



FRA

Thematic Study on Child Trafficking,
report on Germany

Mechtild Lauth
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Executive Summary

Germany has ratified a number of international conventions relevant in the context of trafficking in children, such as the UN Convention on the Rights of the Child, the ILO Convention Nr. 182 on the worst forms of child labour (1999) and the UN Convention against transnational organised crime/Palermo Protocol of 2006. Ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) and of the Council of Europe Convention on Action against trafficking in human beings (2005) and of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (2007) is still pending. A declaration on the interpretation of the UN Convention on the Rights of the Child was made in relation to the law on asylum and foreigners, which essentially impacts on the full realization of the rights of children who are not German or EU citizens.

The *Strafgesetzbuch* (StGB) [Criminal Code] contains provisions on the trafficking of persons in line with the relevant international conventions (trafficking for purposes of sexual exploitation, article 232; trafficking for the purposes of economic exploitation, article 233; child trafficking - trafficking for illegal adoption, article 236; forcing someone to engage in a marriage, article 240). However, relevant jurisprudence in relation to criminal cases dealing with all aspects of 'child trafficking' in line with those provisions hardly exists given the fact that some of the provisions were only introduced in the Criminal Code in 2005. Official statistics on the relevant offences do not display – with the exception of article 236 (10 convictions in the year 2006) – the number of convictions for offences involving children as victims. The fact that human trafficking is one of the so called 'control crimes' ('Kontrolldelikte') adds to the problem as well as the fact that a considerable amount of cases that appear to involve human trafficking aspects are often (only) investigated and prosecuted for other offences committed in the context of trafficking. Information on criminal proceedings for violation of article 240 (4) no. 1 of the Criminal Code (forced marriage) is not reflected in official statistics. Relevant proceedings have not taken place yet.

Despite the fact that the principle of best interests of the child is a primary consideration in judicial and administrative provisions and decisions in the context of family and administrative law, it does not appear to be always fully implemented in the context of proceedings under the Residence Law and Law on the Asylum Procedure involving unaccompanied minor refugees.

A National Plan of Action against Trafficking, including a budget of relevant ministries specifically designated to the issue of child trafficking does not exist. Monitoring mechanisms, such as an independent national rapporteur, are also not available.

A National Referral Mechanism required for the identification of victims of human/child trafficking is not fully implemented yet. Cooperation agreements between the relevant authorities and NGOs exist in (almost) all Länder, but very much vary in relation to the level of involvement of the specialist counselling services ('Fachberatungsstellen').

A uniform and comprehensive training strategy covering all issues related to child trafficking and all professionals (potentially) involved in dealing with trafficked children does not exist. Some training on select aspects of organized crime and human trafficking is provided by the relevant institutions to different groups of professionals involved, usually focussing on trafficking in women.

In relation to the particularly vulnerable group of unaccompanied minor refugees, article 42 *Sozialgesetzbuch* (SGB) [Social Code] VIII stipulates a primary responsibility for the youth welfare authorities, obliging them to take custody over all unaccompanied minors until their completed 18th year. This new regulation still has to be fully implemented, which is complicated by the fact that the regulations of the Residence Law on the capacity to act in proceedings ('Verfahrensfähigkeit') of persons above 15 years continue to apply in parallel. Unaccompanied minor foreigners are considered capable to act ('handlungsfähig') upon turning 16 years of age and are de facto treated as adults in accordance with article 80 of the *Aufenthaltsgesetz* (AufenthG) [Residence Law] and article 12 of the *Asylverfahrensgesetz* (AsylVfG) [Law on the Asylum Procedure] respectively. Competent services of juvenile protection do not always exist, or the relevant contact persons or emergency services are not known to all involved in the proceedings. The age of minors is often not assessed at all, or the assessment is carried out under flawed proceedings.

In accordance with article 15 a of the Residence Law and article 47 of the Law on Asylum Procedure, foreigners who have illegally entered the country and who do not apply for asylum are distributed throughout the Länder and are accommodated in so called collective accommodations ('Sammelunterkünfte'). Relevant NGOs have pointed out repeatedly that a large number of persons affected by trafficking are within that group and that in practice those persons are re-allocated by the Zentrale Aufnahme- und Ausländerbehörde (ZAAB) [Central Authority for Reception of Foreigners] of the competent Land. This procedure appears to be particularly harmful for victims of trafficking, and directly impacts on their willingness to testify.

Legal guardians appointed by the relevant authorities have general education and training in social matters. However, relevant NGOs still criticize the level of education of legal guardians and/or the significant number of cases covered by them, which often makes effective representation difficult if not impossible.

A couple of organizations have been involved in preventive efforts in recent years, such as awareness-raising campaigns, also involving children. The German

Association for Technical Cooperation (GTZ) has also carried out several projects in countries of origin with a preventive view in the area of trafficking in women.

There is no Task Force involving relevant authorities dealing specifically with the issue of child trafficking. Cooperation agreements between state agencies and non-governmental actors are not standard practice yet. There are no international agreements specifically dealing with child trafficking. A couple of bilateral agreements with foreign states exist in the area of organized crime and human trafficking.

In accordance with recently amended legislation, victims of trafficking are granted a period of 30 days during which they have to decide as to whether they want to appear as a witness in possible criminal proceedings against the perpetrator(s) or not. The new article 50 (2a) of the Residence Law stipulates a 'period for departure' ('Ausreisefrist') of at least one month if the residence authority has concrete information that the person was a victim of trafficking (as reflected in articles 232, 233 and 233a of the Criminal Code, thus not including article 236 'child trafficking'). However, relevant counselling services as well as police authorities point out that the identification and stabilization of victims of human trafficking often takes longer than the four weeks granted. In any event, the right to stay is strictly linked to cooperation with the police and/or the prosecutor in consequent criminal proceedings. If the victim decides not to cooperate as a witness, the application of the relevant provisions of the Residence Law is triggered, usually resulting in the commencement of the deportation proceedings.

Moreover, the Residence Law does not regulate the situation of the exploited person after the completion of the criminal proceedings. Victims of trafficking who are granted temporary stay are usually not granted this status for the mere fact of being victims of trafficking, but usually only on the basis of their willingness to testify in criminal proceedings. Only subsidiary protection in form of a general prohibition of deportation ('Abschiebeverbot') may apply. A couple of courts have decided to bar deportation proceedings on the basis of the so called 'kleines Asyl' ['small asylum'] in case the person concerned either had been the victim of a forced marriage in the country of origin or in case there is a high risk of her becoming a victim of forced marriage upon return.

The Bundesamt für Migration und Flüchtlinge (BAMF) [Federal Agency for Migration and Refugees] provides general statistics on applications for asylum, the reasons for granting asylum as well as the countries of origin of persons seeking asylum, but does not provide detailed statistics on temporary stay. There is no general prohibition of detention for children refugees, which appears to be one of the consequences of the declaration made in relation to the interpretation of the UN Convention on the Rights of the Child, basically giving priority to the principles of the Residence Law over those of the protection of children and juveniles.

The number of children detained for the purpose of deportation is not exactly clear, and the situation depends on the practice of the Land where the proceedings take place. Some case law exists dealing in general with the admissibility of detention of minors in the context of deportation proceedings and the procedure to be applied. In general, stricter rules apply for the detention of juveniles than adults, and the court is obliged to determine *ex officio* whether a detainee is a minor or an adult. Detention for the purpose of deportation should be limited to a period of 6 weeks.

A comprehensive family tracing programme does not exist, and it is largely left to the efforts made by the individual legal guardian whether the situation in the home country of the minor is assessed or whether family members are traced prior to the return of the minor. Children often remain in emergency services of the youth welfare authorities or in places of custodial care („Inobhutnahmestellen“) only for a short period of time. The accommodation of trafficked children in specialised shelter(s) seems to be the exception rather than the rule. Strategies to prevent children from going into hiding as well as relevant statistics do not exist. In fact, the above mentioned practice regarding accommodation negatively impacts on their willingness to stay.

Victims of human trafficking can only claim subsidies in accordance with the *Asylbewerberleistungsgesetz* (AsylbLG) [Law on subsidies for Asylum Seekers]. As they usually only live in the country temporarily (for the duration of the court proceedings), they only receive subsidies in accordance with the rates of the Law on Subsidies for Asylum Seekers, which are about 30% below the regular social welfare rate and are only oriented towards a minimal or emergency care. Support measures required to overcome the trauma suffered and to stabilise the person as well as costs for the treatment of chronic illnesses are usually not covered.

The situation in relation to the right of children to attend school who illegally reside in the country is not clearly regulated and practice of schools accepting children varies considerably.

Victims of human trafficking can pursue claims for compensation as injured persons against the state in accordance with the *Opferentschädigungsgesetz* (OEG) [Law on the Compensation of Victims of Crime]. In case the claim is rejected the victim can challenge the decision of the maintenance office („Versorgungsamt“) in court. The victim can also apply for legal aid for those proceedings. The victims can also pursue claims directly against the perpetrator(s) in accordance with the provisions of the *Bürgerliches Gesetzbuch* (BGB) [Civil Code]. However, it is not standard practice for victims of human trafficking to pursue claims. The few cases that commence before courts usually end in a compromise settlement between the convict and the victim. The amounts paid are usually significantly lower than the claims initially pursued and, in most cases, they only represent a very small portion of the assets gained by the perpetrator through the exploitation of the victim.

Statistics regarding the general implementation of the Law on the Compensation of Victims of Crime are provided by the 'Weisser Ring', an organisation committed to strengthening the rights of victims of crime. These statistics reflect the number of violent crimes, the number of applications made under the Law on Compensation of Victims of Crime as well as the number of approvals, including the type of compensation granted. More detailed statistics regarding the types of crimes or details regarding victims, such as age or nationality of the victim claiming compensation, do not exist.

Telephone numbers for relevant general hotlines have been reserved by the Bundesnetzagentur [Federal Network Agency] to report missing children and to provide assistance to children or other vulnerable groups, but are not all operational yet.

No clear regulations exist for the assessment of means to guarantee that the child will be appropriately taken care of upon return, either by relatives or by representatives of relevant organisations. Again it is left to the efforts of the individual legal guardian whether all those aspects are carefully assessed or not.

Child-sensitive procedures in front of police, prosecutor and court, allowing for alternatives to direct confrontation with the trafficker victim are possible. The *Zeugenschutzharmonisierungsgesetz* (ZeugenschutzG) [Witness Protection Law] of 2001 brought about a couple of procedural changes. Questioning via video conference is also possible in accordance with the *Strafprozessordnung* (StPO) [Criminal Procedure Code]. In addition, the witness can be accompanied by a person of her trust ('Vertrauensperson'). The Criminal Procedure Code provides for the possibility to remove the accused from Court room if the interest of the witness so requires. However, in principle the witness has to be heard during the main trial. There is no procedurally admissible alternative to the presence of the victim witness until the completion of the criminal proceedings.

1. General anti-child trafficking framework

- [1]. **Ratification of international legal instruments: Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000), UN Convention against transnational organised crime/Palermo Protocol to prevent, suppress and punish trafficking in persons (2000), ILO Convention Nr. 182 on the worst forms of child labour (1999), CoE Convention on Action against trafficking in human beings (2005), CoE Convention on the protection of children against sexual exploitation and sexual abuse (2007)**

Germany ratified the UN Convention on the rights of the child in 1992. At the same time, the government declared a couple of reservations against a number of provisions in the Convention. In addition, a declaration was made in relation to the law on asylum and foreigners, according to which '[n]othing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens'. Despite strong criticism from various NGOs and childrens' rights organizations, the declaration has not yet been withdrawn.¹

Germany also signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2000, but has not ratified it yet.² The ILO Convention No. 182 on the worst forms of child labour (1999) was ratified in 2002. The UN Convention against transnational organised crime/Palermo Protocol was ratified in 2006.

¹ National Coalition für die Umsetzung der UN-Kinderrechtskonvention in Deutschland [German National Coalition for the Implementation of the UN Convention on the Rights of the Child], http://www.national-coalition.de/pdf/pm03/24_10_03%20PM%20Exp_%20KiKo%20Rueckn_%20Vorbehalte.pdf (22.07.08);

The First Chamber of Parliament (Bundestag) has also requested the current and previous governments repeatedly to withdraw the declaration. Thus far, the government declined to do so. The Second Chamber of Parliament (Bundesrat) re-confirmed its agreement not to withdraw the declaration on 13 June 2008, [http://www.bundesrat.de/cln_050/nn_8336/SharedDocs/Drucksachen/2008/0401-500/405-08_28B_29,templateId=raw.property=publicationFile.pdf/405-08\(B\).pdf](http://www.bundesrat.de/cln_050/nn_8336/SharedDocs/Drucksachen/2008/0401-500/405-08_28B_29,templateId=raw.property=publicationFile.pdf/405-08(B).pdf) (08.07.2008).

² However, a law on the Adoption of the Optional Protocol was adopted by Federal Parliament on 20 June 2008, BT-Drs. 16/3440 and is expected to enter into force shortly, <http://www.bundestag.de/dasparlament/2008/26/innenpolitik/20948506.html> (22.07.08). At the same time, Parliament adopted the law on transposition of the Council Framework Decision on the fight against sexual exploitation of children and child pornography of 22 December 2003, BT-Drs. 16/9646, <http://dip21.bundestag.de/dip21/btd/16/096/1609652.pdf> (22.07.08).

Germany signed the Council of Europe Convention on Action against trafficking in human beings in November 2005 and the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse in October 2007. Both conventions have not been ratified yet.

- [2]. **Legal provisions criminalising child trafficking in line with the definitions of those international standards to cover all forms of child trafficking, including for economic and/or sexual exploitation, illicit activities (such as drug dealing), trafficking for adoption, for forced marriages, removal of organs etc.**

Chapter 18 of the *Strafgesetzbuch* (StGB) [Criminal Code] (articles 232 – 241) entitled ‘criminal offences against personal liberty’ (‘Straftaten gegen die persönliche Freiheit’) covers offences relating to child trafficking in line with the definitions of international standards, however, with a couple of deviations as outlined in the below.

Article 232 (1) 1st sentence of the Criminal Code sanctions the trafficking of persons for the purpose of sexual exploitation with imprisonment between 6 months and 10 years (‘Menschenhandel zum Zweck der sexuellen Ausbeutung’). One of the important elements is the ‘abuse of a predicament or helplessness connected with the person’s stay in a foreign country’ (‘Ausnutzung einer Zwangslage oder der Hilflosigkeit, die mit ihrem Aufenthalt in einem fremden Land verbunden ist’). In addition, the provision requires that the person is ‘brought to engage in prostitution’ (‘zur Aufnahme oder Fortsetzung der Prostitution...bringt’). According to article 232 (1) 2nd sentence, if a person below the age of 21 years is the exploited person, the element of force as stipulated in the first sentence of the same paragraph is not required and the same punishment as provided for in the first sentence applies.

Article 232 (3) no. 1 of the Criminal Code effectively covers grave cases of human trafficking and makes the same act a criminal offence, punishable with imprisonment of minimum 1 year up to 10 years, if the exploited person is a child.³ However, regarding the definition of ‘child’, article 232 (3) makes reference to article 176 (1) Criminal Code (the criminal offence of ‘sexual abuse of children’), which defines a child as a person below the age of 14. Accordingly, the aggravation of paragraph 3 of article 232 does not apply in case the exploited person is a child above the age of 14. In that regard the definition of a child in the German Criminal Code differs from that of article 1 of the UN Convention on the

³ Article 12 of the Criminal Code makes a systematic distinction between ‘Verbrechen’ (‘crime’) and ‘Vergehen’ (‘criminal offence’), defining in paragraph 1 a ‘crime’ as an illicit act punishable with a minimum sentence of one year or above, and defining in paragraph 2 a ‘criminal offence’ as an illicit act punishable with a lower imprisonment sentence or with a fine. Consequently, in accordance with article 30 of the Criminal Code, aiding and abetting is also punishable in the context of human trafficking.

For reasons of consistency, the term ‘criminal offence’ is used for all types of offences under the Criminal Code discussed in this report.

Rights of the Child as well as of article 4 (d) of the Council of Europe Convention on Action against trafficking in human beings of 2005. It is also important to note that article 232 (1) does not cover the act of using the sexual services of a (minor) person who was forced into prostitution.⁴

Article 233 of the Criminal Code covers the criminal offence of human trafficking for the purpose of economic exploitation ('Ausbeutung der Arbeitskraft').⁵ In relation to the age of the exploited person the article follows the same systematic approach as article 232 described above.

Article 233a criminalizes the advancement of human trafficking ('Förderung des Menschenhandels') and again contains (article 233a (2)) the same aggravation in relation to victims below the age of 14 years as articles 232 and 233.

Article 6 of the Criminal Code stipulates the universal jurisdiction of the Criminal Code for the offences outlined in articles 232-233a. Accordingly, they can also be prosecuted if committed abroad.

Although the German legal system has been combating exploitative structures generally (most notably through labour regulations) under separate provisions of criminal law (for example: Robbing of Persons; Stealing of Minors and Children, Trafficking of Children; Children Trafficking for Adoption, *Adoptionsvermittlungsgesetz* (AdoptVG) [Law on the Facilitation of Adoptions], Organ Trafficking, Transplantation Act, Illegal Employment – "Trafficking" of Illegal Workers), the primary offence of trafficking in human beings up to February 2005 remained in the context of sexual offences.⁶ The amendments of the Criminal Code of February 2005 introduced with the 37th *Strafrechtsänderungsgesetz* [Law Amending the Criminal Code] brought the code in line with the meaning which trafficking of human beings had acquired under the Palermo Protocol. The amendment in article 232 gives trafficking a broader context by systematically placing it into the section on offences against personal liberty. It is important to note that, in the end, article 232 despite its title "human trafficking" only criminalizes acts which would not fall under a restricted notion of "human trafficking", but that it rather criminalizes forms of organized exploitation of persons in the context of prostitution and actions close to prostitution. The "trafficking" as such of persons for that purpose is usually not

⁴ However, there has been much public debate in recent years on whether or not to criminalize persons using the services of prostitutes forced into prostitution and the introduction of a separate criminal offence ('Freierstrafbarkeit') in the Criminal Code. See, for example BT-Drs. 16/4146, <http://dip21.bundestag.de/dip21/btd/16/041/1604146.pdf> (07.07.08).

⁵ Article 233 was introduced by the 37th *Strafrechtsänderungsgesetz* (Law amending the Criminal Code) in 2005 with a view to implement both the Palermo Protocol as well as the Council Framework Decision on the fight against sexual exploitation of children and child pornography of December 2003.

⁶ Prior to the amendments human trafficking was covered under articles 180 and 181 of the Criminal Code. See K. Ziegler (2005) 'Criminal Victims/Witnesses of Crimes: The Criminal Offences of Smuggling and Trafficking of Human Beings in Germany, Discretionary Residence Rights, and Other Ways of Protecting Victims' in: *German Law Journal*, Vol.06, No. 03, p. 625.

covered by article 232.⁷ The Residence Law contains relevant criminal provisions regarding the smuggling of persons, articles 96 and 97 of the Residence Law.⁸

Trafficking of children for the purposes of illegal adoption is criminalized in article 236 of the Criminal Code, which is in fact the criminal offence entitled 'Kinderhandel' ('trafficking in children') in the Criminal Code.⁹ Paragraph 1 criminalizes natural or adoptive parents, who, in return for payment, leave or commit their (adoptive) child below the age of 18 to another person. According to paragraph 2 of article 236 any person who facilitates the adoption of a person under the age of 18 with the purpose of achieving a financial gain is punishable with imprisonment of up to 3 years. The same act is punishable with a sentence of up to 5 years if the child is brought to Germany from abroad or vice versa, article 236 (2) no. 2 2nd sentence. Article 236 of the Criminal Code is supplemented by article 14 of the Law on the Facilitation of Adoptions] which contains a number of *Ordnungswidrigkeiten* [misdemeanours], such as the illegal facilitation of adoptions, the search for and offer of children or surrogate mothers as well as assisting a pregnant woman in arranging the giving away of her (future) child.

Forcing someone to engage in a marriage is criminalized in article 240 (4) no. 1, 2nd alternative of the Criminal Code as a particularly grave case of the (general) criminal offense of duress ('Nötigung') outlined in article 240 (1). Despite the seriousness of offences often related to the phenomenon of forced marriages, such as 'honour killings', a 'forced marriage' is considered a criminal offence, punishable with imprisonment between 6 months and 5 years in accordance with the general distinction as stipulated in article 12 of the Criminal Code.¹⁰ Amendments are currently pending before the Federal Parliament, aiming at introducing a separate criminal offence of 'forced marriage' into the Criminal Code with a view to reflect the seriousness of the offence at stake and to underline the need to appropriately address the seemingly widespread phenomenon of forced marriages.¹¹

Abusing children for the purpose of other illicit activities, such as drug dealing, is also criminalized in accordance with the provisions of special laws, such as the

⁷ H. Tröndle/Th. Fischer (2007) *Kommentar zum Strafgesetzbuch* [Commentary on the Criminal Code] 54th edition, München, article 232, note 2a, p. 1496.

⁸ On the distinction between smuggling of persons and human trafficking under German Law see K. Ziegler (2005) 'Criminal Victims/Witnesses of Crimes: The Criminal Offences of Smuggling and Trafficking of Human Beings in Germany, Discretionary Residence Rights, and Other Ways of Protecting Victims' in: *German Law Journal*, Vol.06, No. 03, pp. 605-648.

⁹ It is interesting to note that article 236 was incorporated into the Criminal Code in April 2004 with a view to transpose the relevant provisions of the 2nd Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of May 2000, but that the Protocol, thus far, has not been ratified by Germany, see above footnote 2.

¹⁰ See above, p. 7, footnote 3.

¹¹ BT-Ds. 156/1035. The level and extent of the phenomenon of forced marriages, however, remains unclear. The Federal Ministry for Family, Senior Citizens, Women and Youth has recently launched tender proceedings for an academic research project to assess the extent and dimension of the phenomenon of forced marriage, see <http://www.bmfsfj.de/bmfsfj/generator/Kategorien/Aktuelles/ausschreibungen,did=111748.html> (30.07.08).

Betäubungsmittelgesetz (BtMG) [Narcotics Law], in conjunction with the relevant principles of the general part of the Criminal Code as outlined in articles 25–27 of the Criminal Code.

Removal of organs is punishable in accordance with article 18 of the Law on the *Transplantationsgesetz* (TransplantationsG) [Law on the Transplantation of Organs] and is listed as one of the offences to which the Criminal Code applies regardless of whether the crime is committed within or outside the country, article 5 no. 15 of the Criminal Code.

[3]. **Legal provisions criminalising all forms of child trafficking within one Member State**

The above mentioned provisions apply equally if the trafficking takes place within the country or if the exploited person is brought into Germany from abroad. However, as described above, a couple of provisions make the abuse of the helplessness of the victim as a result of being a foreigner in the country an aggravating circumstance, such as article 232 (1), 1st sentence and article 233 (1) 1st sentence and article 236 (2) no. 2.

[4]. **Legal provisions and/or case-law establishing direct applicability of international standards on child trafficking. In your presentation of the relevant case-law please pay attention to possible divergences, for instance between lower courts and higher courts**

It is important to note at the outset that relevant jurisprudence in relation to criminal cases dealing with all aspects of ‘child trafficking’ in line with the provisions described above hardly exists given the fact that some of the relevant provisions were only introduced recently in the Criminal Code. Also, relevant statistics on criminal prosecutions including convictions¹² show that ‘child trafficking’ has not been dealt with as a separate offence in the context of trafficking in human beings with the exception of article 236, which, as described above, mainly covers the aspect of illegal adoptions and does not deal with trafficking for the purpose of sexual and/or economic exploitation. Statistics of the *Bundeskriminalamt* (BKA) [Germany's Federal Criminal Police Office] on human trafficking, ‘Bundeslagebild Menschenhandel’ [‘Federal Situation Survey Human Trafficking’] display a total number 614 victims of human trafficking for the purpose of sexual exploitation. They further indicate, for the period between 2000

¹² Statistics of the Statistisches Bundesamt [Federal Statistical Office] only refer to the relevant criminal offences of human trafficking without identifying the age of the victims, see: *Rechtspflege – Strafverfolgung* [criminal prosecution] 2006, Fachserie 10 Reihe 3, p. 34

https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,sfgsuchergebnis.csp&action=newsearch&op_EVASNr=startswith&search_EVASNr=243. The statistics display around 10 convictions per year for the offence of article 236 (‘child trafficking’) of the Criminal Code between 2002 and 2006.

and 2007¹³ that (1) the vast majority of victims of trafficking (95%) are female and (2) between 3,6 % (2000) and 12 % (2007) of human trafficking victims are children in accordance with the definition of article 1 of the UN Convention on the Rights of the Child. Accordingly, such cases should be prosecuted under article 232 (3) no. 1 of the Criminal Code in accordance with the international definition(s).

The limited information provided in official statistics combined with a rather selective publishing of court decisions make it difficult to obtain a comprehensive overview of relevant case law. Another complicating aspect is the fact that a considerable amount of cases that appear to involve human trafficking aspects are often not prosecuted for that offence, but (only) for other offences committed in the context of trafficking, such as physical injury, pimping ('Zuhälterei'), smuggling of persons or duress.¹⁴ Criminal charges for human trafficking as such are often dropped in the course of the proceedings given the difficulties associated with proving the required elements before court. One reason often mentioned as an explanation for the situation is the lack of trained and experienced prosecutors capable of dealing with the crime in its entire complexity. Very often the prosecutor's offices do not have specialized units dealing with human trafficking or child trafficking, but only organized crime units that also deal with proceedings in human trafficking cases.¹⁵

Regarding criminal prosecution for violation of article 232 (human trafficking) (and articles 180b, 181 of the Criminal Code prior to adoption of the amendments in February 2005), a significant number of decisions exists dealing with the elements of the offence as outlined above, such as the abuse of a predicament of the trafficked person or the helplessness connected with the person's stay in a foreign country' or the element of 'making someone to engage in prostitution' in article 232.¹⁶ However, these decisions are not particularly relevant in the given

¹³ http://www.bka.de/lageberichte/mh/2007/bundeslagebild_mh_2007.pdf (22.07.08), p. 8-9. See also Lagebericht Situation Survey Human Trafficking Nordrhein-Westfalen: 10% (2007), p. 5, <http://www1.polizei-nrw.de/lka/stepone/data/downloads/18/01/00/lagebild-menschenhandel-2007.pdf> (22.07.08).

¹⁴ A. Herz (2006) 'Trafficking in Human Beings. An Empirical Study on Criminal Prosecution in Germany', Max Planck Institute for Foreign and International Criminal Law (ed.), p. 7, http://mpicc.org/shared/data/pdf/fa_33_herz_engl03_06.pdf (23.07.08). The fact that human trafficking is one of the so called 'control crimes' ('Kontrolldelikte'), which requires skilled and trained officials to be able to identify victims of trafficking adds to the problem.

¹⁵ A. Herz (2006) 'Trafficking in Human Beings. An Empirical Study on Criminal Prosecution in Germany', Max Planck Institute for Foreign and International Criminal Law (ed.), pp. 7-13, http://mpicc.org/shared/data/pdf/fa_33_herz_engl03_06.pdf (23.07.08).

¹⁶ See, for example Germany/Bundesgerichtshof [Federal Court of Justice], decision of 24 April 2007, case no.: 4 StR 94/07; Germany/Bundesgerichtshof, Decision of 7 March 2006, case no.: 2 StR 555/05; Germany/Bundesgerichtshof, judgement of 18 April 2007, case no.: 2 StR 571/06; Germany/Bundesgerichtshof, judgement of 20 October 1976, case no.: 3 StR 266/76; Germany/Bundesgerichtshof, judgement of 15 July 2005, case no.: 2 StR 131/05.

A 'predicament' in the sense of article 232 (1) 1st sentence, in accordance with the case law of the Federal Court of Justice is considered to be a serious economic or personal hardship which results in a significant limitation of the possibility to freely decide and act, and which involves the risks of diminishing the resistance of the victim against attacks on her or his sexual self determination, see Germany/Bundesgerichtshof (BGH) 42, 399 in relation to

context of child trafficking, since, as outlined above, all these elements are not necessary to be proven in proceedings where persons below the age of 21 are the victims of the offence.

Case law on the recently introduced article 233 of the Criminal Code (trafficking for the purpose of economic exploitation) also hardly exists. The (allegedly) first decision on the application of article 233 (trafficking for the purposes of economic exploitation)¹⁷ delivered by the *Landgericht* [District Court] Augsburg was, due to its sensitivity, only made available by the court when it became final.¹⁸ However, a couple of labour courts have dealt with the aspect of economic exploitation in work relationships.¹⁹

Official statistics on criminal proceedings involving ‘child trafficking’ in accordance with article 236 of the Criminal Code (i.e. adoption cases) display only a number of 10 convictions for the year 2006.²⁰ Yet it is not clear how many cases these involve. The cases are also not available on publicly accessible data bases. Administrative courts have issued relevant decisions in the context of adoption proceedings, outlining as the main aspect the suitability of the applicant to care for the well-being of the child rather than the realization of the applicants’ desire to have children, even though the serious desire to have children constitutes an important aspect of suitability. The courts base their reasoning on the central aspect of the well-being of the child and on the need to address the manifold risks associated with international adoptions, such as child trafficking and the transfer of the child from abroad in an immoral way (‘sittenwidrig’) as addressed in article 1741 (1) 2nd sentence of the *Bürgerliches Gesetzbuch* (BGB) [Civil Code].²¹

article 182 (‘sexual abuse of juveniles’), containing the same element. Situations that simply enable or favour the commission of the offence are not sufficient. It is irrelevant whether or not the victim caused the situation through his or her irrational or unreasonable behaviour Tröndle/Th. Fischer (2007) *Kommentar zum Strafgesetzbuch* [Commentary on the Criminal Code] 54th edition, München, article 232, note 9, p. 1499. In addition, the victim has to be ‘made to commence or to continue engaging in prostitution’ Germany/Bundesgerichtshof (BGH) 33, 252; 42, 179.

¹⁷ Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (KOK) [German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration], Newsletter 01/2008,

<http://www.kok-buero.de/index.php?idcat=17&lang=1&PHPSESSID=49f704b924aa02c211e2fe2da24e18cd;>

<http://www.sueddeutsche.de/panorama/artikel/117/158689/print.html>

¹⁸ See letter from the Landgericht [District Court] Augsburg dated 12 June 2008.

¹⁹ Germany/Arbeitsgericht [Labour Court Bremen], judgement of 30 August 2000, case no.: 5 Ca 5152 5198/00; Germany/Arbeitsgericht Berlin, decision of 10 August 2007, case no.: 28 Ca 6934/07; Germany/Sozialgericht [Social Court] Fulda, judgement of 17 March 2004, case no.: S 1 AL 77/03

²⁰ Statistics of the Statistisches Bundesamt [Federal Statistical Office], Rechtspflege – Strafverfolgung [criminal prosecution] 2006, Fachserie 10 Reihe 3, p. 34

https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,sfgsuchergebnis.csp&action=newsearch&op_EVASNr=startswith&search_EVASNr=243 (23.07.08).

²¹ See, for example, Germany/Verwaltungsgericht [Administrative Court] Hamburg, judgement of 1 December 2005, case no.: 13 K 3059/05; Germany/Verwaltungsgericht des Saarlandes, judgement of 16 October 2006, case no.: 10 K 101/05.

Criminal proceedings for violation of article 240 (4) no. 1 of the Criminal Code (forced marriage) have also not taken place yet. Even though the new regulation has existed already for about 4 years, no relevant judicial decisions have been delivered,²² which does not appear to match the increased number of calls for assistance registered with relevant NGOs.²³ The relevant official statistics do not include the offence of forced marriage, as criminal proceedings initiated *ex officio* prior to the entry into force of the new article 240 (4) no. 1 only related to other offences, such as duress, physical injury, harassment or ‘honour killings’. Also the recent criminal proceedings relating to ‘honour killings’ only deal with that crime rather than the forced marriage that often preceded the killings.²⁴

Administrative courts, in the context of deportation proceedings, have more frequently considered as a bar to deportation (‘Abschiebungshindernis’) the fact that a person was either already forced into a marriage prior to coming to Germany or would face the risk of being forced into a marriage upon return to the country of origin.²⁵ However, it remains unclear how many of those cases involve children or minors.

The procedure for the assessment of age of unaccompanied minor refugees as recommended by relevant organizations²⁶ is not clearly regulated in national law. Article 49 (3) of the Residence Law provides that ‘in case of doubt regarding the person, the age or the citizenship of the alien, measures necessary for the determination of the identity, age or citizenship may be taken...’. However, the application and interpretation of the relevant provisions and the practice of the competent institutions seem to be very inconsistent.²⁷ A number of courts have clarified issues regarding the procedure for the assessment of age of unaccompanied minor refugees. For example, an estimated age contested by the person concerned cannot be entered as the age of the person in official documents

²² R. Kalthegener, (2007) ‘Strafrechtliche Ahndung der Zwangsverheiratung’ [‘Criminal Prosecution of Forced Marriage’] in: Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ) [Federal Ministry for Family, Senior Citizens, Women and Youth] (ed.) *Zwangsverheiratung in Deutschland* [Forced Marriage in Germany], Baden-Baden, p. 221, also available at http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-_20Forschungsreihe-Band_201.property=pdf,bereich=,sprache=de,rwb=true.pdf (23.07.08).

²³ For example, staff of the women’s rights organization TERRE DES FEMMES e.V. registered 173 calls for help in cases of forced marriages or threat with honour killing (‘Bedrohung mit Ehrenmord’). See R. Kalthegener (2007) ‘Strafrechtliche Ahndung der Zwangsverheiratung: Rechtslage-Praxiserfahrungen-Reformdiskussion’ in: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.) *Zwangsverheiratung in Deutschland*, Baden-Baden, p. 221

²⁴ Germany/Landgericht [District Court] Limburg, April 2007; Germany/Bundesgerichtshof [Federal Court of Justice], 2007 (attempted instigation to commit honour killing); Germany/Bundesgerichtshof, decision of 24 October 2007, case no.: 2 StR 421/07.

²⁵ Germany/Verwaltungsgericht Stuttgart, judgement of 23 January 2006, case no.: A 11 K 13008/04; Germany/Verwaltungsgericht Stuttgart, decision of 25 July 2005, case no.: 16 K 2234/05.

²⁶ For example, UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, p. 149, http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf (23.07.08).

²⁷ This aspect will be further discussed under Chapter 5 below.

as the relevant regulations do not provide for a sufficient legal basis.²⁸ Also - in case of doubt of the age of the person - the principle of full protection of juveniles requires the authorities to use a later date of birth for the determination of the capacity to act ('Handlungsfähigkeit').²⁹

The international requirement to grant a temporary stay to victims of trafficking willing to cooperate with the relevant law enforcement authorities is reflected in Article 25 (4a) of the Residence Law, and was introduced through the 'Richtlinienumsetzungsgesetz' [Law on the Transposition of EU Directives] of 19 August 2007, transposing a number of EU Directives into national law, including Council directive 2004/81/EC of April 2004.

The *Zeugenschutzharmonisierungsgesetz* (ZeugenschutzG) [Witness Protection Law], which entered into force in 2001, provides for international standards on witness protection in the context of serious crime, thus also covering victim witnesses of trafficking.

[5]. **Legal provisions establishing the principle of best interests of the child as a primary consideration in all actions (and decisions) affecting children, including trafficked children (e.g. through a constitutional guarantee)**

The principle of best interests of the child as a primary consideration is a well established principle in judicial and administrative provisions and decisions in the context of family and administrative law.³⁰ Divorce, adoption, custody or maintenance proceedings are guided by the principle of best interests of the child ('Kindeswohl'). The *Sozialgesetzbuch* (SGB) [Social Code], in a number of provisions, also stresses the principle of the best interests of the child as a primary concern.³¹

The Federal Constitutional Court held already in 1968 that 'the child is a human being with his or her own human dignity and the right to development of his or her personality in the sense of article 1 (1) and article 2 (1) of the Constitution'.³²

²⁸ Germany/Verwaltungsgericht [Administrative Court] Freiburg, judgement of 16 June 2004, case no.: 2 K 1111/03; Germany/Verwaltungsgericht Freiburg, judgement of 16 June 2004, case no.: 2 K 2075/02; Germany/Verwaltungsgericht Berlin, judgement of 30 December 2004, case no.: 35 A 129.03.

²⁹ Germany/Bundesverwaltungsgericht [Federal Court of Administration], judgement of 31 July 1984, case no.: 9 C 156/83; Germany/Administrative Court Aachen, decision of 1 July 2002, case no.: 8 L 484/02.A; Germany/Administrative Court Düsseldorf, judgement of 21 June 2007, case no.: 13 K 6992/04.A.

³⁰ The translation of the English term 'best interests of the child' as 'Kindeswohl' is not exactly accurate as it does not fully reflect the concept that lies behind the English language term. However, in the absence of a more appropriate term, 'Kindeswohl' is used in this report.

³¹ For example, article 8a of the Social Code VIII, requiring the youth welfare authority to act in case of threat of the 'Kindeswohl'; article 42 of the Social Code VIII, requiring the youth welfare authority to take charge of the child in case of serious threat to the 'Kindeswohl', http://www.gesetze-im-internet.de/sgb_8/BJNR111630990.html (24.07.08).

³² Germany/Bundesverfassungsgericht [Federal Constitutional Court], BVerfGE 24, 119, 144, <http://www.servat.unibe.ch/dfr/bv024119.html> (24.07.08).

This phrase was repeatedly used by the Constitutional Court³³ and is considered to be the starting point for the further determination of the principle of best interest of the child ('Kindeswohl').³⁴

However, the principle does not appear to be so well-established in the context of proceedings under the Residence and the Law on the Asylum Procedure. Despite the fact that a number of amendments were introduced with the entry into force of the Law Transposing EU Directives in 2007, one of the main obstacles in this context still exists, which is the declaration on the interpretation of the Convention on the Rights of the Child, which basically gives priority to the relevant provisions of the Residence Law and Asylum Procedure Law rather than the interests of the child.³⁵ The conflict between the interests of the child and the relevant provisions of the Residence Law arising particularly in the case of unaccompanied minor refugees is further elaborated upon below.³⁶

[6]. **Existence of National Plans of Action against Trafficking (in general/on children). If there is a Plan of Action, please provide a brief summary of the main gist as far as child trafficking is concerned**

A National Plan of Action against Trafficking as such does not exist, neither a general one nor one specifically dealing with child trafficking. However, two National Plans of Action touch upon a couple of issues also relating to some extent to aspects of human trafficking. One is the 'National Plan of Action for a Child Friendly Germany 2005-2010, ('Nationaler Aktionsplan für ein Kindgerechtes Deutschland 2005-2010') which covers the fields of education, the right to grow up in a violent-free environment, the fostering of a healthy life and healthy conditions of environment as well as the participation of children and juveniles, amongst others. While this Action Plan does not specifically address or even mention the aspect of child trafficking, it contains a chapter on children as refugees and acknowledges their vulnerability when separated from their families. The government committed itself to a couple of measures in that context, such as improving the conditions of life of refugee children, the introduction of a clearing

³³ Germany/Bundesverfassungsgericht [Federal Constitutional Court], BVerfGE 79, 51, 63; E 83, 130, 140.

³⁴ R. Fodor/E. Peter (2005) *Aufenthaltsrechtliche Illegalität und soziale Mindeststandards. Das Recht des statuslosen Kindes auf Bildung*. Rechtsgutachten im Auftrag der der Max Traeger Stiftung, p. 21, http://www.gew.de/Binaries/Binary29225/RG_im_Auftrag_der_Max-Traeger-Stiftung_Das_Recht_des_stat%C2%85.pdf (24.07.08). The Federal Constitutional Court, in a recent landmark decision, also held that article 6 (2) of the Constitution, which stipulates a constitutional right and obligation of the parents to care for and to educate their children also contains a corresponding constitutional right of the child, see Germany/Bundesverfassungsgericht, judgement of 1st April 2008, case no.: 1 BvR 1620/04, http://www.bverfg.de/entscheidungen/rs20080401_1bvr162004.html (24.07.08).

³⁵ In a recent hearing in the second Chamber of Parliament (Bundesrat), the Länder confirmed their agreement not to withdraw the said declaration, see above, footnote 1. On the impact of the declaration on national law see H. Cremer (2005), 'Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes', Hamburg, p. 180-201.

³⁶ See below, para 20-21.

procedure, the appointment of a legal guardian for 16-17 year old as well as a appropriate accommodation.³⁷

The ‘National Plan of Action of the government on the Fight Against Violence Against Women’ (‘Aktionsplan II der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen’) identifies women and girls with a migration background as specifically vulnerable to become victims of human trafficking and makes a number of recommendations to alleviate the various risks for the members of this group.³⁸

[7]. **Evidence of any changes as part of an impact assessment of National Plans of Action against Trafficking (in general/on children).**

The latter National Plan of Action (Aktionsplan II der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen) is a follow up plan of a previous plan which was already launched in 1999.³⁹ The National Plan of Action follows up on those issues that were identified in the first plan as requiring specific action, such as the aspect of migrant women, amongst others. The Ministry had also published a couple of studies on violence against women, which were the basis for the Plan of Action on the fight against violence against women.⁴⁰

[8]. **Existence of data collection mechanisms, involving different relevant actors, including on the local, provincial (if relevant) and national level of Member States**

No information was obtained from relevant authorities. Please see attached correspondence.

[9]. **Designated budget of relevant ministries/actors (e.g. as part of a national anti-trafficking task force) for anti-trafficking measures in general**

A specifically designated budget of relevant ministries for anti-trafficking measures does not exist. Projects relating to the fight against human trafficking are not supported through a specifically allocated budget, but are rather financed occasionally when a need arises.⁴¹ However, around 40 specialist counselling services (‘Fachberatungsstellen’) are financed through public funds made

³⁷ Nationaler Aktionsplan für ein kindgerechtes Deutschland 2005-2010, p. 75, <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/NAP-Aktuell.property=pdf,bereich=,sprache=de,rwb=true.pdf> (24.07.08).

³⁸ Nationaler Aktionsplan II zur Bekämpfung von Gewalt gegen Frauen, pp. 34 -35, <http://www.bmfsfj.de/bmfsfj/generator/Kategorien/Publikationen/Publikationen.did=100962.html> (24.07.08).

³⁹ <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-aktionsplan-gewalt-frauen-ohne-vorwort.property=pdf,bereich=,sprache=de,rwb=true.pdf> (24.07.08)

⁴⁰ <http://www.bmfsfj.de/bmfsfj/generator/Politikbereiche/Gleichstellung/frauen-vor-gewalt-schuetzen.html> (30.07.08). Regarding changes in relation to proceedings involving unaccompanied minor refugees, see below, chapters 3 and 4.

⁴¹ See letter from the Ministry of Foreign Affairs (Auswärtiges Amt), dated 4 July 2008, p. 1 and other relevant correspondence.

available by the relevant ministries of the Länder. The German nationwide activist group coordinating the relevant organizations ('Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (KOK)') is funded by the Federal Ministry for Family, Senior Citizens, Women and Youth.⁴²

There are also a number of projects in relation to the fight against trafficking in human beings implemented by the *Gesellschaft für Technische Zusammenarbeit* (GTZ) [German Association for Technical Cooperation] in the countries of origin of trafficking victims.⁴³

- [10]. **Designated budget of relevant ministries/actors (e.g. as part of a national anti-trafficking task force) to support research on child trafficking (causes, impact on victims, dimensions, routes, impact on government efforts etc)**

A designated budget of relevant ministries to support research specifically on child trafficking does not exist. However, in line with general budgetary regulations, funds can be made available for research on trafficking as these would fall under general budget lines allocated to research activities.⁴⁴

- [11]. **Existence of monitoring mechanisms, such as independent National Rapporteurs, which also cover the trafficking of children.**

Monitoring mechanisms, such as an independent national rapporteur, do not exist.⁴⁵

- [12]. **Existence of a National Referral Mechanism or similar systematic, formalised and standardised instrument for cooperation and referral, which addresses also the rights of trafficked children**

A National Referral Mechanism required for the identification of victims of human trafficking as outlined in the relevant report of the European Commission⁴⁶ is not fully implemented yet. The Bund-Länder-Arbeitsgruppe Frauenhandel (BLAG) [State and Länder Working Group on Trafficking in Women]⁴⁷ elaborated a 'concept paper on cooperation between the specialist counselling services and the police for the protection of victim witnesses of human trafficking for purposes of sexual exploitation' ('Kooperationskonzept für die Zusammenarbeit von Fachberatungsstellen und Polizei für den Schutz von Opferzeugen/innen von Menschenhandel zum Zweck der sexuellen Ausbeutung').

⁴² For a list of specialist counselling services see KOK, <http://www.kok-buero.de/index.php?idcatart=23&lang=1&client=1&PHPSESSID=fa7a0f61a0b150f59dc04fae10a145d6&PHPSESSID=d1fd49348b7251f52546a91225e59c2e&PHPSESSID=45b5dc9d7a1649ffed92ab9559eed2fb> (30.07.08).

⁴³ See <http://www.gtz.de/de/praxis/2691.htm> (24.07.08).

⁴⁴ See, for example, letter of the Ministry of Justice, dated 3 July 2008, p. 2.

⁴⁵ See attached correspondence.

⁴⁶ European Commission 2004: Report of the Experts Group on Trafficking in Human Beings. Brussels, 22 December 2004.

⁴⁷ On Working Groups on the matter see further below, para 24.

The concept paper deals mainly with the trafficking in women and not with children. However, many of the recommendations would also apply to children in case they are victims in a given situation.

The concept paper of the Working Group actually recommends, amongst others, that:

“Already during the first contact with the investigative authorities the potential victim has to be informed about the possibilities of support to be provided by an independent specialist counselling service ... The authority leading the investigations shall immediately get in contact with the specialist counselling service when it has reasonable suspicion that the person could be a victim of human trafficking.”⁴⁸

Cooperation agreements were entered into following this concept paper in (almost) all Länder, however, they vary significantly both in terms of their formulation as well as the competences allocated to the relevant actors involved, especially regarding police and specialist counselling services (‘Fachberatungsstellen’).⁴⁹ So far, in nine of the 16 Länder the police has entered into cooperation agreement with the specialist counselling services.⁵⁰

The first cooperation agreement was entered into by the Landeskriminalamt Hamburg (LKA HH) [Police Office of the Land Hamburg] and the counselling/information centre KOOFRA⁵¹ in the Land Hamburg already in 1999. It clearly defines the rights and obligations on the side of the police and the information centre and regulates the involvement of KOOFRA during the identification process at the earliest possible moment.

The cooperation agreement in the Land Nordrhein-Westfalen follows verbatim the above quoted recommendations of the Working Group on the participation rights

⁴⁸ Kooperationskonzept für die Zusammenarbeit von Fachberatungsstellen und Polizei für den Schutz von Opferzeugen/innen von Menschenhandel zum Zweck der sexuellen Ausbeutung, Bund-Länder-Arbeitsgruppe Frauenhandel 2007, p. 12, <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-kooperationskonzept,property=pdf,bereich=sprache=de,rwb=true.pdf> (24.07.08); D. Popova (2008) ‘Expertise zu den Rahmenbedingungen von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland für das Nationale Thematische Netzwerk Asyl in der europäischen Gemeinschaftsinitiative EQUAL, Bundesministerium für Arbeit und Soziales, Europäische Union Europäischer Sozialfonds (ed.), p. 16, http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (27.06.2008).

⁴⁹ D. Popova (2008) ‘Expertise zu den Rahmenbedingungen von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland für das Nationale Thematische Netzwerk Asyl in der europäischen Gemeinschaftsinitiative EQUAL, Bundesministerium für Arbeit und Soziales, Europäische Union Europäischer Sozialfonds (ed.), p. 16,

http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (27.06.2008)

⁵⁰ See KOK, <http://www.kok-buero.de/index.php?idcart=49&lang=1&client=1> (24.07.08).

⁵¹ <http://www.koofra.de/de/koofra.html> (10.07.08).

of the counselling services and their involvement in the identification process at the earliest possible moment.⁵²

On the other hand, the cooperation agreement in Bayern of 2004 only provides for an involvement of the specialist counselling services if the prosecuting authorities consider it necessary.⁵³

Regarding the situation in Baden-Württemberg, the guidebook on the cooperation between official authorities and specialist counselling services published in November 2007 also does not formulate any clear and unambiguous rules on the speedy involvement of counselling services. It provides that ‘as long as confidentiality concerns do not militate against the planned actions and as long as there is agreement from the prosecutor’s office, the specialist counselling services as well as the authorities responsible to provide services are informed in a timely manner.’

The cooperation concept in Rheinland-Pfalz exclusively refers to the situation of victim witnesses in criminal proceedings, who could not be included in a protection programme (for victims).⁵⁴

The cooperation agreement of Sachsen regulates that it is at the discretion of the police to involve the specialist counselling services in cases of women not being willing to appear as witness during criminal proceedings. One of the relevant information centres insisted on having information material distributed to all women taken up (‘aufgegriffen’) by the police (including those who, at the discretion of the police, do not appear to be victims of human trafficking) and not only to those where concrete suspicion exists that they are victims of trafficking. However, the suggested practice was not implemented.⁵⁵

In Bremen only a rather loose verbal agreement exists between the NGOs and the prosecuting authorities. Usually the police would categorize the persons as victim, non-victim or ‘undecided’ witness. In accordance with the threat assessment carried out by the police the specialist counselling service takes over the person.⁵⁶

⁵² Kooperationskonzept zwischen Fachberatungsstellen und Polizei für den Schutz von Menschenhandel in Nordrhein-Westfalen, 2000.

⁵³ Zusammenarbeitsvereinbarung der Polizei, Staatsanwaltschaft, Fachberatungsstellen, Ausländerbehörden, Sozialbehörden und Agenturen für Arbeit und zum Schutz von Opferzeuginnen und Opferzeugen in Menschenhandelsfällen. Gemeinsame Bekanntmachung der Bayerischen Staatsministerien des Innern, der Justiz und für Arbeit und Sozialordnung, Familie und Frauen vom 21. März 2004, zuletzt geändert zum 1. Januar 2005.

⁵⁴ D. Popova (2008) ‘Expertise zu den Rahmenbedingungen von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland für das Nationale Thematische Netzwerk Asyl in der europäischen Gemeinschaftsinitiative EQUAL, Bundesministerium für Arbeit und Soziales, Europäische Union Europäischer Sozialfonds (ed.), p. 16,

http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (27.06.2008)

⁵⁵ D. Popova (2008), p. 16.

⁵⁶ D. Popova (2008), p. 16.

Representatives of some specialist counselling services are allowed to be present during the interrogations carried out by the police and to speak alone with the women to provide advice. This practice significantly improves the support provided to the persons, who very often are fearful and suspicious after having been taken up by the police and who are unable to distinguish the different roles of the actors involved.⁵⁷

[13]. **Existence of a training strategy for all professional actors involved in identification, care and protection of trafficked children. Please specify, if possible, the kind of training that is available for various categories of professionals**

A uniform and comprehensive training strategy addressing all issues related to trafficking and all professionals dealing with trafficked children does not exist.⁵⁸ Training is provided on select topics by various institutions to different groups of professionals involved. For example, some NGOs provide training to police officers on how to treat children during criminal investigations.⁵⁹ Staff members of municipalities involved in providing care to trafficked children are usually fully trained social workers who receive basic training on traumatology and other relevant issues. However, it appears that the level of expertise in such areas varies considerably, depending on where cases of trafficking are detected. Usually, there is more expertise available in bigger cities where the social authorities deal rather frequently with cases of human trafficking, whereas this is not necessarily the case in more rural areas. Training of judges and prosecutors takes place at the German Academy for Judges (Deutsche Richterakademie),⁶⁰ offering regular courses on 'international human trafficking'.⁶¹ In addition, the annual programme of the academy usually covers relevant issues, such as 'dealing with victims of sexual violence, especially children and juveniles' or 'psychiatry and psychology in the criminal proceedings'.⁶²

⁵⁷ D. Popova (2008), p. 16.

⁵⁸ The above mentioned Working Group 'Bund-Länder Arbeitsgruppe Frauenhandel' is in the process of elaborating a concept paper for a training strategy for authorities and institutions dealing with trafficking in women, see <http://www.kok-buero.de/index.php?idcat=131&lang=1&PHPSESSID=f3e7ba75d57fe7b5bdb3ff50b0ba53c7> (24.07.08).

⁵⁹ such as KARO, <http://www.karo-ev.de/> (10.07.08); JADWIGA, <http://www.jadwiga-online.de/> (10.07.08), KOOFRA, <http://www.koofra.de/> (10.07.08); a list of organizations active in the prevention of human trafficking can be obtained here: http://www.magsa.de/beratungsstellen_fuer_opfer_von_menschenhandel.htm (10.07.08). See also B. Wilhelm 'Die Bekämpfung des Menschenhandels aus polizeilicher Sicht', (March 2007) <http://www.hss.de/downloads/Wilhelm.pdf> (10.07.08) and http://www.gegenfrauenhandel.de/download/20070308_Wilhelm.pdf (10.07.08).

⁶⁰ <http://www.deutsche-richterakademie.de/dra/index.jsp> (10.07.08).

⁶¹ See letter from the Federal Ministry of Justice, dated 3rd July 2008, p. 3.

⁶² Programme for 2008, p. 65 and p. 73 respectively,

http://www.deutsche-richterakademie.de/systemstatic/dra/DRA_Tagungen_08.pdf (10.07.08).

[14]. **Existence of a policy of non-criminalisation of children victims of trafficking (e.g. through legislation on prostitution)**

Prostitution as such is not criminalized in German law. However, the management and the facilitation ('Förderung') of prostitution was considered a criminal offence for an extended period of time. Prostitutes were also exposed to a significant risk of not being paid for their services as the contract between the prostitute and the client was immoral resulting, which results in the inability of the prostitute to legally claim the money owed. Only in the beginning of 2002 the *Prostitutionsgesetz* (Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten, ProstG) [Law Regulating the Legal Relationships of Prostitutes] entered into force. The law basically clarifies that prostitutes are legally entitled to payment for the provision of the agreed sexual services.

Currently, prostitution, if pursued at a place where it is prohibited in accordance with an (administrative) decree, so called 'Sperrbezirksverordnungen' (decrees on zones barred against prostitution), is considered an administrative offence ('Ordnungswidrigkeit') in accordance with Article 120 of the *Ordnungswidrigkeitengesetz* (OWiG) [Misdemeanour Law]. Only the *persistent* violation ('*beharrliche* Zuwiderhandlung') of such a decree constitutes a criminal offence in accordance with Article 184 d of the Criminal Code and can be punished with imprisonment of up to 6 months or with a fine.

The practice of the relevant municipalities in issuing such administrative decrees, prohibiting prostitution in select places and/or at specific times varies considerably. Whereas some municipalities do not issue any decrees at all, others declare large parts of inner cities as barred zones ('Sperrbezirke').⁶³ Accordingly, the practice in relation to issuing fines or launching criminal proceedings against persons pursuing prostitution in areas labelled as 'Sperrbezirke' also varies to a large extent, depending on the place where prostitution is carried out. There is no legal provision specifically exempting children or minors from prosecution under the above mentioned provisions.

In any event, a conflict usually arises between the person being a (potential) victim of trafficking and, at the same time, violating the relevant domestic provisions on the right to residence if they entered the country illegally. The illegal stay in the country is in principle considered an offence which would usually trigger the application of the provisions of the Residence Law, including those on deportation.

⁶³ See list of various decrees regulating and prohibiting prostitution at certain places and time ('Sperrbezirksverordnungen'), <http://www.sexarbeiterinnen.com/huren/recht/vorschriften-dsperrbezirksvo.html> (27.07.08).

Article 154c (2) of the Criminal Procedure Code, which was also incorporated with the 37th Law Amending the Criminal Law, has the potential of facilitating a certain degree of leniency towards victims of (child) trafficking who, by reporting an offence, would expose themselves to the risk of prosecution. Paragraph 2 of article 154c of the Criminal Procedure Code provides the possibility for the prosecutor's office to decide not to pursue criminal proceedings in case the victim of the criminal offence of duress ('Nötigung') (article 240 Criminal Code) or of the criminal offence of blackmailing (article 253 Criminal Code), by reporting these offences would, at the same time, reveal that she or he committed a criminal offence herself. However, it is obvious that the general conflict between being a victim and (in principle) an illegal resident renders the person particularly vulnerable.

2. Prevention of child trafficking

- [15]. **Evidence of awareness-raising campaigns in relation to adults (e.g. in order to reduce demand for child sexual/economic exploitation) and to children (e.g. not to follow promises to be granted a job/income in an other place/country)**

ECPAT⁶⁴ carries out a couple of campaigns, such as the design and distribution of postcards highlighting the sexual abuse of children in the context of tourism⁶⁵ and the distribution of ECPAT cups in Condor flights to destinations of sex tourism.⁶⁶ TERRE DES HOMMES also actively supports awareness-raising campaigns in victims' countries of origin.⁶⁷

- [16]. **Evidence of direct participation, where appropriate, of children and relevant NGO's in the development/implementation/evaluation of such awareness-raising efforts**

A couple of organizations have been involved in awareness-raising campaigns in recent years. For example, UNICEF Germany carried out a major campaign against child trafficking in 2003 and 2004, also involving children as actors and organizers.⁶⁸ 130 volunteer groups of UNICEF carried out the campaign in their cities, and during a country-wide day of action against child trafficking ('bundesweiter Aktionstag gegen Kinderhandel') events took place in more than 100 cities, including demonstrations, exhibitions, discussions as well as a 'child slavery market'. Following the campaign, about 450.000 citizens signed UNICEF's recommendations regarding child trafficking, and about 7 Million Euro

⁶⁴ End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes, <http://www.ecpat.net/El/main/front/index.asp> (10.07.08), the German Branch ECPAT Deutschland – Arbeitsgemeinschaft zum Schutz der Kinder vor sexueller Ausbeutung, <http://www.ecpat.de/> (10.07.08).

⁶⁵ <http://www.ecpat.de/index.php?id=65> (10.07.08).

⁶⁶ <http://www.taz.de/4/reise/specials/sextourismus/artikelseite/1/-972338c924/> (10.07.08).

⁶⁷ <http://www.tdh.de/content/themen/schwerpunkte/kinderhandel/projekte/index.htm> (10.07.08).

⁶⁸ See http://www.unicef.de/galerie_aktionstag.html (10.07.08).

were donated for various UNICEF programmes against child trafficking. The joint publication of UNICEF and the German branch of the childrens' rights organization ECPAT 'Kinder auf dem Strich' (,children in prostitution') on child prostitution at the German-Czech border created political pressure, resulting in the implementation of training programmes for law enforcement officers on how to deal with vulnerable victims in criminal investigations.⁶⁹

[17]. **Evidence of direct participation of local communities and/or minority groups, such as Roma and Travellers, in preventive efforts**

The above mentioned projects of GTZ also involve local communities and/or relevant national NGOs in their preventive efforts.⁷⁰

[18]. **Policies to prevent that children in a vulnerable position (such as unaccompanied asylum- seekers) may become victims of child trafficking upon their arrival in the country**

Children in a vulnerable position are often not recognized as such given the limited resources and staff available during the first phase after being picked up. Despite a couple of recent legal amendments aiming at improving the situation for victims of human trafficking, there is still a general conflict between the trafficked person being a victim of a (serious) crime and the relevant provisions of the Residence Law. It appears that the main problem evolves around the procedure of age assessment and the willingness of the authorities to apply the principle of the benefit of doubt.⁷¹ Policies to prevent that children in a vulnerable position may become victims of child trafficking do not exist.

3. Appointment of legal guardian

[19]. **As a rule, are legal guardians appointed whenever an unaccompanied child is identified as a victim of trafficking?**

Problems often unfold when minors and/or trafficked persons are taken up by the authorities. The identification of persons as minors and/or (potential) victims of trafficking should take place at an early stage. Usually, clearing offices ('Clearingstellen') for unaccompanied minor refugees would carry out the identification of those persons in order for the authorities to take an informed decision as to which proceedings should follow. However, in many Länder

⁶⁹ See <http://www.unicef.de/509.html> (10.07.08).

⁷⁰ See <http://www.gtz.de/de/themen/politische-reformen/demokratie-rechtsstaat/2691.htm> (24.07.08)

⁷¹ See Bundesverband für Unbegleitete Minderjährige Flüchtlinge e..V [Federal Association for Unaccompanied Minor Refugees], <http://www.b-umf.de/clearing.html> (11.07.08).

clearing offices do not exist,⁷² and the situation varies from Land to Land depending on the level of cooperation of the relevant authorities and the counselling services. For example, some Länder, thus far, do not have any cooperation arrangements between the youth welfare services and the specialist counselling services. Other Länder have good cooperation between the relevant institutions to the effect that the youth welfare services in case of collection ('Aufgriff') of juveniles first involve the specialist counselling services in order to seek their advice.⁷³ Competent services of juvenile protection, which could be contacted either by the specialist counselling services or by the police in case minor victims are affected, do not always exist or the relevant contact persons or emergency services are not known to everyone involved.⁷⁴

In accordance with the relevant regulation of article 42 of the Social Code VIII – which was introduced through the *Kinder- und Jugendhilfweiterentwicklungsgesetz* [Law on the Further Development of the Assistance for Child and Juveniles] in 2005, the youth welfare authority usually appoints a legal guardian to the juvenile who is supposed to legally represent the child's interests. In addition, private persons or associations can take over the guardianship ('Vormundschaft') for unaccompanied minors supported by certain networks of legal guardians ('Vormundschaftsnetzwerke'), amongst others.⁷⁵ Accordingly, already the specialist counselling services can take over the guardianship in a given case, the advantage of which is that they would be directly involved in all issues concerning the procedure.

In relation to private persons acting as guardians it is a prerequisite to be experienced in the supervision and taking care of children and minors and to be willing and able to deal with the individual needs of the minors. In addition, guardians are required to familiarize themselves with the relevant legal issues in the context of the guardianship. The youth welfare authority assesses the

⁷² For example, Schleswig-Holstein does not have such a clearing service, see M. Best, 'Es fehlt eine Clearingstelle für unbegleitete minderjährige Flüchtlinge. Umsetzung der Neuregelung des Kinder- und Jugendhilfgesetzes (KICK) in Schleswig-Holstein', in: Der Schlepper, Nr. 34, Kiel 2006, p. 37, http://www.frsh.de/schl_34/s34_36-37.pdf (24.07.08); S. Stöckigt, p. 4. For a list of clearing services in Germany see <http://www.b-umf.de/pdf/Clearinghaeuser%20in%20D%20und%20A.pdf> (24.07.08)

⁷³ Stöckigt, p. 4.

⁷⁴ See S. Stöckigt, Susan (2007) 'Schwierigkeiten in der Unterstützung minderjähriger Opfer von Frauenhandel' [Difficulties in Supporting minor victims of women trafficking], Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess (KOK), p. 4, <http://www.kok-buero.de/data/Medien/MinderjaehrigeOpfervonFrauenhandel.pdf?PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=31a75a08c3479bf9d0aa5751eec7b9d8&PHPSESSID=d741b5d68f36a7b1b12d3dc175468697&PHPSESSID=b13f66ecef5853a019148c82463e5e&PHPSESSID=cebbff7e8358b480dccc47003c938f83&PHPSESSID=1fe122fb9930d7980c7eb86a78ef3c22&PHPSESSID=d20d569ff6a57322bf72c87f39e79e5c&PHPSESSID=6eeba4d68de23e8aec071c1c35dbe07a&PHPSESSID=1d6fda63b27c37a41279a8f11a2d4419&PHPSESSID=5c1cd54309b398c872b0f07c5d9e98b2> (24.07.08)

⁷⁵ Stöckigt, p. 5. For example, the association 'lifeline', http://www.frsh.de/lifeline_relaunch/gesetze.htm (24.07.08) – a subbranch of the 'Flüchtlingsrat Schleswig-Holstein e.V.' [Refugees' Council Schleswig-Holstein] <http://www.frsh.de> (24.07.08) – acts as agent between the youth welfare authorities or the guardianship Court ('Vormundschaftsgericht') and individuals willing to accept the guardianship for minors and advises them in the exercise of their duties.

suitability of the guardian, and, at a later stage, the (guardianship) Court, pursuant to article 1774 of the Civil Code, through written order, ex officio implements the guardianship or transfers it from the official (public) guardian to the private guardian as appropriate.

- [20]. **Age limit for qualifying for legal representation e.g. by guardian appointed by youth welfare authority/court (age limit might be different/lower than age of majority, as sometimes in the asylum area)**

In accordance with article 80 Residence Law unaccompanied minor foreigners are considered capable to act ('handlungsfähig') upon turning 16 years of age and are de facto treated as adults. Accordingly, the legal guardian, thus far, only considered him or herself to be responsible for the concerns of the juvenile until the completion of 16 years of age. However, the new regulation of article 42 SGB VIII stipulates a primary responsibility for the youth welfare authorities, obliging them to take custody over all unaccompanied minors until their completed 18th year of age. This new regulation still has to be fully implemented, which is complicated by the fact that the regulations of the Residence Law and the Asylum Procedure Law on the capacity to act in proceedings ('Verfahrensfähigkeit') of persons above 15 years continue to apply in parallel.

- [21]. **Existence of a policy on age assessment, including benefit of a doubt**

Clear regulations on how to assess the age in cases of doubt do not exist. In many cases, the age of the affected persons is not assessed at all, be it because the person does not appear to be a minor given his or her outer appearance or behaviour and the authorities concluded that there was no obvious reason to assess the age of the person, or be it because the authorities in general do not display a pro-active approach in the case of a doubt. In the case of a doubt, a medical procedure (x-ray procedure) examining the consistency of carpus bone ('Handwurzelknochentest') was frequently applied to determine the actual age of the person with a certain likelihood. This practice is in the process of being abandoned and other procedures apply in cases of doubt. In any event and in accordance with relevant court decisions, in cases a doubt the authorities would have to treat the person as a minor and apply the procedure applicable to minors. The arbitrary determination of the age by authorities not involved in the proceedings relating to guardianship was held to violate the right to freedom of personality.⁷⁶

- [22]. **Evidence of specialised training for legal guardians employed for representation of trafficked children**

⁷⁶ Germany/Verwaltungsgericht [Court of Administration] Freiburg, decision of 16 June 2004, case no.: 2 K 2075/02; Germany/Verwaltungsgericht [Court of Administration] Berlin, judgement of 30 December 2004, case no.: VG 35 A 129.03, http://www.asyl.net/dev/M_Doc_Ordner/6039.pdf (11.07.08.), <http://www.b-umf.de/clearing.html> (24.07.08).

Legal guardians appointed by the authorities have received general education and training in social matters. They usually also undergo additional training in the course of their careers, but would usually not receive training specifically focussing on trafficked children. In general and as mentioned above, legal guardians are required to gain the relevant legal knowledge necessary to exercise their functions in the best interest of the children concerned.⁷⁷ However, relevant NGOs still criticize the level of education of legal guardians and/or the significant number of cases covered by them, which often makes effective representation difficult if not impossible.⁷⁸

[23]. **Evidence of appropriate time for preparation of cases for the legal guardian, including personal contact with the child**

There is no general regulation as to how much time the legal guardian is granted to prepare for a given case. However, given that there are usually a number of legal issues to be addressed as a result of the (often) illegal stay of the trafficked child in the country, which have to be addressed within the short deadlines provided for by the Residence Law, the general problem faced is that of insufficient time for preparation of the case. The sheer number of cases puts even more burden on the persons acting as legal guardians. Against this background, it appears that time for preparation of cases for legal guardians is often not sufficient. Extensive personal contact with the child is also often not possible.

4. Coordination and cooperation

[24]. **Existence of formalised Task Forces on child trafficking/coordination bodies, comprising of key state and non-state actors relevant for anti-trafficking efforts**

There is no Task Force dealing specifically with child trafficking. However, there are a couple of Task Forces dealing with aspects of human trafficking and related issues. The above mentioned State-Länder Working Group on Trafficking in Women ('Bund-Länder-Arbeitsgruppe Frauenhandel', BLAG) deals with a number of issues also of relevance in the context of trafficking in children, such as developing procedures on how to deal with victim witnesses or guidelines on how to claim compensation in the context of criminal proceedings. Similar Working Groups were also established in a couple of Länder and at municipal level.

⁷⁷ See above, para 19.

⁷⁸ In relation to the relevant services of the youth welfare authorities: J. Joo-Schauen (2006) 'Opfer von Menschenhandel – Zeuginnen ohne Rechte? Dokumentation einer Veranstaltung vom 10. Mai 2006' [Victims of Human Trafficking – Witnesses without rights? Documentation of a conference on 10 May 2006] Die Grünen im Landtag NRW, p. 20, <http://www.monika-dueker.de/cms/uploads/files//Dokumente/0608-Menschenhandel.pdf> (24.07.08).

Germany's Federal Police Office (Bundeskriminalamt) organized an interdisciplinary Workshop on child trafficking in October 2007, involving experts from academia, police and other authorities as well as NGOs, where concrete proposals for further research were developed.⁷⁹

[25]. **Existence of cooperation agreements concerning child trafficking between relevant Ministries, such as Ministries for the Interior and Ministries for Children/Youth Welfare Affairs**

Cooperation agreements with a specific focus on child trafficking between relevant authorities do not exist. A couple of informal cooperation agreements touch upon issues related to child trafficking as they usually deal with the aspect of human trafficking. However, there is not systematic approach in relation to child trafficking.⁸⁰

[26]. **Existence of cooperation agreements between state agencies and non-governmental actors, e.g. running shelters for trafficked children**

Cooperation agreements between state agencies and non-governmental actors are not standard practice yet. However, there are a couple of positive examples of cooperation between, for example, police forces and non-governmental actors working in the area of support to victims of human trafficking, such as SOLWODI⁸¹, JADWIGA⁸², KARO⁸³ etc.⁸⁴

[27]. **Existence of and independent monitoring of implementation of Guidelines aimed at protecting personal data of the trafficked child**

Guidelines for the protection of personal data of the trafficked child do not exist.⁸⁵

[28]. **Existence of cooperation agreements concerning child trafficking between your Member State and countries of origin outside the EU**

There are no agreements specifically dealing with child trafficking.⁸⁶ However, a couple of bilateral agreements exist in the area of organized crime and human trafficking. The government entered into bilateral agreements on the fight against organized crime and serious crime with the governments of Kyrgyzstan, Russia, Turkey, Tunisia, Uzbekistan, United Arab Emirates and Vietnam. The government

⁷⁹ See Federal Police Office, <http://www.presseportal.de/polizeipresse/pm/7/1083483/bundeskriminalamt> (24.07.08).

⁸⁰ See attached correspondence.

⁸¹ <http://www.solwodi.de> (24.07.08).

⁸² <http://www.jadwiga-online.de> (24.07.08)

⁸³ <http://www.karo-ev.de> (24.07.08)

⁸⁴ On (general) cooperation agreements between authorities and NGOs see above, para 12.

⁸⁵ See attached correspondence.

⁸⁶ See letter from the Ministry of Foreign Affairs, dated 4 July 2008, p. 2

is also currently negotiating agreements with other countries.⁸⁷ Liaison Officers of the Federal Police Office (BKA) are assigned to a number of German embassies abroad.⁸⁸

- [29]. **Existence of support programmes as part of Member States' international development assistance in countries of origin or within the EU-area (e.g. through Twinning projects under the CARDS programme)**

The German Association for Technical Cooperation (GTZ) has carried out several projects in countries of origin, for example projects on local strategies⁸⁹ or training programmes to prevent human trafficking.⁹⁰ GTZ is also implementing a general project on trafficking in women.⁹¹

5. Care and protection

- [30]. **Legal provisions ensuring respect for a reflection period of minimum 30 days**

In accordance with recently amended legislation⁹², victims of trafficking are granted a period of 30 days during which they have to decide as to whether they want to appear as a witness in possible criminal proceedings against the perpetrators or not. The new article 50 (2a) in conjunction with article 25 (4a) of the Residence Law stipulate a period for departure ('Ausreisefrist') of at least one month if the residence authority has concrete information that the person was a victim of trafficking in accordance with article 232 or 233 (thus excluding article 236). Accordingly, the deadline of 3 months reflection period for victims of trafficking as recommended in the EU directive is not fully exhausted as the law prescribes only the required minimum.⁹³

⁸⁷ See letter from the Ministry of Foreign Affairs, dated 4 July 2008, p. 2, on other government activities in relation to organized crime see http://www.bmi.bund.de/nr_165126/Internet/Content/Themen/Kriminalitaet/DatenundFakten/Menschenhandel__und__Illegale__Einreise__Id__94084__de.html (11.07.08).

⁸⁸ <http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/Themen/TerrorismusOK/OK-Drogen/OK.html#t2> (11.07.08).

⁸⁹ <http://www.gtz.de/de/dokumente/de-svbf-kb-lost-d.pdf> (11.07.08).

⁹⁰ <http://www.gtz.de/de/dokumente/de-svbf-kb-demetra.pdf> (11.07.08).

⁹¹ <http://www.gtz.de/de/themen/politische-reformen/demokratie-rechtsstaat/2691.htm> (11.07.08).

⁹² Richtlinienumsetzungsgesetz [Law on the Transposition of EU Directives] of 19.08.07, BGBl I, p. 1970, <http://www.bgblportal.de/BGBl/bgb11f/bgb1107s1970.pdf> (24.07.08).

⁹³ S. Stöckigt (2007), Schwierigkeiten in der Unterstützung minderjähriger Opfer von Frauenhandel', in: KOK – Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (ed), <http://www.kok->

[buero.de/data/Medien/MinderjaehrigeOpfervonFrauenhandel.pdf?PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=31a75a08c3479bf9d0aa5751eec7b9d8&PHPSESSID=d741b5d68f36a7b1b12d3dc175468697&PHPSESSID=b13f66ecebfe5853a019148c82463e5e&PHPSESSID=cebbff7e8358b480dccc47003c938f83&PHPSESSID=1fe122fb9930d7980c7eb86a78ef3c22&PHPSESSI](http://www.kok-buero.de/data/Medien/MinderjaehrigeOpfervonFrauenhandel.pdf?PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=31a75a08c3479bf9d0aa5751eec7b9d8&PHPSESSID=d741b5d68f36a7b1b12d3dc175468697&PHPSESSID=b13f66ecebfe5853a019148c82463e5e&PHPSESSID=cebbff7e8358b480dccc47003c938f83&PHPSESSID=1fe122fb9930d7980c7eb86a78ef3c22&PHPSESSI)

The law provides that the period should be calculated in a way that allows the concerned person to reach a decision whether or not he or she is willing to testify in criminal proceedings. Staff of the special counselling services and specialised (police) officers consider the one month period insufficient for the victim to fully recover and to take a clear decision.⁹⁴ The authorities in those Länder where well-functioning cooperation mechanisms between the authorities and the police exist, such as in Hamburg, often issue decisions that go - in the interest of the affected persons - beyond the minimum period prescribed in the relevant regulations. However, it should be noted that the deadline in law is not described as a 'reflection period' ('Bedenk- und Stabilisierungsfrist'), but rather as a 'departure period' ('Ausreisefrist'), which may result in a lack of understanding on the side of the competent authorities of the meaning and purpose of such a regulation. Accordingly, the authorities do not always make use of their discretionary powers in the interest of the affected person and in the interest of efficient criminal prosecution.⁹⁵

[31]. **Legal provisions ensuring a right/entitlement to residence to trafficking victims, irrespective of cooperation with police/prosecutor**

The right to residence is strictly linked to cooperation with the police and/or the prosecutor in consequent criminal proceedings. If the victim decides not to cooperate as a witness, the application of the relevant provisions of the Residence Law is triggered, usually resulting in the commencement of the deportation proceedings. Only a general prohibition of deportation ('Abschiebeverbot') may apply. Moreover, the Residence Law does not regulate the situation of the exploited person after the completion of the criminal proceedings. Usually the right to residence automatically ceases to be effective as soon as the proceedings are completed.

However, a number of regulations and instructions indicate that in well-founded individual cases the issuance of a residence permit in accordance with article 25 (3) Residence Law may be considered, particularly when victim witnesses,

D=d20d569ff6a57322bf72c87f39e79e5c&PHPSESSID=6eeba4d68de23e8aec071c1c35dbe07a&PHPSESSID=1d6fda63b27c37a41279a8f11a2d4419 (25.07.08).

⁹⁴ D. Popova (2008) 'Expertise zu den Rahmenbedingungen von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland für das Nationale Thematische Netzwerk Asyl in der europäischen Gemeinschaftsinitiative EQUAL, Bundesministerium für Arbeit und Soziales, Europäische Union Europäischer Sozialfonds (ed.), p. 22, http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (27.06.2008)

⁹⁵ For example, KOK, Aktualisierte Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 5. Juni 2007, http://www.kok-buero.de/data/Medien/offizielleStellungnahme_1_.pdf?PHPSESSID=800157dd37219146b8586455b3999e0a&PHPSESSID=800157dd37219146b8586455b3999e0a&PHPSESSID=c4cdb5afc420af73fd368a07eeeadb64&PHPSESSID=c4cdb5afc420af73fd368a07eeeadb64 (27.07.08); D. Popova (2008) 'Expertise zu den Rahmenbedingungen von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland für das Nationale Thematische Netzwerk Asyl in der europäischen Gemeinschaftsinitiative EQUAL, Bundesministerium für Arbeit und Soziales, Europäische Union Europäischer Sozialfonds (ed.), p. 22, http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (27.06.2008)

including close family members face a significant danger for life, physical integrity or freedom in case of return to the country of origin. In such cases a prohibition of deportation applies in accordance with article 60 (7) Residence Law prior, during and after the criminal proceedings.

An instruction issued by the authority for interior of Hamburg of September 2007 even indicates that ‘in the case of endangered victim witnesses in exceptional cases a discretionary naturalization in accordance with article 4 of the Staatsangehörigkeitsgesetz (StAG)’ [Citizenship Law] may be issued.⁹⁶

[32]. **Number of children being granted temporary stay on grounds of trafficking (2000-2007)**

Victims of trafficking who are granted temporary stay are usually not granted this status for the mere fact of being victims of trafficking, but usually only on the basis of their willingness to testify in criminal proceedings.

However, it is interesting to note that in a couple of cases the courts have decided to halt the deportation proceedings on the basis of the so called ‘kleines Asyl’ [‘small asylum’] in case the person concerned either had been the victim of a forced marriage in the country of origin or in case there is a high risk of her becoming a victim of forced marriage upon return to the country of origin.⁹⁷

The Bundesamt für Migration und Flüchtlinge (‘BAMF’) [Federal Agency for Migration and Refugees] provides general statistics on applications for asylum, the reasons for granting asylum as well as countries of origin of persons seeking asylum,⁹⁸ but does not provide detailed statistics on temporary stay. According to the statistics, in 121 cases ‘protection against deportation’ (‘Abschiebungsschutz’) was granted for reasons of gender-specific persecution (‘geschlechtsspezifische Verfolgung’) in 2006. This figure might be used as an indicator that victims of trafficking can potentially benefit from stronger protection, given that under this criterion the Federal Agency has to assess threats of, for example, forced marriages, domestic violence as a form of persecution, genital mutilation and ‘honour killings’, but arguably the figure does not provide any reliable information on that aspect.

⁹⁶ D. Popova, p. 24; Bundesministerium des Innern AZ.: PGZU-128 406/1: Hinweise zu den wesentlichen Änderungen durch das Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 19. August 2007 (BGBl. I S. 1970) (Hinweise zum Richtlinienumsetzungsgesetz) [Instructions on the main changes of the Law Transposing EU Directives of 19 August 2007], Stand 18.12.2007, http://www.infonet-frsh.de/fileadmin/infonet/pdf/BMI_HinweiseAendGesetz.pdf, p. 41.

⁹⁷ Germany/Verwaltungsgericht Stuttgart, judgement of 23 January 2006, case no.: A 11 K 13008/04; Germany/Verwaltungsgericht Stuttgart, decision of 25 July 2005, case no.: 16 K 2234/05.

⁹⁸ See Federal Agency for Migration and Refugees, Asyl in Zahlen, Bundesamt für Migration und Flüchtlinge, 2007, http://www.bamf.de/cln_092/nn_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-asyl-in-zahlen-2006.templateId=raw.property=publicationFile.pdf/broschuere-asyl-in-zahlen-2006.pdf (24.07.08).

[33]. **Legal framework concerning administrative detention/detention pending deportation for children (possibly explicit prohibition of detention).**

There is no general prohibition of detention for children refugees, which again appears to be one of the consequences of the declaration on the interpretation of the UN Convention on the Rights of the Child, basically giving priority to the principles of the Residence Law over those of the protection of children and juveniles.⁹⁹ While the number of children detained in deportation proceedings does not appear to be very high, the fact remains that a certain number of children and juveniles is regularly detained for that purpose.¹⁰⁰

In general, stricter rules apply for the detention of juveniles than adults, and the court is obliged to determine *ex officio* whether a detainee is a minor or an adult.¹⁰¹ Considering that minors are exceptionally affected by the detention and that they can suffer from long-lasting psychic damage, the constitutional principle of proportionality requires the authorities to examine all other possibilities to secure the deportation in a milder and less drastic manner.¹⁰² In general, detention for the purpose of deportation should be limited to a period of 6 weeks.

[34]. **Special safeguards for children who are detained (placement separate from adults, special detention regime and adapted facilities, limited duration, court review etc.)**

In the absence of regulations and safeguards specifically dealing with children, the general situation in relation to accommodation of victims of human trafficking is described in the below.

In accordance with article 15 a of the Residence Law, foreigners who have illegally entered the country and who do not apply for asylum are distributed throughout the Länder and are accommodated in so called collective accommodations ('Sammelunterkünfte').¹⁰³ Despite the fact that there is no clear entitlement under law for human trafficking victims to be separately accommodated, they are usually excluded from the group of asylum seekers either through special accommodation concepts or through cooperation agreements between the specialist counselling services and the authorities. Niedersachsen was the first Land to adopt a binding regulation on the accommodation of persons

⁹⁹ See http://www.rbb-online.de/_kontraste/beitrag_jsp?key=rbb_beitrag_1209164.html (11.07.08).

¹⁰⁰ See, amongst others, PROASYL, http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Archiv/Flyer/2004/Kinder_Abschiebehaft.pdf (11.07.08) or Antidiskriminierungsbüro Berlin e.V., <http://www.adb-berlin.org/content/view/32/42/lang,de/> (11.07.08), H. Habbe 'Kinder auf der Flucht', Forum Recht 03/2005, <http://www.forum-recht-online.de/2005/305/305habbe.pdf> (11.07.08).

¹⁰¹ Germany/Oberlandesgericht [Regional Court] München, decision of 28 April 2005, case no.: 34 Wx 045/05, <http://www.abschiebungshaft.de/OLG-Muenchen-vom-28-April-2005.doc> (11.07.08).

¹⁰² Germany/Oberlandesgericht [Regional Court] Köln, decision of 11 September 2002, case no.: 16 Wx 164/02, <http://www.abschiebungshaft.de/home/R125.html> (11.07.08).

¹⁰³ Popova, p. 27.

affected by human trafficking in November 2005, according to which such persons are to be exempted from accommodation in central establishments.¹⁰⁴

However, relevant NGOs have pointed out repeatedly that a large number of persons affected by trafficking are within that group and are re-allocated by the Zentrale Aufnahme- und Ausländerbehörde (ZAAB) [Central Authority for Reception of Foreigners] of the competent Land, which is very harmful for the physical and psychological well-being of the persons concerned, and directly impacts on their willingness to testify. It is often reported that trafficked women soon resume contact with the brothel as a result of the stressful situation that prevails in the accommodation for asylum seekers.¹⁰⁵

Different accommodation concepts exist within the Länder. For example, in Hamburg the accommodation for the majority of victim witnesses is usually guaranteed through the special witnesses support programme of the Police Office of Hamburg (Landeskriminalamt). The persons concerned are usually accommodated in apartments located in suburbs. Often the costs for rent exceed the regular rates to be paid to the victims in accordance with the relevant regulations, and the difference is usually paid from the budget of the witness support programme of the LKA. Those persons who do not want to be included in a witness support programme, or who do not match the requirements for acceptance into the programme or who do not comply with them are accommodated in accommodations by the specialist counselling service.¹⁰⁶

In general, when choosing the appropriate accommodation the specialist counselling services are dependent on funding. A uniform regulation as to the compensation of rental costs within the Länder and municipalities does not exist. In many places the trafficked women are accommodated in local shelters for battered women ('Frauenhäuser'). Women who are victim witnesses and included in witness protection programmes of the Police Office are usually accommodated by the police. Some specialist counselling services, for example SOLWODI prefer a central accommodation and maintain their own apartments for the accommodation of their clients.

- [35]. **Existence of a family tracing programme to allow for family reunification after assessing child's best interests (immediate return could lead to re-trafficking, if initially trafficked with support from parents/because parents themselves are in state of dependency of other traffickers)**

¹⁰⁴ Popova, p. 27,

http://www.equal-asyl.de/fileadmin/dokumente/080128_Expertise_Opfer_von_Menschenhandel.pdf (24.07.08).

¹⁰⁵ Hiller, Klaus 2006: Herausforderungen und Problemlagen bei konkreten Ermittlungsverfahren – Handlungserfordernisse. Rede am 15.11.2006 auf der BKA-Herbsttagung „Illegale Migration – Gesellschaftliche und polizeiliche Handlungsfelder im Wandel“,

http://www.bka.de/kriminalwissenschaften/herbsttagung/2006/langfassung_hiller.pdf (24.07.08).

¹⁰⁶ Popova, p. 28.

A comprehensive family tracing programme does not exist.¹⁰⁷ It is left largely to the efforts made by the individual legal guardian whether the situation in the home country is assessed and whether family members are traced prior to the return of the minor.

[36]. **Existence/number of specialised shelter(s) for trafficked children**

The accommodation of trafficked children in specialised shelter(s) seems to be the exception rather than the rule. Most victims are accommodated in asylum homes, which cannot provide special psycho-social support. However, a couple of specialized projects offer appropriate accommodation for girls who are victims of trafficking.¹⁰⁸

[37]. **Statistics, if available, of children who leave shelters with unknown destination; evidence that they may have become victims of child trafficking; strategies to prevent them from going into hiding.**

Children usually remain in emergency services of the youth welfare authorities or in places of custodial care (‘Inobhutnahmestellen’) only for a short period of time before they are accommodated in other establishments. As the accommodation is often provided in so called collective accommodations not addressing the specific needs of children, the willingness of the minor to stay is already rather limited from the outset. In general it is difficult for the staff to exercise control and to establish a relationship of trust with the children who are usually distant and fearful.¹⁰⁹ Strategies to prevent children from going into hiding and relevant statistics do not exist.¹¹⁰

[38]. **Legal provisions ensuring access to full health care services, including psychosocial care and rehabilitation, to trafficked children (e.g. not just**

¹⁰⁷Rechtliche Grundlagen für den Umgang mit unbegleiteten minderjährigen Flüchtlingen, Flüchtlingsrat Schleswig-Holstein, p. 26, http://www.frsh.de/leitfaden/leit_2_1.pdf (25.07.08).

¹⁰⁸S. Stöckigt (2007), Schwierigkeiten in der Unterstützung minderjähriger Opfer von Frauenhandel’, in: KOK – Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (ed), p. 6,

<http://www.kok-buero.de/data/Medien/MinderjaehrigeOpfervonFrauenhandel.pdf?PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=739df55e856ff7038fa449832d348599&PHPSESSID=31a75a08c3479bf9d0aa5751eec7b9d8&PHPSESSID=d741b5d68f36a7b1b12d3dc175468697&PHPSESSID=b13f66cecbfe5853a019148c82463e5e&PHPSESSID=cebbff7e8358b480dccc47003c938f83&PHPSESSID=1fe122fb9930d7980c7eb86a78ef3c22&PHPSESSID=d20d569ff6a57322bf72c87f39e79e5c&PHPSESSID=6eeba4d68de23e8aec071c1c35dbe07a&PHPSESSID=1d6fda63b27c37a41279a8f11a2d4419> (25.07.08).

¹⁰⁹E. Peter, ‘Völkerrechtliche Rahmenbedingungen beim Kinderhandel in Deutschland unter besonderer Berücksichtigung der UN-Kinderrechtskonvention’ (2006), p. 21, http://209.85.135.104/search?q=cache:ThT3cct8gG4J:www.tdh.de/content/materialien/download/download_wrap_per.php%3Fid%3D82+Erich+Peter+v%C3%B6lkerrechtliche+Rahmenbedingungen&hl=de&ct=clnk&cd=2&gl=de (25.07.08).

¹¹⁰See attached correspondence. On the tracing of missing persons by the Police in general see: ‘Die polizeiliche Bearbeitung von Vermisstenfällen in Deutschland’ (2003), Federal Criminal Police Office (BKA), Fragen & Antworten, <http://www.bka.de> (25.07.08)

emergency treatment) and number of children receiving such services (2000-2007)

In the absence of specific regulations for trafficked children, the general regulations on health care and other support services apply to victims of trafficking. Victims of human trafficking may claim subsidies in accordance with the Law on Subsidies for Asylum Seekers. Many persons affected are basically obliged to depart. They only live in the country temporarily (for the duration of the court proceedings) and therefore only receive subsidies in accordance with the Law on Subsidies for Asylum Seekers. Only persons from EU-countries who enjoy freedom of movement for workers can claim subsidies in accordance with the Sozialgesetzbuch XII and II (SGB) [Social Code], that is, general living maintenance and unemployment benefits.

Even though in accordance with the new immigration law, victims of human trafficking from third countries are supposed to be granted a residence title, they are all supported only in accordance with the Law on Subsidies for Asylum Seekers. Subsidies paid in accordance with the Law on Subsidies for Asylum Seekers are usually around 30% below the regular social welfare rate and are only oriented towards a minimal or emergency care. Despite the fact that EU citizens belong to a different group of foreigners, the major part of the persons concerned coming from the 'new' EU countries are also supported in accordance with the Law on Subsidies for Asylum Seekers.¹¹¹ The basic subsidies in accordance with the Law on Subsidies for Asylum Seekers range between 170 and 190 Euro per month in the different Länder. In addition, the persons concerned receive a cash amount of 40-50 Euro (so called 'pocket money'). Since the real needs of the persons affected are significantly higher, the counselling services in many Länder have to pursue other avenues to cover the daily costs associated with the social support (for example, travel and telephone costs).

The allowance of an appropriate medical care beyond the emergency treatment is particularly problematic. Support measures required to overcome the trauma suffered and to stabilise the person (therapeutic and rehabilitation treatment) are usually not covered despite the fact that these measures are decisive for a self confident appearance of the witnesses in court. In order to secure a psychotherapeutic treatment for the person, the counselling services often use the services of treatment centres who sometimes offer therapeutic treatment free of charge, such as Refugio¹¹² or Wildwasser e.V.¹¹³ Considering waiting periods of up to 3 months for a first consultation and of up to one year for a treatment place these services are far from being comprehensive.¹¹⁴ For example, the authorities in Bremen claim that the approval of long-term therapies in accordance with article 6 of the Law on Subsidies for Asylum Seekers constitutes the exception. The

¹¹¹ Popova, p. 29.

¹¹² <http://www.refugio.de> (25.07.08)

¹¹³ <http://www.wildwasser.de> (25.07.08).

¹¹⁴ Popova, p. 31.

authorities require an expert opinion from a specialist physician for the approval of compensation of psychotherapeutical treatment measures. The expert has to confirm that ‘the measure is indispensable for the health of the person and that the commencement of the treatment, considering the expected duration of the stay of the person, is appropriate and that similar, less cost effective treatment is not available’.¹¹⁵ Costs for the treatment of chronic illnesses are also only rarely covered.¹¹⁶ Costs for translation and interpretation are only paid under strict requirements in accordance with article 6 Law on Subsidies for Asylum Seekers and are only paid as “other subsidies” (sonstige Leistung).

[39]. **Legal provisions ensuring access to education, in particular to secondary education and to vocational training and number of trafficked children receiving such education/training (2000-2007)**

Costs for advanced vocational training (Weiterbildungs- und Beschäftigungsmaßnahmen) are not compensated in accordance with the Law on Subsidies for Asylum Seekers.

The situation in relation to the right of children to attend school who illegally reside in the country is not clearly regulated. Practice varies considerably. While some heads of schools take on such children in the same way as children legally residing in the country, others turn down the applications, referring to the illegal stay in the country and the requirement to report those cases to the relevant authorities.¹¹⁷

[40]. **Legal provisions ensuring access to legal assistance (e.g. for claiming compensation) and number of trafficked children receiving such assistance (2000-2007)**

In principle victims of human trafficking can pursue claims against the *Versorgungsamt* [Maintenance Office] as injured persons in accordance with the *Opferentschädigungsgesetz* (OEG) [Law on the Compensation of Victims of Crime]. In case the claim is rejected the victim can challenge the decision of the maintenance office in court. The victim can also apply for legal aid for those proceedings. The victims are supported by the specialist counselling services and/or lawyers during the proceedings.

¹¹⁵ Letter of response of the Senator für Justiz und Verfassung [Senator for Justice and Constitution] of Bremen regarding the demands of the Expert Meeting ‘Ich wollte doch nur ein besseres Leben’ [‘I only wanted a better life’] on the background and effects of involuntary prostitution (Bremen, 7 November 2007) of 07.01.2008, quoted after Popova, p. 32.

¹¹⁶ In order to enable the medical treatment of a victim witness who suffered from hepatitis C who was only supported in accordance with the regulations of the AsylBLG, the counselling office KOBRA-net successfully sued the Freistaat Sachsen in proceedings (Widerspruchsverfahren), Popova, p. 32.

¹¹⁷ R. Fodor/E. Peter (2005) *Aufenthaltsrechtliche Illegalität und soziale Mindeststandards. Das Recht des statuslosen Kindes auf Bildung*. Rechtsgutachten im Auftrag der der Max Traeger Stiftung, p. 1, http://www.gew.de/Binaries/Binary29225/RG_im_Auftrag_der_Max-Traeger-Stiftung_Das_Recht_des_stat%C2%85.pdf (25.07.08).

However, the possibility of pursuing claims for compensation under the Law on Compensation of Victims of Crime is not very widely used by victims of human trafficking and claims, if pursued under this law, are usually unsuccessful. Therefore, the above mentioned ‘State and Länder Working Group Working Group on Trafficking in Women’ has developed a manual on how to pursue claims under the law.¹¹⁸ Despite its wide distribution to the relevant specialist counselling services, the manual, thus far, has not had a significant impact on the situation.

Statistics regarding the general implementation of the Law on the Compensation of Victims of Crime are provided by the ‘Weisser Ring’,¹¹⁹ an organisation committed to strengthening the rights of victims of crime. These statistics reflect the number of violent crimes, the number of applications made under the Law on Compensation of Victims of Crime as well as the number of approvals, including the type of compensation granted.¹²⁰ More detailed statistics regarding the types of crimes or details regarding victims, such as age or nationality of the victim claiming compensation, do not exist.

- [41]. **Evidence that special needs for children coming from different ethnic backgrounds, needs of children with disabilities have been taken into consideration in all relevant contexts and legal procedures (eg. house rules for shelters, memoranda of understanding with operators of shelters, availability of translations concerning basic information on rights and duties, availability of translators for communication etc.)**

While in many cases the special needs of children in the given situation are addressed, it cannot safely be maintained that this is the case in all circumstances and in all contexts.¹²¹

- [42]. **Existence of a hotline (following Commission Decision of 15 February 2007 reserved as 116 000) to report missing and sexually-exploited children**

The Bundesnetzagentur [Federal Network Agency] has reserved a couple of telephone numbers for hotlines to provide assistance to children or other vulnerable groups, such as number 116 000 (to report missing children), 116111 (for children seeking help), 116 123 (assistance in crisis situations). However, not all numbers

¹¹⁸Bundesministerium für Familie, Senioren, Frauen und Jugend, 2007 ‘Broschüre zur Geltendmachung von Leistungsansprüchen nach dem Gesetz über die Entschädigung für Opfer von Gewalttaten (Opferentschädigungsgesetz) für Opfer von Menschenhandel zum Zweck der sexuellen Ausbeutung’ [Manual on how to pursue claims under the Law on the Compensation for Victims of Violent Crimes (Law on the Compensation of Victims) for victims of human trafficking for the purpose of sexual exploitation], <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/leistungsansprueche-opferentschaedigungsgesetz,property=pdf,bereich=,sprache=de,rwb=true.pdf> (02.07.2008).

¹¹⁹ <http://www.weisser-ring.de> (02.07.2008).

¹²⁰ http://www.weisser-ring.de/fileadmin/content/OEG_2007.pdf (02.07.2008).

¹²¹ See attached correspondence.

are in operation yet as the relevant tender proceedings are still pending.¹²² A request from the Federal Ministry for Women, Senior Citizens, Family and Youth to the Agency for the establishment of a hotline no. 116 016 for women suffering from violence is also currently pending.

[43]. **Existence of similar instruments to report other situations of exploitation of trafficked children**

Many municipalities and NGOs have established hotlines to report situations of exploitation, however not specifically addressing trafficked children.¹²³

6. Best interests determination and durable solutions, including social inclusion/return

[44]. **Evidence for formalised process for identification of durable solutions based on best interest determination, including risk and security assessment prior to possible return of the child**

There are no clear regulations on the assessment of means to guarantee that the child will be appropriately taken care of upon return, either by relatives or by representatives of relevant organisations. Again in practice it depends on the efforts made by the individual legal guardian whether all relevant aspects are carefully assessed or not.¹²⁴ A couple of Ministries of Interior in the Länder have issued relevant instructions. The Ministry of Interior of Schleswig-Holstein, for example, issued a decree in 2004 according to which the authorities have to implement the principles of the EU Council decision of 26 June 1997, requiring the authorities to assess means to guarantee that the child is taken care of upon return, amongst others.¹²⁵ In case facts become known that militate against the return of the child, the authorities should assess ex officio whether a bar to deportation exists. A couple of associations, in the context of projects on the advancement of re-integration, carry out assessments of the situation in the country of return and provide advice to the authorities.¹²⁶

¹²²http://www.bundesnetzagentur.de/enid/83eab020c98902fe805b99db2b78c97e,0/ssss6xyz/Liste_der_zur_Verfuegung_stehenden_Nummern_fuer_HDSW_3y5.html (25.07.08)

¹²³ For example, Berlin, http://www.berlin.de/sen/jugend/kinder_und_jugendschutz/ (25.07.08); Hamburg, <http://fhh.hamburg.de/stadt/Aktuell/behoerden/bsg/familie/kinderschutz/hotline/start.html> (25.07.08), http://www.carechild.de/news/aktuelle_news/berliner_kinderschutz_hotline_freigeschaltet_232_1.html (25.07.08).

¹²⁴ See above, para 35.

¹²⁵ Rechtliche Grundlagen für den Umgang mit unbegleiteten minderjährigen Flüchtlingen, Flüchtlingsrat Schleswig-Holstein, p. 24, http://www.frsh.de/leitfaden/leit_2_1.pdf (25.07.08).

¹²⁶ See, for example the NGO Karo e.V., <http://www.gegen-menschenhandel.de/index.php?id=22> (11.07.08).

[45]. **Availability of asylum/subsidiary protection for child victims of trafficking**

In principle the general provision on the bar to deportation in accordance with article 60 (7) of the Residence Law would apply, which requires the authorities to also consider psycho-social circumstances. Administrative courts, in the context of deportation proceedings, have considered as a bar to deportation ('Abschiebungshindernis') the fact that a person was either already forced into a marriage prior to coming to Germany or would face the risk of being forced into a marriage upon return to the country of origin.¹²⁷ However, granting subsidiary protection for victims of child trafficking is not standard practice. Relevant case law does not exist. The rejection as manifestly ill founded of an application for asylum made by a child was held to be as such a violation of article 9 of the directive 2004/83/EC, but the rejection following an assessment of the merits was considered to be compliant with the directive. Subsidiary protection was not granted in the given case.¹²⁸

[46]. **Evidence for respect for participation of the child in the decision-making/obligatory hearing in all relevant legal procedures (eg. procedures regarding asylum, subsidiary protection, return, special procedures under Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to victims of trafficking, provision of translators and translations regarding basic information on rights and duties etc.)**

Participation in the decision-making process and in the relevant hearings takes place, depending on the type of proceedings, through the legal representative and/or the child. Depending on the quality and willingness of the legal representative to be involved, situations may arise where the child is left to his or her own devices in the (legal) proceedings, which may in fact go against the consideration of the best interests of the child in a given situation.

[47]. **Evidence of access to integration programmes (similar to refugee status), including access to full health care, education and vocational training**

See above, para 38.

[48]. **Establishment of specialised integration programmes for trafficked children**

See above, para 38.

[49]. **Evidence that special needs for children coming from different ethnic backgrounds, needs of children with disabilities have been taken into consideration in all relevant contexts and legal procedures**

¹²⁷ See above, para 4; Germany/Verwaltungsgericht Stuttgart, judgement of 23 January 2006, case no.: A 11 K 13008/04 (Iran), Germany/Verwaltungsgericht Stuttgart, decision of 25 July 2005, case no.: 16 K 2234/05.

¹²⁸ See Germany/Verwaltungsgericht Frankfurt, judgement of 8 November 2006, case no.: 1 E 2572/06.AO

No information obtained from authorities.¹²⁹ It appears that special needs for children coming from different ethnic backgrounds are occasionally taken into consideration, for example in the context of accommodation, however, these needs and those of children with disabilities are not considered in all relevant contexts and legal procedures.

7. Prosecution

[50]. **Legal provisions offering child-sensitive procedures in front of police/prosecutor/court, allowing for alternatives to direct confrontation with the trafficker victim/witness security and protection**

Child-sensitive procedures during police, prosecution and court proceedings, allowing for alternatives to direct confrontation with the trafficker are possible. The Witness Protection Law of 2001 brought about a couple of changes and improvements, even though it does not specifically address the situation of children. In accordance with article 168 e of the Criminal Procedure Code, questioning via video-conference is possible. In addition, the witness can be accompanied by a person of his or her trust ('Vertrauensperson) in accordance with article 406 f III of the Criminal Procedure Code. Article 247 provides for the possibility to remove the accused from the Court room if the witness might not say the truth in his presence, or, in case the witness is below the age of 16 years, a significant disadvantage for the well-being of the witness might result from the confrontation with the perpetrator.

The existing possibility to take statements of the witness by the judge during the investigative proceedings is only an option in case the defendant and his/her lawyer are given the opportunity to cross-examine the witness and if no additional aspects become known in the main trial. Usually the victim witness has to be heard during the main trial. There is no procedurally admissible alternative to the presence of the victim witness until the completion of the criminal proceedings.¹³⁰

[51]. **Number of final convictions based on child trafficking cases, per year (2000-2007)**

Regarding the statistics on the number of final convictions in child trafficking cases, it is important to bear in mind that the German Criminal Code does not

¹²⁹ See attached correspondence.

¹³⁰ J. Renzikowski 'Ausländerrechtliche Probleme des Frauenhandels', Zeitschrift für Ausländerrecht und Ausländerpolitik, 2006, pp. 55-61, 57.

provide for one single criminal offence covering all possible scenarios in accordance with the definitions of the international conventions.¹³¹

Relevant statistics on criminal prosecutions including convictions¹³² also show that ‘child trafficking’ has not been dealt with as a separate offence in the context of trafficking in human beings with the exception of article 236, which, as described above, mainly covers the aspect of illegal adoptions and does not deal with trafficking for the purpose of sexual and/or economic exploitation. Statistics of the *Bundeskriminalamt* (BKA) [Germany's Federal Criminal Police Office] on human trafficking, ‘Bundeslagebild Menschenhandel’ [‘Federal Situation Survey Human Trafficking’] display a total number 614 victims of human trafficking for the purpose of sexual exploitation. They further indicate for the period between 2000 and 2007¹³³ that (1) the vast majority of victims of trafficking (95%) are female and (2) between 3,6 % (2000) and 12 % (2007) of human trafficking victims are children in accordance with the definition of article 1 of the UN Convention on the Rights of the Child. Accordingly, such cases should be prosecuted under article 232 (3) no. 1 of the Criminal Code’ in accordance with the international definition(s). The number of convictions for the various offences is displayed in the Annex of this report.

[52]. **Legal provisions granting trafficked children access to justice, including right to compensation**

In principle, the law provides for two different ways to claim compensation for damages suffered from a crime. The first way is to claim compensation as a victim of a crime against the state in accordance with the procedure of the Law on the Compensation for Victims of Crime. Again, the general principle is that children would pursue their claims through their legal representative. However, there are a couple of obstacles that put the practical use of the law into question in the given context. First, the law is basically only applicable to Germans and EU citizens, with a few exceptions possible in case the victims has legally resided in the country for a number of years or is a relative of a German or EU citizen residing in Germany.¹³⁴ Even if the victim fulfils the basic requirements of the law, the situation does not seem to be significantly different. This is partly due to the fact

¹³¹ See above, para. 2.

¹³² Statistics of the Statistisches Bundesamt [Federal Statistical Office] only refer to the relevant criminal offences of human trafficking without identifying the age of the victims, see: Rechtspflege – Strafverfolgung [criminal prosecution] 2006, Fachserie 10 Reihe 3, p. 34

https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,sfgsuchergebnis.csp&action=newsearch&op_EVASNr=startswith&search_EVASNr=243. They display around 10 convictions per year for the offence of article 236 (‘child trafficking’) of the Criminal Code between 2002 and 2006.

¹³³ See above, para 4; http://www.bka.de/lageberichte/mh/2007/bundeslagebild_mh_2007.pdf (22.07.08), p. 8-9. See also Lagebericht Situation Survey Human Trafficking Nordrhein-Westfalen: 10% (2007), p. 5, <http://www1.polizei-nrw.de/lka/stepone/data/downloads/18/01/00/lagebild-menschenhandel-2007.pdf> (22.07.08).

¹³⁴ See article 1 of the Law on the compensation for victims of crime, <http://www.bundesrecht.juris.de/oeg/BJNR011810976.html> (25.07.08).

that the possibilities of the law are not very widely used as the relevant actors involved appear not to be very familiar with the details of the law.

The second way to claim compensation is to pursue a claim for compensation in accordance with the principles of civil law against the perpetrator(s), articles 253 and 823 of the Civil Code, either in parallel to or after criminal proceedings against the perpetrator. It is also possible to pursue such claims already during the pending criminal proceedings in a so called ‘Adhäsionsverfahren’, that is, a civil law claim for compensation is brought before the court in the course of the criminal proceedings against the perpetrator in accordance with articles 403-406c of the Criminal Procedure Code. However, lawyers often seem to advise the victims to try and reach settlements outside court. The situation is further complicated for the victim by the general requirement to leave the country upon the completion of the criminal proceedings.

Furthermore, there has been, until recently, uncertainty for victims as to whether the amounts paid as compensation – in case their claims were successful - would be deducted from their entitlements to basic living allowances in accordance with the Law on Subsidies for Asylum Seekers, thereby effectively losing the compensation. The relevant provision of the Law on Subsidies (article 8 (1) first sentence) did not make an exemption for such entitlements, thus including amounts paid in compensation of immaterial damage in the calculation of income that had to be used up by the asylum seeker prior to receiving state subsidies. The practice was also confirmed by a number of court decisions.¹³⁵

The Federal Constitutional Court, however, held in July 2006 that the corresponding practice of authorities and consequent confirmation by courts amounts to a violation of the right to equality under article 3 (1) of the Constitution if a person applying for asylum had to, in accordance with article 7 (1) first sentence of the Law, consume her or his funds paid as compensation for immaterial damage in accordance with article 253 (2) of the Civil Code prior to receiving state subsidies.¹³⁶ The Constitutional Court obliged the legislator to adopt a new regulation until 30 June 2007 failure of which would result in direct application of relevant provisions of the Social Code XII (SGB XII)¹³⁷. Article 6 (2) no. 3 of the Law on the Transposition of EU Directives of 19th August 2007 eventually incorporated an additional paragraph 5, now clearly exempting compensation claims from income that can be taken into consideration for the calculation of the entitlements under the Law on Subsidies for Asylum Seekers.

¹³⁵ Germany/Bundesverwaltungsgericht [Federal Court of Administration] , decision of 2 December 2004, case no.: 5 B 108.04; Germany/Verwaltungsgerichtshof [Administrative Court] Baden-Württemberg, judgement of 1 September 2004, case no.: 7 S 818/02; Germany/Verwaltungsgericht [Administrative Court] Sigmaringen, judgement of 28 Februar 2002, case no.: 8 K 1560/00.

¹³⁶ Germany/Bundesverfassungsgericht/decision of 11.07.2006 - 1 BvR 293/05, para 40-46.

¹³⁷ Articles 83 (2) and 90 (3) first sentence, providing for such exceptions for persons entitled to social security benefits.

- [53]. **Total amount, average amount and range of amounts of compensation paid to trafficked children, per year (2000--2007)**

It is not standard practice for victims of human trafficking to pursue claims. Only few cases that are subject to criminal prosecutions are followed by a separate claim brought against the state and/or the perpetrator. The few cases that are commenced before the courts against the perpetrator regularly end in a compromise settlement between the convict and the victim. The amounts paid are usually significantly lower than the claims initially pursued and, in most cases, they only represent a very small portion of the assets gained by the perpetrator through the exploitation of the victim.¹³⁸ Statistics on compensation paid to victims of (child) trafficking are not available.

8. Miscellaneous

- [54]. **Refer, if appropriate, to current issues in the public debate relating to child trafficking (such as, for example, proposals to prioritise the prosecution of those who exploit minors who are street musicians)**

It appears that the debate on the issue of child trafficking has only begun recently in Germany. A debate addressing child trafficking in a comprehensive manner, including all aspects and forms of trafficking in children, has not taken place yet. Some debates exist in relation to select aspects of trafficking, such as forced marriages and its possible criminalization.¹³⁹ A debate has also taken place for a long time on the question of whether those persons using the services of prostitutes should be subject to stricter criminal prosecution. Programmes are also discussed addressing those persons and aiming at increasing their level of sensitivity in relation to human trafficking and other offences that prostitutes might be subjected to.¹⁴⁰

- [55]. **Please provide any other significant additional information**

Law enforcement authorities often report that EU enlargement has in fact made the prosecution of human trafficking more difficult. Given that potential victims can now reside legally in the country, the relevant control procedures of the Residence Law usually applied by the authorities, often resulting also in the detection of victims of trafficking, are not carried out in cases involving EU citizens.

¹³⁸ See, for example http://www.berlinkriminell.de/2/gericht_akt32.htm (27.07.08).

¹³⁹ See above, para 2.

¹⁴⁰ See above, para 2.

9. Good practice

- [56]. **Present all important relevant legal provisions and practices, e.g. laws, decrees, administrative regulations, and legal interpretations (for example in case law) in your legal system, which could be considered as “good practice” regarding the fight against child trafficking and/or the support/assistance of victims of child trafficking. Please include a link to websites detailing such provisions and interpretations (with particular reference to such information in English). In order to further substantiate why this constitutes a “good practice” please provide any available additional information (for example, relevant case law and/or statistics).**

Germany has a comparatively well-developed system of support provided to victims of trafficking. About 40 publicly funded specialist counselling services (‘Fachberatungsstellen’) exist throughout the country and provide relevant support and counselling services to victims of trafficking.¹⁴¹ However, it needs to be noted that the programme is primarily designed to address women victims of trafficking and not children victims.

The Ministry of Interior of Schleswig-Holstein issued a decree in 2004 according to which the authorities have to implement the principles of the EU Council decision of 26 June 1997, requiring the authorities to assess means to guarantee that the child is taken care of upon return, amongst others.¹⁴²

¹⁴¹ See above, para 9, p. 18.

¹⁴² Rechtliche Grundlagen für den Umgang mit unbegleiteten minderjährigen Flüchtlingen, Flüchtlingsrat Schleswig-Holstein, p. 24, http://www.frsh.de/leitfaden/leit_2_1.pdf (25.07.08).

Annex 1 - Tables and Statistics

Number of children being granted temporary stay on grounds of trafficking	No official statistics available, only general statistics on asylum exist, see Federal Agency for Migration and Refugees, http://www.bamf.de/clin_101/nn_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-asyl-in-zahlen-2006.html (28.07.08)
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	No official statistics available, see attached correspondence
Number of trafficked children receiving education/training, in particular secondary education and vocational training	No official statistics available, see attached correspondence
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	No official statistics available, see attached correspondence

Number of final convictions based on child trafficking cases, per year	2000	2001	2002	2003	2004	2005	2006	2007
Article 236 Criminal Code ('child trafficking')			9	9	9	10	10	Not available yet
Article 232 Criminal Code ('human trafficking for the purpose of sexual exploitation'),							175	Not available yet
Article 233 Criminal Code ('human trafficking for the purpose of economic exploitation')							18	Not available yet
Article 233a Criminal Code ('advancement of human trafficking')							2	Not available yet

Number of final convictions based on human trafficking cases, per year, in accordance with old legislation (prior to amendments of 2005)	2000	2001	2002	2003	2004	2005	2006	2007
Article 180 b (1) Criminal Code ('human trafficking, influencing a person to pursue prostitution')			12	5	17	25		
Article 180 b (2) ('human trafficking, influencing a person to pursue prostitution, while knowing the specific helplessness of the person or the person being below the age of 21')			67	65	57	56		
Article 181 ('grave case of human trafficking')			116	106	115	102		

Total of amount of compensation paid to trafficked children, per year	Only general statistics available on compensation for victims, see http://www.weisser-ring.de/internet/presse/statistiken-zur-staatlichen-opferentschaedigung/index.html (28.07.08)
Average of amounts of compensation paid to trafficked children, per year	Only general statistics available on compensation for victims, see http://www.weisser-ring.de/internet/presse/statistiken-zur-staatlichen-opferentschaedigung/index.html
Range of amount of compensation paid to trafficked children, per year	Only general statistics available on compensation for victims, see http://www.weisser-ring.de/internet/presse/statistiken-zur-staatlichen-opferentschaedigung/index.html

Annex 2 – Relevant Case Law

Case title/no.	Case no.: 13 K 3059/05 – International Adoption
Decision date	1 December 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] Hamburg, 13. Kammer
Key facts of the case (max. 500 chars)	Couple applying for adoption of a child born in Morocco and determination of their suitability as adoptive parents. Plaintiffs already had custody for the child under Moroccan Law when applying for adoption. The child had been living in an orphanage in Morocco, but was living in Germany at the time of application for adoption. The competent authority rejected the application for adoption.
Main reasoning/argumentation (max. 500 chars)	<p>The essential aspect of international adoptions, both from an International Public Law as well as from a national law perspective is the principle of the best interests of the child ('Kindeswohl'). In the context of international adoptions manifold dangers need to be addressed, such as possible child trafficking or the illegal or immoral procurement of children into the country. The essential legal criterion is the suitability of the person applying for adoption to take care of the well-being of the child.</p> <p>The realization of the desire to have children ('Kinderwunsch') is not the primary aspect, even though the serious desire to have children naturally constitutes an important suitability criterion.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The public law regulations of adoption and its facilitation are primarily oriented towards the interests of the child and serve the protection of the child. The primary obligation of the authorities is to find suitable parents for a child given up for adoption and to enable the child to grow up in a stable family. However, the applicants are also entitled to have their suitability carefully assessed. The authority is obliged to carry out the relevant investigations and clarification.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim against the decision of the authority to reject the application for adoption was successful.

Case title/no.	Case no.: 10 K 101/05 – International Adoption
Decision date	16 October 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] des Saarlandes, 10. Kammer
Key facts of the case (max. 500 chars)	Turkish applicants are the grand parents of the child who was born in Turkey and lives in Turkey. The applicants live in Germany and adopted the child in accordance with a decision of a Turkish court. The reasoning was mainly based on the financial situation of the biological parents, which did not allow for appropriate care for the child.
Main reasoning/argumentation (max. 500 chars)	The competent authorities facilitating adoptions have the power to exclude applicants for adoption in a legally binding way in case they lack suitability for adoption. The establishment of a durable relationship between the parents and the child is decisive for the assessment of the suitability of applicants for adoption.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Turkish law is the applicable law as the applicants were Turkish citizens. The child had not consented to the adoption even though he was capable to take decisions ('urteilsfähig') in accordance with the relevant provision of the Turkish Civil Code. The adoption, in accordance with Turkish law, also required that the child had lived with the adoptive parents for one year, which was not the case in the given situation. Economic interests are not decisive but rather the establishment of a durable relationship between the parents and the child.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Claim was rejected.

Case title/no.	A 11 K 13008/04 – Subsidiary Protection, Forced Marriage
Decision date	23 January 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative] Court Stuttgart
Key facts of the case (max. 500 chars)	The plaintiff is an Iranian citizen and applied for asylum in Germany in 2004. She had been forced into marriage in Iran 2003. Her application for asylum was rejected.
Main reasoning/argumentation (max. 500 chars)	Persecution on the basis of the belonging to a social group also exists if the persecution only takes place because of the sex of the person. Persecution on the basis of sex of the person particularly affects women who suffer from gender based discrimination, either by the state or by private persons, in case the state is not willing or able to protect them. It also affects women who fear prosecution because they violated cultural and religious norms and, as a result are exposed to a significant level of violence and physical abuse by the husband.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Bundesamt für Migration und Flüchtlinge [Federal Agency for Migration and Refugees] is obliged to assess whether the requirements of article 60 (1) of the Residence Law are fulfilled, according to which a foreigner must not be deported to a state where his or her life or liberty are jeopardized as a result of his belonging to a race, religion, citizenship, social group or as a result of his political belief.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Subsidiary protection granted.

Case title/no.	Case no.: 16 K 2234/05 – Subsidiary Protection, Forced Marriage
Decision date	25 July 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative] Court Stuttgart
Key facts of the case (max. 500 chars)	The Turkish plaintiff came to Germany at the age of 17, after she had been forced into a marriage with a German of Turkish decent. She was granted a temporary permission to stay. She divorced from her husband, following which an extension of the permission to stay was rejected. Family members had issued death threats in case she would return to Turkey.
Main reasoning/argumentation (max. 500 chars)	The return to Turkey in the light of a failed (forced) marriage and facing a serious death threat constitutes a considerable hardship.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The described situation of the plaintiff prevents the announcement of the deportation ('Androhung der Abschiebung').
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Suspensive effect of the appeal against the decision not to extend the permission to stay was granted.

Case title/no.	Case no.: 1 E 2572/06.AO
Decision date	8 November 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] Frankfurt
Key facts of the case (max. 500 chars)	13 year old Vietnamese girl applied for asylum. The application was rejected as being manifestly ill founded.
Main reasoning/argumentation (max. 500 chars)	The fact that an unaccompanied minor was brought to a foreign country requires the authority to assess the situation in the light of EC Directive 2004/83/EC.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The rejection as manifestly ill founded of an application for asylum made by a child constitutes a violation of article 9 of the directive 2004/83/EC.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was only successful in so far as the decision rejecting the application for asylum as being manifestly ill founded was repealed. No subsidiary protection was granted.

Case title/no.	Case no.: 2 K 1111/03 – Entry of estimated date of birth in official documents
Decision date	16 June 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] Freiburg
Key facts of the case (max. 500 chars)	The plaintiff requests the entry of the date of birth that he indicated into the official document on toleration of his stay ('Duldung'). He applied for asylum in March 2001 and indicated his date of birth as 15 May 1986. As the plaintiff did not provide any proof in the form of official documents, the authority fictitiously fixed the age for 31 December 1984.
Main reasoning/argumentation (max. 500 chars)	The plaintiff is only entitled to have the age entered into official documents that he can prove. The actual date of birth can only be proven by providing official documents.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The entry of a freely chosen date of birth into official documents constitutes an inadmissible infringement upon the right to personality. However, the entry of 'unknown' or 'unclear' is possible.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was successful to the extent that the authority must not enter the fixed date of birth.

Case title/no.	Case no.: 2 K 2075/02– Entry of estimated date of birth in official documents
Decision date	16 June 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] Freiburg
Key facts of the case (max. 500 chars)	The plaintiff requests the entry of the date of birth that he indicated into the official document on toleration of his stay ('Duldung'). He applied for asylum in June 2001 and indicated his date of birth as 2 March 1986. As the plaintiff did not provide any proof in the form of official documents, the authority fictitiously fixed the age for 11 June 1985.
Main reasoning/argumentation (max. 500 chars)	The plaintiff is only entitled to have the age entered into official documents that he can prove. The actual date of birth can only be proven by providing official documents.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The entry of a freely chosen date of birth into official documents constitutes an inadmissible infringement upon the right to personality. However, the entry of 'unknown' or 'unclear' is possible.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was successful to the extent that the authority is not allowed to enter the fixed date of birth.

Case title/no.	Case no.: 35 A 129.03 – Determination of age by way of Administrative Decision
Decision date	30 December 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	Verwaltungsgericht [Administrative Court] Berlin
Key facts of the case (max. 500 chars)	The plaintiff requests the entry of the date of birth that he indicated into the official document on toleration of his stay ('Duldung'). He applied for asylum in April 2004 and indicated his date of birth as 1 st February 1988. As the plaintiff did not provide any proof in the form of official documents, the authority fictitiously fixed the age as 'at least 31 December 1986' and informed the plaintiff of his capacity to act in accordance with the Law on Asylum Proceedings.
Main reasoning/argumentation (max. 500 chars)	A legal basis for the formal determination of the age by the authority does not exist. The determination of age therefore violates the plaintiff in his right in accordance with article 2 (1) of the Constitution not to be subjected to a disadvantage that is not founded in the constitutional order.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The determination of age cannot be carried out by way of an administrative decision.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The decision of the relevant authority was repealed.

Case title/no.	Case no.: 9 C 156/83 – Capacity to Act in Asylum Procedure
Decision date	31 July 1984
Reference details (type and title of court/body; in original language and English [official translation, if available])	Bundesverwaltungsgericht [Federal Court of Administration]
Key facts of the case (max. 500 chars)	The plaintiff, who is a stateless Palestinian from Lebanon, was born in 1964. His application for asylum was rejected in September 1980. The decision of the competent authority, together with the request to leave ('Ausreiseaufforderung') was handed over to the plaintiff in person, as represented through his lawyer.
Main reasoning/argumentation (max. 500 chars)	In case of uncertainty regarding the exact date of birth within a known year of birth, the principle of comprehensive protection of minors requires the authorities to use the latest possible date within that year as the date of birth.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The request of the authority to leave the country issued to the plaintiff was flawed since the plaintiff, at the time the request was addressed to him, was not capable to act ('handlungsfähig') as he was below the age of 16.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The request to leave the country was repealed.

Case title/no.	Case no.: 34 Wx 045/05 – Detention for Deportation Purposes against Minor
Decision date	28 April 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Oberlandesgericht [Regional Court] Munich
Key facts of the case (max. 500 chars)	The competent authority pursues the deportation of a person following an unsuccessful application for asylum.
Main reasoning/argumentation (max. 500 chars)	The conditions under which detention for deportation purposes can be ordered against minors are stricter than for adults. Detention for deportation purposes is not necessarily impossible against minors, however, specific conditions need to be fulfilled.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court is obliged to ex officio clarify whether the person against whom detention is ordered is a minor or an adult. The principle of proportionality requires the authority to assess whether a less burdensome way can be considered to secure the deportation, such as the accommodation in a youth welfare establishment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The matter was referred back to the competent court.

Case title/no.	Case no.: 16 Wx 164/02 – Detention for Deportation Purposes against Minor
Decision date	11 September 2002
Reference details (type and title of court/body; in original language and English [official translation, if available])	Oberlandesgericht [Regional Court] Köln
Key facts of the case (max. 500 chars)	The competent authority pursues the deportation of a person following an unsuccessful application for asylum.
Main reasoning/argumentation (max. 500 chars)	The conditions under which detention for deportation purposes can be ordered against minors are stricter than for adults. Detention for deportation purposes is not necessarily impossible against minors, however, specific conditions need to be fulfilled.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court is obliged to ex officio clarify whether the person against whom detention is ordered is a minor or an adult. The principle of proportionality requires the authority to assess whether a less burdensome way can be considered to secure the deportation, such as the accommodation in a youth welfare establishment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The relevant decisions and the arrest warrant were repealed.

Case title/no.	Case no.: 1 BvR 293/05 – Compensation for Immaterial Damage and Entitlements under the Law on Subsidies for Asylum Seekers
Decision date	11 July 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Bundesverfassungsgericht [Federal Constitutional Court]
Key facts of the case (max. 500 chars)	The constitutional complaint addresses the question as to whether the regulation is compatible with the Constitution according to which compensation paid for injury suffered from the commission of a criminal offence has to be deducted from the entitlement to receive subsidies in accordance with the Law on Subsidies for Asylum Seekers.
Main reasoning/argumentation (max. 500 chars)	The relevant regulation treats persons differently than any other persons receiving state subsidies. This differential treatment is not justified and therefore constitutes a violation of article 3 (right to non-discrimination).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Compensation for immaterial damage ('Schmerzensgeld') aims at compensating damages beyond the material compensation of damage. It is not aimed at covering material needs, which is the function of the Law on Subsidies for Asylum Seekers. Accordingly, it cannot be included in the calculation of the entitlement under the Law on Subsidies for Asylum Seekers.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The constitutional complaint was granted. The relevant legal provisions were amended following the decision of the Constitutional Court.