

Fighting Human Trafficking in Bavaria

*Lothar Köhler**

Preliminary Remarks

Human trafficking—which we primarily observe in the form of trafficking in children and women, often linked to prostitution—is an especially reprehensible and offensive type of organized crime. It deeply injures human dignity. It is a modern form of slavery, which has already claimed many victims. In such cases, fundamental human rights, such as physical integrity, personal freedom, and sexual self-determination, are violated.

Ever since the passage of Germany's 37th Criminal Law Amendment Act of 19 February 2005, with regard to the term "human trafficking," the German authorities differentiate between human trafficking for purposes of sexual exploitation and for purposes of labor exploitation. Human trafficking for purposes of sexual exploitation refers to the exploitation of persons in a state of exigency or helplessness (associated with transportation to a foreign country) in order to bring them into or continue prostitution or force them to perform sexual acts on or before a perpetrator or third party, or to have sexual acts performed on them by a perpetrator or third party. Human trafficking for purposes of labor exploitation means exploiting the situations cited above in order to bring persons into slavery, bondage, or debt slavery, or to compel individuals to continue to labor under working conditions in which an obvious disparity exists to other employees in a comparable work situation. The law prescribes punishments for those convicted of prison sentences ranging from six months to ten years.

Aggravating factors for sentencing—which call for a minimum prison sentence of one to ten years—exist if the victim is a child, if the perpetrator has severely abused the victim during the crime or has endangered the victim's life, if he has committed the crime for profit or as a member of an organized criminal enterprise, or if he has made the person begin or continue prostitution or perform sexual acts using violence, threats of violence, or through deception. Persons promoting human trafficking by recruiting, transporting, transferring, housing, or taking in another person will be punished with prison sentences ranging from three months to five years. (The attempt to commit any of the above acts is also punishable.) In addition, a prison sentence of six months to five years has been set for the offense of forced marriage.

The Situation in Bavaria

The relevant case statistics regarding the situation in Bavaria from the year 2003—which, it should be noted, are based on the old laws, and only include human trafficking for the purpose of sexual exploitation—demonstrate that police statistics for Bavaria cite 126 cases of human trafficking for the year, involving 196 victims. In a ten-year

* Lothar Köhler is a Senior Criminal Advisor in the Bavarian State Ministry of the Interior.

comparison, the annual average was 84 cases per year. 31 of the investigations conducted in 2003 involved cases with definite ties to organized crime.

The majority of the victims in the 2003 cases were between eighteen and twenty-four years old, the youngest just fourteen. Most of the victims came from Central and Eastern European nations: 35 percent came from Germany, 27 percent from Bulgaria, 9 percent from Romania, and 8 percent each from the Czech Republic and Slovakia. Sixty-three suspects were registered. The nationalities of these registered suspects break down to 27 percent German, 21 percent Bulgarian, 16 percent Turkish, 6 percent Czech, 5 percent Yugoslav, and 3 percent Austrian, Slovak, Russian, Romanian, and Hungarian combined. 25 percent of the suspects were women.

However, these are only the numbers that are revealed by actual police investigations. The number of actual cases is probably a multiple of those stated above. According to estimates by the United Nations, almost 700,000 women and girls are kidnapped and forced into prostitution around the world every year. Thus, we must continue our endeavor to further expose the gray areas of this modern slave trade.

Special Problems

In the fight against human trafficking, we confront unique challenges. For instance, perpetrators use the prevailing social conditions in their countries of origin to their own advantage. In the recruitment phase, they generally promise the women serious employment and then, in most cases, use physical or psychological coercion to lead them into prostitution. The recruitment methods of perpetrators are varied and diverse. The most common method is to promise a woman a job in the service sector, especially in the domestic or food-service fields. Sometimes perpetrators use forged employment contracts. Using newspaper advertisements, combined with requests that “applicants” send photos, perpetrators usually make a visual preliminary selection of the women. In other cases, the traffickers answer advertisements posted by women seeking employment, or they promise to match their victims with husbands in the “Golden West” through their own dating or marriage agencies. In rare cases, the perpetrators purchase prostitutes from other human traffickers or abduct women from Central and Eastern European countries and ship them to Western Europe.

The women that are brought to Germany are primarily transported over land, in cars, vans, trucks, or trains. Entry into the country in itself is not problematic. Nationals from Poland, Lithuania, Slovakia, Croatia, Romania, and Hungary do not need a visa for entry, and can thus enter the country at any time as tourists. It has been determined that about half of the known victims of human trafficking that have been brought to Germany crossed the border in a quasi-legal fashion.

In Germany, traffickers generally immediately use their victims as prostitutes and exploit them. Usually, the women are forced into prostitution under the pretense that they must work off the debt for their passage. The majority of victims of human trafficking continue to be housed in brothel-like establishments. The high demand by johns for commercial sex leads the traffickers to maintain a high supply. Those involved in

the trade are generally well organized, highly secretive, and tend to operate in more isolated areas.

Confiscating profits from human traffickers is difficult, because the victims generally only provide scant information on their pay. When victims are released, they usually return to their home countries, and thus are no longer available for investigators to obtain further information. As a result, a corresponding adjustment of claims to facilitate the recovery of profits is only seldom possible.

Informal social monitoring through neighbors or one's social environment is virtually nonexistent in the isolated areas where human trafficking victims are often found. The victims are also rarely willing to press charges. One of the primary reasons for this is their dependence on the traffickers, who may pose a serious threat to themselves or their family in their home country. In addition, a lack of identification documents (which are often confiscated by the traffickers), poor language skills, a distrust in the government and/or police, and their ignorance of existing support options through the state or social institutions also work to restrain victims of human trafficking from seeking redress. This is particularly true given that, in cases where victims are discovered to be living in Germany illegally, criminal proceedings must also be initiated against them as well.

Abatement Measures

Due to these difficulties, German law enforcement agencies depend on a wide variety of preventive and repressive measures, especially in the fight against organized crime, and specifically human trafficking. For instance, over fifteen years ago Bavaria set up effective special bureaus for the fight against organized crime. The police officers employed in these bureaus have received comprehensive training to be capable of adequately and successfully reacting to any form of organized crime. Situational analyses are continually being conducted for all offense areas of organized crime, in order to identify new developments at an early stage and be able to react effectively to them. Especially in cases of human trafficking, special commissions spanning several agencies (e.g., police, federal border guards, customs) are established to utilize the variety of skills, legal instruments, insights, and contacts—both domestic and on foreign ground—in a concentrated manner.

Potential measures range from undercover investigators to victim protection establishments to several technical surveillance methods. In addition to classical law enforcement, we in Germany have had success in employing financial measures against traffickers. Not only do we wish to break down the structures of organized crime, we also wish to deprive the criminals of their means of financial support, because the incredible potential profits are the true engine driving this dangerous form of crime. Our specially trained financial investigators work extremely efficiently. In cooperation with the courts, they were able to seize criminal profits in the amount of 34.2 million euros in 2003.

Locally responsible specialized police departments regularly monitor the relevant brothels and areas where customers seek prostitutes in order to discover and stop cases

of human trafficking. The preventive effect of a police presence in this area continues to be high. Several crimes that are common building blocks of this larger framework can be prevented at an early stage.

In addition, we have established special investigative and surveillance units that are permitted to perform searches without probable cause of persons and motor vehicles in border areas and on all roads and inland localities that carry significant border traffic. Our so-called dragnet controls have proven especially successful in the fight against transborder crime in the German interior. Dragnet controls are especially valuable in the fight against drug smuggling, illegal immigration, and people smugglers, and thus against human trafficking.

Victim Protection Measures

In addition to these measures on the enforcement side of the equation, comprehensive organizational measures have also been undertaken to strengthen victim protection measures in Bavaria. For instance, among other measures, the Bavarian police have appointed fourteen “Police Delegates for Women and Children (BPFK),” who counsel and support victims of crime. At police headquarters in Munich, a separate department for victim protection has been established, and in Nuremberg, the police have created a “House of Prevention,” in which various victim protection organizations and a counseling center work together on an interdepartmental basis. For years, the Bavarian police have been working together in a confidential and efficient manner with various social, charitable, and religious organizations. One example of this collaboration is the project entitled “Fighting Sex Tourism and Child Abuse through German Perpetrators in the Border Areas of the Czech Republic” (known as “KISS” for short), as well as collaboration with the Solwodi (Solidarity with Women in Distress) and Jadwiga professional counseling centers in Germany and the Czech Republic, which are supported and maintained by the state.

In further pursuit of the protection of victims of human trafficking on the one hand, and of the successful fight against this inhuman type of crime on the other, last year Bavaria concluded a special agreement for the protection of victim witnesses between the police, the office of the district attorney, professional counseling centers, foreign and social welfare offices, and the state employment agency. The agreement allows the police, in coordination with the district attorney’s office, to involve local victim counseling centers at an early stage when pursuing human trafficking cases in which victims of human trafficking are likely to be picked up. Of course, confidentiality requirements must be taken into consideration in these cases. However, with the aid of the professional counseling centers, we want to be able to establish better mutual trust with the victims, who may be required to testify as witnesses. In this way, we wish to diminish their fear of the police and justice system and promote their willingness to testify, because only with witness testimony can we conclusively determine if the perpetrators are human traffickers.

All women who are found to be victims of human trafficking are generally given four weeks to leave the country. Only if the victim is prepared to testify—and then only

if it can be determined that human trafficking took place—can imprisonment (detention while awaiting trial or custody pending deportation) be avoided. All human trafficking victims are counseled and supervised by the professional counseling centers during the period of their stay in Germany, and are provided with support in making any necessary preparations for their return trip. As part of this process, the counseling centers try to contact counseling centers in the victim's home country. However, in many cases the victims wish to return to their homeland immediately after testifying before a judge.

If the victim is willing to remain in Germany until the trial, several victim protection measures are available. If, due to their willingness to testify—especially in cases involving serious or organized crime—victims are in particular danger, they may be put in a special witness protection program (with a new identity, no contact with their family in their home country, etc.) upon approval of the district attorney. In the event of a less severe degree of danger, victims are protected in special secure accommodations that are part of the professional counseling centers.

Victims generally receive a limited right of residence (known as “exceptional leave to remain”) until the end of the trial. During this time, they are counseled by the professional counseling centers (e.g., Solwodi or Jadwiga) intensively and, if possible, in their native language, and assisted in completing whatever administrative tasks are involved in their repatriation. The victims are thus aided in utilizing the time before the trial in a meaningful way.

Victims of human trafficking in Bavaria have a right to state social welfare assistance. They are provided with housing, are allowed to apply for a work permit, and are able to take advantage of medical assistance to regain their physical and psychological stability. The counseling centers will also organize their return trip to their home country; they often pay the travel costs and, in some cases, grant a small sum of money to enable the victims to establish a new life for themselves upon their return. These centers, acting on the victims' behalf, can also usually apply for acceptance into a re-integration program through the International Organization for Migration (IOM) and, if necessary, for secure housing as well.

International Cooperation

International cooperation is extremely significant in the larger struggle against organized crime, and especially in the fight against human trafficking. Favorable ties and contacts with the countries of origin of the victims and perpetrators are essential to effective police work in this area. The police take particular advantage of liaison officers in over fifty nations around the world, of Interpol ties, and of contacts developed beyond these more formal channels. For example, close cooperation exists between Bavarian law enforcement authorities and their counterparts in Poland and the Czech Republic. A permanent relationship exists, including formally responsible contact persons, such that a regular exchange of information and quick approval of necessary measures are possible. In the past, for instance, one human trafficking victim was first placed in a German and subsequently in a Czech witness protection program.

The Bavarian State Ministry of the Interior has concluded mutual bilateral declarations of police cooperation with a few neighboring countries in Eastern Europe, such as the Czech Republic. The goals of these agreements include improved collaboration, especially in the areas of fighting organized crime and human trafficking. Joint training courses, joint preventive measures, and the mutual exchange of crime-fighting strategies are high on the priority list. In addition, other measures include treaties that have been concluded by the federal government with Russia, Tunisia, and the Ukraine on fighting organized crime and other serious offenses, as well as treaties on police and legal cooperation. These treaties also cover cases of human trafficking.

Upon becoming members of the European Union, the new member nations also become part of respective EU police and judicial cooperative institutions, such as EUROPOL and EUROJUST. We hope that these mechanisms will lead to further improvements in international collaboration.

In recent years, the counseling centers in Bavaria have also undertaken a number of efforts to improve multinational collaboration. The main focal points include the granting of return trip assistance (travel costs, start-up assistance), qualification measures, the development of mutual strategies, intelligence measures, the exchange of information and experiences, guidance of victims returning home, or the conduct of international conferences in which policy-makers, police, federal prosecutors, and other governmental organizations participate, along with representatives from NGOs.

Despite all the progress that has been achieved, we must still further expand our collaboration on the international level. The Bavarian state government will consistently continue to pursue the path of concluding mutual declarations of police collaboration with neighboring countries in the East. We wish to further improve and simplify the conditions for cross-border observation and pursuit. Ideally, preventive cross-border observation would also be possible, under specified circumstances. In addition, we need even better legal foundations in order to enable undercover investigators to act on a cross-border basis in urgent cases, even without prior permission from the respective state. In anticipation of such cases, we are striving to establish internationally staffed investigative groups under the sovereignty of local police. The data and investigative opportunities provided by the Schengen Information System must be expanded to include the search and identification data of all European police.

Further Legislative Measures

Further measures are also necessary with regard to the legislature in Germany. The latest criminal law reforms have already expanded the scope of laws against human trafficking. They now also allow for the possibility of victims of coercion and extortion to escape punishment if they file charges against their tormentors.

However, we also need a series of further improvements, such as the following:

- Loopholes for brothels and pimps must be eliminated. Actions taken to promote prostitution that were punishable offenses in Germany as late as 2001 must once again be criminalized. Pimps who publicize working hours, venues, and prices of prostitutes must once again be subject to prosecution under German criminal law.

- Johns who exploit the situation of women and girls forced into prostitution must be liable to criminal prosecution.
- Regulations governing principal witnesses testifying for the state must be established, particularly for crimes attributable to the core area of organized crime. In order to break down structures, we must offer those willing to testify the incentive to cooperate with police and turn state's evidence.
- The expansion of the criminal offense catalog that justifies telephone surveillance is necessary – in all forms of human trafficking, telephone surveillance must be permissible. We also need manageable guidelines for electronic room surveillance, including optical surveillance. The recent decision of the Federal Constitutional Court on the “Great Bugging Operation” has made the work of law enforcement agencies in this field significantly more difficult.

Measures Taken in the Countries of Origin

Independent of measures taken in Bavaria and Germany, the respective countries of origin of non-German perpetrators and victims of human trafficking can also make significant contributions to the fight against this abominable form of crime. First and foremost, campaigns and measures for the education of potential victims are needed. Awareness measures play an especially critical role, so that as few women and children as possible will be taken in by the methods of human traffickers. It is also necessary to intensify proactive investigations in order to identify and break up criminal activities, structures, and procedures as early as possible. In concrete investigations as well as in the realm of victim assistance, we must work together even more closely across national borders. Victims must be placed even more at the center of attention of the relevant government agencies in their home countries when they return. In doing so, they must focus on victim counseling, required protection measures, and aid in reintroducing victims to society.