



Supplementary Report to the First National Report of the Federal Republic of Germany 2013

to the United Nations

Supplementary Report in the context of the National Report procedure regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child respective the sale of children, child prostitution and child pornography of 20 May 2000

Submitted by

ECPAT Deutschland e.V. – ECPAT Germany

30 May 2013

ECPAT Deutschland e.V. (eds.); Supplementary Report to the First State Report of the Federal Republic of Germany to the United Nations pursuant to Article 12, para. 1 of the Optional Protocol of the Convention on the Rights of the Child, respective the sale of children, child prostitution and child pornography, Freiburg (Germany), May 2013.

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1. Preamble

The First State Report of the Federal Republic of Germany concerning the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) has been submitted to the United Nations in April 2013¹.

ECPAT Germany has compiled this report at hand after consultation and in agreement with the National Coalition for the implementation of the UN Convention of the Rights of the Child in Germany (NC).

It has been prepared with inclusion of the 28 ECPAT member organizations, the youth representatives of ECPAT Germany and further experts. A broad involvement of child and youth participations has not taken place, as the Supplementary Report to the First State Report of the Federal Republic of Germany concerning the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) had to be submitted end of May for the Pre-Session June 18th, 2013 in Geneva.

The OPSC defines the considered phenomena, which the UN Convention on the Rights of the Child (CRC) did not entail, and thus gives clear guidelines for its implementation.

Definitions

The State Report of the Federal Republic of Germany uses a distinction of the domains sale of children, child prostitution and child pornography not accordingly to a real distinction of the phenomenon of commercial exploitation of children, as seen in practice. All three domains are often interwoven. Hence, ECPAT will provide definitions to achieve an improved legibility:

This report uses the term “child prostitution”, as per the OPSC language.

Nonetheless, this term remains problematic as it can blur the distinction between prostitution as a voluntary sexual service for money between two adults on the one hand, and the commercial sexual exploitation of children in prostitution on the other. The term “child prostitution” seems more suitable to us.

In regard of the distinction between the terms “sale of children”, which is used in the OPSC, and “child trafficking”, which is used in the Palermo Protocol², it is stated that this supplementary report has investigated the described and commented activities and measures for both terms³. The report at hand uses the term “child trafficking” when it is used in the State Report of the Federal Republic of

¹ The version of the First National Report present to ECPAT is undated.

² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as supplement to the UN Convention against Transnational Organized Crime, so-called Palermo-Protocol, November 15, 2000.

³ Cf. ECPAT International (2007): ECPAT Network Guide to Alternative Reporting on the Optional Protocol on the sale of children, child prostitution and child pornography. Thailand, p. 17f.

Germany and we refer to it. It has to be stated that the German Penal Code (StGB) does not use both terms in the sense of the OPSC and the Palermo Protocol (see Chapter 4)⁴.

Additionally, the terms „victim“ and „affected“ are used synonymously in this report, although ECPAT prefers to use „affected by...“ to the more standard term “victim”. The Supplementary Report uses the term “affected”, when referring to statements on victim protection. The term victim is used in reference to the explanations of the State Report, when the term victim is used, as well as in the context of statutory provisions.

The term „child“ is used in accordance with its meaning in the UN Convention on the Rights of the Child (CRC). In practice of criminal prosecution and criminal procedure as well as in the area of victim protection and particular high-risk groups of victims of commercial sexual exploitation, like unaccompanied underage refugees, it does not fully accommodate for the terminology of the CRC “child – person under the age of 18” in Germany (see page 11).

⁴See also explanations included in the National Report pursuant to Article 3.

2. General Observations to the First State Report

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) of May 25, 2000, which includes corresponding definitions and obliges each state party to punish offences, has been ratified by the Federal Republic of Germany July 15, 2009 and its instrument has been deposited at the General Secretary of the United Nations. The Protocol has come into effect for the Federal Government, pursuant its Article 14 (2), August 15, 2009, one month after deposit of the ratification document and pursuant Article 12 (1) a comprehensive First State Report by the Federal Republic of Germany had to be submitted until August 14, 2011.

The First State Report of the Federal Republic of Germany describes the implementation of Article 1-10 of the OPSC. Article 8 of the OPSC describes the measures taken for the protection of child victims in criminal proceedings. Explanations concerning the implementation of the OPSC on the level of criminal prosecution are missing in the State Report. Article 9 of the OPSC in the present State Report describes measures and campaigns concerned with sexual abuse in familiar and institutional context, but not productively only those concerned with protection from child prostitution, child trafficking and child pornography. This leads to partial doublings to the “Third and Fourth State Report of the Federal Republic of Germany to the United Nations of the Convention on the Rights of the Child (CRC)”⁵. Not included are activities for the protection of children from other forms of commercial exploitation like labour exploitation, sale for the purpose of theft and begging or for the purpose of trade in organs.

According to Article 12 (1 and 2) of the OPSC the state parties need to submit a comprehensive First State Report. Besides, the Committee on the Rights of the Child (CRC) in Geneva has adopted directives for the First State Reports of the state parties in 2002 and 2006. The report of the Federal Republic of Germany orients insufficiently on these directives, according to which it should be divided into six areas⁶. The First State Report thus exhibits considerable gaps and formal deficiencies, and is often imprecise and generalizing. It also does not include, as recommended by the Committee of the CRC, quantitative evaluations or statistical data. We would like to fill these gaps with our Supplementary Report therefore.

To enable a better readability of the Supplementary Report and an adjustment with the First State Report, we deviated from the structure as recommended by the CRC⁷, inserting the chapter “Prevention” before “International Provisions”.

⁵ undated; Kapitel VIII Besondere Schutzmaßnahmen C. Sexueller Missbrauch und Menschenhandel, p 93.

⁶ 1.General Measures of Implementations 2.Prevention 3. Prohibition and Related Matters 4. Protection of the Rights of Victims 5. International Provisions” see the “Revised Guidelines regarding initial reports to be submitted by States parties under Article 12, paragraph 1, of the OPSC”, adopted 2006.

⁷ “Rather than an article-by-article or thematic approach reports should follow the structure of the reporting guidelines for initial reports and include the following sections: Assistance and Cooperation 6. Other legal in NGO Group for the CRC; Reporting on the OPSC and OPAC page 25.

The recommendations compiled in Chapter 8 extend to the following areas:

- The implementation of regulations on the level of criminal prosecution of child prostitution and sale of children, as well as concrete victim protection for the affected, shows considerable deficits, which from our perspective also require improvements on the normative level. Existing regulation in its form and application does not sufficiently capture the phenomenology of child prostitution and child trafficking, as it has developed in the past years, respectively has not been subsumed as such by the law enforcement agencies.
- Valid data for the subject matter is insufficient. Either no data is collected or it is not compiled or recorded in official crime statistics but not evaluated on federal level. Also the National Situation Report on Trafficking in Human Beings (Lagebild Menschenhandel), by the German Federal Criminal Police Office (BKA) does not provide sufficient valid data on the topic of children in prostitution.
- Prevention campaigns and activities have been and are conducted concerning the subject matter sexual abuse, however not leading productively to protection from sale of children, child trafficking and child prostitution as well as child pornography, as these represent different issues.

3. General Measures of OPSC Implementation

The phenomena of various forms of sale of children, child prostitution and child pornography are part of reality in Germany. The description of the report at hand has to remain fragmentary, as concerning Germany there is nearly no data or fact-material available or not publicly accessible.

Child Trafficking

For years, experts have criticized the insufficient empirical data concerning Sale of Children and Trafficking in Children and until to date it exists no scientific study which also includes dark field research. Advances have already been made by the Criminological Research Institute of Lower Saxony (KfN), but the Federal Government has refused to award a contract and finance a comprehensive study of child trafficking. The German Foundation “Volkswagenstiftung” has refused an application for support, referring to this being a primary state task which is not to be funded by the private sector⁸.

The National Situation Report on Trafficking in Human Beings (Lagebild Menschenhandel), which is published annually by the Federal Criminal Police Office (BKA)⁹, displays only a part of the problem and the extent of child trafficking. This is also confirmed by the BKA¹⁰. In general, the National

⁸ Statement by Prof. Dr. Christian Pfeiffer, Director of the Criminological Research Institute of Lower Saxony (KfN) recorded 22.5.2013.

⁹ BKA (eds.): Menschenhandel Bundeslagebild 2011, Wiesbaden.

http://www.bka.de/DE/ThemenABisZ/Deliktsbereiche/Menschenhandel/Lagebilder/lagebilder__node.html?__nnn=true

¹⁰ Statement by Dr. Jörg Ziercke, President of the BKA at the press conference January 10th, 2013 of UNICEF in Berlin accompanying the television film „Operation Zucker“ (Operation Sugar).

Situation Report on Trafficking in Human Beings does only present concluded investigations. It comprises those cases, where it was investigated or proceedings were initiated (§232, 236 StGB), however not the cases where proceedings were initiated due to induction of minors to prostitution (Zuführung zur Prostitution von Minderjährigen, §180 StGB). For the compilation of the official police crime statistics this data is collected on the level of the Federal States, but it is not evaluated. Data about criminal proceedings concerning child trafficking are not recorded by the justice, respectively are not accessible. The National Situation Report on Trafficking in Human Beings allows for an overview of the age structure of affected of selected nationalities. It does not provide an overview of the structures of the offences.

The specialized counseling centers for victims of trafficking (FBS) receive their information and data through their counseling, support and supervision of affected. Additionally, they try to collect empirical data in the course of trial monitoring in criminal proceedings of cases of human trafficking, amongst others with minors. The counseling of offices for victims of trafficking is not completely included in the National Situation Report on Trafficking in Human Beings of the BKA, as criminal proceedings are not initiated in all cases. A systematic record of data, respective a nationwide collection of FBS's data is not possible due to missing resources and as not all criminal proceedings are known to the NGOs. Another issue is the varying manner of data collection. The FBS compile different statistics, which orient on the requirements of the federal states authorities which support the clients of the FBS with financial resources.

A critical comment in this context should refer that an independent rapporteur on trafficking in human beings or trafficked children doesn't exist in Germany. The establishment of such a rapporteur could be connected to the process of data collection.

Child Prostitution

For Germany little data is available and no comprehensive study of child prostitution or children in prostitution does exist. Minors in prostitution often belong to population groups, which are rarely in focus: children living in the streets, drug addicted children, minor often unaccompanied refugees, delinquent children. As a result, the reports of NGOs, which support those children (street workers, social workers, refugee support groups etc.), are one of the few sources of information about the phenomenon child prostitution in Germany.

Child Pornography

Also in regard to child prostitution, there is only a deficient amount of data. A series of studies exists, concerning the behavior of children online or in social networks¹¹, but not extensively on child pornography. „Innocence in Danger“ has conducted a study on whether and how child pornography is relevant for cases of sexual abuse, which are counseled by the FBS.

¹¹ Cf.: Hans-Bredow-Institut (ed.); Risiken & Sicherheit im Internet, Befunde einer empirischen Untersuchung zur Onlinenutzung von Kindern und Jugendlichen Überblick über europäische Ergebnisse. Eine Untersuchung des Forschungsverbundes EU Kids Online, Hamburg Januar 2011. www.eukidsonline.de. Medienpädagogischer Forschungsverbund Südwest Mpfs (ed.); JIM 2012 - Jugend, Information, (Multi)Media. Basisstudie zum Medienumgang 12- bis 19-Jähriger in Deutschland, Stuttgart 2012. Medienpädagogischer Forschungsverbund Südwest Mpfs (ed.); KIM-Studie 2012. Kinder + Medien + Computer + Internet. Basisuntersuchung zum Medienumgang 6- bis 13-Jähriger in Deutschland www.mpfs.de.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has commissioned a study of child pornography in the context of the start of the Center for Child Protection Online I-KiZ¹². This study is completed, however has not yet been published¹³.

Dunkelziffer e.V. reports from their counseling of victims of child pornography that the victims are increasingly often in infancy. This data and information has not yet been systematically elaborated.

This quite insufficient data collection is hampering progress of the Federal Republic in measuring and evaluating the implementation of the OPSC. This deficit prevents taking the right, best possible measures in order to combat child pornography, child prostitution and child trafficking successfully and provide for sufficient necessary protection of children. Additionally, this lack of empirical facts and valid data leads to public and politics being not aware of this issue.

OPSC Implementation on different Levels

The Federal Government has already started the normative implementation of the OPSC. Before the Federal Government's ratification of the OPSC, the German Criminal Law relating to Sexual Offences and the Penal Code (StGB) have been changed in the context of the implementation of the Framework Decision forwarded by the Council of the European Union for combating of sexual exploitation of children and child pornography of October 31st, 2008. The amendments entered into force November 5th, 2008. Further amendments of the German Penal Code (StGB) have been made in 2009, with the inclusion of child and youth pornography as statutory offences.

In the field of the normative implementation of the OPSC, ECPAT sees the greatest advances being made in the Federal Republic of Germany. Furthermore, the EU guidelines 2011/36/EU of the European Parliament and the Council relating to preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JI of April 5th, 2011, which had to be established in national legislation no later than in a given period of two years, ending April 6th, 2013. Thus, on the normative level, subsequent improvement of statutory rule is required, so that it can be anticipated that the next months will bring about further progress.

Nonetheless, from our perspective there remain deficits in the introduction and of the amendments to statutory rule on the level of criminal prosecution relating to child prostitution and child trafficking as well as concrete victim protection for the affected, which will be more closely explained in Chapter 4.

Major deficits in the implementation of the OPSC are seen by ECPAT on one hand in the practice of criminal prosecution, which means the application of statutory rules, which is further referred to in Chapter 4, and on the other hand in particular in regards to the implementation of further measures, which concern prevention and victim protection (see Chapter 5 and 6).

¹² See www.i-kiz.de

¹³ Hans-Bredow Institut: „Vorschläge zur Verbesserung der Strukturen zur Bekämpfung von Darstellungen von Kindesmissbrauch im Internet“, Studie im Auftrag des BMFSFJ 2012. <http://www.hans-bredow-institut.de/de/vortrag/vorschlaege-zur-verbesserung-strukturen-zur-bekaempfung-von-darstellungen-von-kindesmissbrauch>.

4. Criminal Law and Legal Provisions

As stated in the First State Report by the Federal Republic of Germany relating to the OPSC, the actions and activities of child sale and trafficking, child prostitution and child pornography are in general captured in the Criminal Law.

To date not all forms of child exploitation and sale of children are captured within the German Criminal Law. The Penal Code does not yet provide a detailed description of commercial exploitation for further crimes, like forcing children to steal or beg. According to the German Penal Code (StGB) the exploitation of children in the form of forcing to beg or steal as well as capitalizing of criminal offences are not punishable. In the context of the implementation of EU guideline 2011/36 it is absolutely necessary to include these forms of exploitation into the German Penal Code. However, as stated above, the implementation of these guidelines has not yet been carried out. It remains questionable, whether the EU guideline finds direct application. There is a legislative gap, thus preventing the possibility to adequately punish this exploitation. This is due to the fact that a detailed description of “other exploitation” is missing, as in practice, sale of children or trafficking of children are often not recognized as such, when capitalizing on a person to commit criminal acts, in particular when those children are from abroad, as it is the case e.g. for drug dealing or children who steal or do pickpocketing (Klaukinder). Also adoption or organ trafficking belong to this area. The existing legal provisions are missing a systematization, which can clearly capture the corpus delicti of exploitation.

The German Penal Code misleadingly regulates child trafficking in §236 of the German Penal Code (StGB). §236 of the Penal Code (StGB) aims at regulating adoption trafficking and captures in para. 1, person as a parent/guardian has seriously neglected his/her duty of care and left one’s child to a third party and in para. 2 the sale, purchase and prohibited procurement of adoption. This has already led to confusion in the past as the terminology is unusual in the international context¹⁴. This separate path of the German terminology is from ECPAT’s point of view not constructive. Often child trafficking for sexual exploitation is masked as adoption. The standard of proof in adoption trafficking is set too high and trafficking rings and perpetrator structures are profoundly organized, to achieve sentences. This classification of the offence of sale of and trafficking with children has proven little practical, with the consequence that there are only a few criminal proceedings of the offence of child trafficking in the sense of the OPSC in cases with very young children.

Problematical is also that §236 of the Penal Code (StGB) does not demand a minimum threshold of one year (of liberty deprivation) and hence cannot make use of the extensive investigative techniques as included in the Code of Criminal Procedure (StPO).

¹⁴ Cf. EU-guideline combat trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JI as well as the optional protocol Convention on the Rights of the Child concerning Child Trafficking, Child Prostitution and Child Pornography and the Convention of the Council of Europe SEV 201 (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007, <http://conventions.coe.int/Treaty/EN/Treaties/Html/201.htm>.)

It remains to check on how the existing legal regulations can systematize in way, the focus lies on punishing sale of children in all its exploitive forms and be criminally prosecuted with the necessary instruments of investigation according to the sense of justice. A grave form of adoption trafficking for the purpose of sexual exploitation could be included to §236 of the Penal Code (StGB) with a minimum threshold of one year, or §232 of the Penal Code (StGB).

So far no alignment of §232 (3) of the Penal Code (StGB), concerning trafficking in human beings for the purpose of sexual/commercial exploitation, with the UN Convention on the Rights of the Child and its optional protocols has been made, in which it is stated that a child is a person under the age of 18 and as a result demands a rise of the age of consent. This is also intended with the EU guideline 2011/36. Children are seen as particularly in need of protection and the best interest of the child is denoted as primary consideration, which is described in detail in the recital concerned with the degree of penalty. At the same time, we would like to point to the imbalance of ages of consent as stated in §180 of the Penal Code (StGB) (promotion of sexual acts by minors). Here, the age of consent lies at the age of 16. In this case an alignment of the age of consent would be necessary, but sexual acts between youth over the age of 16 should according to the right to sexual self-determination not be criminally prosecuted.

ECPAT's experiences show that in the context of criminal prosecution of §232 of the Penal Code (StGB) (trafficking in human beings), it is often switched to the regulations according to §180 of the Penal Code (StGB) (promotion of sexual acts by minors), as standard of proof is lower and the phenomenology of sexual exploitation and the introduction to prostitution can be better captured. The standard of proof concerning the exploitive character are set too high in §232 of the Penal Code (StGB) and the perpetrator structures too dense. The promotion of sexual acts according to §180 of the Penal Code (StGB) is as a result easier to prove. ECPAT is aware that in particular in the Penal Code of sexual offences also sexual acts between youth over the age of 16 should not be penal, as sexual self-determination and development are in focus. However, in the context of the trade and sale of children as well as promotion of prostitution a clear threshold concerning the age of consent must be set.

From ECPAT's perspective the phrasing of §233 of the Penal Code (StGB) (trafficking in human beings for labour exploitation) is worth discussing, as it does not sufficiently consider the particular need of protection of children. The §233 states that for labour exploitation is necessary that a person is forced to do it: "eine andere Person unter Ausnutzung einer Zwangslage oder der Hilflosigkeit ...". Problematic is that with "consent" of the affected person, also of a child, exigency circumstances or helplessness are always negated. At least it is arguable whether a minor/child can consent in this case legally effective. The Penal Code (StGB) does not take into account that children are mentally unable to reject an offender. A phrasing is missing in §233 of the Penal Code (StGB), which includes the specific need of protection of minors and particular standards of proof and also that generally exigency circumstances and helplessness are to be assumed.

If victims of human trafficking have committed an offence, like e.g. concerning the Law on Residence, the Code of Criminal procedure enables the suspension of a punishment (optional-provision / Kann-Bestimmung). For minor victims an obligatory-provision (Soll-Bestimmung) would better reflect the requirements of the OPSC. In regards to this, it should be checked, if legal changes are possible in Germany.

General regulations of support, supervision and protection measures for children, which have been victims of trafficking in human beings, aim at a primary consideration of the best interest of the child – also when it comes to the determination of the age. From the perspective of ECPAT, this has not been implemented in Germany. The Residence Act (Aufenthaltsgesetz) regulates in §49 (6, sentence 2) that the burden of proof concerning age determination has to be carried by the foreigner. This regulation presents a direct contradiction to the OPSC and must be aligned accordingly.

It would be required to interpret cases of doubt in determination of age in the best interest of the child. Furthermore, a limitation to those under the age of 14 is ineligible, as the in Article 13 of the OPSC situation is to be applied to any person under the age of 18. The present practice of “Visual Inspection” by Foreigners’ Registration Office staff is not appropriate to the matter and is legally questionable. A similar problematic that should be mentioned in this context is the non-existence of separate immigration requirements for minor affected by human trafficking, although this would be necessary in order to consider the best interest of the child. All regulations which apply to adults are also applied to children and minors. For ECPAT this also raises questions in regard to the present practice of legal support in the course of immigration procedures for minors, also concerning the cooperation with youth welfare offices and a possible withdrawal of parental custody, as they often place their children in prostitution.

The sequestration and confiscation as demanded by the OPSC, Article 7 is insufficiently carried out. According to Article 7 (2) of the OPSC the state parties are asked to introduce legal regulations in order to confiscate or include profits resulting from these offences. This is reflected in the Penal Code (StGB) related to offences of procuration (§181a StGB), regulated by §181c StGB and of trafficking in human beings (§232ff StGB), regulated by §233b StGB. The Penal Code does not reflect a skimming of profits or confiscation of goods in cases of exploitation for the purpose of prostitution (§180a StGB), induction of minors to prostitution (§180 StGB) or child pornography (§180 StGB).

Article 7 of the OPSC also states that asset used to commit an offence but also generated from the offence, has to be confiscated. As criminal proceedings in cases of child pornography rarely result in prison sentences, but the offenders are convicted to pay several daily rates of fines, the possibility of skimming of profit is excluded. Conducted research did not find one criminal proceeding in cases of child pornography where a prison sentence has been pronounced, where a skimming of profits has taken place.

The National Situation Report on Trafficking in Human Beings (Lagebild Menschenhandel), which is published annually by the Federal Criminal Police Office (BKA) from 2011 shows that in general in the domain of trafficking in human beings in only a small number of prosecuted cases skimming of profits, is an option. The Federal Criminal Police Office cannot determine, whether this is due to structural problems in skimming of profits. A research conducted by the scientific institute of the Federal Criminal Police Office is needed in order to study the backgrounds and develop measures, which improve the proceedings.

With application of the EU guideline concerning securing and confiscating of profits resulting from offences in the European Union (COM/2012/085 final - 2012/0036 (COD)) these gaps are closed. However, child rights organizations and specialized counseling offices for victims of human trafficking criticize that no direct remuneration of victims with confiscated financial means are intended by the guideline¹⁵.

5. Protection of the Rights of Victims

Article 8 of the OPSC states that state parties are obliged to take appropriate measures in order to acknowledge the rights and best interests of children and the need for protection of underage victims, as well as to adapt the proceedings to account for their special needs, namely in their role as witnesses. This is regulated by the Penal Code (StGB) and the Code of Criminal Procedure (StPO) only fragmentarily. In practice, victim-witnesses in criminal procedures related to OPSC, in particular in cases of foreign children/unaccompanied underage refugees, are not sufficiently informed and witness assistance is not arranged. Video-recorded hearings of minor victim-witnesses are not used often enough in criminal procedures – most likely in cases of young children and sexual abuse (§174 and §176 StGB), but only rarely in proceedings with affected youths of trafficking in human beings (§232), induction of minors to prostitution (§180) or child pornography (§184). A direct confrontation with the offender in court is no proceeding, which is considerate of the need for protection of underage victim-witnesses.

The experience of specialized counseling centers, which attend such affected in proceedings, show that it is in no manner made use of the legal options by justice in practice, which are included in the Code of Criminal Procedure. In regards to questions of victim-support of minors in proceedings on §232ff and §180, specialized counseling centers report the following problematic cases from their experience¹⁶:

- An underage African was interrogated by the police in a proceeding of trafficking in human beings repeatedly without legal support in the city U¹⁷. At this time, a legal guardian had not been assigned to her (2009/2010).
- A center based in the federal state Baden-Wuerttemberg reports that it has not been made use of video-recorded hearings in cases of questioning minor victims in proceedings of §232 in the last 3.5 years.
- An underage victim-witness has been interrogated and treated as the accused in a 2011 proceeding of trafficking in human beings, as she had a forged passport. An accessory prosecution lawyer has not been mandated, as the parents living abroad could not sign the

¹⁵ <http://www.kok-buero.de/kok-informiert/website-news/detailansicht-website-news/artikel/richtlinie-des-europaeischen-parlaments-und-des-rates-ueber-die-sicherstellung-und-einziehung-von-er.html>

¹⁶ For the creation of this report the KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the migration process) conducted a query from May 3rd till 15th, 2013 of the specialized counseling offices organized in the KOK.

¹⁷ The right of legal presentation exists and in a questioning this must be referred to according to §§397a para. 1 No. 1 406h/StPO.

necessary authorization. Only with vehement interference by the specialized NGO her treatment as victim-witness could be achieved and an accessory prosecution mandated.

- The specialized counseling centers have repeatedly made experiences during the last years that their supervision and support of underage victim-witnesses has led the justice to doubt their credibility.

Another case, which received broad public attention:

In the federal state of Saxony, a case of child prostitution dating back to 1993 has been reopened in 2012. In this case, the judge refused to treat the minor victims as victims, who have been freed from a child brothel in Leipzig, justifying this “it is often not recognizable, whether the prostitutes work there voluntarily or not”. In 2008, when the police presented pictures of possible clients to the victims, who at the time of the offence were 15 years old, they recognized the judge and a prosecutor. As a result, the meanwhile adult women were accused of defamation and they are defendants in court by now. The end of the trial, where the former judge has appeared as joint plaintiff, is not in sight in May 2013¹⁸.

There are, contradicting the statement by the Federal Government in the First State Report, no nationwide options of counseling centers or other measures, which would be necessary for the support of the physical and mental-social rehabilitation of minor victims in Germany. “Dunkelziffer e.V.” assumes that there are not even half a dozen specialized counseling centers for affected by child pornography. In a few major cities in Germany, appropriate options and institutions exist for boys, which are affected by sexual abuse. Also suitable, age-based accommodation for children is missing. There are no specialized counseling NGOs or suitable accommodations for underage victims of labour exploitation. The Federal Association for Unaccompanied Refugee Minors (UMF) remarks that in particular unaccompanied minor refugees, who are victims of human trafficking or forced prostitution, do not receive legally possible support and supervision¹⁹. In some Federal States, a guardian is only reluctantly assigned, with reference to the necessary transfer of parental custody by the parents/guardian, which proves impossible or not promptly possible in those cases.

Measures of support and supervision for families of underage victims of child trafficking, child prostitution and child pornography are completely missing.

Since a long time, ECPAT and other NGOs point to the need of an assessment when assigning a guardian related to his/her particular knowledge of the proceedings of foreigners and asylum law, as well as the victim-protection issue in cases of human trafficking of minors. Potential guardians should be trained correspondingly²⁰.

The existing structures of supervision and support for victims of human trafficking and other exploitive offences as well as services for affected of child pornography are presently not adequately designed for children. Structures for the cooperation and networking of involved specialists

¹⁸ Detailed coverage can be found for the process with the known key word „Sachsensumpf“ i.a. in; Die Zeit November 29th, 2012, Die Welt March 9th, 2013, Der Spiegel April 6th, 2013.

¹⁹ www.b-umf.de

²⁰ See also recommendations of the Federal Association for Unaccompanied Refugee Minors Supplementary Report on the third and fourth periodic reports of Germany to the United Nations pursuant to Art. 44 of the UN Convention of the Rights of the Child, page 8: “All proceedings concerning children and young people in the field of child and youth welfare services, as well as in the area of foreigners and asylum law, have to be explained in a child-friendly manner. It is also important that the information accessible to young people has to be in a language they can understand”.

departments like the youth welfare offices, youth accommodation, counseling centers and counseling centers specialized in abuse, are non-existent when the victims are underage; there is no concept of a “National Referral Mechanism” for affected minors of sale of children, of prostitution and child pornography. Also, appropriate age-based and culturally specific rehabilitation-structures are needed. Mental-social counseling services for traumatized persons under the age of 18 are not considered in the German asylum or foreigners’ law, which certainly represents a clear contradiction to the OPSC from ECPAT’s point of view.

The Federal Government adopted a legislative reform to strengthen the rights of victims of sexual abuse May 3rd, 2013 (StORMG)²¹, and it must be waited on its first effects in practice for victims of child trafficking, child prostitution and child pornography.

Further training for justice and police on the subject of child trafficking, child prostitution and child pornography

The existent further training offers for judges and prosecutors are limited. Far more advanced is the further training of the police. The State Offices of Criminal Investigation (LKAs) and the German Federal Criminal Police Office (BKA) frequently conduct trainings on the subject of child pornography. The governmentally organized further trainings for judges and prosecutors is conducted by the German Academy of Judges, a joint institution of Federation and States for judges of all branches of the court system and prosecutors, and offers trainings in their particular areas of expertise and provides knowledge and experience on political, social and other scientific developments. The annual training program, which is compiled at so-called program-conferences, is strongly determined by a market analysis. In practice this means that so far no further training on the subjects of child trafficking and child prostitution has been offered or conducted, due to a lack of demand. The topic of child pornography has only been introduced punctually to courses of sexual abuse by specialist departments²². Some of the federal states provide intern meetings of further training to respective chief prosecutors. Further information regarding this subject was not available to us.

Funded privately, only financed by donations, the NGO „Dunkelziffer e.V.“ offers a three-day further training on the subject of child pornography for judges, prosecutors and police. Only rarely frequented by judges, a strong participation on the side of the police leads to the courses always being fully booked.

Additionally, ECPAT holds two-day networking workshops for further training of specialists (police, prosecutors, judges, Aliens Department, guardians, youth welfare, counseling offices) on the subject of child trafficking. Also this further training opportunity is financed exclusively by donations.

Additional training opportunities could not been found despite of extensive research. The responsible ministries do not publish data on this subject. The facts at hand speak against an implementation of Article 8 (4) of the OPSC.

²¹ (Drucksache 253/13)

²² Presently the program for further training by the Academy of Judges for the second half of the year 2013 includes one course on the topic of sexual abuse of children.

The activities related to the Federal Initiative for Further Training (bufo), funded by the BMFSFJ and conducted by the NGO DGfPI, listed in the First State Report by the Federal Government, focus on protection from sexual abuse in the institutional or familial field. Topics which concern the OPSC are not part of the further training-modules²³.

6. Prevention

In Germany there are presently several activities and campaigns for the protection from sexual abuse ongoing, which are partially described extensively in the First State Report by the Federal Government of Germany²⁴. Key aspects of these prevention prospects are a general sensitization on the subject of sexual abuse, appeals to affected by sexual abuse in the familial or institutional field to contact support or pass on information to the police.

„Nummer gegen Kummer“

The child and youth helpline of “Nummer gegen Kummer e.V.” is often contacted by children and youth to talk about personal problems²⁵. Main reasons for a call are problems with one’s own person, followed by problems with children/youth or adults. Also the subjects of violence and sexual abuse are part of the topics in counseling conversations. As specific issues physical violence, sexual harassment and abuse are primary reasons for a call. Statistics of the past years and the internet presentation of “Nummer gegen Kummer e.V.” show that neither child prostitution, child pornography nor child trafficking are mentioned and addressed. As a result, the actual target group of the OPSC is not reached²⁶.

„Trau-dich“

This is a nationwide initiative, which aims at sensitizing children age-based on the topic of sexual abuse with help of a play. It is no prevention measure against child trafficking or child prostitution²⁷.

„Missbrauch verhindern!“

„Missbrauch verhindern!“ is a campaign against sexual abuse in general and not related to OPSC-topics, conducted by the Police Crime Prevention of States and the Federation (ProPK). It aims at a rise in filing charges when sexual abuse is suspected and is directed towards the broad public and does not include the OPSC topics²⁸.

„Kein Raum für Missbrauch“

The aim of this campaign of the Independent Representative of the Federal Government for questions of sexual abuse is „to raise public awareness on the subject through the nationwide

²³ Statement by DGfPI on May 22nd, 2013 and cf. www.dgfpi.de/bufo_konzept.html

²⁴ Cf. First National Report of the Federal Government concerning the OPSC, pp. 13- 18.

²⁵ www.nummergegenkummer.de: „um zwischenmenschliche und intime Probleme zu besprechen“

²⁶ www.nummergegenkummer.de/html/img/pool/Statistik_KJT_2011.pdf

²⁷ www.trau-dich.de

²⁸ www.polizei-beratung.de/presse/794-missbrauch-verhindern-eine-strafanzeige-ist-auch-opferschutz.html and www.missbrauch-verhindern.de

dispersion of the campaign's message "No Space for Abuse" and through press coverage. In particular parents, professionals and persons with frequent contact to children should be better informed on the topic and encourage them to support protection measures in institutions („durch die deutschlandweite Verbreitung der Kampagnenbotschaft „Kein Raum für Missbrauch“ und eine breite Presse- und Öffentlichkeitsarbeit zur Bildung eines Verantwortungsbewusstseins zur Thematik in der Öffentlichkeit beizutragen. Besonders Eltern, Fachkräfte und Personen, die regelmäßig mit Kindern in Kontakt sind, sollen besser über das Thema informiert und dazu ermutigt werden, sich für Schutzkonzepte in Einrichtungen einzusetzen"²⁹). This initiative does not include topics of the OPSC.

„Mutig fragen – besonnen handeln“

This is a leaflet, published by the BMFSFJ, targeting the questions of parents concerning sexual abuse in the familial or institutional field and not the commercial exploitation of children.

All these initiatives provide an important contribution in regards to content for the protection of children from sexual abuse and are not criticized here. Rather, it shall be indicated that appropriate sensitization initiatives concerning child trafficking, child prostitution and child pornography for affected or the professional public, have so far not been implemented in Germany. As a result, ECPAT does not see the compilation of these prevention measures as included in the "Third and Fourth Report of the Federal Republic of Germany to the United Nations of the Convention on the Rights of the Child"³⁰ as constructive in the sense of the OPSC.

Only the campaign „**Don't look away!**“ for the protection of children and youth from sexual exploitation in travel and tourism, started as a trinational initiative, does target the implementation of the Child Protection Code in travel and tourism and campaigns for the passing on of information by travelers on travelling sexual offenders, insofar corresponding to Article 10 of requested measures by the OPSC³¹. In cooperation of governmental with non-governmental partners and the majority of travel companies from Austria, Switzerland and Germany additional countries could be won for the campaign at the beginning of 2013³².

The inventory of prevention activities shows that related to the problematic fields, for which data and facts are missing for Germany and there are no studies so far, also no constructive prevention campaigns exist.

²⁹ <http://www.kein-raum-fuer-missbrauch.de/kampagne/ueber-die-kampagne/>

³⁰ Third and Fourth Report of the Federal Republic of Germany to the United Nations of the Convention on the Rights of the Child, pp. 53ff.

³¹ Art. 10 OPSC: „States shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.“. Also the revised guidelines regarding initial reports to be submitted by States parties it is explicitly referred to measures for the protection from child sex tourism. Cf. the "Revised Guidelines regarding initial reports to be submitted by States parties under Article 12, paragraph 1, of the OPSC", adopted 2006, Art. 38ff.

³² Cf. Report of the International Conference „Don't look away!“ – Campaign to protect Children and Youth from sexual Exploitation in Travel and Tourism 9./10.1.2013, Berlin.

7. International Support and Cooperation

On EU level it should particularly be referred to two guidelines, which have to be implemented to national legislation in a maximum period of two years: The guideline 2011/36/EU of April 5th by the European Parliament and of the Council on April 5th for the Prevention and Combating of Trafficking in Human Beings and Protecting Victims, repealing Framework Decision 2002/629/JI (ABl. L101/1 of April 14th, 2011) and the guideline adopted December 13th, 2011 by the European Parliament and the Council for combating sexual abuse and sexual exploitation of children as well as child pornography, repealing Framework Decision 2004/68/JI (ABl. L335/1 of December 17th, 2011 and L 18/7 of January 21st, 2012). Both guidelines have not yet been implemented.

International cooperation is required in the context of travelling sexual offenders, in particular, if the victims are minors from abroad. Presently, the repatriation of underage victims affected by offences of trafficking in human beings is prioritized by Federal and State Governments. The specialized counseling centers criticize that the repatriation is not oriented on the best interest of the child, but on Immigration Act and Asylum Law. Sufficient resources are missing to ensure that affected are not again exploited or trafficked by criminal networks.

To date there are only a few charges filed in cases of travelling sexual offenders. The necessary contact addresses remain quite unknown and are not standardized and not sufficiently functional. In the next years, supported by the EU Committee and Interpol, improvements for Germany and countries of destination are planned.

8. Further Legal Provisions and Regulations

Monitoring-Process

The National Action Plan „Aktionsplan 2011 der Bundesregierung zum Schutz von Kindern und Jugendlichen vor sexueller Gewalt und Ausbeutung“ (NAP) of September 27th, 2011 as described in the First State Report, is supported by an annual meeting Federal-State Working Group. Exemplary for the Federal Government is the associated Monitoring-Process. Four Working Groups concerned with Intervention, Prevention, International Cooperation as well as Child Trafficking and Tourism, which consist of Federal Ministries, Representatives of the Federal Council and the German Cities Council as well as NGOs and affected have been installed.

9. List of Recommendations

- In regards to all forms of exploitation of child trafficking, child pornography and child prostitution, the Federal Government should make efforts commission an independent research on the “dark field” in those domains and receive a comprehensive inventory and valid data in order to establish a basis for effective interventions.
- Additionally, the justice should commission an independent research to clarify the skimming of profits for all forms of exploitation of child trafficking, child prostitution and child pornography.
- The Federal Government should implement the ratified international conventions against child trafficking promptly and completely into national legislation and strategies. To guarantee the efficient implementation of the conventions, the Federal Government should particularly meet the in the EU guideline against trafficking in human beings and protecting victims listed protection measures for minors and protection measures for professionals, which are in contact with potential victims (police, prosecution, Aliens Department, youth welfare).
- The Federal Government should ensure by provision of specific and frequent further trainings to sensitize the relevant agencies (law enforcement agencies, courts and child and youth welfare as well as guardians and interpreters) as to all forms of exploitation of child trafficking, child prostitution and child pornography.
- The Federal Government should ensure that vulnerable children, explicitly minor refugees, can find contact points and that agencies are sufficiently equipped to efficiently combat all forms of exploitation of child trafficking, child prostitution and child pornography.
- To avoid additional strains in the course of hearings of children, the execution of questionings in proceedings of child trafficking, child prostitution and child pornography should take place in special rooms, video-recorded and by trained professionals, and if possible by the same person, and these should in any case be included in the Code of Criminal Procedure and summary proceedings (RiStBV).
- The Federal Government should urgently consider a reformation of the Penal Code in form of a readjustment of §§232 (StGB). Not only the inclusion of all forms of exploitation of child trafficking, child prostitution and child pornography into the Penal Code is necessary, but also the misleading heading of §236 (StGB) should be withdrawn. A separate regulation for adoption trafficking with corresponding extension of the penalty range should be carried out. First suggestions for a reformation are already available to the Federal Government³³.

³³ See study „Entwicklung von tragfähigen Unterstützungsstrukturen für die Betroffenen von Menschenhandel“, Herausgeber BMAS, koordiniert vom KOK e.V., Berlin 2011

- The Federal Government should install an independent rapporteur on child trafficking.
- Improvements of the criminal procedural regulations as well as concerning the right of residence should urgently be questioned by the Federal Government.
- Prevention measures for the particularly vulnerable minors to child trafficking (sale for the purpose of sexual exploitation, sale for the purpose of begging, for the purpose of theft or labour exploitation), child prostitution and child pornography are to be implemented.
- Improved police equipment for investigations on all forms of exploitation of child trafficking, child prostitution and child pornography should be ensured by the States.