

Committee of the Parties
to the Council of Europe Convention
on Action against Trafficking in Human Beings



CP(2017)11

**Report submitted by the Austrian authorities
on measures taken to comply with
Committee of the Parties Recommendation
CP(2015)14 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings**

Second evaluation round

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Report of Austria concerning the recommendations of the Committee of the Parties adopted at its meeting on 30 November 2015:

[The Committee of the Parties] recommends that the Austrian authorities take measures to address the following issues for immediate action identified in GRETA's report:

- include prosecutors as members of the Task Force and its working groups with a view to increasing the involvement of the Prosecutor's Office in combating human trafficking and strengthening national co-ordination;

Prosecutors in Austria are organised hierarchically and subordinate to the instructions by the competent higher authorities - ultimately to the Federal Minister of Justice. Since the Federal Ministry of Justice is an active Member of the Task Force and its working groups, involving the Prosecutor's Office would not result in any added value. It should be added that the Austrian Ministry of Justice each year conducts a round table with representatives of NGOs, prosecutors, judges and law enforcement authorities to discuss concrete proceedings and their finalization in an in-depth way. This seems to be more effective in terms of enhancing cooperation and understanding for the needs of victims of THB. Furthermore - as has already been the case in the past - prosecutors are invited to meetings of the Task Force which are of interest to them.

- develop and maintain a comprehensive and coherent statistical system on trafficking in human beings, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, by compiling reliable statistical data on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of human trafficking cases; statistics regarding victims should be collected from all main actors and allowing disaggregation concerning sex, age, type of exploitation, country of origin and/or destination; this should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database;

An adaptation of criminal statistics allowing the collection of additional data is currently under preparation. As a follow-up step, the Federal Ministry of the Interior, the Federal Ministry of Justice and relevant NGOs will elaborate a joint commentary on their respective statistical systems, containing their common understanding on why different statistical systems on human trafficking are justified in different contexts (police investigations, convictions, cases of NGO assistance, etc.).

- improve the identification and assistance to child victims of trafficking, in particular by:

- **adopting as a matter of priority a National Referral Mechanism for child victims of trafficking which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of trafficking and children at risk;**

In October 2016, the Working Group on Child Trafficking under the umbrella of the Task Force concluded its long lasting preparatory work and finalised comprehensive guidelines for identification, referral and protection of child victims of trafficking that were widely distributed to all relevant authorities and institutions that might get in contact with potential victims.

- **ensuring that child victims of trafficking across the country benefit from the assistance measures provided for under the Convention, including appropriate accommodation, effective access to free legal assistance and psychological support, and take steps to address the problem of children going missing while in the care of the state;**

With regard to criminal proceedings, victims of THB have effective access to free legal assistance and psychological support irrespective of their age. According to para. 66 subpara. 2 Criminal Procedural Code (CCP), a person who might have been a victim of violence or dangerous threat or whose sexual integrity might have been violated (para. 65 subpara. 1 lit. a CCP) is entitled to obtain psycho-social and legal assistance upon request to the extent necessary in order to safeguard his/her procedural rights while having the greatest possible consideration for his/her personal involvement; child victims of THB are encompassed by this general rule. Victims whose sexual integrity might have been violated (e.g. sexual exploitation) and who have not completed their fourteenth year of age, are entitled to psychosocial assistance in any event.

Psycho-social assistance encompasses the victim's preparation with regard to the criminal proceedings and the related emotional stress, and to accompany him or her to hearings as a witness. Legal assistance comprises legal advice and the victim's legal representation during the criminal proceedings, both provided by a lawyer. Victims are granted psychosocial and legal assistance according to their individual need, as is regularly the case with victims of THB (irrespective of their age). Victims whose sexual integrity might have been violated and who are under the age of 14 are granted psycho-social assistance in any case.

- ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking, including EEA nationals, are offered an effective

recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period; officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators;

The Federal Ministry of the Interior has issued a binding internal decree introducing a recovery and reflection period of a minimum of 30 days for all presumed victims of THB regardless of their nationality. During this period no measure putting an end to the person's residence in Austria must be taken. The full range of assistance and protection without any conditions is available to all presumed victims. Thus, it is not conditional on the victim's cooperation and it is offered before formal statements are made to investigators.

- take additional measures to ensure compliance with the principle of non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, as contained in Article 26 of the Convention; such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers and prosecutors on the scope of the non-punishment provision, including with regard to administrative/civil law sanctions; further, the Austrian authorities should examine the possibility of repealing administrative sanctions imposed against victims of trafficking.

In February 2016, an Ad hoc-Working Group under the umbrella of the Task Force on Combating Human Trafficking has been established, with the objective of assessing the implementation of the non-punishment principle and, where appropriate, to elaborate measures to improve compliance with the principle. The Ad hoc Working Group met four times until November, a next meeting is foreseen in December 2016. As a first result of the deliberations, the Federal Ministry of Justice is currently preparing a decree containing guidance for prosecutors and judges on the implementation of the non-punishment principle in the context of the criminal law. As a further step, implementation of the principle in the context of administrative/civil law shall be assessed in 2017. Furthermore, discussion on the non-punishment principle was part of the agenda of the yearly meeting of the Task Force dedicated to issues concerning the competences of the federal provinces.