



**Bundesweiter Koordinierungskreis
gegen Frauenhandel und Gewalt an Frauen
im Migrationsprozess e.V.**

**KOK - Statement on the Proposal for a Directive on preventing and combating
trafficking in human beings, and protecting victims, repealing Framework
Decision 2002/629/JI - *Abridged Version* -**

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KOK- Statement on the Proposal for a Directive on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JI

Introduction

The KOK – German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration – constitutes the only national, as well as Europe-wide, point of coordination with this focus and successfully networks all NGOs working with this subject area in Germany. The KOK organizes all specialized counselling centres for human trafficking victims in Germany, encompassing furthermore many other organizations working and dealing with the subject.

The KOK principally welcomes the “Proposal for a new Directive on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JI”, dated 29.03.2010, with the objective of not only improving prosecution and preventing offences, but also achieving a better protection for the trafficking victims¹.

In Article 1 of the current Provision, its objective is articulated. Besides the mentioning of the minimum regulations on the definition of criminal offences and penalties in the field of human trafficking, common regulations on strengthening the prevention and the protection of the victims are established. The KOK appreciates the fact that Article 1 explicitly mentions also the protection of the victims of human trafficking as a subject of regulation, thus steering the direction towards dealing with them.

Nevertheless, in some respects the KOK regretfully notices a need for action.

In its statement, the KOK brings forth the problems and recommendations as viewed from the field of practice.

In detail, we would like to elaborate on three concrete contents:

1. Offences concerning trafficking in human beings

In Article 2, the Framework Decision defines the different activities and circumstances of human trafficking. The criminal offence is divided into activities of human trafficking, coercive means and purpose. The KOK appreciates the fact that the Provision aims at harmonizing and standardizing the differing national legislations. Moreover, the definition and identification of additional forms of exploitation, like the “exploitation of activities associated with begging, unlawful activities, or the removal of organs”, is to be considered positive.

Concerning the offence of begging, it should be stated more precisely which definition of the particular characteristics of forced labour to take as a basis.

Regarding the “exploitation of unlawful activities”, the KOK considers it very important to extend the elements of this criminal offence. In the framework of the national penal principles, the Directive should ensure more effectively the possibility that victims of human trafficking who were forced to participate in unlawful activities are not punished.

The KOK welcomes the intention to harmonize the statutory range of punishment. However, a regulation concerning a minimum penalty is lacking. In addition, the KOK would like to point out that, in practice, the already existing ranges of punishment regarding human trafficking are frequently not applied.

Non-application of sanctions against victims

It is envisioned that every Member State envisages the possibility not to prosecute or punish victims of human trafficking who participated in unlawful activities as a direct consequence of

¹ The Framework Decision utilizes the terminology “victim”, which we will maintain here for reasons of consistency. We would like to denote though, that some experts view this term as problematic preferring the use of the term “person affected by human trafficking” instead.

offences they were exposed to. The KOK criticises that the mere “possibility” not to prosecute victims of human trafficking is not an effective means for their protection. The KOK rather demands the introduction of the "non-punishment clause" as a binding provision for all Member States.

Investigation and prosecution

Every Member State has to ensure that investigation and prosecution can be carried out – independent of the report of an accusation by the victim her/himself or a withdrawal of declaration. The KOK holds that in this case proper assistance and protection measures must be initiated or/and further ensured. The KOK welcomes the fact that Member States are indentured to ensure that offences against minors can be prosecuted also after the victims have reached majority. Regarding the planned schoolings and trainings for the prosecution services, we would like to recommend the involvement of non-government-organizations, e.g. the specialized counselling centres for victims of human trafficking.

Furthermore, the KOK suggests that protection measures – unconditional of their willingness to give evidence – should be coordinated internationally between the states of the European Union.

2. Support and assistance to victims of human trafficking

According to the Provision, every Member State should take appropriate measures for the assistance and the support to victims during and after the proceedings –unconditional of their willingness to testify or not. The KOK principally welcomes all cited measures of victim support. However, we recommend modifications towards a state in which the rights of victims of human trafficking are granted fundamentally by the Directive. The KOK notes that statements on the right of residence cannot be found here. Recital 11 says that, after the time period in which the victim of human trafficking reflects about a potential cooperation with the prosecution services, the Member States are not obliged to concede support and assistance to him/her. This passage has to be deleted. We recommend that the Directive associates the support and assistance with the grant of a legal permission to stay, which is also unconditional of the victim's willingness to cooperate with law enforcement.

Moreover, in the framework of witness protection measures of the respective Member States, requirements of safe accommodation and a sufficient and adequate funding of the counselling centres should be met. In addition, we recommend that decisions on an introduction of a right to refuse to testify for the staff of the specialized counselling centres are made in the Member States.

The Proposal envisions conceding legal assistance to victims of human trafficking, also in the case of compensation. The KOK principally welcomes this regulation on legal assistance to victims during the proceedings. Nevertheless, we additionally ask for access to a free use of legal assistance and legal representation for the purpose of asserting withheld wages. During this period, the victims should be granted a right of residence for this reason.

In the context of prevention measures, the Directive points out that every Member State is free to start appropriate initiatives in cooperation with organizations of the civil society. The KOK welcomes the fact that the Member States regularly promote schoolings for officials, but we would like to point out that organizations of the civil society should be involved in principle in order to elaborate and realize practically-based initiatives with the help of the expertise e.g. of the specialized counselling centres.

The schoolings should be clearly defined regarding the carrying out (by whom and how) and the financing (by whom and to which extend).

3. National Rapporteurs or equivalent mechanisms

The Proposal envisions Member States to account for measures to establish National Rapporteurs or equivalent monitoring mechanisms. The KOK welcomes the establishment of National Rapporteurs, if this post is politically and party-independent, if it acts in an interdisciplinary way and if it disposes of sufficient financial resources. In addition, it would be useful if the posts in all Member States were similar in regard to structure and prerequisites in order to create equal standards. The establishment of such posts should moreover happen independently of legislative periods.

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