

# Working Paper on Intervention Against Trafficking for Sexual Exploitation in Germany<sup>1</sup>

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## Part 1: The Intervention Sequence and the Response to Core Questions

### 1 Empirical Data and case story

This working paper is based on two multiprofessional workshops in which the intervention responses to a specific form of violence were explored (see [background paper](#)). Each workshop comprised two half-day sessions, and a focus group methodology was used. Participants were given a case story in three sequences to discuss. Six “core questions” were introduced during the discussions. The stories were agreed across the four countries, but adapted to fit the national context when necessary.

Participants in the German workshops on trafficking for sexual exploitation were: 5 police from 4 cities, 1 specialised public prosecutor, 1 criminal court judge, 3 lawyers/attorneys from 2 cities, 2 social workers from refugee/ detention centre, 2 professionals from public health units for prostitutes and sexual health, 4 social workers from specialist NGO counselling centers from 4 cities.

For the German workshops on trafficking the story was as follows:

#### 1<sup>st</sup> PHASE OF THE STORY

*Maria came from Nigeria on a 6 month tourist visa expecting that she would be able to work in a hotel and send money home. She is in debt for the costs of her travel and her family also took a loan to help with the costs so they are in debt as well. On her arrival she was taken to a brothel. She speaks only a little of the language and the brothel manager has her papers. Seeing no alternative, she agrees to work in the brothel for a limited period until the debts have been paid off. She has been in the country for 4 months and the visa is due to expire in 2 months. During one of her shifts Maria collapses. The receptionist at the brothel has one of the other women take her to the public health centre where her physical and mental health are assessed as poor and she is found to have a sexually transmitted infection. The doctor indicates the need to inform Maria’s sexual partners but Maria responds that this will not be possible. The doctor prescribes Maria antibiotics and hands her a card with details of a helpline.*

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## 2<sup>nd</sup> PHASE OF THE STORY

*Maria saw no option but to return to the brothel. She has been there for 7 months. She is exhausted and very unhappy and has been looking for a way out of her situation, but has been told that her visa has expired and that she can be prosecuted as a criminal if she is found by police, and also if she goes to any other public office or agency. She has received practically no money and is now even more in debt as she had to take time off to recover but was still required to pay the brothel house fees to cover her shifts. Now she is very much afraid: afraid of the managers of the brothel, afraid of being sent to prison and afraid of being deported to stand empty handed in front of her family. In desperation she calls the helpline and tells them about her situation and names the brothel.*

## 3<sup>rd</sup> PHASE OF THE STORY

*Early one morning police officers attend premises to carry out a check on the occupants. They find Maria and a number of other women as well as two men. The men produce valid identity documents. Maria is unable to produce any identity documents and is taken into custody. The officers suspect she may be a victim of trafficking but she is reluctant to talk to them. She believes the helpline gave her away. She is fearful of the authorities and unwilling to make a formal statement but says she is afraid for her family back home and is likely to be in danger herself if sent back. She appears unstable and there are concerns for her mental health. It is also apparent that she has no money and says she owes a great deal of money.*

## 2 Intervention pathways from the perspective of professionals

There are two main routes by which a victim of trafficking can enter the intervention system: Being noticed by the police (in larger cities with a specialized police unit), or contact with a specialised NGO offering support. Third parties, individuals or organisations, if they suspect a prostitute may be a trafficking victim, would choose one of these routes: For example, clients using prostitutes not infrequently call the police (or occasionally the NGO) when they are concerned, while social workers in the health services are more likely to provide a suspected victim information about the specialized NGOs. A third route into the intervention system would begin if the woman who, like Maria, is illegal, encounters police who know little or nothing about trafficking and might even send her to the detention/asylum centre; there, the decision-makers have been trained and a social worker would accompany her to the intake interview, and if she can be persuaded to say anything indicative of trafficking, this would bring her back to one of the above two routes towards qualified intervention.

Most (13 out of 16) German federal states have formal cooperation agreements between the police and specialist NGOs; there should be at least one designated advice centre for trafficked women in each Land. Within cooperation, when the police have the impression that Maria could be a victim of trafficking, they will arrange to legalise her presence in the country for at least 3 months (permit can be issued the same day) and will put her in touch with the NGOs, who can offer her safe shelter if needed, alongside information, advice, and psychosocial support. Since in the first two chapters of our story, as in very many cases in reality, the trafficking victim does not contact or agree to talk to the police at all, the hypothetical intervention sequence begins with the health services.

The public health services are tasked with prevention of the spread of STI. While the services represented in our workshops have continued and expanded the tradition of social work and medical services specifically for women and men in prostitution, many others seem to have dropped these services, for lack of resources and on the principle that STI prevention is for everybody. Specific public health services addressing sex workers offer health examinations, diagnosis, and in the best centres, treatment including all medication (but only for STI), free of charge and anonymously. Such services usually have both physicians and social workers, and a number of them also do streetwork (those in our workshop included), visiting the various places of prostitution to offer advice and

support. Recognizing Maria as a probable TSE victim, the health service would tactfully explore her situation as far as she is willing. Should she actually say she does not want to go back to the brothel, they would guide her to the specialized NGO, or possibly even to the police, but this is unlikely to happen at the first visit.

(Outside the cities, in East Germany and in the rural areas both the NGOs centres and the health services for prostitutes are often missing.)

**(1) As a professional what might lead you to try and discover whether this might be a trafficking situation? Or, on the other hand, what would keep you from getting involved?**

For all professionals in the workshops, the bare facts – coming from Africa, working in a brothel, in poor health with STI – identified Maria as a probably a trafficking victim. The response to our core question (1) was thus that all three “branches” of possible first contact (police, health, NGO) would explore the situation as far as Maria is willing to talk to them. Neither the public health service, nor the specialized NGOs would ever inform the police about a trafficking victim without her consent (or, for some: unless she is in imminent severe danger). Their approach would be to offer information, including her right to a temporary residency permit for a (minimum) three-month reflexion period (this does not require her to make a statement or to agree to testify, although in city BA, where the prosecutor has reserved the right to issue the permit, there is a tendency to require some sort of story from the victim as a condition), and she has a right to safe housing, state income subsidy, health care for acute illness, etc.

**(2) How might it come about that your institution or profession is the place to which the Maria turns for advice, intervention or support? Or how else might it happen that someone in your position would become involved?**

In all cities in our workshops (again: by no means everywhere in Germany), there is a police unit in charge of “red-light-district crime”, and they systematically visit all places where prostitution takes place (and since prostitution is legal, they can gather full information about this if their unit is adequately staffed), and they use these visits to try and build trust, and hope that the women will accept their standing offer of support. Building trust is also the key framework of intervention for the health services and the NGOs. In the cities BA and Z, following the dominant (official) police belief that detecting TSE is often only possible through police controls, these visits do involve checking everyone’s papers; a non-EU foreigner on a tourist visa working as a prostitute could be taken to the police station and the brothel manager charged with furthering illegal employment. In city Z, regular police visiting places of prostitution is understood to be prevention, advice and support, and not control, and does not involve asking to see papers; rather, it very much resembles social work. Despite these local differences, specialized police units all emphasise building trust.

There was not a great deal of difference between responses to the three sections of our story, since the fundamental assessment that Maria is a victim of trafficking was on the table from the outset and not disputed. The question of *how* to talk to a victim or enable her to talk was important to all.

**(3) Would you consider asking Maria directly about being trafficked, or what reasons might there be not to do so? How important do you think this is?**

Because of the difficulties in building trust, question 3 was received a variety of responses depending on the circumstances under which professionals have contact with a suspected victim. Reasons not to ask at the outset or at an early stage of contact were all related to the issue of trust, on the assumption that someone like Maria would perceive all professionals as a potential threat. Differences in perspective emerged more strongly in regard to our further core questions:

**(4) When might you pass on information to relevant authorities or institutions without the consent of the victim (resp. the family)? Or, on the other hand, what might keep you from doing so?**

**(5) When could it be right / appropriate to initiate measures of protection from further violence even against the wishes of the victim? What concerns might prevent you from doing this, or cause you to hesitate?**

The provocations of our story: that Maria might refuse to talk to the police, and that there might be circumstances that could justify taking action without her consent, opened a window to two central tensions with respect to our questions (4) and (5):

- 1) Police and justice system are obligated, and indeed strongly wish to prosecute trafficking, but can only do so if the victims are willing and able to testify and receive enough (NGO) support to enable / empower them to testify credibly and consistently. It is vital to the justice system to have “stable” or “stabilised” witnesses. Experienced police units can enable some women to talk to them, but need the NGOs for the psychosocial process of stabilisation and for safe housing.
- 2) The principled commitment of the NGOs to the absolute priority of the individual woman’s wishes (see KOK mission statement: *“All specialist NGOs have a duty of confidentiality; nothing will be done against your will, and contact to authorities will not be made unless you expressly request it”*) lowers the threshold for help-seeking, so that victims often find their way to an NGO without previous contact with the police, but it can prevent both prosecution of traffickers and delivery of important rights and services to victims; police may not even receive information from NGOs about where trafficking victims might be found.

Experienced police, prosecutors and criminal court judges as well as all NGOs agreed that most women trafficked into prostitution have very little interest in seeing the trafficker prosecuted, and it is thus extremely difficult to reach the point where they are willing to testify. Many face threats of grave harm to themselves or their families at home. Even when this is not the case, the priority of the victims, recognized by the participating professionals, is to escape exploitation and to earn money to send home and to pay their debts.

The further sequence of intervention thus depends on whether Maria accepts the offer to talk to police at all, so that she can be issued a residency permit. If she accepts the offer of support from the NGO, they can also arrange to have her permit extended until she is ready to decide on further steps. However, if she returns to the brothel without accepting offers of help, the manager may well simply move her to a brothel in a small rural town where no police will bother her (or the brothel) again.

If either the police or the NGO think that the victim needs more time to recover and to decide about making a statement, the temporary residency permit (reflection period) will usually be extended, and it might be as long as a year and a half before she can decide whether to testify. She can lose the permit if she returns to work for the trafficker.

If the victim is willing to testify but is in grave danger of harm, the specialised NGO in cooperation with the police can organise victim protection in safehouses. In theory she can be taken into the federal witness protection program, but this is very rare. If there is evidence enough to prosecute, the case may not come to trial until two or three years later. The German legal system follows the principles of immediacy and orality that require the judge to hear the testimony of witnesses in court and form a well-grounded opinion about the strength of their evidence<sup>2</sup>. By then the victim may have returned to her home country (especially if she is an EU citizen), has made herself a life, and then suddenly receives a summons to appear in a German court on a specific date; they often don’t

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<sup>2</sup> The principle of immediacy requires that all evidence is presented in court in its most original form, and that the investigation at trial be conducted orally. “If the proof of a fact is based on the observation of a person, such person shall be examined at the main hearing. The examination shall not be replaced by reading out the record of a previous examination or reading out a written statement.” Code of Criminal Procedure Sec. 250

[http://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html#p0176](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p0176)

appear. Traffickers earn good money and can afford a team of defence lawyers who challenge the testimony. Lawyers who represent witnesses as a party to the criminal proceedings<sup>3</sup> are also concerned about traumatic effects of testimony and prolonged aggressive questioning by defence lawyers on their clients and see a need for better procedural protection.

Despite all the obstacles, the number of cases brought to court and the number of convictions are gradually increasing, especially in some Länder (among them Lower Saxony), however, the outcomes are that perpetrators are less likely to be convicted of trafficking, but instead for offenses such as causing bodily harm, which is usually sanctioned by a fine.

The residency permit is valid for the duration of criminal proceedings. When the court case ends, or the investigation does not lead to a court case at all, the temporary residency permit expires. If the victim is under threat of harm in case of return, deportation would be prohibited and a humanitarian visa issued. (Residency Act sec. 60 (7): “A foreigner should not be deported to another state in which this foreigner faces a substantial concrete danger to his or her life and limb or liberty”). According to all our professionals, today deportation plays almost no role at all when there are any reasons to suspect possible trafficking. Only if the victim adamantly refuses all offers of help, advice or support might she be taken to a detention and asylums-seekers centre, and there the social workers or a minister is likely to notice that trafficking is a possibility and would ask the nearest specialist NGO to visit the woman. Even if the woman decides not to testify, the NGO may help her apply for asylum, and during the processing of the application the prohibitive danger can be made plausible. If a return to the home country is the only option, or the preference of the woman concerned, the specialist NGO organises this, so that detention and deportation are avoided.

**(6) Let us imagine that Maria is an EU citizen (for example, if she came from Bulgaria or Romania)? What difference might this make?**

The process of building trust is described as very similar regardless of where the woman comes from. However, professionals generally experience more difficulty in having their offers of help and support taken up by trafficked women from within the EU. These women do not need the residency permit and often do not wish to be involved with the police. In the regions represented in our workshops, most trafficked women are now from Bulgaria and Romania. There was a strong focus on the challenges of giving support to Roma women, who grew up in conditions of poverty, discrimination and subordination to patriarchal “clans”, and may not see themselves as victims at all (‘better than having to beg on the streets in winter’). They seek the help of an NGO when the conditions of their work are intolerably exploitative. Unless they face threats of harm to themselves or their families, if conditions are unacceptable to them, they generally prefer to return to their home country and seek new conditions of work from there. If their health suffers (especially with STI) the traffickers/ brothel managers might send the women home, closing down avenues of possible support here; in that case, they probably re-enter prostitution.

## **Part 2: Framing of the Problem and the Intervention**

All participants in the workshops were familiar with the legal provisions and drew upon the underlying framing (where immediately relevant to the frame, they are cited again here); there were no disputes in that regard, but some dissatisfaction with the failure of legislation to provide for effective implementation.

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<sup>3</sup> Victims of violent crimes, including trafficking and sexual assault, have the right to be a party to criminal proceedings as auxiliary prosecutors (Nebenklage) (and to legal aid for the costs), represented by a lawyer who sees the evidence in advance of trial and can ask questions of witnesses, etc.

### 3 Framing trafficking and intervention

#### (1) Prostitution is legal and is “work”

Prostitution has been legal since 1927, but it was legally considered immoral and socially harmful, so that, while prostitutes had to pay taxes on their income, no contract related to prostitution (such as rent or health insurance) was valid, and owning or managing premises where prostitution took place was penalized. The law reform in 2002 removed this discriminatory legal foundation. When police in particular now emphasize that it is **legal**, they are referring to the brothels, clubs, apartments, and to the fact that these are now open and “above ground”; when they make their rounds to check on the various sites of prostitution they might call this a visit or control, but never a “raid”. Rather than being immoral, it is **framed as work** (both in law and by the workshop participants).

Framing prostitution as legitimate and legal work does not attribute any positive value to it, but presupposes that it will not be stamped out, that it is done to earn money (often in the hope of escaping grinding poverty), and that those who work as prostitutes should receive the same respect and have the same rights as anyone else. Prostitution as such is thus not defined as a problem in the work frame, the **problem** is sexual exploitation (including pimping), a criminal offence. In this frame, professionals agree that prostitution is largely driven by the need or desire to earn money, which is, however, typically withheld from trafficked women (and many women who were not trafficked have their earnings “collected”). The driving force for women to enter a trafficking system is poverty and/or debt, often intensified by discrimination. (The establishment of free methadone substitution for heroin has made prostitution linked to drug dependency rather marginal.) The **implicit** (and meanwhile explicit) **solution** follows from the typical dangers inherent in this type of work: It should be regulated. While the law gave prostitutes the right to employment contracts and health insurance, for example, it stopped short of regulating this sphere of work in a similar way to work in, for example, gastronomy, and this is a major criticism of police and prosecutors. The current government is committed to passing a regulatory law on the protection of prostitutes.

*Physician public health service<sup>4</sup> GesA: At most I ask, not where she works, but whether she works long hours, I don't know, if I maybe see her vagina is very red and it's all somehow difficult. Then I'd say: Hmm, it looks to me, could it be that she is working a lot, working too much, does she need to take a break, I sometimes do that. In a situation like this there might be a pointer that it would be good if she didn't work quite so much. And I might also ask if it would be good to give her a medical certificate so she doesn't need to work in the next few days. #00:30:24-1#*

*Beratungsstelle U: We are also a general advice and support center for prostitutes.... Last year we had nearly 800 women who received our support, and 213 of them were trafficking victims, that is, a quarter. And the others were not victims, and we can help them as well, we don't have to make victims of them; that is sometimes a criticism of the specialized services, that we make everyone a victim so we will have enough clients. But we are in the comfortable situation, we can help the one and we can help the others, no problem. And those who need special protection are given it, and of that group, less than one quarter were referred to us by the police. #01:50:38#*

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<sup>4</sup> The free public health services do not offer general medical care, but only information and services related to matters of public health, such as infectious diseases, sexual health, drug dependency, health and hygiene in housing for the homeless or for migrants and refugees, as well as school prevention programs, health certificates for public employment, and other matters. The services in our workshop do outreach for prostitutes, but would offer treatment only for sexual health; if Maria in our story had incipient pneumonia, for example, they would refer her to a physician in private practice, and the question of payment would arise.

*Public prosecutor S: I think the approach of prohibiting prostitution for example by penalizing clients is the wrong way to go, we are bound to fail. We have to follow the other path, the one begun by the prostitution law that made prostitution legal, and take it forward, saying: "While legal, it is dangerous work and we need to regulate it very closely." Everything needs to be regulated. A permit to open the business, as I said before, with conditions attached and so on.*  
#01:17:32#

## **(2) Exploitation of prostitutes is a crime and must be combated**

This second frame presumes that it is possible to distinguish between prostitution and exploitation. Police and criminal justice are tasked with identifying relations of exploitation, investigating and prosecuting traffickers, pimps and managers of businesses that exploit victims via coercion, withholding earnings and other means.

Trafficking is a serious crime, legally defined as exploiting a position of helplessness and vulnerability arising from being in a foreign country, or equally, as inducing anyone by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or other exploitative sexual activity<sup>5</sup>. Administratively it is considered a form of organised crime. Police and the justice system have a duty to investigate and prosecute every case that comes to their attention (legality principle). However, these crimes are classified under "offences against personal freedom" and thus as a rule require testimony by the person who suffered harm. Thus, the frame of trafficking as **exploitation** implies both the duty to combat it (as organized crime that affects multiple victims), but also that (some) victims will be willing and able to testify (see below frame 7).

*Police PoE: Our responsibility is to combat trafficking, and in discussion circles like this that is always forgotten. That's my feeling, anyway. Because no-one talks about the pimps, no-one talks about the men who go there, but it's always about the poor girls, who are really badly off, I don't dispute that. But we can only do our job when we have the girls, when we can bring them to give us statements about what happened to them, how they were forced, how they came to Germany. And if that doesn't happen, we can't make a criminal case against trafficking.*

### **Subframe (2a): Exploitation and coercion are barriers to law enforcement**

Practitioners frame trafficking, in accordance with the legal definition, with reference to the critical aspects of **coercion** to work as a prostitute and of **exploitation** of prostitution, and cite **violence** as well as **threats** to the victim or her family as means through which coercion and exploitation are maintained. In particular, violence and threats are used to enforce victims' silence towards authorities. For the police, this frame implies that they cannot simply wait for victims to report the crime, but must develop strategies to reach out to victims, as well as to break through the barrier of silence. For providers of support and care, the frame implies that their services must be as low-threshold as possible.

*Statement Police O: We know that we cannot really get a grip on this situation with the current legal tool-set. It is simply impossible. On the other hand we have the problem that the current Federal Government has not, at least until now, created a suitable set of tools. Nonetheless we have to work with what we have at the moment and that is hard. It is very hard. That's why we try not only to undertake repressive measures but to also do outreach work by visiting all the brothels, the red-light district, the apartments and see that we meet the women, talk to them,*

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<sup>5</sup> A very recent high court decision confirming the conviction of traffickers found that the fact that the victim entered the process coming from a situation of dire economic deprivation (Nigeria, in this case) in itself fulfils the criterion of coercion, as someone in that situation cannot possibly give free consent..

*offer them advice, and in the end simply hope that in an extreme case, if they need it, we will also get the necessary feedback from them that we need for criminal proceedings.*

### **Subframe (2b): It is crucial that someone spots the victim**

In the workshops, **spotting victims**<sup>6</sup> and recognizing them as such was framed as a challenge requiring, in particular from police, specific knowledge, skills, experience, and staff capacity as well as strategies for gaining trust (see frame 5) and providing protection. This is a subframe to the duty to combat trafficking. Victims subject to exploitation and coercion are not obvious, they can be missed; police in rural areas, where there are no specialized support services, may not suspect trafficking at all, support services may not be available in small towns.

*Prosecutor F.: In the Länder that have only small police stations it will depend on chance whether the first police officer that she encounters has any notion of trafficking, or whether it is an ordinary constable who says “Oh, just another illegal immigrant”. ... And prostitution isn’t only in the cities, it is fairly widespread in the rural areas. And you won’t hear anything about a prostitute in X or Y (two smaller towns); there are no support services there. How to find out: Where are the trafficking victims? They exist.*

By offering services more generally to prostitutes or to women in migration, the support services can (and do) reject responsibility for spotting victims for the police, emphasising that they have a different task, offering support and safety based on specialised knowledge about trafficking and victim’s needs.

*Beratungsstelle FBR I am really happy to leave criminal prosecution to the police, that’s not my job. I can’t do it, and I don’t want to. Same with deciding whether something is trafficking or not, I don’t decide, I ask the advice of a lawyer. #00:03:46-2# And I will not try to find out whether she is a trafficking victim or not, or whether any criminal charges...This is not a question I even ask myself at all. #00:49:02-3#*

### **(3) Initial suspicion of a crime should give the victim rights**

**Initial suspicion** is both a general legal frame for initiating criminal investigation and a strategic one specific to trafficking. For police, recognition that someone might be a trafficking victim signals that measures to ensure her safety are called for (police duty to avert danger) and that a possible crime should be investigated. For all practitioners an initial suspicion is the key to rights, such as a temporary residence permit (based on a special case of humanitarian grounds) for third-country nationals<sup>7</sup>. Once the police suspect trafficking, no further „stages“ of identification are necessary unless and until the prosecutor asks for a victim statement and a visa for the duration of criminal proceedings is requested.

*Police O: “If I (as police) have the feeling, the suspicion, that she could be a victim of trafficking, then she HAS a residence right. It’s that simple.”*

In discussion the specialised support services rarely used the concept of suspicion, but focused instead on exploring what the woman needs; they would offer her information about trafficking, German law, victim’s rights, available resources including those that the police can provide, and the like.

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<sup>6</sup> I use the term „spotting“ because „identifying“ and „recognizing“ both have various formal legal meanings in different countries or even within Germany.

<sup>7</sup> EU citizens do not need a permit, but recognition as potential trafficking victims can help them claim essential social welfare rights, as proving that they did not come to Germany solely to look for a job.

### **Subframe (3a) Being „illegal“ is both a risk and a chance**

Third-country nationals from outside the EU who are found working (for example, in prostitution) without a permit, or who overstay the tourist visa, are illegally in the country. If the frame “illegal immigrants” is applied by local police without the knowledge or experience to suspect trafficking, this frame implies that the target persons should be deported without delay. For specialized police units, on the other hand, the frame “illegal” gives them the opening to free the victim from the trap of coercion and violence and convince her to accept support by a specialised NGO, in the hope that she will at some later date also be willing to make a statement.

*Police O: Well, she's illegal. As soon as we get in contact, this discussion about Maria is over. What I want to say is there is no more discussion about whether I am going to do something. There is no 'whether' in this case. No matter where I start here, as soon as I have the information, when somebody calls me and says „there is a woman who needs help“ then we go there and check this place out and we'll find out who's there and then we'll take her with us.*

### **(4) Helping each individual victim has priority**

#### **(5) A basis of trust must be built with great care before Maria can begin to "open up"**

These are two interlocking frames, one defining the obligation of society to help, the other constructing the situation of the victim as it affects the possibility of help. The “help first” frame (4) is implicitly based on attributing responsibility to the society where the victim is being exploited. There is universal agreement among practitioners that intervention should give priority to helping each victim that they encounter, and that pursuing prosecution can only follow when help is in place. There is less agreement about what help implies.

For the support services, help is focused on the needs and wishes of the individual victimized woman. Prosecutors and judges tended to concur that their task will only succeed if the victim has first received effective help; in our workshop, they also emphasized the “help first” frame. For the police, the two primary duties in their role – averting danger of whatever kind (here: to the individual woman), and preparing the evidence for prosecution of a crime – have equal weight. From the point of view of combating trafficking, prosecution may be their priority.

Adequately-staffed police units seek to know all the sites and contexts of prostitution in their district and visit them regularly. Most define this as both controlling and offering information, but some “progressive” units say that “We do outreach and advice and not control”; they all hope that a familiar face will make it easier for women to see them as a possible source of help.

*Public prosecutor S: „For me it has long been clear that help must be the first priority“ TSE 1, Beratungsstelle: „Our primary duty as a specialized support service is to support the women and to help them.“ On the other hand, TSE 2, police: "If the police are kept out of it, the girl is not helped at all-" and "If the victim witnesses are withheld from us, that means we have helped one woman and no others."*

In frame 5, victims of trafficking are understood to be very frightened, deeply distrustful of anything connected to the state and especially and profoundly distrustful of police, and to lack any prior experience with NGOs, having no idea of what these are and what they can do. In consequence, all agencies that come into contact with a possible trafficking victim need to take great care to build a foundation of trust before asking her to tell any more of her story than she has volunteered (frequently called “opening up”).

All of the professionals in support and health care, and the police and justice professionals in West German locations as well, emphasized the need and the difficulty of gaining the trust of trafficking victims, who have suffered or are still suffering violence, coercion, threats and exploitation, and who have been warned not to talk to any authorities. The East German police also take similar care when and how they interview suspected victims, proceeding very cautiously and with a comparable level of

awareness, but they do not use the term “trust” in this context, and indeed have a generally less “psychological” vocabulary.

*Social worker in public health service E, unit for prevention of STI: (on building trust), then they go to the medical examination. Sometimes they open up a bit more there, because the examination is physical; then they come back to us (the social workers). If she (Maria) would open up more then, we would encourage her to turn to the police for help; there have been cases where we took the woman directly to the police station, if that was what she wanted, to avoid her being met by the car that brought her from the brothel.*

*Beratungsstelle KBR: [When would you ask directly about coercion or violence?] I would ask about anything, once a basis of trust has been established. But not at the beginning. For me this is a woman, [she should be met] with respect. Not at the beginning. I have to get to know her first. #00:52:37-6#*

*Beratungsstelle FBR: Or we could start by offering her something, a safe place to stay, something to eat, someone who speaks her language. In that way as well, trust can be built. #00:53:26-1#*

*Police O: Our first sentence is not „Who brought you here and what are you doing?“ but indeed the point is, and that is very important, to find a basis of trust. Well, I (she) must be able to look him in the eye and say, “OK, I can believe this person, even if he is from the police“. So then we can talk to each other, and these are EXACTLY the matters we talk about: What about my residency status? What will happen with the criminal investigation for offending against residency law? Will I be deported? Those are always the questions that we deal with at the beginning. And when after that, the woman has the feeling „OK, I guess I can agree to that“, only then would we think about a statement. So that is not really a problem. (Beratungsstelle Z: But she only has a few hours to process the information and decide ,What do I want to do?') Well, in City A she has months for that. #77:16.8#*

Professionals agree that women from outside the EU, and women from discriminated minorities such as Roma within the EU, have experienced police and other authorities as repressive, abusive and corrupt, and they are under pressure from the poverty that drives them to being trafficked.

*Beratungsstelle U: The problem is that the fear and the distrust of the police is // very very great. It is really the police as such, because experiences with police in their own country play into this. They transfer this to police here. And I know that for many women, who do finally make a statement, building trust that the police here will not do anything bad to them does succeed after a while. That the police are on the side of the “good guys”. And many are surprised at how nice the police are to them, giving them coffee or a cigarette and so on. But that is only later. It often takes a long time to bring them to the point where they don't faint with fear when they see a uniform on the other side of the street. #02:07:26#*

## **(6) Nothing will be done without the woman's consent, professionals have a strict confidentiality duty.**

KOK mission statement: “All specialist NGOs commit themselves to give advice and support free of charge, anonymously if so desired, and it is entirely voluntary; all member NGOs have a duty of confidentiality; nothing will be done against your will, and contact to authorities will not be made unless you expressly request it.”

The commitment to frame (6) is founded, on the one hand, on data protection law and on criminal law penalising betrayal of secrets by professionals such as social workers, on the other hand, it rests on a frame that constructs “Beratung” as by its nature led by what the help-seeking person considers to be the problem and by her express needs and wishes. While this frame is not specific to trafficking, the heightened element of danger to the client if what she said – or even the fact that she sought support – came to the ears of the traffickers has lent it greater salience.

*Social worker in public health service E: We do nothing behind the woman's back, we work on with the accepting approach and we work anonymously; when a new woman comes we create a file using a pseudonym, and the only thing we know is her birth date.*

*Beratungsstelle FBR: Nothing against the will of the woman, because we are support and advice (Beratung) // that is, we want to provide her rights. #00:17:54-1#... As to the question of sharing information, the duty of confidentiality and so on. That is simply protection of personal rights, that data are not passed on, and for us that is very, very important. For example, we look very closely at who we cooperate with, in other countries... We do not like to cooperate with the IOM for that reason, only with the explicit consent of the woman, because they collect and share data. #00:18:30-5#*

### **Subframe (6a) It is always up to the woman to decide what options to pursue**

The official commitment of the NGOs to “respect and foster” the right of the client to make her own decisions implies that women subjected to a high level of violence and entrapped within a situation of coercion have the right to decide, but also must do so, and may not be fully able to make choices without help (thus: to foster her right). The innate ambivalence in this frame (her right to decide is absolute but she may be unable to make a decision) is expressed in the emphasis on saying that she **must** make her own decisions (like it or not). It further positions each woman as making choices about her own life only, although she is probably in a system where a number of other women are (or will be) also coerced and exploited. (see “Dilemmas”).

*Beratungsstelle FBR: It is really a question of the role in which I meet the woman. We want to calm her down first of all, stabilise her, and bring her to the point where she is capable of action, because she has to make the decision. Even though she is probably totally upset and overwrought, nonetheless, she has to make the decision, yes or no, do I want to go to the shelter, am I willing to trust this person or not? #00:49:02-3#*

While this frame is fundamental and well established, it is also sometimes questioned by the police, who call on the helping frame (see Dilemmas: conflicting mandates).

*Police O: If she goes [back to the brothel] that doesn't mean she's doing it voluntarily, especially if we are talking about Voodoo, which is the case with a lot of what goes on in this area, then for me that's a long way from acting voluntarily. To me that's being forced, being forced in the classical sense and that's what needs to be broken. And that's hard. And if I leave this decision to Maria, I can do that, but then I know for sure that this is a situation of coercion. That means there is someone coercing her and that's why she has to go there. So for me there is indeed a question: "Does she have to go there now?" And then I'd do a lot to keep that from happening. #00:30:08#*

*Police Pol2: We know how strong the pressure is. And I don't have any illusions. It's very hard to bring the woman to the tipping point just by talking to her, actually not at all. And up to now everyone has just said: We let the woman decide for herself. That's all very fine. But no-one is **helping** her. If we take her out, then she is at least she is no longer under pressure in the situation. #00:26:41-6#*

### **(7) Residence rights and a reflection period are an escape route from exploitation offering safety, support and stabilization**

By law, if the foreigners' office has concrete grounds to suspect that a third-country national has been a victim of trafficking, it shall set a deadline for leaving the country which will allow the foreigner sufficient time to decide whether he or she is prepared to testify, at least three months (sec 59 Abs. 7 Residence Law (AufenthaltsG). In case criminal proceedings go forward, the victim may be granted a residence permit for the duration of the proceedings (sec. 25 Residence Law (AufenthaltsG).

([http://www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0770](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0770))

Victims have a right to support and social protection during that time as well. When proceedings end, or if their testimony is not useful, the permit becomes invalid and deportation is foreseen, but victims may be granted asylum or a residence permit may be extended when there is reason to fear for the life and safety of the victim if she is returned to her home country; and she may receive a longer residence permit for humanitarian reasons if the provisions for prohibition of deportation are deemed to apply.

In the workshops the participants do not frame this as a “**deadline** for leaving the country” but as a more or less secure **right** to a residency permit, depending on inter-agency cooperation and the regulations in the *Länder*. While the law frames the permits as a means to the end of prosecuting traffickers, the NGOs (and most of the professionals) frame it as a window of opportunity for the trafficking victim. In consequence, specialized support services think that they as well as police ought to be able to authorize such permits. The *Land* NRW has issued a regulation to that effect, but local authorities seem unwilling to comply.

*Police O: Well, if she says „I am afraid, I don't want to make any more statements“ then the status of her right to residency remains in effect. Well, in city A she would not be deported. That would not be allowable, if only for humanitarian reasons. (Beratungsstelle Z: Humanitarian grounds, that's something else again.) But according to § 25 4 (a) she has an independent right to residency, and that would not end if she was afraid and didn't make a statement. (Beratungsstelle Z: Yes it would) No, not unless (Beratungsstelle Z: If the residency is in fact only based on the suspicion of trafficking and on § 25 4 (a) of the Residency Act, that would change very quickly, that really is the case, and it's difficult to get the permit in NRW anyway, even if she has this status as a suspected victim of trafficking, that is BECAUSE criminal charges are being pressed, and if she no longer cooperates and because of her the investigation cannot continue... #54:03.4*

*Beratungsstelle U: I know that it has always been difficult in NRW and in city H. There are regulations that define the competencies of the specialised support services very widely, including recognising the right to a reflection period, by ministerial decree. These regulations were very clear and unambiguous. The problem is that some local authorities simply don't comply with them. #00:34:42#*

With the end of restrictions on EU mobility for Bulgaria and Romania, the bulk of trafficking seems to have shifted to making use of mobility within the EU, so residency permits seem less important<sup>8</sup>.

### **Subframe (7a) Only stable victims will be both willing and able to make a formal statement**

The period of at least three months covered by the temporary residence permit is framed in the workshops, following the EU-Directive rather than German legal framing, as a “reflection period” or a “stabilization period”. At this stage, it is not the declared willingness to testify, but rather the probable usefulness of the testimony, if testimony is given, that counts (legally the prosecutor deems the permit appropriate “because it would be more difficult to investigate the facts of the case without his or her information”, but this assessment can be delegated to the police<sup>9</sup>). The frame

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<sup>8</sup> At a conference on Oct 8 2014, the federal ministry of the interior cited data that in the entire time since 2008, a total of 219 persons were given this humanitarian residence permit, of whom only one later left Germany. She reported that many victims do not know they have this right, but also, that 80% of the victims of trafficking are from within the EU and thus don't need the permit, but other measures under consideration.

<sup>9</sup> In the German legal framework, the police are defined as “auxiliary officers of the prosecutor's office”; see [http://www.euro-justice.com/member\\_states/germany/country\\_report/2787/](http://www.euro-justice.com/member_states/germany/country_report/2787/)

“stabilization period” rests conceptually on the expectation that specialized support can bring an initially fearful and reluctant victim to the point where she can give credible and consistent testimony in court. Interestingly, the NGOs make this claim rather strongly, especially if they can work with the women for as long as necessary without involving the police.

*Beratungsstelle U: A big problem that I see, and that makes me angry, is when help and support for women victims of trafficking gets obstructed or can't be provided due to financial considerations. I think that ought to be the very last concern, because when women are well taken care of, when they feel safe, they can be good witnesses, and experience says that they usually decide to cooperate with criminal prosecution, so that all concerned benefit.*

*Beratungsstelle FBR: In our city there are very clear rules. The police inform every potential trafficking victim about the support we offer, and we offer support in native languages. And we also offer anonymous advice and support. This has been successful, with respect to criminal prosecution as well, because women who have had our advice and support, and have seen a lawyer who clarified whether they had a right to a reflection period or not, are a very different witness, when she has decided to testify and she is stable when she enters the proceedings. So this arrangement has proven successful. #00:22:35-2#*

Prosecuting traffickers requires victim-witnesses as evidence; the victim has a right to be represented by a lawyer (at no cost to herself, via means-tested legal aid). Police, prosecutors, lawyers and criminal court judges underline their dependency on victims who are both willing and able to testify, this is summed up in the concept of the “stable victim”. The specialized NGOs are framed as the key to “producing” such a witness. However, criminal proceedings are unpredictable, and “stable” is thus relative: Lawyers find themselves caught between protecting their client and pushing for penalization of the traffickers.

*Public prosecutor: The judges don't occupy themselves with these questions every day, they may have such a case once or twice in a year. And not all judges and not all prosecutors have the necessary sensitivity to deal with these women well, some of whom are traumatised, in the main proceedings. We need a change of thinking and a learning process. But I also would like to have stabilized, or stable witnesses who can bear up under questioning by the defense lawyers. And that is difficult enough. #00:07:36#*

## **(8) Everything depends on what Maria wants.**

This frame focusses on the disparity between the interests of trafficking victims, as the professionals see them, and the interests of the justice system and of society in curbing and combatting trafficking. It is understood that victims see few or no advantages to themselves and many risks in having the traffickers prosecuted. Even before it comes to that, from the very first contact with any agency, whether or not any further intervention takes place will depend on the woman's personal priorities, how she assesses her migration goal (to earn money, to help and not harm her family at home) against the background of the experiences she has had. The implication of this frame is that specialised services and police must invest considerably in support, and indeed – although there is not space here for long descriptions – when experienced police in specialized units describe how they approach possible victims, one could imagine them to be social workers.

*Prosecutor S: We have to see what Maria wants. She wants to earn money, because she has to pay her debts. And she wants to go on working, although she's sick. Of course we could investigate criminal charges against her, for example because she is illegal, or if she has sex with men despite STI. But the problem is that her interests are totally different.*

*Police E: If we have information from support services, we know their work. But the problem is, if the lady is not willing to make a statement to the police, and the support service doesn't give us even a hint of which brothel is involved, then unfortunately nothing happens. So here again it depends entirely whether Maria is willing.*

*Beratungsstelle KBR: When the social worker in the health services talks to the woman, that is all voluntary to begin with. And it is also voluntary whether she tells me anything or tells me nothing. All I can do is to make her offers, and I do that. #00:15:51-9#*

*[Mod: what were key points for you?] Police O: That it is voluntary. That Maria, in this case, in every stage of the story, has to participate by her own choice. No matter what point we discuss, if Maria doesn't want it, nothing can be done. Prosecutor F: That's the key, indeed: Maria has to let herself be helped.*

### **(9) Cooperation and mutual trust between agencies is the key to effective intervention.**

Given all the difficulties of combatting trafficking, frame 9 places local networking and interagency cooperation agreements at the center of effective intervention. It implies that the differences in perspectives, institutional cultures and values, traditions and approaches among and between statutory agencies and NGOs can and should be overcome and replaced by mutual trust, which will allow quick and uncomplicated solutions to practical problems. It does NOT, however, imply case conferencing as a solution; this is prohibited by the confidentiality frame. Trust (implying mutual respect for differing roles and responsibilities) becomes a key concept here, especially in cities where networking is not yet well developed.

*Police O: But all that only works geared together, that is: support services, foreigners' office, social welfare department, job centre, all of them, let's say in the ideal case, talk to each other, sit around a table to work through these problems in advance. And when a woman comes, then it's my turn and I say "We have a problem", and the foreigners' office says "all clear, stamp, she can stay". The support service says "all clear, first four weeks to see a doctor, let her calm down, then we'll see". Then decision: statement? "Yes, no, maybe". #83:14.1#*

*Beratungsstelle KBR: For women from Nigeria we have achieved such a trustful cooperation with the police here in city Z that I can call the police and say, if the woman did not come to us by way of the police, or however she may have come, I can say she is a potential victim, a potential witness, but she doesn't want to talk. She doesn't want to talk, what can we do? And in some cases we have the possibility that she receives this temporary residence permit anyway. We have had witnesses who didn't give their statement until a year later, because we had to deal with so much fear that they had, and that not only in one case. #00:28:28-6#*

The flip side of this approach is that it depends entirely on local circumstances, the engagement and awareness of key actors, and systematic, sustained efforts.

*Beratungsstelle FBR: What I found today once more: It is SO dependent on how local cooperation works. Where I am, for example, it all works out really well. We can assure most of the women convincingly that nothing will happen to them if they make a statement. We say that we can make sure they will be given specific rights. We have fantastic cooperation with the foreigners' office, with the police, and so on. But that is not because the woman has the right to this, it is the result of our work, it is our achievement, all the Institutions and agencies working together; but in other Länder it is different and doesn't work so well. And I find that just IMPOSSIBLE. #01:03:24-9#*

Caught between the duty of preserving confidentiality and realities of emerging dangerous situations, the support and care services value the option of consulting the specialized police, in particular, without revealing the name of the victim from whom their information has come. It is not always clear if and when the support and care services would reveal to police locations where trafficked victims might be found, when they have such information. The police find this disappointing, but recognize the confidentiality obligation.

*Beratungsstelle FBR: Yes, I'm also familiar with this kind of anonymous case discussion, and I can say that we have done this with the police in two cases, where we said: Imagine that there is such and such a case, and this happens, what can we do? And I find that completely*

*harmless, because at that point no names or other things are given, just the situation is described. And we have a confidentiality duty. #00:23:30-5#*

## 4 Framing culture and difference

### (10) Trafficking victims cannot break out of their cultures

In cross-border trafficking, the victims are by definition coming from a different cultural background, and that is often referred to as part of the difficulty of intervention. Culture is defined as comprising both norms and values and material conditions and dependencies. On the one hand, women are framed as never having known anything different from patriarchal subordination and clans that organize their lives, and as unable to understand German institutions and culture; on the other hand, their culture shapes survival strategies to which the intervention professionals can offer few or no real alternatives.

In general, other cultures are framed as strongly traditional, closely bonded into to larger family networks, and having norms that legitimize male domination and violence against women. While poverty drives women into the trafficking system, culture gives traffickers much of their power and means of coercion.

Nigerian women, it was agreed, are often bound by voodoo rituals as well as other coercive aspects; they try to remain connected with their community in Germany, making it additionally difficult for them to leave their situation. However, once the bonds of silence are broken, their difficult legal situation gives openings to offering support and advice. The question of viable alternatives to prostitution remains unanswered, however.

The NGOs and the police alike see trafficked women from within the EU as (at present) predominantly Roma from Bulgaria and Romania<sup>10</sup>, and frame these as belonging to a profoundly patriarchal culture, within which women have a subaltern position and no rights, as well as owing allegiance to “clans” or extended family networks. They are also said to be very closely controlled.

*Police Pol1: Our experience, especially with Roma women, is that you can't get a Roma woman out of her clan. That is really as you said, they grow up like that. From childhood on the girls constantly get the message: The man has the authority, and if father says: You're going with second cousin Ali to Germany and will earn your money there, then that's just how it is. They don't resist, because they have never learned how. And it is really hard to get through to them, you can't break through the system. We Germans don't understand this very well. #00:59:57-6#*

#### Subframe (10a): Some women don't perceive themselves as victims

This is a subframe for other cultures when professionals can't reach them with offers of help: Some trafficked women just do not have an awareness of themselves as victims, because what they have now (not having to beg in the streets) seems to them better than what they would have at home. This definition of the problem does not imply a solution, but justifies not finding any solution, any way to reach them or to offer real help. In a more political phase of the discussions, the NGOs demanded that trafficked women, as long as they remain in the country, should have a right to psychotherapy and to education or job training to open up real alternatives.

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<sup>10</sup> While it is probably not true that all or most women from Bulgaria and Romania working in prostitution are Roma, it is may well be true that women from the Roma minority in these countries are particularly vulnerable to being trafficked.

Indirectly, that is without actually saying so, the frame is also applied to German culture, in that German women will believe their pimp is a boyfriend or lover and is taking her money for a shared future. (The frame here is: Women in love are hard to reach. The trafficking victims from a situation of poverty and discrimination in other countries are not presumed to be in love with the pimps.) Emotional and psychological dependency was mentioned as a factor in exploitation, but not further explored.

## Part 3: ETHICAL ISSUES AND DILEMMAS from the perspective of practitioners

### 5 Ethical issues in the workshops<sup>11</sup>

The participants in our workshops were very interested in ethical issues and open to reflecting on difficult decisions.

#### 5.1 Practical and professional dilemmas

##### 5.1.1 A number of practical difficulties of intervention arise from insufficiently established or trained staff or a lack of specialized agencies or units in many regions.

- a. **One result of such gaps are failures of cooperation, when statutory agencies are not willing, or even fail to comply with regulations.**

*Beratungsstelle KBR: We don't have any free public health services for prostitutes in Land B. We made great efforts, we visited all the health offices, we wrote a paper about the problem, nothing worked. We have to take women from all over the countryside and the towns in B to City Z ...it's a catastrophe. If we bring the women to Z, we know it will be good, but if we have to use health care in Land B, we know already that it will go wrong... Our only hope lies in our efforts to build cooperation with all sorts of possible partners. #00:50:11-5#*

*Beratungsstelle Z: There is a regulation from the federal employment work agency that victims of trafficking receive income support...But that is an optional provision, and our employment office continues to refuse, they are obligated to recognize our advice and support service, but they continue to reject our certification of such women as victims. #00:33:41#*

- b. **Another consequence is failure to even recognize potential trafficking victims.**

*Beratungsstelle Z: Let us assume that she doesn't end up with the criminal police, but with colleagues who do not think of human trafficking at all and who only see that she doesn't have the documents. Then she will immediately be questioned by the police and not in the way it is done in your Land, and she will possibly be taken into custody pending deportation and finally be deported. In places where we have counselling services and collaboration, things are different, but not in the village.*

- c. **Where support services are not available in a city or region, cooperation may be impossible in practice.**

*Police POL2: We are actually obliged [by the cooperation agreement in our Land] to take the NGOs with us every time we visit the places of prostitution. But in reality that is not possible, since they are in city Dd and we are in city BA. #00:25:21-3#*

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<sup>11</sup> For consistency with the outline, we label this section chapter 4, although there is no chapter 3.

### 5.1.2 Prosecution for trafficking requires the credible victim-witness as evidence and as a result, often fails because victims are not willing not able to testify

The police can ensure that victims of trafficking, if they are illegally in the country, gain legal status, can receive medical care without having health insurance, and income support. Locally, procedures differ in detail, but if the police have any reason to suspect trafficking, they can and will see to it that the necessary papers are made out quickly. They will also put her in touch with the most appropriate specialized NGO; the police particularly value the ability of NGOs to provide safe housing if needed, and their capacity to stabilize victims. In three cities represented in our workshops, the police could authorize a permit up to six months, even – and indeed especially – when the victim tells them almost nothing. In another city, however, where the prosecutor has reserved the right to authorize a residency permit, the police find themselves pressed to get at least a preliminary ‘story’ to justify a permit.

If the NGO are the first contact, they face the dilemma of knowing that it will be extremely difficult to offer safety and support if the woman does not talk to the police, and recognizing that for many trafficking victims, the police represent discrimination, brutality, corruption. All professionals were agreed that the majority of trafficking victims (especially from outside the EU, but also Roma) initially mistrust and fear police (or any other “competent authority”). Frame 6 (it is up to the woman to decide) thus prevents frame 7 (escape route and rights) from going into effect.

Thus, while the police and justice take their legal duty to prosecute traffickers very seriously, the practical implementation depends entirely on the willingness of the victims to testify. The workshop participants were all very well informed and aware of the reasons what victimized women often don’t testify or may not even want to talk to the police at all. The result is frustration expressed through a number of concrete examples of how prosecution fails.

*Beratungsstelle Z: Yes, it’s difficult when the woman positively refuses to contact the police at all. When we actually have her with us and she says “I don’t want to have anything to do with police right now, in no way.. #83:49.0# ... For me personally it is much easier, I’m speaking only for myself now, when women are brought to us by the police. If I already know she has also told them something, then I don’t really have much interest in what she told them, but I know how I can support her, I know what information I can pass on, and so forth. #02:08:49#*

*Public prosecutor S: Basically, we can only work through awareness-raising. She has to have a victim consciousness, if I can call it that. This divergence, that we see her as a victim and she doesn’t see herself as one, cannot be overcome. It has to come from her, and in the story of Maria that was THE problem. She has to cooperate with us and tell us what she has experienced and who is doing what to her and why. And then see herself as a victim, that is the essential thing...We find ourselves exactly in that dilemma: police, prosecutor, judge, the legality principle means we must. But we can’t, if the only one who can tell us how the offence was committed will not speak to us. We can’t put her under pressure, we can’t force her to say anything, we agreed on that already, and that is really the problem, first, because she is not willing to co-operate with the police, and second, because in the backs of our minds we also know, perhaps it’s better for her if she says nothing. #01:24:36#*

## 5.2 Ethical dilemmas

### 5.2.1 How to define the limits of the confidentiality duty?

For professionals in support and care (such as Beratungsstellen, public health, lawyers representing victims) this dilemma arises when a central value to which they subscribe, respect for the self-determination and the will of each individual woman, comes into conflict with their mandate to protect women from grave harm. Our questions in the workshop confronted them with this issue, and most of them struggled visibly to find solutions. Generally the tendency was that, when there is

imminent danger to life and limb, taking action without consent of the endangered person is imaginable, but with many reservations.

*Beratungsstelle FBR: I would never make a decision for a woman, I could not bear the consequences... Often it is really justified, she is subject to coercion and decides not to make a statement... She must bear the consequences. And I would never act for her. #01:04:20-0#*

*Beratungsstelle FBR: We tell them that as soon as she herself or any of us are in danger, we would inform the police. We say that very clearly, and we observe all safety precautions... But otherwise, no. Nothing against the will of the woman, because we are a support service (Beratung) and we want to help her to her rights....If it were really massive I might also contact the police unit for red-light crimes and say, have a look, I hear things about such and such a place, I don't know about the source, but it sounds very very strange. #00:17:54-1#*

*Beratungsstelle U: Well, it's very clear, if I have to assume that there is a concrete danger, that she is actually in danger, that there have been attacks and very bad things are happening, then I would certainly pass that information on.*

## 5.2.2 Conflicting mandates between police and support services

### a. Cooperation as a one-way street: Essential for police to share information with NGO support services, but the reverse is only possible in cases of imminent danger

The ethical conflict between providing support, safety and justice on the one hand and respecting the right of the woman to decide (as crucial to developing and maintaining a trusting relationship) is managed primarily by role separation, but this leads to conflicting mandates (e.g. NGO support work and police/prosecutors) between agencies that have a vital need to co-operate. This conflict is partly latent, partly open. In the first workshop, this standpoint was only regretted as a missed opportunity to stop the traffickers or at least to disrupt them, in the second workshop it was challenged on ethical grounds, in particular:

- As one-way cooperation, taking without giving in return,
- As a lack of concern for justice: some women get the help that only the police can give, others don't
- As lack of interest in combating trafficking.

*Police POL2: [Our cooperation agreement] is a one-way street from the point of view of the police. [We are obliged to involve the NGOs always], but the NGOs only give us information when it suits them. That is unsatisfactory from a police perspective. Because, well I realize that this can help the individual woman at that moment, but not other women. In this case here there should be an investigation against the brothel owner, and if the woman remains anonymous, he will do the same with other women. And of course that disturbs us as police very strongly. On the other hand, the NGO is also in a dilemma, because when the woman opens up and tells them how she got there and perhaps who is running the brothel, the NGO women sit there and say "What do we do with this information? We have confidentiality." So maybe they call us and say "this is going on", and they bring the police into a devil of a dilemma. Because we are subject to the legality principle and have to investigate. But the victim is our witness, and if we can't get her into the proceedings I can't investigate. #00:25:21-3#*

The support services argue along three main lines to counter this critique.

First, they underline that their central task is to help women who have suffered a great deal of violence to regain fundamental rights; that is central to their concept of "Beratung (see frame 6), of which self-determination is among the most fundamental. In the view of the support services, sharing information with statutory agencies and/or involving police and the criminal justice system without explicit consent would violate the very rights that it is their task to strengthen.

Second, they describe how fragile the contact; is information sharing can jeopardize the process of building trust (see frames 5 and 6), and make further support an impossibility: victims may then deny the violence, traffickers may (and often do) move the victim to a brothel in another town. Many professionals see assurance of confidentiality as a precondition for maintain any contact or any open communication about the woman's story, her situation, and her possible alternatives (if any).

Thirdly, and this is the argument that comes to the foreground most strongly when the issue is debated, they emphasize the utility of their confidential support strategy to the police and the justice system, in that only a stable witness can be of use to them in prosecuting traffickers (see frame 7a). Maria will not tell her story and she cannot be helped until a basis of trust has been built.

*Beratungsstelle Z: [if Maria would call and ask for help?] And who gives me the right, actually to decide whether the situation is really the way she describes it, and if she is really in that situation? Naturally I will discuss it with my colleagues and ask for anonymous advice from the criminal police; I will give her tips as to where she might be, perhaps I don't even know where she is, how could I pass on information then? #00:25:10#*

*Beratungsstelle Z: Under no circumstances would we press her to make a statement, we know that is useless. As long as she is not stable, she is unable to testify.. #00:04:18# ... [The EU Directive says] she should be given three months stabilisation time, with intensive support from the specialised service, so that she can make a decision, because without a stable witness you have no criminal proceedings, and we all know that. #78:10.1#.*

*Beratungsstelle Z: In my streetwork, I was there yesterday, and among the women in street prostitution I can guess that every second one is not working there solely by her own choice, but for us as well it is very difficult to know, we are not at all certain, #01:16:03#*

### 5.2.3 Prosecution as an ethical dilemma in itself

Knowing the ordeal that criminal prosecution of a trafficker can mean for the victim-witness, is it ethical to encourage women to testify? How to decide between the duty of the state to enforce the law, combat organized crime, and to stop trafficking, and the human rights of a victim who may be re-traumatized, or have to enter a witness protection program, or be exposed to new and unknown dangers threatening her family at home?

*Public prosecutor S: For me at least, the question is: How can we help this Maria? She has turned to a statutory agency that actually offers help, but if we come in swinging the club of criminal prosecution, it is a big question whether our proceedings that then take place will be helpful for Maria. We are always confronted with the question: Does the woman want to testify against her tormenter? And at least in larger scale proceedings, we always ask ourselves: Can we even expect this of the woman, that she take up this fight? That she testifies? With the trial and...I had a witness, she was interrogated for TEN full trial days, by a team of SEVEN defense lawyers, you just have to imagine to yourselves the torture this was. So THIS is always a question that we really have to ask ourselves: Do we want at any price to expose the facts of trafficking and bring her to speak out? Or do we only want to help her get out of the situation? This is the question I always have to ask myself. #50:26.7#*

Lawyers who represent victim witnesses are equally concerned about the ordeal, but raise question of improvement in criminal law to reduce the conflict.

*Statement lawyer RA1: As a lawyer who represents women in the main hearing against their traffickers I often experience a tension between representing the interests of women as witnesses who have a duty to testify and the interest in criminal sanctions. In part I can only solve this by deciding from case to case: Do I need to protect my client from this particular interrogation, or do I need to promote criminal penalties?*

Her suggestions include more use of video statements and of judicial interrogation. German procedural law is restrictive as to the use of audiovisual recordings as evidence, which are admissible “only insofar as it is required in order to establish the truth”.

The police have much the same view of the legal situation, but have fewer conflicts of conscience, because they only investigate, but don’t decide on whether someone will be charged. In addition, the police, if adequately trained, experienced and resourced, have quite a few possibilities to offer help in the context of averting danger. An ethical conflict arises for the police when they are obliged to give up investigation because the danger to the victim is too great, but they have no ethical problem if they don’t believe her story.

*Police Pol2: If a woman lies to us, that doesn’t really bother us, we write down what she tells us, and we don’t decide if her story is evidence enough for criminal charges, that’s up to the prosecutor. For us it’s not so tragic if she tells us lies. If we doubt her story, we add a note to the file, but in the end it is the judge who will decide.*

### 5.3 Tensions and contradictions in the intervention system that can have ethical implications:

#### 5.3.1 The state has a duty to penalize, prosecute, and stop trafficking, but can only do so if the victim voluntarily co-operates.

The German Criminal Code penalizes

- a. (§ 232) **trafficking for the purpose of sexual exploitation** (defined as exploiting a position of helplessness and vulnerability arising from being in a foreign country, or equally, as inducing anyone by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or other exploitative sexual activity; furthermore
- b. (§ 233a) **assisting in trafficking**, defined as Recruiting, transporting, referring, harbouring or sheltering a person for exploitation as defined above.

According to the judgment and experience of police, prosecutors and judges in our workshops, §232 is inadequate, and §233a worse than useless. Because these offences are classified as offences against the person (and in particular, against personal freedom), prosecution is impossible without **credible and consistent testimony of the victim** who has suffered harm. Across the board, all practitioners agreed that the great majority of trafficking victims mistrust and fear police (or any other “competent authority”) and have little or no interest in seeing the trafficker prosecuted; testifying can also be dangerous for her (self or family at home).

§ 232 also includes a specific offence of inducing a person under 21 years of age to engage in prostitution or other exploitative sexual activity. This is easier to prosecute, since the means to bring a young person to work in prostitution and the degree of exploitation do not have to be proven<sup>12</sup>. (Traffickers deal with this by requiring the younger women to sign a statement that they had worked in prostitution before.)

While trafficking for work exploitation can be controlled to some extent by workplace regulation and inspection, the German parliament, when legalizing prostitution, could not reach agreement on regulating prostitution as a business (allowing, for example, inspection of working conditions, legal papers for all working there, hygiene, etc.). The present coalition government has agreed to reform the prostitution law, but it is not yet clear what will come out of this. A small but vocal pressure group is demanding the abolition of prostitution for ideological reasons. There were no sympathies

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<sup>12</sup> To focus the workshops on trafficking as such, rather than entering the broad area of sexual abuse and exploitation of minors, the paradigmatic story assumed a victim over the age of 21.

for this viewpoint expressed in our workshops. But there was concern that political parties might be too afraid of seeming to favor prostitution to agree on a law that would actually be useful in practice.

Ethical implications of this tension within the legal and political system appear in concern about when it is justified to ask victims to testify against a trafficker,

The Criminal Code also penalizes

- a. (§ 180 a) **Exploitation of prostitutes**, defined as maintaining or managing on a commercial basis an operation in which persons engage in prostitution and in which they are held in personal or financial dependency, and **for that purpose** maintains a general relationship with the person beyond a particular occasion. as well as
- b. (181 a) **controlling prostitution** (that is, pimping), defined as exploiting a prostitute, or for his own material benefit supervising another person's engagement in prostitution, determining the place, time, extent or other circumstances of the engagement in prostitution, or taking measures to prevent the person from giving up prostitution ,as well as impairing another person's personal or financial independence by promoting that person's engagement in prostitution, by procuring sexual relations on a commercial basis and **for that purpose** maintains a general relationship with the person beyond a particular occasion.

The purpose of these paragraphs was to remove the moral onus and ensuing discrimination from the prostitute, while penalizing those who exploit her. Thus, she would now be able to have a regular employment contract with social benefits, or if self-employed, could have health insurance and pay into a pension plan, and her agreement with a client would be a legal contract obliging him to pay. For the most part, this regularization has not become reality, but the character and purpose of police controls has changed.

Both of these offences are evidently difficult to prosecute without **victim cooperation**. How else could it be proved that the exploiter or pimp maintains the general relationship "for that purpose". Thus, while all four of the offenses relevant to sexual exploitation are "public interest" or "ex officio" offences, and the strict legality principle in German law requires the justice system to investigate and prosecute regardless of the victim's wishes, the framing of the offences make prosecution dependent on the wishes of the victim.

The ethical issue implied in this rather inconsistent legal framing is the question of whether it is ethically acceptable to treat prostitution as "normal work" and to treat exploitation as distinct from prostitution, or whether prostitution is in itself exploitative. The issue, which does play a part in public political debates, was not explicitly raised in either workshop, but was implicitly present in comments on women choosing prostitution or working independently.

### 5.3.2 The state has diverging obligations (from a human rights perspective) that are, at least, difficult to reconcile

- A) Duty to prosecute and sanction trafficking as organized crime
- B) Duty to support, help and empower trafficking victims.

In Germany, the tension between these two obligations is managed by a clear role separation and an established principle of inter-agency co-operation; with data sharing in one direction only: from the police to the NGOs as described above (see Part 1). Some of the ethical dilemmas mentioned below arise within this not fully resolved field of tension.

At the same time, the existing legal framework is considered inadequate. From the point of view of police and justice system, the law makes prosecution extremely difficult; from the point of view of support services, the law fails to place victim protection on an equal level with prosecution.

*Statement police O: We know that we cannot really get a grip on this situation with the current legal tool-set. It is simply impossible. On the other hand we have the problem that the current*

*Federal Government has not, at least until now, created a suitable set of tools. Nonetheless we have to work with what we have at the moment and that is hard. It is very hard. [That's why we do outreach work and simply hope that if they need it,] we will also get the necessary feedback from them that we need for criminal proceedings. But it's also a fact that we do not get that usually. Not because the women would not trust us, but because their motivation is simply a different one. Some of them want to earn money, some want to just get out of their situation when they need help. The willingness to endure criminal proceedings is a completely different one and most of them do not have that. Not even if you bring to their attention that it might be of help to other women, too. So we really have few possibilities for criminal proceedings, our tools are very, very blunt, and I just hope that in the near future we will get the means and possibilities that enable us to deal with it in a better way.*

*Beratungsstelle FBR: The EU Directive would be a possibility to place victim protection on the same level with the criminal prosecution approach, or at least to strengthen the rights of victims. At present, everything we can offer to the women grows out of the criminal prosecution approach. Because they are needed for their testimony, they are allowed. As specialized support services we claim that women who become victims of human rights violations in Germany should have rights on that basis, income and so forth. #01:03:24-9#*

And in closing, a brief exchange among the actors trying to stop the traffickers:

*Police E: We have talked about the situation that the police can wait, the prosecutor can perhaps weigh options to spare the victim distress, but once criminal charges are taken to court, then it is usually different, the witness is actually obligated to testify when proceedings have begun, then there are legal means of enforcing testimony and possible sanctions...*

*Public prosecutor S: And you just have to imagine this, you just have to imagine this. First she is victimized, then she lets herself be persuaded and makes a statement, then she is back home for a year and everything is OK, then she is summoned to come here for the main hearing and says "I don't want to say anything any more", and then "Three days prison for disobedience to the court!" Right, you really have to imagine this.*

*Police O: We shouldn't forget, we have just said in the context of trafficking that we would always weigh in our minds what we can expect of the victim. What will happen in such a case? Well, first, when the summons arrives she gets her ears boxed, and when the main hearing takes place, and he may even be convicted, she'll have to work for 24 hours to bring in the money for his fine, and because he is angry, she gets boxed again. In the end, it is all negative for her if we would do that.*

*Public prosecutor S: Right, OK, then we will just have to give up on our work (everyone laughs). Sure, it's frustrating. #02:06:20#*

## 6 Summary

The German system of government recognition of NGOs and cooperation agreements with police and the foreigners' offices, in cities where the partners of cooperation are well enough equipped, does seem to succeed in finding a balance between victim protection, empowerment, and criminal investigation. Information from several foreigners' offices (where the federal government has given the main decision-maker in each *Land* special training), suggests that potential victims of trafficking, once someone has spotted them, are now unlikely to be deported, even later on. Most don't want to stay in Germany permanently, and the NGOs organize their return if and when that is their choice, but humanitarian visas also seem to be given. No doubt it helps that the bulk of trafficking is now within the EU, where the issue of residency permits and deportation does not arise. The numbers from non-EU countries are much lower than those from within the EU. Prosecution is still weak and victim protection incomplete, because everything depends on local and regional political and

financial circumstances. A basic problem is that regulations and funding for the relevant units, agencies or the NGOs are locally negotiated. However, the NGO sector discusses as an ethical dilemma how closely they can cooperate with the police without losing their independence and their political impetus.

Regrettably, due to last minute cancellations we could not have the various legal actors involved in prosecution together in the same workshop: One workshop had a specialized prosecutor and a judge, the other had two lawyers who represent women as witnesses exercising their right to “auxiliary prosecution” in trafficking cases. As a result, the question of whether and how procedural law could be changed or re-interpreted to protect victim-witnesses from traumatic experiences of interrogation by the defense was not discussed in depth.

Another ethical issue that was not discussed in depth was the dilemma for NGOs arising from the very limited nature of the help and support they can give even in the best case, and in particular in situations where there is nothing more they can do, when they have to leave the woman alone with impending danger of coercion or violence. The police were more willing to describe their regrets in such situations, perhaps because the limits of what they can do are legally bounded and thus external in nature, while the NGOs are defined by their own commitments and ideals.

This is part of a larger psychological burden that all participants mentioned: Even with knowledge, sensitivity, skills, and dedication to best practice, assisted perhaps by luck, intervention in this area is very demanding and is almost never rewarded by what could be called real success. Victims can be helped to leave the immediate situation in which they are abused and exploited, they can be housed safely for a certain time and even given a permanent residence permit or, if they wish, be supported in a voluntary return, they can sometimes be enabled to testify with special protection, and may have the satisfaction of seeing a trafficker punished. But even when some or all of this comes together, neither can the penalties for a few traffickers act as a significant deterrent, nor are the agencies that seek to help trafficking victims, especially those from poverty environments in other countries, able to offer them real alternatives to prostitution when they are burdened with debts and obligations and have neither knowledge of the language nor any educational background. There are programs to help women leave prostitution, but for many trafficked victims, the alternative is prostitution under slightly better conditions. Thus, in both workshops participants articulated the need for more fundamental changes in policy and legislation: Regulation of prostitution is needed to enable “victimless prosecution” with the help of objective evidence; victims should have the right to psychotherapy, comprehensive health care, language courses, education and vocational training as human rights. While reform of prostitution law is in progress, a wider range of basic rights for trafficking victims or migrants with humanitarian visas seems much more difficult to attain.

The workshops did focus on the main issues, but the difficulties in finding participants highlighted the fact that both services and police and justice units specifically concerned with trafficking are concentrated in the larger cities and even then, in ones where the government of the *Land* has chosen to make this a priority. We had to search with extensive contacts for a long time to put together the professionals on our list from different cities or regions, and last-minute cancellations also were due to workloads. Thus, it seems that the system has potential for working fairly well, but lacks the resources and a consistent political commitment to act towards ending trafficking. This produces some rather strange sideshows in public discourse. Morality struggling with realism and recognition of rights, fear of being overwhelmed with expenses for victims and spells of immigration panic lead to surprising alliances and phases of political paralysis or political hysteria.