

**German contribution**

**Questionnaire of the Special Rapporteur on Trafficking in Persons, especially Women and Children**

**on the implementation of the non-punishment principle in the context of trafficking in persons**

With reference to the Special Rapporteur’s letter to the Permanent Mission of the Federal Republic of Germany to the United Nations Office in Geneva dated 14 December 2020, the Federal Foreign Office makes the following contribution:

In German law, the principle of legality applies, which means that the public prosecutor's office is obliged to investigate criminal offences.

However, there are some exceptions to this principle in the German Code of Criminal Procedure (StPO[[1]](#footnote-1)) that allow the non-prosecution of a criminal offence under certain conditions.

It is possible to forgo further prosecution, in particular under section 153 StPO (Non-prosecution of petty offences), section 153a StPO (Non-prosecution subject to imposition of conditions and directions) and section 154c StPO (Non-prosecution of victims of coercion or extortion). Within the scope of the exercise of discretion, the concrete circumstances of the respective individual case are critical.

Section 153 and 153a StPO are only applicable to less serious criminal offences, i.e. unlawful acts which according to the German Criminal Code are punishable by a lesser minimum term of imprisonment or by a fine (section 12 paragraphs 1 and 2 German Criminal Code – StGB[[2]](#footnote-2)), such as theft (section 242 of the German Criminal Code), forgery of documents (section 267 StGB) or offences under the penal provisions of section 95 of the Residence Act.

The victim's predicament is taken into account, in particular in the case of section 154c StPO (Non-prosecution of victims of coercion or extortion). In the area of trafficking in human beings, section 154c paragraph 2 StPO is of particular importance: if a victim of trafficking reports this offence and if, as a result, an offence committed by the victim becomes known, the public prosecutor's office may refrain from prosecuting the offence unless it is imperative due to the gravity of the offence. The consent of the court is not required for this.

Furthermore, it must be pointed out that a person who commits a crime under the circumstances set out in section 35 paragraph 1 StGB acts without guilt and therefore cannot be punished. This is the case if the person commits the punishable act in order to avert from himself or herself or a relative or another person close to him or her a present danger to life, limb or liberty which cannot otherwise be averted.

1. https://www.gesetze-im-internet.de/englisch\_stpo/ [↑](#footnote-ref-1)
2. https://www.gesetze-im-internet.de/englisch\_stgb/englisch\_stgb.html#p0116 [↑](#footnote-ref-2)