

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CP(2013)11

**Report submitted by the Austrian authorities
on measures taken to comply with
Committee of the Parties Recommendation CP(2011)1
on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings**

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Vienna, 27 September 2013

Ref. to your letter dated 2.8.2013
DG-I/PN/DD/mc

Petya Nestorova
Executive Secretary
of the Council of Europe Convention on Action
against Trafficking in human beings
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Dear Mrs. Nestorova,

Thank you very much for your letter dated 2 August 2013 on the follow up to recommendation CP(2011)1 of the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings on the implementation of the Convention by Austria.

It is my pleasure to transmit the information on the measures taken by Austria to comply with the said recommendation, as requested by the Committee of the Parties in paragraph 2 of recommendation CP(2011)1, .

This information focuses on the period since the adoption of the recommendation on 26 September 2011 and intends to complement but not to repeat information transmitted earlier during the 1st evaluation round (Austria's reply to GRETA's questionnaire published in August 2010 and Austria's comments to the GRETA report published on 15 September 2011).

We look forward to the discussion at the meeting of the Committee of the Parties on 7 October 2013.

Yours sincerely,

Elisabeth Tichy-Fisslberger

Encl.

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Measures taken to comply with recommendation CP(2011)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria

26 September 2013

Comprehensive approach and co-ordination in the fight against THB

Recommendation 1

Austria continuously strives to reinforce the comprehensive approach to the fight against all forms of THB and to strengthen coordination at the national and international levels. A recent amendment to section 104a of the Criminal Code on THB includes a more comprehensive list of forms of exploitation. One of the working groups reporting to the Austrian National Task Force on Combatting Human Trafficking (Task Force) is dedicated to the issue of child trafficking. In order to look deeper into the issue of trafficking for the purpose of labour exploitation, another specialized working group has been established in late 2012. Moreover, a recent study by the Men's Health Center on male victims of THB is one contribution to the basic research required for improving the protection of male victims of THB.

Recommendation 2

Representatives of all *Länder* are members of the Task Force and its working groups (which cover the areas of prostitution, child trafficking and labour exploitation), they are invited to all meetings and receive all documents. The Task Force organizes *Länder* conferences on a regular basis: the first such conference took place in 2011 in Vienna; in 2013 the 2nd meeting was organized in Graz, Styria. Both conferences had a comprehensive agenda encompassing a variety of issues. Both were well attended by representatives of almost all *Länder*. Upper Austria and Carinthia confirmed that they would host the next conferences in 2014 and 2015 respectively.

Recommendation 3

All anti-trafficking action is funded from the allocated budgets of the ministries and other competent actors. The actual needs are assessed on a continuous basis, which for example lead to an increase of the annual budget for the victim support organization LEFÖ-IBF in the period covered by this report (2011-2013).

International co-operation

Recommendation 4

International police cooperation and networking have intensified with countries of origin, e.g. Romania, Bulgaria, Slovakia, Hungary and the Czech Republic as well as with other countries such as Thailand. Austria also supports joint projects with

EUROPOL in the framework of EMPACT.

Austria is actively engaged in all international fora, including the UN, the OSCE, the EU, etc on the issue of THB. Austria also takes advantage of specific bodies, such as Eurojust, which have been established with a view to reinforcing the fight between the competent judicial authorities against serious crime. In addition to granting effective legal assistance Austria has intensified cooperation with European countries involved in the fight of THB - especially in the context of coordination meetings at Eurojust. An Expert from the Federal Ministry of the Interior/Federal Criminal Intelligence Service and a judge participated in the project “Enhancing multi-stakeholder cooperation to fight human trafficking in countries of origin and destination”. The project which was organised by UNODC in cooperation with IOM as well as the NGO EXIT and financially supported by the Austrian Federal Ministry for European and International Affairs aimed at building capacity to enhance operational cooperation between Nigerian and European law enforcement, judiciary and victim service providers.

The prevention of human trafficking through fighting poverty and increasing human security is a focus area in projects with partner countries of the Austrian Development Cooperation. Recently, a co-operation between the Austrian Development Agency, the Ludwig Boltzmann Institute for Human Rights and the Criminal Intelligence Service Austria was initiated to strengthen national, international and regional co-operation in combating organized crime, including trafficking with a special focus on victim protection, non-discrimination and gender, data protection and prevention of torture and inhuman or degrading treatment.

Austria works closely with other host countries to international organizations on measures to prevent exploitation of domestic workers in diplomatic households.

The Initiative “Austria and Neighbouring Countries - Preventing and Combating all Forms of Trafficking in Women: Improving Transnational Coordination and Cooperation; Developing and Strengthening Networks and Partnerships with Third Countries” was launched by the Austrian Federal Minister for Women and the Civil Service, with the Austrian Institute for International Affairs/Österreichisches Institut für Internationale Politik (oiip) as the lead organization, in cooperation with the International Organization for Migration (IOM). This Initiative started with a High-level Ministerial Round Table on 20 September 2010 in Vienna, where the participants agreed on the Vienna Declaration. Amongst others, the participants declared to improve coordination and cooperation in combating THB and to advocate for the establishment of national/regional monitoring and reporting mechanisms, for data collection and evidence-based research (http://thbregionalinitiativeoiip.files.wordpress.com/2012/08/oiip-vienna_declaration-final.pdf). A “Master Plan for Implementation - Joint Regional Activities for the Period 2011 to 2013” is to be implemented by government authorities in cooperation with NGOs of participating countries with the support of the Project Management Team and expert input from International Organizations, covering measures in the key areas data/information and sharing of know-how, THB partnerships for prevention, research and evaluation/evidence-based policies. Since 2011, round tables were organised, dealing with labour exploitation, data collection, and the prevention of slavery. Moreover a data base was set up and “Guidelines for Preventing, Identifying and Combatting Cases of Trafficking in Human Beings for Labour exploitation” were developed. The next Round Table “Preventing & Combating Trafficking for Labour

Exploitation, From Theory to Practice. Tackling the Missing Components“ will take place on 20 September 2013.

Data collection

Recommendation 5

The collection of comparable data is a challenge that cannot be addressed at the national level alone. Therefore Austria participates in a project initiated by Portugal entitled “Towards a pan-European Monitoring System of THB”. The project started in April 2013 and is scheduled to run for 24 months. The main objective is to provide countries with a THB monitoring system with harmonized procedures for the collection, treatment, analysis and sharing of information. It also allows for cooperation between police, justice officials and NGOs. Moreover, data will be collected and shared in alignment with EUROSTAT indicators.

The Austrian Ministry of Justice established an expert group to upgrade the existing data collection and data analysis. Since December 2011 sex, age and nationality of victims of trafficking in human beings are collected in the Automation of Court Procedures (ACP, electronic register of courts and public prosecution). As from 2013 data on the type of exploitation are equally being registered. In addition ACP collects all offences which gave rise to a conviction (not only the offence decisive for the punishment imposed). The statistical data system of the Federal Ministry of Justice has been improved too. Starting with the data for 2012, the Austrian Report on judicial statistics provides information on how many times a specific criminal law provision has been applied by the courts (*Gerichtliche Kriminalstatistik 2012*); the data are not any more limited to the “leading offence”.

Research

Recommendation 6

At the end of 2012 the new working group on labour exploitation, chaired by the Federal Ministry of Labour, Social Affairs and Consumer Protection, took up its activities. It comprises representatives of all relevant ministries, of the *Länder*, of NGOs and of social partners. It will focus on improving cooperation and awareness-raising among relevant authorities, and work on indicators to improve the identification of victims of trafficking for the purpose of labour exploitation. In this context, a study on male victims of trafficking by the Men’s Health Centre guided a qualitative and quantitative enquiry and analysis of experience and assessments concerning male victims of human trafficking in Austria and other countries, among them Moldova, Belarus, Ukraine, and Ireland. The Federal Ministry of Labour, Social Affairs and Consumer Protection also supports the “THB Regional Implementation Initiative” (see above) aimed at improving national and transnational coordination and cooperation in preventing and combating all forms of THB with a special focus on research and data acquisition (see recommendation 4). In this context an online research platform was established in 2012, regular conferences are being held and „Guidelines for Responding to Cases of Trafficking for Labour exploitation“ have been elaborated. The Boltzmann Institute for Human Rights is a member of the Task Force and its working groups in order to strengthen the research-based approach. The National Coordinator and members of the Task Force regularly contribute to research

conducted by students, researchers and journalists.

Awareness raising and education

Recommendation 7

Raising awareness on trafficking for the purpose of labour exploitation is one of the main objectives of the newly established working group on labour exploitation. In addition to enhanced trainings, an update of the internal decree for labour inspectors is foreseen.

Trainings on THB for police officers have increased. ECPAT has given several trainings on child trafficking, including for police officers; for members of the Armed Forces on assignment abroad as well as for the staff of the Youth Welfare both in Lower Austria and the Tyrol. The Youth Welfare of Carinthia trained its staff with regard to the identification of child trafficking in the context of adoption and unaccompanied minors.

For the purpose of awareness-raising and better identification of victims of child trafficking, the working group has developed and widely distributed the information material "*Child trafficking in Austria. Background Information and Checklist to Assist Youth Welfare Authorities, Police Forces, Aliens' Authorities and Embassies/Consular Offices in Identifying Victims of Child Trafficking*". Since 2008 more than 20.000 copies have been distributed (25.000 copies in German/3.000 copies in English were printed in three editions).

Identification of victims of THB

Recommendation 8

Trainings for staff in detention centres have been continued and further intensified. For example, a practical and target-group oriented training to raise awareness about THB took place at a Detention Centre in Vienna in December 2012. A follow-up seminar is scheduled to take place in autumn 2013 at the Police Department of the Land of Salzburg (*Landespolizeidirektion*) with the participation of 20 law enforcement agents working in detention centres in the Länder of Salzburg, Upper Austria, the Tyrol and Vorarlberg. The feedback received on this type of training was very positive. See also response to recommendation 10.

Recommendation 9

Under the previous and the current National Action Plans, numerous targeted training activities for all relevant professional groups, including border patrol and asylum officials, but also consular staff, military staff on service abroad, judges and public prosecutors, are continuously organized in order to improve the identification of victims of human trafficking. All training seminars and events are conducted in close cooperation with Austrian NGOs, such as LEFÖ-IBF (Intervention Centre for Trafficked Women), the Ludwig Boltzmann Institute of Human Rights (BIM) and ECPAT Austria (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes). For example ECPAT has given several trainings on child trafficking, including for police officers; for members of the Armed Forces on assignment abroad and for the staff of the Youth Welfare (of Lower Austria and

Tyrol). The Youth Welfare of Carinthia has trained staff with regard to the identification of child trafficking in the context of adoptions and unaccompanied minors. Border guard officials and federal immigration police receive trainings on THB as part of their basic training and life-long education. Trainings for the staff of the Federal Asylum Office (BAA) and the future Immigration and Asylum Office (BFA) as well as the staff of refugee centers charged with assisting asylum seekers also focus on identifying victims of trafficking. The Austrian Ministry for European and International Affairs has included the topic of human trafficking in the training curriculum for consular staff and organizes trainings on a regular basis. Comprehensive internal decrees, for example on measures to prevent exploitation of domestic employees in diplomatic households, contribute to the awareness-raising and sensitization of staff before issuing a visa.

Recommendation 10

The Working Group on Labour Exploitation will focus on the review of existing indicators for labour exploitation and on improving their applicability in order to better assist the relevant authorities in the identification of victims.

Staff of police detention centres is among the target groups of training activities under the National Plan of Action on Combating THB. Several trainings were conducted in the period since 2011 (see also response to recommendation 8 and 9). NGOs specialized on assistance to asylum seekers and migrants have access to detention centres. Official and free legal assistance is provided to all asylum seekers and other immigrants involved in proceedings. The Task Force established a dialogue with the Director of the Federal Asylum Office (the future Immigration and Asylum Office) with a view to promoting awareness-raising for the issue of THB in asylum procedures. It is expected that the future Immigration and Asylum Office (from 2014) will make procedures more efficient since one single official will be responsible for all questions related to one individual case.

The Austrian Council on Human Rights produced a report on identifying victims of THB in police detention centres in 2011.

Work on a National Referral Mechanism is ongoing, two workshops have been conducted.

Assistance measures

Recommendation 11

The Task Force continuously strives to deepen the cooperation between all actors in order to ensure the best possible protection and assistance to all victims. A network of contact persons in the government of each *Land* has been established following the first Länder conference (see response to recommendation 2) and included in the mailing list of the Task Force.

Nationals of Non-EU Countries are entitled to “basic provision” (*Grundversorgung*), including medical care, according to the basic provision agreement (*Grundversorgungsvereinbarung*) between the Federal Government and the Länder as well as by the regional laws on basic provision. In case of medical expenses in

direct connection with the crime of trafficking, victims can be entitled to compensation according to the Victims of Crime Act.

At the moment there is no specialized assistance for male victims of trafficking in Austria. At this stage, male victims are being taken care of by the regional Welfare Services. In order to improve this situation, a study on male victims of trafficking conducted by the Men's Health Centre has been commissioned and the results and recommendations are currently being discussed. The focus is on male victims of labour exploitation in construction, gastronomy, agriculture and the cleaning business.

Recommendation 12

The Task Force's working group on child trafficking is in the process of discussing a concept for the systematic provision of care and support for victims of child trafficking as well as a National Referral Mechanism based on input from NGOs. Measures to enhance the identification of and assistance to child victims of THB has been a main focus of the *Länder* conference 2013 in Graz and will be followed-up by the working group. For now the crisis centre "*Die Drehscheibe*", operated by the City of Vienna, remains the most developed system for providing support and assistance to victims of child trafficking.

In order to assist victims of child trafficking, an EU-wide helpline for missing children (116 000) was established and promoted by a flyer. This flyer is distributed in places where unaccompanied minors are most likely to see them.

Recovery and reflection period

Recommendation 13

The recovery and reflection period of 30 days for presumed victims of THB is regulated through an internal decree of the Federal Ministry of the Interior. Within this period, a presumptive victim of THB cannot be returned or deported from the country even if his or her presence is illegal. The decree allows for flexibility and the possibility to extend the period wherever needed. It is expected that the future Federal Immigration and Asylum Office (from 2014) will make procedures more efficient since one single official will be responsible for all questions related to one individual case.

Residence permits

Recommendation 14

An amendment to the Austrian Act Governing the Employment of Foreign Nationals, which entered into force on 1 July 2011, grants both victims and witnesses of human trafficking facilitated access to the Austrian labour market, the issuance of a work permit (*Beschäftigungsbewilligung*) being no longer contingent on a labour market demand test (*Arbeitsmarktprüfung*). EU citizens among victims of human trafficking enjoy the EU right to free movement of workers and therefore do not need a work permit for their access to the labour market, with the exception of transitional arrangements for citizens of Bulgaria and Romania as well as Croatia.

Compensation and legal remedies

Recommendation 15

Victims of THB are entitled to government assistance under the Victims of Crime Act. A recent amendment to the Victims of Crime Act provides for the possibility of including victims of THB whose stay in Austria has been illegal at the time of the crime.

Compensation is an important topic of the round tables with the police, prosecutors and the victims' support organization LEFÖ-IBF and of the national seminars on trafficking in human beings for judges and prosecutors. Furthermore, the Federal Ministry of Justice is currently examining the results of the COMP. ACT research on victims' access to compensation in particular within the range of criminal proceedings.

Protection of witnesses and victims

Recommendation 16

Protection measures for victims are ensured regardless of the progress of the criminal law proceedings and of the perpetrator.

Release from pre-trial detention: A victim, who requests so, is to be informed of the accused person's release from pre-trial detention before the first instance judgement. Victims of violence or dangerous threat or infringements of their sexual integrity are to be informed ex officio (section 177 para 5 of the Code of Criminal Procedure).

Release from detention:

Victims of violence or dangerous threat or infringements of their sexual integrity have the possibility to request being informed in the event of the perpetrator's release from detention by the prison administration (section 149 para. 5 of the Execution of Prison Sentences Act).

Recommendation 17

If required, victims are provided with an emergency accommodation and offered round the clock support by a native speaker or they receive access to a temporary accommodation with accompanying support three times a week. The addresses are kept secret and appropriate safety measures are taken in order to ensure all necessary protection. During the counseling, joint security strategies to prevent re-victimisation are developed. Following a case review, there is the possibility of entering a witness protection programme. Witness protection continues as long as a risk exists, including after the end of the criminal law proceedings.

Repatriation and return of victims

Recommendation 18

If return is in the best interest of the child, the crisis center "*Die Drehscheibe*", operated by the City of Vienna, works to ensure the best possible conditions for return and reintegration. "*Die Drehscheibe*" has established a network of partner

institutions in countries of origin.

The Austrian Federal Ministry of the Interior together with IOM started a cooperation with Moldova in the field of “Assisted Voluntary Return and Reintegration of Minors and Young Adults from Moldova with emphasis on the Prevention of (Re-)Trafficking”. With due regard to the Convention on the Rights of the Child, the project provides tailored rehabilitation and reintegration assistance to minors and young adults having been trafficked persons as well as vulnerable individuals who return from Austria to the Republic of Moldova. These assistance measures aim to lower the risk of these individuals being (re-)trafficked. Trainings in Austria and Moldova will be organized by “Die Drehscheibe” in the autumn of 2013 (in Vienna from 29 September-12 October and in Chisinau from 11-15 November). The project has been running since June 2012 and has been extended until December 2013.

In cooperation with LEFÖ-IBF the Ministry of the Interior conducted the project FROM for voluntary return of victims of human trafficking. In the framework of the project quality standards for risk analyses as well as for return and reintegration were elaborated. The project runs from November 2009 to June 2014.

Austria participated in a project which evaluated the legal and political framework for the assistance to child victims of trafficking (“Assisting and reintegrating child victims of trafficking. Improving policy and practice in the EU-MS.” Center for the Study of Democracy, 2013). The findings and good practices concerning Austria have been elaborated by the Boltzmann Institute for Human Rights and ECPAT Austria. All findings are available under <http://www.childrentrafficking.eu> .

Substantive criminal law

Recommendation 19

Section 104a of the Criminal Code (CC) on THB was amended by the Criminal Law Amendment Act 2013 (Federal Law Gazette Nr. 116/2013; entry into force: 1 August 2013). The main changes are:

- A more comprehensive enumeration of forms of exploitation (explicitly including begging, benefiting from criminal activities committed by other persons, etc.);
- An increase of the penalties for the basic offence in Article 104(a)(1) from previously up to three years of imprisonment - to between six months and five years of imprisonment;
- An increase of the maximum term of imprisonment for trafficking of children between the age of 14 and 18 years to ten years (sec 104a para. 5 CC).

Sec. 104a as amended by the Criminal Law Amendment Act 2013 reads as follows:

„Trafficking in human beings

Sec 104a. (1) A person who recruits, harbours, otherwise receives, transports or offers or transfers to another person an adult using dishonest means (para. 2) against

*this person with the deliberate intention of the person's exploitation (para. 3), is to be punished with a prison sentence of a **minimum of six months up to five years**.*

(2) Dishonest means are the use of force or severe threats, the deception about facts, abuse of authority, a position of vulnerability, insanity or of defencelessness, intimidation and the receiving or giving of benefits for handing over control over the person.

*(3) Exploitation includes sexual exploitation, exploitation through organ transplantation, labour exploitation, **exploitation of begging and the exploitation to commit criminal activities**.*

(4) A person who commits the criminal act in the context of a criminal association, under the use of severe violence or in such a way that the life of the person is severely endangered deliberately or by gross negligence or in such a way that particularly serious harm is caused to the person, is to be punished with a prison sentence of a minimum of one year up to ten years.

*(5) With a prison sentence of a **minimum of one year up to ten years** is also to be punished who recruits, harbours, or otherwise receives, transports or offers or transfers to another **person a person under age** [n.b. under 18 years of age] with the deliberate intention of the person's exploitation."*

The maximum terms of imprisonment for the offence „pimping“ (section 216 of the CC) have also been increased (two years of imprisonment for the basic offence, in case of certain aggravating circumstances up to three years of imprisonment respectively between six months and five years of imprisonment).

Recommendation 20

After conducting such an assessment the Working Group “Prostitution” of the Task Force recommended an increase of the maximum term of imprisonment for procuring (“pimping”). With the Criminal Law Amendment Act 2013 penalties for the crime of procuring (“pimping”) are going to be raised. As a consequence, the possibilities for police investigations will be improved, e.g. telephone surveillances will be possible. As procuring often involves THB, this amendment is likely to strengthen the prosecution of THB.

Investigation, prosecution and convictions

Recommendation 21

The existing decree for labour inspectors on THB is going to be reviewed and updated. The working group labour exploitation is currently working on this issue. Labour inspectors participate in the relevant meeting of the working group.

In the course of the continuous training of judges and prosecutors, the Austrian Federal Ministry of Justice also offers seminars on the subject of trafficking in human beings. In October 2011 as well as in June 2013 seminars for judges and prosecutors (both organised by the Federal Ministry of Justice together with IOM and the NGO LEFÖ-IBF) took place. One seminar focused on labour exploitation, protection of victims and International cooperation, the other on the EU directive 2011/36/EU and its implementation into national law, the latest jurisdiction and best practise. The next seminar will be offered by the Federal Ministry of Justice in 2015.

Apart from national training, judges, prosecutors as well as trainee judges/prosecutors are regularly given the opportunity to participate in seminars organized by European institutions, such as ERA (Academy of European Law), DRA (German Judicial Academy), and EJTN (European Judicial Training Network). These organizations have become constant reliable partners of the Austrian Government, and their training programs are actively promoted by the Federal Ministry of Justice.

Recommendation 22

The Working Group on Labour Exploitation focuses on the review, update and improved applicability of existing indicators in order to increase the identification of victims of THB for the purpose of labour exploitation.

Furthermore, the explanatory notes to the draft bill of the Criminal Law Amendment Act 2013 that contains amendments of Sec. 104a of the CC (see Recommendation 19) explicitly deal with questions concerning the notion of labour exploitation which arose in the last few years.

Non-punishment of victims of THB

Recommendation 23

According to Sec. 10 para. 1 of the Criminal Code (Exculpating state of necessity) a person who commits a punishable offence in order to avert an imminent and considerable disadvantage from himself or from another is exonerated, if the damage menacing from the offence is not disproportionately graver than the disadvantage to be averted, and if in the situation of the offender no other conduct was to be expected from an individual attached to the values protected by law.

If the exculpating state of necessity is revealed after the criminal conviction became legally binding, the case may go to a retrial (*Wiederaufnahme*, Sec. 353 of the CCP), because a person acting in an exculpating state of necessity is not punishable. In cases of exculpating state of necessity that appear after the conviction became legally binding, the public prosecutor is obliged to apply for a retrial in the benefit of the convicted person according to the principle of legality (Sec. 354 of the CCP). The Federal Ministry of Justice initiated round tables between the law enforcement agencies, prosecution and the victims' protection organization LEFÖ-IBF where the issue of non-punishment of victims for their involvement in criminal activities is discussed. For the last two years NGOs have not reported any problems regarding the application of the non-punishment principle as far as the involvement of THB victims in criminal activities is concerned.

Sections 120 and 121 of the Aliens Police Act (*Fremdenpolizeigesetz*) contain penal provisions (illegally entry and stay or any other violation). In this context, no explicit mechanism for trafficking in human beings is required, since the principle enshrined in section 38 of the General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) also applies to administrative penalties. An administrative authority can stay proceedings until the judgement of another authority or court, if the latter had to assess a preliminary question.

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