



Organization for Security and Co-operation in Europe

Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Foreword

On 19-23 November 2018 and 14 January 2019, I had the pleasure of paying an official visit to Austria to hold consultations with high-level government officials, including the National Co-ordinator on Combating Human Trafficking, the Federal Ministry for Constitution, Reforms, Deregulation and Justice, the Public Prosecutor of Vienna city, the Judge of the Regional Court for Criminal Matters of Vienna city, the Joint Operational Office for Combating Human Trafficking and Human Smuggling of the Federal Criminal Intelligence Service, the Directorate General for Families, Youth, Women and Equality Issues, the Federal Ministry for Labour, Social Affairs, Health and Consumer Protection, the Labour Inspection, the Federal Ministry of Interior, the Federal Ministry for Europe, Integration and Foreign Affairs, the Federal Chamber of Labour as well as with representatives of civil society and international organizations involved in the field of anti-trafficking.

The objectives of the visits were to identify promising practices for combating human trafficking as well as to promote the full implementation of OSCE commitments in the field of anti-trafficking, notably holistic and comprehensive actions aiming to better prevent and respond to human trafficking and to protect and support its victims. I appreciated the constructive discussions held and I was pleased to observe the strong political will of the Government of Austria and the inspiring commitment of practitioners to further anti-trafficking responses in the country.

The Report was presented to the Delegation of Austria on 14 June 2019. The Delegation submitted its comments on 15 July 2019.

I am delighted to note the recent adoption of the 2014 Protocol to the ILO Convention on Forced Labour of 1930 by Austria and an increased attention to the issue of labour exploitation. I am also pleased to receive a recent paper developed by LEFÖ-IBF and MEN VIA in collaboration with Mag. Barbara Steiner which elaborates on criminal processes related to human trafficking, compensation and protection for trafficked persons. I believe these recent development will further advance the work done by authorities and civil society organizations in combating and preventing trafficking in the country.

By encouraging relevant authorities to implement the comprehensive set of recommendations made in this report, I look forward to deepening our established collaboration and to furthering our future co-operation in the best interest of the most vulnerable and disadvantaged members of society.

A handwritten signature in blue ink, appearing to read 'Valiant Richey'.

Valiant Richey
Acting Co-ordinator for Combating Trafficking in Human Beings

**Report by the OSCE Acting Co-ordinator for Combating
Trafficking in Human Beings following the official visit to Austria
19-23 November 2018 and 14 January 2019¹**

1. This Report presents main findings and recommendations of OSCE Acting Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey (hereinafter referred to as the Acting Co-ordinator) following his country visit to Austria on 19-23 November 2018 and on 14 January 2019.
2. The purpose of the visit was to hold consultations with government officials and experts from state institutions and civil society to discuss ways to support and advance ongoing efforts to prevent trafficking, assist trafficked persons and protect their rights, as well as bring perpetrators to justice in line with OSCE commitments and relevant international standards.
3. In the course of the visit, the Acting Co-ordinator engaged in direct consultations with high-level government officials, including the National Co-ordinator on Combating Human Trafficking, Director-General of the Consular Section of the Ministry for Europe, Integration and Foreign Affairs; Secretary General at the Ministry of Justice, the Head Directorate General for Criminal Law; the Head of the Department for Substantive Criminal Law and the Adviser at the of the Department; the Adviser at the Department for Criminal Procedural Law; the Public Prosecutor of Vienna city; the Judge at the Regional Court for Criminal Matters of Vienna; the Head of the Joint Operational Office for Combating Human Trafficking and Human Smuggling of the Federal Criminal Intelligence Service; representatives of the Directorates General for Families and Youth and Women and Equality Issues; representatives of the Ministry for Labour, Social Affairs, Health and Consumer Protection and the Labour Inspectorate; representatives of the Ministry of Interior; representatives of the Ministry of Europe, Integration and Foreign Affairs and the Federal Chamber of Labour.

The Acting Co-ordinator also held consultations with the anti-trafficking NGOs LEFÖ -IBF, MEN VIA, Diakonie, ECPAT Austria and Herzwerk.

Finally, the Acting Co-ordinator met with the representatives of international organizations based in Vienna, including the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

4. The Acting Co-ordinator visited the Reception Centre for Asylum Seekers in Traiskirchen (Erstaufnahmestelle Ost/Reception Centre East). Moreover, his Office visited the Socio-Pedagogical Institution for Unaccompanied Foreign Minors “Drehschiebe” operated by the Municipal Department 11 of the City Administration of Vienna.
5. The Acting Co-ordinator wishes to thank the Austrian authorities, and in particular, the Office of the National Co-ordinator for Combating Human Trafficking under the Ministry Europe, Integration and Foreign Affairs, for their co-operation, commitment and assistance in organizing and facilitating the visit. He also wishes to thank all

¹ The Report was finalized on 14 June 2019

interlocutors, including civil society and international organizations in Austria, for their willingness to share their knowledge and insights.

6. Consultations during the visit focused on the situation of trafficking in human beings (THB) in the country and the ongoing policy, legislative, and practical responses to it. More specifically, discussions focused on the identification of, and the provision of assistance to, victims of all forms of trafficking, including of child victims of trafficking; the protection of victims' rights, including of migrant workers and asylum seekers; efforts in the area of prevention and countering the demand for sexual and labour exploitation of foreign women and men; co-operation with civil society; and prosecutions and convictions of perpetrators.
7. Over the course of the visit, the Acting Co-ordinator noted with appreciation that government officials and civil society representatives demonstrated significant awareness and understanding of human trafficking as a serious violation of fundamental rights, knowledge of new human trafficking trends in the country, and a readiness to tackle new threats.
8. The Acting Co-ordinator stressed the importance of maintaining the prevention of THB as one of the key priorities on the government's agenda. He notes that a decline in high-level attention to the problem could jeopardize the important results already achieved.

Legal, policy and institutional framework

9. The Acting Co-ordinator commends Austria for being a party to major international instruments providing high standards in the fight against trafficking in human beings, such as the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ratified on 23 September 2004, and the Council of Europe Convention on Action against Trafficking in Human Beings, ratified on 21 October 2006.

The country has also ratified a number of Conventions addressing slavery and forced labour such as the ILO Forced Labour Convention No.29, ratified in 1960; the ILO Convention on the Abolition of Forced Labour No.105, ratified in 1958; the ILO Convention on Worst Forms of Child Labour No.182, ratified in 2001; and the UN Convention on the Elimination of All Forms of Discrimination against Women in 1982.

Austria ratified the UN Convention on the Rights of the Child in 1992. The Optional Protocol on the involvement of children in armed conflict and on the Sale of Children, Child Prostitution and Child Pornography, were ratified in 2002 and 2004, respectively.

10. The Acting Co-ordinator welcomes the recent adoption by Austria of the Protocol of 2014 to the Forced Labour Convention of 1930 and believes the ratification of this Protocol will advance prevention, protection and compensation measures against all forms of forced labour.

11. While commending Austria for effectively addressing and preventing trafficking and exploitation of domestic workers in diplomatic households (see paragraph 31), the Acting Co-ordinator recommends that Austria signs and ratifies the ILO Convention 189 concerning Decent Work for Domestic Workers, which serves as an effective instrument for the prevention of THB for labour exploitation, especially for domestic servitude.² The ratification of this Convention will further advance Austria's efforts in preventing and addressing the exploitation of migrant domestic workers in the country.
12. The Acting Co-ordinator further recommends that Austrian authorities sign and ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The ratification of this Convention is of particular importance to enhance protection mechanisms in the context of migration flows.
13. Austria is also bound by the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims on combating THB; EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography; as well as of EU Council Directive 2004/81/EC of 29 April 2004 on the resident permit issued to third-country nationals who are victims of THB or who have been the subject of an action to facilitate illegal immigration.
14. Likewise, as a participating State to the OSCE, Austria has pledged to implement the commitments it has undertaken in the OSCE framework, in particular the recommendations contained in the 2003 Action Plan to Combat Trafficking in Human Beings, as well as its 2005³ and 2013⁴ Addendums.
15. Domestically, human trafficking was first defined in the Austrian Criminal Code (CC) in 2004 through the inclusion of Article 104(a), which listed sexual and labour exploitation, as well as organ removal as purposes of trafficking punishable from six months to five years of prison sentence. Of note, such definition was amended in 2013 by adding "exploitation of begging" and "exploitation to commit criminal activities" to the list of forms of exploitation. Trafficking "means" listed under paragraph 2 of Article 104(a) include threat, deception of materials facts, abuse of position of vulnerability, duress and mental impairment, intimidation or giving/receiving of benefits for transferring control over the other person. The aggravating circumstances, set out in paragraph 4 and 5 of the article, include, *inter alia*, the committing of an offence in connection with criminal associations, by use of serious violence and against a minor. In these cases the punishment is from one to ten years of imprisonment. In addition, the Criminal Code Article 104 criminalizes slavery with ten to twenty years of prison term.
16. Criminal Code Article 106a entered into force in 2016 and criminalizes the offence of forced marriage by defining it as "any person who coerces another one into

² OSCE, Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude, Occasional Paper Series No. 4, 2010. Available at <http://www.osce.org/cthb/75804>

³ OSCE Permanent Council Decision No. 685 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special needs of Child Victim of Trafficking for Protection and Assistance](#), PC.DEC/685

⁴ No.1107 [Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later](#), PC.DEC/1107/Corr.11

entering a marriage or registered partnership by using force or dangerous threat or by threatening to sever or deprive a person of family contact”. Forced marriage is punishable from six months to five years of prison term.

17. Article 217 of the Criminal Code criminalizes the “transnational prostitution trade”. This offence is defined as the procurement and recruitment of a foreign national for the purposes of prostitution in Austria and prescribes a liability to imprisonment from six months to five years. If the offence is committed for commercial purposes, the penalty is increased from one to ten years of imprisonment. Similar to the trafficking provision, Article 217 includes means such as deception, force and coercion for the purposes of engaging of a foreign citizen in prostitution in the country, and prescribes a prison term from six months to five years and in cases when the offence is committed commercially the prison term ranges from one to ten years. Prior to the amendment of the Criminal Code in 2004, Article 217 was used to address human trafficking and related crimes. Despite the addition of Article 104(a) (trafficking in human beings), Article 217 remained contextually unchanged. Various interlocutors met during the visit indicated that there appeared to be a lack of clarity on the use of Article 104(a) versus Article 217 in the context of trafficking-related commercial sexual exploitation. Thus, data was collected on the use of both Articles 104(a) and 217. Although criminal offenders could be held accountable under either statute, it raised concerns that victims in cases under 217 may not receive the services they would be entitled to under 104(a).

18. Regarding consent of victims to their exploitation, the baseline established by the Trafficking in Persons Protocol is that the consent of an adult victim to the intended exploitation is irrelevant if any of the listed ‘means’ are used.⁵ Genuine consent is only possible and legally recognized when all relevant facts are known and a person exercises free will.⁶ Children cannot - by law - consent to being trafficked nor can trafficked persons validly consent to their exploitation.⁷ In the case of children, therefore, no means at all, including coercion, deception or threat, are required to establish the victim status of the child. Although Austrian legislation does not explicitly provide for the *irrelevance of consent* when any of the means set forth in the definition of trafficking have been used, Austrian authorities reported in their follow-up submission that legal doctrine has been developed on the issue of consent such that consent is irrelevant in cases of e.g. force, coercion or deception. Therefore, all the means listed in paragraph 2 of Article 104a exclude a free consent as a prerequisite for a valid consent. Nevertheless, the Acting Co-ordinator notes that a number of interlocutors raised concerns during the country visit that trafficking cases were not being prosecuted (as trafficking) due to a perception that the victim had consented to the exploitation. Thus, there may be a gap between the doctrine and actual practice. He recommends that Austrian authorities include an explicit reference to the irrelevance of victim consent to the intended exploitation in the legal framework (in line with the Palermo Protocol and UN model law on trafficking in persons).

⁵ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Trafficking in Persons Protocol, Art. 3(b).

⁶ 2009 UNODC Model Law on Trafficking in Persons.

⁷ Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, OSCE OSR/CTHB, 2013

19. Other relating provisions of the Criminal Code include Article 205a which penalizes the violation of the right to sexual self-determination, introduced in 2016. This article defines the offence as engagement in sexual intercourse by abuse of predicament situation and/or against the person's will and is punishable by a prison term for up to two years unless the offence is punishable with a higher penalty under another provision. The Ministry of Justice stated their view that this provision can be used to criminalize the users of services provided by trafficked persons. (see paragraph 47) It is noteworthy, however, that the statutory definition does not take into account the commercial aspect of the crime and thus its specific applicability to users could be unclear.
20. The Aliens Police Law criminalizes exploitation of a foreigner (Article 116) with an irregular immigration status, no working permit or otherwise in a particular situation of dependency. It is a requirement for this offence that the perpetrator takes advantage of the victim's specific dependency (e.g. illegal stay in Austria, lack of a working permit). This offence further requires the offender's intention to obtain a regular income by repeatedly committing the offence and a reckless exploitation of the victim.⁸ The offence is punishable with a prison term of up to three years. In the presence of aggravated circumstances—for instance if the offence is committed against a large number of foreign persons or results in a foreign person(s)' situation of hardship—the penalty is from six months to five years of imprisonment. In cases when the offence causes a death of a foreign person the maximum penalty is increased to ten years.
21. Overall, the Acting Co-ordinator notes that, although there are numerous advantages to the presence of various provisions in the Criminal Code and other relevant laws criminalizing various forms of trafficking and related crimes, there also appear to be challenges in how these provisions are applied to prosecute offences. According to interlocutors met during the visit, this is especially the case with regard to Article 217 (Transnational Prostitution Trade), which appears to be used frequently as an alternative to the trafficking statute, rather than applied to its original purpose of prosecuting the recruitment and transportation of foreign women for prostitution in the country (even in cases where there is no evidence of force, deception or coercion). According to a report by NGOs, Article 217 is used in cases where Article 104a could be applied if the police chose to proceed under different provisions of the law.⁹ In his review of the application of the criminal code provisions during the visit, the Acting Co-ordinator commends Austrian authorities on a robust legislative framework to address trafficking, however, encourages Austrian authorities to provide explanatory note or guidance on the distinct features of each of the statutes mentioned in above paragraphs to ensure the proper adjudication of human trafficking cases.
22. Since 2007, Austria has been pursuing a three-year National Action Plan (NAP) on Combating Human Trafficking prepared by the Task Force on Combating Human Trafficking under the Federal Ministry for Europe, Integration and Foreign Affairs.

⁸ Severe Forms of Exploitation, Supporting Victims of severe forms of labour exploitation in having access to justice in EU Member States, Austria 2014, FRA, p.10

⁹ Best practices in tackling trafficking Nigerian Route (BINIs), National Report Austria, Herzwirk- Initiative for People in Prostitution, 2018

The fifth NAP covering the period of 2018-2020 was adopted in late 2018 and is composed of five parts: actions related to National and International Co-ordination and Co-operation (Part I); Prevention (Part II); Victims (Part III); Law Enforcement (Part IV); and Evaluation (Part V).¹⁰ It also includes a time-frame, the agencies in charge of implementation, and funding for each action. Besides building upon earlier action plans, the new NAP expands on prevention and on tackling trafficking of refugees and asylum seekers, particularly of unaccompanied children. It also envisages enhanced capacity building of employees and care providers at reception centres and police detention facilities. The Task Force publishes a public report on the implementation of the NAP, available on the website of the Federal Ministry for Europe, Integration and Foreign Affairs. The Acting Co-ordinator is pleased to note Austria's comprehensive NAP, including enhanced focus on prevention of trafficking among and on the protection of unaccompanied minors from trafficking and exploitation as called for by the OSCE's recent Ministerial Council Decision adopted in Milan in 2018.¹¹

23. With regard to the institutional anti-trafficking framework, Austria's Task Force on Combating Human Trafficking was set up in 2004 under the Federal Ministry for Europe, Integration and Foreign Affairs. It is chaired by the National Co-ordinator for Combating Human Trafficking. Comprised of the Federal Chancellery, the Federal Ministry for Europe, Integration and Foreign Affairs as well as the Federal Ministry of the Interior; Federal Ministry for Constitution, Reforms, Deregulation and Justice; Federal Ministry of Labour, Social, Health and Consumer Protection, Federal Ministry of Education, Science and Research as well as Federal Ministry of Defence, the Task Force meets three to four times annually to coordinate anti-trafficking measures. It also meets at the federal level and by way of example, the Acting Co-ordinator notes the federal Task Force Meeting held in Salzburg in 2018. The competencies of the Task Force also include monitoring and evaluation of the trafficking situation and developing policy guidance and strategies on anti-trafficking. Civil society representatives from the Intervention Centre for Migrant Women affected by Human Trafficking (LEFÖ-IBF), the Men's Health Centre MEN VIA and Ending the Sexual Exploitation of Children– Austria (ECPAT-Austria) are also members of the Task Force.
24. The Task Force has three sub-working groups: child trafficking, prostitution, and trafficking for the purpose of labour exploitation. The working group on child trafficking is chaired by the Federal Chancellery – Division for Families and Youth, which develops annual reports on the work of the group. The Task Force on Prostitution was set up in 2006 and is chaired by the Federal Chancellery – Division of Women's Affairs and Equality and mandated to develop recommendations for improving living and working conditions of women in prostitution. Established in 2012 under the chairmanship of the Federal Ministry for Labour, Social Affairs, Health and Consumer Protection, the working group on trafficking for the purpose of labour exploitation serves as a platform for information sharing and knowledge exchange between agencies involved in labour issues such as, for instance, the labour inspectorate and financial police.¹² The Acting Co-ordinator commends the active

¹⁰ https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Nationaler_Aktionsplan_2018-2020.pdf available in German.

¹¹ Ministerial Council Decision No 6/18 Strengthening efforts to prevent and combat child trafficking, including of unaccompanied minors, MC DEC/6/18

¹² <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/>

work of the Task Force and its working groups and welcomes the multidisciplinary approach adopted by the Austrian Government to co-ordinate the implementation of anti-trafficking policies.

25. As described in the paragraph 24, the National Co-ordinator also acts as Austria's National Rapporteur and is mandated with the monitoring and evaluation of anti-trafficking action in the country. The Acting Co-ordinator wishes to commend the active work of the National Co-ordinator while stressing the importance of independent monitoring and evaluation of anti-trafficking measures, and underlines the separate role of a National Rapporteur or equivalent national monitoring and reporting mechanisms as a means to collect and utilize accurate and evidence-based data on THB. This is particularly critical to assess and monitor the scope of trafficking, the effectiveness of the anti-trafficking measures taken by the State, and, drawing from this data collection and analysis, to produce recommendations for the government and the parliament¹³. In line with international best practice and OSCE Ministerial Council Decision 14/06, the Acting Co-ordinator encourages Austrian authorities to consider separating the co-ordination work from that of monitoring and evaluation by establishing an independent National Rapporteur.¹⁴
26. The Acting Co-ordinator commends the dynamic role that anti-trafficking NGOs play in Austria in conducting a range of critical activities, including policy work, reintegration and rehabilitation of trafficked persons, and awareness raising. He commends the level of co-operation between civil society organizations and Austrian authorities in addressing human trafficking in Austria and notes how this approach well reflects the recommendations set out in the recently published OSCE report on "the Critical Role of Civil Society in Combating Trafficking in Human Beings".¹⁵
27. The Acting Co-ordinator commends the annual public reports published by the Austrian Criminal Intelligence Service.¹⁶ The reports provide detailed analysis of trends and patterns of human trafficking, annual statistics of investigations and prosecutions segregated by various forms of exploitation, number of convictions and identified victims of trafficking and transnational prostitution trade segregated by gender and age of victims. The reports also provide in-depth analysis of the *modus operandi* of traffickers, as well as measures and initiatives of law-enforcement agencies in preventing and combating THB. The Acting Co-ordinator believes that such reporting is critical to understand the scope of the measures in response to the evolving nature of the crime and significantly contributes to development and review of overall anti-trafficking policies and measures.

Identification, referral and assistance for victims of trafficking

28. Austria is a country of destination and transit for human trafficking for various exploitative purposes. Victims of human trafficking in Austria are trafficked from less affluent EU and third countries.¹⁷ Third country nationals constituted 57 percent

¹³ OSCE Action Plan for Combating Trafficking in Human Beings, Chapter IV, para 1, p17

¹⁴ OSCE, Ministerial Council Decision No. 14/06 "Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach", MC.DEC/14/06, 5 December 2006

¹⁵ Available at <https://www.osce.org/secretariat/405197?download=true>

¹⁶ Available at <https://www.bundeskriminalamt.at/303/start.aspx>

¹⁷ <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/>

of all victims of sexual exploitation identified by the police in 2017.¹⁸ While EU national victims of trafficking (predominantly from Bulgaria, Romania and Hungary) continue to be trafficked to Austria, the majority of identified victims are women and girls from Nigeria, China and recently Venezuela. The majority of victims identified in Austria were exploited for the purpose of sexual exploitation whereby victims were forced to engage in prostitution in massage parlours and brothels. According to the Situation Report published by the Federal Criminal Investigation Service in 2017, the number of identified Chinese female victims of trafficking has increased compared to the previous year. The second largest group of victims identified were women from Nigeria who are psychologically and spiritually coerced through voodoo oaths. While victims were previously recruited through print media, model agencies and night clubs, this pattern has shifted to online in the last few years. The Austrian police reported that the Internet has been used in 74 percent of cases to groom, recruit, advertise and control victims.¹⁹

29. The Acting Co-ordinator notes the identification rate of trafficking victims in Austria as stated by the annual reports of the Criminal Intelligence Service and international reports²⁰. For the period from 2010-2014, the police identified 387 trafficking victims and in 2015 62 victims were identified under trafficking statute (Art 104a) and 57 victims under the transnational prostitution trade statute (Art 217). In 2017, the police identified 61 victims under Art 104a and 60 under the art 217.

30. As reports received by government officials suggest an increase in labour trafficking, the Task Force's Working Group on labour exploitation is discussing more targeted action to prevent and combat this form of exploitation.²¹ Although data available reflect low numbers of detected cases of trafficking for labour exploitation, various reports and civil society met during the visit report the occurrence of this form of exploitation in agriculture, construction and catering sectors.²² Victims are reportedly recruited through various means and the country of origin of the victims seems to be linked to the sector in which victims, whether EU citizens or third country nationals, are exploited.²³ According to information provided during the visit, front line officers who come in contact with the workers rarely accept the absence of labour contracts and unpaid wages as potential indicators of exploitation which results in low identification of labour exploitation. Reportedly, most labour trafficking cases are treated as fraud or dismissed. To aid the situation, the working group on labour exploitation developed a list of indicators for the use of front line officers. However, the restricted mandate of labour inspectors (see paragraph 64)—which is limited to health and safety—and a lack of capacity of financial police and tax inspectors on THB for labour exploitation can contribute to inadequate response to this form of exploitation.

31. Trafficking for domestic servitude reportedly occurs in both private and diplomatic households. According to the Austrian Ministry of Justice, annually the prosecution service receives 20-30 complaints involving exploitation of domestic workers. The

¹⁸ Situation Report human trafficking and trans-border prostitution trade for 2017, p.11, Federal Criminal Investigation Service, available in German language at https://www.bundeskriminalamt.at/bmi_documents/2250.pdf

¹⁹ Ibid

²⁰ Council of Europe GRETA second evaluation report, 2015

²¹ Information provided during the meeting with the National Co-ordinator for Combating Trafficking in Persons, 20 November 2019

²² Together against Trafficking In Human Beings, European Commission,

²³ Combating Trafficking in Human Beings for Labour Exploitation, 2011, Chapter 1, p16

https://bim.lbg.ac.at/sites/files/bim/THB%20for%20Labour%20Exploitation_Chapter%201_Austria_JPlanitzer_HSax_2.pdf

workers are brought to the country through foreign recruitment agencies or labour brokerage firms which are not monitored by Austrian authorities due to the fact that they are outside the country. Churches play an important role in the identification of victims among domestic workers, as some are allowed to leave the house on their own for services on Sunday.²⁴ To encourage self-identification and reporting of exploitation, Austria replaced cash payments to employees with the obligation that all wages of a private domestic worker have to be paid into a bank account in the sole name of the domestic worker. Due to multiple violations of domestic workers' privacy and safety, the Austrian MFA requests a copy of the employers' rental agreement and of a layout of the dwelling indicating the location of the private domestic worker's room.²⁵ Additionally, Austrian authorities also introduced a mandatory rule for domestic workers to receive legitimation cards in person to enable them to speak up in private.

At the time of the visit, Austrian authorities reported the presence of 100 private domestic workers in diplomatic households in the country (excluding 69 persons working as household staff in embassies). In 2016 and 2017, seven cases involving exploitation of primarily citizens of Philippines have been brought to the government's attention; only two of them were qualified as exploitation, as reported by the authorities. In 2018, five cases were brought up to the attention of the Ministry of Foreign Affairs, two of which can be qualified as exploitation (country of origin of workers: the Philippines and from Cote d'Ivoire).²⁶ A third case was reportedly being investigated at the time of the visit. The Acting Co-ordinator commends the efforts and pioneering initiative of the Ministry of Foreign Affairs in preventing and addressing this form of human trafficking.

32. During the visit, the Acting Co-ordinator was informed about an increasing pattern of trafficking for forced criminality and begging. The 2013 amendment to the Criminal Code advanced law enforcement measures to identify victims of trafficking for forced criminality who are both adults and children. According to police, persons of Roma origin who are brought to Austria for the purpose of begging are usually informed about the nature of their work in advance, but deceived about being able to keep any of the money and eventually exploited. There are some 600 beggars in Vienna who have been identified by the police, however, according to law enforcement authorities, proving exploitation is challenged by reluctance to cooperate with prosecution or inconsistency in reporting. In 2015, police identified both adult and child male victims from Slovakia, Romania and Bulgaria forced to beg and 2 Romanian minors forced to commit walk-in theft or residential burglaries and 3 Hungarian victims were forced to shoplifting. The Acting Co-ordinator notes that the subtle means of trafficking, such as abuse of position of vulnerability, coercion and deception can be observed particularly in trafficking of persons for forced criminality and/or begging. In this regard, he notes that the use of "force" and/or "coercion" were reported as to constituting the means being considered by the Austrian police and prosecutors in most human trafficking cases examined. While in the majority of cases this might be the case, the *modus operandi* of traffickers, however, has evolved

²⁴ Ibid

²⁵ Handbook on How to prevent human trafficking for domestic servitude in diplomatic household and protect private domestic workers, OSCE, 2014

²⁶ Information provided by the MFA on 7 December 2018

overtime and it is now rare that physical force or coercion are exercised in controlling a victim.

33. Reportedly, children are trafficked for various exploitative purposes in Austria, mainly in the capital, Vienna. Nonetheless, there is no baseline data on child trafficking in Austria, nor statistics provided by state agencies reflect the scale of the issue. In 2017, the Austrian police identified six child victims of trafficking: four girls between 15-17 years old from Hungary and Nigeria who were victims of sex trafficking; one girl from Bosnia and Herzegovina and one boy from Nigeria exploited for the purpose of criminality. While the 2015 police report noted a pattern of violence and force in cases of involving children in commission of crimes, the current *modus operandi* has reportedly shifted to a softer approach where children, especially girls of Roma origin, are also given some pocket money while being exploited for the purpose of committing theft especially during holiday seasons.²⁷ The need to understand the scope of child trafficking led to the establishment of the Task Force Working Group on Child Trafficking (see paragraph 24). The Acting Co-ordinator positively notes that tackling child trafficking, including preventative measures, is one of the main objectives of the new NAP for 2018-2020 with the major focus on unaccompanied minors as a potential risk group for trafficking.
34. Although low in numbers, trafficking for sham marriages exists in Austria and affects women from socially disadvantaged families in the EU member states such as Hungary and Bulgaria. According to authorities, women are trafficked to Austria, under false promises of payment, to marry men of Afghan and Egyptian nationalities for the purpose of acquiring legal residence permits in Austria. Upon arrival, these women are forced into prostitution to support the family.
35. One of the key discussions during the visit included the identification of trafficked persons in the asylum procedure and in detention facilities for irregular migrants. In 2015, a total of seven asylum seekers were identified as trafficked persons. According to police, approximately 200-250 asylum requests are annually made by Nigerian women. Of note, while the number of Nigerian males claiming asylum fluctuates, the number of women has remained stable over the last four decades. While the Acting Co-ordinator notes the increasing attention of Austrian asylum officials on identification of trafficked persons among asylum seekers, identification of persons in the detention facilities for irregular migrants requires enhanced efforts of Austrian asylum officials.
36. As regards the identification procedures for victims of trafficking, the Acting Co-ordinator notes the absence of a National Referral Mechanism (NRM) for adult victims of THB in Austria. The Joint Operational Office for Combating Human Trafficking and Human Smuggling (Anti-trafficking police) under the Federal Criminal Intelligence Service is the competent agency to identify trafficking person and uses standard internal procedure which also includes indicators for various forms of trafficking for identification purpose. The NGOs/service providers LEFÖ-IBF and MEN VIA can also identify victims of trafficking either through outreach or referral by other NGOs. While commending the co-operation agreements signed between the authorities and LEFÖ-IBF and MEN VIA to identify and assist victims of trafficking,

²⁷ Information provided during the meeting with Drehscheibe centre.

the Acting Co-ordinator shares the concern of international organizations and civil society actors that the absence of formal NRM is an impediment to the effective and early identification of trafficking persons. At the time of the visit, the Ministry of Interior shared their ongoing work on a draft NRM. The adoption of an NRM would enhance the effectiveness of identification procedures by assigning clear roles and reporting lines including amongst border, detention and immigration officers. The Acting Co-ordinator kindly requests an update on the progress of the paper.

37. Assistance to child trafficking victims is a responsibility of the federal youth and child welfare authorities in Austria. On 1 May 2013, Austria adopted the Federal Child and Youth Welfare Act which binds Austrian institutions that provide counselling and care for children and adolescents, as well as members of healthcare services, to notify child and youth welfare services of suspected cases of child trafficking. As per Article 37 of the Act, this must be followed with an immediate risk assessment to determine the level of risk and the need for assistance. The Austrian General Civil Code envisages criteria for defining the best interest of the child and provides for measures regarding care and upbringing of a child in an imminent danger until a court decision has been made. In 2017, in accordance with the Austria's Third and Fourth NAPs, Austria adopted non-binding practical guidelines on Identifying and Working with Potential victims of child trafficking, which include a set of indicators.²⁸ The Acting Co-ordinator notes that this NRM for child victims of THB includes necessary provisions to enable early identification of child victims, recommends actions for police, child and youth welfare services, asylum and immigration authorities, healthcare sector and detention officer. Nevertheless, as mentioned above, the NRM is only a consultative paper and is not legally binding. Additionally, government and NGO practitioners consulted during the visit reported that the specific provisions of the NRM are unknown to some frontline officers and its implementation is not being systematically assessed or monitored. Thus, it is extremely difficult to assess its functionality. To this end, the Acting Co-ordinator recommends that Austrian authorities, in particular the Task Force's Working Group on Child Trafficking, monitor the implementation and evaluate the effectiveness of the NRM and develop a plan for regular awareness and training of relevant agencies and organization to identify and refer child victims of trafficking to immediate assistance and protection.

38. The "Drehscheibe Centre" was founded in 2001 by the City Administration of Vienna and provides accommodation and social pedagogical support to unaccompanied foreign minors and child victims of trafficking in Vienna. Children are brought to the centre by police and also by member of the public encountering unaccompanied minor in the city. The maximum duration of the stay is three months with the possibility of extension depending of the needs of the child. The Centre has a capacity of 12 places and operates with seven staff members with mandatory pedagogical knowledge and educational background. The youth and child welfare authorities have a pool of interpreters who can be assigned to a specific case. Additionally, the Office of the Acting Co-ordinator was told that the staff of the Centre can interact with foreign children including through a system of video translation. According to the Centre management, since 2015 the number of unaccompanied minors hosted at the Centre has significantly decreased. While a

²⁸ Available at www.gewaltinfo.at/themen/2013_10/checkliste.php

large percentage of children brought to the Centre are of Roma ethnicity, Chinese, Afghan, and Mongolian children were also supported by the Centre.

The centre is an open facility; children can leave freely. Cases of missing children were reported by the staff of the Centre. In this regard, the Acting Co-ordinator notes the need for implementation of the provisions of the Federal Child and Youth Welfare Act which requires an immediate risk assessment and early identification of children at risk (see para 37) and appropriate action in the best interests of the child. He is pleased to learn that the Working Group on Child Trafficking is planning to develop a concept for a country-wide child protection strategy paper which would enable opening of intervention centres in various provinces and kindly requests an update on the progress of the concept.

39. The reflection and recovery period for trafficking victims is not enshrined in law but is regulated by an internal binding decree of the Ministry of Interior. According to the Handbook on Aliens Act, a presumed trafficked person shall not be deported for at least 30 days and no forced return shall be imposed on identified trafficked victims. Article 13 of the Council of Europe Convention requires that all state parties provide a recovery and reflection period of at least 30 days in its internal law which should be sufficient for the person concerned to recover and escape from the influence of traffickers. Similarly, the UNODC Toolkit to Combat Trafficking in persons states that “granting a reflection period, followed by a temporary residence or permanent residence permit, would ideally be granted to victims of trafficking regardless of whether the person is able or willing to give evidence as a witness. In this regard, the Acting Co-ordinator notes with regret that the reflection and recovery period as provided for in the internal decree does not appear to be implemented consistently with its core purpose of providing a period for a trafficked person’s recovery from a trauma endured and give a decision whether or not to cooperate with law enforcement. He further notes the concerns of the civil society organizations that in many instances victims are not informed about this right of reflection period and the period is not being enforced. The Acting Co-ordinator strongly recommends that Austrian authorities revise legislation to include an explicit reference to a reflection and recovery period for persons when there are reasonable grounds to believe the person is a victim of trafficking.
40. Pursuant to Article 25 of the Police Security Act, the Federal Ministry of Interior shall commission victim support organizations to provide counselling and support to potential and actual victims of violence. Furthermore, Article 38a of the Police Security Act obliges the police security organs to inform the persons at risk of violence about the intervention centres. Article 56 of the same law extends the requirement to police authorities to inform the institutions with victim protection programmes about the case, particularly in cases when protection is deemed necessary.²⁹ Thus, the assistance to trafficked persons is solely provided by civil society organizations with LEFÖ-IBF being the largest provider of assistance to identified and presumed female victims of trafficking. LEFÖ-IBF operates nationwide on behalf of the Ministry of Interior and the Federal Chancellery Division on Women Affairs and Equality and is funded by both ministries in equal shares. It operates four shelters from 24 hours to weekly housing care. In addition to providing

²⁹ Police Security Act <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792> (available in German language)

safe accommodation for trafficked women, it also provides medical, psychological and legal assistance. The assistance and support measures provided by LEFÖ-IBF are not linked to victim's participation in criminal procedures. Since establishment in 1998, LEFÖ-IBF assisted 2600 women and girls offering psycho-social counselling in the victims' native languages. The number of assisted victims was 327 in 2017, 21 percent of which were accommodated in safe housing.

41. NGO MEN VIA was established in 2013 with the funding support of the Ministry of Labour, Social Affairs and Consumer Protection to assist adult male victims of human trafficking in Austria. In 2015, the Ministry of Justice assigned MEN VIA to provide psycho-social and legal assistance during court proceedings for adult male victims. The mandate of the MEN VIA was expanded in 2018 allowing them to also serve child male victims of trafficking. Although funding was temporarily suspended in 2017, MEN VIA reopened a specialized shelter with the capacity of accommodating 12 male victims in mid-2018. Since its establishment, MEN VIA identified and assisted 130 men of which 62 men were assisted in 2017 alone.
42. Residence permits for trafficked persons and victims of transnational prostitution trade are regulated by Section 57 of the Asylum Act which provides for special protection residence permits issued by the Federal Office for Immigration and Asylum (BFA). Issuance of residence permits are linked to the criminal proceedings. According to the procedure, police send the asylum authority a report about a potential case of a victim who might be needed in the criminal or civil law proceedings. The decision for granting of a permit takes six months and is valid for one year with the possibility of extension. The residence permit also enables the trafficked person's access to labour market. However, the issuance of the residence permit is linked to court proceedings and extensions must be applied for on time. Different institutions are responsible for granting a permit – while the Federal Office for Immigration and Asylum (BFA) issues “special protection” residence permits for third country nationals, residence permits for EU citizens are granted by the City of Vienna (Municipal Office 35) and are not linked to court proceedings. Outside of Vienna, the responsibility for issuing residence permits for EU citizens falls under district administrative authorities, i.e. Magistrat or Bezirkshauptmannschaft. When an application for international protection is dismissed *ex-eficio*, examination review of temporary residence permit can be opened. According to statistics provided by the BFA, in 2017, 19 victims were granted a residence permit and residence permits for 47 victims were renewed.
43. Victims' access to justice and remedies empowers victims and deters exploitation. The Acting Co-ordinator recognizes that a precondition for access to justice is the provision of free and qualified legal assistance. Criminal Procedure Code Article 66 paragraph 2 provides for victims' legal support and legal representation by an attorney as well as provides for psycho-social support during criminal and civil proceedings. NGOs LEFÖ-IBF and MEN VIA also provide legal advice to trafficked person as referred to by the Ministry of Justice. Diakonie Fluchtinsdient gem GmbH (Diakonie Refugee Service) provides legal advice on behalf of the Ministries of Justice and Interior to non-Austrian nationals, asylum seekers, and trafficked persons in detention or applying for residence permit. The Acting Co-ordinator was informed about a plan of the Austrian authorities to transfer the tasking of legal counselling for asylum seekers and persons facing removal order from NGOs

to the Federal Agency to be established under the Ministry of Interior. He notes the concern of the civil society that such an absolute transfer of responsibilities would jeopardise the independent legal counselling and representation to one of the most vulnerable groups at risk of trafficking in the country and recommends that Ministry of Interior retains the co-operation agreement with the relevant NGOs to benefit with the expertise and capacities of civil society organizations.

44. Article 67 of the Code of Criminal Procedure (CCP) provides for victims' rights to seek restitution for any damages suffered by the criminal offence or compensation for infringements of their legal interests protected by criminal law. Pursuant to Article 373a of the CCP, authorities can grant advance compensation to the victim upon a court decision on compensation if it is evident that a prompt payment of the compensation or any part thereof is fully or mostly thwarted by the execution of a sentence or fine against the sentenced person. Once the order to grant an advance is legally binding, the presiding judge has to call on the Recovery Office of the Higher Regional Court of Vienna to make the payment. Victims can also claim compensation under the Federal Act concerning Support Provided to Victims of Crime.

Pursuant to Article 373b, in cases of forfeiture under Article 20 of the Criminal Code or extended forfeiture under Article 20b of the Criminal Code, if the compensation has not yet been paid, notwithstanding Article 373a, the victim has the right to demand that the victim's claims be settled out of the assets forfeited by the state. The Acting Co-ordinator was informed about a case of successful compensation pursued by LEFÖ-IBF awarded to victims from perpetrators. He is pleased to learn that the issue of compensation for trafficked persons will be the focus area of the Task Force in 2019. While acknowledging the enabling legal framework on compensation, the Acting Co-ordinator notes that access of victims to compensation in practice is reportedly impeded by lack of awareness among law enforcement and the judicial system, adequate information to victims, and the lengthy duration of criminal and civil proceedings. Moreover, obstacles to victim's access to effective compensation also include difficulties in enforcing compensation orders, the non-identification of perpetrators or lack of prosecution and actual seizure and confiscation of traffickers' assets. To this end, the Acting Co-ordinator recommends that Austrian authorities monitor and review the practical implementation of victims' access to compensation, including by conducting regular and targeted training of prosecutors, judges and other relevant actors to ensure compensation awards.

Investigation and prosecution of human trafficking

45. As mentioned previously, criminal investigations of THB are conducted by the Joint Operational Office for Combating Trafficking in Human Beings and Human Smuggling established under the Federal Criminal Intelligence Services. The competencies of this Office include investigation of all cases of human trafficking and related crimes, smuggling of migrants, and identification of victims. The Office also operates a hotline which was established in 2010 to increase the reporting of suspicious cases of human trafficking and exploitation, and is operational 24/7. While the hotline is not used as an emergency line, it assists to identify trafficking

cases and conduct reactive investigations. In 2015, the hotline received 540 calls on suspected cases and inquiries. No data was provided for the proceeding years.

46. The Acting Co-ordinator notes the efforts of the Austrian police in investigation of cases of sexual exploitation which comprise 70 percent of the completed investigations. In 2015, police investigated 63 cases under Art 104a (human trafficking), six cases under Art 104 (slavery), seven cases under Art 116 (exploitation of foreigners) and 61 cases under Art 217 (transnational prostitution trade). This rate increased in 2016, when the police initiated 87 investigations under Art 104a, 1 under Art 104, 8 under Art 116 and 66 under Art 217. In 2017, the police investigated six cases of slavery, six cases of foreigners' exploitation; and 70 cases of transnational prostitution trade. According to statistics provided by the police, out of the 102 human trafficking cases investigated in 2017, the majority of cases investigated were of sexual exploitation; three cases of labour exploitation; five cases of begging; and cases of forced criminality. While positively noting the investigative efforts of the Anti-trafficking Police to detect and investigate cases of sexual exploitation, the Acting Co-ordinator urges the police to increase their efforts to conduct proactive investigations into other forms of human trafficking, including trafficking for labour exploitation.
47. Austria's legislation does not include an explicit provision criminalizing the users of services of trafficked persons as encouraged by Article 19 of the Coe Convention, as well as by Article 26 of the EU Directive 2011/36/EU. Article 205a of the Austrian Criminal Code was introduced in 2016 which criminalizes cohabitation or sexual intercourse with a person against his/her will, taking advantage of a predicament situation or after having been intimidated. According to Austrian authorities, this provision can be applied to criminalize the users of sexual services of trafficked persons. The Acting Co-ordinator notes the decision of the Supreme Court dated 02/27/2019 which found a perpetrator guilty of entering into sexual intercourse with a victim of THB despite knowing the act was involuntary.

Pursuant to the Employment of Aliens Act Article 28c paragraph 2, whoever employs a foreign national without residence in particularly exploitative working conditions in the federal territory; employs a foreign national without residence title in the federal territory of whom he/she knows that he/she is a victim of human trafficking; or employs a large number of foreign nationals without residence title for more than one month in the federal territory, shall be punished with imprisonment of up to two years. While acknowledging the numerous provisions that could be used to criminalize the users of trafficked persons' service, the Acting Co-ordinator believes that the inclusion and effective application of an explicit and clear provision criminalizing the knowing use of services of trafficked persons is crucial to reduce the demand for trafficking of persons for sexual and labour exploitation. He recommends that Austrian authorities consider amending legislation or provide commentary to the existing relevant provision to ensure that the offence covers the knowingly use of the services of trafficked victims.

48. Articles 129 to 136 of the Criminal Procedure Code allow the use of surveillance, undercover investigation, fictitious transactions, and interception of communication and monitoring of suspicious persons by technical means. In some cases these techniques can be used by the Criminal Police following an authorization by the

Prosecutor's Office, while in others these techniques may be conducted independently by the criminal investigation authority and in still others also by a court approval. According to the aforementioned articles, the use of special investigative techniques can be permitted if the inquiry is regarding a criminal offence committed intentionally and punishable by imprisonment for more than one year, while in other cases completely different (statutory) ranges of punishment apply. A report published by an NGO states that in the successful Bulgarian "Haskevo case", the police investigation used telephone surveillance and observations more than statements of victims.³⁰ Anti-trafficking police also reported their engagement in Joint Investigative Teams with countries of origin, such as, for instance, Nigeria and China in the investigation THB cases. The Acting Co-ordinator commends the use of victim-less investigations as well as multi-jurisdictional cooperation.

49. The Acting Co-ordinator is also pleased to note that human trafficking is taught as part of the police's basic training course and also as part of in-service training. The Federal Police Academy (SIAK) under the Federal Ministry of Interior, in partnership with LEFÖ-IBF, offers two advanced training courses per year for police officers on the issue of human trafficking and victim identification. The officers of investigation divisions in the Provincial departments of criminal intelligence also receive annual training courses on THB.
50. As regards the prosecution and adjudication of traffickers, reportedly there are three specialized judges on THB based in Vienna mostly specialized on transnational prostitution trade. Overall, the Acting Co-ordinator notes the comparably low number of individuals convicted in relation to the number of investigations. Austrian authorities prosecuted 10 cases of human trafficking and 24 cases of transnational prostitution trade in 2015, 19 human trafficking and 20 for transnational prostitution trade cases in 2016. In 2017, the authorities prosecuted 6 cases under Art 116, one case under slavery, 31 cases of trafficking and 20 cases of prostitution trade. However, the high number of dismissals in all cases—for example, in 2017, the courts dismissed 77 cases of human trafficking, seven cases of slavery, six cases of foreigner's exploitation and 58 cases of prostitution trade—speaks to the difficulties that are encountered during the lifespan of a case. Additional assessment should be made to evaluate whether there are opportunities to enhance conviction rates in the investigation, prosecution or adjudication phases of the system.
51. The Acting Co-ordinator notes with regret very low number of convictions under trafficking and related statutes of the Criminal Code. According to the statistics provided by the Ministry of Justice, from 2015 to 2017, the courts convicted 15 persons under trafficking statute and 36 persons under the transnational prostitution trade with the largest number in 2016 (10 human trafficking convictions and 16 prostitution trade convictions). However, the courts acquitted 20 persons. There have not been any convictions under other relevant statutes. The Acting Co-ordinator further notes that even though the law provides for severe penalties for human trafficking offences, penalties imposed during the period from 2015 to 2017 show lenient penalties ranging from six months to three years of imprisonment, which are disproportionate to the gravity of the crime. According to the discussion held with

³⁰ Best practices in tackling trafficking Nigerian Route (BINIs), National Report Austria, Herzwerk- Initiative for People in Prostitution, 2018

relevant stakeholders, the low conviction and high acquittal rate is due to the difficulties encountered to prove all of the elements of trafficking; for example, indictments brought to courts are based on testimonies of victim who are extremely traumatised and are often lacking in corroborating evidence³¹. Practitioners report that due to high levels of trauma, particular life circumstances and various dependencies, victims often produce statements that turn out to be only marginally useful.³² Moreover, during the visit, the Acting Co-ordinator was informed about the instances of maltreatment of victims, in particular victims of labour exploitation, during court proceedings. He further notes that psychologists are invited to assist victims during trials, however, typically they are limited to victims of sexual exploitation and are very rarely invited for victims of labour exploitation due to the apparent belief that labour exploitation victims do not experience trauma. In this regard, the Acting Co-ordinator notes that the level of trauma varies in each trafficked and exploited person and every victim is unique with different needs. Therefore it is crucial that the needs of all trafficked persons are properly assessed by mental health specialists who are experienced in working with people who were abused and traumatised before criminal proceedings. In this regard, he also reiterates the need for proper application of recovery and reflection period for victims of all forms of human trafficking both for the benefit of the victim and the criminal proceedings.

52. The UN Convention for Transnational Organized Crime recognizes the fact that victims need assistance and protection beyond their role as witnesses. It requires states to provide support and protection to victims regardless of whether they are witnesses in a case.³³ Similarly, Article 12 of the CoE Convention on Action against Trafficking in Human Beings calls for the adoption of legislative and other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness. Support to victims may create the conditions for them to collaborate in a trial. To this end, noting the heavy reliance of criminal proceedings on victim and witness testimony, the Acting Co-ordinator recommends that Austrian authorities enhance their efforts to effectively prosecute and convict perpetrators of human trafficking by considering other sources of evidence, in addition to the victim testimony, as well as improve victim assistance and protection schemes to secure victim co-operation in criminal proceedings, if necessary by ensuring residence permits for victims/witnesses. Additionally, the Acting Co-ordinator recommends that prosecutors receive additional training on conducting prosecutions in the absence of a co-operative victim to enhance the ability of authorities to hold traffickers accountable.
53. As regards financial investigations and the confiscation of proceeds of trafficking, the Acting Co-ordinator notes the establishment, in January 2018, of the Austrian Financial Intelligence Unit (FIU) under the Criminal Intelligence Service. The FIU (Office 7.3) is one of the three main Offices under the Department 7 on Economic Crimes and comprises a Money Laundering Analysis Unit which is responsible for intelligence, fact finding, analysis and a Money laundering Investigation Unit (Office

³¹ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_prosecuting_thb_for_the_purpose_of_labour_exploitation_en_1.pdf, page 28

³² Best practices in tackling trafficking Nigerian Route (BINs), National Report Austria, Herzwirk- Initiative for People in Prostitution, 2018

³³ Anti-human trafficking manual for criminal justice practitioners Module 12: Protection and assistance to victim-witnesses in trafficking in persons cases, UNODC, 2009

7.2.) which is responsible for investigation of suspicious criminal acts. The core competencies of the FIU are to analyse suspicious transaction reports, implement operational and strategic analysis, manage the analysis database (goAML) and conduct structural investigations for analysis purposes.

54. The Money Laundering Investigation Unit (Office 7.2.) is Austria's first operational money laundering unit which also includes the Assets Recovery Office (ARO). The Office provides services in the field of financial investigations, financial information on predicate offences; serves as a contact point for other investigation groups "asset assurance" in the states and conducts further parallel financial investigations. According to the FIU, in 2017, 31 disclosures were received in relation to THB and approximately 10 financial investigations were conducted in 2017 and 2018 respectively. The Acting Co-ordinator notes that the data on financial investigations related to THB is also included in the annual meeting of THB/red light experts and the Austrian FIU actively participated in the training activities organized by CEPOL and Operational Action Plan in 2018. He welcomes the establishment of the FIU and believes that financial investigation into human trafficking parallel to criminal investigation is an important tool to disrupt the business model of perpetrators as well as to enhance use of corroborating evidence in prosecutions. It also can be used both as punitive measure against traffickers but also protective in relation to reparation and compensation for trafficked persons. To this end, he invites the Austrian authorities to closely co-operate with the OSR/CTHB in its upcoming project on Financial Investigation into Human Trafficking to be launched in 2019.
55. The non-punishment principle in regard to trafficking victims was enhanced in 2017 by a decree of the Federal Ministry of Justice which complemented the jurisprudence of Article 10 (Emergency) of the Criminal Code in relation to trafficking victims. Pursuant to Article 10 paragraph 1, a person who commits an offence to avert an imminent and significant detriment from him/herself or another person is exonerated from criminal liability of the impending harm if damage from that offence is not disproportionately more serious than the detriment that is to be averted and if a reasonable person in the position of that person could not be expected to act differently. According to paragraph 2, this would not apply if the person has deliberately exposed himself to the danger without a reason recognised by the legal system. The decree lists offences that are likely to be committed by the victims, such as theft, fraud (in connection with prostitution or even in in contracts where the victim is considered to be a contractor), documentary offences and drug related offences. If during the proceedings, it is suspected that the offences were committed under such circumstances, Article 10 must also be examined *ex officio*. The Acting Co-ordinator notes that the NAP also includes action to expand the scope of Article 10 to administrative offences, such as restrictions to areas where prostitution is allowed by the Federal Prostitution Law. While positively assessing the Decree of the Federal Ministry of Justice, the Acting Co-ordinator notes the findings of the civil society report this provision is rarely used by judges. He recommends that the decree is widely distributed and explained and is included in the training curricular on human trafficking for prosecutors and judges.

Prevention of human trafficking

56. The Acting Co-ordinator notes that prevention is one of priority areas of the current NAP which foresees regular awareness raising activities among media representatives, embassy staff and private domestic workers of diplomatic households and capacity building activities to all front line officers. It further envisages the examination of possibility of ratification of relevant international documents such as ILO Convention 189 on Decent Work for Domestic Workers of 2011 and the CoE Convention against organ trafficking. Austria's exemplary initiative to take measures to prevent the abuse and exploitation of domestic workers in diplomatic households can serve as a good practice throughout the OSCE. The Acting Co-ordinator commends the work of the Task Force in organizing an annual anti-trafficking conference on specific topics and continuous initiatives to prevent human trafficking and address current and emerging forms of THB.
57. Numerous legally and politically binding commitments at the international level direct States to take action to address the demand that fosters all forms of trafficking including both Article 9 of the Palermo Protocol and Article 6 of the Council of Europe Convention, which call for State Parties to adopt legislative or other measures including educational, social and cultural measures to discourage demand; Article 18 of the EU Directive 2011/36/EU which tasks Member States to discourage and reduce the demand; and the OSCE Action Plan for Combating Trafficking in Human Beings which urges countries of destination to take measures to effectively address demand as a key element in their strategies. The Acting Co-ordinator was unable to identify any actions taken by the Austrian authorities to address the demand as addressed by the EU Directive and COE Convention.
58. Several significant risk factors were identified in Austria with regard to trafficking for sexual exploitation. Prostitution is legal in Austria and according to the Anti-Trafficking Police, there are approximately 800 brothels and 8000 women in prostitution registered in Austria with the majority of them being in Vienna. Europol notes that legalized prostitution makes it "much easier for traffickers who wish to use a legal environment in order to exploit their victims. Organized crime groups engaged in THB calculate the risks, rewards and effort involved, both in absolute terms and in comparison with other activities. One of the reasons for the large number of persons trafficked and exploited in the EU is the extremely high profits involved, against relatively limited risks. Human traffickers constantly try to optimise profits against the operating risks and costs."³⁴ Moreover, "[i]n countries where prostitution is legal, suspects were able to exploit minors alongside adults in window prostitution, sex studios, night clubs, etc., often with the support of the business managers."³⁵ Academic research analysing human trafficking in Austria states that prostitutes are among the groups with the highest victimization rates.³⁶

According to the Comparative Report published by the Immigrant Council of Ireland which examines measures to address demand for the purchase of sex from victims of human trafficking in six EU Member States, migrant women make up 90 per cent of

³⁴ <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu> at page 12.

³⁵ <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu> at page 30.

³⁶ The Way to a Better Life? Human Trafficking in Austria – a bilateral research project, Huber, Edith et al, SIAK-Journal for Police Science and Practice, International Edition vol.8 2018, p66 available at https://www.bmi.gv.at/104/Wissenschaft_und_Forschung/SIAK-Journal/internationalEdition/2018/Huber_IE_2018.pdf

those in prostitution in Austria³⁷. The data collected during the visit shows that while two thirds of women in prostitution come from other EU Member States, women from Nigeria, China and recently Venezuela comprise large numbers working in prostitution in Austria.

Several of the interlocutors met during the visit stated that most Nigerian victims of trafficking for the purpose of sexual exploitation who come to Austria have first claimed asylum. Asylum seekers can acquire self-employment status three months after logging an asylum request in accordance with Article 18 (self-employment) of the Refugee Convention of 1951. Prostitution in Austria is accessible without a work permit that is required for most other types of employment and has very few obstacles to entry in comparison to other independent professions that require a trade license.³⁸ According to the police and other interlocutors, due to these factors—as well as inability to speak the language to access other areas of the labour market effectively—these women often end up in trafficking situations.

The Acting Co-ordinator notes the conclusions reflected in the reports cited above, including that any measures seeking to address human trafficking for sexual exploitation must recognise that victims “can be hidden within mixed population of independent, exploited and coerced prostitutes and in mixed migration flows”.³⁹ While acknowledging the continuous efforts of the Anti-trafficking police to identify trafficked persons, the Acting Co-ordinator recommends that Austrian authorities enhance their efforts to identify victims of human trafficking among persons in prostitution; reduce the demand that fosters trafficking of foreign women for prostitution; closely monitor the places which provide or advertise sexual services, including internet ads and websites; and enforce the penalties against users as provided under Art 205a of the Criminal Code.

59. The Acting Co-ordinator further notes that Article 15 of the Reception Directive provides for effective access to labour market to all asylum seekers after nine months of logging the asylum request. According to the Chamber of Labour, the access of asylum seekers to seasonal work only cannot be regarded as effective access to labour market and is in violation of European Labour law. The Acting Co-ordinator recommends that Austrian authorities ensures that asylum seekers eligible to self-employment are provided with adequate skills and opportunities to prevent their abuse and exploitation by traffickers, including by expanding the sectors and workplaces where asylum seekers are allowed to work to both prevent possible abuse and exploitation and empower vulnerable persons in need of special protection.

60. The Reception Centre in Traiskirchen is one of two centres⁴⁰ for asylum seekers in the admissibility procedure and for unaccompanied minor asylum seekers as long as they are not transferred to reception facilities of the federal provinces.⁴¹ According to the Asylum Information Database (AIDA) of the European Council of Refugees and Exiles (ECRE), citizens of Syria, Afghanistan, Pakistan, Iraq and Nigeria comprise

³⁷ Comparative Report: Disrupt Demand, Immigrant Council of Ireland, 2018, available at <<https://www.immigrantcouncil.ie/sites/default/files/2018-11/ICT%20AntiTrafficking%20Report2018-A4-WEBBSITE-FA.pdf>>

³⁸ Best practices in tackling trafficking Nigerian Route (BINIs), National Report Austria, Herzwerk- Initiative for People in Prostitution, 2018

³⁹ Ibid

⁴⁰ The other reception centre for asylum seekers is located in Thalham

⁴¹ Asylum Information Database, Austria, Types of accommodation available at <https://www.asylumineurope.org/reports/country/austria/reception-conditions/housing/types-accommodation>

the largest number of asylum seekers in Austria. ORS, a company contracted by the Ministry of Interior provides care to asylum seekers. If, during an initial examination of psychological and physical status, the person claims exploitation, the ORS informs the Ministry of Interior upon the consent of the potential victim. The Acting Co-ordinator notes that while this can be done in theory, there is no centralised formal procedure for referral and that the reporting of a suspicious case of exploitation is not mandatory. He further notes that the laws relating to the reception of asylum seekers include no mechanism for identifying vulnerable persons with special needs.⁴² According to Centre's representative met during the visit, annually 4-5 victims of trafficking are identified during the initial screening, and at the time of the visit, ORS identified four trafficking victims from Nigeria and Afghanistan, and fourteen unaccompanied minors. The new NAP includes enhanced training activities to improve the identification of trafficking persons in the asylum procedures. Nevertheless, the funding of such activities is at the discretion of the various agencies which create challenges in actual implementation. In this regard, the Acting Co-ordinator recommends that Austrian authorities, namely the Ministry of Interior develop a mechanism for identifying trafficked persons in the reception facilities. For this purpose, he wishes to inform about the recent publication of the OSR/CTHB Uniform Guidelines for the Identification and Referral of Victims of Human trafficking within the Migrant and Refugee Reception Framework in the OSCE region⁴³ which could provide a useful guidance in developing such mechanism in Austria.

61. Numerous stakeholders consulted during the visit shared concerns about cases when trafficked persons claiming asylum fall under the Dublin regulation procedure and are returned back to the country of first entry despite clear indications of being trafficked. Such returns can place the person at risk of exploitation or re-traumatization. According to civil society organizations, these cases particularly concern women entering Austria from Italy where they had reportedly been sexually exploited. According to IOM, although not directly related to the assessment of international needs, the Dublin procedure plays a decisive role in the access of trafficked persons to residence rights provided through the asylum procedure.⁴⁴ Although the Dublin Regulation does not mention trafficking as a criteria for the assessment of the asylum claim by a responsible member state, Article 17 of the Regulation provides that each member state may decide to examine an application for international protection lodged by a third-country national or stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation. While positively noting the number of positive asylum decisions—particularly of the second instance courts—in recent years, the Acting Co-ordinator is informed about a gap in the Austria's legal system when it comes to protecting to persons falling under the Dublin process. In this regard, he shares the concern of the stakeholders that in cases qualifying for the Dublin process, appropriate risk assessments and transnational referral processes should be put in place to ensure that the person returning to the country of first entry does not face re-victimization and receives immediate assistance and protection in the country. In cases when there is a reasonable grounds to believe that the person is a victim of trafficking, *ex-officio*

⁴² Ibid

⁴³ <https://www.osce.org/secretariat/413123>

⁴⁴ Trafficked persons as asylum seekers, The process of identification and access to Residence Rights in Austria, IOM 2014, http://publications.iom.int/system/files/pdf/trafficked_persons_as_asylum-seekers_en.pdf

residence permit should be considered; and the principle of *non-refoulement* should be applied as provided under Articles 2 and 3 ECHR, or Article 8 of the European Court of Human Rights.

62. According to a report published by the EU Fundamental Rights Agency (FRA), there is no public authority in Austria which has a legal mandate to monitor labour exploitation and enable victims of labour exploitation to access justice.⁴⁵ Nevertheless, there are two authorities that have mandates that are relevant to detection of labour exploitation: the labour inspectorate and the financial police. The Labour inspectorate mandate is limited to inspecting work places for health and safety conditions, while the financial police monitor work contracts, social security and wage tax payments in order to prevent tax fraud. There are 300 labour inspectors and 17 of them are assigned to agriculture and forestry. According to stakeholders met during the visit, the limited capacity of labour inspectors impedes the effective identification of forced labour in workplaces. Although the Austrian Work Inspection Act mandates the labour inspectors to report on suspected cases of labour exploitation such as underpay, irregular work, and human trafficking to the financial police as well as suspicious cases of severe labour exploitation to the criminal police, in practice this reporting only occurs if there is a strong suspicion such exploitation which occurs very rarely.⁴⁶ The Acting Co-ordinator notes with support that the co-operation between police, labour inspectors and financial police has increased in past years in terms of conducting joint raids and visits to workplaces prone to exploitation; nonetheless only handful number of labour trafficking victims have been identified to date. The number of victims identified appears inconsistent with the relatively high volume of reports of underpayment (see paragraph 65 below). Reportedly, increased attention to smuggling during inspections discourages irregular migrants to report abuse and prevent any person to come forward and speak up. To aid the situation, the Counselling Centre for Undocumented Workers (UNDOK) was established in 2014 with the funding of the Federal Ministry for Labour, Social Affairs and Consumer Protection, the Austrian Chamber of Labour and the Trade Unions. This Centre informed irregular migrant workers without residence and work permits about their rights in different languages. Recently, the operation of UNDOK was significantly decreased due to the reduction of the funding from the Ministry.
63. In Austria, the requirements applying to the posting and hiring of workers as well as associated legal implications are not contained in a single statute but provided for in several laws.⁴⁷ This includes but is not limited to Anti-Wage and Social Dumping Act, Temporary Agency Work Act, Employment of Foreigners Act, Trade Code and Annual Leave and Severance Pay for Construction Workers Act. According to the Ministry of Labour, while employment of third country nationals is restricted to seasonal work, EU nationals are permitted to work in construction. Despite the regulations on working times and collective agreements, working conditions in harvesting reportedly can be poor. Excessive working hours are reported, living conditions are bad and passports are taken away and locked during the harvest season.⁴⁸

⁴⁵ Severe Forms of Exploitation, Supporting Victims of severe forms of labour exploitation in having access to justice in EU Member States, Austria 2014, FRA

⁴⁶ *Ibid*

⁴⁷ https://www.postingofworkers.at/cms/Z04/Z04_10_999.8/legal-framework

⁴⁸ Combating THB for Labour Exploitation in Austria, Julia Planitzer 2015
https://bim.lbg.ac.at/sites/files/bim/THB%20for%20Labour%20Exploitation_Chapter%201_Austria_JPlanitzer_HSax_2.pdf

64. Prevention of labour exploitation in supply chains is one of the key preventive measures under Austria's new NAP. Through its measure 2.21, the NAP for the first time includes a specific action to examine public procurement law in relation to human trafficking. The Acting Co-ordinator comments Austrian authorities for efforts to adopt and implement these measures. According to stakeholders consulted during the visit, problems with the subcontracting companies in the construction industry led to the addition of customer responsibility provision to the Anti-Wage and Social Dumping Act in 2017 to secure remuneration claims for foreign employees working in the construction industry. It complemented and broadened the general provision of the Construction Worker's Annual Leave and Severance Pay Act and created liability for customers for accepting the contract with a knowledge or suspicion about unpaid wage or exploitation. According to the data provided by the Ministry of Labour and Social Policy, from 2011 to 2017 the authorities received 3,017 reports of underpayment concerning 12,168 workers from EU countries which resulted in 2,198 decisions and penalties imposed in the amount over 21 million. The majority of workers were involved in construction, food preparation and service, and transport. To this end, the Acting Co-ordinator recalls that the ILO's Labour Inspection Convention No. 81 (1947) defines the role of labour inspectorates in three areas: prevention, advisement and enforcement⁴⁹ and believes that the application of these roles requires proper mandate, adequate resource and staffing. He recommends that labour inspectors and financial police are provided with a sufficient mandate and trained regularly to identify human trafficking and play a frontline role to detect and refer cases of labour exploitation in workplaces. Once a clear mandate is established through policy, labour inspectors can play an important role in prevention, dispute resolution and labour law enforcement and through the application of civil penalties on offenders.
65. The Austrian Federal Chamber of Labour is one of the main pillars of social partners and is a unique institution that requires compulsory membership of all employees working in private organizations. It is also part of the Task Force Working Group on Labour exploitation. The Acting Co-ordinator was informed that the Chamber has a strong focus on combating labour exploitation and is known by the general public as first point of contact to reach out for help in case of dispute with employers. Nevertheless, only severe cases of labour exploitation are reportedly identified and foreign migrant workers only reach out for help when they lose their jobs. The Acting Co-ordinator commends the work of the Austrian Federal Chamber of Labour and believes social partners are important actors in combating trafficking in particular in workplaces.
66. In conclusion, while positively noting the commitment and numerous steps taken in the prevention and countering of trafficking by the Government of Austria, particularly in the area of strong policy adoption, the Acting Co-ordinator encourages the authorities to continue their efforts and invites them to consider the following recommendations to enhance the implementation of OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human

⁴⁹ Model Guidelines on Government measures to prevent trafficking for labour exploitation in supply chains, OSCE, 2018

Beings and its Addenda⁵⁰. The Acting Co-ordinator and his Office stand ready to provide technical assistance, if requested, by national and local authorities, as well as civil society, and welcomes further dialogue and co-operation to promote an appropriate follow-up of these recommendations.

Recommendations

1. Enhance legal, policy and institutional framework by:

- Ratifying ILO Convention 189 concerning Decent Work for Domestic Workers.
- Ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 2003.
- Amending legislation where necessary to include an explicit reference to the *irrelevance of victim's consent* to the intended exploitation.
- Improving monitoring and evaluation of anti-trafficking action by separating the National Rapporteur function from the National Co-ordinator function to ensure independent assessment and reporting of anti-trafficking action and its effectiveness; improving research and data collection and analysis in order to develop effective and well-targeted anti-trafficking policies.
- Continuing to engage all provinces of Austria in the work of Task Force and its Working Groups to ensure equal anti-trafficking measures in the country

2. Enhance victim identification, assistance and protection by:

- Finalizing and using a formal mechanism to identify and refer adult victims of trafficking to support services.
- Enhancing measures to identify victims of trafficking among persons involved in prostitution, asylum processes and in detention facilities for irregular migrants; reviewing existing practices of identifying means in THB cases including by expanding the focus on other subtle means of trafficking such as deception, abuse of position of vulnerability and various forms of coercion.
- Enhancing measures to identify victims of trafficking of various exploitative purposes, particularly of forced criminal activities with a view to developing targeted responses. In line with the relevant OSCE Ministerial Council Decisions and the recommendations proposed in

⁵⁰ OSCE Permanent Council, Decision No. 557/Rev.1 *OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Permanent Council, Decision No. 1107 *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

the recently published report of the OSR CTHB on “Child Trafficking and Child Protection”⁵¹, strengthening the current system of child protection and the overall child protection strategy, and tackling all forms of exploitation of children; and prioritizing care and protective measures for children in reception and temporary protection centres.

- Monitoring and evaluating the effectiveness of the National Referral Mechanism to identify child victims of human trafficking, including by training front line officers and child protection authorities. Finalizing and putting into practice the country-wide concept for protection and support of child victims of trafficking including by developing secure accommodation and safe houses in all provinces.

- Increasing the focus on labour trafficking by raising awareness in industries at risk for exploitation of foreign migrant workers, such as construction, agriculture and catering; expanding the mandate and capacities of labour inspectors and financial police to identify and refer victims of labour exploitation to relevant agencies and relief measures as prescribed by the relevant laws.

- Developing formal identification and referral procedures for persons in asylum processes to ensure the persons get early intervention and assistance in case of reasonable grounds of human trafficking.

- Revising legislation to include explicit reference to a reflection and recovery period for persons when there are reasonable grounds to believe the person is a victim of trafficking.

- Reviewing the mechanism for issuing residence permits for trafficked persons and individually assessing cases with residence requests in addition to the mandatory requirement for the criminal proceedings.

- Continuing to work with the civil society organizations to provide legal counselling for asylum seekers and persons facing removal order.

- Developing simple and effective procedures to enable trafficked persons’ access to compensation, including by monitoring and evaluating the current practices of compensation procedures, and providing training for law enforcement and judiciary on victim’s right to compensation.

3. Enhance the criminal justice response to all forms of human trafficking by:

- Prioritizing proactive investigations and prosecutions without solely relying on victim testimony, as well as by making the best use of special investigative tools, including wiretapping, surveillance and undercover operations, and developing capacity building activities for investigators and prosecutors to advance the victimless investigations.

⁵¹ Available at <https://www.osce.org/secretariat/405095>

- Providing a comprehensive guidance to practitioners—particularly law enforcement, prosecutors, and judges—on all laws and related jurisprudence connected to anti-trafficking within Austria’s rather complex legal framework. This would help ensure consistent and complete use of all legal tools to combat trafficking.

- Enhancing measures to investigate human trafficking for labour exploitation, child trafficking, and trafficking for forced criminal activities.

- Enhancing efforts to effectively prosecute and convict perpetrators of human trafficking by considering other sources of evidence, in addition to victim testimony, and by improving assistance and support to victims to secure victim cooperation with the criminal proceedings.

- Reviewing and assessing the application of Article 205a of the Criminal Code in criminalizing the users of services of trafficked persons, including by considering amending legislation and/or providing commentary to the jurisprudence and usage of the Article to ensure it serves the purpose of criminalizing the knowing use of—and thus reducing the demand for—sexual and labour exploitation.

- Improving the treatment and assistance measures for victims, in particular victims of labour trafficking, during court proceedings including by providing regular training for prosecution and judicial authorities on trauma-informed treatment and interviewing of victim witnesses.

- Ensuring the principle of non-punishment of victims is effectively implemented in practice in accordance with the decree on the application of Article 10 of the Criminal Code and regular training for judges and prosecutors is conducted to ensure its proper application.

4. Enhance prevention of human trafficking by:

- Increasing and supporting prevention efforts by focusing on the demand that fosters all forms of trafficking, including adoption of appropriate legislative, educational, cultural and social measures to discourage demand and by closely monitoring the places and sites offering prostitution services to prevent exploitation of foreign women in this industry.

- Monitoring and evaluating the current system and practices of asylum seekers’ self-employment, and access to the labour market including expanding the sectors and work-places where asylum seekers are eligible to work to prevent possible abuse and exploitation.

- Introducing risk assessment and transnational referral mechanisms in cases falling under the Dublin Regulation, and ensuring the principle of *non-refoulement* is respected in regard to trafficked persons.

- Considering the sustainability of funding for UNDOK to ensure the provision of support to irregular migrant workers in their residence claims and work permits.

- Taking preventive measures, aimed at eradicating deceptive and exploitative practices regarding the recruitment of migrant workers in sectors which are prone to exploitation through providing regular inspection of work places as well as using joint operations and investigations with other relevant agencies.

- Conducting training for the staff of reception facilities and ORS on how to detect indicators of abuse and exploitation and to refer presumed victims for assistance to service providers.

Programme of the visit

Monday, 19 November 2018	
09:00-10:00	Meeting with Anti-trafficking National Co-ordinator, Ambassador Petra Schneebauer
11:00-13:00	Meeting with Anti-trafficking NGOs
Tuesday, 20 November 2018	
09:00-10:00	Meeting with Birgit Einzenberger, Head of the Legal Unit of the UNHCR National Office in Austria
Wednesday, 21 November 2018	
09:00-10:30	Meeting with the Ministry of Justice, Prosecutor's Office and the Criminal Court
12:00-13:30	Meeting with the Federal Office for Immigration and Asylum, Erstaufnahmestelle Ost (Reception Centre East)
15:00-16:30	Meeting with the Federal Chancellery, Directorate General for Families and Youth & Directorate General for Women and Equality Issues, Ombudsman Office for Children and Youths
16:45-18:00	Meeting with the Katie Klaffenbock, IOM Focal point for Austria
Thursday, 22 November 2018	
10:30-11:30	Meeting with the Ministry for Labour, Social Affairs, Health and Consumer Protection, Labour Inspectorate
14:00-15:30	Meeting with the Ministry of Interior and Financial Police
16:30-17:30	Meeting with the Ministry for Europe, Integration and Foreign Affairs
Friday, 23 November 2018	
09:00-10:30	Meeting with the Joint Operational Office for Combating Human Trafficking and Human Smuggling, Federal Criminal Intelligence Service
Monday, 14 January 2019	
09:00-10:00	Meeting with the Joint Operational Office for Combating Human Trafficking and Human Smuggling
11:00-12:00	Visit to the Socio-Pedagogical Institution for Unaccompanied Foreign Minors "Drehschiebe"

**Comments of Austria to the Report by the OSCE Acting Co-ordinator for Combating
Trafficking in Human Beings following the official visit to Austria**

19-23 November 2019 and 14 January 2019

(received on 24 July 2019)

Comment to para 43

In this context, it should be added that Article 66 par. 2 Criminal Procedure Code (CCP) does not only provide for victims' legal support and legal representation, but also for psycho-social support for the proceedings, if this is necessary to preserve the rights of the victim, taking into account their personal concerns. Psycho-social support for the proceedings includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and at trial. Some victims are afforded this support in any case (victims whose sexual integrity might have been violated and who are under the age of 14). The Federal Minister for Constitution, Reforms, Deregulation and Justice is authorized to enter into agreements with established, suitable institutions so that they, after assessing the statutory requirements, provide support for the proceedings to victims within the meaning of Article 65 subpara. 1 lit. a or b CCP. The victims' support organisations are entrusted with the decision whether to grant the assistance. The reason behind is that the needs assessment requires expertise the victims' support organisations have. The assistance is provided free of charge, independent of the victim's financial situation. The costs are initially borne by the victim support organisation entrusted with the provision of the assistance and refunded by the Federal Ministry for Constitution, Reforms, Deregulation and Justice. When the accused person is convicted, he/she has to replace the costs of the proceedings including a lump sum for the court assistance of up to € 1.000,-- (Article 381 par. 1 subpar 9 CCP).

Article 65 subpara. 1 CCP stipulates that "victim" refers to

- a. any person who, through an intentionally committed criminal offence, might have been exposed to violence or dangerous threats, or might have been violated in their sexual integrity or sexual self-determination, of whose personal dependency might have been exploited by such an offence,

- b. the spouse, registered partner, domestic partner, relatives in a direct ancestral line, siblings, and other dependants of a person, whose death might have been caused by a criminal offence, or other relatives who were witnesses of the crime,
- c. any other person who might have suffered damage or whose legal interests protected by criminal law might have been violated through a criminal offence.

Moreover, it should be noted that in Austria according to Article 66 para. 1 CCP victims generally have the right to be represented, receive written confirmation of their report of a crime, have their special protection needs assessed as soon as possible, access files, obtain information about the subject matter of the proceedings and about their principal rights before questioning, be notified about the progression of the proceedings, obtain interpretation aid through an interpretation service, participate in the adversarial examination of witnesses and accused and in a re-enactment of the crime, be present during the main trial, to question the defendant, witnesses and expert witnesses and to be heard concerning their claims and demand resumption of proceedings that were ceased by the prosecution authority.

It should also be taken into account that there are special rights for particularly vulnerable victims (victims of sexual offences, of violence in residential dwellings, victims under the age of 18 years, other victims that are granted this status under certain circumstances) in Austria, namely to demand to be interviewed in investigation proceedings by a person of the same gender if possible, refuse to answer questions concerning details of the criminal offence, if they consider giving their account to be unreasonable, or questions concerning details of most personal private sphere, demand to be interviewed in a considerate manner in investigation proceedings and in the main trial, namely that a victim who is a minor whose sexual sphere might have been violated by the accused through the offence he or she is accused of is, in any case, interviewed in the manner described in Article 165 para. 3 Criminal Procedure Code, if necessary by an expert witness, demand to exclude the public from the main trial, be informed ex officio immediately of the release or escape of the accused person from custody and provisional custody and consult a person who they trust if questioned (Article 66a para. 2 CCP).

However, Article 66 paragraph 2 Criminal Procedure Code provides for victims' legal support and legal representation by an attorney only during criminal proceedings. Victims' legal support and legal representation by an attorney in civil proceedings is not encompassed by the Criminal Procedure Code, but by provisions in the Civil Procedure Code.

Comment to para 44

It should be clarified that victims, who have become a private participant according to Article 67 para. 1 CCP, besides other rights particularly may request the taking of evidence, may, in case the public prosecutor withdraws the indictment, pursue the indictment as subsidiary prosecutor, may appeal against the court decision to dismiss the charges, have the right to be summoned to the trial and may give reasons for the claim and may appeal against the court decision in regard of his or her claims.

Comment to para 47

Introducing a threat of punishment for “the knowingly use” of the services of trafficked persons might actually weaken the current legal provisions.

For an intentional criminal offence, the perpetrator has only to seriously consider the offence to be conceivable and be prepared to accept it. (Art.5 Criminal Code). The “knowingly use” of the services of trafficked victims might require certainty (“Wissentlichkeit”) instead of only intent.

Comment to para 48

It has to be clarified that in some cases the Criminal Police needs the authorization by the Prosecutor’s Office, while in others these techniques may be conducted independently by the criminal investigation authority and in still others also a court approval. It should also be clarified that only in some cases, the condition of the use of special investigative techniques is the perpetration of a criminal offence committed intentionally and punishable by imprisonment for more than one year, while in other cases completely different (statutory) ranges of punishment apply.

Comment to para 51

In this context, it should again be mentioned that according to Article 66 paragraph 2 CCP victims may be granted psycho-social support for the proceedings, if this is necessary to preserve their rights, taking into account their personal concerns. Psycho-social support for the proceedings includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and at trial, as already described in the remark to para. 43. According to Article 66a para. 1 CCP victims have the right to have their special protection needs assessed and determined as soon as possible subject to their age, psychological and health condition as well as the type and specific circumstances of the criminal offence. In the case of particularly vulnerable victims (for the definition please see

remark to para. 43) there is also always the possibility upon request to be interviewed during the investigation and the trial phase in a protecting manner by an expert (in most cases a psychologist or psychiatrist). In this context, “protecting manner” means that the public prosecutor, the accused person and his/her lawyer are not present in the room where the interrogation takes place, but can follow the interrogation via video equipment.

Comment to para 52

In this context, it should be clearly pointed out that the possibility for victims to get legal and psycho-social support according to Article 66 para. 2 CCP – and in general all victim rights in criminal proceedings – are granted regardless of whether a victim cooperates with law enforcement agencies. There is no provision in the CCP, which would focus on the cooperation of victims in criminal proceedings or even make the grant of rights dependent on it – such a regulation would otherwise have to be regulated expressly as a statutory exemption according to the system of the CCP.

In addition, it should be pointed out that the granting of psycho-social and legal support in proceedings is not at the discretion of the public prosecutor or the court. On the contrary, the Federal Minister for Constitution, Reforms, Deregulation and Justice is authorized to enter into agreements with established, suitable institutions so that they, after assessing the statutory requirements, provide support for the proceedings to victims. The victims’ support organisations are entrusted with the decision whether to grant the assistance. Therefore, the co-operation of a victim in investigations or main proceedings can by no means constitute a precondition for the granting of psycho-social and legal support in proceedings.

Moreover, according to Article 106 CCP, any person claiming to have their personal rights violated in investigation proceedings by the prosecution authority may raise objections to the court if the exercise of a right under the CCP has been refused or an investigative or coercive measure has been directed or executed in violation of provisions under the CCP.