



**GRETA**  
GROUP OF EXPERTS  
ON ACTION AGAINST  
TRAFFICKING IN HUMAN BEINGS

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**Report concerning the implementation  
of the Council of Europe Convention  
on Action against Trafficking in Human Beings  
by Austria**

**SECOND EVALUATION ROUND**

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## Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to the parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental.

Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA launched the second evaluation round of the Convention on 15 May 2014. During this new evaluation round, GRETA has decided to examine the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. The questionnaire adopted by GRETA for the second evaluation round is sent to all parties which have undergone the first evaluation round, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to submit, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual comments by the party concerned, is made public and sent to the Committee of the Parties to the Convention.

## I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by Austria took place in 2010-2011. Following the receipt of Austria's reply to GRETA's first questionnaire on 31 August 2010, a country evaluation visit was organised from 16 to 19 November 2010. The draft report on Austria was examined at GRETA's 9th meeting (15-18 March 2011) and the final report was adopted at GRETA's 10th meeting (21-24 June 2011). Following the receipt of the Austrian authorities' comments, GRETA's final report was published on 15 September 2011.<sup>1</sup>

2. In its first report, GRETA noted that the Austrian authorities had set up structures, in co-operation with civil society, for the identification and assistance of female victims of trafficking in human beings (THB). However, GRETA considered that insufficient attention was being paid to the identification of male and child victims of THB. GRETA urged the Austrian authorities to develop a nationwide system for the identification and assistance of child victims of trafficking. GRETA also asked the authorities to adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation and to create an assistance system adapted to the needs of male victims of trafficking. While co-ordination between federal ministries and agencies was well developed, GRETA considered that there was a need to strengthen co-ordination and co-operation between the federal government and the federal states in the anti-trafficking field and to secure appropriate funding. Another recommendation made by GRETA was to establish clearly in law a recovery and reflection period for presumed victims of trafficking. Further, GRETA was concerned by the low number of convictions for THB, the low level of penalties and the absence of compensation of victims of THB, and made relevant recommendations to address these issues.

3. On the basis of GRETA's report, on 26 September 2011 the Committee of the Parties to the Convention adopted a recommendation to the Austrian authorities, requesting them to report back on the measures taken to comply with this recommendation by 26 September 2013.<sup>2</sup> The report submitted by the Austrian authorities was considered at the 12th meeting of the Committee of the Parties (7 October 2013). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.<sup>3</sup>

4. On 15 May 2014, GRETA launched the second round of evaluation of the Convention in respect of Austria by sending the questionnaire for this round to the Austrian authorities. The deadline for submitting the reply to the questionnaire was 15 October 2014 and the Austrian authorities submitted their reply on this date.

5. In preparation of the present report, GRETA used the reply to the questionnaire by Austria, information received from civil society and other information collected by GRETA. An evaluation visit to Austria took place from 9 to 12 December 2014. It was carried out by a delegation composed of:

- Mr Frédéric Kurz, member of GRETA;
- Ms Siobhán Mullally, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention;
- Mr Markus Lehner, Administrator in the Secretariat of the Convention.

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<sup>1</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, GRETA(2011)10, available at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_10\\_FGR\\_AUT\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_10_FGR_AUT_en.pdf)

<sup>2</sup> Recommendation CP(2011)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria, adopted at the 6th meeting of the Committee of the Parties on 26 September 2011, available at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP\\_2011\\_1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP_2011_1_en.pdf)

<sup>3</sup> Available at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply\\_REC/CP\\_2013\\_11\\_AUT\\_RR\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply_REC/CP_2013_11_AUT_RR_en.pdf)

6. During the visit, the GRETA delegation met the National Co-ordinator on Combating Human Trafficking, Ambassador Elisabeth Tichy-Fisslberger (Federal Ministry for Europe, Integration and Foreign Affairs) and members of the Task Force on Combating Human Trafficking representing relevant federal ministries and agencies. Amongst the officials met by GRETA were representatives of the Federal Criminal Intelligence Service, the Federal Office for Immigration and Asylum, the Federal Chamber of Labour, the Federal Labour Inspectorate, the Finance Police, and the City of Vienna. Further, the GRETA delegation held a meeting with members of the National Council (Parliament). Discussions were also held with members of the Human Rights Advisory Council supporting the Austrian Ombudsman Board.

7. In addition to meetings in Vienna, the GRETA delegation travelled to Klagenfurt (Carinthia) where it met the Governor of the federal state of Carinthia, Mr Peter Kaiser, as well as representatives of the social and child welfare services and the police in Carinthia.

8. Separate meetings were held with representatives of non-governmental organisations (NGOs), Trade Unions and academia. The GRETA delegation also met officials of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

9. In the course of the visit, the GRETA delegation visited a shelter for female victims of trafficking in Vienna, the Talitha counselling centre for victims of trafficking and forced prostitution in Klagenfurt, and the police detention centre (PAZ) in Klagenfurt.

10. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

11. GRETA wishes to place on record the co-operation provided by the Austrian authorities and in particular by Ambassador Elisabeth Tichy-Fisslberger, National Co-ordinator on Combating Human Trafficking, and Ms Margareta Ploder of the Federal Ministry for Europe, Integration and Foreign Affairs.

12. The draft of the present report was approved by GRETA at its 22nd meeting (16-20 March 2015) and was submitted to the Austrian authorities for comments. The authorities' comments were received on 29 May 2015 and were taken into account by GRETA when adopting the final report at its 23rd meeting (29 June - 3 July 2015). The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 45-50). The report covers the situation up to 3 July 2015; developments since that date are not taken into account in the following analysis and conclusions.

## **II. Main developments in the implementation of the Convention by Austria**

### **1. Emerging trends in trafficking in human beings**

13. Austria is a destination and transit country for women, men and children trafficked for the purpose of sexual exploitation (which remains the most frequent form of exploitation), forced begging and forced labour. All victims of trafficking in human beings (THB) identified so far have been foreign nationals originating mainly from Eastern Europe, Africa and Asia. When it comes to sexual exploitation, a new trend is the trafficking of men and transgender persons from Latin America. Sexual exploitation is increasingly taking place in apartments advertising "Chinese massage" as well as escort services. Cases of labour exploitation occur in the fields of domestic and care work and also in the agricultural, construction and catering sectors. Some forced domestic work occurs at the hands of foreign diplomats working in Austria. An increase in internet and social media recruitment has been observed. One of the big challenges is that many fake agencies, for example in care work recruitment, are hardly recognisable as such even on closer inspection. There has been only one identified case of internal trafficking within Austria which concerned a girl of Chechen origin exploited for domestic servitude (see paragraph 184).

14. The police crime statistics, which record victims of THB who have been identified during the investigation and have been communicated to the Prosecutor's Office, indicate that there were 62 victims of THB and trans-border prostitution trade in 2010, 70 in 2011, 103 in 2012, 73 in 2013, and 79 in 2014.<sup>4</sup> This constitutes a drop compared to the number of victims on THB identified by the police in 2008 and 2009. Until 2013, about 90% of the identified victims were female, but in 2014 the number of identified male victims increased (26, i.e. 33% of all victims). The number of identified child victims of THB was two in 2010, two in 2011, six in 2012 and five in 2014. The police data is not disaggregated by form of exploitation. On the other hand, according to statistics from the NGO LEFÖ-IBF, which is the main provider of assistance to victims of THB, the number of presumed female victims was 116 in 2011, 110 in 2012 and 129 in 2013.<sup>5</sup> The majority of these victims were from Nigeria, Bulgaria, Romania, the Philippines and Hungary. Most of them were exploited in the sex industry, but there were also cases of trafficking for the purpose of domestic work, forced labour and forced marriage.

### **2. Developments in the legal framework**

15. In its first evaluation report, GRETA considered that the Austrian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB. In particular, GRETA asked the authorities to examine the dissuasiveness of the penalties provided for in Article 104a of the Criminal Code (CC) entitled "trafficking in human beings" as concerns the offence of THB in the absence of any aggravating circumstances, as well as the offence of trafficking in children between the age of 14 and 18. In this context, GRETA encouraged the Austrian authorities to increase the maximum term of imprisonment in Article 104a, paragraph 1, of the CC in order to reflect the fact that THB constitutes a serious violation of human rights.

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<sup>4</sup> The data includes victims identified during investigations under Section 104a of the Criminal Code ("trafficking in human beings" and Section 217 of the Criminal Code ("trans-border prostitution trade"). GRETA was informed that these figures exclude victims of THB identified abroad, even if the exploitation took place in Austria, in order to avoid double counting.

<sup>5</sup> The total number of victims assisted by LEFÖ-IBF was higher (233 in 2010, 239 in 2011, 232 in 2012, 247 in 2013) as some victims receiving assistance were identified in previous years and victims' children were also included (on average, 11 children per year).

16. As a follow-up to GRETA's recommendations and with a view to transposing Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Section 104a of the CC was amended through the Criminal Amendment Act 2013.<sup>6</sup> This amendment, which entered into force on 1 August 2013, expanded the list of forms of exploitation by adding exploitation of begging and exploitation to commit criminal activities. Further, the amendment increased the penalties for the basic offence in Section 104a, paragraph 1, of the CC from up to three years of imprisonment, to between six months and five years of imprisonment, as well as the penalties for trafficking children aged 14 to 18 from up to three years of imprisonment, to between one and 10 years of imprisonment (Section 104a, paragraph 5, of the CC).

17. Moreover, the Criminal Law Amendment Act 2011, which came into force on 1 January 2012, extended the Austrian jurisdiction for human trafficking committed abroad (see paragraph 191).

18. Further, an amendment to the Victims of Crime Act in 2013 introduced the possibility of granting compensation to victims of THB whose stay in Austria was irregular at the time of the crime.

19. As noted in GRETA's first evaluation report, due to the federal structure of Austria - composed of nine federal states (*Länder*) - issues of relevance to the fight against THB can be regulated differently in the legislation of each federal state (*Land*). For instance, in the field of children and youth welfare, many aspects of the assistance to victims of trafficking are divided between the federal state and the *Länder*, legislation as regards principles being the prerogative of the federal state, while more detailed legislation and implementation of the laws are left to the *Länder*. Similarly, the regulation of prostitution falls within the competence of the *Länder*.

20. The above-mentioned measures are discussed in greater detail in later parts of this report (see paragraphs 147, 158-159 and 191).

### **3. Developments in the institutional framework**

21. Since GRETA's first evaluation, the institutional framework for action against THB has been further developed with a view to addressing certain lacunae highlighted in GRETA's first report.

22. The Task Force on Combating Human Trafficking (hereafter "Task Force"), which was set up by a Council of Ministers Resolution in November 2004, continues to be responsible for co-ordinating and steering national action against THB. The Task Force is headed by the National Co-ordinator on Combating Human Trafficking, who is a senior official at the Federal Ministry for Europe, Integration and Foreign Affairs. It meets on average every six weeks (for example, there were six regular meetings in Vienna in 2013 as well as a meeting involving the federal provinces in Graz, Styria, in July 2013). **GRETA commends the practice of holding frequent meetings of the Task Force.**

<sup>6</sup> Federal Law Gazette No. 116/2013.



23. The composition of the Task Force has been expanded since the first evaluation visit<sup>7</sup> to include the Men's Health Centre MEN VIA, a newly set-up specialised support structure for male victims of trafficking (see paragraphs 49, 100 and 112). Other Austrian NGOs and representatives of intergovernmental organisations active in combating THB are invited to take part in the meetings of the Task Force on an ad hoc basis. However, GRETA notes that there are no representatives of the Prosecutor's Office in the Task Force. This lack of representation is a matter of concern, given the importance of ensuring a comprehensive approach to combating THB. The Austrian authorities have indicated that prosecutors have been invited on an ad hoc basis to attend meetings of the Task Force on topics which are of special interest to them. **Nevertheless, GRETA urges the Austrian authorities to 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 THB and strengthening national co-ordination.**

24. In addition to the two working groups which were operating within the Task Force at the time of GRETA's first evaluation, dealing respectively with child trafficking and prostitution, a third working group on trafficking for the purpose of labour exploitation was set up in December 2012. It is chaired by the Federal Ministry for Labour, Social Affairs and Consumer Protection and comprises representatives of nine federal ministries (including officials from the Finance Police and the Labour Inspectorate), relevant social partner organisations (the Federal Chamber of Labour), the administrations of the *Länder*, as well as the Men's Health Centre MEN VIA.

25. The working group on trafficking for the purpose of labour exploitation published a report on its activities in 2012-2014.<sup>8</sup> According to this report, a total of 10 meetings had been organised since December 2012 (in which a total of 83 different persons took part). The working group focused on the construction, agriculture, forestry and domestic work sectors and considered, *inter alia*, the topics of hiring out and posting workers abroad, temporary agency work, wage and social dumping, false self-employment, and access to the labour market. Further, it developed indicators for the identification of victims of THB for the purpose of labour exploitation (see paragraph 96). The working group has made a number of recommendations, including on the ratification by Austria of ILO Convention No. 189 concerning decent work for domestic workers and the 2014 Protocol to the ILO Forced Labour Convention No. 29. It has also been recommended that the working group's mandate be continued over the period of the new National Action Plan (2015-2017). Other recommendations made by the working group are considered later in the report. **GRETA commends the setting up of the working group on THB for the purpose of labour exploitation and the very active involvement of its members in action against THB.**

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<sup>7</sup> In 2010, the Task Force was composed of representatives of the following entities: Federal Ministry for European and International Affairs; Federal Ministry of Economy, Family and Youth; Federal Ministry of the Interior; Federal Ministry of Justice; Federal Ministry of Labour, Social Affairs and Consumer Protection; Women's Directorate of the Federal Chancellery; Federal Ministry of Health; Federal Ministry for Defence and Sports; Federal Ministry for Education, Arts and Culture; Drehscheibe Crisis Centre, operated by the City of Vienna child and youth welfare department; Austrian Development Agency (ADA); NGO Intervention Centre for Migrant Women Affected by Human Trafficking (LEFÖ-IBF); NGO "End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes - Austria" (ECPAT-Austria); and Ludwig Boltzmann Institute of Human Rights (BIM).

<sup>8</sup> *Arbeitsgruppe "Menschenhandel zum Zweck der Arbeitsausbeutung" des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz im Rahmen der österreichischen Task Force Menschenhandel, Bericht für die Jahre 2012 - 2014.*

26. In the first evaluation report, GRETA considered that the Austrian authorities should reinforce co-ordination and co-operation between the federal government and the governments of the federal provinces (*Länder*). Representatives of the *Länder* continue to be invited to participate in all meetings of the Task Force and its working groups and receive the meeting reports and other relevant documents. A conference focusing on intensifying co-operation with the governments of the *Länder* took place in June 2011 in Vienna. The second meeting of the *Länder* on the issue of THB took place in Graz, Styria, in July 2013, the third meeting was held in Linz, Upper Austria, in June 2014, and the most recent meeting in Klagenfurt, Carinthia, in May 2015. **GRETA considers that the Austrian authorities should continue building co-ordination and co-operation between the federal government and the administrations of the *Länder* with a view to ensuring that all federal provinces are integrated in the efforts to combat THB.**

27. The Central Office for Combating People Smuggling and Human Trafficking is a unit at the Federal Criminal Intelligence Service within the Federal Ministry of the Interior, which is specialised in investigating THB offences. It employs 30 officers, of whom six work specifically on THB and trans-border prostitution trade. Further, there is a special investigation unit dealing with THB and trans-border prostitution trade in the Criminal Intelligence Service of each of the nine federal provinces. The fact that there is one Federal Police under the supervision of the Criminal Intelligence Service ensures close co-operation.

28. Since GRETA's first evaluation visit, a judge at Vienna Criminal Court has specialised in THB cases. **This is a welcome development and GRETA invites the Austrian authorities to continue developing the specialisation of judges on THB cases.** As regards prosecutors, the Austrian authorities have indicated that according to the internal organisation of the Prosecutor's Office, there are prosecutors specialising in THB cases in some of the *Länder* (Vienna, Styria and Vorarlberg). **GRETA considers that the Austrian authorities should continue developing the specialisation of prosecutors to deal with THB cases.**

29. The NGO LEFÖ-IBF remains the main actor providing assistance to female victims of THB. It has an agreement with the Government and is the only NGO receiving state funding for the provision of assistance to victims of THB (see paragraph 107). There are a number of other NGOs which take part in the fight against trafficking in human beings at national and/or local level, such as Caritas, Diakonie, ECPAT, EXIT, Herzwerk and SOLWODI. A new development since the first GRETA evaluation visit is the setting up of the pilot project MEN VIA as part of the Social Medicine Centre South (Kaiser-Franz-Josef Hospital), with a view to providing support to male victims of THB (see paragraphs 49 and 112). Another development is the opening of a drop-in centre for undocumented migrant workers, UNDOK, sponsored mainly by the Ministry of Labour, Social Affairs and Consumer Protection (see paragraph 66).

30. The Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA) was set up on 1 January 2014. It has officers in all *Länder* and employs around 150 case workers who interview asylum seekers (some 30 000 cases a year). GRETA was informed that about 30 case workers, including team leaders of local directorates of BFA, had been trained on THB as part of the IBEMA project (see paragraph 38).

#### **4. National Action Plan**

31. At the time of GRETA's first evaluation, Austria was implementing the Second National Action Plan against Human Trafficking, covering the three-year period from 2009 to 2011. The Third National Action Plan, covering the period 2012-2014, reflects the comprehensive approach taken by Austria in combating trafficking and is structured in five chapters: 1. National and international co-ordination and partnerships; 2. Prevention; 3. Protection of victims; 4. Prosecution; 5. Evaluation/Monitoring. The plan comprises overall objectives and concrete actions, including a time frame, the authorities competent for their implementation, as well as indicators for measuring progress.

32. A report on the implementation of the National Action Plan is drawn up annually by the Task Force and is published on the website of the Federal Ministry for Europe, Integration and Foreign Affairs.<sup>9</sup> However, there is no external evaluation of the implementation of the National Action Plan.

33. The Austrian authorities have informed GRETA that the Task Force is also acting as “equivalent mechanism” in the sense of Article 19 of EU Directive 2011/36/EU<sup>10</sup> and is responsible for monitoring the anti-trafficking activities of State institutions. GRETA would like to stress that Article 29 of the Convention makes a clear distinction between National Co-ordination and National Rapporteur. In GRETA’s view, the key features of National Rapporteurs’ mechanisms in the sense of Article 29, paragraph 4, of the Convention<sup>11</sup> should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions enables an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations.<sup>12</sup> **GRETA considers that the Austrian authorities should keep under review the effectiveness of the Task Force in fulfilling the role of a National Rapporteur, and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.**

34. As was the case at the time of the first evaluation, there is no specific budgetary line in the federal budget allocated to the implementation of the National Action Plan. The implementation of the actions included in the plan is financed by the budgets of the relevant ministries and it is up to each ministry to decide on the amount to spend to accomplish the tasks which are under its responsibility, including on training. It was noted in the first evaluation report that the Austrian authorities had stated their intention to specify more clearly in the future the financial implication of the measures to be taken in the field of combating THB. However, this has not happened. Although the annual budget allocated for victim support to LEFO-IBF was reportedly increased in 2011-2013 (see paragraph 107), civil society actors met by GRETA during the second evaluation visit considered that the financial resources invested by the Government in action against THB continued to be insufficient in relation to the actual needs. **Recalling the recommendation made in its first evaluation report, GRETA considers that the Austrian authorities should ensure that the budget allocated to action against THB to federal ministries and in the *Länder* is adequate to cover all actions needed to combat THB.**

<sup>9</sup> Available at:

[http://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Menschenrechte/Taskforce\\_Menschenhandel\\_2013.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Taskforce_Menschenhandel_2013.pdf)

<sup>10</sup> “Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.”

<sup>11</sup> “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”

<sup>12</sup> In this context, see also the Summary report on the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms organised by the UN Special Rapporteur on trafficking in persons, especially in women and children, in Berlin, 23-24 May 2013.

35. GRETA noted in its first evaluation report on Austria that the Second National Action Plan did not adequately address the problem of child trafficking and the need to set up a nationwide system for the identification of and assistance to child victims of THB. The Third National Action Plan contains a number of actions related to child trafficking, which is an important step forward. The Task Force's working group on child trafficking is responsible for implementing these actions. It aims at increasing the identification rate of child victims, as well as networking among the *Länder*, and intends to develop nation-wide standards for the care and protection of trafficked children. This working group has drafted a National Referral Mechanism for child victims of THB which will be presented for approval to the federal government and then to the administrations of the *Länder*, as matters concerning children protection fall under their competence.

36. At the time of GRETA's second evaluation visit, the Task Force was in the process of elaborating the Fourth National Action Plan for the period 2015-2017. This plan was adopted by the Federal Government on 21 April 2015. It reflects the structure of the previous action plan by grouping the objectives and activities in five main chapters (see paragraph 31). A number of new activities are envisaged. For example, as regards the legal framework, an analysis will be conducted of whether the definition of the exploitation element of the offence of THB in the Criminal Code is sufficient. Further, the possibility of ratifying ILO Convention No. 189 concerning decent work for domestic workers, the 2014 Protocol to the ILO Forced Labour Convention and the Council of Europe Convention against Trafficking in Human Organs will be examined. As regards trafficking for the purpose of labour exploitation, it is envisaged to continue building up support for male victims of trafficking and to distribute the indicators for identifying victims of trafficking for the purpose of labour exploitation to the relevant inspection authorities. Moreover, evaluations of the application of the non-punishment provision and access of victims of THB to compensation will be carried out. In addition, the practical implementation of victims' access to the labour market and vocational training will be assessed. Further, several activities address child trafficking, including the finalisation of the National Referral Mechanism for child victims and a draft guidance document for relevant authorities.

## 5. Training of relevant professionals

37. The Third National Action Plan on Combating Human Trafficking provided for many training activities, both mandatory and optional. Police and immigration officers, child and youth welfare officials, financial police and labour inspectors, the judiciary as well as consular staff have been among the target groups. Most trainings are carried out in co-operation with NGOs, in particular LEFÖ-IBF and ECPAT, and aim at sensitising relevant professionals to THB, raising awareness about their role in this context, clarifying the indicators for the identification of victims of THB, and discussing regulatory processes. Whenever possible, a multi-stakeholder approach is promoted.

38. By way of example, the Austrian authorities have referred to the following training activities:

- The training department of the Ministry of the Interior (*Sicherheitsakademie*, SIAK) offers training on THB for all levels (basic police training, training of middle and senior management). THB being part of criminalistics and criminology lessons, teachers of these subjects receive obligatory training by THB experts on an annual basis. SIAK also offers an annual in-service training with at least two 3-day seminars focusing on THB and victims' rights. These seminars are conducted in co-operation with NGOs. Participation is voluntary; however, an increasing demand has been noticed. There are also international training activities which are funded by SIAK, for example at the Central European Police Academy (CEPA) for middle and senior police management on combating organised crime, including THB.

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- Trainings for officers working in police detention centres, staff of Federal Reception Centres and immigration/asylum officers have continued with a focus on victim identification. Prior to the establishment of the Federal Office for Immigration and Asylum (BFA) on 1 January 2014 its entire staff received training on the resident permit for specific protection. As part of the IBEMA project, the IOM Office for Austria organised training in Vienna on 23 June 2014 for 13 participants, and another training in Salzburg on 28 October 2014 for 23 participants, the majority of whom were from BFA. A total of 600 BFA officials received training and a practical manual was adopted in 2014.
  - In the framework of continuing education of judges and prosecutors the Federal Ministry of Justice periodically organises seminars on the fight against THB. On 20 October 2011 a seminar was held in co-operation with LEFÖ-IBF and IOM, involving 14 judges and prosecutors. Another seminar entitled "THB: new developments in due consideration of exploitation of labour" was organised on 20 June 2013. Further, judges, prosecutors and trainee judges and prosecutors have the opportunity to participate in seminars organised by the Academy of European Law (ERA), the German Judicial Academy (DRA), the Dutch Training and Study Centre for the Judiciary (SSR), and the European Judicial Training Network. Seven seminars and events on THB were attended by Austrian judges and public prosecutors in 2012-2013, and six national and international events relating to THB took place in 2014. Moreover, in 2014, a prosecutor participated in the three-week International Visitor Leadership Programme "Co-operative Efforts in Combatting Trafficking in Persons" organised by the U.S. Department of State.
  - The tax authorities have control duties with regard to the labour market which could lead to detection of labour exploitation and trafficking. The customs authorities can also detect presumed victims of THB during inspections. Both authorities receive training by trainers from the Ministry of the Interior and LEFÖ-IBF. According to the Austrian authorities, an increase in the number of reports to the police has been observed after each training session.
  - The Federal Ministry of Labour, Social Affairs and Consumer Protection is in the process of updating its internal decree for labour inspectors on human trafficking and intends to strengthen its awareness-raising measures on this topic. A seminar for labour inspectors on THB for the purpose of labour exploitation took place on 28 April 2015 in Wels, Upper Austria, involving participants from all 20 labour inspectorates in Austria.
  - Training in the area of action against THB for military personnel deployed on missions abroad is given to officers and non-commissioned officers who are expected to have increased contact with the local population and may come across cases of THB. The training is obligatory and is conducted in co-operation with relevant NGOs (e.g. ECPAT) and international organisations (IOM).
  - The Federal Ministry for Europe, Integration and Foreign Affairs offers training on THB to diplomatic and consular staff, including prevention of exploitation of domestic staff in diplomatic households, as part of the training curricula for young diplomats (obligatory) and in the framework of the annual consular conference (voluntary).
  - Employees of the child and youth welfare system (mainly social workers) received optional training on trafficking in children by ECPAT. Other NGOs providing training are Caritas and the Protection Centre for Victims of Violence (*Gewaltschutzzentrum*).
  - Based on a workshop on the "Istanbul Protocol" (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), which took place in Vienna in January 2014, a presentation on victim identification at the medical level is planned to be held by a psychiatrist of the Vienna General Hospital in the framework of the existing further training for police doctors.

39. After the evaluation visit, GRETA was informed that the Federal Ministry of the Interior would provide training to staff of the detention centre in Vordernberg in September 2015, in co-operation with LEFÖ-IBF. Training of relevant professionals, including staff of the Federal Immigration and Asylum Office, detention centres and frontline officers is ongoing within the framework of the above-mentioned IBEMA project. Currently, an extension phase is being developed and is expected to be implemented as of July 2015 onwards.

40. **GRETA commends the investment made in the training of relevant professionals on THB and considers that these efforts should continue, in particular as regards prosecutors, staff of the Federal Immigration and Asylum Office, staff working in detention centres and centres for asylum seekers, judges, social workers in the youth welfare system, labour inspectors, financial police officers and medical staff. It would be important to integrate basic training on the identification of victims of trafficking in all federal provinces of Austria.**

## **6. Data collection and research**

41. In its first evaluation report, GRETA considered that the Austrian authorities should introduce a comprehensive and consistent data collection mechanism that would make it possible to share information among the main actors in the fight against THB and to better assess the situation with regard to groups affected by THB and forms of THB, as well as the number of prosecutions, convictions and sanctions related to the offence of THB. GRETA stressed that data collection concerning THB should be designed in a way that enables the authorities to determine the scale of the problem and identify the most appropriate measures to be taken, while respecting the rights of data subjects to personal data protection. In particular, statistical data should be disaggregated according to the sex and age of the victims, the type of exploitation and the country of origin.

42. Following the first evaluation of Austria by GRETA, since December 2011, the data in the electronic register of courts and public prosecution (Automation of Court Procedures) has been disaggregated by sex, age and nationality of victims of THB. As from 2013 the type of exploitation is also registered. Further, the report on judicial statistics (*Gerichtliche Kriminalstatistik*) now provides information on how many times a specific criminal law provision has been applied by the courts (previously the registered information was limited to the "leading offence" in case of a conviction on the grounds of several articles). The Criminal Intelligence Service Vienna is planning a manual evaluation of all investigations for suspicion of THB in 2015, due to the fact that the modification of the existing police crime statistics will take some more time.

43. Austria participated in the EU-funded project "Towards a pan-European monitoring system of trafficking in human beings", led by Portugal and aimed at developing harmonised procedures for the collection, treatment, analysis and sharing of information on THB. The project started in April 2013 and the results were presented at an international seminar in Lisbon on 25-26 June 2015. Data will be collected and shared in alignment with Eurostat indicators. There will be three levels of data collection: i) local repository (e.g. police, NGOs, social workers) who will fill in standardised and anonymised questionnaires on victims and perpetrators; ii) national level; and iii) European level. **GRETA would like to be kept informed of Austria's decision to implement the project's results.**

44. GRETA notes that despite the above-mentioned developments, the fact that data concerning victims of THB continues to be collected separately by different governmental bodies and NGOs leads to discrepancies in the figures, and police data on identified victims is different from that collected by LEFÖ-IBF (see paragraph 14). While police statistics count only victims who were identified during the investigation and participated in criminal proceedings, the statistics of LEFÖ-IBF include all presumed victims of THB who have been referred to it for assistance (50% of these persons are reportedly not referred by the police) and some of whom decide not to contact the police and give testimony. There are several other NGOs to which presumed victims of THB may turn for assistance and if these persons do not wish to have contacts with the police, they are not entered in the official police statistics, nor do they appear in the statistics of LEFÖ-IBF. Separate statistics on child victims of THB are kept by the Drehscheibe Centre, operated by the City of Vienna. GRETA notes that the coexistence of different systems for counting victims of THB makes it difficult to undertake a comprehensive assessment of the situation and the extent to which measures to combat THB correspond to the actual needs.

**45. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Austrian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings 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 allow 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.**

46. In its first evaluation report, GRETA considered that the Austrian authorities should put stronger emphasis on research and invited them to continue supporting research on the nature and extent of THB in order to have a better grasp of the problems and to take appropriate action to tackle these forms of THB. Areas where further research was required, according to GRETA, included trafficking for the purpose of labour exploitation, trafficking in men and trafficking in children.

47. There is no specific budget line for the work of the Task Force, nor a budget line dedicated to co-funding of research projects concerning THB. Nevertheless, as laid down in the Third National Action Plan 2012-2014 (objective 2, V.5), members of the Task Force have provided co-funding and other support to various research projects, mainly funded by EU. The research findings have been discussed in the Task Force and its working groups and have been used in the development of the National Action Plan.

48. The research on THB for the purpose of labour exploitation referred to in the first evaluation report was completed by the Ludwig Boltzmann Institute of Human Rights in 2011 with the financial support of the Federal Ministry of Labour, Social Affairs and Consumer Protection. The same Ministry also contributed with funding to a research project on THB for labour exploitation in Austria's construction sector, carried out by the Ludwig Boltzmann Institute of Human Rights in the framework of the EU-project "Facilitating Corporate Social Responsibility in the field of Human Trafficking".

49. In order to improve knowledge on trafficking in men in Austria and develop a strategy for assistance and protection of male victims of trafficking, the Federal Ministry of Labour, Social Affairs and Consumer Protection commissioned a study on the situation of trafficked men. This study was conducted by the organisation Men's Health Centre MEN (part of the Social Medicine Centre South/Vienna).<sup>13</sup> Following up on the main recommendation of the study, a support centre for male victims of human trafficking was set up in early 2014, financially supported by the Federal Ministry of Labour, Social Affairs and Consumer Protection (see also paragraphs 100 and 112).

50. LEFÖ-IBF, in co-operation with the Ludwig Boltzmann Institute of Human Rights, conducted research concerning labour exploitation in Austria and Hungary entitled "Labour exploitation: A socio-economic phenomenon?".<sup>14</sup> This project was supported by the European Regional Development Fund's Transnational Co-operation Programme Austria-Hungary 2007-2013, which aims at the creation of transnational capacities in the border region for the support of persons affected by THB. The research concluded that despite relatively few relevant risk factors (close legal, economic and political connection as EU-neighbours), intensive exploitation takes place.

51. As regards child trafficking, the Ludwig Boltzmann Institute of Human Rights was involved in two EU-funded projects, one on assistance to trafficked children (together with the Bulgarian Centre for the Study of Democracy and research teams in several other countries)<sup>15</sup> and another one on trafficking of Roma children (see paragraph 73).

52. Further, LEFÖ-IBF carried out research on the theme "Towards greater accountability; participatory research on anti-trafficking initiatives". This study emanated from the assumption that the effects and impacts of protective mechanisms for trafficked persons are best understood from the perspectives of the victims themselves. The goal was to learn from the analyses of affected women to allow anti-trafficking programmes to be more responsive to their needs and to initiate a process of accountability on the part of anti-trafficking organisations and institutions.

53. Several government-supported projects aimed at increasing knowledge about the specific obstacles that members of ethnic minorities face in exercising their rights. ECPAT Austria was involved in several studies in recent years, including a study on "Typology and Policy Responses to Child Begging in the EU", commissioned by the European Commission and carried out by the International Centre for Migration Policy Development (ICMPD). The challenges identified include a lack of specific support system for children from Roma communities at risk of being exploited for begging, forced criminality and prostitution, their identification and problems of prejudices and discrimination.

54. **GRETA welcomes the research efforts undertaken by a variety of institutions in Austria, which have covered the areas suggested in GRETA's first evaluation report, and invites the Austrian authorities to continue providing funding and support for research projects on THB.**

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<sup>13</sup> Markus Zingerle, Dzhamalis Alionis, Men's Health Centre MEN, Social Medicine Centre South, *Male Victims of Human Trafficking in Austria*, available at:

[http://www.men-center.at/typo2013/typo3/fileadmin/resources/downloads/Male\\_victims\\_of\\_human\\_trafficking\\_in\\_Austria.pdf](http://www.men-center.at/typo2013/typo3/fileadmin/resources/downloads/Male_victims_of_human_trafficking_in_Austria.pdf)

<sup>14</sup> Lilia Hajdu, Julia Planitzer, Evelyn Probst, *Arbeitsausbeutung: ein Sozial-Ökonomisches Phänomen?*, Vienna, October 2014.

<sup>15</sup> Centre for the Study of Democracy, *Assisting and reintegrating child victims of trafficking: improving policy in practice in the EU member States*, Sofia, 2013.



### III. Article-by-article findings

#### 1. Prevention of trafficking in human beings

55. In its first evaluation report on the implementation of the Convention by Austria, GRETA considered that the Austrian authorities should take further measures to raise awareness on the problem of THB, in particular as regards child trafficking and trafficking for the purpose of labour exploitation. GRETA stressed that awareness-raising campaigns should target among others foreign nationals coming to work in Austria, employers and employers' associations, trade unions, social workers, recruitment agencies and other intermediaries, as well as labour and tax inspectors.

##### a. Measures to raise awareness of THB (Article 5)

56. The Austrian authorities have indicated that numerous public events, campaigns and efforts to raise awareness of THB take place on a regular basis, including an annual public event on the occasion of the "EU Anti-Trafficking Day" with an average attendance of 250 people and broad coverage in mainstream media (Austrian public radio and television ORF, quality newspapers). Further, members of the Task Force participate regularly in a broad range of public events at universities and other institutions, support bachelor, master and doctoral theses or other studies, make themselves available for media interviews, and participate in lectures and seminars at universities and research institutes.

57. The exhibition entitled "THB – Slavery of the 21st century", which was referred to in the first evaluation report, has continued to be circulated in schools throughout Austria. The exhibition is offered to teachers via the central education service institution for citizenship education in schools.<sup>16</sup> It has also been used every year at the Austrian Citizenship Days (*Aktionstage politische Bildung*) and has been shown on other occasions, such as the annual Open Door Event at the Federal Ministry for Europe, Integration and Foreign Affairs (with approximately 5 000 visitors per year), on the occasion of the "EU Anti-Trafficking Day" and at the Austrian Parliament.

58. During the second evaluation visit, the GRETA delegation had the opportunity to attend an awareness-raising class on THB given to future kindergarten teachers at a professional training school (BAKIP) in Klagenfurt, Carinthia. The training was given by a representative of Caritas Carinthia (Project Talitha), which runs workshops in schools and for men undergoing compulsory military service.

59. As regards raising awareness among vulnerable groups (e.g. sex workers, immigrants), different leaflets with information on whom to contact have been issued by the Task Force's working group on prostitution, the Ministry of the Interior, the administration of Carinthia and different NGOs. Further, MEN VIA has issued a leaflet for men who may be victims of THB.

60. There has been no systematic impact evaluation of the above-mentioned awareness-raising measures, though an increase in media attention, feedback and anecdotal evidence suggest a certain effectiveness of the measures. **GRETA invites the Austrian authorities to continue their efforts to raise awareness of THB and to design future actions in this area in the light of impact assessment of previous measures, focusing on the needs identified.**

<sup>16</sup>

Available at <http://www.politik-lernen.at/site/gratisshop/shop.item/105872.html>

**b. Measures to prevent THB for the purpose of labour exploitation (Article 5)**

61. Raising awareness of trafficking for the purpose of labour exploitation is one of the main objectives of the Task Force's working group on THB for the purpose of labour exploitation, alongside enhanced training. The Federal Ministry of Labour, Social Affairs and Consumer Protection is preparing an update of the existing internal decree for labour inspectors on human trafficking and intends to strengthen its awareness-raising measures on this topic. Information on human trafficking will be increasingly integrated in the training for labour inspectors (see also paragraph 38). As noted in paragraph 25, the working group has elaborated a list of indicators for the identification of victims of labour exploitation geared to supporting the authorities in the identification of victims and the competent ministries have the task of spreading this information to all authorities concerned.

62. Monitoring and inspections of the labour market include a large number of powers for the Financial Police and the Labour Inspectorate. The Financial Police is a special unit of the Ministry of Finance whose tasks include tax supervision, combating social insurance fraud, detection of illegal employment of foreigners, and combating wage and social dumping in the posting of workers, including investigating false or feigned notifications of workers. The Financial Police employs some 490 investigative officers in 42 tax offices across Austria who examine the validity of work permits in the course of on-site-inspections and control wages. Labour market controls by the Financial Police include every working place, including brothels and other sex work locations, with some restrictions in respect of the private sphere. Supply chains are especially observed in the construction sector because of contract structures that usually involve many sub-contractors working with companies from abroad. When migrant workers without residence or work permits are detected, the inspectors check if there is an indication of trafficking and inform the criminal police for further action. In principle, inspections of domestic workers are possible, but negotiations with the social partners on extending the powers of the inspectors concerning domestic service employers are ongoing. **GRETA considers that the Austrian authorities should collect and monitor data from the Financial Police on cases of suspected THB and the types of exploitation involved.**

63. The Labour Inspectorate is a federal authority divided into 19 regional offices as well as a separate Labour Inspectorate for construction work (only for Vienna and parts of Lower Austria). With approximately 300 labour inspectors, the Labour Inspectorate is the largest authority for the monitoring of employment conditions in Austria. It monitors the protection of the lives and health of employees, adherence to the provisions on working hours and rest periods, the employment of children and young people, and the protection of pregnant women and nursing mothers. It does not inspect employment contracts, collective agreements, illegal employment and wage and social dumping. Further, nine Agriculture and Forestry Inspectorates are set up by the respective provincial governments (regional administrations of the *Länder*). They act as labour supervisory authorities for the agriculture and forestry sectors. There is a total of 17 agriculture and forestry inspectors.

64. The 2011 Act against Wage and Social Dumping introduced wage control and administrative fines for employers. However, there are reportedly difficulties in enforcing this law against non-compliant employers as most of the posted workers come from foreign countries (e.g. Bulgaria and Romania) and the employers are not based in Austria. The Act against Wage and Social Dumping is explicitly applicable to domestic work employers and has been amended in the light of EU Directive 2014/67/EU. **GRETA invites the Austrian authorities to continue their work on ensuring effective enforcement of the Act against Wage and Social Dumping.**

65. GRETA was informed that workers categorised as "self-employed" are particularly at risk of trafficking and other forms of labour exploitation. There are reportedly some 25 000 self-employed nurses, carers and other workers in Austria, including 1 000 self-employed domestic workers, who have no access to social protection and fall outside of the safeguards of labour laws.

66. A drop-in and counselling centre for undocumented workers UNDOK was established in June 2014. It is run by an association of Trade Unions (GBH, GPA-djp, PRO\_GE, vida), the Chamber of Labour, the Austrian National Student Union and civil society actors such as LEFÖ-IBF, migrant organisations and anti-racist activists. UNDOK is funded by the Ministry of Labour, Social Affairs and Consumer Protection, the Vienna Employment Promotion Fund, the Chamber of Labour and Trade Unions. Persons working in Austria without a residence and/or work permit who are not paid the agreed wage or are harmed by their employers in any other way are provided with basic counselling about issues of labour law, social security and assistance with administrative procedures. Leaflets with information for undocumented migrants have also been issued in a variety of languages. Furthermore, UNDOK co-operates actively with organisations supporting victims of trafficking. In their comments on the draft GRETA report, the Austrian authorities have indicated that the Federal Ministry of Labour, Social Affairs and Consumer Protection has increased the financial support for UNDOK in 2015-2016. The work of UNDOK is not limited to Vienna and workshops are also hosted by the *Länder*. **GRETA welcomes the setting up of UNDOK and the assistance provided by it to potential victims of trafficking in human beings, and considers that its work should continue to be supported and should be expanded throughout Austria.**

67. Since 2014, the Federal Ministry of Labour, Social Affairs and Consumer Protection has been a partner in the project "Innovations towards prevention of labour exploitation of EU citizens", which is carried out by the Czech Ministry of Labour and Social Affairs with funding from the European Commission. The aim is to develop a concept and a campaign for the prevention of labour exploitation, in particular of Bulgarian citizens in the Czech Republic.<sup>17</sup>

68. The PRO-GE Trade Union has launched an information campaign in early 2015 targeting seasonal workers and offering them low-threshold information in the federal states Burgenland, Lower Austria, Styria and Tyrol, in co-operation with UNDOK, LEFÖ-IBF and MEN VIA.<sup>18</sup>

69. GRETA was informed that a new law on public procurement was expected to be adopted in 2015 as part of the transposition of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC). The new law will introduce the so-called "best-offer-principle" as opposed to the "best-price-principle". In this context, GRETA was informed of an event organised at the Austrian Parliament to raise awareness of corporate liability for offences committed by sub-contractors and, more generally, of corporate social responsibility.

70. **GRETA commends the efforts taken since the first evaluation to prevent trafficking for the purpose of labour exploitation and considers that these efforts should be intensified, building on the experience and recommendations of the working group on trafficking for labour exploitation, in particular by:**

- **further sensitising relevant officials, in particular prosecutors and judges, to the importance of effective, proportionate and dissuasive sanctions for THB for the purpose of labour exploitation;**
- **expanding the mandate of labour inspectors;**
- **strengthening the monitoring of recruitment and temporary work agencies and supply chains and reviewing the legislative framework for any loopholes that may impede protection or preventive measures;**
- **working closely with the private sector and the Chamber of Commerce to promote corporate social responsibility, in line with the Guiding Principles on Business and Human Rights.<sup>19</sup>**

<sup>17</sup> For further details, see the report on the working group on trafficking for labour exploitation (footnote 8)

<sup>18</sup> Available at: [www.sezonieri.at](http://www.sezonieri.at) in German, Romanian and Hungarian.

### c. Measures to prevent trafficking in children (Article 5)

71. For the purpose of raising awareness of child trafficking and achieving better identification of child victims, the Task Force's working group on child trafficking, which is led by the Federal Ministry for Family and Youth, created an information brochure entitled "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". This brochure, available only in German, is currently in the process of being updated.

72. ECPAT Austria, with support from The Body Shop, carried out a three-year campaign entitled "Stop Sex Trafficking of Children and Young People". As part of it, a call for action was signed by over 55 000 people and was submitted to the President of the Austrian Parliament in 2011. As a consequence, the Parliament adopted a motion in March 2014 urging the government to continue working on the prevention of child trafficking and to seek co-operation with the federal states for developing a nation-wide concept and standards for the identification and care of trafficked children. ECPAT has also been involved in a number of training activities on combating child trafficking, in particular for police officers, military personnel and staff of youth welfare centres (see paragraph 38).

73. With support from the Federal Ministry for Europe, Integration and Foreign Affairs, the Ludwig Boltzmann Institute of Human Rights participates in the EU-funded project "CONFRONT – Countering new forms of Roma children trafficking: a participatory approach". The project aims at strengthening child protection measures in relation to THB, with a focus on protective measures against particular forms of exploitation such as begging and sexual exploitation of boys and young men. The project's other objective is to strengthen co-operation with representatives of Roma groups in order to fight the stereotypical linking of child trafficking to the Roma community. Further, the project aims at engaging the Roma community in a pilot project on cultural mediators as a form of prevention of child trafficking.

74. GRETA was informed that some *Länder* had organised awareness-raising and training activities for relevant professionals on the issue of child trafficking. For example, in Carinthia, a conference on this topic took place in 2013 and training for 100 social workers was organised together with ECPAT-Austria in 2011. Further, training was recently organised in Tyrol, which may become the first federal province to set up a local referral mechanism for trafficked children.

75. **GRETA considers that the Austrian authorities should make further efforts in the area of prevention of child trafficking, in particular by sensitising and training child protection professionals across the country and working with the Roma and migrant communities.**

### d. Measures to prevent trafficking for the purpose of organ removal (Article 5)

76. Trafficking for the purpose of the removal of organs is criminalised under Section 104a of the CC. The 2012 Act on Transplantation of Human Organs set out the conditions under which the removal of organs intended for transplantation is permitted. According to Section 4 of this Act, the donation of organs must be voluntary and unpaid. Advertisements concerning the need for or the availability of organs with reference to a financial gain or comparable advantage are prohibited. The donation of organs from living donors is regulated by Section 8, which prohibits donations from donors who have not reached the age of 18. The removal may only be carried out if the living donor was informed, both verbally and in writing, about the risks, the purpose of the removal and any further health checks which are required. The consent must be given in writing and can be revoked informally. According to Section 9, procurement organisations are obliged to offer living donors a follow-up assessment three months after the donation and living donors are advised to undergo a medical examination at regular intervals.

<sup>19</sup> Implementing the United Nations "Protect, Respect and Remedy Framework", HR/PUB/11/04, United Nations, 2011, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

77. Only approved hospitals or clinics (so-called procurement organisations and transplantation centres, of which there are four in Austria) are entitled to carry out the removal of organs and organ transplantations. Approvals are granted by the federal government if the specific quality requirements are met and a corresponding need is established. The selection of living donors may only be done through such procurement organisations. However, the allocation of removed organs is carried out by the Eurotransplant International Foundation which maintains waiting lists for its members (Austria, Belgium, Croatia, Germany, Hungary, Luxemburg and the Netherlands). Medical care and the recovery of donors and recipients are responsibilities of the particular procurement organisation, respectively transplantation centre, in collaboration with medical specialists.

78. GRETA was informed that there had been no known cases of THB for the purpose of organ removal. However, there have been media reports about Austrian citizens travelling abroad for organ transplantation.

79. Medical doctors must submit a report to the law enforcement authorities whenever a suspicion regarding a punishable act arises during their professional activities. There has so far been no training on prevention of THB for the purpose of organ removal, but the Federal Minister of Health has circulated a new training regulation for medical doctors which entered into force on 1 June 2015.<sup>20</sup> According to Section 4 of this regulation, as part of their training, medical doctors are to be sensitised to the specific circumstances of patients who are victims of THB and psychological violence, in particular children, women and persons with disabilities. **GRETA invites the Austrian authorities to ensure that, as part of their training, medical staff are sensitised to THB for the purpose of organ removal.**

#### **e. Measures to discourage demand (Article 6)**

80. The Third National Action Plan on Combating Human Trafficking provided for the organisation of a number of educational, training and other activities, aimed *inter alia* at discouraging and reducing the demand that fosters all forms of exploitation related to THB. Civil society organisations are systematically involved in these activities and the Task Force makes an effort to involve the private sector in anti-trafficking action. One of the main objectives of the Task Force's working group on THB for the purpose of labour exploitation is the dissemination of information to as many stakeholders as possible, including social partners.

81. Since its establishment in 2004, the Task Force has organised seven annual events on the occasion of the EU Anti-Trafficking Day as a means of generating interest in the topic on the part of the media and the public. The event on 21 October 2013 included a panel on the demand side of THB entitled "The Role of Clients and Civil Society in Combating Sexual Exploitation". Members of the Task Force also regularly work with media representatives, for example, the Ministry of the Interior organised a press breakfast in May 2014.

82. The exhibition referred to in paragraph 57 which is used to raise awareness of THB among school children is also relevant to discouraging demand.

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<sup>20</sup> Verordnung der Bundesministerin für Gesundheit über die Ausbildung zur Ärztin für Allgemeinmedizin/zum Arzt für Allgemeinmedizin und zur Fachärztin/zum Facharzt (Ärztinnen-/Ärzte-Ausbildungsordnung 2015 – ÄAO 2015).

83. Regarding demand for sexual services, the Austrian authorities have stated that there is broad agreement among frontline workers, especially the police and support organisations for sex workers, that legal and effectively regulated prostitution with a focus on ensuring the safety and working conditions of sex workers is a better solution than driving the existing market for prostitution underground. However, challenges persist and further efforts have been made to develop a consistent and uniformly applicable legal framework for sex workers in Austria – an objective that cannot be reached easily or quickly, due to the manifold legal issues involved and different legislative powers at the federal and *Länder* levels, as well as changes in societal perspectives on prostitution. The GRETA delegation was informed in Klagenfurt (Carinthia) of difficulties experienced by the police and NGOs concerning the setting up of large brothels along the Austrian border with Italy and Slovenia, where working conditions are more difficult to monitor and the safety of sex workers is less certain. The trend towards sex tourism and sex workers being brought daily from across the border was mentioned as a particular concern, given the risk that such trans-border activity might facilitate THB. As yet, there seems to be little activity to combat such sex tourism and the related potential of demand for services of persons subjected to THB.

84. As home to a large diplomatic community, Austria has put a particular emphasis on preventing THB among private domestic staff in diplomatic households. The Ministry for Europe, Integration and Foreign Affairs has introduced a number of measures which have already been described in GRETA's first evaluation report and regularly communicates its policy to diplomatic missions and international organisations. The Ministry for Europe, Integration and Foreign Affairs and the Ministry of the Interior organised an event for domestic workers in diplomatic households to inform them about their basic rights with respect to wages, working hours, insurance and entitlement to holidays as well as legal options available to them. The event is part of a comprehensive policy of the Ministry for Europe, Integration and Foreign Affairs to prevent THB in diplomatic households, which includes obligatory personal interviews at the Ministry on the occasion of collection of yearly extension of the legitimisation card (official identity card).

85. In their comments on the draft GRETA report, the Austrian authorities have referred to plans to introduce a new provision in the CC criminalising the use of sexual services from a person against that person's will which is intended to address the demand side (see paragraph 167).

**86. GRETA considers that the Austrian authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector. In this context, the Austrian authorities should keep under review the regulation of brothels, paying particular attention to border areas.**

**f. Border measures (Article 7)**

87. Austria has participated in relevant EU activities, for example the FRONTEX trainings for Border Guards on THB, debriefing expert trainings with a module on THB in Malta and Madrid, as well as anti-trafficking training for Border Guards in Lübeck.

88. In March and November 2013, the Criminal Intelligence Service conducted trainings on THB and people smuggling with a focus on victim identification for the employees of the public transportation service in Vienna. Trainings for airline attendants are envisaged for the future.

89. Information is exchanged with neighbouring countries on the basis of bilateral agreements, if existent, or otherwise on the basis of the Police Co-operation Act, the Law applicable in matters of extradition and mutual legal assistance (*Auslieferungs- und Rechtshilfegesetz*), and the Law on Judicial Co-operation in Criminal Matters.

## **2. Measures to protect and promote the rights of victims, guaranteeing gender equality**

### **a. Identification of victims of THB (Article 10)**

90. In the first evaluation report on Austria, GRETA stressed that not all victims of THB benefited from an established system of identification and referral for protection and assistance. While the Austrian authorities had set up a specialised infrastructure, in co-operation with civil society, for the identification and assistance of female victims of THB, GRETA considered that insufficient attention was being paid to the identification of male and child victims of THB. GRETA recommended that a proactive approach be adopted to the identification of victims of trafficking for the purpose of labour exploitation, and that victim identification be improved in police detention centres prior to the deportation of foreign nationals who are victims of trafficking.

91. There is no National Referral Mechanism (NRM) for the identification and referral to assistance of victims of trafficking in Austria. The formal identification of victims of THB is performed by the police, in particular the Central Office for Combating People Smuggling and Human Trafficking and the specialised investigation units in the federal provinces which are subordinated to it. The guidelines for conducting criminal investigations include human trafficking. Further, police officers have at their disposal various documents and manuals which list the main indicators for identifying a victim of trafficking. Frontline police officers are instructed to inform the Central Office or its units in the federal provinces about presumed victims of THB who are then interviewed by specialised investigations.

92. LEFÖ-IBF can also identify victims of THB which contact it directly or are referred to it by other NGOs, and can provide them with accommodation and assistance without the need for formal identification by the police. As regards other NGOs doing outreach work, such as SOLWODI, Herzwerk and Caritas, they do not have access to public funding and cannot identify victims of THB, nor can the police refer victims of THB to them because LEFÖ-IBF is the only NGO contracted by the federal authorities to provide assistance to victims. As regards the referral of male victims of THB, there is still no formal agreement between the police and MEN VIA.

93. A hotline for trafficking in human beings has been operated by the Central Office for Combating People Smuggling and Human Trafficking since 2010 to enable the reporting of presumed trafficking cases as well as facilitate self-reporting. The hotline's phone number as well as an email address are publicised through leaflets issued by the Ministry of the Interior. GRETA was informed that some 80 calls were received annually, as well as some 100 emails. The working hours of the hotline are 7:30 to 15:30, Monday to Friday. According to some NGOs, the limited working hours of the hotline have sometimes posed problems.

94. As regards identification of victims of trafficking for sexual exploitation, the weekly health checks of registered sex workers provide an opportunity to detect potential victims of THB. There is no accurate information on the number of unregistered sex workers who do not undergo periodic health checks and no evidence was provided to GRETA as to whether these checks have contributed to an increase in the identification of victims of THB.

95. The Central Office for Combating People Smuggling and Human Trafficking focused in 2014 on identifying cases of THB for the purpose of forced begging. A special group within the office worked on identifying places where begging takes place across Austria. GRETA was informed that there had been two detected cases of disabled men who had been sold by their families in other countries with a view to being exploited through begging. GRETA was informed by the Central Office for Combating People Smuggling and Human Trafficking that in 2015 their work would focus on THB for the purpose of labour exploitation and there were plans to control sectors at risk, such as ethnic restaurants and construction sites. In their comments on the draft GRETA report, the Austrian authorities indicated that on 16 and 18 March 2015 a co-ordinated operation focusing on labour exploitation of persons from China was organised in Vienna with a view to identifying victims of THB, tracking down key figures in international human trafficking networks, and verifying crime patterns and possible criminal organisation structures. Further police actions together with the financial police and labour inspectors to detect cases of labour exploitation are reportedly planned in the second half of 2015.

96. As noted in paragraph 25, the Task Force's working group on human trafficking for the purpose of labour exploitation has elaborated a list of indicators for the identification of victims of THB for the purpose of labour exploitation, with the involvement of relevant practitioners such as labour inspectors, members of the financial police and the Central Office for Combating People Smuggling and Human Trafficking. This list is primarily intended as a tool for the authorities that might establish a first contact with possible victims, in particular the Financial Police, labour inspectors and customs officers. It is supplemented by information on how to communicate observations to the police in an easy and fast way and information on organisations providing victim protection services.

97. While welcoming the development of the above-mentioned list of indicators, GRETA notes that the number of identified victims of trafficking for the purpose of labour exploitation remains low. There is still a knowledge gap when it comes to identifying this form of trafficking and NGOs are concerned that the Financial Police and labour inspectors do not refer possible victims of THB for the purpose of labour exploitation to them as there is no National Referral Mechanism defining the roles and responsibilities of all relevant actors. As noted in paragraph 63, the mandate of labour inspectors is limited to health and occupational safety inspections and they do not investigate cases of labour exploitation. As for the Financial Police, GRETA was informed that until recently, they focused on checking work permits and detecting irregular migrant workers with a view to deportation. There is also reportedly a lack of clarity as to the rules and procedures for sharing information between different entities.

98. Trade Union representatives met during the second evaluation visit have recently dealt with two cases of seasonal workers, in Burgenland and Tyrol. In the first case, the workers were brought from Romania by bus, worked up to 60 hours per week, and received only part of their wages. The workers contacted Trade Union representatives who informed the police and following an inspection, a criminal investigation was launched, THB being one of the charged offences. The investigation is on-going.

99. With a view to encouraging self-identification, measures have been taken to provide potential victims with information about their rights. As noted in paragraph 66, in June 2014 the drop-in centre for undocumented workers UNDOK was launched. UNDOK is situated within the Trade Union headquarters in Vienna. It is staffed by two persons with knowledge of foreign languages. In the first six months following its opening, 120 people contacted UNDOK, of whom 80 came to the office. The first contact is anonymous. GRETA was informed that through its counselling activities, UNDOK had been able to help persons without a valid residence permit and/or working documents to identify themselves as victims of THB and empower them to seek support for compensation.



100. As mentioned in paragraph 49, with a view to improving the identification of male victims of THB, a study was conducted by the Men's Health Centre, focusing on the construction, catering, agriculture and cleaning sectors. Building on the findings and recommendations of this study, the pilot project MEN VIA was set up in December 2013 as part of the Men's Health Centre, initially for a one-year period. MEN VIA has worked closely with the police, Trade Unions and NGOs. In order to spread information about MEN VIA, flyers and folders in 12 languages were produced and distributed. However, the number of men who have been formally identified as victims of THB remains low (a total of 33 between 2010 and 2014 according to the police crime statistics made available to GRETA).

101. Concerning the identification of victims of THB in the context of asylum procedures, GRETA notes that the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), in its 2013 Concluding Observations, expressed concern that asylum officers were not sufficiently trained to identify victims of trafficking, and urged Austria to ensure that a gender-sensitive approach is adopted by asylum officers in the system for the identification of victims of trafficking, including through allowing for the provision of interpreters and interviewers of the same sex as the asylum seeker.<sup>21</sup> As part of the IBEMA project implemented by the IOM Office for Austria, a workshop on THB and victim identification was conducted for case workers of the Federal Office for Immigration and Asylum (BFA). A contact person on THB has been nominated in each regional directorate of the BFA to act as a "multiplier" and pass on the knowledge gained to the rest of the staff. The BFA's manual for the conduct of the personal interview contains specific guidelines for questioning vulnerable groups, including possible victims of THB. Further, the handbook on the Alien Police Act for the Immigration Police and Border Control officers includes detailed information on human trafficking and a guide for action to be taken.

102. In the first evaluation report, GRETA expressed concern that possible victims of trafficking residing illegally in Austria and placed in police detention centres ran the risk of being deported before being identified. During the second evaluation visit, GRETA visited the police detention centre (PAZ) in Klagenfurt, Carinthia, where it was informed of the case of an Ukrainian woman who had been admitted to the PAZ in 2012 in order to be deported after having spent time in prison (apparently for failure to pay her fines). The woman in question had refused to eat and was seen by an NGO representative visiting the PAZ as part of the regular monitoring of detention facilities carried out by the Austrian National Preventive Mechanism.<sup>22</sup> As a result of the interview, the woman was identified as a victim of trafficking and was moved out of the PAZ. There have reportedly been other cases of victims of THB detained in PAZ. **Noting that regular visits to places of deprivation of liberty by visiting commissions can contribute to detecting victims of trafficking and referring them to assistance, GRETA invites the National Ombudsinstitution (*Volksanwaltschaft*) and the Human Rights Advisory Council to sensitise the members of the National Preventive Mechanism commissions to the issue of human trafficking.**

103. While acknowledging the important role played by LEFÖ-IBF over the years in identifying and assisting female victims of trafficking, GRETA stresses that the good co-operation between the police and LEFÖ-IBF cannot be a substitute for a fully-fledged National Referral Mechanism defining the roles and responsibilities of all relevant actors. GRETA notes that there is a series of actors who can identify victims of trafficking, not only the specialised investigation units dealing with THB offences, but also immigration and asylum officials, Finance Police, labour inspectors, social workers and NGOs. Without a coherent and co-ordinated National Referral Mechanism, there is no guarantee that victims of THB will be put in contact with specialised support providers who can provide them with assistance and legal support.

<sup>21</sup> Concluding Observations on the seventh and eighth periodic reports of Austria, adopted by CEDAW at its fifty-fourth session (11 February - 1 March 2013) UN Doc. CEDAW/C/AUT/CO/7-8, paragraphs 46-47.

<sup>22</sup> National Preventive Mechanisms (NMPs) are set up in accordance with the Additional Protocol to the UN Convention against Torture.

104. **GRETA considers that the Austrian authorities should take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:**

- **strengthening multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, by giving a formal role in the identification process to frontline actors such as labour inspectors, financial police, social workers, officials dealing with irregular migrants, officials interviewing asylum seekers, medical staff and relevant NGOs;**
- **increasing efforts to proactively identify victims of trafficking for the purpose of labour exploitation, including among irregular migrant workers, by reinforcing the role and training of labour inspectors, and providing the labour inspectorates (including construction and agriculture inspectorates) with the resources required to effectively prevent and combat THB;**
- **paying increased attention to detecting victims of trafficking among asylum seekers and persons placed in immigration detention centres. In this context, training on the identification of victims of trafficking should be provided to staff, including medical staff, of all police detention centres (PAZ) and Federal Reception Centres.**

105. **GRETA also invites the Austrian authorities to ensure that asylum interviews are conducted by persons of the same gender as the asylum seeker, and that a gender-sensitive approach to the asylum adjudication process is implemented in order to strengthen the identification procedures for victims of THB.**

#### **b. Assistance measures (Article 12)**

106. In its first evaluation report, GRETA considered that the Austrian authorities should ensure the provision of protection and assistance to victims of trafficking outside Vienna, create an assistance system adapted to the specific needs of male victims of THB, and facilitate access to general health care for presumed victims of THB.

107. Section 25 of the Security Police Act allows the Minister of the Interior to mandate an appropriate victim protection organisation to advise and support presumed victims of violence. LEFÖ-IBF has been commissioned by the Government to provide support to female victims of human trafficking from the age of 15 onwards. LEFÖ-IBF is thus the centralised female victims' protection organisation for the whole of Austria and the law enforcement authorities refer to it women and girls aged 15 and older who are identified as victims of THB. Despite an overall tense budgetary situation, the financial resources given to LEFÖ-IBF have continuously been raised in the last years (from 480 000 Euros in 2011, to 707 000 Euros in 2014). The amount spent by LEFÖ-IBF for providing support to victims of THB from 2011 to 2013 stood at 356 113 Euros.<sup>23</sup>

108. As stipulated in the contract with the Ministry of the Interior and the Ministry of Education and Women's Affairs, LEFÖ-IBF runs two shelters for female victims of THB and is in the process of conceptualising a third one. The first shelter ("emergency shelter") is designed for the initial accommodation period; it has staff presence around the clock and can accommodate up to six women. The second shelter offers temporary housing for women who are more stabilised, wish to develop their regained autonomy and require service on a three-times a week basis. The addresses of both shelters are kept secret.

<sup>23</sup> Of which 90 187 Euros in 2011 (79 victims supported), 99 664 Euros in 2012 (103 victims supported), and 166 262 Euros in 2013 (123 victims supported).

109. The provision of assistance by LEFÖ-IBF is unconditional, begins before the start of any criminal proceedings and is not dependent on the victim's willingness to act as a witness in a trial. Assistance is available both to victims officially identified by the police and to presumed trafficked persons who were not officially identified. The latter category are provided free and unconditional access to assistance by LEFÖ-IBF, but have no access to a legal residence status and have to leave the country. This erodes the standard of unconditional assistance, the requirement of safety and protection for trafficked persons, as well as the prevention of further trafficking.

110. Assistance by LEFÖ-IBF includes psychological, social and health assistance; life counselling and psychotherapy; support in access to health and medical care; counselling and assistance for residence and work permits; accompaniment to police interviews; psychosocial counselling in court cases and legal assistance services; assistance in accessing German courses, further education and integration offers; assistance in finding accommodation and employment; support and counselling for returning to the country of origin in co-operation with other organisations. The first counselling session is designed to inform the potential victim about the support structures and duties of LEFÖ-IBF and about the victim's rights and options. Many victims wish to use only part of the services available, others take full advantage. Victims have the right to end the relationship with LEFÖ-IBF whenever desired.

111. The faith-based NGO SOLWODI runs a shelter for presumed victims of THB with eight places, which is funded by donations from religious congregations. GRETA was informed that the police cannot refer victims of THB to SOLWODI because they have a contractual obligation to refer victims to LEFÖ-IBF. Further, in Klagenfurt, Caritas Carinthia has been offering since November 2008 guidance and support to sex workers and victims of THB, through the Project Talitha which includes a counselling centre for victims of THB and forced prostitution, psychotherapeutic, legal and material support.<sup>24</sup> Caritas accommodates victims in secure flats or refers them to SOLWODI's shelter.

112. Male victims are referred to MEN VIA, which rented a small flat in the summer of 2014, capable of providing accommodation to two victims. However, MEN VIA had limited resources while the number of men seeking help and accommodation was increasing. There were also security problems and the flat was closed down and the victims moved to hotels. A total of 10 men have been supported by MEN VIA since it started operating in December 2013; five of them were referred by the police, mainly on grounds of forced begging. At the time of the evaluation visit, the question of the funding provided to MEN VIA was being examined by the Ministry of Social Affairs. GRETA was also informed that MEN VIA needed to be given official intervention status. In their comments to the draft GRETA report, the Austrian authorities indicated that the Federal Ministry of Labour, Social Affairs and Consumer Protection increased the financial support for MEN VIA for the period 2015/2016.

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<sup>24</sup> <http://www.erstestiftung.org/komenskyfond/talitha-support-and-guidance-for-sex-workers-and-victims-of-human-trafficking/>

113. One of the priorities of the Second National Action Plan was to find ways of providing better medical care for victims of trafficking who have not yet obtained a residence permit. During the second evaluation visit, GRETA noted an improvement in the provision of health care to victims of THB. Section 9 of the General Social Security Act states that specific groups which have no income and otherwise would not be part of the statutory health system can be included by a decree of the Federal Ministry of Labour and Social Affairs. This decree refers to asylum seekers (who are covered by the federal minimum guarantee) and vulnerable foreigners covered by Section 2 of the basic provision agreement (*Grundversorgungsvereinbarung*) between the Federal Government and the *Länder*. Therefore victims of trafficking in human beings who fulfil one of these criteria can be included in the statutory health system. Third-country nationals are entitled to "basic provision", including medical care, according to the basic provision agreement as well as the regional laws on basic provision. However, trafficked EU citizens cannot be insured before receiving a registration certificate, which may be difficult to obtain. The maintenance of a network of doctors and the co-operation with a Vienna-based organisation providing basic health care for uninsured people implies a significant effort for LEFÖ-IBF. GRETA was informed that difficulties arise since the quality of free health care is not comparable to paid health care services.

114. **GRETA considers that the Austrian authorities should take further measures to ensure that presumed and identified victims of trafficking across Austria receive adequate assistance and support, in particular by:**

- **adopting minimum support service standards for victims of THB and the provision of adequate funding to maintain them;**
- **further developing co-operation with NGOs, including those working outside Vienna, and the *Länder* in order to ensure the provision of protection and assistance to all victims of THB;**
- **ensuring that assistance is adapted to the specific needs of male victims of THB and giving an official intervention status to MEN VIA;**
- **guaranteeing access to health care as soon as a person is identified as a victim of THB, regardless of the trafficked person's citizenship or legal status.**

**c. Identification and assistance of child victims of THB (Articles 10 and 12)**

115. In its first evaluation report, GRETA was concerned by the serious shortcomings in the process of identification of child victims of trafficking, in particular lack of awareness and knowledge of THB amongst relevant officials and in particular youth welfare centres, as well as lacunae in the system for age identification.

116. As noted in paragraph 35, the Task Force's group on child trafficking has been developing over the last three years a National Referral Mechanism (NRM) for child victims of THB, providing guidelines for key stakeholders such as the police, child welfare authorities, the alien's police, the judiciary and medical doctors for the identification of children and the steps to be taken, while respecting the best interests of the child. At the time of GRETA's evaluation visit, this draft NRM was about to be submitted to relevant stakeholders, but it appears that the process of its approval might be rather lengthy.

117. Reference has already been made in paragraph 71 to the brochure on child trafficking issued by the working group on child trafficking, which includes indicators for the identification of child victims. The group is now drafting a handbook for professionals working in the field of international adoptions on the implementation of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

118. Age determination is carried out by using a combination of three methods: medical examination of the body, inspection of the dental chart and panoramic X-ray, and X-ray examination of the wrist and collar bone (magnet resonance imaging subsidiary). The age verification procedures are based on medical examinations aiming solely at determining the biological age; neither psychological, nor cognitive, nor behavioural factors are considered for age assessment. Since May 2012, an X-ray examination of the wrist is performed first (pre-selected measure). The methods combined enable a determination of the age with a fluctuation margin of plus or minus one year. The person concerned is presumed to be a child until the verification is completed.

119. As explained in GRETA's first evaluation report on Austria, the responsibility for implementing assistance measures regarding child victims of THB lies with the child and youth welfare offices of the *Länder*. In Vienna, the Drehscheibe Centre, a socio-pedagogic institution established in 2001 by the City of Vienna, is specialised in providing accommodation to unaccompanied foreign minors and child victims of trafficking. Children are often brought to the shelter run by the Drehscheibe Centre after having been apprehended by the police while committing petty crime or begging in the streets. The centre provides children with accommodation, food and protection, tries to determine their identity and learn more about each child's individual story. Drehscheibe works with translators and employs native speakers. Legal assistance is provided by LEFÖ-IBF.

120. The Drehscheibe Centre's field of action is limited geographically to Vienna (very rarely children are sent to the centre from other parts of the county). Further, the Drehscheibe Centre has limited means and capacity while the number of unaccompanied foreign minors for which it is responsible has been growing. Thus the number of children accommodated in the centre in 2014 was over 400 (one-third of them were possibly victims of THB and the remainder were asylum seekers, mostly from Syria, Pakistan and Afghanistan). The shelter has 12 places and employs four staff during the day and two staff at night. It operates an open-door regime and children may attend schools in the community, but in most cases they do not stay long at the centre. GRETA was concerned to learn that some of the children accommodated in the shelter go missing.

121. GRETA was informed that almost all trafficked children accommodated at the Drehscheibe Centre in recent years had been from the Roma community, a great majority of them from Bosnia and Herzegovina. In this respect, there have reportedly been difficulties in obtaining information from Bosnia and Herzegovina about the children's identities or places of origin. GRETA stresses the need to work on prevention within the Roma community, both in countries of origin and countries of destination. In this respect, GRETA was informed that a drop-in centre for Roma has been set up by an NGO in Salzburg, but in general it was reported that there was a shortage of funding for NGOs working in Roma communities and with migrants.

122. The other *Länder* do not have specialised services for child victims of trafficking and the child and youth welfare offices are responsible for dealing with such cases as well as, in general, for unaccompanied minors. The competent child and youth welfare office is usually appointed as the legal guardian by the competent court within a few days/weeks. Formally these offices are responsible for assessing the best interests of the child, including risk assessment. However, GRETA was informed that the practice varies enormously as there are no nationwide standards concerning unaccompanied minors and/or child victims of trafficking. As a follow up to the 2012 Concluding Observations of the Committee for the Rights of the Child in respect of Austria, a working group of youth welfare authority representatives has been discussing the possibility for adopting standards for determining the best interests of the child. However, child victims of trafficking reportedly have no special consideration in that working group, whose mandate covers unaccompanied minors. Further, there is a currently a research project at the University of Graz to assess how the "best interests" criteria enshrined in law are reflected in practice; the results are expected by 2018. As noted in paragraph 35, the Task Force's working group on child trafficking intends to develop nation-wide standards for the care and protection of trafficked children. **GRETA considers that the Austrian authorities should bring this process to completion without delay.**

123. GRETA notes that according to the 2012 Concluding Observations by the UN Committee on the Rights of the Child concerning Austria, child victims of trafficking often have no effective access to free legal assistance and psychological support.<sup>25</sup>

124. **GRETA urges the Austrian authorities to:**

- **adopt as a matter of priority a National Referral Mechanism for child victims of THB 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 THB and children at risk;**
- **ensure that child victims of THB 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 to take steps to address the problem of children going missing while in the care of the state.**

**d. Protection of private life (Article 11)**

125. The Data Protection Act provides a clear legal basis for the protection of personal data. Only the Criminal Intelligence Service stores personal data of victims. According to Section 56 of the Security Police Act, national law enforcement authorities may forward data to appropriate victim support organisations, if required.

126. The victim protection organisations LEFÖ-IBF and MEN VIA hold all the relevant information about victims in strict confidentiality and do not share personal data with any other institution or authority without prior agreement of the victim. Access to assistance by LEFÖ-IBF does not depend on submission of available data about the victim or identification by the police. On the contrary, collected data is generally kept to a minimum with full protection of privacy. Any transfer of data across national borders is avoided whenever possible. Victims have the right to request the deletion of their data. When reporting on its activities, LEFÖ-IBF uses only aggregated data and advocates for better anonymisation in all public communications. MEN VIA has not reported any conflict of interest between the needs of victim protection and the organisation's responsibilities towards the authorities.

**e. Recovery and reflection period (Article 13)**

127. In its first evaluation report, GRETA asked the Austrian authorities to establish clearly in law a recovery and reflection period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim of THB. The Austrian authorities have argued that the fact that this period is not regulated by law but by an internal decree of the Ministry of the Interior allows for flexibility and the possibility to extend the period whenever needed. At present, the recovery and reflection period is regulated by the "Handbook on Aliens Law", seventh edition, 2014, as follows:

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<sup>25</sup> Concluding observations on the combined third and fourth periodic report of Austria, adopted by the Committee on the Rights of the Child at its sixty-first session (17 September – 5 October 2012), CRC/C/AU/CO/3-4 03 Dec 2012, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/483/47/PDF/G1248347.pdf?OpenElement>

“Until a decision on the residence permit pursuant to Section 57, paragraph 1, point 2, of the Asylum Act and in any case for at least 30 days (recovery and reflection period) a deportation of presumed victims of THB must not take place. Concerning victims of THB who have been identified, this very fact is sufficient reasoning why no forced return is to be implemented. It is essential that, in the framework of proceedings under Aliens legislation, a distinction is made between a credible statement of a party and false claims which are made to cover oneself by bringing an unjustified claim for a victim status. Considerations which are also to be made include the severity of any violations against interests of public order, safeguarding of internal security, and whether the victim has renewed contacts with the suspected perpetrators. Furthermore, all information that could affect the security of the victim is to be excluded from the files.”

128. According to the Ministry of the Interior, the Handbook on the Aliens Law has the status of an internal decree and is binding on police officers. Third-country nationals who are victims of THB must be informed by the police about the recovery and reflection period and the possibility of being granted international protection. The Federal Office for Immigration and Asylum has to examine *ex officio* whether a person is a victim of THB before a decision on the return of that person is taken (Section 58, paragraph 1, of the Asylum Act).

129. GRETA is concerned that presumed victims of THB are not informed of the recovery and reflection period. As was the case during the first evaluation visit, none of the victims of THB met by the GRETA delegation during the second evaluation visit knew what a recovery and reflection period is. Police officers met during the visit did not see the utility of proposing such a period to victims. There was no data on the number of persons who had benefited from a recovery and reflection period and NGOs providing assistance to victims of THB were not aware of any presumed trafficking victims having received such a period.

130. GRETA is concerned that in the absence of an explicit legal framework concerning the recovery and reflection period, presumed victims of THB in Austria risk being deported, unless they are co-operating with the police, and not being given the time needed to recover from the trauma experienced and to make an informed decision on possible co-operation with the authorities. According to the Convention, the recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. The recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed.

**131. GRETA urges the Austrian authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking, including EU and EEA citizens, 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.**

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**f. Residence permits (Article 14)**

132. Following GRETA's first evaluation report, the legal provision previously regulating the issuing of residence permits to victims of THB (Section 69a, paragraph 1, of the Law on Settlement and Residence) has been replaced by Section 57 of the Asylum Act, which was amended in 2012 and entered into force on 1 January 2014. Pursuant to the latter, victims of human trafficking and trans-border prostitution trade are entitled to "special protection" residence permits, which can be issued at the initiative of the competent authority or upon application by the victim, provided that a residence permit is considered necessary for the criminal prosecution of the offender or for enabling the victim to make civil claims in connection with crimes. While the law does not specify that residence permits are issued for the purpose of co-operation, a pending legal (criminal or civil) procedure is a precondition for issuing the residence permit.

133. Following the setting up of the Federal Office for Immigration and Asylum (BFA) in January 2014, the issuing of "special protection" residence permits falls under the responsibilities of this office. BFA has to decide whether to grant a residence permit for "special protection" within six weeks. GRETA was concerned to learn that this deadline was not observed and some of the victims of THB met during the second evaluation visit had waited for several months (in once case almost a year) for a residence permit. BFA representatives met during the visit were unable to indicate the average time it takes to issue a "special protection" residence permit. Civil society interlocutors indicated that victims were frequently left in an uncertain position for extended periods, with little or no information concerning the status of their applications. In their comments on the draft GRETA report, the authorities have stated that major organisational changes and a sharp increase in the workload made it difficult for the BFA to meet the deadline of six weeks; however, fast track communication channels have been set up with relevant NGOs and the situation has reportedly improved.

134. According to information provided by the Austrian authorities, six residence permits were granted to victims of THB in 2013 (to three women and three men) and six permits were extended (to four men and two women). No information was available for 2014.

135. Following the above-mentioned amendments to the Asylum Act, the City of Vienna (Municipal Office 35) issues settlement permits (the so-called "red-white-red card plus") in case of extension of existing residence permits on the basis of authorisation from the BFA. In the case of children who are third-country nationals, the application is made directly to Municipal Office 35. EU and EEA citizens also apply directly to this office but the files need to be sent to the BFA. These permits are issued for the duration of one year and give the bearer the right to work. A total of 33 settlement permits were issued to victims of THB in 2013.

136. An amendment to the Act on the Employment of Foreign Nationals entered into force on 1 July 2011, granting victims and witnesses of THB facilitated access to the labour market. The issuance of a work permit is thus no longer contingent on a labour market demand test. GRETA welcomes this amendment.

137. There is no data available on the number of victims of THB given refugee status or subsidiary protection. GRETA was informed of one case where a Chinese woman who had sought asylum in Italy was identified as a victim of THB in Austria and was granted asylum there. Access to the labour market is rather restrictive for asylum seekers, but there are no restrictions on asylum seekers becoming self-employed and GRETA was informed that women asylum seekers in particular were frequently driven into being self-employed sex workers.



138. A report published by UNHCR in December 2013, which described the main problems and challenges for refugee protection in Austria, outlined six recommendations for the Austrian Federal Government in relation to the asylum process and the rights of asylum seekers. These included, *inter alia*, improving the provision of basic services for asylum seekers in Austria by facilitating access to the labour market, paying greater attention to the needs of vulnerable people in the asylum system, and increasing support for the integration of refugees and persons with subsidiary protection in Austria.<sup>26</sup>

139. GRETA notes that the legal provision for granting a residence permit to victims of THB in Austria, which links the permit to criminal or civil proceedings, in practice undermines the unconditional nature of assistance to victims. According to the Austrian authorities' comments on the draft GRETA report, the asylum authorities are aware that Article 14 of the Convention provides for renewable residence permits for victims of THB also in situations when "the competent authority considers that their stay is necessary owing to their personal situation", and that linking the issuing of a residence permit to criminal or civil proceedings in all cases may restrict access to it excessively. Consequently, the explanatory remarks to Section 57 of the Asylum Act stress that the result of criminal or civil proceedings is not decisive and does not preclude the issuing of a residence permit to third-country nationals due to their personal situation.

140. **GRETA considers that the Austrian authorities should keep under review the practical implementation of Section 57 of the Asylum Act and the extent to which residence permits are granted because of the personal situation of the victim.**

141. **Further, GRETA considers that the Austrian authorities should take steps to ensure that decisions to grant residence permits victims of THB are taken in compliance with the time-limit specified in law.**

#### **g. Compensation and legal redress (Article 15)**

142. As far as criminal and civil proceedings are concerned, the legal framework for compensation of victims of THB in Austria has remained unchanged since GRETA's first evaluation visit.<sup>27</sup> Pursuant to Section 66, paragraph 2, of the Code of Criminal Procedure (CCP), victims of THB are entitled to legal assistance (*juristische Prozessbegleitung*) free of charge. Legal assistance is provided by lawyers and includes legal advice and appearance for the victim in court with regard to claims for compensation. According to Section 67 of the CCP, victims have the right to a decision on compensation from the offender in the course of criminal proceedings (*Privatbeteiligung*). If the accused person is convicted and the victim has claimed compensation as part of criminal proceedings, the criminal court has to decide upon this civil claim too. Such a court decision on civil claims forms an executory title. Only in cases where the findings do not provide a sufficient basis for a decision on civil claims, the criminal court may refer a victim of THB to the civil court (Section 366, paragraph 2, CCP).

143. In 2010 and 2012, LEFÖ-IBF co-ordinated a working group in Austria within the framework of the project COMP.ACT EUROPE (European Action for Compensation for Trafficked Persons). The working group conducted research concerning compensation for trafficked women. The findings and recommendations of this study were included in the Third National Action Plan 2012-2014 (objective 4, III.15).

<sup>26</sup> The report is available in German at: [http://www.resettlement.eu/sites/icmc.ttp.eu/files/FR\\_AUS\\_Positionen\\_2013-RegNeu.pdf](http://www.resettlement.eu/sites/icmc.ttp.eu/files/FR_AUS_Positionen_2013-RegNeu.pdf)

<sup>27</sup> See paragraphs 118-120 of GRETA(2011)10.

144. Special departments for proprietary measures (*Sonderreferate für vermögensrechtliche Anordnungen*) were established at the Prosecutor's Offices in Vienna, Graz, Linz and Innsbruck and at the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption in March 2014. These special departments are concerned with proprietary orders to ensure that assets are seized and victims of THB are eventually able to obtain compensation from perpetrators (see also paragraph 180).

145. As a licensed anti-trafficking organisation, LEFÖ-IBF is mandated by the Ministry of Justice on the basis of Section 66 of the CCP to provide free of charge legal advice to victims during the investigation and court proceedings (*Prozessbegleitung*). Access to compensation is an important part of the support provided by LEFÖ-IBF, independent of the place of the victim's residence. Representatives of LEFÖ-IBF indicated that there was certain progress in obtaining compensation from perpetrators thanks to early confiscation measures and freezing of assets and an increasing number of victims were granted executory titles. By way of example, a woman who was trafficked and sexually exploited for several years was represented by a lawyer provided by LEFÖ-IBF during the criminal proceedings. When the judge granted a financial compensation of 3 000 Euros the victim received the money a few months later because the perpetrator's car had been seized at an early stage. LEFÖ-IBF is now working on gaining experience about transnational claims for compensation. Reference was made to several pending compensation cases, including one for 500 000 Euros against perpetrators in Bulgaria. If the perpetrator and/or assets are abroad, access to compensation can be very difficult and there is reportedly insufficient institutional support in other countries and little success in enforcing executory titles.

146. Illegally employed foreigners can sue the business operator having employed them for their outstanding claims. Furthermore, perpetrators can be fined or, under certain circumstances, even imprisoned for not paying. The Chamber of Labour provides legal support for claiming unpaid wages and supports victims of THB together with LEFÖ-IBF through labour law court proceedings.

147. As noted in paragraph 18, the Victims of Crime Act (which provides a State compensation scheme for victims of violent acts) was amended in 2013 to provide for the possibility of providing compensation to victims of THB whose stay in Austria was irregular at the time the offence against them was committed. GRETA was informed that the number of State compensation payments to victims of THB had increased in recent years: while there was one application in 2010 and one in 2011, in 2012 there were six applications and in 2013, 17 applications. Four applicants were granted compensation in 2012 (for the total amount of 13 630 euros) and 10 victims in 2013 (for the total amount of 89 680 euros).

**148. While welcoming the progress made in Austria in the area of compensation to victims of THB, GRETA considers that the Austrian authorities should make additional efforts to guarantee effective access to compensation for victims of THB, including children, including through the systematic provision of legal advice and information.**

#### **h. Repatriation and return of victims (Article 16)**

149. The Austrian authorities have indicated that every case of return of a victim of THB is assessed individually, based on the needs of the victim. Voluntary returns are generally the preferred option. In case of a forced return, the rights, safety and dignity of the returnee are guaranteed. No sensitive information about the person is given to the receiving state.

150. LEFÖ-IBF has been implementing a project under the European Return Fund to assist the voluntary return of female victims of THB since 2009. It establishes contacts with partner organisations and police departments in countries of origin, if desired by the victim. On a psycho-social level the decision to return is discussed individually. Counsellors discuss with the victim individual measures to prevent, recognise and react appropriately to dangerous situations. LEFÖ-IBF underlines the nexus between a secure residence status and the victim's decision in favour of voluntary return.

151. In co-operation with LEFÖ-IBF, the Ministry of the Interior supported the project "FROM – *Freiwillige Rückkehr von Opfern des Menschenhandels V*" on the voluntary return of victims of THB. The project ran from November 2009 to June 2014 and aimed at strengthening the structures for safe voluntary return and reintegration of trafficked women into their countries of origin. As part of it, LEFÖ-IBF developed a framework entitled "Quality standards for risk assessment and safe return and reintegration of trafficked persons", which contains guidelines for the support of victims. The standards are outlined in three chapters: a) identification, b) return counselling and measures for reintegration, and c) risk assessment.

152. Further, the Criminal Intelligence Service supports the IOM-Vienna project "CARE: Co-ordinated Approach for the Reintegration of Victims of Trafficking". The kick-off meeting took place on 6 November 2013. Eligible beneficiaries are any male, female and child victims of trafficking returning voluntarily to any third country. The project aims at providing flexible and tailored assistance for the return of victims of THB, helping them to resettle and become again active members of their home communities.

153. As regards child victims of THB, if return to the country of origin is in the best interests of the child, the competent child and youth assistance office contacts the embassy and/or the child assistance agency in the respective country in order to discuss the case, the conditions required and the recommended procedure. The Drehscheibe Centre has developed a special repatriation model for children and young persons together with Bulgaria and Romania as well as with some non-EU countries, including a network of contacts with child assistance agencies. Monitoring of each individual case enables verification and provision of further support and assistance to the children after their return for a six-month period. In 2013, 12% of the children admitted to the centre were returned to their countries of origin following individualised risk assessment, and best interests.

154. In the other *Länder*, the child and youth welfare authority is responsible for deciding whether the return is in the best interests of the child. It has to establish contacts with the child assistance agency in the respective country in order to discuss the case, the conditions required for a safe return and the recommended procedure to ensure the effective protection of the best interests of the child. However, proper monitoring of the conditions of safety, reintegration, and prevention of re-trafficking is still lacking. No systematic study has been carried out on the situation of trafficked children who are returned to their home countries in the past 10 years, after a decision of "safe return" has been made and there is little knowledge of the long-term implications of these decisions.

155. If a return is not feasible or recommendable in accordance with a best interests determination, the child stays in the care of the child and youth welfare system. However, there is no dedicated integration programme for trafficked children and once the child turns 19, the child and youth welfare system is no longer responsible and solutions have to be found elsewhere, e.g. through NGOs.

156. In 2012 the Ministry of the Interior together with IOM started a project with the Republic of Moldova entitled "Assisted voluntary return and reintegration of children and young adults with emphasis on the prevention of (re-)trafficking". The project provides tailored rehabilitation and reintegration assistance to children and young adults having been trafficked as well as vulnerable individuals who return from Austria to the Republic of Moldova. Trainings in Austria and the Republic of Moldova were organised by the Drehscheibe Centre in the autumn of 2013.

157. **GRETA considers that the Austrian authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return.**

### 3. Substantive criminal law

#### a. Criminalisation of THB (Article 18)

158. Section 104a of the CC ("trafficking in human beings"), as amended by the Criminal Law Amendment Act 2013, reads as follows:

"(1) A person who recruits, harbours, otherwise receives, transports or offers or transfers to another person an adult using dishonest means (paragraph 2) against this person with the deliberate intention of the person's exploitation (paragraph 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, deception about facts, abuse of authority, a position of vulnerability, insanity or 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 a person who recruits, harbours, or otherwise receives, transports or offers or transfers to another person a person under age<sup>28</sup> with the deliberate intention of the person's exploitation."

159. As already noted in paragraph 16, the list of forms of exploitation has been expanded to explicitly include the exploitation of begging and the exploitation of criminal activities. As regards forced begging, the Austrian authorities have indicated that this form of exploitation is not uncommon in criminal investigations of THB, but no cases involving the child's family or legal guardian have been reported. Cases in which victims of THB were exploited by urging them to engage in pickpocketing or in fraudulent begging (pretending to have a disability) have also been reported.

160. There is no specific provision on "forced marriage" in the CC, but it is punishable under Section 106, entitled "serious coercion" (*schwere Nötigung*), according to which a person who forces another person to get married by using violence or threat is punished with a prison sentence from six months to five years. This offence has been liable to public prosecution (*Offizialdelikt*) since 2006, which means that a third party unaffected by it can take action against it. Some cases can also be punished under Section 104a of the CC in case the forced marriage led to sexual or labour exploitation. A draft bill introducing the offence of forced marriage under a new Section 106c of the CC are being discussed by Parliament and, if adopted, the amendment will enter into force as of 1 January 2016. **GRETA would like to be kept informed of developments in this respect.**

<sup>28</sup> A person under 18 years of age, i.e. a child.

161. The CC includes the offence of illegal procurement for adoption in Section 194 (*unbefugte Adoptionsvermittlung*). Persons who adopt a person from another country for the purpose of obtaining a residence permit for Austria or other EU country are punishable under Section 118 of the Alien's Police Law (*Fremdenpolizeigesetz*). In one case currently under investigation for THB, a victim claimed that, at the age of 14, she was sold against her will from Serbia to her husband-to-be in Austria where she had to live together with him and his parents and was forced to have sex with him and care for their household. The Austrian authorities have indicated that several *Länder* are implementing measures to prevent forced marriages and illegal adoptions through sensitisation of the authorities and putting in place appropriate procedures in case of suspicion.

162. THB for the purpose of slavery or practices similar to slavery and servitude is covered by Section 104 of the CC which prohibits slavery and the slave trade. The Ministry of Justice has indicated that if one of the "severe" cases of slavery or practices similar to slavery (e.g. debt bondage, servitude) occurs, then it would fall under Section 104 of the CC and not Section 104a. This was indeed intended by the legislator according to the *travaux préparatoires* of the CC. According to the Ministry of Justice, in practice the possible application of either Section 104 or Section 104a is not a problem because the court is not bound by the opinion of the prosecutor and can "switch" from applying Section 104 instead of Section 104a and vice versa.

163. There is no definition of the term "abuse of a position of vulnerability" in the CC. In the explanatory remarks to the Criminal Law Amendment Act 2002, a position of vulnerability is described as a serious pressure situation. It is not limited to economic distress alone, but can also be caused by, for example, a drug addiction, homelessness or fear of violence. The perpetrator is abusing such a situation if he/she exploits the victim, taking into account the position of vulnerability. The position of vulnerability has – at least – to make it easier for the perpetrator to exploit his victim. In many cases, a position of vulnerability of persons subjected to THB results from the fact that the victim is in a financially and/or socially difficult situation, often in the country of origin. Examples of abuse of a position of vulnerability as a means used in THB offences mostly involve certain deficiencies in the lives of the affected persons. Indicative factors include the lack of a supportive family background, responsibility for caring for children or other relatives, lack of formal education, insufficient income, lack of access to information about the country of destination, false information about the rights in the country of destination, often intended to raise anxieties and mistrust towards the authorities there. In many cases the victims depend on the perpetrators to provide them with housing, food, etc. Adding the inability of the victims to speak German and their irregular status in Austria, their position of vulnerability is intensified. LEFÖ-IBF has recently experienced an increasing number of cases of trafficking of psychologically unstable women.

164. GRETA notes that Section 104a of the CC does not specifically state the irrelevance of the victim's consent to the intended exploitation, when any of the specified means are used, which is integral to the Convention's definition of THB. As noted in the first evaluation report, according to the Austrian authorities, the question of consent to exploitation is irrelevant with regard to the standing of victims in criminal proceedings. Nevertheless, GRETA sees benefits in stating explicitly in legislation that consent is irrelevant to determining whether the crime of human trafficking has occurred. Setting out this pivotal principle in law could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and to obtaining a more consistent approach. Indeed, consent is an important factor at different stages of human trafficking cases, for instance: if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as THB where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.<sup>29</sup> **GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions.**

<sup>29</sup> See UNODC Issue Paper, The Role of Consent in the Trafficking in Persons Protocol, United Nations, Vienna, 2014. Available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

165. After conducting an assessment as recommended by GRETA in the first evaluation report, the Task Force's working group on prostitution recommended an increase in the maximum term of imprisonment for "pimping" (Section 216 of the CC). With the Criminal Law Amendment Act 2013, the maximum terms of imprisonment for this offence have been increased to two years of imprisonment for the basic offence (Section 216, paragraph 1), and in case of aggravating circumstances, to up to three years of imprisonment (Section 216, paragraph 2), or from six months to five years' imprisonment (Section 216, paragraphs 3 and 4). As a consequence of these increased sentences, the tools available to the police for THB investigations will be improved, e.g. telephone surveillances will be possible. This amendment is likely to strengthen the prosecution of THB offences under both Sections 104a and 216 of the CC.

**b. Criminalisation of the use of services of a victim (Article 19)**

166. There are provisions in Austrian law that criminalise the use of services with the knowledge that the person providing them is a victim of THB. Pursuant to Section 28c, paragraph 2, point 2 of the Act Governing the Employment of Foreign Nationals, a person who employs another person without the right of residence, of whom he/she knows that this person is a victim of THB, is to be punished with a prison sentence of up to two years for the use of the employee's forced work or services". Further, customers of sex workers who are under 18 years of age are punishable under Section 207b (3) of the CC with up to three years of imprisonment.

167. In their comments on the draft GRETA report, the Austrian authorities have indicated that it is planned to introduce in the CC a new Section 205a which criminalises a person: "1) who has sex with another person against that person's will (without any [further] violence or coercion); or 2) who exploits the victim's plight; or 3) who has gained the victim's consent after intimidation". The Ministerial draft bill was sent for public examination and the Government draft bill was submitted to Parliament, with expected entry into force on 1 January 2016.

**168. GRETA invites the Austrian authorities to consider introducing a legal provision criminalising the use of services which are the object of exploitation as referred to in Article 4 of the Convention, with the knowledge that the persons is a victim of THB.**

**c. Corporate liability (Article 22)**

169. There have been no changes in the Federal Statute on the Responsibility of Entities for Criminal Offenses (*Verbandsverantwortlichkeitsgesetz*) since the first evaluation report concerning THB. The law regarding corporate liability does not apply to sub-contractors. No cases of corporations involved in THB have been reported. GRETA was informed by the Task Force's working group on labour exploitation about plans to introduce civil liability of legal persons. **GRETA invites the Austrian authorities to review the legal provisions and practice concerning corporate liability for THB with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive.**

#### **d. Non-punishment of victims of THB (Article 26)**

170. There have been no legal changes concerning the non-punishment provision. The Austrian authorities have reiterated that Section 10, paragraph 1, of the CC on an exculpatory state of necessity is the legal basis for implementing the non-punishment principle to victims of human trafficking.<sup>30</sup> Moreover, they have referred to Section 198 and following of the CCP on withdrawal from prosecution ("diversion") as legal basis in procedural law. GRETA notes, however, that the provisions on diversion do not allow for a simple closing of criminal proceedings, but require either the payment of an amount of money, the rendering of community services, undergoing a probationary period, or agreeing on an out-of-court compensation by the person who is charged. Therefore, the provisions on diversion cannot be regarded as ensuring non-punishment for victims of THB.

171. In its first report, GRETA recommended that the Austrian authorities assess the application of the non-punishment principle and, if necessary, revise the scope and/or application of the relevant provisions. As noted in paragraph 36, an assessment of Section 10 of the CC is planned to be carried out as one of the measures of the Fourth National Action Plan for 2015-2017.

172. GRETA was informed by NGOs that sex workers are regularly subject to administrative fines for offering services at a place or a time where this is not permitted, pursuant to the relevant *Länder* legislation regarding prostitution. Repeated fines lead to significant accumulated amounts to pay for the person concerned and may result in imprisonment (see paragraph 102). LEFÖ-IBF supports many victims who are required to pay substantial administrative fines originating from the time they were exploited and controlled by the traffickers. NGOs have also referred to residence prohibitions or other penalties pronounced if victims use falsified passports, even though these actions occurred under constraint.

173. According to the Austrian authorities, administrative fines are revoked once a person is identified as a trafficking victim. At the same time, difficulties seem to exist to find out whether and where administrative fines have been imposed against a victim of trafficking as a central database for administrative fines does not exist in Austria. Moreover, it is not possible to compensate trafficking victims for fines they have paid while they were being exploited. Victims of THB may also retain a criminal conviction on their records, where the non-punishment provision has not been properly complied with.

174. After the second evaluation visit, GRETA received reports about the case of a 17-year old girl from Bosnia and Herzegovina who was sentenced by a court in Vienna to 18 months' imprisonment for theft, despite there being indications that she had been pressured to commit offences by traffickers.<sup>31</sup> According to information provided by the Austrian authorities in their comments on the draft GRETA report, although a certain family-related pressure has been acknowledged by the court as a mitigating circumstance in the case in question, there was no sufficient evidence that would qualify the girl as a victim of THB. The case in question is part of national and international investigations against the so-called Mobile Organised Crime Groups (MOCG), specialised in committing property crimes, especially pick pocketing, in a number of European countries.

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<sup>30</sup> Section 10, paragraph 1, of the CC reads as follows: "A person who commits a punishable offence in order to avert an imminent and considerable disadvantage from him/herself or from another person 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".

<sup>31</sup> Available at: <http://derstandard.at/2000012794547/Zum-Stehlen-gezwungen-Maedchen-fuer-134-Taschendiebstaehe-verurteilt>

175. **GRETA urges the Austrian authorities to take additional measures to ensure compliance with the principle of non-punishment of victims of THB 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 THB and providing compensation or reimbursement of fines paid by victims of THB.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>32</sup>

#### **4. Investigation, prosecution and procedural law**

##### **a. Measures related to ensuring effective investigations (Articles 1, 27 and 29)**

176. As noted in paragraph 27, there are 10 special investigation units dealing with THB offences (one at the Federal Criminal Intelligence Service and nine in the Criminal Intelligence Units of the *Länder*). The fact that there is one Federal Police under the supervision of the Criminal Intelligence Service ensures close co-operation. Moreover, a common data base is used.

177. Proactive investigations are an integral part of all THB trainings for relevant professional groups, including police officers, financial police officers, prosecutors and judges, at both basic and advanced level. The Criminal Intelligence Service Vienna is seeking proactively the co-operation of other countries in conducting investigations. Currently, for example, joint anti-trafficking action with the Hungarian police is taking place in the framework of the ISEC Project "Operational co-operation for fighting against sexual exploitation committed by Hungarian organised crime groups in Europe".

178. The use of special investigative techniques is regulated by the Code of Criminal Procedure, Sections 129 to 143. The following special investigative techniques are permitted: secret surveillance, undercover investigation, fictitious purchase, monitoring of data, interception of communication, audio-visual monitoring of persons by technical means and computer-aided data cross-referencing. These techniques can be used by the Criminal Police at their discretion or with the authorisation of the Prosecutor's Office. The use of special investigative techniques depends on the extent of the sentence for the particular offence being investigated. As the sentence for the basic offence of THB is from six months to five years, the full range of special investigative techniques permitted by law can be used, but in practice the mostly frequently used ones are interception of communication and secret surveillance (photo/video).

179. Blocking websites may be necessary to prevent access to them pre-emptively. To block a website, a court order is necessary. In case the hosting server is located in Austria, the website can be taken down immediately, regardless of whether it is an Austrian domain (.at). If there is an Austrian domain (.at) hosted on a server abroad, the Austrian Police cannot take down this service. In this case, a request for mutual assistance is to be issued to the appropriate State.

<sup>32</sup>

<http://www.osce.org/cthb/101002>



180. The Asset Recovery Unit of the Criminal Intelligence Service is involved in all THB investigations. According to Section 110(1) of the CCP, a seizure shall be admissible if it appears to be necessary for reasons of evidence, to secure private law claims, or to secure a forfeiture, a recovery or another property law order stipulated by law. The public prosecutor orders the seizure and the criminal police perform it. The criminal police are entitled to seize objects at its own initiative under certain circumstances, in particular if they were taken from the victim as a result of the punishable act. Recalling that the confiscation of criminal assets, which requires prior detection, identification and seizure of the illegal assets at the time of the criminal investigations, is crucial to reinforce the effect of the penalty and to ensure the payment of compensation to the victim, **GRETA welcomes the fact that there have been confiscations of proceeds from criminal offences related to THB in Austria and invites the Austrian authorities to make full use of the possibility of seizure and confiscation of criminal assets linked to human trafficking.**

181. Joint Investigation Teams (JITs) have not yet been used by Austria and senior police officers met during the visit felt that there had not been a real need to set up JITs.

182. When it comes to prosecuting cases of THB for the purpose of labour exploitation, difficulties have been experienced stemming mainly from the lack of clarity and understanding of the occurrence, nature and impact of exploitation. The following example was provided by LEFÖ-IBF: H. was recruited in Romania via internet to work for a care work agency in Austria. The agency assigned H. to a family who severely mistreated her and did not pay the wage agreed in the contract. On the occasion of a medical appointment, H. realised that, contrary to the agreed conditions, the agency had not insured her. As the agent refused to pay her wages and to take action against the abuses by the family, H. contacted the police. When the police arrived, the agent handed some money to H. and assured the officers that everything was alright and that H. was just confused. H. eventually went to the district court and told her story. She was referred to the Chamber of Labour which established that the contract she had signed was void as the agent did not hold a business license. Following the advice given by the Chamber of Labour, H. went to the police and pressed charges against the agent. LEFÖ-IBF assisted her during the criminal procedures, but the prosecutor's office dismissed the charge. An application for continuation was granted, but the charge was dismissed again, on the grounds that the Prosecutor's Office would not be capable of proving the agent's intent.

183. According to data provided by the Ministry of Justice, the number of judgments given by courts under Sections 104, 104a and 217 was respectively 26 in 2010, 26 in 2011, 17 in 2012, 37 in 2013, and 66 in 2014. Out of these judgments, those concerning Section 104a (trafficking in human beings) were as follows: two convictions and three acquittals in 2010; two convictions and three acquittals in 2011; two convictions in 2012; two convictions and five acquittals in 2013; and 30 convictions and two acquittals in 2014. In comparison, there were considerably more convictions for trans-border prostitution trade (Section 217 CC). As regards Section 104 (slavery), there were two convictions in 2010, two in 2011 and one in 2013.

184. The above-mentioned statistical information is not disaggregated by form of exploitation, but GRETA was informed that there had been very few – if any – convictions for THB for the purpose of labour exploitation. There has been one Supreme Court ruling in a case involving THB for labour exploitation which concerned domestic servitude including physical abuse in the period 1999-2006 against a girl born in 1987.<sup>33</sup> The accused were convicted for tormenting an under-age or defenceless person (Section 92 CC), severe coercion (Sections 105 and 106 CC), trafficking in human beings (Section 104a CC) and organised serious fraud (Sections 146, 147 and 148 CC). The Supreme Court accepted several of the claims of the accused and referred the case back to the court of first instance. The conviction for THB was not attacked as such, but the application of the aggravating circumstances contained in paragraph 4 of Section 104a ("particularly serious harm") was repealed because the first instance judgment had not contained sufficient factual basis for it.

<sup>33</sup> High Court Judgement of 22 May 2013, case 15 Os 167/12s.

185. **GRETA considers that the Austrian authorities should take additional measures to ensure that THB cases are investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions. In this context, the Austrian authorities should encourage the specialisation of prosecutors and judges to deal with human trafficking cases (see paragraph 28). Further, the authorities should continue efforts to train police officers to detect and investigate cases of THB, including through co-operation with other relevant actors (financial police, labour inspectors) in the country and abroad.**

**b. Protection of witnesses and victims (Articles 28 and 30)**

186. Victims of human trafficking are protected in accordance with the provisions of the Security Police Act (*Sicherheitspolizeigesetz*). High-risk victims have access to a victim protection programme run by Unit 5.4.2 High-Risk Victim Protection (VHR) of the Criminal Intelligence Service of the Federal Ministry of the Interior. Such a special protection measure has reportedly been used in at least two cases. GRETA was informed that in the framework of an investigation on THB, a Romanian man trafficked for the purpose of forced begging had been admitted to the programme.

187. The CCP contains a number of provisions concerning the protection of witnesses. Section 10, paragraph 3, Section 161, paragraph 1, and Section 162 of the CCP provide for the protection of the identity of the witness. According to the latter provision, a witness may be allowed to testify anonymously if he/she or a third person is exposed to a danger for their life, health, physical integrity or freedom by the disclosure of his/her identity. Furthermore, the public may be excluded from the trial in order to protect a witness testifying anonymously.

188. In order to avoid secondary victimisation as well as any direct contact of the witness and the defendant, Sections 165 and 250 of CCP provide for the possibility of an adversary questioning of a witness. Taking into consideration the age, psychological or health condition of the witness, the participation in the interrogation of other participants in the proceedings may be limited either on request by the public prosecutor or *ex officio* through the use of technical means (audio or visual transmission) for following the interrogation and asking questions. If a witness is younger than 14, it is possible to appoint an expert to conduct the interrogation. Victims of sexual abuse may request to be questioned in this particular manner.

189. Further, Section 160, paragraph 1, and Section 247a of the CCP provide for the possibility to interrogate a witness at home or another place if due to his/her ill health or frailty or other reasonable circumstances he/she cannot follow the summons and may be interrogated with the use technical means (audio or visual transmission).

190. **GRETA considers that the Austrian authorities should make full use of the available measures to protect victims and witnesses of THB, including children, and to prevent intimidation during the investigation and during and after the court proceedings.** In this context, GRETA refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.<sup>34</sup>

<sup>34</sup> Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. Available at: [http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20\\_4\\_.pdf](http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf)

### **c. Jurisdiction (Article 31)**

191. The Austrian jurisdiction for human trafficking committed abroad was extended by the Criminal Law Amendment Act 2011, which came into force on 1 January 2012. According to Section 64 (4a) of the CC as amended by the Criminal Law Amendment Act 2011, slavery (Section 104 of the CC), trafficking in human beings (Section 104a of the CC), illegal procurement for adoption (Section 194 of the CC) and trans-border prostitution trade (Section 217 of the CC) constitute criminal offences subject to prosecution irrespective of the criminal law in force in the country where the crime has been committed, if: 1) either the perpetrator or the victim is an Austrian national or has his/her habitual residence in Austria, 2) the offence impairs other Austrian interests, or 3) the alleged perpetrator was an alien at the time the offence was committed, is staying in Austria and cannot be extradited.

## **5. International co-operation and co-operation with civil society**

### **a. International co-operation (Article 32)**

192. The Austrian authorities have reported that since the first evaluation by GRETA, international police co-operation and networking have intensified with the main countries of origin, in particular Romania, Bulgaria, Slovakia, Hungary and the Czech Republic, as well as with other countries such as Thailand. As noted in paragraph 181, Joint Investigation Teams (JITs) have not yet been used by Austria, but there have been a number of successful mirror investigations. Austria is among 11 countries which have ratified the Police Co-operation Convention for Southeast Europe.

193. 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 Co-operation. Recently, a co-operation between the Austrian Development Agency, the Ludwig Boltzmann Institute for Human Rights and the Criminal Intelligence Service was initiated to strengthen national, international and regional co-operation in combating organised crime, including THB, with a special focus on victim protection, non-discrimination and gender, data protection and prevention of torture and inhuman or degrading treatment. Austria has supported various projects, *inter alia*, for the return and reintegration of voluntary returnees to the Republic of Moldova in co-operation with IOM, for enhanced institutional responses to challenges regarding trafficking in human beings in Serbia together with the OSCE, and for the development of a child protection safety network in Albania. Further, the Austrian Development Co-operation contributed to the UNODC regional programme to combat organised crime in the Southern African Region, West Africa and the Sahel and supported programmes for safe and informed migration and the reduction of trafficking in Nepal and Cambodia.

194. Austria is an active member of the ETUTU project, which is led by Germany and developed under the EMPACT project on THB, and is aimed at comprehensively tackling Nigerian human trafficking networks operating across the EU. Further, an expert from the Federal Ministry of the Interior and a judge participated in the project "Enhancing multi-stakeholder co-operation to fight human trafficking in countries of origin and destination". The project was organised by UNODC in co-operation with IOM and the NGO EXIT and was financially supported by the Federal Ministry for European and International Affairs. It aimed at building capacity to enhance operational co-operation between Nigerian and European law enforcement, judiciary and victim service providers.

195. Further, the Criminal Intelligence Service is taking part in a UNODC project to assist the Colombian authorities in implementing the national anti-trafficking strategy and to support the criminal justice system in the prevention, investigation and prosecution of THB offences according to the Palermo Protocol standards.

196. With a view to strengthening international co-operation in the area of THB, Austria takes an active role in multilateral fora at the level of the UN, the OSCE, and the EU. For example, Austria participated at the ministerial level in the High Level Meeting of the UN General Assembly on THB in New York in 2013, which Austria helped preparing as co-facilitator of the modalities resolution, and supports the UN Trust Fund for Victims of Trafficking. One of the main events during the Austrian Chairmanship of the Council of Ministers of the Council of Europe was dedicated to THB (conference "Not for Sale – Joining Forces against Trafficking in Human Beings", 17-18 February 2014, Vienna, in co-operation with the OSCE). Further, Austria works closely with other host countries to international organisations on measures to prevent exploitation of domestic workers in diplomatic households.

**197. GRETA commends the efforts in the area on international co-operation made by Austria and invites the Austrian authorities to continue these efforts.**

**b. Co-operation with civil society (Article 35)**

198. NGOs continue to be involved in developing, implementing and monitoring policies, programmes and initiatives to prevent THB. The NGOs LEFÖ-IBF and ECPAT as well as the Men's Health Centre MEN VIA and the Ludwig Boltzmann Institute for Human Rights are full members of the Task Force on Combating Human Trafficking. The social partners, including the Austrian Trade Union Federation and the Federal Chamber of Labour, are members of the Task Force's working group on labour exploitation. Other NGOs are invited on an ad hoc basis to participate in Task Force meetings. Several actions under the National Action Plan, including training and awareness-raising activities, but also projects in partner countries, are carried out in co-operation with NGOs.

199. The Security Police Act (Section 25) as well as the CCP (Section 66) provide for the possibility of establishing contractual partnerships with relevant victim support organisations. Such a partnership has been established between the Federal Ministry of the Interior, the Federal Ministry of Education and Women, the Federal Ministry of Justice, and the NGO LEFÖ-IBF.

200. GRETA notes that there are a number of other NGOs in Austria involved in anti-trafficking action (see paragraph 29) which, however, do not receive government funding and rely entirely on private donations.

**201. GRETA considers that the Austrian authorities should continue building strategic partnerships with a series of civil society actors, trade unions and the private sector.**

## IV. Conclusions

202. Since the adoption of GRETA's first report on Austria in 2011, progress has been made in a number of areas.

203. The Austrian authorities have continued to develop the legal framework for combating trafficking in human beings, in accordance with GRETA's recommendations. The expanded definition of THB, which explicitly mentions the exploitation of begging and the exploitation to commit criminal activities, corresponds to the need to address new trends in human trafficking. The increased penalties for THB reflect the serious character of this offence.

204. Progress has also been made when it comes to the co-ordination of anti-trafficking action and the development of specialisation among competent authorities. GRETA commends the practice of holding frequent meetings of the Task Force. Efforts have been made to involve the federal provinces (*Länder*) in the work of the Task Force.

205. With a view to addressing trafficking for the purpose of labour exploitation and in accordance with GRETA's recommendations, the Task Force has set up a working group on labour exploitation in December 2012. GRETA commends the very active involvement of its members, who have elaborated a list of indicators of trafficking for the purpose of labour exploitation as a first step for increasing the detection of such cases. Further, a drop-in and counselling centre for undocumented migrant workers, UNDOK, was set up in June 2014. GRETA welcomes this development and the assistance provided by UNDOK to potential victims of trafficking in human beings.

206. Another important development since the first evaluation report is the setting up of the Men's Health Centre MEN VIA as a specialised support structure for male victims of trafficking. MEN VIA fills an important gap in the provision of assistance to such victims and given that their number has been on the rise, the increased funding provided by the government in 2015-2016 is welcome.

207. To address GRETA's concerns raised in the first evaluation report, the Task Force's working group of child trafficking has produced a draft National Referral Mechanism for children.

208. Efforts have been made to provide training to relevant professionals and to expand the categories of staff targeted. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

209. A variety of institutions in Austria have carried out research on the issue of THB, including in the areas suggested in GRETA's first evaluation report.

210. Some improvement has also been made in the area of compensation for victims of trafficking. The Victims of Crime Act was amended in 2013 to provide for the possibility of granting compensation to victims of THB whose stay in Austria was irregular at the time the offence against them was committed. The number of victims granted State compensation has increased since 2011. Furthermore, there is some progress in obtaining compensation from perpetrators thanks to early confiscation measures and freezing of assets.

211. GRETA also welcomes the efforts made in the area of international co-operation, both when it comes to police cooperation and keeping THB high on the international agenda, as well as championing measures to prevent domestic servitude in diplomatic households.

212. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests that the Austrian authorities take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

**Issues for immediate action**

- **GRETA urges the Austrian authorities to 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 THB and strengthening national co-ordination (paragraph 23).**
- **For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Austrian authorities to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings 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 (paragraph 45).**
- **GRETA urges the Austrian authorities to:**
  - **adopt as a matter of priority a National Referral Mechanism for child victims of THB 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 THB and children at risk;**
  - **ensure that child victims of THB 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 to take steps to address the problem of children going missing while in the care of the state (paragraph 124).**
- **GRETA urges the Austrian authorities to 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 (paragraph 131).**
- **GRETA urges the Austrian authorities to take additional measures to ensure compliance with the principle of non-punishment of victims of THB 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 THB and providing compensation or reimbursement of fines paid by victims of THB (paragraph 175).**

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Further conclusions:

- GRETA considers that the Austrian authorities should continue building co-ordination and co-operation between the federal government and the administrations of the *Länder* with a view to ensuring that all federal provinces are integrated in the efforts to combat THB (paragraph 26).
- GRETA invites the Austrian authorities to continue developing the specialisation of judges on THB cases (paragraph 28).
- GRETA considers that the Austrian authorities should continue developing the specialisation of prosecutors to deal with THB cases (paragraph 28).
- GRETA considers that the Austrian authorities should keep under review the effectiveness of the Task Force in fulfilling the role of a National Rapporteur, and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions (paragraph 33).
- GRETA considers that the Austrian authorities should ensure that the budget allocated to action against THB to federal ministries and in the *Länder* is adequate to cover all actions needed to combat THB (paragraph 34).
- GRETA commends the investment made in the training of relevant professionals on THB and considers that these efforts should continue, in particular as regards prosecutors, staff of the Federal Immigration and Asylum Office, staff working in detention centres and centres for asylum seekers, judges, social workers in the youth welfare system, labour inspectors, financial police officers and medical staff. It would be important to integrate basic training on the identification of victims of trafficking in all federal provinces of Austria (paragraph 40).
- GRETA welcomes the research efforts undertaken by a variety of institutions in Austria, which have covered the areas suggested in GRETA's first evaluation report, and invites the Austrian authorities to continue providing funding and support for research projects on THB (paragraph 54).
- GRETA invites the Austrian authorities to continue their efforts to raise awareness of THB and to design future actions in this area in the light of impact assessment of previous measures, focusing on the needs identified (paragraph 60).
- GRETA considers that the Austrian authorities should collect and monitor data from the financial police on cases of suspected THB and types of exploitation involved (paragraph 62).
- GRETA invites the Austrian authorities to continue their work on ensuring effective enforcement of the Act against Wage and Social Dumping (paragraph 64).
- GRETA welcomes the setting up of UNDOK and the assistance provided by it to potential victims of trafficking in human beings, and considers that its work should continue to be supported and should be expanded throughout Austria (paragraph 66).

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- GRETA commends the efforts taken since the first evaluation visit to prevent trafficking for the purpose of labour exploitation and considers that these efforts should be intensified, building on the experience and recommendations of the working group of trafficking for labour exploitation, in particular by:
    - further sensitising relevant officials, in particular prosecutors and judges, to the importance of effective, proportionate and dissuasive sanctions for THB for the purpose of labour exploitation;
    - expanding the mandate of labour inspectors;
    - strengthening the monitoring of recruitment and temporary work agencies and supply chains and reviewing the legislative framework for any loopholes that may impede protection or preventive measures;
    - working closely with the private sector and the Chamber of Commerce to promote corporate social responsibility, in line with the Guiding Principles on Business and Human Rights (paragraph 70).
  - GRETA considers that the Austrian authorities should make further efforts in the area of prevention of child trafficking, in particular by sensitising and training child protection professionals across the country and working with Roma and migrant communities (paragraph 75).
  - GRETA invites the Austrian authorities to ensure that, as part of their training, medical staff are sensitised to THB for the purpose of organ removal (paragraph 79).
  - GRETA considers that the Austrian authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector. In this context, the Austrian authorities should keep under review the regulation of brothels, paying particular attention to border areas (paragraph 86).
  - Noting that regular visits to places of deprivation of liberty by visiting commissions can contribute to detecting victims of trafficking and referring them to assistance, GRETA invites the National Ombudsinstitution (*Volksanwaltschaft*) and the Human Rights Advisory Council to sensitise the members of the National Preventive Mechanism commissions to the issue of human trafficking (paragraph 102).
  - GRETA considers that the Austrian authorities should take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:
    - strengthening multi-agency involvement in the decision-making process leading to the identification of victims of trafficking, by giving a formal role in the identification process to frontline actors such as labour inspectors, financial police, social workers, officials dealing with irregular migrants, officials interviewing asylum seekers, medical staff and relevant NGOs;
    - increasing efforts to proactively identify victims of trafficking for the purpose of labour exploitation, including among irregular migrant workers, by reinforcing the role and training of labour inspectors, and providing the labour inspectorates (including construction and agriculture inspectorates) with the resources required to effectively prevent and combat THB;
    - paying increased attention to detecting victims of trafficking among asylum seekers and persons placed in immigration detention centres. In this context, training on the identification of victims of trafficking should be provided to staff, including medical staff, of all police detention centres (PAZ) and Federal Reception Centres (paragraph 104).



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- GRETA also invites the Austrian authorities to ensure that asylum interviews are conducted by persons of the same gender as the asylum seeker, and that a gender-sensitive approach to the asylum adjudication process is implemented, so as to strengthen the identification procedures for victims of THB (paragraph 105).
  - GRETA considers that the Austrian authorities should take further measures to ensure that presumed and identified victims of trafficking across Austria receive adequate assistance and support, in particular by:
    - adopting minimum support service standards for victims of THB and the provision of adequate funding to maintain them;
    - further developing co-operation with NGOs, including those working outside Vienna, and the *Länder* in order to ensure the provision of protection and assistance to all victims of THB;
    - ensuring that assistance is adapted to the specific needs of male victims of THB and giving an official intervention status to MEN VIA;
    - guaranteeing access to health care as soon as a person is identified as a victim of THB, regardless of the trafficked person's citizenship or legal status (paragraph 114).
  - GRETA considers that the Austrian authorities should bring the process of developing nationwide standards for the care and protection of trafficked children without delay (paragraph 122).
  - GRETA considers that the Austrian authorities should keep under review the practical implementation of Section 57 of the Asylum Act and the extent to which residence permits are granted because of the personal situation of the victim (paragraph 140).
  - GRETA considers that the Austrian authorities should take steps to ensure that decisions to grant residence permits victims of THB are taken in compliance with the time-limit specified in law (paragraph 141).
  - While welcoming the progress made in Austria in the area of compensation to victims of THB, GRETA considers that the Austrian authorities should make additional efforts to guarantee effective access to compensation for victims of THB, including children, including through the systematic provision of legal advice and information (paragraph 148).
  - GRETA considers that the Austrian authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return (paragraph 157).
  - GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions (paragraph 164).
  - GRETA invites the Austrian authorities to consider introducing a legal provision criminalising the use of services which are the object of exploitation as referred to in Article 4 of the Convention, with the knowledge that the persons is a victim of THB (paragraph 168).

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- GRETA invites the Austrian authorities to review the legal provisions and practice concerning corporate liability for THB with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive (paragraph 169).
  - GRETA welcomes the fact that there have been confiscations of proceeds from criminal offences related to THB in Austria and invites the Austrian authorities to make full use of the possibility of seizure and confiscation of criminal assets linked to human trafficking (paragraph 180).
  - GRETA considers that the Austrian authorities should take additional measures to ensure that THB cases are investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions. In this context, the Austrian authorities should encourage the specialisation of prosecutors and judges to deal with human trafficking cases (see paragraph 28). Further, the authorities should continue efforts to train police officers to detect and investigate cases of THB, including through co-operation with other relevant actors (financial police, labour inspectors) in the country and abroad (paragraph 185).
  - GRETA considers that the Austrian authorities should make full use of the available measures to protect victims and witnesses of THB, including children, and to prevent intimidation during the investigation and during and after the court proceedings (paragraph 190).
  - GRETA commends the efforts in the area on international co-operation made by Austria and invites the Austrian authorities to continue these efforts (paragraph 197).
  - GRETA considers that the Austrian authorities should continue building strategic partnerships with a series of civil society actors, trade unions and the private sector (paragraph 201).

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## **Appendix**

### **List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations**

#### **Public bodies**

- National Co-ordinator on Combating Human Trafficking
- Task Force on Combating Human Trafficking
- Federal Ministry for Europe, Integration and Foreign Affairs
- Federal Ministry of the Interior
- Federal Ministry of Justice
- Federal Ministry of Labour, Social Affairs and Consumer Protection
- Federal Ministry of Education and Women's Affairs
- Federal Ministry for Family and Youth
- Federal Ministry of Health
- Human Rights Advisory Council of the Austrian Ombudsman Board
- Austrian Development Agency
- Federal Criminal Intelligence Service
- Federal Office for Immigration and Asylum
- Training Department of the Ministry of the Interior
- Financial Police
- Federal Chamber of Labour
- Federal Labour Inspectorate
- National Council (Parliament)

#### *City of Vienna*

- Prosecutor's Office Vienna
- Vienna Regional Criminal Court
- Municipal Department 35
- Drehscheibe Centre

#### *Carinthia*

- Government of the Land Carinthia
- Regional Criminal Police Office

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**Intergovernmental organisations**

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

**NGOs and other civil society organisations**

- Caritas Carinthia
- Caritas Wien
- ECPAT Austria
- Herzwerk
- LEFÖ-IBF
- Ludwig Boltzmann Institute of Human Rights
- MEN VIA
- SOLWODI
- Trade Union Bau-Holz
- Trade Union PRO-GE

## **GOVERNMENT'S COMMENTS**

### **The following comments do not form part of GRETA's analysis concerning the situation in Austria**

GRETA engaged in a dialogue with the Austrian authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Austrian authorities on 4 August 2015 and invited them to submit any final comments. The comments of the authorities of Austria, submitted on 15 September 2015, are reproduced hereafter.

No. BMEIA-E1.4.36.38/0016-IV.2/2015

Vienna,

Ref. your letter dated 4 August 2015  
DG-II/PN/mc

Ms. Petya Nestorova  
Executive Secretary  
of the Council of Europe Convention on Action  
against Trafficking in Human Beings  
F-67075 Strasbourg Cedex  
Email: [trafficking@coe.int](mailto:trafficking@coe.int)

Dear Ms. Nestorova,

Thank you very much for your letter dated 4 August 2015 transmitting the final GRETA report concerning the implementation of the Convention on Action against Trafficking in Human Beings Austria.

I am pleased to submit Austria's final comments on the report.

Yours sincerely,

Ambassador Elisabeth Tichy-Fisslberger  
(Director General for Legal and Consular Affairs,  
National Coordinator on Combating Human Trafficking)

enclosed:

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## **Comments on the draft GRETA report on Austria**

(the numbering refers to the paras of the draft report)

**(62). GRETA considers that the Austrian authorities should collect and monitor data from the financial police on cases of suspected THB and the types of exploitation involved.**

It is neither provided for by the system nor do the financial police have the legislative power to collect cases and personal data only upon suspicion of THB. As has been stated previously, the financial police inform the criminal police if there is an indication of trafficking or exploitation. To compile personal data for statistical reasons would cause data protection problems as there is no process in place that provides legal information on the procedure to get wrong data deleted by the financial police. Data about THB for the purpose of labour exploitation are covered by the general statistics of the criminal police and the courts. It could result in double counting as there would be no link between cases with or without criminal investigation. Besides, the few cases that have actually been prosecuted do not justify complex legislative and technical changes.

**(104). GRETA considers that the Austrian authorities should take further steps to ensure that all victims of trafficking are identified as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:**

**- paying increased attention to detecting victims of trafficking among asylum seekers and persons placed in immigration detention centres. In this context, training on the identification of victims of trafficking should be provided to staff, including medical staff, of all police detention centres (PAZ) and Federal Reception Centres.**

Austria will continue to train staff, which may come into contact with victims of trafficking, including medical staff, staff of police detention centres and reception centres.

**(131). GRETA urges the Austrian authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking, including EU and EEA citizens, 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.**

We are aware that this is the strongest wording for a recommendation (urge). In the framework of the next amendment to the Aliens Act a possible amendment regarding the recovery and reflection period will certainly be taken into account. If so, clearer instructions to officers in charge would be issued.

**(140). GRETA considers that the Austrian authorities should keep under review the practical implementation of Section 57 of the Asylum Act and the extent to which residence permits are granted because of the personal situation of the victim.**

**(141). Further, GRETA considers that the Austrian authorities should take steps to ensure that decisions to grant residence permits victims of THB are taken in compliance with the time-limit specified in law.**

Both paragraph 140 and 141 refer to the practical implementation of section 57 of the Asylum Act, which the Austrian authorities will consider carefully.

**(148). While welcoming the progress made in Austria in the area of compensation to victims of THB, GRETA considers that the Austrian authorities should make additional efforts to guarantee effective access to compensation for victims of THB, including children, including through the systematic provision of legal advice and information.**

Austria will continue its practice to provide access to compensation for victims of THB (children are traditionally included). As noted in paragraph 14 of the Victims of Crime Act, the national safety authority as well as the criminal court of first instance and the public prosecution respectively, are legally obliged to inform victims about this Act. Furthermore, the Federal Ministry for Labour, Social Affairs and Consumer Protection provides victims with information and legal advice regarding the Victims of Crime Act as well as complements the procedures provided for in the Victims of Crime Act.

**(167). In their comments on the draft GRETA report, the Austrian authorities have indicated that it is planned to introduce in the CC a new Section 205a which criminalises a person: “1) who has sex with another person against that person’s will (without any [further] violence and coercion); or 2) who exploits the victim’s plight; or 3) who has gained the victim’s consent after intimidation”. The Ministerial draft bill was sent for public examination and the Government draft bill was submitted to Parliament, with expected entry into force on 1 January 2016.**

The new Section 205a has been introduced in the CC. The Austrian Parliament passed the bill in summer 2015. The new section will enter into force on 1 January 2016.

**(175). GRETA urges the Austrian authorities to take additional measures to ensure compliance with the principle of non-punishment of victims of THB 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 THB and providing compensation or reimbursement of fines paid by victims of THB.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.

GRETA’s recommendations will be examined in the framework of the new National Action Plan 2015-2017, in particular concerning the assessment of possibilities to refund administrative fines already paid. The assessment will be embarked upon in a coordinated manner, involving all relevant actors on the level of the *Länder* (federal provinces), including NGOs, in order to achieve a comprehensive understanding of challenges and issues and assess individual solutions. Concrete examples of implementation by other countries as mentioned by GRETA would be interesting in this context.



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**Concerning the issues for immediate action (page 42):**

**GRETA urges the Austrian authorities to:**

**- ensure that child victims of THB 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 to take steps to address the problem of children going missing while in the care of the state (paragraph 124).**

With regard to criminal proceedings, victims of THB have effective access to free legal assistance and psychological support independent of age. According to para. 66 subpara. 2 Criminal Procedural Code (CCP), a person who might have been a victim of violence or a dangerous threat or whose sexual integrity might have been violated (para. 65 subpara. 1 lit. a CCP) is entitled to obtain psychosocial and legal assistance upon request to the extent necessary to safeguard his/her procedural rights in greatest possible consideration of 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.

Psychosocial assistance encompasses the victim's preparation with regard to the criminal proceedings and the related emotional burden, 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 it is regularly the case with victims of THB (independent of age). Victims whose sexual integrity might have been violated and who are under 14 years old are granted psychosocial assistance in any case.