

Trafficking in children for sexual purposes

Update Country report

Germany

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1. Legislation and Law Enforcement Regarding Trafficking and Prostitution of Minors

There are some changes in our laws concerning the issue of trafficking:

- Cancellation of the sentencing guidelines for less serious cases of sexual child abuse under the German Penal Code (StGB) § 176 (1) and (2) and § 179 (1) and (2)¹.
- New sentencing guidelines for particularly serious cases of child sex abuse (Penal Code § 176 (1) and (2)) and cases of sexual abuse of defenceless persons (Penal Code § 179 (1) and (2)) with mandatory prison sentences of at least 1 year and maximum sentences of 15 years imprisonment.
- Increased penalties for aggravated sexual abuse according to the Penal Code §176a (1-3 new) with the minimum term of imprisonment increased from 1 to 2 years. For less severe abuse, imprisonment options have changed from 3 months - 5 years to a range of 1 - 10 years (Penal code StGB § 176a (4 new)).
- Higher minimum sentences increased under Penal Code § 174 (sexual abuse of dependants), § 174a (sexual abuse of prisoners, wards of the State or sick and dependent persons in institutions), § 174b (sexual abuse by persons in a position of authority), § 174c (sexual abuse of persons in a relationship of counselling, treatment or care) and Penal Code § 176 (5 new) (sexual abuse of children without bodily contact).
- Addition of a new definition under the German Penal Code § 176 (sexual abuse of children without bodily contact). Violators now include persons who attempt to elicit sexual acts from a child using a communications medium (§ 176 (4 new)), or persons who arrange sexual acts by children (§ 176 (5 new)), or who offer the products of such acts for sale (§ 176 (5 new)).
- Increase in the sentencing guidelines for the distribution of child pornographic publications to others under the Penal Code § 184 (5), chapter 1, from imprisonment for up to 1 year or a fine, to imprisonment for from 3 months to 5 years.
- Where there is a commercial purpose, or where organised crime is involved in the act of distributing or disseminating child pornographic publications under Penal Code § 184 (4) the penalty is imprisonment for between 6 months and 10 years.
- Increased maximum prison sentences of from 1 to 2 years for the acquisition and possession of child pornographic publications according to Penal Code § 184 (5).
- The Statute of Limitations is stayed (Penal Code § 78b (1.1) not only in respect of § 174 (sexual abuse of dependants) but also in relation to § 174a (sexual abuse of prisoners, wards of the State or the sick and persons under care in protective institutions), § 174b (sexual abuse while abusing a dominant position) and § 174c (sexual abuse in a relationship of counselling, treatment or care).²
- Better utilisation of DNA analyses. The record of a DNA analysis will be retained in all cases of abuse against sexual integrity that triggered such analysis without attaching any legal significance to them.³
- Under the provisions of Penal Code § 176 (1) and (2), the sexual abuse of children is punishable by imprisonment of not less than 1 year if the perpetrator has been previously tried and convicted of such a crime within the preceding 5 years.

¹ Gesetz zu Änderung der Vorschriften über die Straftaten gegen die sexuelle Selbstbestimmung und zur Änderung anderer Vorschriften, announced on the 30.12.2003 unter www.bundestag.de; Stand der Gesetzgebung des Bundes 15.Wahlperiode, Berichtsstand 26.1.2004.; Bundesministerium der Justiz, Mitteilungen für die Presse Nr. 106 / 03 30.12.2003: Verschärfung des Sexualstrafrecht im Gesetzblatt.

² Bundestags-Drucksache 15/1311 Deutscher Bundestag 01.07.2003 15.Wahlperiode Beschlussempfehlung und Bericht des Rechtsausschusses (6.Ausschuss).

³ Bundestags-Drucksache 15/1311

- Child sex abuse under Penal Code § 176 (1) and (2) is punishable by imprisonment of not less than 2 years under the following circumstances: 1. Where a person over the age of 18 years engages in intercourse with a child, performs an act of penetrative sexual abuse upon the child, or allows the child to perform such an act on him. 2. The sexual abuse is committed by a group of perpetrators. 3. The abuse seriously endangers the health or the physical and mental development of the child.
- Violations of the Penal Code § 176 (1-3), (4.1) or (4.2) or § 176 (6) are punishable by not less than 2 years imprisonment if the perpetrator or participant plans to exploit the act for the purpose of publication (§ 11 (3)) or dissemination within the meaning of § 184b (1-3) of a pornographic publication
- Violation of § 176 (1-3) is punishable by imprisonment of not less than 5 years if during the sexual abuse the perpetrator inflicts either severe physical abuse on the child or endangers the child's life.⁴
- Wards in public or private care are protected under Penal Code § 236 (1) (Child Trafficking). Under § 236 (1.1), the age limit for this protection is extended from 14 to 18 years.⁵
- Under the U.N. Convention on the Rights of the Child, a child is a person under the age of 18. However, in German law, a child is a person under the age of 14. Between the ages of 14 and 18, the person is a juvenile.

In a Special Part - especially in §§ 80-358 and most importantly in Section 18 - the German Penal Code (StGB) deals with offences against personal freedom (§§ 234-241a) and laws against child trafficking. In view of the fact that these matters have their legal basis in the Penal Code, it must be presumed that the 1998 6th Legal Reform Law is expressed in the new §236 of the Code against child trafficking. Moreover, provisions relating to child abduction were extended in § 235 (now titled Abduction of Minors). This form of child trafficking is still not considered an offence of organised crime.

However, the German Federal Government has extended the term 'organised crime' to include trafficking in both women and girls. Since 1992 the police have been able to investigate pimps and traffickers under Penal Code §180b/§181, but not clients or offenders.

Now the German Federal Government has extended the protection programmes to such crimes. For the first time there are no age limitations on girls entering the witness protection programme. All these changes make significant improvements in respect of victims and for effective law enforcement. However, the implementation of the new rules is poor. For example, there are major differences in the way in which the witness protection programme is implemented in the different States of Federal Germany.

The psychological or physical situations of complainants in court proceedings may make it difficult for them to defend their interests in court. In such cases, victims are entitled to request the appointment of a legal representative to speak for them (Amendment to the Code of Criminal Procedure (StPO) § 397a (1.2)).⁶ Victims' rights are still not adequately protected, however. For example, there are certain gaps in the regulations, such as for the legal protection of video tapes containing evidence.⁷

⁴ Bundestags-Drucksache 15/1311

⁵ Bundestags-Drucksache 15/1311

⁶ Bundestags-Drucksache 15/1311.

⁷ K.Schoor/J.Fegert: The German National Report on Child Abuse and Adult Justice – National Reports, Sweden 2002, p.73.

A new National Action Plan (NAP) was agreed by the Federal Government in January 2003. The new NAP contains several measures in the areas of prevention and intervention, including:

- Increased efforts to inform the public and create awareness through a national prevention campaign, and other projects.
- Specialised and continuing education for professionals, e.g. for the German Federal Justice Department and the legal community.
- The development of a plan for the continuing education of both full-time workers and volunteers in child and youth organisations.
- Provisions to promote cooperation and networking between police, the legal community and the youth welfare services.
- Awareness-raising with the tourism industry to protect children from sexual exploitation, with a special focus on the Code of Conduct for the tourism sector.

The implementation of the NAP will be monitored by a Federal Working Group composed of government and non-governmental agencies.

2. Existing Prevention and Rehabilitation Programmes

The Hague Convention of May 29, 1993, on the protection of children and co-operation in the field of international adoption (Federal Law Gazette (BGBI.) 2001 II, p.1034, Adoption Agreement) came into effect in Germany on March 1, 2002. This Convention is designed to strengthen the fight against child trafficking through international collaboration. Police forces combat trafficking in human beings using many national and international procedures within the organisational framework of Interpol and the Task Force against Organised Crime for the Baltic Sea region. However, implementation remains low, especially with regard to support from the German embassies abroad.

The German Federal Government also participates in the working group on Co-operation on Children in the Baltic Sea Region. Via the Internet, expert networks collaborate and exchange expertise in relation to child protection. The group also supports initiatives in the countries adjoining the Eastern (Baltic) Sea, including a project to prevent child trafficking.⁸

Children affected by trafficking and sexual exploitation, and their relatives, need protection, counselling and long-term assistance to prevent further trauma. Efforts to discover, investigate, and prosecute crimes, as well as efforts to protect witnesses and victims and to offer psychosocial and medical aid and assistance should therefore be better co-ordinated. The effective prosecution of cases requires improved opportunities and facilities for children to testify. Therefore, children and juveniles should be treated in a child-friendly and sensitive manner in court proceedings, regardless of their visa status. This requires specially trained personnel, and assistance during court hearings, as well as psychosocial care and assistance. The protection of victims is a central theme in the reform of the Code of Criminal Procedure of the German Federal Government. In criminal proceedings, the Federal Government seeks to improve the status of the victim. The victim's legitimate rights to be protected and vindicated are central to this process.⁹ These efforts are on-going.

⁸ Bundestags-Drucksache 15/116.

⁹ Nationaler Aktionsplan der Bundesregierung, Berlin 2003.

3. Public Awareness and Attention Paid to the Issue

A legal obligation to report sexual abuse, sexual coercion or rape, even when committed against captive victims, has not been extended. A proposal debated by experts 2003 met with criticism. Mandatory reporting was also assessed and criticised by support organisations for children and juveniles. In particular, victim protection associations rejected such a proposal as counter-productive. The Conference of Ministers for Youth in May 2003, as well as the Conference of Ministers of Justice in June 2003, voted against the proposal. Instead, a broad campaign will begin to alert the public about the urgent problem of sexual child abuse and to encourage voluntary action to prevent sexual abuse by all necessary and suitable means. 'We will not propose a disclosure requirement enforced by law for the sexual abuse of children and persons who cannot resist or for sexual coercion and rape (Code of Criminal Procedure § 138)'.¹⁰

A nation-wide prevention campaign will begin within the framework of the German NAP. Among other initiatives, the German Federal Government will conduct projects in the areas of prevention and intervention.

Increasingly, members of the Federal Parliament are concerned about the problem and the lack of implementation of the U.N. Convention on the Rights of the Child.

4. Policy Changes (including Asylum Procedures)

There have been a number of important political changes brought about by the new NAP. Additional agreements have led to further progress in international co-operation. A German/Czech/Polish working group was formed with the specific purpose of combating trafficking in women and girls and to protect children from sexual exploitation. The group is working to develop common norms in the fight against trans-border crime. It also provides information and training to local police and border patrol officers. This platform is resulting in better collaboration between countries to combat crimes of child trafficking and child prostitution.

An Evaluation Group for the German Federal Government and its states is in operation since September 2003. It is particularly noteworthy that NGOs are deeply involved in its work.

The German Federal Government has recently been working with inter-governmental agencies on legal issues arising in the framework of the United Nations, the International Labour Organisation, the Council of Europe and the European Union. The Federal Government has promoted the ratification of the relevant international legal instruments by as many nations as possible, because such ratification will considerably facilitate the fight against trafficking in human beings, and especially against trafficking in children.

In this context the relevant instruments are:

- The UN Optional Protocol of May 25, 2000, regarding the Sale of Children, Child Prostitution and Child Pornography. Germany signed the Protocol on September 6, 2000. Its ratification and implementation in the States are currently being prepared.
- Recommendation of the Committee of Ministers of the Council of Europe of October 31, 2001, for the protection of children from sexual exploitation.
- Framework Decision of the Council of the European Union for the fight against

¹⁰ Bundestags-Drucksache 15/1311.

trafficking in human beings of July 19, 2003, in effect since August 1, 2002 (Gazette of the European Union 2002, No. L 203, p.1). The member countries committed themselves to criminalise certain acts.

– Convention No. 182 of the International Labour Organisation of June 17, 1999, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Germany has ratified the Convention, which came into operation for Germany on December 11, 2001.

– The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. Germany signed the Protocol in September of 2000. Ratification and intrastate implementation are in the course of preparation.¹¹

But so far these international instruments have not been actually implemented in Germany.

A law to harmonise the protection of witnesses at risk came into effect on January 1, 2002 (ZSHG Journal). The individual States, and their witness-protection authorities, are now obliged to implement the provisions. However, the law does not contain provisions that are specific to children, and also does not provide rules about the visa status of foreign witnesses or on their status with regard to social legislation.

Furthermore, the Aliens Act is very inadequate with regard to minors, and the visa status of children is weak. While there are plans in the course of preparation, such as a special refugee law for children, they have still to be pushed through.

5. Estimates of the Number of Victims and Profiles

Conditions for statistical assessment have not improved. The old numbers from 2001 are still the only figures available. The crime statistics from the law enforcement division of the German Federal Bureau of Criminal Investigation does not separately list the numbers of cases of child trafficking (Penal Code § 236) but instead reports them together with crimes of kidnapping (Penal Code § 234) and the abduction of minors (Penal Code § 235).

The Federal State Police (BKA) has published figures on trafficking in women which include some data on child victims. The BKA figures show that in 2002, 811 women were recorded as victims of trafficking in human beings. None of the victims was under 15 years of age. There were 38 minors who were victims, including 4 girls from Russia, 2 from Lithuania, 5 from Bulgaria, 7 from Poland and 4 from Romania.¹²

6. Information on Demand

The BKA published figures about suspects of trafficking in general. There were 821 suspects in 289 investigations recorded for 2002, which represents an increase of 7.9% compared to 2001. German nationals (39.4%) head the list of suspects.¹³

There are no figures available about the number of German clients who have sexual intercourse with trafficked children from Eastern Europe or specifically from the Czech Republic.

ECPAT Germany and UNICEF Germany recently published a report about sexual exploitation in the Czech-German border region. The author of the report has noted some

¹¹ Bundestags-Drucksache 15/116.

¹² Bundeskriminalamt, Trafficking in Human Beings 2002, Wiesbaden 24.7.2003, page 9.

¹³ Bundeskriminalamt, Trafficking in Human Beings 2002, Wiesbaden 24.7.2003, pages 12-14.

cases of trafficking in children: ‘Some children spend the week-end with the tourists in Germany and sometimes also stay for longer periods.’¹⁴

The scene of sexual exploitation of minors between Germany and the Czech Republic is well organised and there are all forms of sexual exploitation of trafficked children. For more information see the Eastern European part of this research project.

7. Constraints

The Federal Ministers for Legal Affairs have commissioned the Max Planck Institute for Foreign and Domestic Penal Codes to carry out a study on the “legal applicability and efficiency of the monitoring of telecommunications according to the Code of Criminal Procedure §§ 100a, 100b and other covert investigative procedures”. In the light of this study, the Federal German Government will examine whether the scope of the powers available for monitoring can be extended to cases of simple child sex abuse and to cases of medium severity in aggravated child abuse (Penal Code § 176 and § 176 a (5)) as well as to the dissemination of child pornography (Penal Code § 184b new).

The current weak state of bilateral cooperation has to be improved in the future. There are very often practical difficulties in investigating cases efficiently, due especially to different laws and major language problems with Eastern European countries.

Further adaptations of the Penal Code are necessary to cover inducement of sexual child abuse via the Internet (chat rooms) and the dissemination of child pornography via the Internet. There is need for new guidelines for the monitoring/interception of telecommunications.

The situation for trafficked child victims is still not satisfactory. Not all victims are given legal assistance. The judges and the prosecutors have no special training to handle sexual abuse cases in general.¹⁵ Children need more protection so that they can give evidence without fear, and children should have victim support during the whole criminal process.

The new Articles of the Penal Code dealing with child pornography and sexual abuse will facilitate more efficient law enforcement against child prostitution and trafficking in children. Also it will be an important indication of more effective child protection in Germany.¹⁶

30 January 2004

¹⁴ Cathrin Schauer; Kinder auf dem Strich, Bericht von der deutsch-tschechischen Grenze, Hg. ECPAT Deutschland und UNICEF Deutschland, Bad Honnef 2003, page 86.

¹⁵ Kathleen Schnoor/Prof.Dr.Jorg Michael Fegert: The German National Report on Child Abuse and Adult Justice –National Reports, Hg: Save the Children, Sweden 2002, page 74.

¹⁶ Prof.Dr..Birgit Thoma; Stellungnahme zu den Gesetzänderungen, in ECPAT Rundbrief 2/2003, Freiburg 2003.