



# Pulling together as one! Federal cooperation concept »Protection and help in cases of trafficking in and exploitation of children«

Recommendations for collaboration between the youth welfare office, police, specialised counselling centres and other entities involved in the identification and protection of children who are victims of human trafficking



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Recommendations for collaboration between the youth welfare office, police, specialised counselling centres and other entities involved in the identification and protection of children who are victims of trafficking in human beings

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## List of abbreviations

<b>AsylbLG</b>	German Asylum Seekers' Benefits Act
<b>AsylG</b>	German Asylum Act
<b>AufenthG</b>	German Residence Act
<b>BAMF</b>	German Federal Office for Migration and Refugees
<b>BGB</b>	German Civil Code
<b>BKA</b>	German Federal Criminal Police Office
<b>BMFSFJ</b>	German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
<b>ECPAT</b>	Ending the Sexual Exploitation of Children
<b>FamFG</b>	German act on the procedure in family matters and in matters of non-contentious jurisdiction
<b>FBS</b>	Specialised expert counselling centre for victims and survivors of trafficking in human beings
<b>GARP</b>	Government Assisted Repatriation Programme
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings
<b>GVG</b>	German Courts Constitution Act
<b>IOM</b>	International Organization for Migration
<b>ISD</b>	German branch of International Social Service (ISS)
<b>JGG</b>	German Youth Courts Law
<b>KKG</b>	German law on cooperation and information for the protection of children
<b>KOK</b>	German NGO network against trafficking in human beings (Bundesweiter Koordinierungskreis gegen Menschenhandel e. V.)
<b>ProstSchG</b>	German Prostitute Protection Act
<b>REAG</b>	Reintegration and Emigration Programme for Asylum-Seekers in Germany
<b>RiStBV</b>	Guidelines on Criminal Proceedings and Imposition of Fines in Germany
<b>SGB</b>	German Social Code
<b>PP</b>	Public prosecution office
<b>StGB</b>	German Criminal Code
<b>StPO</b>	German Code of Criminal Procedure
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UNCRC</b>	United Nations Convention on the Rights of the Child

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**Figure 6:** Collection of data in case of endangerment of the welfare of a child. Every child<sup>1</sup> has a right to protection against violence and exploitation and is also entitled to special care and support. The welfare of the child<sup>2</sup> is the governing principle of all action and is an aspect, which must be considered as a top priority. Trafficking in children and exploiting them jeopardises the welfare of the child<sup>3</sup>. This consequently triggers the protection mandate by the state<sup>4</sup>.

*In order to guarantee adequate protection, support of the children in question and effective prosecution, while preventing any possible retraumatisation or repeated victimisation, good cooperation based on trust amongst all entities involved is absolutely necessary.*

*This cooperation concept is a recommendation and is intended to support effective, child-orientated collaboration between public authorities, non-governmental organisations and other facilities.*

<sup>1</sup> A child means any human below the age of 18 years unless under the law applicable to the child, majority is attained earlier, Article 1 of the Convention on the Rights of the Child. Further, the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse as well as Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, define children as persons below the age of 18 years.

<sup>2</sup> Article 3 of UNCRC.

<sup>3</sup> Jeopardizing the welfare of the child means that the child is exposed to a present danger to such an extent that it can be predicted with reasonable certainty that he or she will be considerably damaged in his or her further development (German Constitutional Court (BVerfG) Family Law Journal (FamRZ) 2012, 1127; 1129).

<sup>4</sup> Article 6 Section 2 Clause 2 Basic Law for the Federal Republic of Germany (GG) in conjunction with § 8 a SGB VIII.

# 1

## Introduction

Trafficking in and exploitation of children is a crime. Known manifestations include the adoption trade, trafficking for the purpose of sexual exploitation, of committing criminal acts (e.g. drug trafficking, theft), of begging or organ trafficking, of work exploitation and of exploitation involving the deprivation of liberty. New forms may be added or be changed, and the tactics of the perpetrators change as well. The Internet is playing a more and more significant role and is opening up new ways of accessing (potential) victims.

This cooperation concept is as a result of the initiative of the Federal-State Working Group, which regularly convenes and works under the patronage of the 2011 action plan of the Federal Government for the protection of children and youth against sexual violence and exploitation<sup>5</sup>.

The initiative's point of departure was the existing Germany-wide »Cooperation Concept for the Cooperation of Specialised Counselling Centres and the Police for the Protection of Victims/Witnesses of Human Trafficking for Sexual Exploitation« from 2007<sup>6</sup>, published by the Federal-State Working Group Trafficking in Women (renamed Federal-State Working Group Human Trafficking as of 2013). To date, it has been implemented in 13 German states in the form of cooperation contracts, cooperation

agreements and cooperation decrees and has proven to be an effective instrument for collaboration between the police, specialised expert counselling centres for victims and survivors of human trafficking and other specialised entities involved. These cooperative efforts in the federal states are frequently accompanied by round table discussions, which further reinforce inter-institutional cooperation with regard to the subject of human trafficking.

However, further development is necessary for the target group of children, and the cooperation partners which need to be integrated as a result, especially in the area of child and youth support services.

For the protection of victims of human trafficking who have not reached the age of majority, all entities involved in identification, access to protection and support measures, prosecution and other types of victim support are to be provided with a formalized framework for action in the form of a cooperation mechanism. The objective is to put an end to individual systems working in isolation (child protection, police work, healthcare, etc.) where it is necessary for the entities involved to work together in a coordinated manner. Only by working together it is possible to achieve action which is appropriate for the child.

<sup>5</sup> [www.bmfsfj.de/blob/jump/86314/aktionsplan-2011-data.pdf](http://www.bmfsfj.de/blob/jump/86314/aktionsplan-2011-data.pdf).

<sup>6</sup> [www.bmfsfj.de/blob/80716/dcd4d0c9c868c579144316c9a668b010/gewalt-kooperationskonzept-data.pdf](http://www.bmfsfj.de/blob/80716/dcd4d0c9c868c579144316c9a668b010/gewalt-kooperationskonzept-data.pdf).



This concept is a Germany-wide recommendation for the development of new cooperation mechanisms of the states and/or extension of existing cooperation mechanisms of the states. It provides a framework for a cooperation mechanism and requires adaptation to the respective provisions and structures in the individual state. The concept contains orientations for action and suggestions for organisational and communicative structures, which support local long-term and person-independent collaboration. It can and should be extended to include further entities who play a special role in the respective state's regional context.

The recommendations were discussed in an intensive consultation process with experts from youth welfare offices, the police and public prosecution office, specialised counselling centres, the Federal Office for Migration and Refugees, the field of healthcare and further specialists at federal and state levels and in close cooperation with ECPAT Deutschland e.V., KOK e.V., the Federal Criminal Police Office and the International Social Service.

# 2

## Semantic differentiation

### 1. What is trafficking in human beings?

Trafficking in human beings is generally regarded as a crime in which persons are placed in an exploitative situation or kept there by taking advantage of a predicament or their helplessness, in association with a stay in a foreign country. Trafficking in human beings may involve crossing national borders, but this is not a prerequisite. Persons, including children, who are victims or survivors of human trafficking have been forced to perform acts against their will from which another person profits. NB:

In the case of work exploitation as per § 233 StGB, it is of no consequence whether or not the perpetrator has »enticed« the victim to commence or continue the action, i.e. has influenced their will. It suffices that the perpetrator is aware of the unfavourable situation of the victim and puts this to his/her own use by employing the victim in exploitative conditions or taking advantage of the victim's begging activities<sup>7</sup>. Thus persons are, for instance, forced into prostitution, work for little or no pay or steal. The forms of exploitation often overlap. The exploitation or coercion is not always evident at first glance, even in the case of victims who have not reached the age of majority.

One of the main characteristics of human trafficking is that the victims and survivors are in a situation of dependence. Contrary to widespread belief, perpetrators are not necessarily organized crime rings – acquaintances, partners or family members could also commit human trafficking and exploitation<sup>8</sup>.

### 2. How is trafficking in human beings defined in the German Criminal Code (StGB)?

In Germany, the provisions of the Criminal Code pertaining to human trafficking and exploitation are divided into five main categories: human trafficking, forced prostitution, forced labour, exploitation of labour and exploitation involving the deprivation of liberty. Simply put, human trafficking and exploitation according to the German Criminal Code (StGB) can be divided into three acts: recruiting – prompting exploitative action – exploitation.

The provision on **human trafficking (§ 232 StGB)** deems it a crime to create conditions which facilitate exploitation.

If the economic or personal circumstances or

<sup>7</sup> BT-Drs. 18/8095.

<sup>8</sup> With slight amendments, taken from: Eva Küblbeck: The EU directive against human trafficking: situation and implementation in Germany. In: NDV, April 2017: [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/Kueblbeck\\_NDV-4-2017.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/Kueblbeck_NDV-4-2017.pdf).

vulnerability of a person are exploited and the person is recruited with the intention of exploitation, such can be punishable as human trafficking. Recruiting or creating conditions which facilitate exploitation includes, for instance, inducing, conveying or accommodating a person if this person is to be exploited. In the case of persons under the age of 21 years, whether there is helplessness or a predicament is of no consequence – the mere transport or inducement to enable exploitation may be deemed human trafficking.

The provisions on **forced prostitution and forced labour (§ 232a and b StGB)** defines the unlawful act of influencing the will of a person so that the person takes up or continues to engage in specific exploitative relations. This crime is punishable in law were a person to take advantage of the circumstances or vulnerability of another person in order to prompt them to perform an exploitative action. This can include various types of labour, as well as begging or prostitution. In this case as well, if the person is under the age of 21 years, there need not be exploitation of a predicament or helplessness – merely prompting the exploitative action suffices.

The provision regarding **exploitation of labour/ exploitation resulting from the deprivation of liberty (§ 233/233a StGB)** covers the actual exploitation. If a person is exploited in an occupation, begging or committing criminal acts as a result of advantage being taken of a predicament or helplessness, this is punishable according to the existing provisions.

**Exploitation through prostitution** is treated separately in **§§ 180a, 181a StGB**. Particularly serious cases in which the affected person is deprived of his/her liberty, are subject to more severe sentencing as per § 233a StGB. As mentioned above, stricter standards are to be applied with regard to persons who are below the age of majority and young adults.

In order to account for the particular vulnerability of young adults, the legislative authority has determined a protection age limit of 21 years. It is prohibited to induce a person under the age of 21 years into prostitution or recruit such a person into an occupation in which the person is exploited. There need not be any instance of a predicament or helplessness being taken advantage of in connection with a stay in a foreign country in order for this to constitute a case of human trafficking<sup>9</sup>.

NB: Also in the case of human trafficking as per § 232 StGB, which is committed in a foreign country, the German Criminal Code applies (§ 6 Number 4 StGB). Human trafficking need not involve crossing a border but can also take place within Germany or within national borders.

<sup>9</sup> Ibid.

### 3. About the terms trafficking in human beings, child trafficking and trafficking in children

On the basis of Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000, the offering, delivering or accepting, by whatever means, of a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labour, illegal adoption, as well as offering, obtaining, procuring or providing a child for child prostitution, and producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography are to be fully covered under criminal or penal law. All forms of child trafficking are thus deemed criminal acts. This cooperation concept is based on the internationally regulated elements of the offence of child trafficking as trafficking in human beings to the detriment of minors.

In Germany, the provisions of criminal law regarding trafficking in human beings not only refer to adults as victims but also to affected persons under the age of 21 years. If victims are under the age of 18 years at the time the crime is committed, qualifying elements of the offence apply, i.e. sanctions are more severe. In addition, further relevant forms of exploitation of human trafficking to the detriment of persons who are under the age of 18 years are specified as elements of offences in Chapter 13 of the German Criminal Code (StGB) (Offences Against Sexual Self-Determination) (see Table 1).

But care is to be exercised: The term »child trafficking« is only used in StGB as the headline of Section 236 and refers in particular to unauthorised procurement of an adoption of a person under 18 years of age as well as engaging in procurement activity with the aim of a third party taking a person under 18 years of age into his/her home for an indefinite period. In order to avoid inconsistencies between the content of § 236 StGB and trafficking in human beings for the purpose of exploiting children, the phenomenon mentioned here is therefore referred to in summary as »human trafficking to the detriment of children« or »trafficking in children«.

### 4. What is the difference between trafficking in human beings and people smuggling?

In contrast to trafficking in human beings described on page 11, people smuggling implies, among other things, the procurement for financial or other gain of the illegal entry into a country<sup>10</sup>.

The crime of people smuggling is considered to include all forms of participation and support actions relevant under criminal law aspects which aim to enable foreigners to illegally enter a country, remain in that country illegally or abuse the right to asylum. Moreover, the term also covers forms of perpetration of smuggling foreigners through and into other countries<sup>11</sup>. This may occur under dangerous conditions or conditions which jeopardise dignity and is then subject to more severe sanctions. The smuggled person has however consented to the procurement of the illegal entry and is free after arrival.

<sup>10</sup> See also: United Nations Convention of 15 November 2000 against transnational organized crime as well as the additional protocols against trafficking in humans and the smuggling of migrants of 1 September 2005 (BGBl. II p. 945 (1009), Bonn, 8 September 2005).

<sup>11</sup> Kepura/Niechziol/Pfau (2015): Schleusungskriminalität – Grundlagen zur Phänomenologie, Ätiologie und polizeilichen Intervention, Verlag für Polizeiwissenschaft, p. 18.

## Table 1: Differentiation between trafficking in adults, trafficking in children and people smuggling<sup>12</sup>

### Differentiation between trafficking in adults, trafficking in children and people smuggling

	<b>Human trafficking (adults)</b>	<b>Human trafficking to the detriment of persons under 21 years of age</b>	<b>Smuggling foreigners</b>
<i>Age of victims</i>	Over 18	Under 21	Immaterial
<i>Main characteristics</i>	Acts: Inducing, conveying, relaying, accommodating, taking into one's home  Means: Taking advantage of a personal or economic circumstances or vulnerability in connection with a stay in a foreign country, exploitative purpose	Acts: Inducing, conveying, relaying, accommodating, taking into one's home  Exploitative purpose	Acts: Enabling illegal entry into or illegal stay in a state  Purpose: For financial or other gains
<i>Consent of the person trafficked/smuggled</i>	The weak position of the victim is in conflict with the assumption that consent was voluntarily given.	Consent is immaterial under criminal law aspects	The person consents to his/her being smuggled.
<i>Crossing of border</i>	Not necessary	Not necessary	Necessary
<i>Perpetrators' source of profit</i>	Exploitation	Exploitation	Support services (e.g. transport)

<sup>12</sup> Based on UNODC (2008): »Toolkit to Combat Trafficking in Human Beings«: [https://www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf).

## Semantic differentiation

### Relevant elements of the offence in Germany

<i>Human trafficking (adults)</i>	§ 232 StGB Trafficking in human beings
	§ 232a StGB Forced prostitution
	§ 232b StGB Forced labour
	§ 233 StGB Exploitation of labour
	§ 233a StGB Exploitation by the use of unlawful restraint
	§§ 177, 178 StGB Sexual assault by use of force or threat of force, rape
	§ 180a StGB Exploitation of prostitutes
	§ 181a StGB Controlling prostitution
<i>Human trafficking to the detriment of persons under 21 years of age</i>	§ 232 StGB Trafficking in human beings
	§ 232a StGB Forced prostitution
	§ 232b StGB Forced labour
	§ 233 StGB Exploitation of labour
	§ 233a StGB Exploitation by the use of unlawful restraint
	If victims are under the age of 18 years at the time the crime is committed, qualifying elements of the offence apply (§ 232 (3) Sentence 1 Number 1 StGB, § 232a (4) StGB, § 232b (4) StGB, § 233 (2) Number 1 StGB, § 232 (3) StGB).
	§ 235 (4) Number 2
	StGB Abduction of minors
	§ 236 StGB Child trafficking
	§§ 176, 176a, 176b, 182 StGB Sexual abuse of children and youth
	§§ 177, 178 StGB Sexual assault by use of force or threat of force, rape
	§ 180 StGB Causing minors to engage in sexual activity
	§§ 184b, 184c StGB Distribution, acquisition and possession of written materials containing child or juvenile pornography. Plus the elements of a sexual offence which also protect persons over the age of 18 years (§§ 177, 178, 180a, 181a StGB)
<i>Smuggling foreigners</i>	§ 96 AufenthG
	§ 97 AufenthG
	§ 84 AsylG
	§ 84a AsylG

# 3

## Legal and political framework conditions

National and international regulations concerning the prevention and combating of human trafficking as well as on the rights of victims and the protection of children have resulted in definitions, provisions and obligations which must also be observed and implemented in Germany. In the case of all forms of exploitation of human trafficking to the detriment of minors, public authorities and counselling centres presented with and responding to the special needs and interests of children must consider the special requirements of victims and survivors regarding protection – also involving the integration of other entities and collaborate with them.

### 1. International and European principles

In addition to the United Nations Convention of the Rights of the Child (UNCRC), which defines the fundamental principles with regard to the rights of children, there are further international and European provisions for combating human trafficking and for cooperation of governmental and non-governmental entities for the protection of children to which Germany has obligated itself:<sup>13</sup>

**Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims** defines minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof. The law governing implementation of the Directive came into effect in Germany on 15 October 2016. It contains, in addition to a revision of the legal provisions regarding human trafficking, an extension to also cover cases of human trafficking for the purpose of committing criminal acts and begging as well as for the purpose of trafficking in organs. Likewise, the qualifying elements of the offence were extended to cover cases in which the victim is under the age of 18 years. Moreover, the elements of the offence of the exploitation of labour and exploitation involving the deprivation of liberty were added<sup>14</sup>.

<sup>13</sup> You will find an overview of human trafficking and the international legal principles at: [www.kok-gegen-menschenhandel.de/menschenhandel/rechtsgrundlagen-international/](http://www.kok-gegen-menschenhandel.de/menschenhandel/rechtsgrundlagen-international/).

<sup>14</sup> See BGBI. I, p. 2226. See [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/KOK\\_Information\\_zum\\_Gesetz\\_zur\\_Umsetzung\\_der\\_EU-RiLi\\_gegen\\_MH\\_ueberarbeitete\\_Fassung.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/KOK_Information_zum_Gesetz_zur_Umsetzung_der_EU-RiLi_gegen_MH_ueberarbeitete_Fassung.pdf).

**EU Directive 2012/29/EU concerning minimum standards on the rights, support and protection of victims of crime (victim protection directive) also treats the particular** welfare of child and juvenile victims of sexual crimes and violent acts, as well as that of adults. The member states are explicitly requested<sup>15</sup> to introduce coordinated public service measures. On 31 December 2015 the act for the reinforcement of victims' rights in court proceedings (3rd Act to Reform the Protection of Victims' Rights) came into effect in Germany<sup>16</sup>. One important new change is that minors have a legal right to free-of-charge psychosocial support for the proceedings according to the German Code of Criminal Procedure (StPO).

Psychosocial support for the proceedings is an especially intensive form of support for persons who have been injured as a result of especially grievous crimes and require protection before, during and after the main case. It provides for qualified care, the provision of information and support in the course of the criminal proceedings. Its main objective is to reduce the individual pressure on the victims. In addition, injured parties now have extended rights to information.

**The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (»Lanzarote Convention«)** was ratified by Germany on 18 November 2015 and came into effect on 1 March 2016. The ratification is in particular preceded by amendments to the German Criminal Code concerning displaying and accessing depictions of child and juvenile pornography (§ 184e StGB) as well as concerning so-called cybergrooming (§ 176 (4) Number 3 StGB).

**Germany ratified the Council of Europe Convention on Action against Trafficking in Human Beings** on 19 December 2012. The Convention came into effect in Germany on 1 April 2013. The independent group of experts on action against trafficking in human beings (GRETA) responsible for monitoring implementation of the Council of Europe Convention urgently requested that German authorities take appropriate steps to ensure extensive coordination of the national measures against human trafficking, especially regarding special consideration of child trafficking. Targeted coordination and cooperation measures are to be used in order to link existing child protection facilities, especially at country level, with the expert knowledge of governmental and non-governmental entities in the area of combating human trafficking<sup>17</sup>. GRETA's recommendations for Germany were accepted by a committee of the parties to the contract on 15 June 2015.

<sup>15</sup> Especially relevant in this case are Recitals 40, 62.

<sup>16</sup> With one exception: The provisions concerning psychosocial support for the proceedings (Article 1 Number 12 and Article 4 did not go into effect until 1 January 2017).

<sup>17</sup> Number 70, 2nd bullet point (p. 26) of the GRETA Report 2015.



## 2. National political and legal framework

**The act concerning strengthening active protection of children and youth** (German Federal Child Protection Act – BKiSchG)<sup>18</sup>, which went into effect on 1 January 2012, provides a framework for setting up across-the-board network structures nationwide for the protection of children also with regard to sexual violence against children and reinforcing and further developing existing structures. With the protection order of child and youth support services in the case of endangerment of the welfare of a child established in § 8a of the Eighth Book of the German Social Code (child and youth support services – SGB VIII), the order confirmed in writing in § 1 (2) Number 3 SGB VIII of child and youth support services to support children and youth against threats to their welfare is set forth in detail. The family court, by virtue of its office, investigates every threat to the welfare of a child which becomes known and opens proceedings as per §§ 1666, 1666a of the German Civil Code (BGB). If there is a threat to the physical, mental or psychological welfare of a child or to the child's property, and the child's parents are not willing or able to avert the danger, then the family court must take the action required to avert the danger. The 3rd Act to Reform the Protection of Victims' Rights standardizes protection rights especially in criminal proceedings and is to be observed and implemented consistently. In addition, **the act concerning strengthening children and youth** (KJSG)<sup>19</sup> implements important improvements in the area of cooperation for the protection of children. Among other things, KJSG specifies that those required to maintain confidentiality as a result of their employment in the healthcare sector who have submitted data to the youth welfare office in connection with a suspected threat to the welfare of a child should be integrated by the agency of public youth support services in the

subsequent actual process of assessing the threat. KJSG also provides for feedback from the public agency of youth support services to be given to those in the healthcare sector who have reported a suspected threat to the welfare of a child as to whether the youth welfare office has acted or not in order to protect the child or juvenile. As a result of KJSG, collaboration between the youth welfare office and juvenile criminal justice authorities, law enforcement agencies and family court will improve overall. KJSG was enacted on 29 June 2017 by the German Bundestag (the lower house of German parliament). In order to go into effect, it still needs to be passed by the German Bundesrat (the upper house of German parliament).

Moreover, **the German Federal Government's Action Plan 2011 for the protection of children and youth against sexual violence and exploitation** as well as for effective prosecution and improvement of the help and support of victims and education and sensitization of relevant professional groups.

<sup>18</sup> <https://tinyurl.com/yyag32b6>

<sup>19</sup> Right to update reserved.



Within the context of SGB VIII, children affected by trafficking or exploitation are entitled to protection and support regardless of their witness status or their willingness or unwillingness to cooperate in the criminal proceedings. In actual practice, however, there is not always confidence to take action in cases of trafficking in children. The Criminal act itself can take various forms of exploitation, frequently sexual exploitation. Albeit, child abuse is also used to conceal the exploitation for another reason. The abuse is frequently a means of placing a child in an exploitive situation or keeping the child in that situation. Due to the their complexity and high evidential requirements, investigation proceedings with regard to trafficking in children sometimes fall back on the offence of child sexual abuse or of inducing minors to engage in sexual activity. But failing to distinguish between the offence of child sexual abuse and trafficking in and exploitation of children leads to an insufficient offering of protection and help. If only the abuse and not the underlying organized context is exposed, the consequences for the children in question may be severe. Special protection and rights, e. g. with regard to safe accommodations or right of residence, would then not be considered.

Further, special circumstances such as flight and migration may lead to increased vulnerability. For this reason, under the leadership of the German Federal Ministry for Family, Senior Citizens, Women and Youth (BMFSFJ) and UNICEF, together with many partner organizations, **minimum standards for the protection of refugees and migrants in refugee accommodation centres** were developed, which are to be applied to the accommodation of foreign minors<sup>20</sup>. The minimum standards contain a differentiated focus on children and youth as a group which is in particular need of protection.

<sup>20</sup> Minimum standards for the protection of refugees and migrants in refugee accommodation centres (2017): <https://tinyurl.com/yxgmfa6c>

# 4

## Target definition of the cooperation concept

### 1. Protecting children and young adults by means of structured collaboration

By creating a cooperation mechanism in the federal state, all children between the ages of 0 and 18 years, as per the definition of the UN-CRC, who are potentially<sup>21</sup> or actually victims of trafficking or exploitation, are to be protected regardless of their citizenship or the place of their permanent residence. Thus German children as well as children from EU member states and non-EU countries who are victims and survivors of human trafficking are to be included in state cooperation concepts. Child and youth support services do not differentiate between German and foreign children and youth. In SGB VIII the principle is defined that every child has »a right to promotion of the child's development and to education to become an independently responsible personality capable of being part of a community«<sup>22</sup>.

Regarding the realisation of this right, youth support services are to especially »[...] protect children and youth against threats to their welfare«<sup>23</sup>. The cooperation concept is also to be used for the group of young adults between 18 and 21 years of age. On the one hand, this extension corresponds to the content of the provision of § 41 SGB VIII, which governs the help and follow-up care for young adults. On the other hand, it takes the German Criminal Code into consideration, which rules that specific elements of an offence apply in the case of trafficking in minors or victims under the age of 21 years. Children of all genders are covered by the protection aim. In view of the different needs of children and the offering of the support system, however, it is absolutely recommended that there is at least differentiation between girls and boys.

A coordinated cooperation mechanism is to help in better identifying victims and survivors and initiating adequate protection measures faster. Children and young adults are to be spared an unnecessarily long gauntlet through various institutions thanks to cooperative collaboration.

<sup>21</sup> This definition is found in the Council of Europe Convention on Action against Trafficking in Human Beings (SEV 197), Article 4d and e in conjunction with Article 13 (1) and Article 10 (1), (3) and (4) SEV.

<sup>22</sup> § 1 (1) SGB VIII.

<sup>23</sup> § 1 (3) SGB VIII.

Moreover, consistently implementing and applying provisions on victims' rights enables criminal cases to be processed with greater care.

## 2. Considering all forms of exploitation

In Germany, since the law concerning implementation of Directive 2011/36/EU in the autumn of 2016<sup>24</sup>, the following forms of exploitation are specified as trafficking in human beings according to criminal law: exploitation in the case of engaging in prostitution or other forms of sexual exploitation, work exploitation, exploitation in the case of engaging in begging, in the case of committing criminal acts, slavery or practices which are similar to slavery, serfdom, trafficking in human beings for the purpose of removing organs. Country cooperation agreements are to cover all of these forms of exploitation.

## 3. Promoting identification, protection and support of victims who are minors

Children affected by trafficking may draw attention as suspected victims and be identified or investigated, they can be approached at their workplace or they declare themselves victims/survivors having contacted the support network.

Frequently, however, the state's protection mandate is not acted on since the exploitative or coercive situation is not recognised. Victims of human trafficking are generally difficult to identify because they often fail to seek help of their own accord.

They often find themselves in a situation which is characterised by fear, menace, violence and a lack of legal knowledge and language skills, and which may also involve traumatisation. Children and youth in such situations find it difficult to trust adults. Consequently, in the case of minors, it is even more unlikely than in the case of adult victims that they will report the human trafficking or exploitative situation on their own initiative.

Children and youth who are affected by human trafficking often do not feel that they are victims or that they are being exploited. When children are forced to commit criminal acts, the authorities often perceive them as offenders, e.g. if a theft has been committed, instead of identifying them as victims. Perpetrators consciously take advantage of this. The children in question are put under so much pressure that they are not inclined to open up to anyone. The entities involved need to recognize the exploitative system. Awareness must be raised at least with regard to youth welfare offices and legal custodians, the police, counselling centres and employees of the German Federal Office for Migration and Refugees. Strategic collaboration between these entities can make it possible to achieve improved and faster identification, which is the first step towards protecting and supporting child victims and survivors. Training and further education are essential for this. Lists of indicators can be consulted to facilitate recognition of children and youth as victims of human trafficking.

A list of indicators is provided in the Annex.

<sup>24</sup> Law concerned with improving the battle against trafficking in human beings and concerned with amendment of the German Central Registry Law (BZRG) and the Eighth Book of the German Social Code (SGB) of 11 October 2016, BGBl. Part I, 2016, Number 48 of 14 October 2016, p. 2226.

# 5

## On the way to a cooperation mechanism in the federal state

### 1. Naming cooperation partners and their responsibilities

The following entities play a major role within the scope of collaboration for protection and support in the case of trafficking in and exploitation of children:

- Youth welfare office
- Police and public prosecution office, criminal court and family court
- Specialised counselling centre
- Healthcare system
- Aliens registration office and the Federal Office for Migration and Refugees (BAMF)
- In addition, good communication between the local education authority and parents/guardians is important.

It is recommended that responsibilities be specified, and reflect any state-specific peculiarities, in order to provide for an understanding of the roles which enable the respective mandatory action, as well as action options of the other entities involved.

#### Jurisdiction of the youth welfare office and family court

The youth welfare office of the child's city is responsible for fulfilment of the **protection mandate**<sup>25</sup>. The youth welfare office is entitled to take a child or youth into care of the state if a child or youth requests such action or if there is imminent danger to the welfare of the child or youth which makes taking the child or youth into care of the state necessary, and the custodial persons do not object or it is not possible to obtain an order from the family court in time (§42 (1) Sentence 1 Number 2 SGB VIII). If these conditions are given, youth welfare office staff must remove children and youth from this situation and take them into care of the state, even if this means taking them from their own family. The youth welfare office is then authorised to place the child or youth with a suitable person (e.g., with an emergency foster family), in an appropriate facility or in another form of residence (e.g. group home or assisted single-person residence).

<sup>25</sup> § 8a SGB VIII, § 1 (3) Number 3 SGB VIII.

If the custodial persons object, the youth welfare office must assess whether the child can be turned over to the custodial persons. If according to the assessment of the youth welfare office the welfare of the child is jeopardised, then the youth welfare office must obtain a decision from the family court. The youth welfare office is also authorised and required to take foreign children/youth into temporary care of the state as soon as unaccompanied entry into Germany is ascertained. A foreign child or youth is generally deemed to be unaccompanied if entry into the country is made without the accompaniment of a custodial person, legal guardian or parent; this also applies if the child or youth is married. Minors who after entering the territory of a member state are abandoned there without accompaniment are also unaccompanied.

As is applicable to German children and youth, in the case of foreign minors, the youth welfare office is responsible for ensuring that such minors are placed for the duration of care of the state (temporarily) with an appropriate person, in an appropriate facility or in another type of accommodation temporarily and the youth welfare office is also responsible for the welfare of the child or youth. Custody can only be terminated once the subsequent placement of the child or youth has been finalised. After completion of the clearing process within the scope of custody, which among other things serves the purpose of determining individual requirements in terms of youth support measures and verifying whether the unaccompanied minors have relatives in Germany or in another EU member state, the children and youth are provided with developmental support in the form of full-time care (§ 33 SGB VIII), group home care or other assisted living forms (§ 34 SGB VIII) or intensive individual social-educational support (§ 35 SGB VIII) or in the framework of youth social work in a living situation with social-educational support (§ 13 (3) SGB VIII). As of commencement of the (temporary) custody, the youth welfare office is immediately authorised and required by law to undertake all legal action

necessary for the welfare of the child or youth; in doing so, the youth welfare office is to involve the child or youth, and the presumed will of the custodial person, legal guardian or parent is to be considered, § 42a (3) SGB VIII and § 42 (2) Sentence 4 SGB VIII. Within the scope of this temporary »right to emergency representation«, the legal representation of the unaccompanied minor is thus ensured, with consideration of individual interests.

Children and youth are entitled to be consulted by the youth welfare office without the knowledge of the custodial person if the consultation is necessary as a result of an emergency or conflict situation and if the purpose of the consultation would be impeded by notification of the custodial person. The requirement for an emergency or conflict situation to present would cease to apply with KJSG's going into effect.

Moreover, the youth welfare office advises those required to maintain confidentiality as a result of their employment within the scope of their right to advise as per § 4 (2) Sentence 1 of the German law on cooperation and information for the protection of children (KKG)<sup>26</sup>. The professionals required to maintain confidentiality as a result of their employment specified in § 4 (1) KKG are authorised, in case of a suspected threat to a child's welfare, to transmit the data to the youth welfare office which the youth welfare office requires to take further action (see Page 50, Section V4).

§ 8a SGB VIII specifies how the youth welfare office is to proceed if a suspected threat to the welfare of a child becomes known and the **family court** is involved. If there are indications that a child is a victim of human trafficking and the child's physical, mental or spiritual welfare is at risk as a result, then the family court is **obligated to open legal proceedings**. There is no need for an application to be filed for this. The court must follow up on information received from the police and public prosecution office, the youth welfare office, the children's facility,

<sup>26</sup> Article 24 Directive 2013/33/EU on the reception of applicants for international protection – § 42a SGB VIII 27, §§ 12, 14 (2) Number 3 AsylG.

the school, teachers and physicians or third parties such as neighbours or relatives. If the child's parents cannot be reached – as in cases of kidnapped or unaccompanied or separated children, then the family court rules suspension of parental care and appoints a guardian for the child<sup>27</sup>. If on the other hand the parents can be reached but are unwilling or unable to avert the threat to the welfare of the child, the family court must take the action required to protect the child as per §§ 1666, 1666a BGB. In the case where the parents can be reached this action can range from reprimands, orders and prohibitions all the way to partial or complete suspension of custodial rights or separating the child from the parental family. However, separating a child from the child's parents against their will involves the fulfilment of strict prerequisites<sup>28</sup>. In particular, it is only permissible if it is not possible to respond to the threat in some other way, also not by means of public assistance<sup>29</sup>. In the case of a threat to the welfare of a child, it is absolutely necessary to involve the youth welfare office in the proceedings<sup>30</sup>.

The proceedings are prioritized and their execution accelerated<sup>31</sup>. At the latest one month after proceedings commence, an early initial appointment for argument is to take place with all of those involved. In actual practice, this way of handling proceedings has repeatedly led to interdisciplinary collaboration between family courts, youth welfare offices, lawyers, experts and guardians ad litem.

The family court must hear the child if the child has reached the age of 14 years or if the child is under the age of 14 years if such is warranted<sup>32</sup>. In order to realise the interests of the child, a guardian ad litem is to be appointed for the child under the prerequisites of § 158 FamFG. The guardian ad litem realizes the interests of the child in the proceedings and advises the child as to the object, procedures and possible outcome of the family court proceedings. For reasons of protection, a child is permitted – in addition to the child's hearing – to be additionally questioned as a witness within the scope of collecting evidence<sup>33</sup>.

### Legal custodians/representation

The legal custodian must avert endangerment and damage within the scope of the assigned statutory duty of care of a minor's person and property. The legal custodian can obtain support through development assistance as per §§ 27 ff. SGB VIII or as per §§ 1800, 1631 (3) BGB from the court<sup>34</sup>.

### Police action

The primary objective of police action is to avert danger. For **averting danger** in the case of human trafficking (to the detriment of children), there are special procedures which permit police to enter premises and ascertain and verify identification during police operations and checks. This makes it possible for the police to avert danger preventively – i.e. even before an initial suspicion involving criminal proceedings – in order to recognize dangers in the first place and ideally prevent them from coming to pass.

<sup>27</sup> § 1674 BGB.

<sup>28</sup> With consideration of the right of a parent protected in Article 6 (2) GG.

<sup>29</sup> § 1666a (1) BGB, § 157 (1) FamFG.

<sup>30</sup> § 162 (1), (2) Sentence 1 FamFG.

<sup>31</sup> § 155 FamFG.

<sup>32</sup> § 159 FamFG.

<sup>33</sup> § 165a FamFG.

<sup>34</sup> See also Bundesarbeitsgemeinschaft Landesjugendämter (2017): Handlungsempfehlung zum Umgang mit unbegleiteten Minderjährigen: [http://www.bagl.jae.de/downloads/128\\_handlungsempfehlungen-zum-umgang-mit-unbge.pdf](http://www.bagl.jae.de/downloads/128_handlungsempfehlungen-zum-umgang-mit-unbge.pdf).



Police-related legislation is a federal state matter and thus varies according to the regulations of the individual federal states. Albeit, sensitive handling of minors is the same in all federal states, regulated consistently throughout the country in Police Service Instruction (PDV) 382 for processing youth-related cases.

In addition, the objective of police action is **effective law enforcement** in order to prosecute perpetrators<sup>35</sup>. **Recognising exploitative situations** is generally difficult the first time contact is made with the child because the child affected either does not feel he/she is a victim, does not see himself/herself as being exploited, is intimidated by the perpetrators or often is afraid for himself/herself and his/her relatives. There is also fear of the police and government measures. The victims and survivors are therefore often unwilling to provide information on a criminal offence. Other victims are so severely traumatised by physical and psychological violence that they are absolutely unable to testify.

However, **personal testimony** in this area is extremely significant in order to prove the offence. Since the principle of immediacy applies to criminal proceedings, the testimony provided by the victim is of the utmost importance.

Without this testimony, a conviction as a result of human trafficking or exploitation is practically impossible, and courts often suspend cases in which the victims have not attended the main proceedings and testified in person<sup>36</sup>. Consequently, the victims must generally be called as witnesses.

A major part of protecting children in the case of trafficking and exploitation is therefore effectively investigating all crimes relating to this, placing charges and prosecuting perpetrators. Witnesses who are available to law enforcement agencies for the entire duration of the proceedings can make a great contribution towards this.

As a result of the significance of the personal testimony, it is only possible to fulfil the police mandate if the police, specialised counselling centres and entities involved in youth welfare, also in connection with questioning victims as witnesses, work together and in the context of the welfare of the child.

For questioning children and youth as witnesses, the provisions of the Guidelines on Criminal Proceedings and Imposition of Fines in Germany (RiStBV), Section 19, apply. These specify exactly under which conditions children and youth are to be questioned as witnesses. Moreover, § 52 (2) StPO is to be observed for the questioning of minors as witnesses.

Accordingly, a minor who is entitled to refuse to give evidence, but who lacks the maturity to understand the significance of the right to refuse to give evidence, can only be questioned if the minor is willing to make a statement and the legal representative consents. Section 19 (4) RiStBV additionally proposes integrating parents, teachers, educators or other parental figures and also contacting the youth welfare office. With regard to credibility, it is also possible to involve experts who have special knowledge and experience in the field of child psychology.

Handling the complex legal material, overcoming difficulties in obtaining evidence, especially in view of finding witnesses amongst victims, as well as requiring special knowledge in this area make it a necessity that the persons responsible possess **a high level of professionalism**. Continuous collaboration and reflection regarding the work of all entities involved is a must. This can take the form of regular meetings of the entities involved so as to ensure an ongoing process of examination, assessment and further development of the cooperation agreements for actual practice and with regard to amendments to the legislation.

<sup>35</sup> See also § 163 StPO – Responsibilities of the police in the investigative proceedings.

<sup>36</sup> Herz/Minthe (2006): Straftatbestand Menschenhandel – Verfahrenszahlen und Determinanten der Strafverfolgung, p. 321.



## Jurisdiction of specialised expert counselling centres

Specialised expert counselling centres for victims and survivors of human trafficking (FBS) are non-governmental organizations. With their expertise and with consideration of the special conditions and life circumstances of the children and youth in question, they offer comprehensive, **holistic and psychosocial consultation** which is in line with their needs and interests. The services available from these counselling centres is easy to access, free of charge and, upon request, anonymous. They offer consultation and accompaniment independent of whether victims and survivors are willing to cooperate with law enforcement and other authorities or testify in criminal proceedings.

The objective is to restore physical and spiritual integrity and maintain it in the long term. Victims and survivors are offered support for their return to a normalised day-to-day routine as well as for the development of future prospects. Specialised counselling centres serve in addition to and in support of the work of child and youth services. Moreover, victims and survivors are helped to become aware of their rights and if necessary are also accompanied during the court proceedings. The core business of the FBS also includes **advising authorities such as youth welfare offices and the police in cases of human trafficking involving adults and children**<sup>37</sup>. Some FBSs additionally have shelters in which they can accommodate victims and survivors. The FBSs have native-speakers available as counsellors and interpreters. The FBS staff are required to maintain confidentiality as per § 203 StGB, but do not have the right to refuse to give evidence before a court of law.

The specialised expert counselling centres for the victims and survivors of human trafficking are networked in the Federal Coordination Office against Trafficking in Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel) (KOK e. V.). KOK promotes the exchange of experiences, has a countrywide network of contacts to specialised counselling centres and supports setting up structures in the federal states.

## Jurisdiction of the healthcare system

The public health authorities commission child and youth health services with conducting annual control examinations in kindergartens, day-care centres and schools. If there is a suspicion that minors have fallen victim to human trafficking, this must be reported to the law enforcement authorities. If within the scope of the health check-ups for children and youth (so-called U and J check-ups) signs of neglect or maltreatment or abuse of the child are evident or there is suspicion of human trafficking, the physician performing the examination must initiate the corresponding steps required in compliance with KKG.

If physicians ascertain that patients who have not reached the age of majority have become victims of human trafficking, they are required to treat and document any injuries and initiate help. In doing so, they must observe their legal requirement to maintain confidentiality, a violation is punishable by law as per § 203 StGB. In case of suspected endangerment of the welfare of a child, § 4 KKG authorises those required to maintain confidentiality as a result of their employment such as physicians to send the data needed to assess the degree of risk to the youth welfare office so that this transmission of data does not constitute a violation of the physician's obligation to maintain confidentiality. For more detailed explanations on how to proceed, refer to Page 50, Section V.4.

<sup>37</sup> A list of specialised expert counselling centres for the victims and survivors of human trafficking can be accessed under <https://www.kok-gegen-menschenhandel.de/fachberatungsstellensuche>.

**The German Prostitute Protection Act (Prost-SchG)**, which went into effect on 1 July 2017, prescribes that, prior to commencing an activity relating to prostitution, persons must undergo a health consultation provided by the authority responsible for public health services (which are predominantly the public health authorities). Proof of health consultations must be presented upon initial registration of the activity as well as upon renewal of the registration certificate. The German Prostitute Protection Act is however only applicable to engagement in prostitution by persons over 18 years of age. Availing oneself of sexual acts performed by minors for remuneration, promotion of prostitution of minors and any act which aims to draw some advantage from the prostitution of minors are punishable by law.

For young adults, i.e. for persons in the age group of 18 to 21 years, there are special provisions in the German Prostitute Protection Act (ProstSchG) due to the particular vulnerability of this age group. Thus, after registering their activity, young adults must undergo the health consultation every six months, persons over the age of 21 years, on the other hand, every 12 months. According to § 10 (2) ProstSchG, the health consultation is to be adapted to suit the personal life situation of the person being advised and is in particular to cover questions regarding the prevention of disease, regulation of conception, pregnancy and the risks of alcohol and drug abuse. The advised person is to be informed as to the confidentiality of the consultation and be given an opportunity to disclose any existing predicament or emergency situation. Third parties can be involved in the meeting with the consent of the authority and the person required to register only for the purpose of language mediation.

**If the children in question are not German citizens, then the following entities are to be additionally involved:**

## Aliens registration offices

The aliens registration offices examine the status of the victims of human trafficking with regard to right of residence on the basis of legal right of residence, in particular the Residence Act. They account for the special protection needs of victims of human trafficking who have not reached the age of majority. They work together with the youth welfare office, which can make use of the expertise of specialised counselling centres if the victim consents to this. Among others, in cases of § 25 (4a) of the Residence Act (AufenthG), the aliens registration offices involve the corresponding public prosecution office or the criminal court or – if not yet known to such – the police authorities in whose jurisdiction the place of residence is located<sup>38</sup>.

In every individual case, the aliens registration office will immediately be notified by the youth welfare office about the presence of the foreign minor and the respective action initiated. If a foreign person is required to leave the country and there are actual indications that he/she has become a victim of human trafficking, the aliens registration office grants a grace period of at least three months for recovery and consideration, i.e. the person is set a deadline by which they must leave the country of at least three months<sup>39</sup>.

The actual indications of human trafficking can be provided by the person himself/herself or that person's legal guardian by means of a plausible statement made to the aliens registration office; likewise this information can be supplemented by the youth welfare office, police or public prosecution office. To illustrate this, reference is made in this context to the amendment to the Cooperation Order of Lower Saxony, wherein the statement of the specialised counselling centre for victims of human trafficking regarding indications of human trafficking is recognized by the aliens registration

<sup>38</sup> § 72 (6) AufenthG.

<sup>39</sup> § 59 (7) AufenthG.

office independent of any statement from the public prosecution office or police.

The aliens registration office also examines whether the foreign minor can be granted a residence title (for this, see section »Residence title«, p. 32).

## Federal Office for Migration and Refugees

Human trafficking can be a reason for fleeing, however it is more likely to be a phenomenon which occurs while en route. Granting protection can then be considered if the victim who has not yet reached the age of majority is subject to persecution by state or non-state entities in his/her country of origin, he/she is at risk of great harm in his/her country of origin, repatriation in the target country would constitute a violation of the European Human Rights Convention or there is considerable, actual danger to body, life or freedom in that country. If the matter involves an unaccompanied minor, then the legal representative can submit a written application for asylum to the Federal Office for Migration and Refugees<sup>40</sup>. If the (unmarried) minor enters Germany with his/her parents and the parents have applied for asylum, then the application for asylum is deemed to also include the minor, § 14a (1) Asylum Act (AsylG).

Just like all applicants for asylum, children and youth have an obligation to cooperate to the best of their ability in the investigation as per § 15 AsylG. The Federal Office decides on the application for asylum on the basis of the hearing. Since unaccompanied minors are deemed a group requiring special protection with special guarantees for their proceedings for granting the right of asylum, special officers support their proceedings for granting the right of asylum. During the hearing, particular attention is paid as to whether there are any indications of definitive, child-specific reasons for fleeing.

For support, it is possible to involve a specialised expert counselling centre for survivors and victims of human trafficking.

## Interpreter services

Interpreters are absolutely necessary for initiating contact with the corresponding staff of the public authorities and/or counsellors if a child is unable to understand or speak German. They therefore have a stabilising role. In addition to interpreting language, interpreters often have an additional function as interpreters of culture. Publicly appointed interpreters are required to maintain confidentiality. It may be beneficial if one and the same person is used for the various parts of the proceedings. This would counteract problems which arise when different terms are used in the translation of spoken language. The staff of the specialised expert counselling centres also work closely with experienced interpreters.

**The involvement of further entities depends on the type of exploitation and/or the purpose of the trafficking in human beings:**

## Education authority

The state education authorities run a school psychology counselling centre which not only advises the student body in case of family- or school-related problems, but also helps teachers with regard to questions on how to work with students and parents. This counselling centre is to be viewed as an orientation aid for teachers and not deemed equivalent to the correspondingly experienced expert as per § 8b (1) SGB VIII.

<sup>40</sup> § 14 (2) Number 3 AsylG.

If teachers in the school detect signs that their students may be victims of human trafficking, they should continuously document their perceptions and observations and notify the school principal. As per § 8b (1) SGB VIII, they are entitled to obtain advice from a correspondingly experienced expert vis-à-vis the local public agency of youth support services. In the case of an obvious threat to the welfare of a child, the youth welfare office is to be involved directly. As a rule, however, there is a meeting with the parents before the youth welfare office is involved. In order to prevent jeopardising the welfare of the child, the school and the youth welfare office work closely together. For support, it is possible to also involve a specialised expert counselling centre for survivors and victims of human trafficking.

## German branch of the International Social Service (ISS)

The Internationale Sozialdienst im Deutschen Verein für öffentliche und private Fürsorge e. V. (ISD) is an expert federal German office for individual case work between countries. ISD primarily works on behalf of courts and public authorities and is active as a countrywide expert office and liaison body between domestic and foreign expert social offices, family and guardianship courts in proceedings involving the child protection and child-related proceedings which extend beyond national borders. It is a member of the international non-governmental organization International Social Service and works with non-domestic work partners within this network. If minors are victims and survivors of human trafficking and/or exploitation, it may be necessary to clarify matters with offices abroad if, for example, the child previously resided abroad or custodial persons or family members reside abroad. Within the scope of verifying the welfare of the child, the youth welfare office or the family court can order ISD to clarify the identity and previous history of the child, to contact custodial persons or family members and investigate their situation.

Based on the reports received from the offices abroad, it is possible to determine further perspectives: whether it is in the interests of the child to return to the country of origin, move to a third country or remain in Germany and whether this ensures protection and further support. ISD coordinates and supports a return and more in-depth support of the child and the child's family in the country of origin or in a third country in conjunction with the office abroad.

## 2. Observing victims' rights

Victims of human trafficking who have not reached the age of majority have special protection rights which are based on the specified international legal instruments and their implementation in Germany<sup>41</sup>. These protection rights are to be implemented within the scope of cooperation between all experts and structurally anchored in collaboration between countries. The following section can only provide a short overview of the most important rights of victims:

### Identification

Child victims of human trafficking must be identified as such so that protective rights can be applied to them and so that they are not criminally processed as offenders.

A list of indicators to facilitate the identification of potential victims is contained in the Annex. Not every exploitative situation involves trafficking in children. Regardless of the criminal categorisation, however, every form of exploitation of a child is a threat to the welfare of the child and requires differentiated assessment of the endangerment and the introduction of measures to protect the child.

<sup>41</sup> Rights of victims, information paper of the Office of the Convention on Action Against Trafficking in Human Beings of the Council of Europe.

## Consideration and stabilisation period

Victims of human trafficking who are required to leave the country have a legal claim to a grace period of at least **three months before they are required to leave the country**, also known as a »consideration and stabilization period« at specialised counselling centres. During this time, victims and survivors are allowed to consider whether they wish to cooperate with the authorities within the scope of investigation proceedings<sup>42</sup>. It is generally not permitted for them to be deported during this grace period unless the prerequisites of § 59 (7) Sentence 3 AufenthaltG are given. Prior to a deportation, it must be ensured that, in the country of origin, the minor will be turned over to a family member, a custodial person or an appropriate reception facility. If it is not possible to positively ascertain this, the deportation cannot be carried out<sup>43</sup>. The authorities should also recognize the expertise of the specialised counselling centres and not merely demand a confirmation from the law enforcement authorities that this is a victim of human trafficking. To illustrate this, reference is made in this context to the amendment to the Cooperation Order of Lower Saxony, wherein the statement of the specialised counselling centre for victims of human trafficking regarding indications of human trafficking is recognized by the aliens registration office independent of any statement from the public prosecution office or police.

## Safe accommodation and care

All child victims are entitled to safe and age-appropriate accommodation and access to medical, psychological and social care<sup>44</sup>.

The accommodation of minors affected by trafficking and exploitation is to be in an appropriate facility of child and youth services, which is suitable for the welfare of the child as well as for the increased need for safety on the part of minors.

Unaccompanied minors are provided with a guardian who represents them and acts in the best interests of the child. For unaccompanied child victims of human trafficking who have not reached the age of majority, benefits as per SGB VIII are ensured which cover accommodations, care, social-educational accompaniment and guidance, healthcare and legal counselling. The local jurisdiction of the public agency of social welfare services is determined on the basis of the actual place of residence of the child.

If the child victim of trafficking enters the country with his/her parents, asylum seekers' benefits are typically considered initially or – after recognition – benefits as per SGB II. In the first case, the asylum seekers' benefits authorities are responsible, which are generally the social welfare bodies<sup>45</sup>; in the second case, the job centres have jurisdiction. For victims of human trafficking, the internal procedure of the Bundesagentur für Arbeit (Federal Labour Agency) regarding § 7 (1) SGB II is to be observed! If the parents are unable to work (illness, old age) and AsylbLG no longer applies, benefits as per SGB XII are considered.

For those entitled to benefits as per AsylbLG, it is possible for the costs of interpreting services during therapies and medical treatments to also be paid for during the first 15 months of their stay as per § 6 AsylbLG. After 15 months, the provisions in SGB XII apply accordingly to those entitled to benefits as per AsylbLG. SGB II and SGB XII as subordinate benefits systems can apply in special individual cases if there is

<sup>42</sup> § 59 (7) AufenthaltG.

<sup>43</sup> § 58 (1a) AufenthaltG.

<sup>44</sup> § 42 (2) Sentence 3 SGB VIII and/or in conjunction with § 42a (1) Sentence 2 SGB VIII.

<sup>45</sup> This is determined by the State Government (§ 10 AsylbLG).

irrefutable need for the coverage of the costs of interpreting services within the scope of psychotherapeutic treatment for refugees. Subordinate means that only essential requirements can be covered which cannot be covered in any other way and thus neither by means of any higher-ranking benefits systems. The legal basis for bearing these costs in SGB XII can, in the case of recognised refugees and others similarly entitled to benefits, be § 27a (4) SGB XII.

Accordingly, the individual standard rate in an individual case is higher than the applicable standard rate category if, for the prospective duration of more than one month, the requirements resulting from the standard requirements are unavoidably considerably higher than the average consumption figures based on the standard requirements determined.

Access is to be granted to education and training as an aid for the children to become (re-) integrated in society.

## Psychosocial support for the proceedings

As per § 406g (3) Sentence 1 StPO, child victims of trafficking have a right to free (professional) psychosocial support before, during and after criminal proceedings. NB: In order to claim psychosocial support for the proceedings, an application must be made to the court with jurisdiction (§ 162 StPO)!

## Legal assistance

Child victims of trafficking are entitled to legal assistance, with the costs borne by the state, which provides advice during criminal proceedings (so-called victim's attorney, §§ 397a, 406h StPO). They are to be informed of their rights, to the extent that they are able to understand these rights.

## Residence title

The Residence Act contains a special humanitarian provision for victims of human trafficking (§ 25 (4a) AufenthG). According to this provi-

sion, a residence title is to be granted if, among other reasons, the victim declares his/her willingness to testify as a witness in the criminal proceedings relating to the offence committed against him/her. After conclusion of the criminal proceedings, the residence permit should be extended if humanitarian or personal reasons or public interests require the person's further presence in the federal territory. This provision also applies to minors. Moreover, for minors – regardless of their participation in criminal proceedings – the granting of a residence title on humanitarian grounds is also an option to be considered as per §§ 23a, 25 (4) or (5) AufenthG. Minors, who after conclusion of their asylum proceedings are granted a residence permit as a person entitled to be granted asylum or as a refugee, generally have the right to the subsequent immigration of their parents as per § 36 (1) AufenthG.

The subsequent immigration of family members related to persons entitled to subsidiary protection remains ineffective until 31 July 2018; after this date, as per § 36a AufenthG (new version) members of the core family of a person entitled to subsidiary protection can be granted a residence permit for humanitarian reasons within the scope of a limit of 1,000 persons/month for the purpose of reuniting the family. Humanitarian grounds are given in particular in the case of a child affected who is a minor and single. The welfare of the child is to be considered especially for examining whether there are humanitarian grounds as well as for the selection process within the scope of the limit. §§ 22, 23 AufenthG remain unaffected.

In the case of a positive asylum verdict, victims and survivors are entitled to be granted a residence permit as per § 25 (1) or (2) AufenthG, see figure on p. 46.

## Protection of privacy and identity

The personal data of affected children and youth must not be made public and may only be saved for specific purposes. The place of residence can be kept secret, even if criminal



charges are filed. The law provides for the option of specifying a different reliable address (address of the law firm of the legal counsel, address of the specialised counselling centre). In the case of threats, the police take action to avert danger. In the case of domestic violence against victims who have not reached the age of majority, the violent person may be ordered to vacate the premises by the police. Also possible are measures of the family court (e.g. order to vacate the premises or revocation of right of access and contact) within the scope of proceedings as per § 1666 or § 1684 BGB or – if the violence is not by a person having care and custody of the child – a restraining order within the scope of proceedings as per protection against violence legislation.

### Protection during criminal proceedings

Victims of human trafficking are witnesses entitled to private accessory prosecution and as such have a right to be assigned a victim's attorney (§ 397a, 406h StPO). Children and youth require special protection during the entire criminal proceedings in the context of § 48 StPO. They thus have special rights:

- Separate examination of defendants and victim witnesses who are children, § 247 StPO
- Video-based examination, § 247a StPO, strict avoidance of multiple examinations
- Exclusion of the public from the hearing, § 171b German Courts Constitution Act (GVG)
- Questioning during the main hearing only by the judge
- Age-appropriate examination in rooms designed to be suitable for children; in matters involving the protection of youth, juvenile courts have jurisdiction, § 26 GVG
- Maintaining the secrecy of the residential address, the specification of an address to

which documents can be served is sufficient, § 68 StPO (address of the law firm of the legal counsel, office of the specialised counselling centre). However, it must be observed that the criminal court will view the registry office information for serving the summons to the main hearing and duly notes the address in the file.

The criminal court and the public prosecution office can nevertheless be appealed to so that the address is not noted in the file.

- Application for written confirmation of the filing of charges, confirmation is useful for measures relating to accommodation, social welfare benefits, at the aliens registration office and measures in connection with the protection against violence legislation
- Information on the status of the proceedings, upon the request the notification is to be translated, §§ 406d, 397, 171 StPO, 187 GVG
- Right to information on rights outside of the criminal proceedings § 406j StPO in easy-to-understand language (assertion of claims for compensation for pain and suffering, provisions of the protection against violence legislation, compensation claims for damages, psychosocial support for the proceedings) as well as the right to information about authorisations in the criminal proceedings as per § 406i StPO
- Child victims of trafficking have a right to free psychosocial support before, during and after criminal proceeding.

## Dispensing with prosecution of the offence

In addition to the above-mentioned (special) rights, in the case of prosecuting offences which may have been committed by juvenile victims of human trafficking, their predicament is to be taken into consideration. If the prerequisites are given, the corresponding proceedings are to be stopped as per the pertinent provisions of the German Youth Courts Law (§§ 45 and 47 German Youth Courts Law – JGG). Also as per § 154c (2) stop, the public prosecution office can dispense with prosecution of the offence in the case of victims of human trafficking.

## Repatriation

The authorities responsible for repatriation take on the task of clarifying the child's perspectives and the situation in the country of origin. A return to the country of origin or to a third country can only be made after an investigation of the child's welfare by the youth welfare office. A safe return to the country of origin is made in coordination with the police and the public prosecution office who require the testimony of the child victim. The child protection authorities of the country of origin must be notified of the repatriation and any necessary child protection measures. This can be done via the International Social Service or via the main authorities at the German Federal Office of Justice. The International Social Service or a specialised expert counselling centre for victims and survivors of human trafficking can support putting the child and the child's family in contact with local counselling and assistance programmes in the countries of origin.



Victims of forced prostitution and/or human trafficking have access to the REAG/GARP programme (Reintegration and Emigration Programme for Asylum-Seekers in Germany (REAG)/Government Assisted Repatriation Programme (GARP)). The repatriation support and start assistance programme is a humanitarian aid programme. It promotes voluntary repatriation/further migration and offers start benefits. The programme is organised by the International Organization for Migration (IOM) on behalf of the Federal Republic and the states and run in collaboration with municipal authorities, charitable organizations, specialised counselling centres, centralized repatriation counselling centres and the United Nations High Commissioner for Refugees (UNHCR). Refer to the information sheet as well as the leaflet on support for more information (available at [www.bamf.de/rueckkehr](http://www.bamf.de/rueckkehr)).



### 3. Representing orientations for action and options for cooperation

Orientations for action are to arise from the cited responsibilities and the rights of victims. These do not constitute a complete list and are to be adapted on a country-specific basis. Collaboration between all entities involved should follow these guiding principles:

i

**Guiding principle 1:** Ensuring that the interests and the protection of the child must be the primary consideration

**Guiding principle 2:** The child and the child's parents, custodial persons or legal representation are provided with access to information at all times as long as this does not place the effective protection of the child at risk; the opinion and needs of the child are heard at every step of the support process

**Guiding principle 3:** Enabling the exchange of information and trusted communication between all entities involved as long as such is not in conflict with the concerns of the criminal proceedings or the protection of the victim, protection of youth or protection of privacy

**Guiding principle 4:** Planning measures in coordination with the other entities involved in order to avoid redundant tasks, time delays and unnecessary strain on the child (e.g. as a result of repeated questioning)

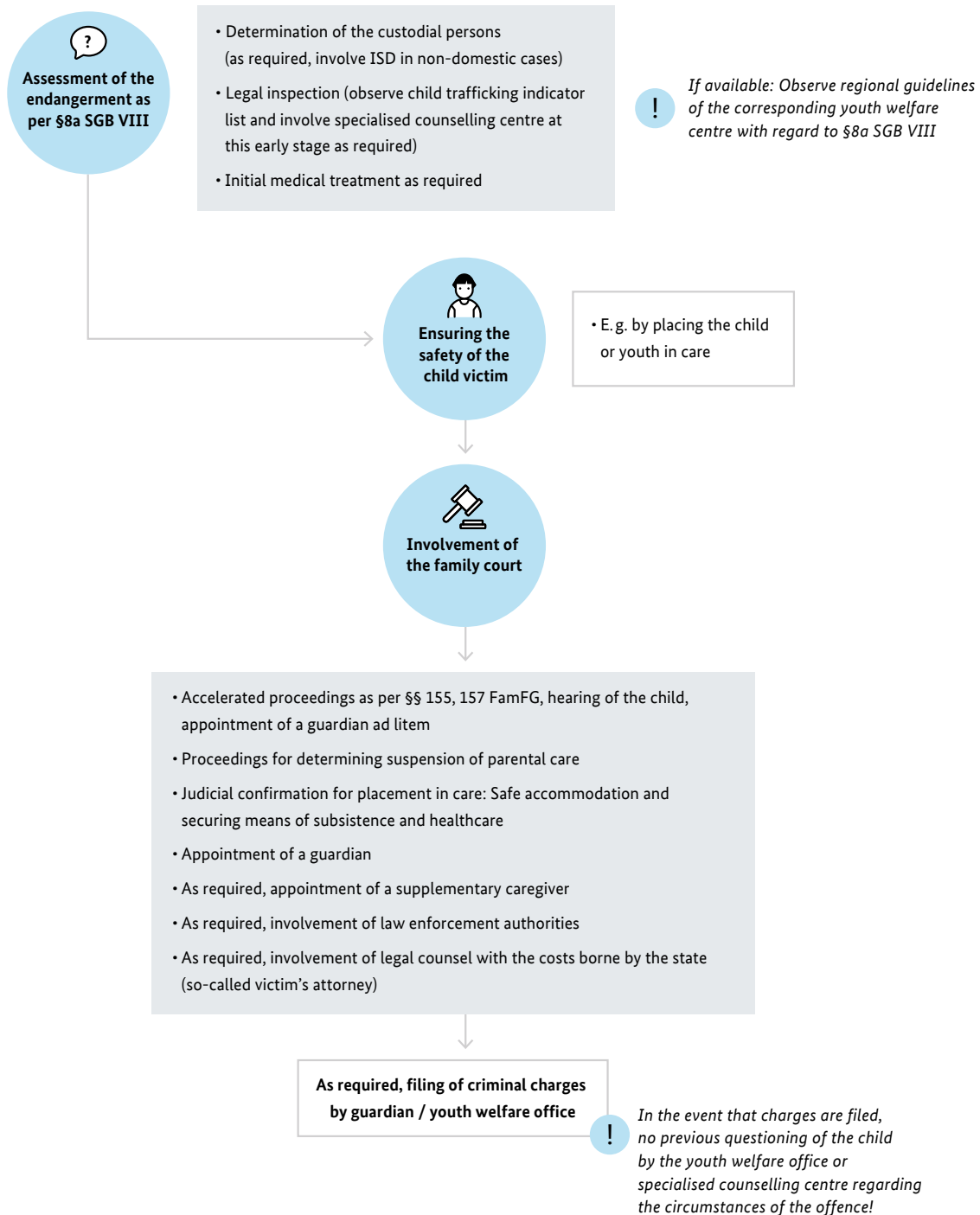
**Guiding principle 5:** If there is no consensus as to a mutual solution between the entities involved, a minimum consensus must be reached nevertheless in the interests of the child

In addition, it is to be pointed out that the reporting of an offence listed in § 138 (1) Number 6 StGB is mandatory for everyone as per § 138 StGB.

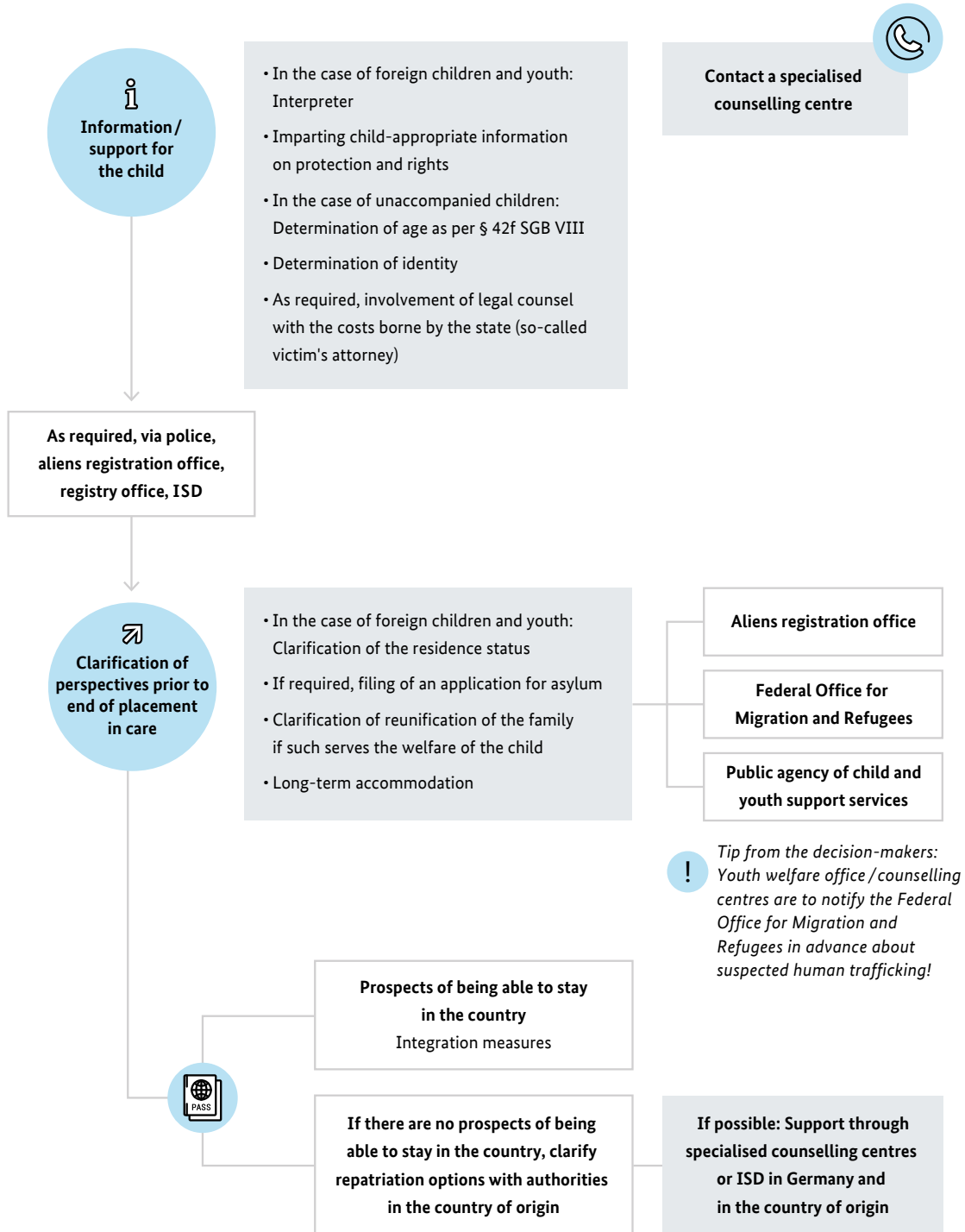
## Orientation for action of the youth welfare office

The figure provides orientation and cannot take the place of investigation of the individual case.

**Initial situation: Report made to the youth welfare office concerning suspected trafficking involving children or direct contact of the youth welfare office with the child**



→ Special points in the case of foreign children and youth





## Tips and notes

Orientation for action of the youth welfare office



Specialised counselling centres for victims and survivors of human trafficking have knowledge not only about sexual exploitation but also about exploitation of labour or being forced to beg or commit crimes; moreover, depending on the case, specific counselling centres are to be involved, e.g. sexual violence against boys.



One and the same person acting as the interpreter generates trust and avoids inconsistencies in terminology. Recommendation: Use a female interpreter for female children and males up to ten years of age, and a male interpreter for male children over the age of ten.



Within the scope of placement in care, forcing the child to stay in locked accommodations is only permissible in exceptional cases and only if the strict prerequisites of § 42 (5) SGB VIII are given. Moreover, forcible confinement can only be considered if the requirements of § 1631b (1) BGB are met in conjunction with the corresponding consent of the person with the authority to decide where the child lives and with the approval of the family court.



Youth welfare offices are not obligated to file criminal charges, but they nevertheless have the option of involving law enforcement authorities if the child in question and the legal representation agree to such (§65 SGB VIII; § 203 StGB).



All children and youth up to the age of 18 years are entitled to psychosocial support for the proceedings free of charge in cases in which human trafficking is suspected (§ 406g (3) Sentence 1 StPO), however an application must be submitted to the court which has jurisdiction (§ 162 StPO)!



Decision-makers at the Federal Office for Migration and Refugees regularly request that they receive notification from the youth welfare office of any suspected cases of human trafficking since victims rarely provide any indication that they are victims.



Children and youth are entitled to legal counsel (a lawyer) free of charge, who provides legal advice (so-called victim's attorney).



The German International Social Service (ISD) offers telephone counselling concerning cross-border questions with regard to child and youth services as well as cross-border child protection: [isd@iss-ger.de](mailto:isd@iss-ger.de), phone: +49 30 62 980-403.



In case of difficulties with authorities in the country of origin, the German Federal Office of Justice can provide mediative support: Central Authority for International Custody Conflicts, [int.sorgerecht@bfj.bund.de](mailto:int.sorgerecht@bfj.bund.de), phone: +49 228 99 410-5212, fax: +49 228 99 410-5401.



Within the scope of their being appointed as legal representation, the youth welfare offices are obligated to clarify the residency status (application for granting of a residence title) or – if the chances of success are good – to immediately file an application for refugee status. The acceptance of a longer undocumented stay is not permissible. As required, the aliens registration office should be contacted so that a temporary residency status can be arranged until the case is clarified. The Residence Act contains a special humanitarian provision for victims of human trafficking (§ 25 (4a) AufenthG).



After submission of an unfounded application for asylum, the opportunities for granting regular residence titles not granted for humanitarian reasons (e.g. for training, employment, attending school) without requiring the applicant to leave and re-enter the country decrease (cf. § 10 (3) AufenthG). Applications for asylum may only be submitted after assessment of the chances of success.

*With the law on improved enforcement of the obligation to leave the country, which went into effect at the end of July 2017, § 42 (2) SGB VIII was amended in such a way that the legal action which must be taken by the youth welfare office within the scope of legal representation includes the immediate submission of an application for asylum for the child or youth in cases in which indications justify the assumption that the child or youth requires international protection in the context of § 1 (1) Number 2 of the Asylum Act, and the child or youth is to participate in this process.*

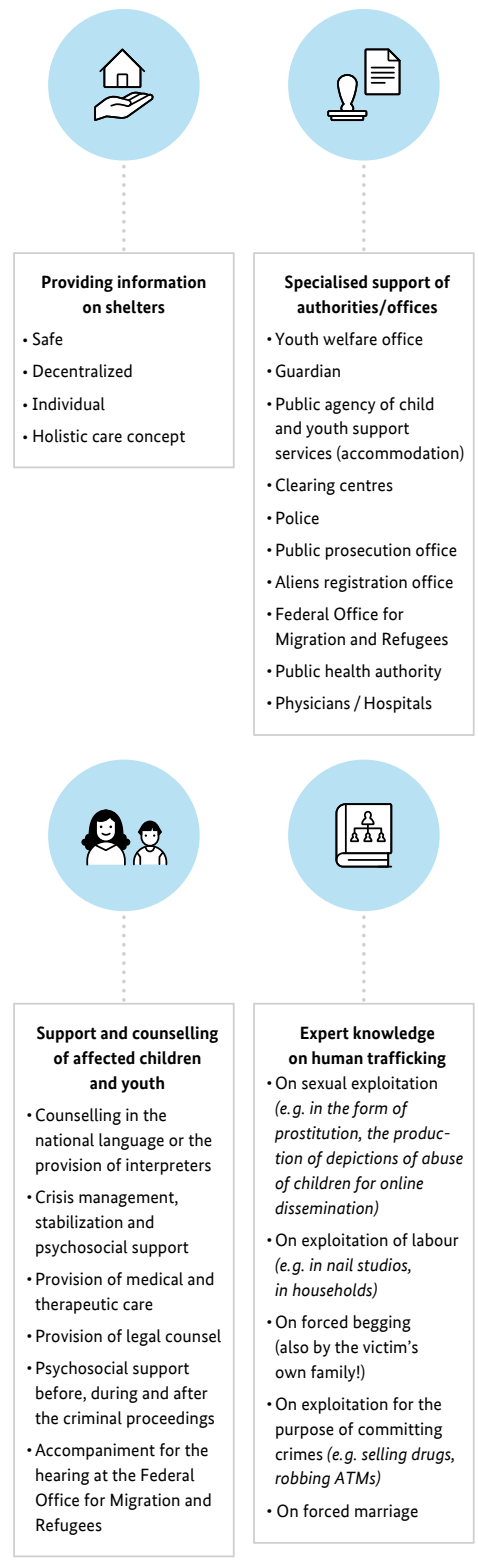
Figure of specialised counselling centres for cases of human trafficking

Specialised counselling centres have specific knowledge and experience in dealing with situations of adult and also minor victims of human trafficking. As a result of their many years of experience, they are able to provide a founded assessment of possible situations of endangerment and should be involved additionally by all entities, especially by youth welfare offices in cases of suspected and actual human trafficking. They are available in a »supporting« capacity for youth welfare offices and guardians, often also taking an active role in counselling, accompanying and stabilising children and youth – always after consultation with guardians, custodial persons or facilities in which minors are accommodated. The basis of the collaboration is trust and the resulting openness arises in dialogue with all partners involved in order to provide children and youth with the best possible protection and support.

Actual work, offers and expertise of the specialised counselling centres are:

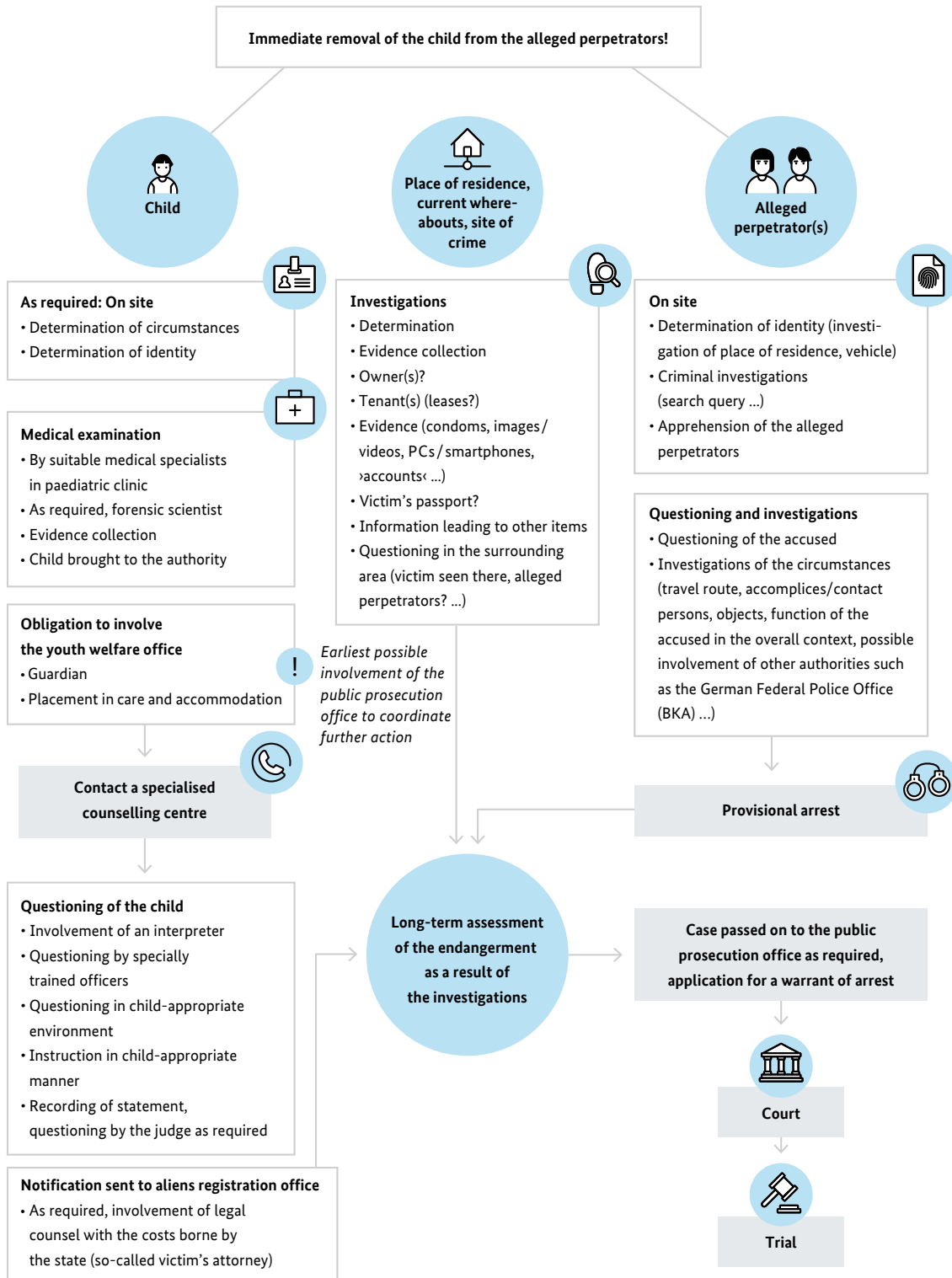
**Specialised counselling centres for victims and survivors of trafficking in human beings**  
([www.kok-gegen-menschenhandel.de](http://www.kok-gegen-menschenhandel.de))

Figure of work and offers of specialised counselling centres



## Orientation for action of the police

The figure provides orientation and cannot take the place of investigation of the individual case.





## Tips and notes

### Orientation for action of the police



One and the same person acting as the interpreter generates trust and avoids inconsistencies in terminology. Recommendation: Use a female interpreter for female children and males up to ten years of age, and a male interpreter for male children over the age of ten.



In the case of aliens, it is recommended that the alien's file be obtained from the city or district office since it may contain important additional information on how circumstances evolved or possible conditions affecting the accused.



Specialised counselling centres, which handle cases of human trafficking, have knowledge not only about sexual exploitation but also about exploitation of labour or being forced to beg or commit crimes; moreover, depending on the case, specific counselling centres are to be involved, e.g. sexual violence against boys.



During the investigation proceedings, questioning of the child by the judge could be arranged for, which is recorded and can be used in the main proceedings instead of questioning the child again.



Victims and survivors can request a translated confirmation of the criminal charge filed as well as the translation of additional pieces of writing from the criminal proceedings.



Children and youth have a right to free psychosocial support for the trial (professional care before, during and after criminal proceedings).



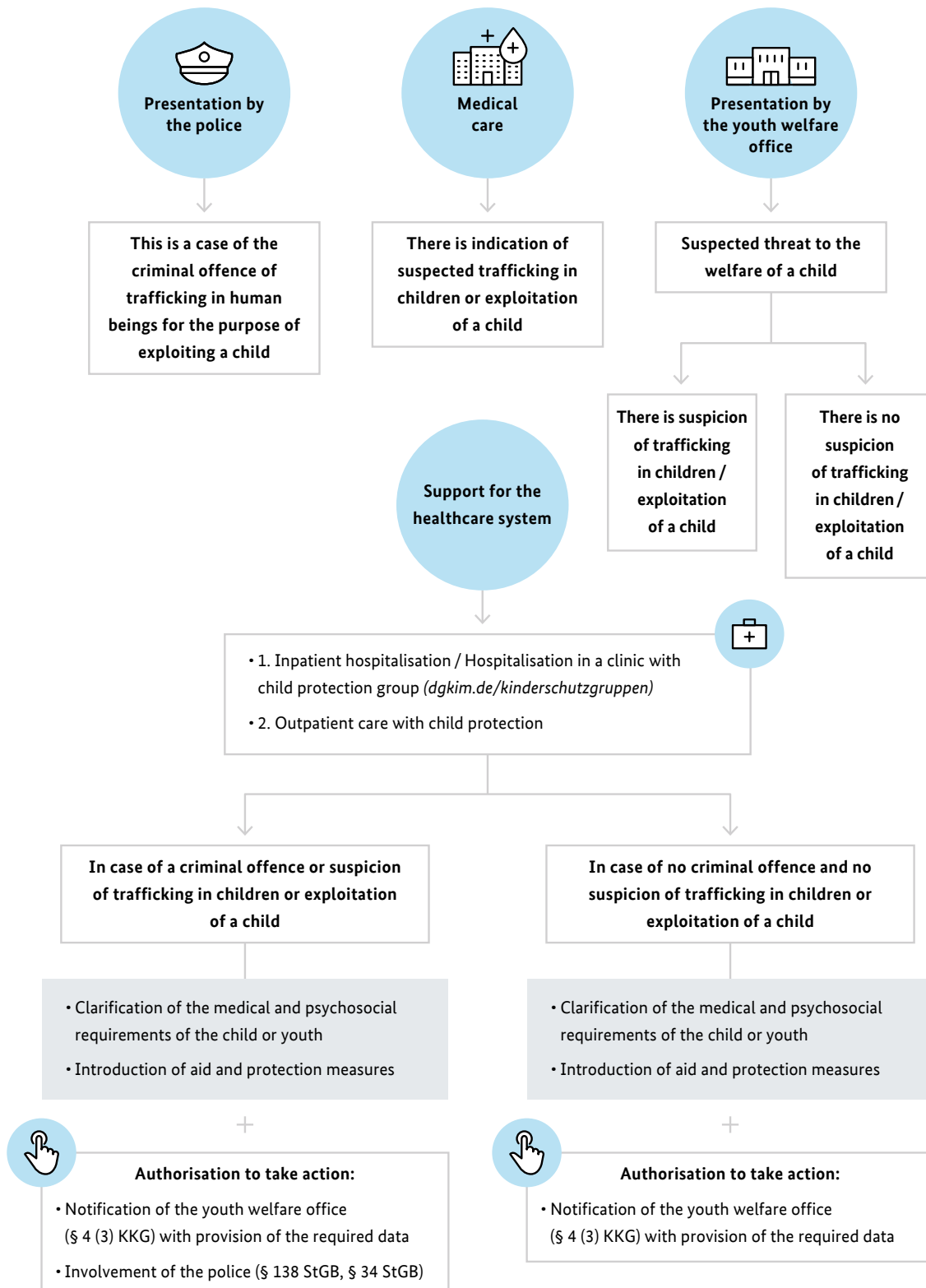
Children and youth are entitled to legal counsel (a lawyer) free of charge, who provides legal advice.



The application for a residence title or the filing of an application for asylum for the victim is the responsibility of the legal representative, in the case of placement in care by the youth welfare office or, if available, an appointed guardian. If an illegal stay is determined, the legal representative, i.e. as required, the youth welfare office or guardian, should therefore be immediately notified about this circumstance.

## Orientation for action of the healthcare system

The figure provides orientation and cannot take the place of investigation of the individual case.







## Tips and notes

### Orientation for action of the healthcare system



At the centre of care by a physician is the child and not the offence of trafficking in human beings. Not until after medical aid has been provided is it to be assessed whether, beyond this, further care by a physician appears to be necessary. Long-term aid however via cooperation structures between the fields of work is important and desired. In the case of ›anonymisation‹, within the scope of counselling, you are required to change the content so that it cannot be traced back to the patient in question.



Physicians can obtain support at any time from the child protection groups of the Deutsche Gesellschaft für Kinderschutz in der Medizin (German Society for the Protection of Children in Medicine). These interdisciplinary associations are usually staffed with specialists from the professional fields of (forensic) medicine, nursing, social work, psychology, child protection and criminology and provide confidence to take action in case of a suspected threat to the physical or mental welfare of children and youth. You will find contact addresses under [www.ag-kim.de/kinderschutzgruppen](http://www.ag-kim.de/kinderschutzgruppen).



Under the number 0800 19 210 00, the medical child protection hotline offers 24-hour, free-of-charge phone support for healthcare professionals ([www.kinderschutzhotline.de](http://www.kinderschutzhotline.de)) – support is also available at night, on holidays and at weekends! The project is tentatively scheduled for autumn 2021.



In addition to detailed documentation of the anamnesis, it is recommended to document the statements of parents /support persons including impressions. Photos of external injuries of the child can be added to the documentation. The corresponding documents can serve as a basis for the legal conservation of evidence. Extensive documentation is the record that possible initiation of measures of the authorities by the physician is based on careful consideration of the situation of the child.



If persons required to maintain confidentiality as a result of their employment become aware of indications of threats to the welfare of a child or youth, they are thus authorised to discuss the situation with the child or youth and the custodial persons and to arrange for assistance, and if this appears to be without success or impracticable from the outset to notify the youth welfare office and provide the youth welfare office with the required data for this purpose (cf. § 4 (3) KKG). Victims and survivors are to be informed of such in advance, unless with this step the protection of the child or youth would be put at risk.



In order to be able to provide support in connection with assessing the threat to the welfare of a child, those required to maintain confidentiality as a result of their employment are entitled to counselling vis-à-vis the public agency of youth support services by a so-called ›pertinently experienced specialist‹. For such support, those required to maintain confidentiality as a result of their employment are authorised to provide this specialist with the necessary data, which is to be pseudonymised before it is sent. ›Pseudonymisation‹ means that the identification of the affected person is made considerably more difficult. This can be accomplished by, for instance, changing the name of the person in question, shortening the name or using different characters. This means that, within the scope of the support provided, those required to maintain confidentiality as a result of their employment are not required to change the content so that it cannot be traced back to the patient in question (in contrast to anonymisation) (cf. § 4 (2) KKG).

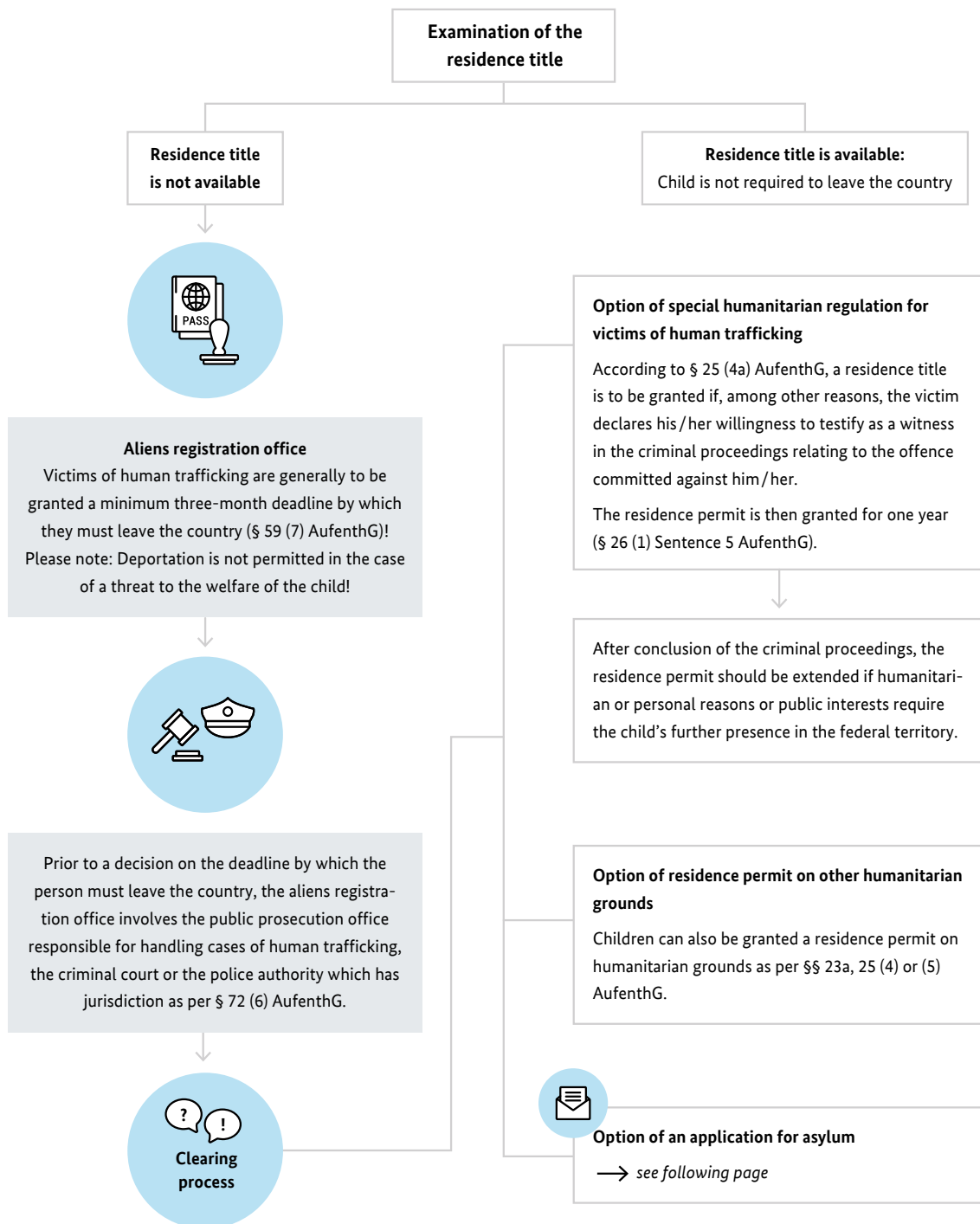


In general, in all cases of threats to the welfare of a child, a release from the obligation to maintain confidentiality is to be obtained from the persons having care and custody of the child vis-à-vis the most important parties involved, primarily the youth welfare office and paediatrician.

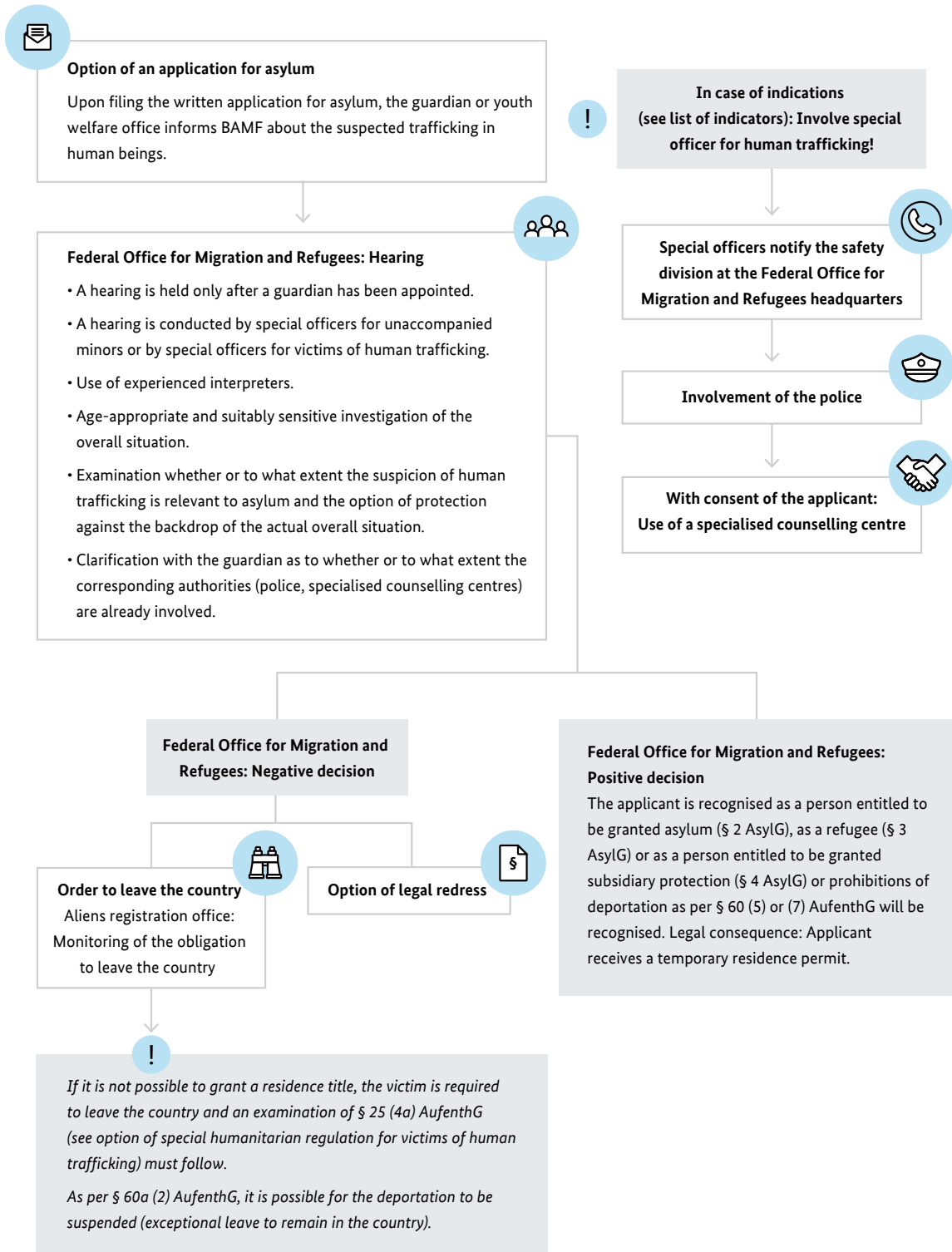
*Based on: Landesärztekammer Baden-Württemberg (2013): Leitfaden für Ärztinnen und Ärzte ›Gewalt gegen Kinder‹.*

## Orientation for action of German aliens registration office and the Federal Office for Migration and Refugees (BAMF)

The figure provides orientation and cannot take the place of investigation of the individual case.



→ Option of an application for asylum





## Tips and notes

*Orientation for action of German aliens registration office  
and the Federal Office for Migration and Refugees*



Applicants are entitled to choose between a male or female person to conduct the hearing as well as between a male or female interpreter.



If consent is granted, the Federal Office for Migration and Refugees provides contact to specialised expert counselling centres.



With regard to hearings involving unaccompanied children, only experienced interpreters may be used.



If the available insights are not sufficient to definitively ascertain whether there is or is not endangerment in the case of a return to the country of origin, the asylum proceedings are to be suspended in order to make it possible to also consider the results of the investigative process or criminal proceedings.



Victims and survivors rarely speak directly as victims of human trafficking because they are reluctant to speak about the exploitation experienced due to feelings of shame or traumatisation. In order to be able to identify victims and survivors of human trafficking, staff are needed who have been sensitized to the issue of human trafficking and who possess intercultural competence as well as professional social-educational expertise.

## 4. Exchanging information and protecting data

In the case of any exchange of information containing personal data (e.g. name, address, nationality, state of health), privacy must be protected. In the interests of personal protection, it must be ensured that passing on data, which is in part particularly sensitive, is permissible. The following provisions apply in particular:

In § 4 KKG there is a special authorization standard for persons required to maintain confidentiality as a result of their employment in the context of § 4 (1) KKG for the transmission of data to the public agency of youth support services. Persons required to maintain confidentiality as a result of their employment are in particular physicians, professional psychologists, experts in certified counselling centres, certified social workers, social-educational professionals and teachers. **The details of the law provide for the following graduated procedure for persons required to maintain confidentiality as a result of their employment:**

**1st step:** In case of a suspected threat to the welfare of a child, persons required to maintain confidentiality as a result of their employment should first discuss the situation with the child or youth and the parents, as long as such action does not place the protection of the child or youth at risk. Further, they should encourage the child or youth to apply for the support available. In order to assess the threat to the welfare of a child, those required to maintain confidentiality as a result of their employment are entitled to counselling by an expert from the public agency of child and youth support services. Passing on data for this purpose however is only permissible in pseudonymized form.

»Pseudonymization« means that the identification of the affected person is made considerably more difficult. This can be accomplished by, for instance, changing the names of those involved. Unlike »anonymization«, the content needn't be changed so that it cannot be traced back to the patient in question.

**2nd step:** If the dialog is not sufficient for averting the endangerment or if such is not an option, persons required to maintain confidentiality as a result of their employment are authorised to notify the youth welfare office if they consider this to be necessary to avert the endangerment. The parents are to be informed in advance unless such action would put the effective protection of the child or youth at risk. For this purpose, it is permissible to pass on unencrypted personal data about the victim or survivor to the youth welfare office. If those required to maintain confidentiality as a result of their employment observe the provisions of § 4 KKG, the transmission of data does not constitute a violation of the obligation to maintain confidentiality and is without consequences under criminal or civil law. This also applies if the suspicion proves to be incorrect at a later point in time<sup>46</sup>.

<sup>46</sup> Fegert et al. (2014): Sexueller Missbrauch von Kindern und Jugendlichen. Ein Handbuch zur Prävention und Intervention für Fachkräfte im medizinischen, psychotherapeutischen und pädagogischen Bereich, p. 169.

In order to avert threats to the welfare of the child, it is possible according to § 8a SGB VIII in conjunction with § 65 SGB VIII for the youth welfare office to pass data on to the family court, police or other provider of services.

For any other data collection carried out by the youth welfare office or a public agency of youth support services, the general provisions of §§ 62 ff. SGB VIII apply (see Figure, p. 50). The passing on of data is always limited to data which is required. Cooperation agreements do not constitute authorisation for transmission. The passing on of data is permissible with the consent of the victims or survivors<sup>47</sup>.

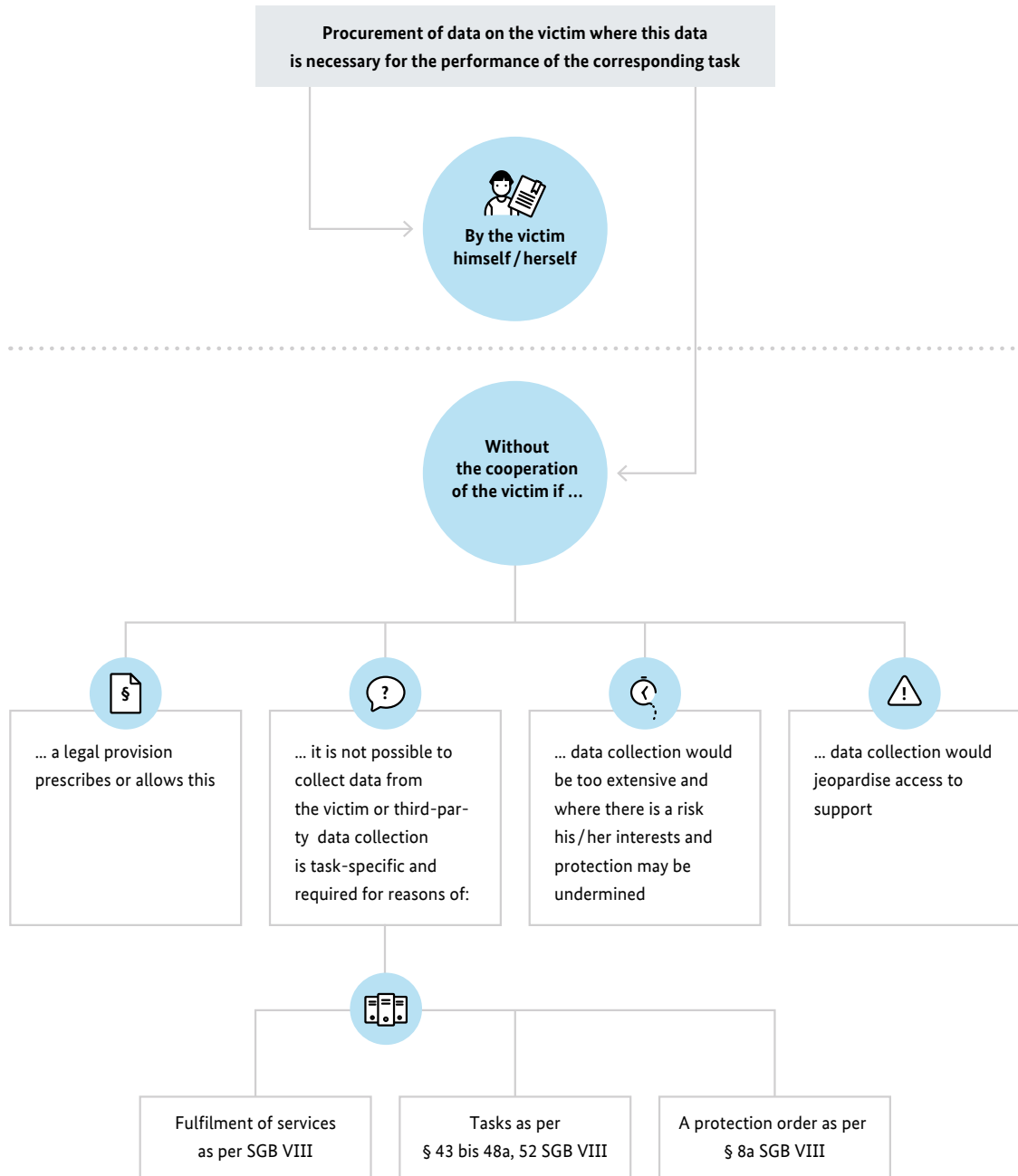
It is recommended that the privacy statements be made available to the minors and their legal representatives in clear, child-appropriate language as well as in various language versions<sup>48</sup>.

<sup>47</sup> § 65 (1) No. 1 SGB VIII.

<sup>48</sup> The Federal Coordination Office against Trafficking in Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel) has drafted a declaration of consent to data collection and data use for victims and survivors of trafficking in human beings. This is also available in easily understandable language and can be used as a template for the corresponding offices: [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/KOK\\_informiert/KoK\\_Einverständniserklärung\\_leichteSprache\\_Neu\\_092015\\_form.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/KOK_informiert/KoK_Einverständniserklärung_leichteSprache_Neu_092015_form.pdf).

## § 62 SGB VIII: Collection of data in case of threat to the welfare of a child as per § 8a SGB VIII

The figure provides orientation and cannot take the place of investigation of the individual case.



## 5. Specifying framework conditions for successful collaboration

The implementation of cooperation agreements on trafficking in and exploitation of children at state level constitutes a task which requires specific structures, prerequisites and preparations in order to be successful.

### Recommendations for successful collaboration:

- Setting up workgroups or round table discussions at state and municipal levels, beyond acute crisis intervention
- Becoming mutually familiar with each other's working practices and processes and indicating the limits of one's own actions in order to generate trust in each other's expertise
- Appointment of contact persons at all cooperation partners or appointment of a coordinator for the development and control of the collaboration
- Development of quality standards for the cooperation, agreement on standard terminology
- Agreements on targets
- Setting up case conferences at which – with the maintenance of privacy – the process is to be discussed with the person affected, within the context of the welfare of the child, in relation to the situation and in accordance with requirements. Existing case conferences at local level conducted in the case of sexualized violence can be used as an example.
- Regular evaluation of the cooperation between states.

For successful implementation of the cooperation agreements, the following framework conditions should be given:

- Entitlement to regular further training and sensitisation with regard to the subject of trafficking in children for all legally obligated entities involved. Secure funding of these measures must be made available. In addition, further professional groups who (potentially) come in contact with this subject should receive instruction and sensitization.
- All entities involved must be reliably equipped in terms of staff and funding.
- In terms of the police, processing the offence requires qualified and sensitised police officers in the corresponding police departments. The State Office of Criminal Investigation in Berlin with the only special commission for combating trafficking in children nationwide can be deemed as an example for the individual German states.
- In the public prosecution offices, commissioners for combating trafficking in human beings are to be specified whose responsibility it is to collaborate with cooperation partners on the side of the public prosecution office on the subject of trafficking in and exploitation of children and to develop suitable processes for supporting the victims.
- Youth welfare offices: Public prosecution offices and police must be provided with a fast contact partner at youth welfare offices for the accommodation and further care of children. In Berlin, for example, this is crisis emergency services. Children who are the victims of human trafficking must normally be removed from their familial environment. The youth welfare offices must therefore act fast and remain in communication with the public prosecution office in order to be able to assess the risk situation.



The children must also be accommodated in such a way that their families cannot access them if these families belong to the circle of perpetrators. This is only possible with trustful collaboration between youth welfare offices, family courts, specialised counselling centres and the public prosecution office and/or police.

- Regarding specialised counselling centres, their ongoing funding is necessary as well as setting up adequate specialised counselling centres for support in cases of trafficking in adults and minors and counselling centres for support in cases of violence against minors, most importantly in rural areas. Counselling centres which are not specialised in cases of trafficking in human beings, but instead provide support in cases of other forms of violence against and exploitation of children, must be consulted as important contributors to recognising potential victims who have not reached the age of majority. For this, professionals there need training on the subject of cases of trafficking in and exploitation of children.
- Standardised processes for the identification of possible victims are dependent on the context. Every federal state should therefore check the list of indicators attached in terms of applicability and adapt it as required so that this list becomes part of the corresponding cooperation agreement. NB: Lists of indicators may support identification; they cannot however replace training and further education!
- An exchange should take place with additional entities who may be able to identify potential victims and survivors. An exchange could take place at regular intervals within the scope of the workgroups and round table discussions to be set up, e.g. with child and youth counselling centres, facilities for refugees, homeless shelters, etc.

**In case of all measures, it is necessary to prioritize consideration of the welfare of the child and the best interests of the child** and treat every case individually. The welfare and situation of victims and survivors as well as their

protection and assurance of their rights should be at the centre of all action. For this it is necessary to possess the corresponding sensitivity as well as knowledge of the specific situation of victims and survivors of human trafficking who have not reached the age of majority.

**Clear arrangements and agreements** at all hierarchical levels lead to increased confidence to take action. The cooperation concept serves this purpose as an instrument to generate commitment and reinforce communication channels in the corresponding structures of the public authority/organisation/institution. This is to help prevent cooperation which is only between individual persons and/or which is at the discretion of individual employees.

## 6. Consolidating and representing contact data and service points

Upon suspicion or in confirmed cases of trafficking in and exploitation of children, fast action is often crucial. All country-level cooperation agreements should therefore include a directory with contact details and contact persons which covers at least the following professional areas:

- Specialised counselling centres for victims and survivors of human trafficking
- Specialised counselling centres for victims of sexualized violence against children and youth
- Contact points in police departments
- Legal counselling centres
- Girls' shelters
- Migration counselling centres
- Support centres for boys who are victims of sexualized violence



You will find a regularly updated list with contact details and helplines under:  
[www.ecpat.de/handel-mit-kindern](http://www.ecpat.de/handel-mit-kindern).

## Annex 1

List of indicators: Recognising trafficking in and exploitation of children

Children and youth who are victims and survivors of human trafficking often do not show that they are victims of such. Often the difficulty lies therein that children who are affected are unable or unwilling to trust anyone for the following reasons:

### **Children don't see themselves as victims of exploitation or trafficking**

Children may find it difficult to understand that what is happening to them is abuse and exploitation, especially in the following situations:

- Girls who have fallen victim to so-called loverboys<sup>49</sup> erroneously believe that they are in a love relationship and can only recognise the associated exploitation with difficulty.
- Children who are exploited by their parents or other family members are under their influence or are emotionally or financially dependent on them.
- Children who are forced to commit crimes believe that they will be punished for these crimes by the police.

### **Children find it difficult to speak about what they have experienced**

Children who have experienced exploitation or human trafficking may find it difficult to trust adults. Human traffickers often provide children with fictitious histories which they must tell public authorities if there is contact. The statements of children may at times seem inconsistent or hard to believe.

Professionals must consider the possibility that the child in question has been traumatised.

Children are often afraid of:

- Adults they don't know, the police and authorities
- Punishment for the offences they have committed
- Deportation/Return to the country of origin
- Juju or other traditional rituals
- Moral condemnation by their family or social reference group
- Exposure and discovery of the exploitation of which they are ashamed

### **It is not permitted to criminally prosecute victims and survivors of human trafficking who have not reached the age of majority**

Children and youth are sometimes forced to commit crimes by perpetrators. These crimes can include selling drugs, stealing or robbing ATMs. As per § 154c (2) StPO, the public prosecution office can dispense with prosecuting the offence in the case of victims of human trafficking. The option of forgoing prosecution of victims for their involvement in criminal acts which they were forced to commit is prescribed with the term »non-punishment clause« by the Council of Europe Convention against Trafficking in Human Beings and EU Directive 2011/36 EU<sup>50</sup>.

<sup>49</sup> A «loverboy» is a man normally between 18 and 30 years of age who pretends to have a love relationship with a girl who is younger in most cases. He makes the girl dependent on him through emotional manipulation and social isolation and then forces her into prostitution. There may also be elements of coercion involving drugs, violence and threats.

<sup>50</sup> Further information on this is available under [https://www.kok-gegen-menschenhandel.de/fileadmin/user\\_upload/medien/Informationsdienst/KOK\\_Informationsdienst\\_2016.pdf](https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Informationsdienst/KOK_Informationsdienst_2016.pdf).

The following list of indicators is to help the staff of law enforcement authorities, youth welfare offices, aliens registration offices, BAMF, healthcare professionals, public and non-public counselling centres and any other professionals who have direct contact with children and youth who are threatened by human trafficking or victims and survivors of human trafficking in the identification of (potential) victims and survivors<sup>51</sup>. The indicators are not intended to serve as a »checklist« but instead provide reference points based on actual practice for considering the situation as a whole. If individual indicators are present, this does not necessarily mean that trafficking in children has occurred. However, if several indicators are present, there should be suspicion and the case should be investigated in detail. Indicators are no replacement for professional expertise in recognising victims and survivors, but may nevertheless provide assistance and support in the identification of possible victims and survivors. The following list of possible indicators is not final.

<sup>51</sup> The following list of indicators was created on the basis of other lists of indicators: KOK (2016): Menschenhandel in Deutschland: sensibilisieren, informieren, schulen – ein Trainingshandbuch (internal document); list of indicators of the Task Force Menschenhandel in Austria; list of indicators of the office of the Dutch general prosecution office; list of indicators of the Counter Human Trafficking Bureau in Great Britain.

**Assessment upon first contact with a possible victim**

<i>Objective observations</i>	No identification documents, or documents which are new or forged, which have presumably been procured via another person
	The child has little or no financial means.
	The child shows traces of physical abuse or sexual abuse.
	The child is in the company of a partner who is considerably older.
	The child has no knowledge of the location/lacks orientation.
	Upon contact with the child, a ›protector‹ imposes herself/himself.
<i>Appearance of the child</i>	The child appears to be uncared for, poorly nourished or in poor health as a result of neglect.
	The child has symptoms indicative of physical labour (e.g. condition of the hands/skin, back pain).
	The child is dressed in a manner which is overly sexualized.
	The child does not possess clothing appropriate for local weather conditions.
<i>Behaviour of the child</i>	The child appears to be intimidated.
	The child is uncooperative, distant, dissocial or aggressive.
	The behavioural pattern of the child indicates dependence on another person.
	The child appears to be excessively agitated, afraid (e.g. of a person, of the authorities, of deportation).
	The child attempts to run away.
	The child displays sexualised behaviour which is not age-appropriate.
	The child has a poor self-image, low self-esteem, displays self-harming behaviours, e.g. cutting, overdosing, eating disorders.
	The child displays a level of self-awareness, maturity and self-confidence which would not be expected in a child of this age.
	The child shows indications of abuse of drugs, alcohol or other addictive substances.
<i>Statements of the child</i>	The child was threatened with violence.
	The child claims to have been in Germany for years yet speaks no German. The child says that he/she has been sexually exploited by others, forced to commit crimes or has been exploited in terms of labour.
	The child was forced to marry.
	The child tells a story which very closely resembles one told by other persons.
<i>Findings resulting from further investigation (questioning, documents, enquiries)</i>	No travel documents, or ones which are new or forged.
<i>Observations on the child's entering Germany</i>	Travel documents are not in the possession of the child (in the case of an accompanying person).
	The trip, flight process or visa were arranged by someone other than the child or the child's family.
	The child reports about experiences of (severe) violence which occurred while fleeing. The child was deceived about the living conditions in Germany. History of the child: Lack of context or moves for which there is no explanation.

<i>Assessment of the living situation</i>	The child was found together with several other children at one and the same address who are not related to the child.
	The child is often absent from the accommodations or absent for longer periods. The child has no accommodations.
	The child remains in locked living quarters and does not possess a key of his/her own.
	Social contacts of the child are limited or prevented entirely.
	The girl has a friend who expects her to have sexual intercourse with other men.
	The child is expected to help a person to whom the child is allegedly close with paying off a debt.
	Images in which the child is posing and/or nude (photos, videos) were made and/or disseminated.
	The child was forced to perform sexual acts which were recorded (photos, videos).
	The child was threatened with the forwarding of the nude recordings/ recordings of sexual acts to friends, family or acquaintances (e.g. via social media such as Facebook or Whatsapp).
	The child was forced to carry out illegal, criminal activities. The child was threatened with denunciation before the authorities.
The child receives demands for money from the country of origin.	
<i>Assessment of the family situation</i>	It is not possible to confirm the name or address of the person who met the child upon the child's arrival.
	An adult has previously submitted visa applications for other children/ has acted as a sponsor for the visa applications of other children.
	The adult responsible is not a member of the immediate family (parent/sibling).
	Relations of the child in the country of origin are subject to extortion or threats.
	The child's family finds itself in economic difficulties and is dependent on the child's income.
<i>Assessment of the »employment situation«</i>	The sites at which the child is employed vary.
	The child must earn a minimum amount of money every day.
	The child must pay off extortionate, unverifiable or fictitious debts (e.g. for clothing, travel costs) before the child can access his/her income.
	A percentage of the child's income is passed on to another person by the exploiter.
	The child remains at the »workplace« overnight and/or does not know the address of the »workplace/place of residence«.
	The child has no days off.
	The child is surveilled by the employer.
	The child's freedom of movement is limited by third parties.
<i>Observations of the state of health</i>	The child has sexually transmitted diseases or is unintentionally pregnant.

## Annex 2

### Contact data and service points

#### Federal Office for Migration and Refugees

<i>Service hotline of the Federal Office for Migration and Refugees</i>	Nürnberg	0911 943 0		<a href="http://www.bamf.de">www.bamf.de</a>
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#### Databases and phone-based hotlines

<i>Sexual abuse help portal</i>				<a href="http://www.hilfeportal-missbrauch.de">www.hilfeportal-missbrauch.de</a>
<i>N.I.N.A. – National infoline, network and support centre for cases of sexual violence against girls and boys</i>		0800 22 55 530		<a href="http://www.nina-info.de">www.nina-info.de</a>
<i>ODABS – Online database for the victims and survivors of criminal offences</i>				<a href="http://www.odabs.org">www.odabs.org</a>
<i>Sexual abuse telephone helpline</i>		0800 22 55 530		
<i>Violence against women support hotline</i>		08000 11 60 16		<a href="http://www.hilfetelefon.de">www.hilfetelefon.de</a>
<i>Medical child protection hotline</i>		0800 19 210 00		<a href="http://www.kinderschutzhotline.de">www.kinderschutzhotline.de</a>

#### Non-governmental organisations and interest groups

<i>ECPAT Deutschland e.V. – Workgroup for the protection of children against sexual exploitation</i>	Freiburg	0761 887 9263 0	<a href="mailto:info@ecpat.de">info@ecpat.de</a>	<a href="http://www.ecpat.de">www.ecpat.de</a>
<i>KOK e.V. – Federal Coordination Office against Trafficking in Human Beings</i>	Berlin	030 26 39 11 76	<a href="mailto:info@kok-buero.de">info@kok-buero.de</a>	<a href="http://www.kok-gegenmenschenhandel.de">www.kok-gegenmenschenhandel.de</a>
<i>DGFPI – German society for prevention and intervention</i>	Düsseldorf	0211 49 76 80 0	<a href="mailto:info@dgfpi.de">info@dgfpi.de</a>	<a href="http://www.dgfpi.de">www.dgfpi.de</a>

<i>BKSF – Federal coordination of specialised expert counselling centres against sexualized violence against children and youth</i>	Berlin	030 88 91 68 66	info@bundeskoordination.de	www.bundeskoordination.de
<i>BumF e. V. – Federal association for unaccompanied refugee minors</i>	Berlin	030 82 09 74 30	nfo@b-umf.de	www.b-umf.de
<i>ISD – German branch of International Social Service (ISS)</i>	Berlin	030 62 98 04 03	isd@iss-ger.de	www.issger.de
<i>ff e. V. – Federal association of women’s counselling centres and women’s emergency hotlines</i>	Berlin		info@bv-bff.de	www.frauen-gegen-gewalt.de
<i>bag FORSA – Bundesarbeitsgemeinschaft Feministischer Organisationen gegen Sexuelle Gewalt an Mädchen und Frauen e. V. (Federal workgroup of feminist organisations against sexual aggression against girls and women)</i>	Berlin	030 40 79 63 10	info@bag-forsa.de	www.bag-forsa.de

#### **Non-governmental organisations and interest groups**

<i>Nationwide counselling services by the police</i>				www.polizei-beratung.de
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\* For general questions to all government offices and agencies, the general public service number 115 is also available. In the participating regions, the 115 is open from 8 a.m. to 6 p.m. between Monday and Friday. Calls to the 115 from a German landline and many mobile networks are charged at local rate and are therefore toll-free for flat rate holders. Deaf persons can access information by dialing the SIP address [115@gebaer-dentelefon.d115.de](mailto:115@gebaer-dentelefon.d115.de). To find out if the 115 is available in your region and for more information on the general public service number please visit <http://www.d115.de>





