of an at least three-month reflection period granted through the issue of an “order to leave the territory”. Even though this period is intended to enable the trafficked victim to decide if they wish to make statements concerning the presumed perpetrators or if they wish to prepare for a return to their country of origin, to be granted such a period, in most federal states the potential victim must give information about the offender to the police (see section 59 (7) under question 32). Victims can't be removed from German territory during this period unless their stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany or they have voluntarily re-established contact with the perpetrator.

¹¹ Bundesverfassungsgericht, Urteil vom 18.07.2012, Aktenzeichen BvL 10/10 und BvL 2/11.

Although the practice has not yet been evaluated systematically, information from specialized counselling centers indicate problems regarding the implementation of the recovery and reflection period: Even though trafficking for labor exploitation was included in the German Criminal Code in 2005 already, the right to a reflection period is still not known to all relevant authorities and is rarely granted in cases of trafficking for labor exploitation. Particularly authorities that come in contact with potential victims of labour exploitation such as the financial investigation for illegal work have neither been systematically trained to recognize human trafficking nor are they part of the regional inter-institutional cooperative alliances and co-operation agreements against human trafficking.

A similar regime of a reflection and recovery period for EU-citizens is not provided. Although they do not require a residence permit, EU-citizens who fled from brothels or lost their jobs and accommodation need financial support within the first three months. That's been dealt with in practice only for victims who testify as witnesses. Where guidelines of the Federal Agency of Employment stipulate that witnesses are entitled to receive social benefits it remains unclear whether the same rule apply to potential victims who do not yet know whether they want to testify and need time¹². Due to legal uncertainty it is often difficult for them to receive support from state authorities.

From the perspective of the German Institute for Human Rights, the full implementation of Articles 10 and 13 of the Europe Convention requires that potential victims of human trafficking be those European citizens or third country nationals can assert their rights during the reflection period without being obliged to give first information to the law enforcement authorities about the crime and the perpetrator. Therefore a comprehensive concept for the identification of victims has to be developed which includes all forms of human trafficking regardless of the victim's nationality. The concept should strengthen the role of specialized NGOs in the identification process. It should be ensured that on the basis of their assessment that a person of trafficking or labor exploitation is concerned state authorities grant the reflection period and support.

Also, the regional co-operation agreements should be consequently expanded on trafficking for labor exploitation and child trafficking and include the relevant governmental and non-governmental actors.

Question 41: What are the grounds (personal situation and/or co-operation with the law enforcement authorities) for issuing residence permits to victims of THB provided for in Article 14 of the Convention? Please indicate the different types of residence permits which can be issued to victims of THB, their minimum and maximum duration, if any, and the grounds for their renewal.

Under German alien law, the legal framework for victims of trafficking is closely linked to their willingness to cooperate with the law enforcement authorities and the value of their testimony.

¹² Bundesagentur für Arbeit (2012): Fachlicher Hinweis zu § 7 SGB II in der Fassung vom 21. 05. 2012. http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mdk1/~edisp/I6019022dstbai377919.pdf?_ba.sid=L6019022DSTBAI377922.

According to section 25 (4a) of the Residence Act¹³ a foreigner who has been the victim of trafficking may be granted a residence permit for a temporary stay, if:

- the public prosecutor's office or the criminal court considers his or her temporary 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 or her information,
- he or she has broken off contact to the persons accused of having committed the criminal offence and
- he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.

The residence permits are issued and extended for six months in each instance; a longer period of validity is permissible in substantiated cases. The residence permit ends with the conclusion of the criminal proceedings against the offender.

Victims are allowed to take up employment pursuant to section 31 Employment Ordinance (Beschäftigungsverordnung, BeschV) in case they obtained a residence permit according to section 25 (4a) of the Residence Act.

According to section 29 (3) of the Residence Act, the subsequent immigration of relatives, to join a victim of human trafficking is not allowed.

According to section 44 of the Residence Act victims are not entitled to attend an integration course. In theory they have access to vocational training and education like other persons.

Section 25 (4a) of the Residence Act applies to children and adults equally.

The legal provisions of the residence act pose the following problems for victims of human trafficking:

- The decision about the issuing of the residence permit is left to the discretion of the prosecutor's office. The moment, the victim first declares about the crime and gives information about the perpetrator to the law enforcement authorities, they cannot be sure whether they will be issued a residence permit. It might be the case, that their information is not valuable or already known by the police and provable through other witnesses.
- The issuing of a permit depends on a trafficking case. In case the court does not follow the legal assessment of the prosecutor's office and open a procedure for pimping, this poses a problem.
- The residence permit does not offer a perspective beyond the criminal procedure. Victims may apply for a residence permit for specific purposes like urgent humanitarian or personal grounds according to section 25 (4) of the Residence Act after the criminal procedure. The moment they decide to testify, they do not know if the requirements will be fulfilled though. A survey of counselling centers against human trafficking on behalf of the joint federal and state-government working group on trafficking¹⁴ in 2013 has

¹³ http://www.gesetze-im-internet.de/englisch_aufenthg/index.html.

¹⁴ <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=73008.html>.

shown that taking the current legal situation into account a large proportion of victims from third countries decides against getting in contact with the authorities. Overall, according to the estimation of the counselling services, on average only every 7th third-country national complained to the police. The main reasons given were fear of the perpetrators, the legal uncertainty and lack of legal perspective.¹⁵

- Since the residence permit is often granted only for six months and it is unclear whether it will be extended, it is almost impossible for victims to find a job. Access to vocational training and education is also massively restricted. This is particularly serious since many victims of trafficking are low-skilled and some of them illiterate. If they decide to testify as witnesses, they spend 2-3 years in Germany onwards with police investigations to the end of the criminal proceedings. During this period, they are not entitled to join integration courses. This also prevents de facto the access to the labor market.
- Section 25 (4a) of the Residence Act does not distinguish between minor and adult victims. Both groups of victims are required to cooperate with the law enforcement agencies in order to be issued a residence permit. Although as long as it is not ensured that minors are looked after in their country of origin, in practice their departure is not enforced and many unaccompanied minors remain in Germany until the age of majority. But their presence in Germany is only accepted pending their expulsion, which implies a worse legal position for the minor.¹⁶

In the opinion of the German Institute for Human Rights, the implementation of article 14 para 2 of the Convention requires, that in case of minors the child's best interests should take precedence over the co-operation requirement and therefore at least minors should be entitled to a residence permit independently of their willingness to co-operate with the law enforcement agencies.

In addition the residence permit for at least victims who decide to cooperate should be granted for an extended period of 2 or 3 years. This would provide legal certainty and a realistic basis for job-hunting and qualification. The moment victims decide to co-operate the subsequent immigration of relatives to join them should be allowed

The entitlement for vocational training and education as a form of rehabilitation should be bound to the residence permit for victims of human trafficking.

Question 42: Please describe how your internal law provides for the right of victims of THB to compensation. Please specify if your country has adopted any specific measures to guarantee compensation for victims of THB as provided for in Article 15 of the Convention.

¹⁵ Sub-working group of The Joint Federal and State-Government Working Group on trafficking in human beings (2013): Right to residence for third country national victims of human trafficking and labor exploitation - Implementation and impact in practice from the perspective of the counseling services against human trafficking, p 3;

<http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/stellungnahme-des-instituts-zum-aufenthaltsrecht-fuer-betroffene-von-menschenhandel-referentenentwurf.html>.

¹⁶ Federal Office for Migration and Refugees (2008): "Working Paper "Unaccompanied minors Migrants in Germany - Reception, return and integration", p. 51 (only available in German):

<http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/EMN/Nationale-Studien-WorkingPaper/emn-wp26-unbegleitete-minderjaehrige-de.pdf?blob=publicationFile>.

Compensation from the perpetrators

Trafficked persons often have a claim to compensation against perpetrators due to unlawful actions under section 823 BGB (German Civil Code). It is possible for them to be compensated either in criminal proceedings using the “adhesion procedure” (Adhäsionsverfahren) under sections 403 et seq. German Code of Criminal Procedure (Strafprozessordnung, StPO) or to take actions in a civil court. The damage that is subject to compensation includes all major material and immaterial (pain and suffering) items.

Victims of trafficking receive only very rarely compensation from the perpetrators.¹⁷ This poses a major problem in practice. A survey of counselling centers from 2009 showed the discrepancy between the number of witnesses and the number of people who receive compensation. One counselling center from the southern part of Germany stated that in 2006 the social workers assisted 34 women who testified at criminal trials, but only “a couple of them” received compensation. One specialized counselling center from another part of Germany assisted a total of 124 clients in 2007. Two of them received compensation during criminal court proceedings. A small counselling center that assisted a smaller number of clients (22 in 2007) stated that two of them received compensation. More recent research data is not available. Official judicial statistics do not exist.

The amount of the compensation payments was not determined by the amount of the damages claimed by trafficked persons but rather by the assets of the perpetrators and by the law enforcement agencies’ technical expertise in the seizure of profits and their dedication. In a few isolated cases, women were awarded between €12,000 and €30,000. Most of the compensation, however, was between €1,000 and €4,000. A glance at the tables of damages for pain and suffering that are used by the courts as the basis for determining compensation payments will show first that there are not yet any representative cases of human trafficking and therefore there are no reference values.

A major cause is the lack of assets of the offender. The BKA (German Federal Criminal Police Office) human trafficking situation reports¹⁸ indicate that over the last 6 years investigators in proceedings on human trafficking into sexual exploitation have been able to secure assets in only three to seven percent of investigations (2% in 2012).

Compensation from the state

Victims of violent crimes rarely receive state compensation. The procedures take a long time and have a low recognition rate. According to German statistics only about 10% of victims of violent crime apply for compensation under the Crime Victim’s Compensation Act, and 36% of these victims receive compensation. That means only 3.7 % of all victims of violent crimes get compensated. This figure remained stable in 2011 and 2012.¹⁹

The statistics do not capture victims of human trafficking. That leads to the fact that there are no official figures, only estimates by counselling centers.

¹⁷ Heike Rabe (2009): Compensation and remuneration for trafficked persons in Germany: In: Human Trafficking in Germany-Strengthening Victim’s Human Rights, German Institute for Human Rights (editor).

¹⁸ German Federal Criminal Police Office: Trafficking in Human Beings Situation Report, short versions approved for press release; reports 2006- 2012.

¹⁹ https://www.weisser-ring.de/fileadmin/content/Intranet/NEUDZF/OEG_Statistik_2012_neu.pdf.

In Germany, the state compensation is currently governed by the German Crime Victims' Compensation Act (Opferentschädigungsgesetz, OEG) and the statutory accident insurance (Gesetzliche Unfallversicherung, GUV).

The GUV includes services for the prevention, rehabilitation and compensation for workers who suffered an industrial accident or have suffered an occupational disease.

The OEG provides similar services for victims of violence who have longer-lasting health consequences. The claim to compensation results from section 1 of the German Crime Victims' Compensation Act. Its primary objective is to restore the physical and mental health of trafficked persons to the extent possible, thereby allowing participation in society and work. This claim includes curative treatment of the injury, payment of a pension that is independent of income and based on persistent effects of the injury, and income-based payments to replace lost wages. All claims are potentially available to people who have been trafficked for either sexual exploitation or labour exploitation.

It is still not routine for compensation to be paid by the pension and benefits offices to people who are trafficked into sexual exploitation. Such payments are still an exception. For example, employees of the responsible pension and benefits offices in two federal states with active specialized counselling centers reported during the reviewed period of the study mentioned above²⁰, that they have not paid compensation to any trafficked persons over the past ten years. One said that two applications were submitted during that period, while the other had received no applications. Seven to ten women have received compensation over the past seven years in another federal state, where the specialized counselling center rates cooperation with the pension and benefits office as good.

Compensation was paid to women who had been trafficked for the purpose of sexual exploitation, who testified in criminal proceedings, and whose residence in Germany following the conclusion of the proceedings was secure. Compensation was frequently paid for physical injuries. Payments and benefits by the pension and benefits offices included small pensions of between €130 and €300 per month, therapies, and dental prostheses or other medical services.

There are still legal and factual obstacles in access to victim compensation for victims of THB. The obstacles to the recovery of benefits are particularly justified in the law and the regulatory proceeding:

- Victims without lawful immigration status and without a temporary suspension of deportation, who don't co-operate as witnesses are excluded from the scope of the Crime Victims' Compensation Act (OEG).
- Victims, who have "only" experienced psychological violence, are as well excluded from the scope of the OEG. Contributions of the OEG can only be granted if the offender in Germany has perpetrated a direct physical "assault" within the meaning of section 1 of the OEG against the victim. But perpetrators often gain control over their victims through violence in their country of origin, deception or threat of reprisals.
- Claims for damages against perpetrators, this claim does not include either damages for pain and suffering or compensation for damage to property or financial losses.

²⁰ See footnote 16, p. 75.

- Proceedings before the pension offices last in practice often 2-3 years. The pension and benefits offices often wait for the end of criminal proceedings against offenders until they decide on the victim`s claim.

In the opinion of the German Institute for Human Rights, the full implementation of article 15 para 4 of the Convention requires to amend section 1 of the Crime Victims` Compensation Act (OEG) and include psychological violence. In addition an unlawful residence status must not be a legal barrier to claim compensation.

In order to effectively implement victims` rights to obtain compensation from the perpetrators a problem analysis needs to be done why the rate of asset seizure is constantly low. Building on this, changes in law and / or practice have to be made.