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Human Trafficking for Labour Exploitation: A Case Study of Germany Accessing Gaps and Barriers in the Identification of its Victims

**AUTHOR**

Koesl, Christina

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# Human Trafficking for Labour Exploitation

A Case Study of Germany Accessing Gaps  
and Barriers in the Identification of its  
Victims

Dissertation (HTM7006) 2018-2019

Christina Koesl

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## Abstract

This case study explores barriers in the identification of victims of human trafficking for labour exploitation in Germany. While the main focus on combating human trafficking was on sexual exploitation, more recent reports display a global increase in identification of labour trafficking. Although severe forms of labour exploitation indicating trafficking are reported within Germany, the evidence according to official data continues on a small scale. The study, therefore, contributes to the current discourse on responses to human trafficking for labour exploitation. Interviews with experts from Non-Government Organisations (NGOs) and German Police shed light on the barriers that hinder the identification of human trafficking for labour exploitation. The findings indicate deficits in the implementation of policies and hindering the formal identification of victims based on a narrow application of the criminal code defining human trafficking. The study recommends establishing a national referral mechanism and adopt a stronger human rights approach of victim support and protection.

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## List of Abbreviations

AufentG	Residence Act
BAMF	Federal Agency for Migration and Refugees
BFSFJ	Federal Ministry of Family, Seniors, Women and Youth
BKA	Federal Criminal Police Office
BMAS	Federal Ministry of Labour and Social Affairs
DGB	German Trade Union Federation
EU	European Union
FKS	Financial Monitoring Unit for Combat Illicit Employment
FRA	European Union Agency for Fundamental Rights
GOV	Government
GRETA	Group of Experts on Action against Trafficking in Human Beings
IASC	Independent Anti-Slavery Commissioner
ILO	International Labour Organisation
KOK	Bundesweiterkoordinierungskreis gegen Menschenhandel
NRM	National Referral Mechanism
OSCE	Organisation for Security and Co-operation in Europe
OVC	Office for Victims of Crime
StGB	German Criminal Code
UK	United Kingdom
UN	United Nations
UNODC	United Nations' Office on Drugs and Crime

## 1. Introduction

Human trafficking (HT) is one of the most severe forms of crime and human rights violation. In 2000, the United Nations (UN) established the latest framework to address this crime through the ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ (2000) also known as the Palermo Protocol. Within the European Union (EU) the Directive 2011/36/EU ‘on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims’, provides binding legislation for member states to address HT and to implement the directive into national law.

However, since the introduction of the protocol (and even before), the focus of HT has mainly been on sexual exploitation (SE), which was and often still is considered to be the most common form of trafficking (Cockbain & Bowers, 2019; Goodey, 2008). Not only did governments across Europe focus more on SE, but also academic literature is denser on sex trafficking than other forms of trafficking; such as labour exploitation (LE) (Sweileh, 2018; Cockbain et. al, 2018). Nevertheless, as awareness for HT and exploitation increases, the identification of HT/LE is increasing, too. This rise was recognized by the United Nations’ Office on Drugs and Crimes (UNODC) in 2016 and the latest statistics of the United Kingdom’s (UK) National Referral Mechanism (NRM) shows that HT/LE is the most common form of exploitation (National Crime Agency (NCA), 2018). However, the evidence base and the literature around HT/LE remains sparse and fragmented (Andrees & van der Linden, 2005; Cockbain et. al, 2018; Cyrus et. al, 2010; Goodey, 2008).

HT/LE is an international phenomenon (UNODC, 2016; Cockbain et. al, 2018). The International Labour Organisation (ILO) estimates 24.9 million people in forced labour. Out of these, 16 million are exploited in the private sector and industries such as agriculture, construction and domestic work (ILO, 2017)<sup>1</sup>. However, the manifestation of HT/LE varies across countries and industries (UNODC, 2016; Cockbain et. al, 2018). Even within the European Union (EU), there are significant differences in the number of identified victims of HT/LE and HT/SE. A high portion of HT/LE victims have been identified in Malta, Portugal, Czech Republic, Belgium and the UK (European Commission, 2018a) but only a small scale within Germany (Federal Criminal Police Office (BKA), 2006-2017).

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<sup>1</sup> ILO includes certain state-enforced labour, but excludes others like military service



While HT/SE is widely recognized within Germany, HT/LE has gained little attention and is less in the public interest and awareness (Schwarze, 2007; Cyrus et. al, 2010; Wodke, 2014; Bundesweiterkoordinierungskreis gegen Menschenhandel (KOK), 2017). However, the latest report on human rights in Germany devotes one chapter to severe LE and calls on the government for action (Engelmann et. al, 2018). While HT/LE is more frequently identified in other European countries, it is also considered that there is a higher proportion within Germany (Group of Experts on Action against Trafficking in Human Beings (GRETA), 2019). Severe forms of LE in Germany are reported in newspapers by NGOs and in studies which in some cases also indicate HT/LE (Geyer, 2019; Faire Mobilitaet, 2019a; Cyrus, 2005; Cyrus et. al 2010; Vogel, 2011).

The research focused on Germany as a case study. The criminal code on HT was revised in 2016. However, since then no study has been undertaken that is known to the researcher. The overall research aim was to identify gaps and barriers which hinder the identification of HT/LE by gaining understanding of how HT/LE is currently addressed through policies and their implementation. Thus, the study contributes to the current debate on HT/LE and how German policies hinder a wider recognition and identification of HT/LE.

The study is comprised of four main sections. Firstly, the study discusses the definitions and challenges of the concept of HT/LE. The research follows the concept of HT as an umbrella term for forced labour, as used in international and European law. This is followed by the different frameworks which address HT/LE. It further outlines victim identification through different agencies and victim support, before discussing limitations through data and estimates. Section two outlines the methodology for the case study. Non-standardised interviews and e-mail interviews were used to create knowledge about gaps and barriers in the identification of HT/LE. The third section presents and discusses the key findings of the case study. Gaps and barriers are found in the implementation of policies, a narrow interpretation, and application of the criminal code, and restricted access to victim support. In the final section, the study concludes with recommendations for further development to increase the identification of HT/LE.

## 2. Defining Human Trafficking for Labour Exploitation

HT/LE is a difficult concept. Although the term is widely used, none of the international frameworks such as the UN Palermo Protocol or the EU Directive use the term LE but instead use: forced labour, slavery and slave-like practices (Rijken, 2013). A clear definition of HT/LE does not exist (Cockbain et. al, 2018; Skrivankova, 2010).

One of the main challenges with the definitions of HT, slavery, forced labour and LE is how the terms are understood and used by different actors such as states, NGOs, media and academia (O'Connell Davidson, 2015; Cyrus & de Boer, 2011). Not only is HT, modern slavery and forced labour conflated and used interchangeably (Cockbain & Bowers, 2019; O'Connell Davidson, 2015) but also the terms LE and forced labour (Skrivankova, 2010).

### 2.1 Human Trafficking, Slavery and Forced Labour

Each term is defined under international law, however, in practice, individual countries use the definitions differently (Focus on Labour Exploitation, 2019). For example, the UK works with the term Modern Slavery, while Germany refers to HT (GOV.UK, 2015; Bundesregierung, 2016).

In international law, HT is defined in Article 3(a) of the UN Palermo Protocol:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

The EU Directive 2011/36/EU follows the definition of the protocol in its general outlines. HT, therefore, constitutes a process of **acts**; such as recruitment, and **means**; such as coercion or deception with the **purpose** of exploitation. All three actions have to be fulfilled to constitute HT (Cyrus et. al, 2010).

Central to the discourse on slavery is the international definition of the League of Nations (1926) according to which, '[s]lavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' (League of Nations, p.1, 1926; Nicholson, 2018). Key to the definition is the exercise of ownership. Although *de juris*

ownership does not exist any longer, Allain and Bales (2012) argue *de facto* ownership still exists, which is exercised through violence and threats, restricting a person's freedom of movement for the purpose of exploitation (Bales, 2012). Slavery is seen as the worst form of exploitation (Bales, 2012; O'Connell Davidson, 2015; Nicholson et. al, 2018).

Forced labour, which was not covered by the slavery convention was defined separately by the ILO in 1930 through the Forced Labour Convention (O'Connell Davidson, 2015). Almost a century later, the term is re-framed in the context of HT by the UN Protocol, ILO and other actors such as Walk Free Foundation (ILO, 2017, 2019). Rather than clarification, this leads to confusion about the different terms and concepts, which will be addressed later on.

According to Article 2 Forced Labour Convention, forced labour encompasses 'all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily'. In addition, ILO describes a set of indicators to help identify a situation as possibly forced labour, which are: 'abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions and excessive overtime' (ILO, p. 3, 2012). A more in-depth operational list with indicators for HT is also provided by ILO and the European Commission (ILO, 2009). Although indicators are no proof, it is argued that the existence of two or more shall lead to an investigation of forced labour (ILO, 2012; Bales, 2011).

ILO further highlights the involuntariness of the victim, in opposition to informed consent about working conditions and the free will to leave at any time. In such incidences, coercion or threat (menace of penalty) is used to force the victim to work, although, besides physical violence, ILO also includes more subtle methods such as the threat of reporting to immigration. Influencing the free will determines if it constitutes forced labour or not. ILO does not accept the lack of alternatives forcing a person to stay in exploitative circumstances (ILO, 2019; Skrivankova, 2010). Contrarily, O'Connell Davidson (2015) argues that there are many forms of structural contracts which create and allow exploitation, even if entered supposedly *voluntarily*, since 'in the absence of alternative options, people will consent to all manner of contract' (p. 136).

Although often used interchangeably, it is argued that HT, forced labour and slavery are not the same. HT requires acts and means that lead to exploitation. Whereas, slavery and forced labour are the conditions under which a person is kept and exploited (Cyrus et al., 2010;

Bales, 2012). It is not about how a person got into the situation of exploitation, but what is keeping them from leaving - such as threats, force, power of ownership. Therefore, it is argued that a person can be in slavery or forced labour *because of* HT, but also because of other reasons such as smuggling or debt bondage (Bales, 2012). Even more subtle and complex is that what has started as a consented but exploitive employment can end up in forced labour when employers increase exploitation over time by use of threats, coercion and force (Cyrus, 2005; Skrivankova, 2010). Therefore, Skrivankova (2010) argues for forced labour as a standalone offence independent of HT.

However, confusion originates through the interchangeable use of terms. According to Jordan (2011) at least three different concepts frame the discourse: 1) Forced labour as an umbrella term for slavery and HT as used by ILO today; 2) Slavery as an umbrella term for forced labour argued by different academics; 3) HT as an umbrella term for forced labour and slavery according to the UN, EU and US.

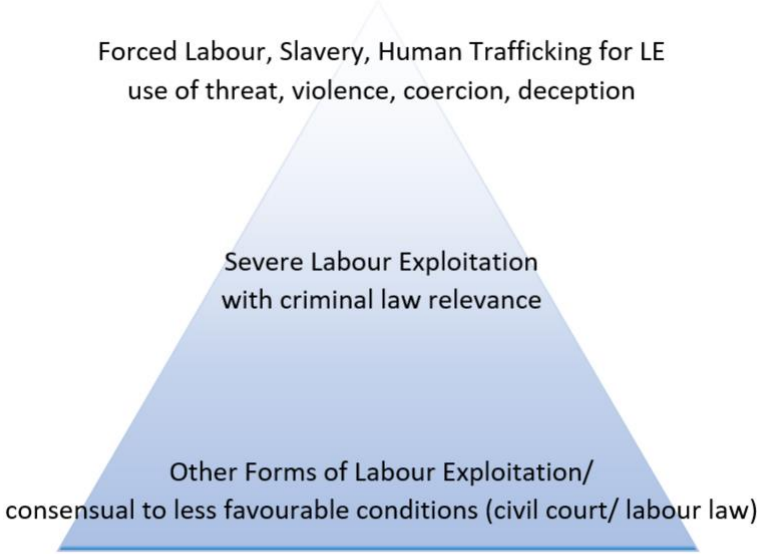
Even though the protocol provides a general definition of HT, it leaves a lot of latitudes to conceptualise and specify difficult terms such as coercion, deception, abuse of power, vulnerability and exploitation. The UN does not further define those terms in practice. The discourse is left to a political judgment that varies across countries to define what are exploitative employment practices and at what point they constitute HT/LE (Anderson & Rogaly, 2005; Plant, 2015). Furthermore, a wide range of definitions exist across countries (Datta & Bales, 2014; Rijken, 2013) as well as differences in legislation of forced labour and slavery as a standalone offence in contrast to an outcome of HT (Skrivankova, 2010; European Union Agency for Fundamental Rights (FRA), 2015).

## 2.2 The Continuum of Labour Exploitation

While scholars such as Bales and other new abolitionists try to draw a clear line between slaves and non-slaves and therefore represent them as objects to their exploiter rather than subject of their own rights, others argue that a clear line cannot be drawn (see O'Connell Davidson, 2015; Skrivankova, 2010; Cyrus et. al, 2010). The situation of HT, forced labour and severe LE is more subtle and complex. Often people do not end up in severe LE and forced labour because of an act of HT, but through their own choices and consent to exploitative work situations (O'Connell Davidson, 2015; Cyrus et. al, 2010). Rather than being static, the process of exploitation is therefore regarded as 'dynamic'. Along a continuum of exploitation, Cyrus (2005) describes LE at one point as a 'crime without victim'

(p.53). A person can consent to their exploitative circumstances and still be in a win-win situation (Cyrus, 2005; Schwarze, 2007). Employers profit from paying lower wages, while workers are still able to improve their situation, although, there is still an imbalance of power (Cyrus, 2005). Nevertheless, in the dynamic process, exploitation can increase until it accumulates to forced labour. For example, employers reduce wages over time or stop paying wages, increase working hours, restrict movement, exercise psychological or physical violence to influence the free will of a worker to leave the exploitation. The methods can be subtle such as through extortion to report to irregular migrants to authorities (Cyrus, 2005; Cyrus, et. al, 2010; Wodke, 2014). This process makes it difficult in practice to distinguish clearly between HT/LE and lesser forms of LE especially in regards to the prosecution of HT/LE.

Cyrus and de Boer (2011) illustrate the continuum in the form of a pyramid. However, it is not possible to create clear distinctions between slavery, forced labour and severe LE.



**Source:** Cyrus & de Boer, 2011; FRA 2015, modified figure

The continuum displays HT/LE to be a criminal justice issue as well as a matter of labour rights. Depending on its severity, it is also a grave violation of human rights. Therefore, HT/LE can be placed in between different frameworks which will be displayed and discussed in the next chapter.

### 3. Frameworks of Human Trafficking and Labour Exploitation

This chapter takes a look at different frameworks around HT/LE to provide an understanding of the different approaches. HT/LE can be placed into four conceptual frameworks. HT is treated foremost within law enforcement and human rights framework but also in the context of labour rights and migration (Bravo, 2007).

The law enforcement approach is established through the Palermo Protocol and the EU Directive and is the most prevalent one (Bravo, 2007; Bielefeldt & Seidensticker, 2009). The focus lies on HT as a serious crime and prosecution of offenders as well as strengthening of border control. Victims are seen as a source of information rather than as individuals with own rights (Bielefeldt & Seidensticker, 2009).

However, HT/LE violates several human rights; such as the right of not being enslaved; the rights to free movement and the right of not experiencing inhumane treatment as well as the right for decent labour conditions and equal and fair payment (UN, 1948). The protocol and directive also require a human rights approach, which includes law enforcement, but goes beyond it. It focusses on the victims and their protection through support such as, housing, justice for their violated rights as well as reducing risk factors through legal migration (Follmar-Otto, 2009).

Within the labour rights framework, the focus is to eradicate forced labour and simultaneously secure and improve working conditions, as well as uphold workers' rights (Bravo, 2007; Skrivankova, 2010). An exploited person is not primarily seen as a helpless, passive victim but as a worker in a difficult situation who is still an active party and can become a claimant for their rights (Skrivankova, 2010).

Migration is another important framework for HT, which is also very interconnected to labour rights. People migrate to improve their living and income situation. Low income, poverty and unemployment are the strongest push factors for migration (Andrees, 2008; Cho, 2015a). It is argued that people who are affected by these factors the most have a higher vulnerability of being exploited (Andrees, 2008). Furthermore, migrants' vulnerability is increased by language barriers, a lack of knowledge of their rights and how to assess their rights as well as an irregular migration status. This, in turn, increases vulnerability for HT and forced labour (Grant, 2005). Besides, Lewis et. al (2015) argue that structural factors such as policies around migration and legal access to employment increase the risk for exploitation rather than the interpersonal factors.

Within this framework, migrants are not only at a higher risk to be exploited, but often clandestine residence status puts them into a position to not only become a victim of exploitation but also being criminalized for illegal residency and employment (Cyrus, 2005). In addition, focussing on HT/LE as a mere migration issue overlooks national victims.

While some argue for a labour paradigm (Skrivankova, 2010; Shamir, 2012), others argue for an HT paradigm based on law enforcement and human rights approach (Gallagher, 2009; Bales, 2012). Since LE takes place on a continuum, it is argued that HT/LE needs to be addressed in a wider context. Structural factors need to be addressed through a labour rights paradigm including risk factors for migrant workers to prevent all forms of exploitation (Skrivankova, 2010; Shamir, 2012). At the same time, HT/LE constitutes a severe crime which needs to be addressed through law enforcement and criminal justice (Plant, 2015).

HT/LE takes place within complex structures on the nexus of migration, labour markets, criminal justice and human rights violation. The next section, therefore, displays different approaches and its front-line actors to address and identify HT/LE and advocates for a holistic approach through partnerships.

## 4. Victim Identification

### 4.1 Competent Authorities to Identify Trafficking

Based on definitions and frameworks, HT/LE is implemented differently into national laws. While in some countries, forced labour and slavery is only criminalised as an *outcome* of HT; in other places, forced labour is a standalone offence. HT/LE not only needs to be addressed through law enforcement but also through labour and migration policies due to its complexity. This requires different actors to be knowledgeable about the dynamic process of exploitation as discussed previously.

Law enforcement is the predominant framework. Hence, police and state prosecutors are the main competent authority to identify and investigate human trafficking cases. Nevertheless, for all forms of HT, a holistic approach is advocated for (Rights Lab & Independent Anti-Slavery Commissioner (IASC), 2017; Rijken 2013). In the case of HT/LE, additional identifying actors are labour inspectors, trade unions and advisory services for migrant workers (Marks & Olson, 2015; Rijken, 2013; GRETA, 2019). Other social services, health care professionals and civil society can also play a critical role (Okech et. al, 2011; Rijken, 2013; Kiss & Zimmermann, 2019).

The main gaps of victim identification are found in a general lack of knowledge and awareness of HT by the professionals mentioned above (Sigmon, 2008) and specifically within law enforcement (Sigmon, 2008; Farrell et al., 2012). Additionally, prosecution and identification depend on if HT is prioritised and seen as a local problem (Farrell et al., 2010). Through a lack of awareness and prioritising SE over the last years, it is even more questionable how much HT/LE is recognized as a crime rather than “just” labour market offences. How victims are therefore perceived, plays another critical role. Victims of HT/LE do not necessarily gain victim status if their exploitation is not extreme and it seems to be more difficult to accept and identify a person in LE as a victim of HT, rather than within SE (O’Connell Davidson, 2015; Mitwalli, 2016).

However, co-operations and partnerships are seen as essential to combat HT and no single agency can address the complexity of it alone (Office for Victims of Crime (OVC), 2019; Rights Lab & IASC, 2017). Research by Farrell et al. (2008) indicates that jurisdictions with active multidisciplinary anti-human trafficking task forces are more likely to identify victims and achieve a successful prosecution. Co-operation and information sharing of different agencies also lead to better victim support and prosecution since the evidence against traffickers can be more complete (Rijken, 2013; GOV.Netherlands, 2016). Windhorst (2015) reports that if a victim is supported by specialised services, they are more likely to co-operate with law enforcement. However, conflicts and tension can arise between different actors pursuing different objectives. Whereas support agencies focus on the need of the victim and victims’ rights, law enforcement is more interested in the prosecution of offenders and sees victims foremost as a witness rather than a traumatised person with special needs and rights (Foot, 2016). Therefore, a victim-centred approach of all agencies as well as building up good and trusting relationships can help to deal with and overcome tensions (Foot, 2016; OVC, 2019).

#### 4.2 Victim Support

Victim support plays an important role in the identification and protection of victims of HT/LE. Without adequate support, victims are less likely identified by services focussed on labour rights if they are not mandated and funded to support presumed victims of HT/LE. Additionally, an exploited person cannot come forth to identify themselves if there is no support to turn to (Mitwalli, 2016; Schwarze, 2007). However, victims of HT and LE may need different forms of support. This can range from support to claim their rights as workers (Skrinkinova, 2010) to more comprehensive support through a recovery period including



housing and health care. Although, this is only accessible if a person is recognized as a victim of HT (Kaye et. al, 2014; FRA, 2015).

Support based on a human rights approach is about protecting and stabilizing a victim of HT (OSCE, 2004). According to EU Directive 2011/36/EU Article 11, governments are obliged to put adequate victim support into place ‘as soon as the competent authorities have reasonable-grounds indication for believing that’ a person is a victim of HT. Support shall be independent of the willingness to co-operate with law enforcement and shall comprise provision of material needs, safe housing as well as medical and psychological treatment, counselling and information.

Additionally, within the labour paradigm, victims need to know their rights and get support to access and claim their rights as workers (Skrinkinova, 2010; Shamir, 2012). Although irregular migrants may face criminalisation for their illegal entry or stay if they are not recognized as HT/LE victims (Cho, 2012), the EU Directive 2009/52/EC provides the right to claim unpaid wages, despite clandestine employment. Therefore, the EU acknowledges the rights of a worker despite their legal status. Hence, appropriate support needs to be put in place.

Authors such as Skrivankova (2010) and Shamir (2012) even argue to shift the focus from an HT paradigm framed within human rights, where a person is perceived as a passive victim, to a labour rights paradigm in which the person is an active part. In addition, Shamir (2012) argues the human rights paradigm focusses more on the specific crime against one person, whereas the labour rights paradigm furthermore addresses underlying structural issues. However, if the focus is too strong on labour rights, the needs of victims who suffered violence and extreme exploitation may be overlooked. Victim support, therefore, needs to be comprehensive and cover all aspects from labour rights to human rights violation. Consequently, different services need an awareness of HT/LE to be able to identify victims and provide or refer for applicable support.

Within the identification process, self-identification is another important factor. Victims of severe LE do not necessarily identify themselves as such (FRA, 2015). Even if exploitation is severe and identified through a service provider, victims often refuse to come forth in fear of being criminalized, detention and deportation or harm to their families (Cyrus, 2005; Sigmon, 2008; FRA, 2015). Tensions especially arise on the nexus of HT and irregular migration. Whereas recognized HT victims are granted support, irregular migrants face criminalisation

and deportation. Thus, strong immigration policies are often in conflict with HT policies which are meant to protect a person's human rights (Cho, 2012).

Nonetheless, where victims are identified, there is an opportunity to make them visible through data collection. This, in turn, is important to gain a better understanding of the manifestation and the scope of HT/LE and derive adequate policy responses from it.

## 5. Issues with Data Collection and Estimates

In 2005 ILO published its first estimate with at least 12.3 million people in forced labour globally. The number increased to 20.9 million in 2012. According to ILO (2012b), the rise is because of better methodology and availability of data to create estimates. In 2017 ILO collaborated with Walk free Foundation publishing estimates on slavery and forced labour, with another growth to approximately 24.9 million (ILO, 2017). In 2006 ILO estimated 15,000 people in forced labour in Germany (Vogel, 2011, p. 309) and by 2018 Global Slavery Index estimated it to be 167.000 (Walk Free Foundation, 2018). While these estimates include commercial SE, they are still in stark contrast to the annually identified victims of HT which had been between 470 to 670 in the years 2015 to 2017 (BKA, 2015-2017). However, the index estimates are critiqued for its weak and inconsistent methodology and an absence of critical engagement to the findings by its researchers (Gallagher, 2017; O'Connell Davidson, 2015). Difficulties to draw estimate based on limited data pertaining to thorough methodology is also discussed by Vogel (2011). Still, new methodologies are being developed, such as the Multiple Systems Estimation, which is being piloted at a national level to estimate the hidden figure of HT victims (UNODC, 2018).

Within HT, researchers, law enforcement and politicians are confronted with a hidden population and official numbers of identified victims are in stark contrast to estimations (European Commission, 2018a; Tyldum & Brunovskis, 2005). However, official numbers also do not reflect the real scope. Data collected by law enforcement and NGOs only cover a small scale of HT and is often considered biased to the population of victims identified by such agents (Tyldum & Brunovskis, 2005; Cho, 2015b). To draw estimates, trends and patterns from law enforcement data is also critical because there is a lot in the unknown about the still hidden population (Tyldum & Brunovskis, 2005). It is also difficult to make links between the number of identified and unidentified victims (Saner et al., 2018). Even if in one year more victims are identified than in another, it does not mean that the number of victims

in total changed. Rather, this might be an indicator of functionality or variations in law enforcement (Tyldum & Brunovskis; Saner et. al, 2018; Vogel, 2011). Furthermore, a high number of identifications for one type of HT such as SE does not allow the conclusion that other types do not exist or exist less (Saner et. al, 2018). Nevertheless, thorough data collection and estimation is important for effective policies to prevent and combat HT and to implement sufficient measures of victim support (Saner et. al, 2018; Tyldum & Brunovskis, 2005; Vogel, 2011).

Germany has collected and published data on prosecuted HT cases since 1999 (BKA, 1999, 2006-2017). Initially, HT was introduced into the German Criminal Code (Strafgesetzbuch, StGB) only for the purpose of SE and in 2005 was extended for LE, and further revised in 2016. Hence, since 2006 the reports cover data on HT/LE. However, in the collected data HT/LE victims count for only 2-10% of HT cases, while the rest count for SE (BKA, 2006-2016). An exception was the year 2017 when two major investigations led to 180 identified HT/LE victims, who represented 27% of all victims (BKA, 2017). Nevertheless, it is considered that HT/LE is more prevalent than identified at the moment (GREATA, 2019). Vogel (2011) concludes that at least 480 people a year are affected by HT/LE; subjected to violence and restricted movement with a need of support once identified. She also assumes that her estimates only represent a small number of people affected by such severe LE.

As discussed, data from law enforcement and even NGOs are still limited and do not represent the true scale of HT; however, in the case of Germany, it is argued that even the visible data could be wider if it was collected more systematically (Lindner, 2015; GRETA, 2019). Local police forces and state police are meant to transmit their prosecuted cases to the BKA. However, a study of investigation files of HT/LE shows that not all prosecutions were transmitted (Lindner, 2015). Besides, there is no systematic data collection of suspected HT cases and LE within the IT-system of the Financial Monitoring Unit for Combat Illicit Employment (FKS), so even cases with an initial suspicion are not made visible (Cyrus et. al, 2010; Lindner, 2015). Additionally, their IT-system is not connected with the BKA-system. Thus, hindering cross authority data sharing - which would increase the visibility of HT/LE and provide a more comprehensive picture of the situation (Lindner, 2015; BT-Drs. 19/7622; Council of Europe, 2018; GRETA, 2019).

While there is a lack of data gathering regarding the police and FKS, additionally, no official data is gathered from NGOs and specialised advisory services. However, some NGOs like Jadwiga and Solwodi publish the number of supported women affected by HT/LE in their

annual report (Schwarze, 2007). While considering the continuum of exploitation, the reports do not differentiate between different forms of exploitation, however, Hoffmann and Rabe (2014) report that specialised victim support agencies give a balanced description of cases of severe LE and identify victims of HT/LE in their advisory settings. Therefore, if data were collected systematically from NGOs it can increase the knowledge base.

## 6. Methodology

The research explored the current state of addressing HT/LE through policies in Germany with the main objective to identify barriers that hinder the identification of victims of HT/LE. As discussed, the evidence base according to official data is on a very small scale, although it is argued that there is a considerably higher proportion of HT/LE (GRETA, 2019; Vogel, 2011).

### 6.1 Research Design

The research took on a constructivist and interpretivist approach as opposed to a positivist and objectivist approach. The objectivist and positivist approach is based on the philosophical rationale that there is only one reality that already exists independently of belief systems. Meaning already resides in the research objects and gets discovered through research. Reality can be observed, measured, generalized and approached value-free (Robson, 2011; Al-Saddi, 2014). Researchers start with a theory that they want to prove or test. In doing so, they distance themselves from the research to obtain objectivity. Although not exclusively, quantitative research methods are favoured (Robson, 2011).

As the researcher of this study, I have to admit, that in my nature I am more prone to be a positivist who wants to prove reality by gaining evidence. However, based on the research inquiry of gaps and barriers to identify HT/LE and the complexity of HT and LE in itself, the research lends itself to a constructivist and interpretivist approach. Within this paradigm, it is believed that there is more than one reality, which is subjective and constructed. Meaning is constructed through social engagement and interaction and does not exist within itself (Robson, 2011; Al-Saadi, 2014). Through engagement with research participants, the researcher creates knowledge through exploration and understanding. Reality is interpreted and constructed by the researcher based on the knowledge and values of participants, as well as their own knowledge and values. In this sense, research cannot be value-free and detached from the researcher (Robson, 2011; Al-Saadi, 2014). Furthermore, the research is inductive,

which means theory and knowledge will be generated through data collection analysis (Braun & Clarke, 2006). Research methods within this paradigm are predominantly qualitative (Robson, 2011).

To explore HT/LE in Germany and the barriers that hinder identification, the research used a flexible design in the form of a case study. A case study examines a current phenomenon in the real world in the here and now. It is exploratory in its nature and allows the development of understanding. A case can take on many different forms and therefore varies from individuals to institutions and organisation (Robson, 2011). The study explores the phenomenon of HT/LE in Germany and how it is identified and dealt with currently. Although HT/LE is a global phenomenon, its manifestations differ between countries. Even within the EU, identification and law enforcement approaches vary greatly (European Commission, 2018a; FRA, 2015). Additionally, it takes on an evaluative approach in regards to current policies to evaluate the effectiveness of identification of victims of HT/LE, prosecution and victim support. Evaluation research intends to evaluate the effectiveness of programs or policies and give recommendations for improvement for the future (Robson, 2011).

## 6.2 Method

To gain further understanding about factors that hinder the identification of HT/LE, non-standardised interviews with frontline experts within NGOs and the police were chosen as the method for data collection. Non-standardised interviews are a valuable tool to gather information and gain a better understanding of a complex issue. They also allow the interviewer to be part of the discussion (Fielding & Thomas, 2008). The aim was to gather understanding on HT/LE and LE from experts in the field which will contribute to the current knowledge base. Although the interviewer can be part of the discussion, it is about listening to the interviewee and guiding them through probing and prompting in a most neutral way along with the interview guidelines (Fielding & Thomas, 2008).

The advantage of a non-standardised interview is to gain in-depth information about a subject. It further allows engagement in the discussion and the ability to ask questions for better understanding and clarification. However, the interviewer needed to be aware of how she might influence the conversation and therefore create bias based on her values.

Prior to the study, a random sampling of advisory services for HT/LE took place through the Service Point for Labour Exploitation (Service Point against Labour Exploitation, 2019a). The

website offers a list of advisory services for HT/LE and LE. Four random services were contacted via phone and asked about their experience with HT/LE. None of the services had experienced a case. The forms of LE dealt within the service were mainly based on violation of labour rights and payment of wages. The random sampling exposed a challenge in identifying and contacting frontline experts who are experienced with and knowledgeable about HT/LE. It was of high interest to talk to experts who are familiar with HT/LE. Therefore, purposive sampling was utilised in the selection of interview partners. According to Dudovski, (2019) purposive sampling is applied if only a small number of participants or experts exists.

Further research about NGOs and services with an explicit focus on HT/LE was conducted on the website of KOK, the German Trade Union Federation (DGB) and the internet. Through reviewing the websites of different organisations identified for objectives on HT/LE, suitable interviewees were contacted via e-mail. One interviewee was contacted through the recommendation of another. However, one interviewee had no specific experience with HT/LE, but with LE. To enhance the knowledge from a law enforcement perspective, it was possible to conduct e-mail interviews based on a personal contact within the police, who also forwarded the questions to a specialised state police officer. Furthermore, the BKA was contacted with three questions through their civil contact service on the website.

Since the research was conducted from the UK, interviews took place via skype, which has been less time consuming and more cost-effective than face-to-face interviews (Fielding & Thomas, 2008).

Based on the pre-study phone calls the issue of HT/LE was addressed in the wider context of LE to gain an understanding of how HT/LE is perceived and framed by frontline experts. Further, it was of interest to gain insight on how experts assess barriers of identification. An interview guide was created to direct the conversation and ensured to cover the research objective (see Appendix 1). Questions e-mailed to police also focused on understanding as well as gaps and barriers (see Appendix 2).

### 6.3 Ethics

Researching the real world includes ethical considerations, especially when it involves people. Some topics are more sensitive than others and can cause exceptional ethical dilemmas for the researcher. Different approaches exist to evaluate and justify the benefits of research; such as findings which will profit a lot of people and costs such as risks and negative consequences

for participants or the researcher. However, it is agreed that ethical judgment cannot and should not be left to the researcher alone. Ethical boards and committees, therefore, were established to approve research. While being aware of own values and approaches to the research topic, researchers need to consider the relation and approach to participants. Important issues are 1) informed consent of the participant. Is the research aim outlined and sufficient information provided? 2) deception. Are researchers using any form of deception to gain participants consent or data? 3) anonymity and confidentiality. How is anonymity and confidentiality of participants and data obtained especially in reporting findings? 4) harm. Is there possible harm to the researcher and participant, especially when engaging with vulnerable people. 5) right to withdraw. Can participants withdraw their data during the process without pressure? (Robson, 2011).

For this study, the main issues to consider were informed consent, withdrawal of data and anonymity. Interviewees were contacted via e-mail and informed about the research aim with an information sheet (see Appendix 3). Consent was gained through a consent sheet which informed participants about anonymity, use and storage of data as well as the possibility to withdraw data (see Appendix 4). Additionally, informed consent was sought at the beginning of the interview by introducing the researcher and explaining the research project as well as allowing questions by the interviewees to any aspect of the research and publication of findings. To protect the participants' anonymity, the report does not describe services or locations of the interviewees. Only a small number of explicit services for HT/LE exists as well as HT units on state levels.

Ethical approval was gained through St. Mary's University (see Appendix 5). Interviewees are professionals and thus no further consideration in regards of vulnerability of participants was made.

## 6.4 Data Analysis

Interviews were transcribed verbally (see Appendix 6). The approach to analyse the data was a thematic analysis. It is a flexible method which can be used to identify pattern and themes within a data set in relation to the research question (Braun & Clark, 2006). It is easily accessible for the researcher and does not require in-depth understanding of underlying theory such as discourse analysis. Nevertheless, it requires accuracy to access the data set through transcribing, reading and re-reading, so that the researcher can code what the data is about and group codes into themes (Braun & Clark, 2006; Robson, 2011). Further, the analysis had an inductive approach, which means there was no pre-existing coding frame and themes were not

directly related to the specific interview questions but were identified through familiarising with the data (Braun & Clark, 2006).

## 6.5 Reliability and Validity

HT/LE is a highly complex issue and a difficult concept as seen in the definition chapter. Its perception and understanding are influenced by different factors. However, the interviewer was aware that through her background as co-founder of an anti-human trafficking group she has strong values in regards to victim support and justice. Hence, the interviewer engaged in the discussion only where it was necessary for further understanding and clarification on the subject. Further, questions posted via e-mail had to be more specific, selected and weighed so that the interviewees were able and willing to respond. Further, it did not allow to ask immediate questions for more understanding. Data gained through the interviews did not allow the generalising of findings due to the small sample and the awareness that knowledge is constructed and subjective. The data, therefore, contributed by highlighting certain aspects to an existing and ongoing discourse. Retrieved data was collated with findings in the literature as well as policy papers and the latest GRETA report.

## 7. Case Study – Germany - Findings, Analysis and Discussion

As shown in the definition chapter there is no unified definition for HT/LE. Furthermore, LE takes place on a continuum and it is left to the political discourse on national levels how to implement HT/LE into national laws. Approaches of identification, prosecution, related victim support and gathering of data on HT/LE varies between countries. The research focussed on Germany as a case study to explore the current development of addressing HT/LE concerning gaps and barriers of victim identification. Non-standardised interviews with three specialised advisory services, as well as e-mail interviews with police officers, were conducted to enhance the knowledge base of the literature and to gain better understanding of the phenomenon and how it is dealt with in relation to identification.

Within the presenting of the data interview extracts from advisory services are quoted as I1, I2, I3 whereas the police responses are cited with P1, P2, P3.

In analysing the data, three themes emerged concerning the overall research aim:

1. Implementation of Policies / Current development- need for co-operation and general awareness



2. Victim Identification – identification based on the criminal code and beyond
3. Access to Victim Support

The findings of the interview data are presented below, with reference to the latest GRETA report (2019), policies and the literature and discussed in comparison to the UK's NRM system.

## 7.1 Implementation of Policies

### 7.1.1 Need for Co-operations

Germany has ratified the UN Palermo Protocol and the European Convention on Human Trafficking. In 2005 HT/LE was incorporated into criminal law. However, it has not been implemented by all state governments and addressed proactively on a wider scale since (GRETA, 2015). Furthermore, until 2016 Germany did not fully implement the EU Directive into criminal law. However, a turning point in starting to act more proactively on HT/LE can be seen through the revision of the law and according to I2 in connection with pressure through country reports by GRETA and the US State Departments:

2016 was the revision of the law and since then the awareness for LE increased again...I think there is a lot in motion now...this might also be connected to reports ... about HT such as by GRETA...and also the new US report which is out since yesterday, which already critiqued Germany in 2018,.. in this regards I believe, a lot happened, such as there are new guidelines and to keep up with it [HT/LE] a little bit more.

While there is an existing workgroup on HT under the Federal Ministry of Family, Seniors, Women and Youth (BFSFJ), the Federal Ministry of Social Affairs (BMAS) formed a separate workgroup on HT/LE on in 2016. It represents partners from the ministries of federal and state level, police of both levels, NGOs and social partners, FKS and public prosecutors (GRETA, p.9, 2019). The workgroup specifically focusses on HT/LE and the main objectives are the assistance of victims, prevention, awareness-raising and better criminal prosecution (Council of Europe, 2017). The BAMS also funded the Service Point against Labour Exploitation, Forced Labour and Human Trafficking in 2017, which aims to build up and strengthen co-operation against HT/LE on federal, state and local level as well as provide trainings and material on HT/LE (BMAS, 2016; Service Point against Labour Exploitation, 2019b).

However, implementation of policies regarding prosecution and law enforcement, victim support and prevention measures belong to state governments because of the federalism (Council of Europe, 2017; GRETA, 2019). Co-operations are in place for HT/SE and define the collaboration between different actors to address HT and victim support. Law enforcement

is responsible for assessing the victim's status whereas victim support service is provided by NGOs through co-operation and contracts with public authorities (Hoffmann, 2013).

However, these co-operations and structures vary between the different states and not all states have established co-operations which include HT/LE yet (GRETA, 2019; I1, I2, I3). Interviewees pointed out the missing co-operations as a general barrier to act on HT/LE (I2; I3). NGOs do not get mandated by authorities to address HT/LE and provide services (I2) which means law enforcement who has the responsibility to inform presumed victims about their rights and refer them to support services have no one to turn to. Nevertheless, in the case of the interviewees, they are in the process of establishing new co-operations (I1, I2) or have already signed co-operations (I3). According to I2 'sensitisation is increasing and our co-operation has strengthened with public authorities in the last year'. However, she also points out that it is a slow and difficult process in general and only advancing in 'small steps'. I3 shares that they have 'co-operations with the police, a union-close service...and very close networks with all sorts of advisory services such as social services, migrations and refugee services.' The police (P3) also points out that 'multidisciplinary co-operations of all essential actors are a success factor in combating HT'.

As shown in the literature, co-operation and partnerships are important to identify victims and can lead to better prosecution. However, it is important that partners share objectives and pursue a victim-centred approach. In this regard, a sceptical voice was raised by I1 when sharing:

similar to what happened 20 years ago with the police [building co-operations] regarding SE is now tried to be developed with the FKS; and that is not easy...they have a totally different perspective on the whole issue.

Co-operations are not only established among existing actors such as law enforcement and established anti-human trafficking organisations, but also with new actors such as the FKS, who so far was in charge to identify illegal employments, therefore looking for offenders, but are now meant to identify HT/LE and look for victims<sup>2</sup>. In addition, new actors are amongst union-close advisory services (I1, I2). However, I2 describes that the services just start to open up to provide support on HT/LE,

Although they have a lot to do with LE, they have not been mandated with HT/LE because authorities have not been aware of the issue and did not approach the services with the topic and fund the service accordingly.

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<sup>2</sup> The role of FKS will be discussed in the next chapter

While co-operations are in process, another critical development is the separation of HT/SE and HT/LE. The interviewees pointed out the existing and established networks for HT/SE in contrast to missing structures on HT/LE. On a political level, the separation is seen through the different workgroups on federal level for HT and HT/LE. The workgroup for HT, set up in 1997 as a federal-state-work-group against the trade of women, was re-named in 2012 to workgroup against HT, however, its main focus is still on SE (BMFSFJ, 2016). In the GRETA report 2019, the separation of the federal workgroups has been seen critical since it creates parallel structures rather than joining efforts and resources.

Further, well established anti-trafficking and support organisations offer their services almost exclusively to women, providing support on SE and in some cases for LE (KOK, 2019; GRETA, 2019). Specialised services for HT/LE and addressing male victims, on the other hand, are limited (GRETA, 2019; I1, I2, I3) and often they are developed out of advisory services for migrant workers with sometimes close links to unions (GRETA, 2019). As a result, they are more labour-rights oriented rather than specialised on HT (GRETA, 2019; I2). I1 describes the current development,

because of the new paragraphs [on HT/LE] new actors appeared...new union-close groups...and now we need to see how to create co-operations and collaborate... at the moment this follows the dichotomy of female organisations and male organisations...and the new actors who do a lot on LE are more male-oriented although they also advise women... and we want to avoid that there is a line between women and SE and men and LE.

This separation, therefore, takes place on two levels, between HT/SE, which has been long established within HT responses, and HT/LE, but also between a human rights approach with comprehensive victim support and a labour rights approach. As discussed in the literature, victims of HT/LE need support on different levels and it is even argued that the focus should be more on labour rights and supporting a victim to access and claim rights as a worker. However, a study by Vogel (2011) concludes that at least 480 people a year need comprehensive support because they experienced violence and trauma through HT/LE. Politics have not responded well to that demand yet. So far, comprehensive and specialised support is only available to women through well-established NGOs, while male victims can only be provided with temporary housing in a pension or refugee accommodation, which does not meet their special needs (I1; Czarnecki, 2017; GRETA, 2019).

Nevertheless, it is a positive development, that interviewees shared co-operations are set up with established and new actors which allow joining efforts and share resources. Through collaboration, they are more able to provide adequate victim support. It further holds the

possibility that through multidisciplinary partnerships, victim identification and prosecution increases.

### 7.1.2 General Awareness

I2 describes that to distinguish HT/LE from LE, general awareness and sufficient structures need to be in place so people can be identified and come forth:

Usually the case numbers need to be there first, so something gets into motion, but in this case [HT/LE], we have recognized it is the other way around. First, the structures need to be put in place that people are sensitised...so a person will not be sent to the labour court, but it might be recognized that there could be something else [HT/LE] behind. Therefore, it needs widespread sensitisation.

Whereas there is progress in some areas addressing HT/LE, widespread awareness within public authorities, local police forces, as well as civil society across the country, is not a given yet (I2). According to I1 ‘there is still complete excessive demand with LE and huge helplessness’ and I2 describes that ‘Germany is very bureaucratic...and until a public authority...is trained and sensitised, it takes a super long time.’ In relation to this and because of strong variations of policy implementation among states, GRETA urges Germany to develop and implement a comprehensive national strategy, to invest in further training for frontline workers and to carry out nation-wide awareness campaigns (2019). These findings show that, as displayed in the introduction to the study, awareness of HT/LE within Germany is still on small scale despite reports in newspapers and studies.

## 7.2 Victim Identification

The formal process of victim identification is through law enforcement (GRETA, 2015) and depends on the definition of HT/LE through the criminal code and the interpretation of the law by state prosecutors and judges (I1, I2, I3, P2, P3). While competent authorities are within law enforcement, and especially seen within state prosecution, it is stressed that there is limited awareness, training and practice in applying the law (I1, I2, I3). On the other hand, there is identification beyond the criminal code through NGOs (I1, I2, I3).

### 7.2.1 Interpretation of the Criminal Code

Germany framed and defined HT/LE in the German Criminal Code (StGB). In the same way as within the Palermo Protocol and the EU Directive, it requires acts and means for the purpose of exploitation. HT for the purpose of work exploitation (§233 StGB superseded version) was incorporated into the law in 2005. In 2016 the criminal code was revised and now three different sections cover HT/LE; §232 StGB, Human Trafficking, §232b StGB, Forced Labour and § 233 StGB, Exploitation of Workforce. In relation to the means of

exploitation all three sections have in common that one person ‘exploits the personal or economical predicament of another person’ or according to §§232b, 233 exploits the ‘helplessness arising from being in a foreign country for the purpose of an exploitative employment, slavery, servitude, debt bondage or forms similar to these’. However, it deviates from Article 2 Directive 2011/36/EU, which uses the phrase ‘abuse of power or of a position of vulnerability.’ Thus, the German text is more restrictive and requires an interpretation which conforms with the directive (Petzsche, 2017; Eisele, 2016).

As discussed previously, forced labour can either be a standalone offence or an outcome of HT. In Germany, the articles provide for forced labour and exploitation of workforce as standalone offences and according to P2 can be prosecuted separately. However, Renzikowski (2017) points out that they are still related.

Nevertheless, §232 StGB provides a basic definition

if the employment takes place out of the ruthless pursuit of profit under working conditions that are in clear discrepancy to those of other workers performing the same or similar activity (exploitative employment) [translated by author].

In practice, this means exploitation takes place if wages are one third or less than the union wages, standard wages or minimum wages for a particular industry (Renzikowski, 2011).

With the new law, it is even recommended to extend it to 50% of the standard wages (BdDrs. 18/9095:28; Renzikowski, 2017). Although the definition offers objective grounds for LE, to fulfil HT, acts and means have to be present at the same time. While for a person under 21 no means are required (BdDrs. 18/9095).

With the revision of the criminal code, the legislator introduced a new offence in the form of §233 StGB Exploitation of Workforce. Whereas in §232 StGB and §232b StGB the influence of the will is required (which reflects the Forced Labour definition by ILO) in §233 StGB it shall be enough that the perpetrator knows about a personal predicament and takes advantage of it. Therefore, it shall be easier to prosecute cases in practice (BdDrs. 18/9095). This was also shared by police. The legislator ‘aimed to create most practical regulations’ (P3) and ‘through the new §233 StGB it is at least easier to get a conviction’ (P2). Further P3 states, that according to the preamble of the new law ‘it is aimed to move away from a central meaning of the victim’s testimony within a court proceeding on HT’. However, P2 expresses that ‘establishing the evidence for HT – even...under the current legislation - is still difficult.’

According to P1, the legal 'barriers are very high that a case will be judged as HT by judiciary'. The interpretation of the law depends on state prosecutors and judges (I2, P2) and is described as 'very stringent' (I2). In relation to the interpretation one issue, in particular, was stressed by several interviewees. The interpretation and proof of the predicament of being a foreigner (P2, I2, I3). According to I2, it is 'is applied in a very narrow way.' She depicts a case they had of an EU-national,

EU-nationals are not per se excluded from the predicament of being a foreigner according to the preamble of the law, in the contrary, the preamble explicitly includes EU nationals. In reality, state prosecutors make a difference; and there is a prejudice, that it is difficult... that a Spanish person who could just take a bus home finds himself in such circumstances of coercion...and Spain is not a country that is economically in bad shape...and that's why it is difficult to prove before the court that an EU-national from Spain is a victim of forced labour.

This example displays, that despite the fact, that the legislator aimed for an easier prosecution through the phrase 'personal predicament' (BdDrs. 18/9095) it has not been applied. The focus was on the general economical predicament rather than assessing the personal predicament. P2 expressed it this way,

to what extent an economical predicament – which is almost not provable for EU-nationals - will be defined as a personal predicament because of easier verifiability, has to be decided by state prosecutors and judges.

The suspended version of the criminal code was described as difficult to handle in practice by the BKA and in different studies (BKA, 2010; Vogel, 2011; Cyrus et al., 2010; Lindner, 2015) and therefore seen as a barrier in the formal identification of victims of HT. Although the new criminal code is expected to be easier in its application according to the legislator and P3, the experiences and statements from other interviewees point out that this has not been the case yet as shown above. Also, Renzikowski (2017) stresses that the new articles are interlinked with each other in very complicated ways, which will make it difficult for law enforcement and jurisdiction to put them into practice.

Further, as discussed above defining difficult terms such as predicament, vulnerability and exploitation is left to national discourse. While FRA (2015) states that the German law has a wide definition of HT/LE, interview partners experience the interpretation as very narrow. The definition of certain terms is based in case law; however, a study of HT/LE court cases has shown that investigations were closed because of 'insecurity in regards of interpretation and application of §233 StGB' [translated by author] (Lindner, 2015, p. 21). In the case of proceeding, judges sometimes ruled on HT/LE without differentiated justification under the article, thus creating legal uncertainty (Lindner, 2015).

This legal uncertainty is found in interviews with all three frontline workers and described as structural difficulties such as: an absence of specialised units within the police for HT/LE (I3), missing openness to deal with HT/LE cases by state prosecutors and police (I1, I2, I3), as well as missing training and experience among state prosecutors and judges (I2, I3). As I3 explains,

first the police assess if it is HT or not and then the case gets passed on to the state prosecutor...but because HT is difficult to prove experience is just missing...factually there are differences in handling cases within law enforcement and especially within state prosecution. State prosecutors get more cases for HT/SE which is different for forced labour. If you are unlucky you get a state prosecutor who has never had a case before...which means there is no experience...but if state prosecutors are not experienced to identify HT, they will either say, no it is not HT, I can't see indications or they will say it could be, but we can't investigate anyone.

I1 shared two conversations she had with a state prosecutor and specialised police officer,

I heard from a state prosecutor...that she considers the articles imprecise and that state prosecutors and state police don't like to work with the articles because they are difficult interpretive-articles...it was also interesting to hear from a staff member of the state office of criminal investigation...that she does not want to have something to do with it, because she feels like...you can make a lot of mistakes. This may actually be due to the article, on the other side it may be missing training, I don't know.

I2 additionally shares, that

too little cases get before judges so they can train themselves because state prosecutors say beforehand, they won't get through with it...lately, we hear from authorities and state prosecutors the request to get more cases reported so they sort of can train themselves and practice.

The need for training and practice is also emphasised by the latest GRETA asking for training and specialisation for law enforcement, state prosecutors and judges. However, it is reported that training is usually voluntary and training specifically for prosecutors and judges had to be declined in 2018 because of a lack of registrations (GRETA, 2019). Which might indicate that HT/LE still does not gain high interest and is not seen as a local problem (see also Farrell et al., 2012).

The formal identification is tightly linked to a law enforcement approach and the definition of the criminal code. The narrow interpretation and difficult application, insecurities and inexperience through law enforcement result in either not prosecuting HT/LE at all, therefore not formally identifying a victim or the prosecution of suspected cases of HT/LE under minor offences such as clandestine work, usury or non-payment of wages (BKA, 2010; Cyrus et. al, 2010; I3). In both cases, this means a person is not treated as a victim of HT/LE and will not have access to protection and support which is only granted to HT victims. Even worse,

victims will be turned into offenders and prosecuted themselves, as found in other studies (Cyrus, 2005; Lindner, 2015). The findings so far also indicate the same barriers as shown in the literature, if law enforcement is not trained and do not perceive HT as an issue, cases will not be identified and prosecuted as such. Further, the reliable identification of victims requires that public authorities and NGOs are trained, know the indicators and go beyond the legal definition.

### 7.2.2 Identification Beyond the Criminal Code

Beyond the criminal code, HT/LE can be assessed with the help of indicators. Thielmann & Melyochina (2013) describe the German legal definition as narrow in opposite to the definition by ILO and its indicators. Interviewees also share this discrepancy between indications and the high bar to meet the threshold of the criminal code (I1; I2; I3). I2 describes that tension as followed,

According to the explanation of the criminal code... and how we interpreted it, we would have way more cases than state prosecutor, police and FKS would decide...especially amongst EU-nationals...with the aspects of helplessness, extortion in case they unknowingly committed a crime, etc. being close to the threshold of [HT/LE], but the problem is, that our assessment is not tantamount to being of criminal relevance, this last step falls onto the authorities and state prosecutors...We have a list of indicators...which means nothing to the state prosecutor and police but for us, in our job, it is extremely important as an argumentation before authorities and in the assessment of cases to distinguish it from "normal" LE.

I3 further emphasises the discrepancy with the EU Directive,

we, of course, look how high is the severity, but we don't have to gain evidence...we have to see what are the circumstances and issues at hand...ultimately, it's about seeing indications. We don't have to prove, that's up to law enforcement. And under the EU Directive and EU Convention, it is irrelevant because it is enough to have indications.

Limiting the identification to a narrow application of the law also limits the identification of people whose lived experiences meet many of the criteria of HT (Kaye et. al, 2014). In addition, LE exploitation takes place on a continuum and in dynamic ways as shown in the literature. Therefore, a clear distinction between severer LE and HT/LE is not always possible, even more, if it is tightly connected to a law enforcement approach. EU Directive 2011/36/EU Article 11 (2) states in accordance to support victims, therefore identifying a person as a presumed victim, as 'soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to' HT. This is a wider approach which looks for indicators to believe, in comparison to a law enforcement approach which seeks to gather evidence to prove. Although the German criminal code reflects the continuum of LE and also criminalises other forms of severe LE such as non-payment of wages or usury, certain rights are only granted to recognised victims of HT.



### 7.2.3 Competent Authorities

Law enforcement approach is predominant in Germany. So far, only the police on local and state level have the competency to investigate HT and are the single agency who collects data (BT-Drs. 19/7622; Kestermann et. al, 2011; BKA, 2015-2017).

Border control is operated by federal police and it is not within their statutory mandate to investigate HT but illegal migration and smuggling (GRETA, 2019). They also get training to identify HT but in case they suspect HT, it is referred to state police. In regards to law enforcement, interviewees especially refer to state prosecutors about formal identification, especially when it comes to granting victim support. As I2 states,

ultimately everything goes to the state prosecutor...and what is not assessed as forced labour by state prosecutors is uninteresting for public authorities because they rely on the assessment of state prosecutors.

It is also displayed in the statement of P2 above, that the final definition is left to state prosecutors and judges.

Another important authority is the FKS, who is in charge of compliance of labour laws such as the payment of minimum wage, compliance with posting foreign workers as well as illegal employment (Generalzolldirektion, 2019). So far they investigated illegal employment, thus looking for offenders, rather than for victims of exploitation. Nevertheless, due to their objective of labour inspections, the FKS can encounter situations of LE and are seen as an important authority to identify situations of HT/LE (Lindner, 2015; BT-Drs. 19/7622; GRETA, 2015). Most recently, a draft bill was passed which commissions the FKS to investigate HT/LE (BT-Drs. 19/8691; Zeit, 2019). Police officers (P2; P3) especially emphasize the importance of the FKS. According to P3,

A huge barrier in identifying victims of HT/LE was overcome by the Bill Against Illegal Employment...The bill provides the FKS with the competence to examine and investigate areas of LE. They control worksites and...therefore are in a position to identify victims of HT on site...This was also urged by...GRETA in their first monitoring report on Germany, which contributed to the revision of the law.

Police also expects that case numbers will rise because of this (P2; P3). However, although this development is very positive, I1 points out that the FKS has to change its focus, which is reflected by I1's experience in joint training,

The feedback at the training [with the FKS] was "you're talking about victims all the time, but for us they are offenders. They are here illegally". And here we need to start and I believe this is cumbersome.

Therefore, it is even more important to train investigators so they are familiar with indicators of HT/LE and act accordingly.

Other government bodies in charge of identifying victims are the Federal Agency for Migration and Refugees (BAMF) and the foreigners' registration office. Within the asylum process, their responsibility is to suspend the deadline for exiting the country if there are tangible reasons to believe that a person is a victim of HT and grant a three months recovery and reflection period (§59 Abs. 7 Residence Act (AufentG)). Therefore, the BAMF has trained specialised caseworkers across the country (Council of Europe, 2018). However, there are no statistics on how many victims get identified by the BAMF (GRETA, 2019). While training is provided, a study in 2013 concluded that despite indicators for HT, most cases have not been treated according to the guidelines and policies (Krohn, 2012). A recent court ruling also calls out that the BAMF has to act on 'tangible grounds' and needs to proactively identify a victim, grant a reflection period and refer to specialised counselling services even without self-identification of a victim (Verwaltungsgericht Düsseldorf, 7 K 6086/17.A). While the BAMF and foreigners' registration office according to the law can make decisions for the reflection period by themselves, two interviewees and GRETA (2019) report that authorities rely on and request the recognition through the police or state prosecution (I2; I3).

Other important agencies who get in touch with presumed victims are specialised advisory services for migrant workers, unions and NGOs who support victims of exploitation and HT. Although the focus of the former services primarily lies on violation of labour rights and not HT and the latter on SE rather than LE. Therefore, there is a high risk that HT/LE does not get identified or there is just no capacity to support victims sufficiently and adequately (Schwarze, 2007; Mitwalli, 2016; Hoffmann & Rabe, 2014; GRETA, 2019). As described, recently union-close advisory services for migrant workers extended their services to HT/LE (GRETA, 2019). However, Cyrus et. al (2010) identified difficulties within some services concerning the definition of HT and that cases of severe LE did not always get identified as possible HT/LE by advisors. Yet, Hoffmann and Rabe (2014) report that specialised victim support agencies gave a balanced description of cases and identify victims of HT/LE in their settings. The specialised services in this study also differentiated between different forms of exploitation and were aware of different indicators including the threshold of the criminal code as well as the continuum of LE.

While the literature discusses further agencies such as health care, social services and the civil society, they can only play a role in identification if a general awareness is given and

sufficient structures are set in place. Without widespread awareness amongst competent authorities and well-functioning co-operation potential victims will not be protected and referred to appropriate support services.

### 7.3 Access to Victim Support

Competent authorities play a critical role regarding access support and claim rights for potential victims. However, two service providers discussed the difficulties victims face to access support in accordance with the two EU Directives; in particular the rights for a reflection period and claiming outstanding wages.

One form of support for presumed victims of HT/LE and people who experience LE is free advice provided by union-close services and NGOs. A person can be either referred to a service based on co-operation between different stakeholders or get in touch themselves (GRETA, 2019). Although law enforcement is supposed to inform presumed victims about their rights and refer them to support agencies (GRETA, 2019) I3 shared, they only had one referral through police yet. A lack of co-operation and referral to victim support in case of HT/LE was also reported in a study by Lindner (2015). Otherwise, services like Faire Mobilitaet even proactively reach out to workers in risk industries to inform them about their labour rights and also initiated investigations (Faire Mobilitaet, 2018, 2019b). Besides advice on labour rights and support to claim outstanding wages, some services also offer crisis intervention, advise on victim rights and compensation, and offer or facilitate accommodation (Czarnecki, 2017).

Beyond advisory service, if there are reasonable grounds to believe a person is a victim of trafficking, the EU Directive requires support independently of the willingness to cooperate with prosecution in the form of a reflection and recovery period. For third-country victims with irregular status or who do not hold a work permit, this means that they are subject to the Residence Act (AufentG) and the BAMF as described above. EU-nationals and foreigners with a work permit are supported under the second section of the social code, which does not explicitly refer to the reflection period and is only directed through an intern working paper of the federal employment agency (Czarnecki, 2017).

While guidelines and laws are in place, interviewees describe that receiving support through a reflection period is very difficult. Issues arise, that although it is meant to be independent of collaboration with a criminal proceeding, the granting is tightly connected to the assessment and recognition of the person as a presumed victim by law enforcement. A person identified

as a presumed victim by services needs to get in touch with police or the foreigners' registration office and possibly with the state prosecutor. They, in turn, assess if the person is a potential victim, that can be granted a reflection period. This in itself causes a problem because police and state prosecutors have to investigate as soon as a potential crime is reported to them. Thus, contradicting the reflection period for the victim and the EU Directive. I3 shares,

to gain the title [for residency under the reflection period] I first have to clarify with state prosecution if they see indications for HT and if they need the witness. Because without that I won't get a title from the foreigners' registration office.

Further, she explains that state prosecutors have to assess the probability of conviction. This standard is then also used in granting the reflection period. She shared,

We had a case...which with a very high probability had been a case of HT. We achieved that the responsible state prosecutor at least during the investigation said, that there are indications that the affected person was granted a leave to remain according to §25 (4a). But in the proceeding, smuggling and document fraud were impeached...which means, that the affected person has no right of support in accessory prosecution and has only the status of a witness.

Although in this case, the victims had been able to get leave to remain for some time, at the moment of proceeding under lesser crimes, they lost their rights which are only granted to victims of HT. This high risk of not being recognized as a victim can turn against the person. As was further shared, presumed victims may also face criminalisation themselves for clandestine work and in case of third-country nationals, risk losing their residency status and being deported. Interviewees share their difficulties in advising about victims' rights and access, according to I2,

If a person gets to us first...we clarify all options...and we need to weigh the consequences and if it means a person is not granted victim protection and there may not be a criminal proceeding and the person is not needed as a witness...then it means, if the person is just handed over to law enforcement, they become victims of law enforcement because they are perceived as offenders in the sense of leave to remain or employment permit.

While third-country nationals are confronted with the fear of deportation or criminalised if they want to access a reflection and recovery period, EU-nationals face the difficulty that it is even harder to be recognized as a victim of HT/LE as shared above.

I2 therefore argues,

There should be the possibility for NGOs to issue a certificate of the suspicion of HT so that the person anonymously gets a reflection and recovery period. In practice, the person has to go to the foreigners' registration office or police or FKS, and there should be a trained officer...who issues the certificate...Which is utter nonsense, because at this moment the person has already reported a crime against his employer...the law enforcement has to investigate.

In addition, although a competent authority should assess the case, awareness and training are not always given. GRETA (2019) in this context also reports, that in the case of HT/LE, authorities are often not aware of the reflection and recovery period as a victims' right. Advisory services, therefore, share the need for a procedure of support and identification independently of law enforcement.

However, advisory services are also aware of the continuum of exploitation. Therefore, besides access to a reflection and recovery period for HT/LE victims, it is argued and acknowledged that a person who experiences LE should have access to claim their wages independently of their legal status. However, I2 shares that third-country nationals claiming their wages before court, still risk being reported as irregular migrants, hence risking deportation. Although Germany has incorporated the EU Directive 2009/52/EC so migrants can claim their rights before a labour court despite their residence status, this is conflicted by another law which requires all authorities to report irregular migrants (Barkholdt & Tschenker, 2015). Therefore, advisory services try to settle wage claims out-of-court, which 'works well, because employers of such contract do not want to be made visible also' (I2).

The literature also displayed the need for different layers of support in regards to labour rights and more comprehensive support in the form of a reflection period. While support concerning labour rights is provided through free advisory services, it is more difficult for a person to access a reflection and recovery period as shown above. Especially on the nexus of HT/LE and irregular migration tensions arise that a person is either recognized as a victim or becomes an offender which also was highlighted within the literature. Therefore, interviewees report that victims often decide against a criminal proceeding (I2; I3). Further, as discussed under implementations of policies, comprehensive support for HT/LE in general and especially for male victims is not sufficient yet.

However, this not only leaves presumed victims without any support as required by the EU Directive, it also hinders to increase the visible scale of HT/LE.

#### 7.4 UK's National Referral Mechanism

A different approach of victim identification and support in comparison to Germany's is exercised by the UK which established an NRM. Victims' identification does not depend on meeting the threshold of providing evidence for law enforcement, but on reasonable and conclusive grounds' decisions by competent authority within the Home Office (Home Office, 2019). In the first step, it is assessed whether it is 'reasonable to believe that a person is victim

of HT...The test the competent authority must apply is: whether the statement “I suspect but cannot prove”...is true’ (Home Office, 2019, p. 49). A positive decision grants comprehensive victim support in the form of 45-days reflection and recovery period. After this, a decision on conclusive grounds is made on the ‘balance of probabilities’ which means

that, based on the evidence available, modern slavery is more likely than not to have happened. This standard of proof does not require the Competent Authority to be certain that the event occurred (Home Office, 2019, p. 63).

Although the competent authority needs to gather evidence to make a conclusive ground decision (Home Office, 2019), the decision requires evidence in a measure that more likely than not rather than to provide certainty and prove.

While there is only a single unit of competent authority who is responsible for making a decision, hence, formally identify HT victims, there are several so-called first responders. They have the mandate and the responsibility to identify victims and are eligible to refer them to the NRM. This comprises government authorities such as police, UK Border Force, Gangmasters and Labour Abuse Authority as well as several NGOs (Home Office, 2019). This delegates competency and responsibility beyond government bodies and law enforcement in identification. In addition, data is gathered on a wider scale because it is not limited to prosecuted cases only.

In comparison, Germany has no NRM, implementation of policies and establishing co-operations is left to state levels and vary across the country. Therefore, there are no systematic and unified measures of collaboration in the procedure of victim identification (GRETA, 2019). Competent authorities to formally identify victims and grant a reflection period are police, state prosecutors, in future FKS as well as the foreigners’ registration office and BAMF. The data of the study indicates that state prosecution holds most of the authority and others refer to them for a final decision. Within the identification process, NGOs only play a subordinated role. They can help a victim who wants to come forth and argue on their behalf with authorities, but they do not have a strengthened key role in the process. Although, this study and Hoffmann & Rabe (2014) indicate that specialised services have a high competency to access LE and HT very differentiated. Furthermore, GRETA (2019) also requests strengthening the role of NGOs in the identification process.

While Germany establishes co-operations and networks between different actors on federal and state-level unified, national and strategical procedure is missing. An NRM system that strengthens co-operation and standardises procedures in identifying victims of HT can

advance the current efforts that are rather fragmented across different states. Furthermore, if applied, like in the UK, it shifts from a law enforcement approach towards a human rights approach.

However, HT takes place in the context of migration, and the interviews point out the vulnerability of migrants in identifying themselves and coming forth. Neither the UK nor Germany necessarily grants leave to remain beyond the reflection period or the criminal proceeding (see Residence Act; Home Office, 2019). Allowing victims to come forth therefore, also depends on a government's willingness to provide sufficient support to recover and to grant leave to remain that goes beyond supporting a prosecution and being a witness.

## 8. Conclusion and Recommendations

The case study explored how HT/LE is currently addressed through policies in Germany and how they are implemented. Despite an increased identification in other European countries and reports of severe LE, the official data on HT/LE Germany is on a small scale. The overall aim was to assess gaps and barriers in the identification of victims of HT/LE.

### 8.1 Conclusion

Regarding current development, the research findings indicate that HT/LE gained increased political awareness since 2016. Establishing the workgroup on federal level focussing on HT/LE is a positive development as well as the co-operations set up among some states. However, widespread awareness and implementation of policies across all state are not given yet. There is a need to establish co-operations concerning HT/LE among all states to collaborate in the identification, protection and prosecution process. As the literature shows, well-established partnerships and multidisciplinary taskforces increase victim identification and successful prosecution. Furthermore, a widespread general awareness amongst public authorities and civil society is not given yet.

In the literature, general difficulties were discussed regarding the concept of HT/LE. Not only are there conceptual confusions around HT, but additionally LE takes place on a continuum which makes distinctions more challenging. Further, defining difficult terms such as vulnerability is left to political, national discourse. Within Germany, the definition of HT/LE is framed in the criminal code. Although the revised articles were intended to be easier in their application and interpretation, the study indicates difficulties in defining and interpreting

terms. The formal identification of victims is tightly connected to a narrow interpretation of the criminal code through law enforcement and in particular state prosecutor, in contrast to the identification through frontline workers based on indications. Further, the current procedure of formal identification indicates that it does not conform to the EU Directive regarding victim support. Therefore, there is a need to move beyond the narrow legal application and adopt a wider approach to assess HT/LE based on the directive's requirements of reasonable grounds and indications. Identification based on indicators and a balanced decision, as in the UK's procedure, widens the possibility to identify presumed victims.

While different agencies have the competency to formally identify victims of HT/LE, others like border control, are missing clear mandates through legislation. Additionally, specialised support services have high competency but only play a subordinated role.

Furthermore, data currently is only gathered through police investigations, thus, limiting the scope of data to the smallest possible scale.

While access to victim support was not considered by the researcher at the beginning of the study, it had been of high importance to interviewees of advisory services, concerning access to the reflection and recovery period. It became apparent, although it is a victim's right granted through the EU Directive, it is not well implemented into German laws yet. Access is highly restricted due to the tight interpretation of the law. Thus, limiting victims to come forth and identify themselves. Furthermore, comprehensive support in the form of safe houses for men is still missing.

## 8.2 Recommendations

It is recommended that Germany overcomes barriers of implementation of policies by creating a national strategy and unified procedure of victim identification which is adopted by all states. Although this will take time, the workgroup on the federal level is a first step to develop measures and strategies that can be rolled out across the different states. Further, co-operations among relevant actors (similar to the federal workgroup) need to be set up by all states and on a regional level to increase victim identification, support and prosecution. In this context, the role of NGOs needs to be further strengthened through mandates and sufficient funding.



Furthermore, there is a need for systematic data gathering by all competent authorities and NGOs. Germany needs to ensure systematic data gathering from all government agencies that encounter presumed victims such as FKS, border control, BAMF and foreigners' registration office and allow cross data sharing. Correspondingly the role of service providers needs to be strengthened and their expertise included in data gathering to increase the visible scale. Systematic data gathering through public authorities can be more immediate action while gathering from NGOs is also based on their willingness and capacity to collect data. To ensure credible data analysis, it is recommended to mandate a single agency which collects and evaluates the data.

In the medium-term, the implementation of an NRM is recommended. While the workgroup is a step into this direction, an NRM similar to the UK's holds further possibility to strengthen social partners in the identification process and to shift from the currently narrow law enforcement approach towards a human right and victim-centred approach.

Germany therefore also needs to strengthen co-operation across states to provide sufficient victim support for male victims. As well as implement the reflection and recovery period into the law in ways that all possible victims are covered. In this context, it is recommended that third-country victims are granted leave to remain independent of co-operation with law enforcement beyond the reflection period.

While training for law enforcement and other authorities are often voluntarily, it is recommended that Germany strengthens and builds up further specialised units among law enforcement. Training should not only comprise indications for HT/LE but also guidelines in the interpretation of the criminal code following the aims of the legislators and the EU Directive.

Beyond, labour exploitation needs to be addressed through labour rights and criminal justice responses. The government should enforce to hold employers accountable for exploitation and enable workers to claim their rights.

Therefore, Germany is urged to conduct nation-wide awareness campaigns with two aims. Firstly, to reach out to presumed victims so they are informed about their rights and enabled to reach out for support. Secondly, to sensitize civil society and win them as a partner in the identification process.

Due to the small sample of interviewees, the study does not allow generalisation. Therefore, the researcher tried her best to relate and compare the findings with the literature and latest GRETA report. Under the given circumstances, it was not possible to gain more data for the study. However, further interviews with state prosecutors and judges as well as other authorities, NGOs and services could have enhanced the findings of the study concerning the interpretation of the criminal code by prosecutors and authorities as well as accessing HT/LE in the context of labour-rights and migration services.

More research needs to be done to identify gaps and barriers in particular among law enforcement, but also amongst relevant actors regarding awareness, training and practice to identify HT/LE. Because of the federalism, it is recommended that further case studies are conducted on a state level to identify how policies are implemented and identifying gaps, but also best practice in addressing HT/LE. To allow comparison of findings, it should be conducted in systematically.

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Aufenthaltsgesetz (AufenthG) in der Fassung der Bekanntmachung vom 25. Februar 2008 (BGBl. I S. 162), das zuletzt durch Artikel 54 Absatz 2 des Gesetzes vom 15. August 2019 (BGBl. I S. 1307) geändert worden ist.

Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), das zuletzt durch Artikel 2 des Gesetzes vom 19. Juni 2019 (BGBl. I S. 844) geändert worden ist.