

Cooperation concept for counselling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation

Introduction:

In 1999, a Sub-Working Group of the Federation-State Working Group on Trafficking in Women¹ developed the first concept for cooperation between counselling services² and the police for the protection of witnessing victims who cannot or do not want to be included in the witness protection program as laid down by law. This cooperation concept has become the basis for corresponding models in various German states and is considered best practice at European and international level.

In January 2006, the nationwide "Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (KOK)" (coordination group against trafficking in women and violence against women in the migration process), in cooperation with the Bundeskriminalamt (BKA), the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the humanitarian organization "Gesellschaft für technische Zusammenarbeit (GTZ)" (organization for technical cooperation) met at a closed session to discuss about "Jointly combating traffic in human beings for the purpose of sexual exploitation - intensifying cooperation and securing funds". One of the results of this closed session was that, due to factual and legal changes, it was mandatory to update the 1999 concept.

Thus, to revise the concept, the Federation-State Working Group on Trafficking in Women set up a new Sub-Working Group, consisting of representatives of the KOK, of the counselling services, of the BKA and of various state police forces (Berlin, Rhineland-Palatinate and Lower Saxony).

The present concept is a recommendation of the Federation-State Working Group on Trafficking in Women and is to serve as a basis for the individual German states to develop their own concepts or to revise existing ones. The 1999 concept is replaced by the present one³.

The scientific study „Straftatbestand Menschenhandel - Verfahrenszahlen und Determinanten der Strafverfolgung“ (The crime of trafficking in human beings - case figures and determining factors for criminal prosecution) by Annette Herz and Eric

¹ Under the leadership of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federation-State Working Group on Trafficking in Women is composed of specialized non-governmental organizations (counselling services) as well as various Ministries at federation and state level.

² Counselling services are especially qualified non-governmental organizations that have specialized on psycho-social support of victims of traffic in human beings.

³ As decided by the Federation-State Working Group on Trafficking in Women on 07 November 2007

Minthe, published in January 2006, served as a reference for the development of the concept.

With the 37th Criminal Justice Amendment Act which came into force on 19.02.2005, the crime of human trafficking was extended to include the exploitation of persons as workers. The offences of trafficking in human beings for the purpose of sexual exploitation (section 232 German Penal Code) and trafficking in human beings for the purpose of the exploitation of persons as workers (section 233 German Penal Code) are two basically different crime phenomena, which, in many areas, have to be viewed quite differently in respect of the approaches employed to combat them (e.g. detecting suspicious circumstances, presentation of evidence). The suppression of these phenomena involves various police agencies. In addition, little information is as yet available on victim profiles as far as the phenomenon "exploitation of persons as workers" is concerned. The hitherto existing counselling and support concepts of the counselling services also have to be revised and adapted to the present conditions. With regard to this crime phenomenon, the concept needs to be further adapted, but this has to be done at a later date by other actors.

The cooperation partners in the present concept are the counselling services and the police. When developing concepts for cooperation agreements, cooperation contracts or instructions to this effect for the federal states, further institutions responsible for protection, support, residence and criminal prosecution should be included (e.g. judicial authorities, aliens offices, social welfare offices, employment agencies etc.). Due to regional differences, this would, however, not be purposeful for the present paper.

I. Aims and purposes

It is the aim of this cooperation concept to contribute to the adequate protection of, and help for, the potential victims/witnesses of human trafficking for the purpose of sexual exploitation and, thus, to a much more efficient fight against this crime phenomenon.

Therefore, this cooperation concept should be given nationwide consideration as a model to develop new concepts or to revise existing concepts of the federal states.

The implementation of cooperation concepts requires handling of the criminal offence by particularly specialized, qualified and sensitized police officers in specialized departments as well as reliable human and logistical resources within the police and a nationwide establishment and permanent financing of the

counselling services.

II. Addressees of the concept and target group

The addressees of the concept are the counselling services and the police.

The target group of the concept comprises persons affected⁴ by traffic in human beings for the purpose of sexual exploitation.

Definition

The target group consists of persons for whom there are facts or other concrete indications suggesting that they are affected by trafficking in human beings for the purpose of sexual exploitation and who do not fulfill the prerequisites for inclusion in the witness protection program of the police⁵.

In detail, this may concern persons

- who, according to police investigations and/or according to their own statements, are affected by trafficking in human beings

and

- either contacted the police or the counselling services out of their own initiative or
- were picked up by the police on the occasion of checks

and

- declared themselves willing to act as a witness until the conclusion of the criminal proceedings or
- have not yet made up their mind as to whether they want to be a witness in a human trafficking case.

⁴ "Persons affected" are the following groups of persons: Victims, witnesses and witnessing victims of traffic in human beings.

⁵ In this connection, please see the Act on the Harmonization of the Protection of Witnesses at Risk.

III. Preliminary remark

Traffic in human beings is a particularly inhumane form of crime. Statistical surveys show that this type of crime has gained a foothold in the Federal Republic of Germany, with organized crime structures becoming more and more visible as the high profits at relatively low risk are a great incentive.

The victims of human trafficking can be both German and foreign nationals. They are mainly women who are often forced into prostitution in Germany on false pretences or are enticed to come to Germany and then put under pressure there by the offenders by means of threats, violence etc.

They can include:

- victims of violence or force or exploitation of a situation of helplessness due to the fact that they come from abroad
- victims who previously agreed to work as prostitutes, but did so under different conditions (self-determined work, receipt of fair and appropriate payment), or
- victims who are under 21 years of age [irrespective of any difficulties they may have or a situation of helplessness they may be in due to their coming from abroad].

The aim of sections 232, 233a of the German Criminal Code is the protection of personal freedom. According to these penal provisions, even persons who already worked as prostitutes can become victims of human trafficking. This does not mean that every prostitute must be a victim of human trafficking.

Human trafficking is an offence often committed by use of force which causes unforeseeable physical and mental harm to the victims, massively interferes with their right of self-determination and frequently has traumatic effects. For this reason, the victims not only need efficient protection, but also the intensive care of a particularly well qualified counselling service. To this end, a good cooperative relationship between the investigating authority and the counselling service is indispensable.

The fight against trafficking in human beings necessitates coordinated, well-structured and rigorous action by all parties involved, as investigations are

difficult and time-consuming. Indictments for these offences are often possible only on the basis of personal evidence, i.e. the statements of the persons affected. For this reason, these statements are of great importance.

Efficient protection and professional care of the persons affected are the basic prerequisites for their stabilization and for obtaining a statement that can be used in penal proceedings. They are an essential step to make sure that proceedings can be initiated and conducted.

This protection must comprise the safeguarding of the victims'

- physical and mental integrity
- accommodation,
- living expenses,
- residence status, and
- human dignity and human rights.

This requires a well-defined cooperation between the police and the counselling services, as laid down in this concept.

IV. Description of the problem

1. From the point of view of the law enforcement authorities

Traffic in human beings is a "controlled crime". This means that the police get information about criminal offences above all through their own activities, e.g. checks in the red-light district. With the EU's enlargement to the East, persons from these states do no longer have an illegal residence status, as this was often the case before. This makes it increasingly difficult for the authorities in charge to recognize cases of trafficking in human beings. Proactive presence and checks in the red-light district aiming at confidence-building measures vis-à-vis all actors involved have proven a successful approach.

In addition, it is also difficult to recognize a case of human trafficking when first contact is made because the persons affected, intimidated by the perpetrators, fear for themselves and their next-of-kin and are afraid of the

police and any state measures.

Therefore, as a rule, they are not willing to supply details about the offence. Other victims are so much traumatized by the violence they experienced that they are absolutely not able to give evidence.

However, since personal evidence is very important to supply proof of a criminal act and the "principle of immediacy" must be observed in criminal proceedings, the statement of the persons affected is of utmost importance.

Therefore, the persons affected have to be summoned as witnesses.

Quite often however, foreign witnesses are no longer staying in Germany. Summoning these witnesses abroad is often not possible because their addresses cannot be established or they are no longer willing to travel to Germany for the trial. Quite frequently, the perpetrators have meanwhile influenced the persons affected in their willingness to give evidence. If the witnesses do declare to be willing to travel to Germany for the trial, this involves great bureaucratic effort and often pressure as regards time limits.

With respect to the significance of personal evidence, the aforementioned study "Straftatbestand Menschenhandel" says (p. 321):

„The importance of conclusive personal evidence and/or the necessity of the witnesses' presence in the trial are clearly shown in the dismissal reasons given by the public prosecutor's offices and the courts, as appears from the files examined. As a rule, the courts dismissed all those cases in which the victims did not appear in court as witnesses and gave personal evidence.“ (*English translation*)

2. From the point of view of the counselling services

It is the task of the counselling services to render support to persons affected by human trafficking, regardless of their willingness to give evidence in the proceedings. The aim is to restore their physical and mental integrity as soon as possible and to maintain it in the long term. The persons affected receive support in returning to normal everyday life and developing perspectives for the future. They also receive support in

the safeguarding of their rights.

In order to enable the counselling service to build up a relationship of trust with the persons affected and potential witnesses and to provide qualified counselling and care, they must be included in the activities of the law enforcement and regulatory authorities from the very beginning. Even if, at the beginning, there is possibly only the suspicion of trafficking in human beings, the counselling service has to be called in without delay. Female counsellors may possibly participate in police checks and raids in the red-light district. Where, for various reasons, this does not appear to be useful, it is still important to inform the counselling services of possible persons affected at an early stage so that they can make plans and get prepared.

The absence of a legally established right to refuse to give evidence is an impediment to the relationship of trust with the persons affected and makes cooperation between the investigating authorities and the counselling services difficult. Cooperation is also difficult because the tasks and approaches of the institutions involved - judicial authorities, police, aliens offices and social welfare authorities - are different and specially trained/named or sensitized points of contact are not available or foreseen in all institutions.

In this connection, there is a risk of the counselling services and the victims being instrumentalized by the law enforcement authorities. This risk is to be countered by the conclusion of a cooperation agreement.

V. Basic understanding

Cooperation between the counselling services and the police is based on the following understanding:

- The crime of trafficking in human beings shall be efficiently prosecuted and the perpetrators shall be indicted and convicted. To this end, witnesses who are at the disposal of the law enforcement authorities over the whole duration of the proceedings may make a considerable contribution. For non-German nationals affected, this implies a right to stay in Germany for at least the whole duration of the proceedings (cf. study „Straftatbestand Menschenhandel“, p. 321).
- According to the Preamble to the Council of Europe Convention No. 197, human trafficking is considered a violation of human rights and an offence to the dignity and the integrity of the human being.
The persons affected therefore have the right to be treated with dignity and to make full use of their rights.
- All parties involved must give equal attention to the situation of the partly traumatized victims and to the penal proceedings as such. In connection with offences of human trafficking, it is generally expected that the persons affected are at risk.
- The willingness of the victims to give evidence is encouraged and more frequently results in convictions for human trafficking if they are cared for by the counselling services and if assistance is provided by a legal counsel or someone who represents them as a joint plaintiff (study „Straftatbestand Menschenhandel“, p. 341).
- If, upon conclusion of the proceedings, there is any concrete risk which may prevent the victims from returning to their country of origin, it must be possible to extend their right to stay in Germany in accordance with the Residence Act.
- All measures in connection with the present protection program are taken in mutual agreement.

VI. Structural organization

1. **The police forces in the federal states**

The police forces in the federal states should set up organizational units that are responsible for initiating and coordinating protection measures.

2. **Specialized counselling services**

It must be ensured that qualified independent counselling services to take care of the persons affected are set up and furthered nationwide in all federal states.

3. **Counselling services and police forces of the federal states and the federation**

The federal states have to develop and implement education and training concepts -both interdisciplinary and for specific professional groups- with a view to identifying human trafficking victims and having them testify as witnesses and also with a view to protecting them and rendering them assistance. In addition to the further development of the national concepts, the training of the police in the countries of origin of the victims and the perpetrators must continue to be part of the work of the Bundeskriminalamt. Similar to the workshop held at the BKA in 1999, the carrying out of joint training measures of the police and the counselling services is to be institutionalized at the state agencies. Counselling services should receive enough funds for further training measures. In this context, cf. also page 339 of the study „Straftatbestand Menschenhandel“: „The handling of this complex legal issue, the difficult presentation of evidence particularly with regard to finding victims willing to give evidence as witnesses as well as the necessary special knowledge about the red-light district require a high degree of professionalization on the part of the case workers.“ (*English translation*)

Continuing cooperation and reflections about the work done are necessary. This can be done in the framework of regular meetings of the actors so that there is a continuing process of revision, evaluation and further development of the cooperation agreements to make them usable in practice and adapt them to changes in legislation.

VII. Structuring of operations

Successful cooperation requires knowledge and acceptance of the different aims of both sides. There must be a clear separation between investigation and the provision of assistance and care. The respective tasks and occupational roles must also be transparent to the persons affected.

1. Decision-making criteria

The inclusion of the persons affected in the witness protection program of the police has priority. If the necessary conditions are not fulfilled, the inclusion of the persons affected in the present program has to be considered.

The following criteria apply:

- a) Victim status/witness status:
Are there any indications that the subject is a victim/witness of human trafficking?
- b) Indispensability of statement
In the further run, is the subject in a position to make a statement that is relevant to the case and is she/he willing to repeat this statement in a later trial?
- c) Risk involved (a risk per se is generally anticipated in cases of human trafficking).
- d) Voluntariness:
Does the person agree to be included in the present protection measures?

2. Involvement of the public prosecutor's office

The public prosecutor's consent that the above criteria are fulfilled has to be obtained.

3. Competence to decide

It is within the responsibility of the police to decide on whether or not a witness is admitted to appropriate protective measures.

4. Involvement of the counselling services

When first contact is made by the investigating authorities with a potential victim, the latter has to be informed of the possibility of receiving support from an independent counselling service.

When deciding about whether or not the victims should be admitted to the present protection measures, the counselling services have to be involved. The counselling services must be granted the right to be present during all interviews of the persons affected by the police, the public prosecutor and the court, provided that they agree.

5. Measures of the police

- 5.1 When first contact is made by the investigating authorities with a potential victim, the latter has to be informed of the possibility of receiving support from an independent counselling service. Multilingual information material of the counselling services should be handed out. As soon as the investigating authority suspects that the subject may be a victim of human trafficking, it shall immediately establish contact with the counselling service and the special police unit responsible for protection measures.
- 5.2 The police and the counselling services handle the formalities with the appropriate authorities in close cooperation; if necessary the police make arrangements to guarantee that no information on the witness is divulged.
- 5.3 The police carry out the necessary measures for the protection of the persons affected before, during and after crime scene inspections, interviews and court hearings.
- 5.4 They give advice with regard to the protection of the female counsellors.
- 5.5 They carry out the mandatory security screenings of the cooperation partners and the necessary undertakings.

5.6 In connection with security issues the police support the counselling services with regard to the return of the persons affected to their countries of origin.

6. Measures of the counselling services

6.1 Following consultation with the police, the counselling service decides about the future place for the persons affected to stay. The counselling service accommodates the persons affected in appropriate facilities.

6.2 The counselling services and the police handle the formalities with the appropriate authorities in close cooperation.

6.3 The counselling service provides continuous psycho-social support for the persons affected and arranges for medical care.

6.4 Female counsellors are present at interviews of the persons affected if so desired by the latter.

6.5 Female counsellors render assistance to the persons affected before, during and after crime scene inspections, interviews and court hearings, and they provide psycho-social support.

6.6 The counselling service arranges education and training measures for the purpose of integration. If necessary, the counselling services provide support with regard to the return of the persons affected to their countries of origin.

6.7 If required, the counselling services continue to support the persons affected also after the conclusion of the criminal proceedings.

7. Information exchange between the counselling services and the police

On the basis of a cooperation in a spirit of trust, the counselling services inform the police of

- any security-relevant developments for the persons affected, also with

- regard to their countries of origin, or for the female counsellors,
- any important information in connection with the offence of trafficking in human beings,
- any information of relevance to the investigation, if consent for its disclosure has been given by the victims.

On the basis of a cooperation in a spirit of trust, the police inform the counselling services of

- any security-relevant developments for the persons affected, also with regard to their countries of origin, or for the female counsellors,
- any important modifications in connection with carrying out qualified protection.

Recommendations to the federal states

The Federation-State Working Group on Trafficking in Women recommends regular evaluation of all cooperation concepts, which should take place at previously defined time intervals.

It is further suggested to set up clearing offices in the federal states with which cooperation agreements exist. These clearing offices should be addressed when there are problems between the cooperation partners in the practical implementation of the agreements.