



GERMANY

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Statutory Law	Written	Yes	Federation	Republic

1. INTRODUCTION

1.1. Germany and Modern Slavery (Human Trafficking)

German criminal law has long prohibited crimes typically committed in connection with human trafficking, such as deprivation of liberty, assault, or coercion. In 1973, the Criminal Code established the first specific criminal offences against modern human trafficking (e.g., promotion of prostitution and human trafficking).¹

While Germany does not fully meet the minimum international requirements for the elimination of human trafficking,² the development is on a positive path.³ Various offences distinguish between different forms of human trafficking (refer to Section 3.1). Still, it is a challenging task to effectively combat human trafficking. In particular, the increase of organised crime makes it difficult for the authorities to act.

Germany is both a destination and transit country. Its geographical location in Central Europe, as well as its large airports and harbours, make Germany an attractive transit country for criminals. However, Germany is also a potential destination country. Organised gangs and clans in particular exploit young women from Eastern Europe for prostitution.

The majority of offences are in the area of sexual exploitation, especially prostitution. In addition, there are cases of labour exploitation, begging, and human trafficking for the purpose of illegal organ trafficking. The Federal Criminal Police Office (*Bundeskriminalamt*) (**BKA**) reports each year on human trafficking in Germany. It evaluates all relevant crimes, and collects information about the victims.

Most victims of sexual exploitation come from Eastern/Southeast Europe, but there are also German victims.⁴ Of all the victims, 96% are women.⁵ Important institutions monitoring and supporting the fight against human trafficking include the German Network and Coordination Office Against Trafficking In

¹ *Viertes Gesetz zur Reform des Strafrechts* (4.StrRG), available at:

https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B@attr_id=%27bgbl173098.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl173098.pdf%27%5D_1627634292513.

² *Länderberichte zu Menschenhandel 2019 – Bundesrepublik Deutschland*, available at:

<https://de.usembassy.gov/de/laenderberichte-zu-menschenhandel-2019-bundesrepublik-deutschland/>.

³ Council of Europe, Germany: progress made in combating human trafficking, but more needs to be done to prevent labour exploitation, available at:

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=090000168094f6c2.

⁴ Available at: https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/Menschenhandel/menschenhandel_node.html.

⁵ BKA in: *Human Trafficking and Exploitation*, pp. 7–9, available at:

<https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandelBundelagebild2018.pdf?>

Human Beings, a non-governmental organisation with public funding,⁶ and the German Institute for Human Rights,⁷ the national human rights institution.

The police and public prosecutor's offices of the federal states are generally responsible for criminal prosecution. The Federal Public Prosecutor (*Generalbundesanwalt*) prosecutes offences against national security and crimes under international criminal law. The Federal—as opposed to a state—Public Prosecutor is therefore competent to prosecute cases of human trafficking that are closely related to such offences. The federal states and the federal government work together to combat human trafficking.

1.2. Germany's Policy and Legal Position

By signing international treaties and conventions, Germany is committed to the fight against human trafficking. However, the Group of Experts on Action against Trafficking in Human Beings (**GRETA**) identifies deficits and continues to give Germany recommendations for improvements.⁸

Germany is trying to adapt its laws to meet international standards and obligations as far as possible. In recent years, Germany has passed laws and launched international, European, and German federal initiatives to prevent human trafficking, better protect victims of human trafficking, and punish the perpetrators more severely.

2. OVERVIEW OF GERMANY'S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. Germany's Regional and International Law Obligations

2.1.1. Fundamental human rights

The German Constitution (*Grundgesetz*) has a bill of rights. All German authorities—legislative, executive, and judiciary—must respect and protect these fundamental rights. Individuals can claim a violation of their fundamental rights before competent courts and the Federal Constitutional Court. In addition, the Charter of Fundamental Rights of the European Union (**CFR**) also binds German authorities when they implement EU law. Regional (European) and international human rights treaties supplement German and EU fundamental rights, including treaties concluded under the framework of the Council of Europe, such as the European Convention on Human Rights and the Council of Europe Convention on Action against Trafficking in Human Beings.

Since the inhuman acts of the National Socialist reign of terror, the respect for and protection of fundamental and human rights has played an important role in German law, as well as in political discourse. Case law, in particular the jurisprudence of the Federal Constitutional Court, has strengthened the scope of fundamental rights and the rights of individuals to claim fundamental rights violations by German authorities. Germany has also signed and ratified most European and international human rights treaties. Other public institutions, such as the German Institute for Human Rights or the Bundestag Committee for Human Rights and Humanitarian Aid, monitor compliance with these international human rights obligations.

⁶ Bundesweite Koordinierungskreis gegen Menschenhandel e.V. (**KOK**), available at: <https://www.kok-gegen-menschenhandel.de/startseite>.

⁷ Deutsches Institut für Menschenrechte (**DIMR**), available at: <https://www.institut-fuer-menschenrechte.de/startseite/>.

⁸ Available at: <https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011>.

Similarly, civil society organisations also play a major role in ensuring compliance with German fundamental rights and Germany’s international human rights commitments.

2.1.2. *Slavery and trafficking*

Germany has signed numerous United Nations and Council of Europe treaties and conventions relevant to human trafficking. Moreover, Article 4 of the European Convention on Human Rights (**ECHR**) prohibits forced labour. Based on Article 4, the European Court of Human Rights (**ECtHR**) has developed a claim against the state for adequate criminal protection against trafficking in human beings.⁹ Germany has ratified the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).¹⁰ On the European level, Germany has ratified the Council of Europe Convention on Action against Trafficking in Human Beings (2005), the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (2007), and the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011).¹¹ Moreover, Germany has ratified the ILO Worst Forms of Child Labour Convention Number 182 (1999) and Domestic Workers Convention Number 189 (2011).¹²

Germany has transposed into German law Directive 2011/36/EU¹³ of the European Parliament and the Council in 2016 on preventing and combating trafficking in human beings and protecting victims.¹⁴

2.1.3. *Effect under Germany’s law*

Under Article 25 of the German Constitution, the “general rules of international law” are part of German federal law. They take precedence over national statutory laws. They thus rank between the Constitution and “normal” federal laws (and like all federal laws, they also take precedence over state laws). However, this interpretation is not uncontroversial.

German case law interprets the term “general rules of international law” to mean generally applicable provisions of international law that the (vast) majority of states worldwide recognize. These general rules include customary international law and the generally recognized principles of international law. Due to Article 25 of the German Constitution, these norms are automatically effective in Germany: the legislature is not required to ratify or endorse them. A different question is to what extent they can also create individual and judicially enforceable rights. This is generally the case only if they are not purely state-centred norms but are also aimed at protecting individual interests, if they do not require any further act of transposition, and if they are sufficiently specific.¹⁵ In that case, individuals can base their legal claims

⁹ ECtHR, Judgment of 26 July 2005 Application no. 73316/01, *Siliadin v. France*.

¹⁰ Neither signed nor ratified: Convention on the Elimination of Trafficking in Human Beings and Exploitation of the Prostitution of Others (1949) and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).

¹¹ For an overview and closer analysis: Lena Vogeler in: *Der rechtliche Umgang mit Menschenhandel zum Zweck sexueller Ausbeutung*, 1st edition, p. 65.

¹² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102643.

¹³ DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

¹⁴ *Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches Sozialgesetzbuch*, available at: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%2527bgbl116s2226.pdf%2527%255D#_bgbl_%2F%2F%25B%40attr_id%3D%27bgbl116s2226.pdf%27%5D_1627631471061.

¹⁵ Jarass/Pieroth, Grundgesetz, Art. 25 Rn. 19–21.

directly on a general rule of international law before German agencies or courts. However, even where these requirements are not fulfilled, state authorities are generally required to observe and take into account general rules of international law, even if these rules are rather general in nature and are not aimed at protecting individual rights and interests. Under certain conditions, therefore, individuals can ask courts to take such objective, general rules into account when deciding a specific case.¹⁶

In contrast, international treaty law requires ratification (Article 59 (2) of the German Constitution). Ratification means legislative consent in the form of a federal statutory law (**consent law**). In this way, the legislature transforms the normative provisions of an international treaty into domestic law. After ratification, the international treaty provisions are ranked at the same level as other federal statutes, and general conflict-of-law rules apply. Due to the *lex posterior* rule, consent laws amend conflicting prior statutes. However, the legislature can adopt, at a later stage, another statute that conflicts with the ratified international treaty. Such statute would be valid under German law, even though it violates an international treaty law. However, the principle of “international law-friendliness” (*Völkerrechtsfreundlichkeit*) applies: as far as possible, courts must interpret laws to be consistent with international law.

2.2. Human Rights Protections Under Germany’s Law

The German Constitution contains—in particular in its first 19 Articles—a bill of fundamental rights (*Grundrechte*). It largely overlaps with the human rights guaranteed by the European Convention on Human Rights (**ECHR**) because the German courts tend to interpret constitutional fundamental rights in the light of the ECHR.

These fundamental rights bind all German authorities, including their actions with effects abroad.

Only German and EU citizens can claim certain fundamental rights. However, the fundamental rights most relevant to trafficking in human beings apply to everyone (the right to life, physical integrity, and freedom, prohibition of forced labour). Fundamental rights have a negative dimension (duty to respect) (*Abwehrrechte*) and a positive dimension (duty to protect) (*Schutzpflichten*). The right to physical integrity means, in its negative dimension, that government agencies must not mistreat individuals. In the positive dimension, it means that government agencies must also ensure that private organisations and individuals do not mistreat other individuals. Consequently, this positive dimension is most relevant in the fight against human trafficking: State agencies must protect potential victims of human trafficking against offences committed by private actors. The Government’s breach of this positive duty can obligate it to compensate victims (refer to Section 7).

The “objective dimension” of fundamental rights—a concept developed by the Federal Constitutional Court—also indirectly influences the relationship between private individuals. For example, where possible, courts must interpret standards of contract and labour law in light of fundamental rights. This can become relevant where, for example, victims of human trafficking claim compensation from traffickers. Courts might also need to interpret tort law rules in the light of relevant fundamental rights to protect victims of human trafficking effectively (refer to Section 7).

In addition to judicial recourse before ordinary courts, victims can also file a constitutional complaint with the Federal Constitutional Court. This extraordinary remedy allows applicants to have their fundamental rights reviewed when claiming a violation through an act committed by the legislature, an authority, or an ordinary court.

¹⁶ Federal Constitutional Court, ruling of 13 December 1977, case no. 2 BvM 1/76.

2.3. Criminalization of Modern Slavery

Germany has a uniform federal criminal code (*Strafgesetzbuch*) (**StGB or Criminal Code**).¹⁷ Sections 232 to 233a of the Criminal Code provide the key standards for combating human trafficking.

2.4. Supply Chain Reporting

Until recently, no legislation explicitly required reporting of human trafficking in supply chains or obliged private businesses to control their supply chains to hinder human trafficking. However, this has changed at least for some major companies. Certain non-financial reporting obligations for major companies, credit institutions, and insurance companies cover labour, social, and human rights issues. These obligations may also cover human trafficking risks (refer to Section 4). Moreover, under the new German Supply Chain Due Diligence Act enacted in 2021, certain major companies are also subject to reporting obligations (refer to Section 4).

2.5. Investigation, Prosecution, and Enforcement

2.5.1. Investigation and prosecution of criminal offenses

In principle, criminal prosecution is carried out at the state level by the respective competent authorities (public prosecutor's offices and police). The criminal prosecution authorities of the federal states work together and receive support from the Federal Criminal Police Office.

2.5.2. Mutual assistance/international cooperation

The Council of Europe Convention on Action against Trafficking in Human Beings (**Convention**), applicable in Germany,¹⁸ promotes international cooperation on action against trafficking in human beings, essentially through the exchange of information amongst signatories of the Convention.¹⁹ The Convention also obliges parties to coordinate national policies and actions against human trafficking, including establishing coordinating bodies. GRETA evaluates the implementation of the Convention.

GRETA commented favourably on Germany's multidisciplinary approach to victim assistance and the prosecution of traffickers. GRETA also suggested improvements,²⁰ including Germany expanding its cooperation with governmental and non-governmental actors in the main countries of origin for trafficking victims.²¹

The Federal Government continues to cooperate with the European Union, the Council of Europe, the United Nations, and the International Labour Organization (**ILO**), as well as other bodies of the Organization for Security and Co-operation in Europe (**OSCE**) and the Council of the Baltic Sea States (**CBSS**).²²

¹⁷ Although Germany is a federal state, there are no criminal laws at the state level.

¹⁸ Available at: <https://www.coe.int/en/web/impact-convention-human-rights/germany>.

¹⁹ Available at: <https://rm.coe.int/168008371d>.

²⁰ Available at: <https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011>.

²¹ Available at: <https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011>.

²² Available at: <https://ec.europa.eu/anti-trafficking/member-states/Germany>.

3. GERMANY'S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

The German Criminal Code contains offences related to human trafficking. The central norms are Sections 232 to 233a and Sections 176, 176a, 180a, and 181a of the German Criminal Code. The individual offences target different forms of human trafficking and provide for prison sentences of up to 15 years.



3.2. Slavery Offenses Under the Criminal Code

3.2.1. General

The central norm regarding human trafficking and comparable acts is Section 232 of the Criminal Code. A 2016 amendment aims to meet international and European requirements in relation to human trafficking.

Section 232 Criminal Code:

(1) Whoever recruits, transports, transfers, harbours or receives another person by taking advantage of that person's personal or financial predicament or helplessness on account of being in a foreign country, or that person is under 21 years of age, incurs a penalty of imprisonment for a term of between six months and five years if

1. that person is to be exploited by way of

(a) engaging in prostitution or performing sexual acts on or in the presence of the offender or a third person, or having sexual acts performed on them by the offender or a third person,

(b) employment,

(c) begging or

(d) committing criminal offences,

2. that person is to be held in slavery, bonded labour, debt bondage or under corresponding or similar conditions or

3. an organ is to be illegally removed from that person.

Exploitation through employment within the meaning of sentence 1 number 1 (b) occurs if the employment, in serving the ruthless pursuit of profit, takes place under working conditions which are strikingly different to those of others performing the same or a similar activity (exploitative employment).

(2) Whoever, with respect to another person who is to be exploited in the manner referred to in subsection (1) sentence 1 numbers 1 to 3,

1. recruits, transports, transfers, harbours or receives that person by force, by threat of serious harm or by deception or

2. abducts that person or gains physical control over him or her or encourages a third person to gain physical control over him or her

incurs a penalty of imprisonment for a term of between six months and 10 years.

(3) In the cases under subsection (1), the penalty is imprisonment for a term of between six months and 10 years if

1. the victim is under 18 years of age at the time of the commission of the offence,

2. the offender seriously physically ill-treats the victim or, by committing the offence or an act committed during the offence, at least recklessly places the victim in danger of death or at risk of serious damage to health or

3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

In the cases under subsection (2), the penalty is imprisonment for a term of between one year and 10 years if the offence was committed under one of the circumstances indicated in sentence 1 numbers 1 to 3.

(4) In the cases of subsection (1) and (2) and subsection (3) sentence 1, the attempt is punishable.

HUMAN TRAFFICKING PENALTIES IN GERMANY	Duration of imprisonment
Human trafficking according to Section 232 Without aggravating circumstances [paragraph 1]	6 months to 5 years
Attempt	Mitigation possible
Use of certain instrumentalities: violence, threat or deceit [paragraph 2]	6 months to 10 years
Offence was committed against a minor (under 18), special consequences (grievous bodily harm, recklessly	6 months to 10 years

HUMAN TRAFFICKING PENALTIES IN GERMANY	Duration of imprisonment
endangers death or serious damage to health), acts commercially or as a member of a gang [paragraph 3]	
Paragraph 3 in combination with paragraph 2	1 to 10 years

3.2.2. Extraterritorial application

Section 6 (4) of the Criminal Code states: “German criminal law continues to apply, irrespective of the law of the place of the crime, to acts of trafficking in human beings (Section 232 Criminal Code).”

Section 5 (8) of the Criminal Code states: “German criminal law applies, irrespective of the law of the place of the offence, to offences against sexual self-determination in the cases of Section 174 (1), (2) and (4), Section 176 to 179 and Section 182, if the offender is German at the time of the offence, which are committed abroad.”

3.3. Slavery-Like Offenses in Germany’s Legal Order

3.3.1. Servitude

Article 4(1) of the ECHR establishes an absolute prohibition of slavery without defining the term itself. Other instruments of international law must therefore be used to interpret it, such as the Slavery Convention (1926).²³ The scope of the term “slavery” under the ECHR is disputed. However, the ECtHR interprets Article 4 broadly. It is thus clear that trafficking in human beings, at least under certain conditions, constitutes a practice against which Article 4 protects.²⁴ This concerns not only the negative (duty to respect) but also the positive (duty to protect) human rights dimension. The ECtHR therefore held that Article 4 of the ECHR requires Member States (including Germany) to ensure that, in addition to provisions on the criminalization of trafficking in human beings, they take appropriate measures to regulate commercial activities that are often used as a cover for trafficking in human beings.²⁵ This section addresses mainly the criminal law sanctions applicable in Germany to combat human trafficking and related offences. The other sections below will look at other areas of law (e.g., tort, labour, or procurement) which intend to regulate commercial activities in a manner to combat these crimes.

Sections 232 and 232b of the Criminal Code punish acts that constitute or are intended to constitute slavery, servitude, or similar acts with a prison sentence of six months and up to five (Section 232) or 10 years (Section 232b) if a person is to be held in slavery, serfdom, bondage, or under similar conditions. In cases of human trafficking involving prostitution, the perpetrator can in severe cases (e.g., with underage victims) even be punished with up to 15 years in prison.²⁶

Slavery means “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²⁷ Under federal case law, this requires that a state formally or at least implicitly recognizes slavery as the exercise of property rights over another person. The intent to bring

²³ Karpenstein/Mayer/Behnsen EMRK Art. 4 para. 3.

²⁴ Karpenstein/Mayer/Behnsen EMRK Art. 4 para. 8.

²⁵ ECtHR, Judgment of 7 January 2010, Application no. 25965/04, *Rantsev v. Cyprus and Russia*, para. 284; Karpenstein/Mayer/Behnsen EMRK Art. 4 Rn. 3–11 with further references.

²⁶ See Sec. 232a para. 4 in conjunction with Sec. 38 of the Criminal Code.

²⁷ Article 1 (1) of the Slavery Convention, signed at Geneva on 25 September 1926.

another person into slavery or servitude would therefore include the intent to subject the victim to a legal system that still at least implicitly recognizes the legal status of a slave, which Germany clearly does not.²⁸ From a German law perspective, acts intending to submit another person to slavery could therefore only occur in cases of abduction of people from the territory of the Federal Republic of Germany, or in cases of crimes outside of Germany in countries where slavery formally or informally persists.²⁹ However, the practical relevance of this narrow interpretation of the term slavery seems limited, since it is, unfortunately, also possible in Germany to hold people captive in slave-like conditions. Insofar as this is intended by the perpetrator, this would fulfil the requirements of Section 232 of the Criminal Code for criminal liability. This is because the intention to hold a person “in slavery ... or under corresponding or similar conditions” is sufficient. This crime can therefore also be committed in states like Germany where slavery is neither formally nor informally recognized.

3.3.2. *Forced labor*

Section 232b penalizes the exploitation of another person’s labour by restricting freedom of self-determination or taking advantage of their helplessness. The sentence ranges from a minimum of three months, in less severe cases, to up to 15 years of imprisonment in severe cases.

3.3.3. *Deceptive recruiting for labor or services*

The element “recruiting” not only describes conduct, such as advertising, but also requires the recruited person to agree—explicitly or tacitly—with the perpetrator to perform a certain activity. Whether the agreement is legally effective is irrelevant. Under the terms of the agreement, the recruited person must feel obliged to submit to the recruiter’s or another person’s instructions, such as to start prostitution. Therefore, there is no recruitment if someone is merely tempted to leave home by promises—such as the general possibility of getting a job. As the agreement is the basis for the offence, it also does not matter whether the intended activity takes place. This definition corresponds to the term “recruitment” as used in the Palermo Protocol and in the framework decision.³⁰

3.3.4. *Early and forced marriage*

It is a forced marriage if at least one of the spouses is brought to the marriage by force. There are four main types of forced marriage:³¹

- Migrants living in Germany are married to each other by family members or third parties without the willingness of both partners to be married;
- Girls or young women or young men from the country of origin of migrants now living in Germany are married to them in Germany without their agreement;
- During a vacation in the home country of their families or relatives, young (usually underage) women who live in Germany are married, often without having been informed beforehand, so-called “vacation marriage” or “marriage abduction”; and

²⁸ See: Federal Supreme Court (BGH), Judgment of 11 May 1993—1 StR 896/92; *MüKoStGB/Renzikowski StGB*, 4th edition, § 232 Rn. 78.

²⁹ *MüKoStGB/Renzikowski StGB*, 4th edition, § 232 Rn. 78.

³⁰ *MüKoStGB/Renzikowski StGB*, 3rd edition, § 232 Rn. 47.

³¹ *MüKoStGB / Wieck-Noodt StGB*, 4th edition, § 237 Rn. 7.

- A woman or girl living in Germany with a secure residence status is married to a man who still lives in the family's home country to enable him to legally immigrate to Germany within the framework of spouse reunification, so-called "marriage for an immigration ticket."

3.3.5. Debt bondage

The term "debt bondage" refers to Section I, Article 1(a) of the Supplementary Convention of 7.9.1956 as a "legal status or situation that arises from the fact that a debtor pledges his personal services or those of a person under his control as security for a debt if the reasonably determined value of these services does not serve to repay the debt, or if these services are not limited and determined both by their duration and by their nature."³² According to the legislative explanatory memorandum, debt bondage is a relationship of dependency in which the creditor exploits the debtor's labour over a longer period of time to pay off an existing or supposed debt.³³ Often the perpetrator holds back the victim's wages until the cost of smuggling or a loan for relatives has been repaid. The perpetrator extends the bondage by charging the victim new—excessive—costs for food and accommodation. The decisive factor for debt bondage is whether the "employer" has complete control over the "employee" and arbitrarily can require the employee to work without restriction at any time.

3.3.6. Any other relevant offenses

Crimes against humanity

Section 7 of the German International Criminal Code (*Völkerstrafgesetzbuch*) (**VStGB**) penalizes crimes against humanity and punishes those who are trafficking in human beings, particularly in women or children, or whoever enslaves a person in another way and in doing so arrogates themselves a right of ownership over that person. Conviction pursuant to the German International Criminal Code requires a widespread or systematic attack directed against any civilian population, with the so-called Islamic State being a recent example. The offender shall be punished with imprisonment for not less than five years. Higher sentences are possible depending on the circumstances of the case.

In a recent trial before the Munich Higher Regional Court, an Islamic State returnee from Iraq has been sentenced to 10 years in prison, as the court found her—among others—guilty of crimes against humanity in the case of enslaving and killing a child.³⁴ The defendant watched as her then-husband chained a five-year-old Yazidi girl in a courtyard in Iraq and left her there to die of thirst in the sun, although it would have been possible for her to intervene and prevent the child's death. The then-husband is currently on trial in Frankfurt.³⁵ Even though the crimes were committed outside of Germany, they were tried in Germany based on the principle of universal jurisdiction. In essence, this principle means that some crimes are so grave—such as genocide and war crimes—that impunity and normal territorial restraints on prosecutions do not apply.³⁶ While universal jurisdiction is recently in the news regarding persons who

³² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery from 7.9.1956.

³³ MüKoStGB/Renzikowski StGB § 232 Rn. 80.

³⁴ Available at: <https://www.euronews.com/2021/10/25/german-is-bride-jailed-in-one-of-world-s-first-trials-for-war-crimes-against-yazidis>.

³⁵ Available at: <https://www.bbc.com/news/world-europe-59036964>.

³⁶ Available at: https://www.washingtonpost.com/world/europe/germany-war-crimes-justice/2021/03/05/b45372f4-7b78-11eb-8c5e-32e47b42b51b_story.html.

worked/collaborated in Nazi concentration camps,³⁷ it can also be put into effect regarding human trafficking and slavery, as evidenced by the recent cases connected to the Islamic State.

3.3.7. Extraterritorial application of the offenses

Refer to Section 3.2.2.

3.4. Human Trafficking/Smuggling-Related Criminal Offenses

3.4.1. International and domestic trafficking/smuggling of people

German law historically punished the smuggling of foreigners. The residence and asylum law directives of the European Union further enhanced criminal offences for smuggling. According to Sections 96 and 97 of the Residence Act, it is a crime for anyone to instigate another person or assist another person to enter the country illegally or despite an existing prohibition on residence. An instigation occurs when the smuggler enlists a foreigner to enter the country illegally, for example by recruiting a person abroad to pursue illegal employment, such as prostitution, after being smuggled into Germany. Aiding and abetting is giving any help or support to a foreigner to enter the country without permission. Such actions include procuring transport or transport options, providing information about suitable border crossing points, or procuring false, forged, or foreign passports or other documents. The sentences range from three months to five years in prison, in less severe cases monetary fines or up to five years in prison. Anyone who smuggles commercially or as a member of a gang is punished with a sentence of six months to 10 years.

3.4.2. International and domestic trafficking in children

The smuggling/trafficking of minors is also punishable under the same rules that apply for adults (refer to Section 3.4.1.). However, the fact of smuggling requires a deliberate, illegal act. In order for a punishable crime to be committed, the foreigner (*i.e.*, the minor) has to deliberately realize the fact of unauthorised entry.³⁸

3.4.3. Victim harboring

Section 232 of the Criminal Code also penalizes harbouring, which means giving someone a kind of accommodation (*e.g.*, apartment, hotel room, caravan) for purposes of human trafficking.

3.4.4. Extraterritorial application of human trafficking and smuggling offenses

Refer to Section 3.2.2.

3.4.5. International and domestic organ trafficking

Section 232 of the Criminal Code also covers human trafficking for the purpose of organ trafficking. The sentence ranges from six months to 10 years of imprisonment.

³⁷ Available at: <https://www.france24.com/en/europe/20211019-trial-begins-in-germany-for-96-year-old-former-nazi-death-camp-secretary> or <https://www.theguardian.com/world/2021/oct/07/trial-begins-of-100-year-old-former-nazi-concentration-camp-guard>.

³⁸ Order of the Federal Court of Justice of 24 October 2018—1 StR 212/18.

Section 18 of the Transplantation Act punishes organ and tissue trade for use in the healing treatment of another. It is also a crime to remove organs or tissues that are prohibited from trading, to transfer them to another person, or to have them transferred. The sentence is up to five years of imprisonment.

3.5. Online Exploitation of Children Offenses

3.5.1. Overview

The Criminal Code contains several offences dealing with the online exploitation of children. The respective norms mainly refer to illegal content, which is defined broadly to cover online-related exploitation. It is therefore irrelevant whether illegal content (e.g., child pornography) is, for example, stored on data storage devices or transmitted via electronic communication services as real-time transmissions on the Internet.

3.5.2. Dissemination, procurement, and possession of child pornography

Section 184b of the Criminal Code punishes the dissemination, procurement, and possession of child pornography (under 14 years of age) with imprisonment from one to 10 years. In grave cases, where the offender acts on a commercial basis or as member of a gang, imprisonment is between two and 15 years.

3.5.3. Dissemination, procurement, and possession of youth pornography

Section 184c of the Criminal Code punishes the dissemination, procurement, and possession of youth pornography (at least 14 years old but under 18 years) with imprisonment up to three years or a fine. In grave cases, imprisonment is from three months to five years.

3.5.4. Organization and attendance of presentations of child and youth pornography

Section 184e of the Criminal Code penalises organising and attending presentations of child and youth pornography. For the penalty, Section 184b applies *mutatis mutandis*.

3.6. Child Sex Tourism Offenses

Sex tourism in itself is not a criminal offence, but may constitute other offences. These include the promotion of sexual acts by minors (Section 180 of the Criminal Code) or the sexual abuse of minors (Section 182 of the Criminal Code). German sex tourism, where a German citizen travels abroad to have sex with children, is a crime prosecuted in Germany (see Section 5, number 8, of the Criminal Code).

4. GERMANY'S SUPPLY CHAIN REPORTING LEGISLATION

In April 2017, Germany transposed the EU CSR Directive (Directive 2014/95/EU) on non-financial reporting into national law. Germany has chosen a one-to-one implementation in Section 289 lit. (b) to lit. (e) of the German Commercial Code (**HGB**). Consequently, certain major companies (balance sheet total of more than EUR 20 million or sales revenues of more than EUR 40 million) must issue a non-financial statement if they are capital market-oriented and have more than 500 employees. The same applies to credit institutions and insurance companies.

The non-financial statement must cover several environmental, social, and corporate governance (**ESG**) aspects: environmental concerns, employee concerns, social concerns, respect for human rights and prevention of human rights violations, and the fight against corruption and bribery. This requirement applies not only to the reporting company's immediate sphere of activity, but also to non-financial impacts along the supply chain. Therefore, the obligation to provide a non-financial statement may also cover likely

and material ESG risks associated with the company’s business relationships, products, and services (Section 289c(3) of the HGB). The term “business relationship” refers not only to the relationship with the company’s suppliers and service providers, but also to its customers (**reverse supply chain**). This “reverse supply chain” makes non-financial reporting also relevant to credit institution. Reporting credit institutions might need to provide information on the extent to which their customer loans have a negative impact on the ESG aspects mentioned. In addition, the non-financial statement should include information on the company’s due diligence processes to identify, prevent, and mitigate existing and potential adverse impacts.

While the statute does not mention human trafficking, incidents of human trafficking occurring along the supply chain would seem to fall within several ESG aspects covered by the non-financial reporting obligation, including employee concerns, social concerns, and human rights risks (considering that human trafficking is a severe human rights violation).

In line with the UN Guiding Principles on Business and Human Rights, the German Government has adopted a National Action Plan for Business and Human Rights (**NAP**). Companies were asked on a voluntary basis to publish a human rights policy statement, establish a procedure to identify actual or potential adverse impacts on human rights, report on measures taken, and implement a grievance mechanism. Companies that have not adopted particular measures should explain why they have not adopted those measures (“comply or explain” mechanism). The Government’s goal was to have at least 50% of companies with more than 500 employees introduce such measures by 2020. However, this target was not met.

After long political debates, the German legislature adopted, on 11 and 25 June 2021, a Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz*) (**SCDDA**).

The SCDDA obliges major enterprises/companies to minimize risks to human rights and the environment in their own businesses and their global supply chains. A major enterprise (and thus regulated under the SCDDA) is an enterprise (including a subsidiary or branch) in Germany with 3,000 employees; as of 2024, the threshold drops to 1,000 employees. The SCDDA requires such companies to perform environmental and human rights due diligence with regard to their own businesses (including group companies) and their direct suppliers. Regulated companies must also take action with regard to their indirect suppliers if there is sufficient evidence of human rights or environmental risks. Compliance with the SCDDA is supervised by the Federal Office for Economic Affairs and Export Control (**BAFA**). An individual person who can make a substantiated claim that they were violated in their protected legal position as a result of the non-fulfilment of an obligation under the SCDDA can request BAFA to take action (Sec. 14 of the SCDDA).

The SCDDA addresses human trafficking. Companies must discuss any human rights risk arising from forced labour. This risk includes any work or service that is required of a person under threat of punishment and that the person has not voluntarily agreed to do, for example, work resulting from debt bondage or human trafficking. The SCDDA requires companies to take “adequate measures” to prevent those risks. It also has some requirements—in part detailed, in part vague—on how to organise a company’s compliance system, such as the obligation to establish a complaint mechanism for victims of alleged human rights violations. Moreover, Sec. 10 of the SCDDA establishes documentation and reporting obligations. For example, companies covered by the SCDDA must prepare annual reports on the fulfilment of their due diligence obligations and make them publicly available free of charge on the companies’ websites (Sec. 10 (2) of the SCDDA). The report must be submitted to BAFA. A federal agency must supervise regulated companies and can investigate alleged cases of non-compliance. Failure to comply with the SCDDA can have significant implications, including regulatory fines of up to 2% of the annual global turnover. Affected persons have a right to request regulatory investigations from the competent federal agency. The SCDDA states that a violation shall not give rise to civil liability. EU due diligence legislation, now under way, might remove this limitation. On 10 March 2021, the European Parliament took the position that Member States shall be

required to “have a liability regime in place under which undertakings can [. . .] be held liable and provide remediation for any harm arising out of potential or actual adverse impacts on human rights.”^{39 40}

The EU due diligence legislation is expected to apply to a wide range of companies doing business in the European Union. The European Commission is expected to submit its legislative proposal by the end of 2021.⁴¹

5. FORCED LABOR: OVERVIEW OF GERMANY’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

Victims of forced labour can claim wage payments anytime an employment agreement exists. A claim does not require a written contract; verbal or tacit agreement and the actual performance of work is sufficient to trigger wage payment claims. Social security registration or the victim’s residence status is irrelevant for bringing a civil claim. If no agreement of the wage amount exists, the competent court determines an adequate wage by looking at comparable positions in the relevant sector, taking into account collective agreements. Victims of forced labour and trafficking can also bring damage claims, both for financial or physical damages, as well for pain and suffering (*Schmerzensgeld*).

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Under Section 611a of the German Civil Code, an employment relationship exists where a person provides work for the benefit of another party according to that other party’s instructions and directives. Personal, financial dependency is also a key aspect of an employment relationship. Victims of forced labour or trafficking often meet the definition of an employment relationship.

In Germany, labour exploitation occurs in industries in which “*workforce is indispensable but access is relatively easy, i.e. no particular qualifications are required.*”⁴² Typical examples for labour exploitation include the sex industry, meat processing, construction, and private households.⁴³

Victims who are classified as employees can bring compensation claims against traffickers or those who have benefitted from their forced labour. Statutory law provides benefits and protection during the performance of work in an employment relationship, such as mandatory free time, vacation, insurance, and financial redress, such as claims for adequate compensation and damages.

³⁹ European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), Annex, draft Article 19 (2).

⁴⁰ European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html.

⁴¹ Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI\(2020\)659299_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf).

⁴² Available at: <https://www.kok-gegen-menschenhandel.de/en/human-trafficking/forms-of-exploitation/labor-exploitation>.

⁴³ Available at: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/kok_flyer_brosch/KOK_Schaubild_engl2.pdf.

5.3. Statutory Rights

German labour and employment law is not consolidated into a single labour code; there are separate laws for particular issues. Any person who is classified as an employee (refer to Section 5.2.) has certain statutory rights.

5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

In 2015, the Minimum Wage Act (**MiLoG**) introduced a general minimum wage. The current minimum wage amount is EUR 9.35 per hour. Different industry-specific minimum wages exist. In principle, the general minimum wage applies to all employees (there are exceptions for, *e.g.*, trainees, self-employed persons, or people under the age of 18 without completed vocational training, *cf.* Section 22 MiLoG). Consequently, it also applies to foreigners and seasonal workers if they work in Germany—regardless of whether they are employed by a domestic or foreign employer.

Infringements of the MiLoG are administrative offences carrying a fine of up to EUR 500,000 (Section 21 MiLoG). The customs authorities are responsible for verifying compliance with the employer’s obligations (Section 14 MiLoG). However, employees themselves have to enforce minimum wage claims before the competent labour court.

Social insurance is compulsory for every employee. It consists of unemployment insurance, health insurance, nursing care insurance, pension insurance, and accident insurance. Mandatory contributions from employers solely fund the accident insurance. Employer and employee contributions provide for the other four forms of statutory insurance (the employer pays the employee contributions via salary deductions).

The Federal Leave Act (*Bundesurlaubsgesetz*) entitles employees to a minimum holiday. The minimum holiday entitlement is 24 working days based on a six-day working week. As an exception, workers may carry over holidays not taken in a calendar year to 31 March of the following year. If holiday claims still exist upon termination, the employee has a corresponding compensation claim (*Urlaubsabgeltung*).

5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

Since July 2019, the Act against Illegal Employment and Misuse of Social Benefits (*Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch*) has been in force to protect against illegal wage practices and labour exploitation. The new law grants German custom authorities increased power in the event of unjustified receipt of social benefits, *i.e.*, through sham work; in the fight against child benefit abuse; in cases of illegal employment on day labour exchanges; in cases of labour exploitation and related human trafficking; in offering illegal employment; and in the improper provision of accommodation.⁴⁴

5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

If an employer makes unlawful deductions from an employee’s wages, the employee can bring a tort claim before the competent employment court. With regard to forced labour and trafficking, this is not an unusual “business model” for criminals. For example, in the meat processing industry, traffickers often lure foreigners to Germany with the promise of employment and social insurance. Upon their arrival, they are then forced to work as so-called subcontractors at a meat processing factory, and also forced to lease work equipment and lodging for horrendous prices. The precarious circumstances of persons working in the meat

⁴⁴ Available at: <https://www.bundesregierung.de/breg-de/aktuelles/mehr-fairness-am-arbeitsmarkt-1582376>.

processing industry were apparent during the Covid-19 pandemic, when various outbreaks occurred due to workers from Eastern Europe living in small, crowded spaces.⁴⁵

Loan and debt bondage seems to be less common in Germany. In those cases, the same principles as in unlawful deductions apply: Victims can bring regular claims under tort law.

5.3.4. Remedies

Victims of forced labour and trafficking can bring regular claims under German civil law to enforce their rights.

5.3.5. The well-being of workers: Preventing work-related psychosocial risks

According to statistics from German health insurances,⁴⁶ mental illness caused around 15–19% of all absent days in Germany in 2019. The duration of absence due to mental illness, at an average of 36 days, is three times as long as other illnesses.⁴⁷

German law includes preventive mechanisms, such as prevention procedures, occupational integration management, and required risk assessments. The protections for “mental health” in Section 4 (1) of the Labour Protection Act and “mental stress” in Section 5 (3) (6) of the Labour Protection Act also illustrate the increased importance of mental health for working life. The Federal Institute for Occupational Safety and Health provides a database (so-called “toolbox”) on its website with procedures for recording mental stress.⁴⁸ In addition, a number of practical guidelines help employers to measure and evaluate mental stress.⁴⁹

5.3.6. The well-being of workers: Promotion of workers’ health

Every German employer has a contractual obligation to protect employees’ health. Key legislation includes the Labour Protection Act (**ArbSchG**) and the Occupational Safety Act (**ASiG**).

Employers must determine the necessary occupational health and safety measures by assessing the risks associated with employees’ work (Section 5 of the Labour Protection Act). Employers must minimize dangers to life and health as far as possible. Special and more detailed legislation covers specific sectors. For example, the Construction Site Ordinance (*Baustellenverordnung*) is relevant for many victims of forced labour and human trafficking.

⁴⁵ Available at: <https://www.bpb.de/gesellschaft/migration/kurzdossiers/325067/fleischindustrie>.

⁴⁶ *TK Gesundheitsreport 2020*, available at: <https://www.dak.de/dak/download/dak-gesundheitsreport-2019-sucht-pdf-2073718.pdf>.

⁴⁷ Available at: <https://www.bundesgesundheitsministerium.de/themen/praevention/betriebliche-gesundheitsfoerderung/gesundheits-und-wohlbefinden-am-arbeitsplatz.html>.

⁴⁸ Available at: <https://www.baua.de/DE/Aufgaben/Forschung/Forschungsprojekte/f1965.html>; [https://www.ergomed-landau.de/downloads/Instrumente-zur-Erfassung-psychischer-Belastungen-\(BAuA\).pdf](https://www.ergomed-landau.de/downloads/Instrumente-zur-Erfassung-psychischer-Belastungen-(BAuA).pdf).

⁴⁹ Available at: https://www.baua.de/DE/Themen/Arbeitsgestaltung-im-Betrieb/Psychische-Belastung/Gefahrungsbeurteilung/Gefahrungsbeurteilung_node.html; available at: <https://www.baua.de/DE/Angebote/Publikationen/Bericht-kompakt/F2358-2.html>.

5.3.7. *The well-being of workers: Rest time*

The Working Hours Act (**ArbZG**) regulates working hours (and rest time). It limits the maximum permissible working time, stipulates mandatory breaks during working time and between the end and resumption of work, and sets rest periods on Sundays and public holidays.

According to Section 3 of the Working Hours Act, the working time of employees shall not exceed eight hours per day. Under certain conditions, employers can extend the working time up to 10 hours. Employers must comply with the legally binding provisions regarding rest time. When the working time exceeds six hours in a day, the minimum mandatory break is 30 minutes; if the working time exceeds nine hours, the minimum rest period is 45 minutes. The minimum rest period after completion of work and between two working days is 11 hours. Work is prohibited on Sundays and public holidays (employers can apply for exceptions).

Infringements of the law are administrative offences punishable by a fine of up to EUR 15,000 (Section 22 Working Hours Act). Prison sentences for responsible managers are possible in cases of repeated, intentional, or negligent offences but are rarely seen in practice.

5.3.8. *The well-being of workers: Freedom to change jobs and right to leave*

Article 12 of the German Constitution gives employees freedom to change and leave jobs. Everyone has a right to choose their occupation or profession, their place of work, and their place of training. Every employee is free to terminate their employment agreement. The employment agreement determines the conditions of termination, but there are statutory minimum notice periods (Section 622 Civil Code) of two weeks during a probationary period (if any) and four weeks without or after a probationary period. Statutory notice periods increase with time of employment and supersede shorter contractual notice periods.

5.4. **Rights to a Safe Workplace and Compensation Associated With Injuries or Illness**

German occupational safety and health law is based mainly on EU framework regulations. Employers have an obligation to set up a functioning occupational safety and health system. Risk assessments play a key role, and companies may also have to appoint a company doctor.⁵⁰

The Continued Remuneration Act (*Entgeltfortzahlungsgesetz*) (**EFZG**) governs remuneration in the event of inability to work due to illness. A claim to continued remuneration under the EFZG requires that the employment relationship existed for at least four weeks and the employee is unable to work solely due to an illness. The employee must not be at fault. The payment claim exists for a maximum of six weeks. Afterwards, the employee may be entitled to receive statutory sickness benefits (*Krankengeld*).

The entitlement to continued remuneration under the EFZG can also apply in cases of forced employment. Remuneration within the meaning of the EFZG generally means the wage, salary, or any other consideration, whether in cash or in kind, that a worker receives directly or indirectly from the employer because of the worker's employment, and that is equivalent to the remuneration received by comparable workers in a legal employment relationship (article 2 letter (j) Directive 2009/52/EC).⁵¹

⁵⁰ For details about general workplace safety, see website available at: <https://www.bmas.de/EN/Labour/Occupational-Safety-and-Health/occupational-safety-and-health-art.html>.

⁵¹ NK-AusIR/Stefan Keßler, 2nd edition, AufenthG § 98a Rn. 7.

In case a foreigner does not have a working permit as the Residence Act requires, the court must examine the question of causation to determine whether the employee is entitled to continued remuneration.⁵² The question is whether the worker's illness is the sole reason for the worker's inability to work. If so, a claim to continued remuneration can exist. If the employer has employed the employee in the past, although the employer knew (or in case of negligent ignorance) that the worker had no work permit, the worker will have a claim to continued remuneration. An expired work permit also is not a contributory cause (in the sense of sole causation) if it is certain that the government authority would have immediately reissued the work permit after application.

The employee is obliged to inform the employer immediately of the worker's incapacity to work and the probable duration of the incapacity. If the incapacity for work lasts longer than three calendar days, the employee must submit a doctor's note no later than the following working day, confirming the worker's incapacity for work and the probable duration.

Germany also has statutory accident insurance. Social Code VII (**SGB VII**) aims to prevent work accidents and work-related health risks, to promote recovery, and to compensate insured persons or their surviving dependents.

The statutory accident insurance can also apply to illegally employed persons. A written employment contract is not required. The right to accident insurance can also arise from the factual circumstances. The decisive factors are usually the performance of actual work and the employer's control over the employee's work performance. Infringements of the Residence Act, Illegal Employment Act (*SchwarzArbG*), or other statutory law do not exclude accident insurance coverage (Section 7 (2) Social Code VII).⁵³

Under certain circumstances, the Victims Compensation Act (*Opferentschädigungsgesetz*) (**OEG**) and the Federal Pensions Act (*Bundesversorgungsgesetz*) (**BVG**) may entitle persons affected by human trafficking or forced labour to a claim for a disability or victim's pension (*Beschädigtenrente*). A prerequisite is that a person is a victim of an act of violence on German territory resulting in damage to health. The Federal Pensions Act determines the scope of compensation, and the degree of damages suffered determines the individual compensation amount.

5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Victims of forced labour can claim their unpaid wages or financial compensation due to their employers' other breaches of contract before the labour courts (*Arbeitsgerichte*). Civil claims can also be combined with criminal proceedings. Refer to Section 7.

The website of the German Network and Coordination Office Against Trafficking In Human Beings (**KOK e.V.**) lists specialised counselling centres in Germany.⁵⁴ The centres provide crisis intervention help, psychological counselling, and general advice to victims of human trafficking and sexual and labour exploitation. They also connect victims with lawyers to enforce social legislation and labour law claims.

⁵² Order of Federal labour court judgement of 26 June 1996—5 AZR 872/94 BeckOK ArbR/Ricken EFZG, 60th edition, § 3 Rn. 27.

⁵³ Order of LSG Hessen of 13 September 2007—L 3 U 160/07 ER mwN. Schmitt in Schmitt SGB VII, 4th edition, § 7 Rn. 7.

⁵⁴ Available at: <https://www.kok-gegen-menschenhandel.de/en/der-kok/assistance/counselling-centres>.

5.6. Interaction Between Employment Law and Migration

5.6.1. *Employment rights affected where employment is unlawful under migration law*

In principle, foreign persons who hold a residence permit may engage in paid employment, unless statutory law determines a prohibition (Section 4a (4) of the Residence Act). Consequently, a foreigner without a residence permit must not engage in employment unless permitted by intergovernmental agreement, statutory law, or the competent authority.

Foreign persons who are in breach of migration law or visa conditions have two ways to bring employment law claims:

- Payment claim for unlawful work

According to Section 98a of the Residence Act, employers are required to pay illegally employed third-country nationals the agreed remuneration. Sections 98a *et seq.* of the Residence Act implement Directive 2009/52/EC. The Directive prohibits the employment of third-country nationals who do not have the right to reside in the EU (recital 3). The objective is to counteract illegal immigration by acting against the employment pull factor (recital 36). Therefore, the Act sanctions employers for illegal employment (in particular financial sanctions) while improving the legal status of the illegally employed.

As a consequence, the employment contract remains legally effective despite the lack of a residence permit or authorisation for employment. Additionally, to prevent difficulties of evidence, it is refutably assumed that the employer has employed the foreign person for three months. The agreed remuneration is presumed as well. If a contract does not state an agreed amount of remuneration, then remuneration is based on the usual wages in the sector (*e.g.*, standard wages or the minimum wage).

In addition to the employer, subcontractors and intermediate contractors also can be liable for the payment claim. The worker must bring a payment claim under Section 98a of the Residence Act before the competent labour court.

- Residence permit pursuant to Section 25 (4a), (4b) of the Residence Act

Section 25 (4a) of the Residence Act provides for the possibility of a residence permit for foreign persons who are victims of a criminal offence under Section 232–233a of the Criminal Code (refer to Section 3.2).

Section 25 (4a) of the Residence Act implements Directive 2004/81/EC. The residence permit shall be granted if and as long as the corresponding criminal proceeding requires the foreign person's presence in Germany as a witness. Since 2015, a foreign person also has the opportunity for permanent residence based on this process. The Government shall extend the residence permit if humanitarian or personal reasons or public interests require the foreign person's further presence in Germany after the criminal proceeding ends.

The residence permit pursuant to Section 25 of the Residence Act does not entitle a foreign person to take up paid employment. However, this can be permitted in accordance with Section 4a (1) of the Residence Act.

Last, the Government also shall grant a temporary residence permit (Section 25 (4b) of the Residence Act) to foreign persons who are victims of a criminal offence pursuant to Section 10 (1) or Section 11 (1) (3) of the Illegal Employment Act (*SchwarzArbG*) or under Section 15a of the Temporary Employment Act (**AÜG**). The Government may extend the temporary permit if the

foreign person has not been paid compensation in full or if it would be a particular hardship for the foreign persons to pursue their claims from abroad.

Although victims of human trafficking and forced labour shall be granted a residence permit if necessary for the corresponding proceedings, the employer and the employee face various types of penalties. According to Section 404 (1) (1) and (2), (3), and (4) of the Social Code III, there is a fine up to EUR 500,000 for the employer who negligently or intentionally employs a foreign person, and a fine up to EUR 5,000 for the employee who intentionally or negligently takes up employment without authorisation. Additionally, both the employer and the employee face imprisonment for up to one year (Section 11 of the Illegal Employment Act). In the case of the employee, a prison sentence is only possible if the intentional act is persistently repeated.

5.6.2. Rights/remedies available under applicable migration law and regulations

Refer to Sections 5.6.1. and 7.

5.7. Employment Laws and Child Labor

Germany prohibits child labour. The child's or the parents' consent to work is generally irrelevant. According to the Youth Employment Protection Act (**JArbSchG**), children are minors up to the age of 15. The employment ban intends to protect children against labour exploitation and against risks to health, development, and school education.

Statutory exceptions to this prohibition against employing children include occupational therapy, an internship, or instructions of a juvenile court judge (Section 5(2) of the Youth Employment Protection Act). In addition, employment of children older than 13 years is allowed if the parents consent and the work is easy and suitable for children. The maximum working time cannot exceed two hours per day or three hours per day if working on a farm. Work during school holidays is also permitted up to a maximum of four weeks per calendar year.

An employer's violation of the statutory prohibition against employing children is a criminal offence or misdemeanour in accordance with Sections 58 and 59 of the Youth Employment Protection Act. Any employment agreement with a child only has legal effect for the future (*ex nunc*). Moreover, the employer cannot contest the validity of the employment relationship for past times, and the underaged employee remains entitled to compensation.

Cases of child labour are rare. Only a couple of judgments and cases are reported. These known cases concerned the participation of children in opera and concerts, newspaper delivery before 6:00 am, or competitive sports, and parents' employment of their children.

6. GOVERNMENT PROCUREMENT RULES

6.1. Overview

According to OECD estimates, the German public sector awards contracts worth at least EUR 500 billion every year to private companies—that would be around 15% of Germany's GDP.⁵⁵ Consequently, federal, state, and municipal government agencies could exert significant influence on the supply of products and

⁵⁵ OECD in: *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, 1st edition, available at: <https://www.oecd.org/gov/public-procurement/public-procurement-in-germany-1db30826-en.htm>; German Federal Ministry for Economic Affairs and Energy (**BMWi**), available at: <https://www.bmw.de/Redaktion/DE/Dossier/oeffentliche-auftraege-und-vergabe.html>.

services, and consequently also on social aspects along the supply chain, described as “sustainable” or “strategic” procurement. While often not tailored to address human trafficking, public procurement rules are one tool to combat human trafficking.

The 2016 reform of German public procurement law now *allows*, but with few exceptions does *not require*, government agencies to consider environmental (**green procurement**) and social (**social procurement**) aspects when awarding contracts. It is questionable whether this regulatory approach meets the requirements of Article 18 (2) of the EU Public Procurement Directive 2014/24/EU. This Directive requires Member States to “take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X,” which refers, *inter alia*, to the ILO core labour convention.⁵⁶

Nevertheless, this 2016 reform was another step towards better protection of social standards and better protection against human trafficking. Before this reform, the law regarded social aspects, which generally refer to production methods and not products, to be “non-procurement aspects.” Over time, EU case law and legislation have recognized that social aspects are legitimate concerns for the award of public contracts.⁵⁷ With the 2016 reform, environmental and social goals have now become official objectives of German procurement law (see Section 97 (3) of the Act against Restraints of Competition (**GWB**)). Several guidelines exist on how to procure products or services in an environmentally and socially responsible manner. However, the awarding authorities still have broad discretion to decide to what extent and how to consider social aspects.

One challenge is that the integration of social aspects in the awarding of contracts increases the costs for the awarding authority and private companies. Smaller contracting authorities, particularly municipal agencies, often regard social requirements in long supply chains as too complex. It is difficult to monitor compliance with social standards along global supply chains, and violations of public procurement law allow competitors to contest awards. To overcome these practical challenges, smaller government procurement agencies need support and know-how and would benefit from the development of mechanisms, such as guidelines or certificates, that would enable them to take social standards into account more efficiently and in a legally secure manner.

Several sector-specific guidelines governing sustainable procurement at all levels already exist. The Procurement Office (*Beschaffungssamt*) of the Federal Ministry of the Interior provides an overview. As part of the Procurement Office, the Competence Center for Sustainable Procurement provides comprehensive information for federal and state procurement.⁵⁸

6.2. Government Procurement Rules and Action Plan

The new framework allows contracting authorities wide discretion to use public procurement to support strategic objectives, such as social standards, environmental protection, or innovation (Section 97 (3), 128 (1) of the **GWB**). Agencies can give more concrete specifications in the various phases of an award process, including the service description, award criteria, and conditions of execution.

The **Service Description** (*Leistungsbeschreibung*) provides the expected characteristics of the services or products to be procured. As most social aspects do not relate to the quality of the product or service itself, German law clarifies that the description of the required characteristics “may also cover ... social and

⁵⁶ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>.

⁵⁷ Order of ECJ of 20 September 1988, *Beentjes*, C-31/87 On the admissibility—but also limits—of the use of eco and fair trade labelling: Order of ECJ of 10 May 2012, *EKO and MAX HAVELAAR*, C-368/10.

⁵⁸ Available at: http://www.nachhaltige-beschaffung.info/DE/Home/home_node.html.

environmental aspects. They may also relate to the process or method of production or provision of the service or to another stage in the life cycle of the subject of the contract, including the production and supply chain, even if such factors are not physical elements of the service, provided that these characteristics are linked to the subject of the contract and are proportionate to its value and procurement objectives.” (Section 31 (3) VgV). Consequently, a contracting authority may require that a supplied item (e.g., footballs for municipal sports facilities) does not originate from forced or child labour in violation of ILO core labour standards.⁵⁹ However, this requirement must be strictly “linked to the subject of the contract” and “proportionate to its value and procurement objectives.” Both criteria can pose significant obstacles, especially for smaller procurement contracts. In practice, agencies will need to consider whether bidders can rely on quality labels such as the Fair Trade label (where they exist) to prove their compliance with social requirements.⁶⁰

Furthermore, the awarding authority must check whether there is a reason for **exclusion** of certain bidders. German law excludes bidders who have been convicted of trafficking in human beings or promoting trafficking (Sec 123 (1) of the GWB). Since 2017, Germany has had a central “Competition Register,” listing companies to be excluded. As a rule, contracting authorities and grantors of concessions are obliged, starting at a contract value of EUR 30,000 upwards, to check the register before awarding a public contract. The law also excludes companies that have not paid social security contributions (Section 123 (4) of the GWB). This exclusion applies when a company fails to make social security contributions for suspected victims of forced labour. In addition, a contracting authority may exclude a bidder that has violated other applicable environmental, social, and labour law obligations.

Social aspects may also become relevant in the **award criteria** (*Zuschlagskriterien*). Those criteria can allow an agency to take into account environmental and social aspects.

Finally, social aspects can play a major role in the **conditions of execution** (*Ausführungsbedingungen*). Subject to other requirements, such as the principle of proportionality, contracting authorities *may* include other social aspects in the contract. The company is then contractually obliged to observe certain standards (Section 128 of the GWB). Again, the contracting authority has wide discretion to decide whether and how to use its right to include social and environmental standards. Federal or state law may obligate contracting authorities to include social aspects in the contractual conditions of execution (Section 129 of the GWB). Particularly relevant here are state law tariff compliance and minimum wage requirements.⁶¹

Social standards in award criteria, such as compliance with the statutory minimum wage, can help to combat human trafficking and forced labour. The contractor also has its own obligation to observe labour standards (in compliance with the core ILO conventions).

A controversial issue is whether contractors not covered by the SCDDA must also ensure compliance with the ILO core labour standards (and thus also the prohibition of forced labour) along their international supply chains. German procurement law allows, but does not require, a contracting authority to add supply chain due diligence obligations as an optional award criterion, subject to Section 128 (2) of the GWB. Whether such a due diligence requirement is lawful is a case-by-case question. The agency must sufficiently define the criteria: what exactly are the minimum standards for the contractor to observe, and how far does the contractor’s duty of supervision extend along its supply chain? Furthermore, it must be possible and reasonable for the contractor, within the framework of the principle of proportionality, to check compliance with these standards in third countries. This may depend on whether reliable certification systems and quality certificates of independent organisations exist.

⁵⁹ Burgi, Vergaberecht, 3rd edition, § 12 Rn. 25.

⁶⁰ Burgi, Vergaberecht, 3rd edition, § 12 Rn. 27.

⁶¹ Beck VergabeR/Opitz GWB § 129 Rn. 18–25. However, such minimum wage requirements must not be discriminatory and must comply with EU law: Order of ECJ of 3 April 2008, *Rüffert*, C-346/06.

6.3. State Public Procurement Rules and Action Plan

Each of the 16 German states has procurement laws that can add substantive green and social requirements. After the 2016 amendment of the GWB, however, the federal states have limited competence to expand social requirements for procurement. The states may (as Section 129 GWB authorises) pass statutes to implement federal law by obliging contracting authorities to add certain environmental or social standards to their conditions of execution. Minimum wage requirements are the most prominent example for such a state law standard. Section 129 of the GWB arguably permits states to require compliance with core labour standards along supply chains. The federal states also provide guidelines to the state awarding authorities to support integrating social aspects into state awards.

7. RESTITUTION AND VICTIM COMPENSATION

7.1. Overview

Victims of human trafficking often suffer physical and psychological harm. In addition, they are often deprived of the reward for their work. Victims of human trafficking in Germany have various possibilities under German law to claim compensation. However, very few victims actually obtain the compensation that German law allows. Several governmental and non-governmental organisations support victims and assist them in seeking compensation before German courts.⁶²

7.2. Compensation Claims Against Offenders

7.2.1. Labor law claims

Victims of forced labour can claim their unpaid wages or financial compensation due to their employers' other breaches of contract before the labour courts (*Arbeitsgerichte*).

This type of claim requires a written or verbal contract of employment. Violations of labour law or residence law are not relevant. For the labour courts to have jurisdiction, the employer's registered office must be in Germany or the work performed in Germany. Victims need to take several steps: Those affected must file a written claim for wage payment with the locally competent labour court. There is no obligation to hire a lawyer, so victims can draft and submit the claim themselves. A judicial officer (*Rechtspfleger*) of the labour court also can formulate the claim. An applicant who cannot pay the costs of the proceedings may apply for legal aid. If the applicant can provide *prima facie* evidence to support the claim, then the employer must prove that there was no employment contract.

Victims face some challenges: The immigration authority or the tax office could become aware of the victim's residence status. A person who does not have a legal residence permit faces expulsion and deportation or other consequences.

7.2.2. Damages under tort/contract law

Victims of human trafficking can bring a tort law claim seeking compensation for physical and psychological harm. The civil courts (*Amtsgericht* or *Landgericht*) handle tort law claims. The *Landgericht* has jurisdiction starting from an amount in dispute of EUR 5,000. Victims can apply for legal aid if they are not able to cover the necessary court and attorney fees. According to German tort law, whoever intentionally or negligently

⁶² For an overview and further information, see Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., Compensation mechanisms for trafficked persons, available at: <https://www.kok-gegen-menschenhandel.de/en/human-trafficking/compensation>.

violates the life, body, health, freedom, property, or any other right of another person unlawfully is obliged to compensate the other person for the resulting damage. The same obligation applies to anyone who violates a law intended to protect another. The defendant, if found liable, has to restore the victim to the condition that would exist without the infringement of rights. Injury to body or health is defined as compromising a person's physical integrity or as a mental disorder that can be classified as illness. In cases of particular hardship, the mental consequences for the victims can be considered as damage to their health, for example in the case of post-traumatic stress disorder. The victim may receive compensation for pain and suffering if damages are awarded for injury to body, health, freedom, or sexual self-determination. Compensation is provided for non-material damage. Finally, the amount of damages depends on the nature, intensity, and duration of the infringement.

The victim only needs to be represented by a lawyer before the Regional Court (*Landgericht*). Anyone affected must file a written claim with the locally competent court. Legal aid requires an application that must include a declaration of personal and financial circumstances.

7.2.3. Compensation in criminal court proceedings

Victims can also claim compensation in criminal court proceedings. Consequently, in a criminal trial for human trafficking, victims can claim compensation in so-called adhesion proceedings (*Adhäsionsverfahren*) (see Section 403 *et seq.* of the Criminal Procedure Act (**StPO**)), if the victim has not asserted this claim in any other court. If the court does not decide the victim's claim, the injured party can still assert a claim before the civil court. Similarly, if the criminal court does not recognise part of the victim's claim in the adhesion proceedings, the victim may bring a civil lawsuit for the part not recognised.⁶³ For both proceedings, the amount of damages or compensation for pain and suffering awarded depends on the nature and extent of the injury inflicted.

Victims need to take several steps. In practice, applications for adhesion are mostly submitted by injured parties entitled to bring an accessory claim (*i.e.*, a personal (damage) claim connected to the criminal case in question). It is also possible to conduct an adhesion proceeding without being a party to the criminal proceeding. The application for an adhesion proceeding can be made in written form or verbally at the court, in the main hearing up to the beginning of the final presentations.

7.3. Compensation claims against the government

According to a ruling of the Federal Social Court (Ref.: 9 RVg 2/78), the state has a duty to protect its citizens from acts of violence and criminal acts. If the state fails in this duty, it is obliged to compensate those injured. This type of compensation is regulated by the Victims Compensation Act (*Opferentschädigungsgesetz*) (**OEG**).⁶⁴

To receive OEG compensation, the claimant must be the victim of an act of violence resulting in some damage to the claimant's physical or psychological health. The injured person or the victim's surviving dependents are entitled to claim damages. The scope of the benefits depends on the duration of the stay and the type of residence permit. Those affected can receive medical treatment, a basic pension, compensation for occupational injuries, or a compensation pension.⁶⁵ The pension offices of the federal

⁶³ Available at:

https://www.justiz.nrw.de/Gerichte_Behoerden/ordentliche_gerichte/Strafgericht/BesondereVerfahrensarten/adhaesionsverfahren/index.php.

⁶⁴ *Bundesweiter Koordinierungskreis gegen Menschenhandel e.V.*, Compensation mechanisms for trafficked persons, available at: <https://www.kok-gegen-menschenhandel.de/en/human-trafficking/compensation>.

⁶⁵ Available at: <https://www.kok-gegen-menschenhandel.de/en/human-trafficking/legal-framework-in-germany/crime-victims-compensation-act>.

states decide the claims. The police provide an information sheet in 29 languages, describing claims under the OEG.⁶⁶ Injured persons can apply for compensation informally or by using forms available on the website of the Federal Ministry of Labour and Social Affairs. Injured persons also can apply to all other social benefit institutions and the municipalities.⁶⁷

The Social Compensation Act, which comes into force in 2024, revises the OEG. In the future, victims of psychological violence may also receive benefits, and compensation payments will increase. Victims of violent crimes will be treated equally, irrespective of their nationality and residence status.⁶⁸

Victims making OEG claims face challenges. Many applications under the OEG have failed, and many injured persons do not apply.

7.4. Other Forms of Support Schemes

Non-governmental counselling centers (*Beratungsstellen*) assist victims of human trafficking. They provide urgent assistance, such as accommodation or medical care, and also legal advice on how to seek judicial compensation.

Based on suggestions made by the Federal-State Working Group (**B-L-AG**) against Human Trafficking for Labour Exploitation, the German Government established the Service Agency against Labour Exploitation, Forced Labour and Human Trafficking. The Ministry of Labour and Social Affairs provides funds for the Service Agency. It has the task of establishing and expanding cooperation structures against labour exploitation, forced labour, and human trafficking nationwide. It provides working aids and practical material for employees of counselling centres, authorities, and other organisations that come into contact with potentially affected persons.⁶⁹

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⁶⁶ GRETA in: *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, p. 42, No. 199, available at: <https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011>.

⁶⁷ Available at: <https://www.bmas.de/DE/Themen/Soziale-Sicherung/Soziale-Entschaedigung/Opferentschaedigungsrecht/oeg.html>.

⁶⁸ Available at: <https://www.bmas.de/DE/Service/Presse/Meldungen/2020/neue-gesetze-soziales-entschaedigungsrecht.html>.

⁶⁹ Available at: <https://www.servicestelle-gegen-zwangsarbeit.de/en/>.