



EVALUATION REPORT

AUSTRIA

Third evaluation round

G R E T A

Group of Experts
on Action against
Trafficking
in Human Beings

Access to justice
and effective remedies
for victims of trafficking
in human beings

GRETA(2020)03
Publication: 9 June 2020



Secretariat of the Council of Europe Convention
on Action against Trafficking in Human Beings
(GRETA and Committee of the Parties)
Council of Europe
F-67075 Strasbourg Cedex
France

trafficking@coe.int

www.coe.int/en/web/anti-human-trafficking

Table of contents

Preamble	4
Executive summary	5
I. Introduction.....	7
II..Overview of the current situation and trends in the area of trafficking in human beings in Austria	9
III. Developments in the institutional and policy framework for action against human trafficking	10
IV. Access to justice and effective remedies for victims of human trafficking	12
1. Introduction	12
2. Right to information (Articles 12 and 15)	14
3. Legal assistance and free legal aid (Article 15)	17
4. Psychological assistance (Article 12).....	19
5. Access to work, vocational training and education (Article 12).....	20
6. Compensation (Article 15).....	21
7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27) ..	25
8. Non-punishment provision (Article 26)	33
9. Protection of victims and witnesses (Articles 28 and 30)	35
10. Specialised authorities and co-ordinating bodies (Article 29).....	36
11. International co-operation (Article 32)	38
12. Cross-cutting issues.....	40
a. gender-sensitive criminal, civil, labour and administrative proceedings	40
b. child-sensitive procedures for obtaining access to justice and remedies	40
c. role of businesses.....	42
d. measures to prevent and detect corruption	42
V. Follow-up topics specific to Austria.....	44
1. Data collection	44
2. Measures to discourage demand	44
3. Measures to prevent and combat trafficking for the purpose of labour exploitation.....	46
4. Identification of victims of trafficking	49
5. Identification of, and assistance to, child victims of trafficking	52
6. Assistance to victims	53
7. Recovery and reflection period	54
8. Residence permits.....	55
Appendix 1 - List of GRETA's conclusions and proposals for action.....	56
Appendix 2 - List of public bodies, intergovernmental organisations and civil society actors with which GRETA held consultations	63
Government's comments.....	65

Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established 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 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 of the Convention on which the evaluation procedure is based.

The first round of monitoring of the Convention provided an overview of its implementation by State Parties. The second evaluation round of the Convention examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking, and the prosecution of traffickers, paying particular attention to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking.

GRETA has decided that the third evaluation round of the Convention will focus on trafficking victims' access to justice and effective remedies, which is essential for victims' rehabilitation and reinstatement of rights, and reflects a victim-centred and human-rights based approach to the fight against human trafficking. A number of provisions of the Convention establishing substantive and procedural obligations are relevant to this topic, in particular articles 12, 15, 23, 26, 27, 28, 29, 30 and 32.

Access to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim's stay, the right to seek and enjoy asylum, and full respect for the principle of *non-refoulement*. These preconditions, corresponding to various provisions of the Convention, have been examined at length during the first and second evaluation rounds of monitoring of the Convention. Consequently, GRETA has decided to ask each State Party for an update on the implementation of GRETA's previous recommendations on selected topics through a separate country-specific part of the questionnaire. GRETA's findings and analysis of these topics are presented in a separate chapter.

Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Austria has continued to develop the legislative and policy framework relevant to action against trafficking in human beings (THB). The fifth National Action Plan on Combating Human Trafficking (2018-2020), adopted in October 2018, reflects a comprehensive approach to combating THB. The Task Force on Combating Human Trafficking, responsible for co-ordinating and steering national action against THB, brings together all relevant ministries, government bodies, the federal provinces, social partners and specialised NGOs. Following the development of guidelines specifying the role of the federal states in the fight against human trafficking, regional co-ordinators were appointed in Tyrol and Vorarlberg. Further, a working group on THB was set up in the City of Vienna.

Austria continues to be a country of destination and transit for trafficked persons originating mainly from Eastern Europe, Africa and Asia. The most frequent form of exploitation remains sexual exploitation, followed by labour exploitation, domestic servitude and forced begging, which often involves children. Compared to the period covered by GRETA's second report, in the period 2015-2018, there has been an increase in the number of presumed and identified victims of trafficking. The Austrian authorities also report a trend to use the internet and technology to facilitate human trafficking.

The focus of the third evaluation round of the Convention being on trafficking victims' access to justice and effective remedies, the report analyses in detail the implementation of provisions of the Convention establishing substantive and procedural obligations relevant to this topic.

A new internal decree of the Federal Ministry of the Interior gives police officers instructions on how to proceed in cases of THB. This has reportedly led to an improvement when it comes to informing victims of THB of their rights. Nevertheless, GRETA considers that the Austrian authorities should strengthen the systematic provision of information to presumed and formally identified victims of trafficking regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. This concerns in particular the right to a recovery and reflection period.

Pursuant to Section 66, paragraph 2, of the Code of Criminal Procedure (CCP), victims of THB are entitled to legal assistance, which includes legal advice and representation by a lawyer. If a victim of THB is referred to a specialised NGO, legal assistance is provided by specially trained lawyers, free-of-charge, as soon as the victim decides to make a report to the police. GRETA considers that a lawyer should be appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, including in the case of asylum seekers and persons placed in detention prior to deportation, before the persons concerned have to decide whether or not they want to co-operate with the authorities and/or make an official statement.

While it is a positive feature that victims of trafficking holding residence permits in Austria are entitled to work, they face barriers in obtaining effective access to the labour market. Steps should be taken to strengthen victims' economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships.

GRETA welcomes the steps taken in Austria to support victims of trafficking to claim compensation and to provide training to relevant officials on access to compensation. However, in practice, the effective access of victims of trafficking to compensation remains rare. GRETA urges the Austrian authorities to make additional efforts to guarantee access to compensation for victims of THB, including by ensuring that the collection of evidence about the harm the victim has suffered and the financial gain from the exploitation of the victim is part of the criminal investigations. A procedure should be introduced entitling victims to obtain a decision on compensation from the offender as part of the criminal trial.

Furthermore, GRETA welcomes the use of the possibility provided under Section 165 of the CCP to conduct hearings of victims and witnesses without the presence of the alleged perpetrator, and the guidance issued to prosecutors to apply this provision when interviewing victims of human trafficking.

The number of convictions for human trafficking remains low, in particular for trafficking for the purpose of labour exploitation. GRETA considers that the Austrian authorities should take further steps to ensure that all possible human trafficking offences are promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of special investigation techniques in order to gather evidence and not to have to rely exclusively on testimony by victims or witnesses. In this context, the Austrian authorities should continue providing training and encourage the specialisation of prosecutors and judges to deal with human trafficking cases.

In February 2017, the Federal Ministry of Justice issued an internal decree aimed at raising awareness of the non-punishment provision. Furthermore, in April 2017, the Federal Chancellery issued a circular on the implementation of the non-punishment provision in the context of administrative law. While welcoming these developments, GRETA considers that the Austrian authorities should adopt a specific legal provision on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so.

The report examines progress made on the implementation of previous GRETA recommendations on selected topics. GRETA once again urges the Austrian authorities to develop a comprehensive system for the collection and analysis of data on measures to protect and promote the rights of victims of THB.

In 2017, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection issued an update of the internal decree for labour inspectors on human trafficking, which includes guidelines on how to proceed when there is suspected human trafficking and a list of indicators for the identification of victims of trafficking for the purpose of labour exploitation. GRETA considers that the mandate of labour inspectors should be expanded to enable them to play a frontline role in the prevention of THB and the identification of victims, including in private households.

While commending the steps taken since the second evaluation to strengthen the identification of victims of trafficking among asylum seekers, GRETA urges the Austrian authorities to set up a formalised National Referral Mechanism which involves a range of frontline actors who may come into contact with victims of trafficking. The authorities should review the application of the Dublin Procedure to presumed victims of THB and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked.

In 2016, Austria adopted practical guidelines on identifying and working with potential victims of child trafficking, which constitute a National Referral Mechanism for children. The Task Force's working group on child trafficking has been developing a concept for a country-wide child protection strategy paper, which should enable the opening of specialised centres for child victims of trafficking.

GRETA welcomes the increase in funding of victim assistance since the second evaluation, as well as the improvement in victims' access to health care. Nevertheless, it stresses the importance of giving an official intervention status to the NGO MEN VIA, which provides assistance and support to male victims of human trafficking, as well as securing the long-term funding of its activities.

GRETA once again urges the Austrian authorities to enshrine in law the recovery and reflection period and to ensure that it is systematically offered to presumed victims of trafficking, including EU and EEA citizens, together with all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.

I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") entered into force for Austria on 1 February 2008. GRETA's first evaluation report¹ on Austria was published on 15 September 2011, and the second evaluation report² on 12 October 2015.

2. On the basis of GRETA's second report, on 30 November 2015 the Committee of the Parties to the Convention adopted a recommendation to the Austrian authorities, requesting them to inform the Committee within a one-year period of measures taken to comply with the recommendation. The report submitted by the Austrian authorities was considered at the 20th meeting of the Committee of the Parties (10 March 2017), and was made public.³ Subsequently, on 13 September 2017, the Austrian authorities submitted additional information as a follow-up to their report sent in reply to the Committee of the Parties' recommendation.

3. On 20 November 2018, GRETA launched the third 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 20 March 2019 and the authorities' reply was received on 1 April 2019.

4. In preparation of the present report, GRETA used the reply to the third round questionnaire by the Austrian authorities, the above-mentioned report and additional information submitted by them in reply to the Committee of the Parties' recommendation, and information received from civil society. An evaluation visit to Austria took place from 3 to 7 June 2019 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Frédéric Kurz, member of GRETA;
- Ms Dorothea Winkler, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention;
- Ms Ursula Sticker, Administrator in the Secretariat of the Convention.

5. During the visit, the GRETA delegation met the National Co-ordinator on Combating Human Trafficking, Ambassador Petra Schneebauer (Federal Ministry for Europe, Integration and Foreign Affairs) and members of the Task Force on Combating Human Trafficking. Amongst the officials met by GRETA were representatives of the Federal Chancellery, the Federal Ministry for Europe, Integration and Foreign Affairs, the Federal Ministry of the Interior, the Federal Ministry for Constitution, Reforms, Deregulation and Justice, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, and the Federal Office for Immigration and Asylum. Further, the GRETA delegation met officials from the federal states (*Länder*) of Styria, Tyrol and Vienna. Discussions were also held with members of the Human Rights Advisory Council of the Austrian Ombudsman Board.

6. In the course of the visit, the GRETA delegation visited the Drehscheibe Centre, an institution of assisted living for unaccompanied foreign children, operated by the City of Vienna, and the detention centre for foreigners in Vordernberg (Styria). Further, the delegation visited a workshop for presumed victims of trafficking run by the NGO Hope for the Future in Vienna.

¹ <https://rm.coe.int/greta-2011-10-fgr-aut-en-rev/168078b7d9>

² <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630cb4>

³ <https://rm.coe.int/16806fd4a2>

7. Separate meetings were held with representatives of non-governmental organisations (NGOs), including the two officially delegated providers of victim support (LEFÖ-IBF for female victims and MEN VIA for male victims) and trade unions, victims of human trafficking, lawyers and researchers. The GRETA delegation also met representatives of the International Organization for Migration (IOM).
8. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.
9. GRETA wishes to place on record the co-operation provided by the Austrian authorities and in particular by Ambassador Petra Schneebeauer, National Co-ordinator on Combating Human Trafficking, and Mr Andreas Lins and Ms Theresa Eder of the Federal Ministry for Europe, Integration and Foreign Affairs.
10. The draft version of the present report was approved by GRETA at its 36th meeting (18-22 November 2019) and was submitted to the Austrian authorities for comments. The authorities' comments were received on 26 February 2020 and were taken into account by GRETA when adopting the final report. The report covers the situation up to 6 April 2020; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.

II. Overview of the current situation and trends in the area of trafficking in human beings in Austria

11. Austria continues to be a country of destination and transit for trafficked persons. Victims of human trafficking originate mainly from Eastern Europe, Africa and Asia.⁴ Third-country nationals made up 57% of all victims of sexual exploitation identified by the police in 2017.⁵ The most frequent form of exploitation remains sexual exploitation, followed by labour exploitation, domestic servitude and forced begging, which often involves children. The Austrian authorities have reported a trend to use the internet and technology to facilitate human trafficking. Police data for 2017 shows that perpetrators used online infrastructure in 74% of the investigated trafficking cases for grooming, recruiting and advertising victims, such as through online advertisements, social media platforms, chat forums and open-source messenger tools, as well as for controlling the victim via online video surveillance of flats and workplaces and mobile phone location services.⁶ Communication between perpetrators and victims, as well as between the perpetrators themselves, has shifted to open-source messenger tools, which are more difficult to track down. Profits are increasingly transferred by the use of Bitcoin, prepaid credit cards and other virtual means of payment.

12. According to statistics provided by the Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice, the number of presumed and identified victims of THB was 221 in 2015, 242 in 2016, 390 in 2017 and 373 in 2018.⁷ The majority of these victims were women. The number of male victims of THB increased from 68 in 2015 to 106 in 2017 and dropped down to 35 in 2018. The number of child victims was 10 in 2015, 10 in 2016, 28 in 2017 and 16 in 2018. This data is not disaggregated by form of exploitation or nationality.

13. On the other hand, according to statistics from the specialised NGO working with female victims of trafficking across Austria, LEFÖ-IBF, and the specialised NGO working with male victims of trafficking, MEN VIA, the number of presumed and identified victims of THB was 301 in 2015 (271 female, 30 male), 348 in 2016 (288 female, 60 male), 389 in 2017 (327 female, 62 male) and 385 in 2018 (339 female, 46 male). Most of these victims originated from Romania, Nigeria, Bulgaria, Hungary, China and the Philippines. The number of Nigerian female victims increased from 6% in 2015 to 37% in 2018. The number of Chinese female victims reached 10% in 2018. There was also an increase in men coming from Asian and African countries, reaching 20% (Asia) and 11% (Africa) in 2018. On average, 65% of the trafficking cases involving female victims were for the purpose of sexual exploitation, 15% for the purpose of domestic servitude, 6% for the purpose of labour exploitation, 4% for the purpose of forced marriage, and the remainder for other forms of exploitation. Most of the trafficking cases involving men were for the purpose of labour exploitation (approximately 70%), followed by sexual exploitation, forced begging and other forms of exploitation.

⁴ <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/>

⁵ Situation Report human trafficking and trans-border prostitution trade for 2017, p. 11, Federal Criminal Investigation Service, available in German at: https://www.bundeskriminalamt.at/bmi_documents/2250.pdf

⁶ Ibidem.

⁷ This data covers criminal proceedings under Section 104a of the CC ("trafficking in human beings"), Section 217 of the CC ("trans-border prostitution trade"), Section 104 of the CC ("slavery") and Section 116 of the Aliens' Police Act ("exploitation of a foreigner"). The numbers concern all victims identified in criminal proceedings, regardless of whether they co-operated with law enforcement authorities.

III. Developments in the institutional and policy framework for action against human trafficking

14. The Task Force on Combating Human Trafficking (hereafter “Task Force”), set up under the Federal Ministry for Europe, Integration and Foreign Affairs in 2004 and responsible for co-ordinating and steering national action against THB, continues to meet about five times per year (usually four times in Vienna and once a year in one of the *Länder*). It brings together all relevant ministries, government bodies, the federal provinces, social partners and specialised NGOs.⁸

15. In response to GRETA’s recommendation made in its second evaluation report to include prosecutors as members of the Task Force and its working groups, the Austrian authorities have highlighted that prosecutors are subordinate to the Ministry of Justice, which is already a member of the Task Force and its working groups, and are invited on an ad hoc basis to meetings of the Task Force, on topics which are of interest to them. **GRETA reiterates the importance of ensuring that prosecutors are involved in the Task Force and its working groups on a regular basis.**

16. NGOs specialised in combating THB continue to play a vital role in Austria in delivering numerous activities, including policy work, awareness raising, reintegration and rehabilitation of trafficked persons. An increased number of civil society representatives, who are not members of the Task Force, are periodically invited to Task Force meetings. In 2015, several civil society actors founded the Austrian Platform against Exploitation and Human Trafficking⁹, which was invited to attend two of the Task Force meetings in 2018. **GRETA welcomes the steps taken to include more civil society representatives in the work of the Task Force and invites the Austrian authorities to continue building strategic partnerships with civil society.**¹⁰

17. The Task Force’s working groups on “child trafficking”, “prostitution” and “trafficking for the purpose of labour exploitation”, have continued their work. In addition, an ad-hoc working group on data collection and statistics has been set up.

18. The Task Force submits three-year reports on the implementation of measures against THB to the government and Parliament.¹¹ Annual implementation reports are drawn up in addition to these three-year reports.

19. Further, the Federal Criminal Intelligence Service (*Bundeskriminalamt*) publishes annual reports on THB in Austria which provide an analysis of trends of human trafficking, statistics of investigations and prosecutions of human trafficking and trans-border prostitution trade, as well as measures and initiatives of law-enforcement agencies in preventing and combating THB.¹²

⁸ The Task Force is chaired by the National Co-ordinator for Combating Human Trafficking, who is a senior official of the Federal Ministry for Europe, Integration and Foreign Affairs, and is composed of representatives of the Federal Chancellery, the Federal Ministry of the Interior, the Federal Ministry for Constitution, Reforms, Deregulation and Justice, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, the Federal Ministry of Education, Science and Research, and the Federal Ministry of Defence. Civil society representatives from the Intervention Centre for Migrant Women affected by Human Trafficking (LEFÖ-IBF), the Men’s Health Centre MEN VIA, Ending the Sexual Exploitation of Children - Austria (ECPAT-Austria) and the Ludwig Boltzmann Institute of Human Rights (BIM) are also members of the Task Force.

⁹ For more information see: <http://gegenmenschenhandel.at/>

¹⁰ See OSCE, The Critical Role of Civil Society in Combating Trafficking in Human Beings, December 2018, available at: <https://www.osce.org/secretariat/405197>

¹¹ Implementation report for the National Action Plan 2015-2017 available in German at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Umsetzungsbericht_2015-2017.pdf

¹² Available at: <https://www.bundeskriminalamt.at/303/start.aspx>

20. The fifth National Action Plan on Combating Human Trafficking, covering the period 2018-2020, was adopted in October 2018. It reflects a comprehensive approach to combating human trafficking and is composed of five parts: actions related to national and international co-ordination and co-operation (Part I); prevention (Part II); victim protection (Part III); law enforcement (Part IV); and evaluation/monitoring (Part V).¹³

21. In November 2018, the Task Force issued a reflection paper with guidelines on the role of the *Länder* in tackling human trafficking in Austria, in which it recommends, *inter alia*, the appointment of a regional anti-trafficking co-ordinator in each federal province. At the time of GRETA's visit, the federal states of Tyrol and Vorarlberg had appointed regional anti-trafficking co-ordinators. Some of the other federal states also have co-ordinators who participate in the work of the Task Force, although they are not formally appointed by the respective governments. Further, GRETA's second report recommendations related to the City of Vienna were approved by a resolution of Vienna City Council in December 2015, and the Human Rights Office of the City of Vienna was appointed to implement these recommendations. Based on this decision, the City of Vienna has set up a working group on human trafficking, bringing relevant stakeholders together, which meets regularly and has been instrumental in raising awareness and addressing a range of issues, such as residence permits and administrative fines on victims of trafficking. **GRETA welcomes the development of the guidelines specifying the role of the *Länder* in the fight against human trafficking, the appointment of a regional co-ordinator in the federal states of Tyrol and Vorarlberg, and the setting-up of a working group on THB in the City of Vienna. 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, in particular by appointing regional co-ordinators in all *Länder* and engaging them in the work of the Task Force and its working groups.**

22. In 2016, the Joint Operational Office (JOO) "Central Service for Combating People Smuggling and Human Trafficking" was established at the Federal Criminal Intelligence Service (Police). It is responsible for investigating THB cases and has offices in the different *Länder*. GRETA was informed by various stakeholders met during the visit that in recent years, the investigation of smuggling of migrants had become a priority, with some two-thirds of the specialised police officers on smuggling cases, at the expense of investigating trafficking cases. According to the Austrian authorities, the specialised police divisions have regularly participated in EMPACT Joint Action Days and Large Scale Action Days, which include checks of venues where sexual services are provided, locations where there are children begging and work places where irregular work is more likely to take place.

23. The National Co-ordinator, who is a senior official at the Federal Ministry for European and International Affairs, is also Austria's National Rapporteur and is mandated with the monitoring and evaluation of the anti-trafficking action in the country. GRETA was informed that there were no plans to designate a separate organisational entity or another independent mechanism to fulfil the role of a National Rapporteur. **GRETA reiterates its recommendation from the second evaluation report and considers that the Austrian authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention, or commissioning the monitoring to an external, independent evaluator.**

¹³ Available in German at:

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

IV. Access to justice and effective remedies for victims of human trafficking

1. Introduction

24. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. These rights must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of parties to the Convention, irrespective of their immigration status or presence on the national territory, and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

25. The right to effective remedies is a reflection of the human rights-based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of THB, and effectively investigate trafficking offences.¹⁴

26. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,¹⁵ the right to an effective remedy is considered to include restitution,¹⁶ compensation,¹⁷ rehabilitation,¹⁸ satisfaction¹⁹ and guarantees of non-repetition.²⁰ All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.²¹

¹⁴ *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment 30 March 2017.

¹⁵ UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

¹⁶ Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

¹⁷ Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

¹⁸ Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

¹⁹ Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

²⁰ Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

²¹ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm

27. The Convention provides specifically for the substantive right of victims of trafficking to compensation and legal redress, as well as for a number of procedural rights necessary to ensure access to these entitlements. These include the rights to be identified as a victim of trafficking, to be granted a recovery and reflection period, as well as a residence permit (to enable a victim to remain in the country and seek access to remedies), and to receive counselling, information, legal assistance and free legal aid. Another important procedural right is provided by the non-punishment provision of the Convention (Article 26), according to which victims of human trafficking must not be subjected to penalties for their involvement in unlawful activities that they have been compelled to commit. Further, the Convention requires State Parties to enable the seizure and confiscation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

28. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.²²

29. Civil society, including NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.²³ In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons²⁴ and Justice at Last - European Action for Compensation of Victims of Crime,²⁵ which aim to enhance access to compensation for trafficked persons.

30. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.²⁶ The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate victims' access to remedies for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.²⁷ States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

31. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right to justice and effective remedies. This includes co-operation in tracing and seizing criminal assets, and in returning confiscated proceeds for the purpose of compensation.

²² UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf

²³ OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

²⁴ <http://www.compactproject.org/>

²⁵ <http://lastradainternational.org/about-lsi/projects/justice-at-last>

²⁶ United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

²⁷ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

2. Right to information (Articles 12 and 15)

32. Victims who are no longer under their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Two common features of victims' situation are helplessness and submissiveness to the traffickers, due to fear and lack of information about how to address their situation. Article 12, paragraph 1, sub-paragraph d, of the Convention provides that victims are to be given counselling and information, in particular as regards their legal rights and the services available to them, in a language that they understand. Further, pursuant to Article 15, paragraph 1, of the Convention, Parties must ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings, in a language they can understand.

33. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.²⁸

34. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.²⁹

35. In Austria, the victim's interest in the punishment of the perpetrator is legally recognised through Section 10 of the Code of Criminal Procedure (CCP), which establishes the "victim's participation" as a basic principle in criminal proceedings.³⁰ The relevant legal provisions as regards victims' rights and information are Sections 65 (definitions), 66 (rights of victims), 66a (special protection needs of victims), 67 (private participation) and 70 (right to information) of the CCP.

36. Pursuant to Section 70 of the CCP, as soon as investigation proceedings are conducted against an accused person, the criminal investigation authority or the prosecution authority has to inform the victims about their fundamental rights, specified in Sections 66, 66a and 67 of the CCP. The provision of information may only be omitted if this would jeopardise the purpose of the investigation.³¹ Section 66a of the CCP defines as "victims with special protection needs" victims whose sexual integrity and self-determination might have been violated, who might have been exposed to domestic violence or who are minors. Such victims have additional rights, including to be interviewed by a person of the same sex and to refuse to answer questions concerning details of the criminal offence or details of the personal private sphere.³²

37. When victims of THB are identified by the police, the police informs them about their rights and refers them to supporting NGOs (namely, LEFÖ-IBF for female victims and MEN VIA for male victims).

²⁸ See Explanatory Report on the Convention, paragraphs 160-162.

²⁹ See 8th General Report on GRETA's activities, paragraphs 168-169.

³⁰ Bertel/Venier, *Strafprozessrecht* (2008), 16.

³¹ In October 2019, the CCP was amended and the new wording of Section 70 reads: "As soon as investigation proceedings are conducted, the criminal investigation authority or the prosecution authority must inform the victims about their fundamental rights (Sections 66 and 67). This may only be omitted for as long as special circumstances give reason to fear that the purpose of the investigation would otherwise be endangered." The amendment entered into force on 1 January 2020.

³² An amendment to Section 66a of the CCP also entered into force on 1 January 2020, providing for the possibility to demand that interpretation services be provided by a person of the same sex during the questioning of a victim in the preliminary proceedings and the main trial, to the extent that this is possible.

LEFÖ-IBF is a recognised victim protection facility as defined by Section 25(3) of the Security Police Act (SPG). It operates nationwide on behalf of the Federal Ministry of the Interior and the Federal Ministry of Education and Women's Affairs. Section 56(1) and (3) of the SPG allow law enforcement authorities to transfer data to appropriate victim protection facilities, as long as it is for the protection of a person at risk. Victims of THB who are referred to LEFÖ-IBF are provided by its staff with information about their rights, including with regard to the relevant judicial and administrative proceedings.

38. MEN VIA is a recognised male victim protection facility (see also paragraph 241). It informs male victims of THB about their rights and legal possibilities at the first contact. This information is provided by members of the MEN VIA team, in face-to-face contact or via telephone. MEN VIA makes sure that victims of THB understand their rights to enable them to take part in further procedural steps (e.g. decision about co-operation with law enforcement).

39. Additionally, many federal counselling services, police detention centres and law enforcement units display information materials for potential victims of THB. The Austrian authorities have provided examples of different information materials which have been developed, e.g. for victims of THB of their general rights,³³ for sex workers,³⁴ for child victims of trafficking³⁵ and for private domestic staff.³⁶ Some of these information materials are available in a variety of languages. Further, specific materials to inform migrant workers about their rights have been developed.³⁷

40. Furthermore, in the Federal State of Carinthia, the flyer "You have a right to get help" has been developed by the Department of Women and Equal Treatment, in co-operation with the State Office of Criminal Investigation of Carinthia and Caritas, for women who are victims of forced prostitution and exploitation. This flyer explains at what point sex workers are considered to be victims of THB and contains information on security and protection in an emergency, safe accommodation, professional psychological advice, as well as contact details of organisations providing assistance. The flyer is available in five languages (German, English, Romanian, Hungarian and Bulgarian). Flyers are displayed at health offices in a way that they can be taken by sex workers anonymously and the police also distribute them during regular controls of brothels.

41. GRETA notes that the provision of information on rights hinges on the person being identified as a victim of THB. A number of victims are not identified as such by the police and are not put into contact with supporting NGOs. By way of example, GRETA was informed of cases of Chinese women who were apparently victims of sexual exploitation or exploitation in domestic households, but were not identified as victims of trafficking by the police because they did not complain or provide evidence against their traffickers or exploiters. Other situations concern victims of trafficking among asylum seekers, who may be in contact with lawyers or non-profit law centres who do not have enough awareness of human trafficking and therefore cannot properly inform victims of their rights. The authorities have indicated that during police operations in the presence of the NGOs LEFÖ-IBF and MEN VIA, possible victims of THB are informed of their rights and options. According to the authorities, asylum seekers in respect of whom a suspicion arises during the asylum interview that they might be victims of THB are informed of the possibility to contact LEFÖ-IBF and MEN VIA to obtain specialised support. Information materials in a variety of languages are available at the asylum reception centres.

³³ Available in German at:

https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Opferrechtebroschuere.pdf

³⁴ http://www.lefoe.at/tl_files/lefoe/Sexwork-

[Info Information brochure for female and male providers of sexual services \(Englisch\).pdf](Info%20Information%20brochure%20for%20female%20and%20male%20providers%20of%20sexual%20services%20(Englisch).pdf)

³⁵ Available in German at:

https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Folder_Kinderhandel_Web.pdf

³⁶ https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Informationsbroschuere_fuer_private_Hausangestellte_EN.PDF

³⁷ Available at www.postingofworkers.at and www.migration.gv.at

42. According to specialised NGOs, a new internal decree of the Federal Ministry of the Interior, which gives police officers instructions on how to proceed in cases of human trafficking,³⁸ has led to an improvement when it comes to informing victims of THB of their rights. However, for victims to actually benefit from their rights to legal aid and psycho-social support, the police should systematically refer them to specialised NGOs, which is reportedly not always the case.

43. The procedural rights mentioned in Sections 66, 66a, 67 and 70 of the CCP do not include the right to a recovery and reflection period. In Austria, this right is not established in law, but is regulated in an internal decree of the Federal Ministry of the Interior (see paragraph 248). The Austrian authorities have stated that the relevant authorities inform possible victims of THB about the right to apply for a residence permit for special protection. According to civil society actors met during the visit, victims of trafficking are not systematically informed about their right to a recovery and reflection period. **In this respect, see the recommendation in paragraph 250.**

44. In criminal proceedings, victims have the right to an interpreter (Section 66, paragraph 1, subparagraph 5, of the CCP, in connection with Section 56 of the CCP). An interpreter has to assist the victim if the victim cannot communicate sufficiently in German. In particular, an interpreter has to be appointed with regard to the information provided to the victim concerning his/her rights.

45. Beyond the right to oral interpretation during interrogations, victims can also request written translation of the relevant parts of the file. These include the written confirmation of the report of the crime (Section 80, paragraph 1, of the CCP), notification of and the reasons for cessation of investigation proceedings (Section 194, paragraph 2, of the CCP), as well as copies of the verdicts.

46. Additionally, in both administrative and criminal proceedings, LEFÖ-IBF and MEN VIA employ cultural and multilingual mediators, who are sometimes former victims of trafficking, and support and counsel the victims. If the language is not available, LEFÖ-IBF and MEN VIA have a pool of trained interpreters. The right to interpreters exists at any stage of the criminal proceeding, but the interpretation is only oral. In criminal and administrative proceedings, the interpreter is chosen by the court or other public entity. LEFÖ-IBF and MEN VIA have observed that these interpreters are not always sufficiently sensitised to the issue of human trafficking. There is no right to object to a specific interpreter in criminal proceedings. Further, interpreters are sometimes not adequately prepared/trained to deal with presumed victims of trafficking. For example, according to NGOs, interpreters have reportedly intervened/intimidated presumed victims (e.g. in the case of Chinese victims) or interpreted something that the person said in a way that their trafficking situation could not be properly recognised. The Austrian authorities have indicated that the Federal Ministry of Justice is making efforts to increase the number of persons registered in the list of court interpreters in order to ensure high-quality services. At the same time, the authorities have noted that, given the range of court proceedings that interpreters are used for, the Ministry of Justice is hardly in a position to take advanced measures to increase the sensitisation of interpreters in particular fields.

47. If a person applies for asylum, a first informal talk with a social worker is offered to each applicant at the beginning of the reception process. Presumed victims of human trafficking are at this stage informed about the possibility of receiving professional support from specialised counselling services (i.e. LEFÖ-IBF and MEN VIA). During an ongoing asylum procedure, presumed victims and victims of THB are interviewed by persons of the same sex and the interpreter is of the same sex.

³⁸ See the annual report of the Austrian Ombudsman Board (*Volksanwaltschaft*) of 2018, Monitoring of Public Administration, pages 142-143, available in German at: <https://volksanwaltschaft.gv.at/downloads/72sag/PB-42-Nachpruefend.pdf>

48. During an ongoing asylum procedure at the BFA an interpreter for the native language is present all the time. In case the BFA issues a ruling, this text contains the decision and the instructions on the right of appeal in the native language of the asylum seeker. This also applies to the rules of procedure on the assignment of a legal adviser. In the case of a complaint procedure before the Federal Administrative Court (BVwG), the presence of an interpreter is also obligatory. The Austrian authorities have specified that the Ministry of the Interior has its own register of interpreters, and that asylum-specific training for interpreters is provided, including through a training manual developed by UNHCR and the University of Graz's Institute for Translation/Interpretation Studies.

49. During the initial reception phase, material conditions are provided by a private operator (ORS GmbH) on a contractual basis with the Federal Ministry of the Interior. ORS GmbH employs multilingual staff covering the most commonly spoken languages, depending on the countries of origin of asylum seekers, as well as by interpreters where needed. In addition, video interpretation is currently being tested in selected reception centres and, according to the authorities, would appear to be successful so far.

50. **GRETA considers that the Austrian authorities should strengthen the systematic provision of information to presumed victims and formally identified victims of trafficking regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. This concerns in particular the right to a recovery and reflection period. Law enforcement officers should continue being trained and instructed on how to properly explain to victims their rights and systematically refer them to specialised NGOs which enable victims to exercise their rights. Similarly, staff working at asylum reception centres and detention centres should be trained and instructed on how to provide information, in a proactive manner, to persons and groups at risk of being trafficked.**

51. **GRETA also considers that the Austrian authorities should take additional steps to ensure the availability, independence and sensitisation to the issue of human trafficking of interpreters.**

3. Legal assistance and free legal aid (Article 15)

52. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law³⁹ also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in a civil matter, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

53. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.⁴⁰

³⁹ *Airey v. Ireland* judgment, 9 October 1979.

⁴⁰ See 8th General report on GRETA's activities, paragraph 167.

54. Pursuant to Section 66, paragraph 2, of the CCP, victims of THB are entitled to legal assistance (*juristische Prozessbegleitung*), insofar as this is necessary to preserve the rights of the victim. Legal assistance for the proceedings includes legal advice and representation by a lawyer. It is provided free of charge, independent of the victim's financial situation. For the purpose of ensuring the provision of legal assistance for the proceedings, the Federal Minister for Justice is authorised to enter into agreements with suitable institutions and specialised victim support organisations (LEFÖ-IBF and MEN VIA) are entrusted to provide legal assistance to victims of human trafficking. According to information provided by the Austrian authorities, the Federal Ministry for Constitution, Reforms, Deregulation and Justice is currently revising the quality standards for assistance in criminal proceedings and a regulation on this issue, including the reorganisation of training for the provision of psycho-social and legal assistance, is in the process of being drafted.

55. If a victim of THB is referred to a specialised NGO, the right to legal assistance exists before and during criminal proceedings, irrespective of immigration status or type of exploitation. LEFÖ-IBF and MEN VIA assess the case and commission specially trained lawyers to provide victims with legal assistance. Legal assistance is provided free-of-charge as soon as the victim decides to make a report to the police. The costs are initially borne by the victim support organisations and are refunded by the Federal Ministry for Constitution, Reforms, Deregulation and Justice. When the accused person is convicted, he/she has to pay for the cost of the proceedings, including a lump sum for the court assistance of up to € 1 000 (Section 381, paragraph 1, subparagraph 9, of the CCP).

56. Victims who are not entitled to legal assistance pursuant to Section 66, paragraph 2, of the CCP and who have joined the proceedings as private parties are to be granted legal aid for the proceedings by the court if the representation by a lawyer is in the interest of justice, in particular if this is necessary for a purposeful assertion of their claims in order to avoid further civil proceedings, and if they are unable to meet the costs for legal representation without compromising their necessary livelihood (Section 67, paragraph 7, of the CCP). The lawyers are appointed by the relevant regional Bar Association. In Austria, all lawyers are obliged to provide legal aid, and the Bar Association has to ensure an even distribution of cases between lawyers, while also complying with the victim's preferences for the appointment of a specific lawyer.

57. In civil cases, the conditions for access to free legal aid (*Verfahrenshilfe*) for victims of THB, including children, are part of the general system of legal aid funded by the state. Legal aid is granted if the applicant (according to his/her income, assets and maintenance obligations) is unable to bear any or part of the cost of the proceedings without compromising the minimum subsistence level. A party with insufficient financial means may apply for legal aid when entering into litigation or subsequently, as long as the civil proceedings are still pending. The court can grant legal aid by wholly or partially freeing the indigent party from court fees and other fees. Legal aid is denied if the claim of the applicant is manifestly unfounded or manifestly not brought in good faith. Legal aid is available for all types of civil proceedings, including to claim compensation. Concerning civil law, e.g. in order to claim unpaid wages for victims of labour exploitation, the victims in some cases receive free legal assistance from trade unions or the Austrian Chamber of Labour.

58. Persons placed in detention centres are entitled to free legal counselling (*Rechtsberatung*). This is independent of their residency status and covers all administrative proceedings, including asylum proceedings.

59. GRETA was informed by civil society organisations that a number of Chinese victims of trafficking who were exploited sexually and/or in domestic households have not been identified as victims by the police, and find themselves in detention prior to deportation, where they do not get access to legal assistance. Further, Nigerian victims who are not in contact with specialised victim support centres receive legal assistance in the asylum process from non-profit law centres or private lawyers who are not sufficiently aware of the issue of human trafficking. LEFÖ-IBF used to have access to detention centres, but this is no longer the case. The authorities have indicated that trained personnel working at detention centres refer possible victims of trafficking, subject to their consent, to LEFÖ-IBF (women) and MEN VIA (men), or to the youth welfare authority in the case of children. The authorities have also specified that NGOs (e.g. Diakonie, ARGE Recht and VMO) provide free legal counselling to persons in detention centres.

60. GRETA notes that a trafficking victim's access to a specialised lawyer depends on whether he/she is referred to a specialised NGO providing psycho-social and legal assistance. Therefore, there should be a good working relationship between the police, staff working in asylum reception centres and detention centres, and specialised NGOs in order to provide legal assistance to trafficking victims.

61. GRETA considers that the Austrian authorities should take further steps to ensure trafficking victims' access to legal assistance and free legal aid, in particular:

- **a lawyer should be appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, including in the case of asylum seekers and persons placed in detention prior to deportation, before the persons concerned have to decide whether or not they want to co-operate with the authorities and/or make an official statement;**
- **Bar Associations should encourage training and specialisation of lawyers to provide legal aid to trafficking victims, and ensure that trafficking victims are systematically appointed a specialised lawyer.**

4. Psychological assistance (Article 12)

62. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic intervention due to the violence they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy, conducted by an experienced clinician.⁴¹ In the case of trafficked children, specialist child psychologists should be employed.

63. In Austria, victims of THB as other victims of crime are entitled to government support under the Victims of Crime Act, including psychological care.

64. During criminal proceedings, all victims of crime within the meaning of Section 65, paragraph 1, lit. a or b, of the CCP, irrespective of immigration status or type of exploitation, are to be afforded psycho-social support upon request, insofar as this is necessary to preserve the rights of the victim, taking into account their personal concerns (Section 66, paragraph 2, of the CCP). Victims whose sexual integrity may have been violated and who are under the age of 14 are provided with psycho-social support for the proceedings in any case. Psycho-social support for the criminal proceedings includes informing the person concerned about the proceedings and the emotional stress associated with the proceedings, as well as accompanying the person to questioning during investigation proceedings and court hearings.

⁴¹ See OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

65. LEFÖ-IBF provides holistic psycho-social services to female victims before, during and after the legal procedures, as well as in cases where there is no legal procedure. A trained psycho-social counsellor of LEFÖ-IBF is in charge of child victims. MEN VIA provides similar services to male victims.

66. Victims of trafficking reportedly have difficulties getting to see a clinical psychologist as this is not covered by their entitlement to health care. The Austrian authorities have specified that Austria has a system of compulsory medical insurance based on employment. Persons receiving unemployment benefits, beneficiaries of the needs-based minimum system (*Bedarfsorientierte Mindestsicherung*) and pensioners are also medically ensured. Asylum seekers and vulnerable foreign citizens are covered by the health insurance scheme, according to Section 9 of the General Act on Social Insurance. Pursuant to the Victims of Crime Act, the costs of psychotherapy (Section 4, paragraph 5) and crisis intervention (Section 4a) can be covered by the public budget, even if the victim has no public health insurance. The victim has to apply for cost contributions for psychotherapeutic treatment and, subject to a positive evaluation regarding admissibility, the Ministry of Social Affairs' Service would bear the cost up to the amount of three times the cost contribution paid by the public health insurance. The authorities have affirmed that long-term psychotherapy would be covered as long as there is a medical necessity.

5. Access to work, vocational training and education (Article 12)

67. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, micro-businesses and social enterprises.⁴² GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.⁴³

68. While it is a positive feature that victims of trafficking holding residence permits in Austria are entitled to work, they face barriers in obtaining effective access to the labour market, due to factors such as inability to speak the language, lack of skills, as well as prejudices of, and social stigmatisation by, potential employers. The fact that victims of THB are issued residence permits pursuant to Section 57 of the Asylum Act is reportedly creating difficulties on several counts: first, the residence permit has to be accompanied by a work permit; second, it is not valid long enough to make employers interested in employing a victim of trafficking; third, the fact that victims of THB are issued a residence permit under Section 57 of the Asylum Act, which is stated on the document that they receive, makes employers suspicious and uncertain about employing them because the grounds for the permit are not well understood. The residence permit is issued for up to one year and can be renewed if the victim has found a job in the meantime, which proves to be difficult. Victims who do not speak German are under pressure to find a job, without having time to follow language classes which would increase their chances of finding employment.

69. The Austrian authorities have indicated that under certain circumstances victims of THB can be issued a settlement permit (the so-called "red-white-red card plus"), pursuant to Section 41a, paragraph 3, of the Settlement and Residence Act, after having held a residence permit pursuant to Section 57 of the Asylum Act. This permit grants unlimited access to the labour market and no separate work permit is required. It can be renewed as long as the requirements for it continue to exist. The requirements are to have adequate accommodation and health insurance, and to be able to financially sustain oneself.

⁴² Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

⁴³ See 8th General report on GRETA's activities, paragraph 183.

70. A special programme provided by Vienna's Public Employment Office, in close co-operation with LEFÖ-IBF, offered labour market integration assistance for victims of THB, including individual coaching, special placement activities, support for acquiring qualifications and language courses.

71. GRETA commends the positive initiative of the NGO Hope for the Future, which provides training to presumed victims of trafficking and supports them in finding jobs. There are other civil society actors promoting such initiatives, but in general, it is difficult to get companies interested in supporting public-private initiatives.

72. Some civil society actors met during the visit indicated that most Nigerian and Chinese victims of trafficking for the purpose of sexual exploitation who come to Austria claim asylum and acquire self-employment status, which they are eligible to do as asylum seekers. According to these civil society organisations, limited vocational and language skills, in combination with a comparably obstacle-free entry to prostitution, seems to lead to the latter *de facto* being the sole access to the labour market for asylum-seeking women. The Austrian authorities have indicated that there are a number of alternative work options for self-employed asylum seekers with limited vocational and language skills, such as distributing promotional leaflets, delivery services, packaging or clothing repair. Further, asylum seekers can be employed on the basis of a service employment voucher to perform household tasks in private households, without needing a work permit. In addition, there are seasonal employment opportunities in the tourism sector, agriculture and forestry. A ministerial decree provides that asylum seekers should be given priority over new arrivals from third countries on the Austrian labour market.

73. **GRETA considers that the Austrian authorities should:**

- **strengthen effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking;**
- **ensure that asylum seekers eligible to engage in self-employment are provided with effective access to the labour market, in particular by providing them with vocational and language training.**

6. Compensation (Article 15)

74. Article 15(3) of the Convention establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). However, even though it is the trafficker who is liable to compensate the victim, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. Article 15(4) therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection, Article 15(4) suggests setting up a compensation fund or introducing measures or programmes for social assistance to, and social integration of, victims that could be funded by assets of criminal origin. Of relevance in this respect is the European Convention on the Compensation of Victims of Violent Crimes, pursuant to which, when compensation is not fully available from other sources, the State shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence, as well as the dependents of persons who have died as a result of such crime, even if the offender cannot be prosecuted or punished.

75. Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.

76. Victims often leave the country where they were exploited at the end of the criminal proceedings. This creates obstacles to making civil claims for compensation, which in addition are associated with a number of other barriers, such as high costs, unavailability of free legal aid and victim-support services, as well as the claimant bearing the burden of proof of the amount of the damage. State parties should therefore consider adopting a procedure through which victims are entitled to obtain a decision on compensation by the offender as part of the criminal trial, within a reasonable time.

77. The legal framework for compensation of victims of THB in Austria has remained unchanged since GRETA's second evaluation report.⁴⁴

78. According to Section 67, paragraph 1, of the CCP, a victim has the right to become a private party (*Privatbeteiligter*) in the criminal proceedings by declaration in order to request compensation from the offender for the damages sustained or the infringement of rights (*Privatbeteiligung*). The status of a private party, which has to be declared to the court, is a prerequisite to seek compensation during the criminal proceedings, and it also applies to victims of THB. The purpose of this provision is to provide victims with a possibility to seek civil compensation already in the course of the criminal proceedings. Otherwise, they would have to claim damages in separate civil proceedings (with all the associated drawbacks, such as court fees and risk of litigation). The declaration has to specify the claims and can be filed with the police or the prosecution service during the preliminary investigation procedure or at court after the indictment. In any case, the declaration has to be filed before the end of the procedure of taking evidence. The court's decision on claims of private participants is enforceable under the rules of the Austrian Enforcement Act.

79. The Austrian authorities have indicated that the number of victims of THB who joined criminal proceedings as private parties was 36 in 2015, 36 in 2016, 41 in 2017 and 52 in 2018 (i.e. around 12% of all presumed and identified victims, see paragraph 12).

80. The 17th part of the CCP stipulates the procedure regarding civil claims within the criminal proceeding (Sections 366 to 373b). If the accused person is convicted and the victim has claimed compensation as a private party within criminal proceedings, the criminal court has to decide on this claim (Section 366, paragraph 2, of the CCP). In case the court is not in the position to decide on the full claim, the private party may be referred to civil proceedings regarding the remaining part of his/her claim, unless evidence can be taken without significant delay. The private party has the right to appeal against the court's decision if he or she is referred to civil proceedings (Section 366, paragraph 3, of the CCP). However, if the court decides only partly on the private claim, the private party has no right to appeal. In case of an acquittal of the accused, the private party is referred to civil proceedings to claim compensation.

⁴⁴ See paragraphs 118-120 of GRETA's first evaluation report on Austria (GRETA(2011)10) and paragraph 142 of GRETA's second evaluation report on Austria (GRETA(2015)19).

81. Trafficked persons can claim compensation for pain and suffering, as well as reimbursement of medical costs from the defendant. A declaratory judgement is an assessment of the liability of the accused person for harm that may result from the criminal acts at a later time and cause a need for psychotherapy or other additional costs. If an expert opinion is requested during criminal proceedings in order to make an assessment regarding injuries or damage to health, he/she is also assigned to assess the suffered pain over certain periods of time in order to estimate the amount of compensation to be paid. In the administrative district of the Higher Regional Court of Vienna, compensation rates are currently set as follows: €110 per day for mild pain suffered, €220 per day for moderate pain and €330 for serious pain. These rates reflect the common practice of Austrian courts.

82. Pursuant to the CCP, prosecutors have to ensure the right of civil claimants to compensation by ordering seizures. If seized assets cannot be returned to the victim or if the case does not involve a return of removed assets, the criminal court has to decide on compensation claims in an adhesive procedure in terms of Section 1323 of the Civil Code (replacement of suffered damages or loss of earnings or redemption payment for a caused offence).

83. Legal assistance includes legal advice and representation of the victim in court with regard to claims for compensation.

84. GRETA was informed by specialised NGOs that in practice, victims of THB often join criminal proceedings as civil claimants with claims only for small symbolic amounts, because an assessment of the real amount of damages is difficult. Additionally, in many cases there is a lack of expert opinions.

85. If civil claimants have been granted compensation by the court, the state can grant a payment in advance to the civil claimant or to his/her beneficiary, pursuant to Section 373a of the CCP. A payment in advance can only be granted if the private party addresses an application to the criminal court of first instance. However, according to information provided by specialised NGOs, there has never been such a case concerning human trafficking due to unduly burdensome requirements.

86. When a victim decides to leave the country or is deported, there is still the possibility to obtain compensation and be represented by the legal representative. However, this requires extensive coordination efforts between specialised NGOs providing victim assistance and the relevant authorities, as well as transnational co-operation with NGOs in other countries. In particular, to act on behalf of the victim when he or she is not in Austria, specialised NGOs (LEFÖ-IBF and MEN VIA) need to be authorised by the victim to act as the victim's psycho-social and legal assistant. Furthermore, maintaining contact with the victims is necessary to successfully assist them to obtain compensation. Victims of THB can return to participate in the criminal proceedings and the costs will be covered by the court.

87. Anyone, regardless of their residency status, can claim unpaid wages through the Labour and Social Court. During first instance proceedings there is no need to be represented by a lawyer, although parties may be represented by qualified persons in terms of Section 40, paragraph 1, of the Labour and Social Courts Act. Besides lawyers, employees of the relevant legal lobby (board) or a voluntary association licensed to bargain collective agreements, such as the Austrian Federation of Trade Unions (ÖGB), can be considered qualified. Victims supported by LEFÖ-IBF are provided with psycho-social assistance in claiming unpaid wages through the Labour and Social Court.

88. The centre UNDOK has been authorised and financed by the government to assist undocumented workers in complaints against employers as a measure to implement the EU Employer's Sanctions Directive. In Austria, most employees are by law member of the Austrian Chamber of Labour and thus entitled to receive legal aid and assistance regardless of residence status. After the claim is assessed and if there is a reasonable probability that the plaintiff will win the case, the Chamber of Labour will provide a legal counsel for the court case.

89. LEFÖ-IBF has participated in the EU-funded project "Justice at Last", together with partners in other European countries, which has involved research, advocacy and training on access to compensation for victims of trafficking.⁴⁵ LEFÖ-IBF offers regular training for the police, which includes identification of THB and access to compensation. In 2019 LEFÖ-IBF ran a seminar for prosecutors and judges within the framework of the project "Justice at Last". The seminar aimed to raise awareness of the rights and needs of victims of THB and advocate the crucial importance of compensation. The training is also offered to lawyers.

90. LEFÖ-IBF and MEN VIA have published a leaflet for victims of THB on the topic of compensation.

91. As noted in GRETA's second report, 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 human trafficking whose stay in Austria was irregular at the time the offence against them was committed.

92. The types of state compensation available to victims of crime can be summarised in seven groups: compensation for loss of earnings; income-dependant additional payments; medical care; orthopaedic care; rehabilitation; care allowance and blind welfare allowance; and lump sum compensation for pain and suffering. If it is considered probable that an injury or damage resulted from a criminal offence, it is possible to apply for compensation based on the Victims of Crime Act during police investigations or criminal proceedings without the need to file a civil claim against the perpetrator. Compensation has to be claimed at the Federal Social Welfare Office, which decides on the claim in the first instance. In reaching a decision, the Federal Social Welfare Office can obtain information from the criminal courts of first instance and the public prosecutor. State compensation can be granted if a perpetrator is unknown, but the relevant Federal Social Welfare Office has to establish whether criminal proceedings have been initiated in relation to the case which is the subject of an application, and how they are developing. Victims can be excluded from receiving compensation if they culpably fail to support the clarification of an offence, the disclosure of facts for the conviction of a perpetrator or the assessment of damages.

93. State compensation is calculated according to real expenses and addresses therefore the gravity of harm. For example, when therapy is approved, the Social Welfare Office will meet an account directly. There is a possibility to receive a one-time payment. The lump sum starts at € 2 000 for aggravated battery resulting from intentional criminal acts. This lump sum is raised to € 8 000 if the victim suffers permanent damage. Victims of trafficking awarded state compensation are not liable for lawyers' costs and fees, nor does receipt of compensation have any consequences for access to social security or other benefits. Additionally, compensation awards are not subject to taxation. According to information provided by the Austrian authorities, since 2015, six victims of THB received state compensation totalling € 50 375. The authorities have noted that the number of applications has increased over the years: while there was only one application in 2016-2017, there were six applications in 2018 and nine in 2019 (most of the proceedings are not yet completed). The deadline for applications for compensation under the Victims of Crime Act was recently extended from two to three years.⁴⁶

94. According to a sample of 178 cases of victims of alleged human trafficking registered by the law firm Steiner between 1 January 2014 and 30 June 2019 (see paragraph 113), in 58 cases there was a court verdict, and in 27 cases the victim was compensated. In some of the cases, the victim was only partly compensated and referred to the civil courts. The amount of the compensation was between € 200 and € 40 000.

⁴⁵ As part of the project "Justice at Last", the publication "Together against human trafficking: Compact Knowledge for Practitioners: Criminal Matters, Compensation and Victim Protection" authored by Barbara Steiner, Evelyn Probst (LEFÖ-IBF) and Manfred Buchner (MEN VIA) was published in 2018. It is available in German at: http://www.lefoe.at/tl_files/lefoe/Kompaktwissen_Strafrecht_Menschenhandel_April2019.pdf

⁴⁶ Federal Law Gazette 1 No. 105/2019.

95. While welcoming the steps taken in Austria to support victims of trafficking to claim compensation and to provide training to relevant officials on access to compensation, GRETA is concerned that, in practice, the effective access of victims of trafficking to compensation remains rare. The reasons are ineffective co-operation between the prosecutor and the police with a view to securing evidence enabling the seizure and confiscation of criminal assets, lack of standards in criminal law regarding compensation, and arbitrary amounts of compensation. Further, the effective enforcement of compensation awards is a recurring problem. Even if the court awards compensation, it is the responsibility of the victim to enforce the order. In practice, this is time consuming, impossible because traffickers have made sure that there is nothing to be gained from them, or even dangerous because of intimidation and threats on the part of traffickers and/or their associates or families. The execution of compensation orders is not included in the legal assistance (*juristische Prozessbegleitung*), but could be covered by legal aid (*Verfahrenshilfe*).

96. The Austrian authorities have stressed that, while prosecutors are required to raise all circumstances that are decisive for the assessment of claims by injured parties, if taking the necessary evidence to support the claim would considerably delay the proceedings, additional investigation must be avoided (also with regard to Article 6 of the European Convention on Human Rights).

97. **GRETA urges the Austrian authorities to make additional efforts to guarantee effective access to compensation for victims of THB, in particular by:**

- **ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigations with a view to supporting compensation claims in court;**
- **prosecutors systematically requesting compensation and judges using all the possibilities the law offers them to uphold compensation claims;**
- **introducing a procedure through which victims are entitled to obtain a decision on compensation from the offender as part of the criminal trial and requiring courts to state, where applicable, why compensation is not considered.**

98. **Further, GRETA considers that the Austrian authorities should take further steps to enable access to compensation for victims of trafficking, in particular by:**

- **making compensation awarded in criminal proceedings payable by the State in advance and the State taking the responsibility to recover the amount from the offender;**
- **additional training being provided to prosecutors and judges on the issue of compensation.**

7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)

99. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) of the Convention establishes that the investigation or prosecution of THB offences must not depend on victims' reports. The aim is to avoid traffickers' subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities. Pursuant to Article 27(2), if the competent authority with which the complaint has been lodged decides that it does not itself have jurisdiction in the matter, then it must forward the complaint without delay to the competent authority of the Party in whose territory the offence was committed. Further, under Article 27(3), each Party shall ensure to non-governmental organisations and other associations which aim at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.

100. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are “effective, proportionate and dissuasive”. Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders (e.g. by so-called “civil” confiscation) of the instrumentalities and proceeds of human trafficking criminal offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

101. Further, Article 22 of the Convention requires Parties to ensure that legal persons can be held liable for human trafficking offences committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person who has a leading position within the legal person. Liability under this article may be criminal, civil or administrative.

102. In 2013, following amendments to the Austrian Criminal Code, the penalty for the basic offence of trafficking in human beings in Section 104a, paragraph 1, of the CC was increased from up to three years’ imprisonment to between six months and five years’ imprisonment, and the penalty for trafficking of children between the age of 14 and 18 was increased from up to three years to one to 10 years’ imprisonment (Section 104a, paragraph 5, of the CC). The Austrian authorities consider that the ranges of penalties for THB offences are effective, proportionate and dissuasive. The determination of the penalty in each specific case falls within the competence of the judiciary. Both the Public Prosecution Service and the defendant can appeal against the penalty imposed by the court in first instance.

103. Plea bargaining does not form part of the Austrian legal system. However, according to Section 198ff of the CCP, the prosecution authority must offer the suspect a withdrawal of the prosecution (so-called “diversion”) under certain conditions (in particular, if the envisaged penalty is not higher than five years’ imprisonment, the fault of the accused would not be considered as serious, and the offence did not result in the death of a person). There are four forms of diversion measures: payment of a sum of money, community service, probation with the assistance of a probation officer and obligations and victim-offender mediation. Diversion measures require the consent of the suspect. In these cases, it is paramount to take into consideration the interests of victims and to support these to the greatest extent possible, especially their interests concerning reparation. The Austrian authorities have informed GRETA that in 2015, proceedings against two persons accused of THB (Section 104a, paragraph 1, of the CC) and in 2019, proceedings against one person accused of the exploitation of a foreigner (Section 116 of the Aliens’ Police Act) ended with a diversion measure.⁴⁷

⁴⁷

Public Prosecutor’s Office of Wels, 5 St 21/14a; Public Prosecutor’s Office of Salzburg 11 St 88/19b.

104. In Austria, there are several measures to deprive perpetrators of the proceeds of crime or property of an equivalent value to those proceeds: securing (Section 110, paragraph 1, of the CCP) or sequestration (Section 115, paragraph 1, of the CCP) with the aim to secure a decision by the court concerning confiscation (Section 19a of the CC), forfeiture (Section 20 of the CC), extended forfeiture (Section 20b of the CC), and seizure of assets (Section 26 of the CC). These measures also apply to properties which have been purchased with the proceeds of illicit activities. In general, a seizure is executed by the criminal police upon an order of the public prosecution office. If law enforcement authorities intend to obtain banking information in order to determine whether assets can be seized, the public prosecutor can order the bank that it is obliged to keep secret all related facts and operations vis-à-vis its customers and third parties (Section 116, paragraph 5, of the CCP). The Financial Investigations and Asset Recovery Sub-Department of Criminal Intelligence Service Austria is involved in all THB investigations. Any orders for seizing assets are issued by the respective public prosecutor's office or court. In cases of forfeiture or extended forfeiture, if compensation has been awarded to the victim, but has not yet been paid, the victim has the right to demand the settlement of the assets forfeited.

105. If seized assets cannot be awarded to the victim or if the case does not involve an award of removed assets, the criminal court has to decide on compensation claims in an adhesive procedure in terms of Section 1323 of the Austrian Civil Code (e.g. replacement of suffered damages or loss of earnings or redemption payment for a caused offence). According to specialised NGOs, in practice, this is not implemented.

106. As noted in paragraph 64, victims of THB have the right to psycho-social and legal assistance, which includes accompanying them to police interviews and court hearings. In order to avoid secondary victimisation as well as direct contact between victims, witnesses and defendants, Section 165 of CCP (*kontradiktorische Vernehmung*, translated as "adversarial witness questioning") provides for the possibility of questioning indirectly victims with special protection needs and other witnesses to whom the criteria mentioned in Section 66a apply, as well as witnesses mentioned in Section 156, paragraphs 1 and 2, of the CCP. The hearing takes place in a separate room, with the use of audio and video recording. An expert may be commissioned to conduct the questioning, in particular if there is a special need for protection. In any case, it must be ensured that the victim or witness does not meet the accused and other parties to the proceedings. According to the Austrian authorities, this type of questioning must be applied if a request to this effect is made by a victim or the prosecution. During the preliminary proceedings, the application of this provision is decided by the prosecutor, and during the court proceedings, by the court.

107. Victims of THB have, *inter alia*, the following rights: to receive a written confirmation of the complaint; to have access to files concerning them; to be informed by the public prosecutor if proceedings are going to be dropped or continued and about the possibility to request continuation of proceedings; to participate in cross-examinations of other witnesses and perpetrators; to be present at the main trial and to question perpetrators, witnesses and official experts. Further, particularly vulnerable victims within the meaning of Section 66a of the CCP (see paragraph 36) have the following rights: to be questioned by a person of the same sex; to refuse to answer questions which concern the most private sphere and details of the crime; to have interviews conducted by way of "adversary questioning"; to request a non-public trial; to be informed *ex officio* about the release of the offender from custody immediately without exception; according to their application to be informed about the escape and arrest or release of the offender from the jail; to be accompanied by a confidant in investigation and court hearings.

108. Through adhesive or subsequent procedures, a victim can claim and enforce his/her right to become a civil claimant during criminal proceedings. If a victim joins criminal proceedings as a civil claimant, he/she can make use of additional rights, namely: request the collection of evidence; request continuation of proceedings as a subsidiary prosecutor if the public prosecutor drops proceedings; appeal against the prosecutor's decision to close the case; apply for legal representation free of charge if victim assistance services are not granted; be present during the main proceedings, make use of the right to ask questions, and have the opportunity to make and explain claims following the public prosecutor's closing speech; appeal for nullity; and appeal against the court's decision on the civil claim. The victim can submit his/her declaration to become a civil claimant to the police or the public prosecutor during preliminary proceedings after the case is brought to court. The declaration has to be submitted before the procedure of collecting evidence is closed, and the amount of reparation of damages or compensation has to be determined. Exercising his/her procedural rights, the victim supports the defendant's conviction and is able to obtain declarations from the criminal judgment, which might support claims in a subsequent civil court case. At any point during the main proceedings the criminal court can record a settlement concerning civil claimant's claims. A settlement represents an executory title and the civil claimant loses his/her position as such for the remaining time of proceedings. The validity of the settlement does not depend on the outcome of criminal proceedings.

109. There are no complaint mechanisms in case of overlong and ineffective investigation and prosecution available to victims and their families. In criminal matters, in which parties have no (further) possibility of appeal to the Supreme Court, they can address a request to the Prosecutor General's Office.

110. The Austrian Ombudsman Board (AOB) offers assistance to victims if they feel they have been treated unfairly by an Austrian authority, irrespective of their age, nationality or their place of residence. The complaint may involve inactivity of the authority, a legal opinion that does not comply with the respective laws or an act of gross negligence. Complaints can only be made against Austrian administrative bodies. It is only possible to lodge a complaint against courts if the reason for the complaint relates to the excessive duration of the procedure. The AOB reviews every complaint and assesses whether there has been mal administration. The Austrian authorities are not aware of any complaints from victims of THB lodged with the AOB.

111. According to statistical information provided by the Austrian authorities, there were 61 investigations as defined by the Ministry of the Interior under Section 104a of the CC (trafficking in human beings) in 2015, 23 in 2016, 34 in 2017, and 71 in 2018. Additionally, there were 42 investigations under Section 217 of the CC (trans-border prostitution trade) in 2015, 28 in 2016, 23 in 2017, and 27 in 2018. The number of investigations as defined by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice was considerably higher. The Austrian authorities have explained that the different figures are due to the fact that three different authorities record data according to different criteria. During police investigations, data is recorded in police crime statistics. The Public Prosecutor's Office keeps its own statistics according to its own parameters and some double counting is possible. The judiciary, for its part, only records cases in which there has been a conviction.

112. According to information provided by the Austrian authorities, the number of convictions for THB was two in 2015 (both for labour exploitation), 10 in 2016 (six for sexual and two for labour exploitation, and two not defined), three in 2017 (two for sexual exploitation and one not defined), and nine in 2018 (three for labour exploitation, two for sexual exploitation, one for child labour, and three not defined). Additionally, there were a number of convictions for trans-border prostitution trade (13 in 2015, 16 in 2016, 7 in 2017, 5 in 2018) and three convictions for exploitation of foreigners in 2018.

113. Between 1 January 2014 and 30 June 2019, the law firm Steiner registered 178 cases of alleged victims of human trafficking that were closed by 30 June 2019; 149 of these cases were forwarded by LEFÖ-IBF and 29 by MEN-VIA. All of the cases can be considered as cases of human trafficking in a broader sense, however, not all of them were subsumed under Section 104a of the CC by the authorities: 112 cases (87 LEFÖ, 25 MEN-VIA) were actually treated as cases of human trafficking by the authorities, 27 cases were also treated as trans-border prostitution trade (Section 217 of the CC), 27 cases were also treated as pimping (Section 216 of the CC), seven cases were treated as exploitation of a foreigner, and the rest concerned rape, bodily harm or other offences. Of the 178 cases, 91 cases were abandoned (21 because elements of crime were not given or other obstacles of prosecution were given, 70 cases due to lack of evidence). In 32 cases, an application for the continuation of the proceeding was submitted. None of these applications were successful. In 56 cases no application was submitted because it was considered that there was no reasonable possibility of securing a conviction. Out of the 178 cases, 38 cases were stopped (10 because the alleged perpetrator was unknown, four because of immunity, three because the victim was absent, and 21 cases because the accused was absent or fugitive).

114. In 60 cases (44 LEFÖ, 16 MEN-VIA) the Prosecutor's Office brought charges. In 58 cases, the court delivered a verdict. Of those 58 cases, 42 cases dealt explicitly with human trafficking. In 22 cases (21 LEFÖ, one MEN-VIA), the court convicted the perpetrator under Section 104a of the CC, and in 20 cases, the perpetrator was acquitted. From those 58 cases, in 27 cases (25 LEFÖ, 2 MEN-VIA) the victim was compensated, of which 21 cases were explicitly cases of Section 104a of the CC.

115. By way of illustration, GRETA would like to refer to the following cases.

116. Two Nigerian women, one of whom was a minor at the time, were brought to Austria in 2015, where they were promised to get a legal employment, but prior to that they had to swear the juju, an oath that includes the obligation to obey and pay off their alleged debts. The accused, a Nigerian national who herself had been trafficked to Austria to work as a prostitute, recruited, transported, transferred and harboured both victims and forced them to work as prostitutes, confiscating their earnings. The Court of Wiener Neustadt found the accused guilty of promoting prostitution, trans-border prostitution trade, human trafficking, smuggling in people and forgery of specially protected documents. The accused was sentenced to three years imprisonment, two of which were suspended, and had to compensate the victims to the amount of € 29 500 and € 1 400 respectively (Regional Court Wiener Neustadt, 37 Hv 35/18f). According to information provided by the authorities, the compensation has not been paid as the police could not confiscate any assets.

117. In another case, four female Nigerian nationals claimed to have been trafficked to Austria by the first accused and other unknown co-perpetrators in return for at least € 30 000. The second accused was alleged to have recruited and harboured two of the victims and having transferred them to brothels by threatening them with the juju oath. The prosecutor brought charges of trans-border prostitution trade, human trafficking and smuggling in people. The first accused was sentenced to 24 months' imprisonment, of which 18 months were suspended on probation, for trans-border prostitution trade (Section 217, paragraph 2, of the CC). There was no conviction of THB because Section 217, paragraph 2, of the CC takes priority if both the elements of Section 104a, paragraph 1, of the CC, and Section 217, paragraph 2, of the CC are fulfilled.⁴⁸ The second accused was sentenced to 12 months' imprisonment, with 10 months suspended, for pimping. The proceedings against the third accused, the husband of the first accused, were discontinued for reasons of lack of evidence that he was involved in the actions of his wife, and the proceedings against the fourth accused were terminated because the victim withdrew her statement against her (Regional Court Vienna, 34 Hv 15/17y).

118. Two Austrian accused were found guilty (while a third one was acquitted) of human trafficking, pimping and introduction to prostitution. The convicted had the intention to exploit three victims (all of

⁴⁸ On the other hand, if both elements of Section 104a, paragraph 4, of the CC and Section 217, paragraph 2, of the CC, are fulfilled, both criminal offences are applicable. The same applies if both elements of Section 104a, paragraph 1 and Section 217, paragraph 1, or both elements of Section 104a, paragraph 5, and Section 217, paragraph 1 or 2, are fulfilled.

Austrian nationality) sexually. The first accused recruited women through the internet and later forced them to work as prostitutes by threatening to beat and kill the victims and/or their families. The accused took all of the victim's earnings from prostitution. The first accused was sentenced to two years' imprisonment, and the second to eight months, suspended. The victims received compensation amounting to € 800, € 6 000 and € 10 000 (Regional Court Vienna, 41 Hv 33/17x).

119. More than 20 Bulgarian victims claimed to have been brought from Bulgaria to Austria and forced into prostitution. They had to hand over all their earnings to the perpetrators and were forced to live in extremely bad conditions. This criminal operation was observed by the police over several weeks. In summer 2013, the police arrested 13 male and female trafficking suspects in Vienna and Bulgaria and identified about 20 female victims, of whom 14 received psychological and legal assistance. All arrested perpetrators were put in remand custody. One of the main perpetrators was fugitive and remains at large. The court found that the victims had been subjected to human trafficking and/or trans-border prostitution trade and/or pimping and many victims were additionally subjected to coercion, bodily harm, rape and other offences. The accused were sentenced to imprisonment ranging between 9 months imprisonment on probation to up to 9 years and had to compensate the victims for their harm and reimburse their earnings. The amount of the compensation ranged between € 400 and € 40 000.⁴⁹

120. A Bulgarian couple took control over two male victims after paying money to a Bulgarian criminal organisation and forced them to beg in Vienna. The victims were about 60 years old; one of them was an alcoholic and the other was suffering from a crippled leg. The accused harboured the victims in a small flat where they slept on the floor together with other men; they were not given enough food. The accused were charged with human trafficking in respect of one of the victims. The second victim was allegedly taken abroad by the accused so that he could not make a statement. The male accused was sentenced to six months in prison (suspended), the female accused died and the proceedings were discontinued. The victim did not claim compensation (Regional Court Vienna, 13 Hv 101/17s).

121. In the spring/summer of 2013, 14 men and women, one from Hungary and the rest from Romania, worked as harvesters in crop fields in eastern Austria. They were made to work seven days a week under bad working conditions. The victims were paid only after having made their statements to the police. The three accused were acquitted of charges of human trafficking because of insufficient evidence (Regional Court Eisenstadt, 15 Hv 51/14x).

122. Three male victims were recruited in Romania in March 2016 as construction workers in Austria, being promised a good income and regular working hours. They were harboured in a boiler room in a cellar. The construction company owner's foreman controlled the workers, maltreated them physically, emotionally and one of them sexually. They had to work more than 60 hours per week and only got small parts of their promised income. Their signatures in the employment contracts and hourly records were forged. The workers were not registered for social security insurance. The mother of one of the workers informed the Austrian police in July 2016. The prosecutor found that there was not enough evidence and the allegations of human trafficking were turned down in December 2017 (Public Prosecutor's Office of Korneuburg 12 St 160/16w). The foreman was convicted of raping one victim (Regional Court Korneuburg 631 Hv 11/18s). His helper was convicted of bodily injury of two other victims (District Court Gänserndorf 7 U 90/17z).

⁴⁹ Regional Court Vienna 41 Hv 7/14v, 41 Hv 3/14f, 41 Hv 6/14x, 11 Os 99/14i, 14 Os 78/14y, 11 Os 94/14d, 11 Os 101/14h, 151 Hv 14/14g, 24 Hv 18/14m, 41 Hv 15/14w, 41 Hv 25/14s, 12 Os 145/14m, 41 Hv 31/14y, 41 Hv 43/14p, 201 St 18/15p.

123. An Ethiopian woman, illiterate and living in poor circumstances, was recruited by her cousin, an official working at a United Nations agency in Vienna, to work for him and his wife as a domestic worker from August 2010 until March 2015. In the diplomat's household she was harboured in a 4 m² windowless storeroom under the stairs. She had to work every day up to 13 hours. The diplomat and his wife were forging the victim's signature on employment contracts, statements of salary slips and other papers, or else the victim had to sign papers which she could not understand, being illiterate. With the help of LEFÖ, the victim reported to the police. As the incriminating acts were not in the official capacity of the suspect, and pursuant to the conditions of the agreement concluded between Austria and the international organisation for which the suspect worked, diplomatic immunity did not apply. Although labour exploitation was indicated, the prosecutor found that there was not enough evidence. The application for the continuation of the proceedings was rejected (Public Prosecutor's Office of Vienna, 13 St 191/15x).

124. A female victim from the Philippines was brought to Vienna to work as a housekeeper and to take care of two children, aged five and two. Although it was agreed that she would have one day off per week, the victim was working every day, being allowed free time only twice a month for about three hours. She was not allowed to use her mobile phone and her residence permit was taken away. One day the victim became ill and was not allowed to see a doctor, but had to continue working. As the suspect enjoyed full diplomatic immunity under the agreement concluded between Austria and the international organisation for which he worked, the case was discontinued (Public Prosecutor's Office of Vienna, 31 St 38/14b).

125. During the third evaluation visit, GRETA was informed by a public prosecutor in Graz of an ongoing case concerning eight Nigerian women (including two under the age of 18) who had been found by the police in sexual exploitation, with no documents or false IDs, of whom six were identified as victims of THB (Public Prosecutor's Office of Graz AZ, 19 St 140/18d). The Dublin Procedure was not applied to them (the women had applied for asylum in Italy). The women were given residence permits as victims of THB and are participating as private parties in the criminal proceedings. Compensation claims of up to € 35 000 were made, but as no criminal assets had been confiscated, they were unlikely to be met. The first defendant in this case, an Austrian man, was charged, *inter alia*, with trafficking in human beings (Section 104a, paragraph 5, of the CC), promotion of prostitution of minors (Section 215a, paragraph 1, of the CC), sexual abuse of adolescents (Section 207b, paragraph 2, of the CC), and violation of the right to sexual self-determination (Section 205a, paragraph 1, of the CC). The main trial took place at the Regional Court for Criminal Matters of Graz, on three days (13 June, 26 June and 4 July 2019). The defendant was sentenced to three and a half years' imprisonment. There were compensation orders ranging from € 1 000 to € 3 000. The proceedings have not yet been finalised with regard to the second defendant, a Nigerian woman.

126. GRETA would like to highlight the following case, presented during the visit by a lawyer and NGO representatives, which illustrates some good practices in the prosecution and adjudication of human trafficking cases.

"Mariposa" case

- **Trial court:** Regional Court for Criminal Matters Vienna
- **File number:** 151 Hv 122/18w
- **Time and duration of main trial:** mid-February to mid-April 2019 (18 days)
- **Victims:** originally there were 25 presumed victims of THB, but only 17 could be identified as victims of trafficking; the victims were citizens of Venezuela, except for two who were Cuban.
- **Defendants:** Five defendants (three female, two male), one of the defendants was under the age of 21 when the crime was committed (beginning of 2016 to mid-2018). All defendants originated from Venezuela and were blood-related or related by marriage; one defendant held Austrian citizenship and two defendants held Spanish citizenship.
- **Charges:**
 - o Section 104a, paragraph 4, of the CC (trafficking in human beings)
 - o Section 217, paragraph 1, of the CC (trans-border prostitution trade)
 - o Section 116 of the Alien Police Act (exploitation of foreigners)
 - o Section 107 of the CC (dangerous threat)
 - o Section 114 of the Alien Police Act (smuggling of migrants)
 - o Section 223 and 224 of the CC (counterfeiting of documents)
- **Type of exploitation:** Trafficking in human beings for the purpose of sexual exploitation
 - o Most of the victims had been approached and recruited in Venezuela, either personally or through social media, their travel to Austria was organised by the defendants, they were picked up at the airport by the defendants and then mostly procured to the clients by the defendants. The victims were usually exploited for several months before new victims were brought in.
 - o The victims had agreed to provide escort services on the basis of splitting the money earned 50:50 with the defendants, but in the end they were allowed to keep considerably less.
 - o The conditions under which the victims worked were exploitative (e.g. no days off, regardless of sickness or menstruation, availability 24 hours per day, seven days per week, no right to reject customers or sexual practices).
- **Sentences:** The adult defendants were convicted to between four and six years' imprisonment, and the underage defendant to three years' imprisonment, of which 26 months were suspended.
- The sentence also included the following measures:
 - o Forfeiture of assets (€ 41 498.05 and US \$1 800) acquired through the offences by two of the defendants in accordance with Section 20 of the CC
 - o Confiscation of the car of the first defendant used to transport the victims to the clients according to Section 19a of the CC
 - o Compensation orders ranging from € 4 000 to € 45 000, mostly depending on the duration of the exploitation, totalling € 281 800 (the victims had claimed € 712 800).
- **Legal assistance:** All 17 victims were granted psycho-social and legal support for the proceedings, in accordance with Section 66, paragraph 2, of the CCP, which included psycho-social assistance provided by LEFÖ-IBF and legal representation provided by one lawyer to all of the victims. Court assistance included information on the proceedings, the investigation and the basis for compensation.
- **Good practices:**
 - o A lawyer and a psycho-social assistant from LEFÖ-IBF were assigned to the victims to build a relationship of trust and develop continuity. This made it possible for most of the victims to be involved until the end of the court proceedings.
 - o At least one meeting was held with each victim together with the lawyer and the psycho-social assistant.
 - o There was an early involvement of financial investigators and close co-operation between law enforcement and LEFÖ-IBF.
 - o A detailed list of facts was prepared and extensively discussed beforehand between the victims, the lawyer and LEFÖ-IBF to determine and calculate the claims for compensation.
 - o The public prosecutor and the court were sensitised to the issue of human trafficking and followed a victim-sensitive approach, in particular in organising the interrogations (the victims were interrogated separately from the defendants in a different room using video transmission to the court room) and bringing in the compensation claims.
 - o The case was processed expeditiously.

127. The duration of criminal proceedings in THB cases depends on the circumstances of the case, in particular on the number of accused and victims. Cases in which the accused is held in custody are given priority. Since the duration of the criminal proceedings also entails an increased burden on all parties to the proceedings (especially with regard to the outcome of the proceedings), the question of the necessary acceleration of criminal proceedings is a main principle of criminal proceedings.

128. **GRETA welcomes the use of the possibility provided under Section 165 of the CCP to conduct hearings of victims and witnesses without the presence of the alleged perpetrator and the guidance issued to prosecutors to apply this provision when interviewing victims of human trafficking.** However, too much emphasis is put on the victim's testimony during criminal investigations and proceedings. If proceedings are built solely upon the victim's testimony, this puts an exorbitant amount of pressure upon the victim who is often vulnerable and possibly traumatised.

129. GRETA notes that the number of convictions for human trafficking remains low, in particular for trafficking for the purpose of labour exploitation. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat THB and guarantee victims' access to justice.

130. **GRETA considers that the Austrian authorities should take further steps to ensure that all possible human trafficking offences are promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of special investigation techniques in order to gather evidence and not to have to rely exclusively on testimony by victims or witnesses.**

131. **Further, GRETA considers that the Austrian authorities should take additional measures to ensure that THB cases are investigated proactively, prosecuted effectively, and lead to effective, proportionate and dissuasive sanctions. In this context, the Austrian authorities should continue providing training and encourage the specialisation of prosecutors and judges to deal with human trafficking cases.**

132. **As regards in particular human trafficking for the purpose of labour exploitation, reference is made to the recommendations in paragraphs 218-219.**

8. Non-punishment provision (Article 26)

133. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.⁵⁰ Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

⁵⁰ See 2nd General Report on GRETA's activities, paragraph 58.

134. In February 2017, the Federal Ministry of Justice issued an internal decree aimed at raising awareness of the non-punishment provision. It states that Article 10 of the CC on an exculpating state of necessity is the legal basis for implementing the non-punishment provision to victims of THB, and complements the judicial interpretation of Article 10 of the CC with regard to trafficking victims.⁵¹ The decree describes characteristics of trafficking cases and, by way of example, lists offences that could be committed by trafficking victims, such as theft, fraud (in connection with prostitution or in the case of contracts where the victim is a contracting party), documentary offences and drug-related offences. The decree clarifies that if, during the proceedings, it is suspected that the offences were committed under such circumstances, Article 10 of the CC must be examined *ex officio*. The Austrian authorities have stated that the decree was an important step in raising awareness of the non-punishment provision among prosecutors and judges. According to the authorities, the decree is used in seminars organised by the Ministry of Justice, which intends to send it to the four Higher Regional Courts of Appeal and ask them to ensure that the decree is used in the training of trainee judges, judges and prosecutors.

135. By way of example, the Austrian authorities have referred to the decision of the Higher Regional Court of Appeal of Linz, 9 Bs 71/19h, of 5 April 2019, repealing a conviction of the Regional Court of Linz for counterfeiting specially protected legal documents (Sections 223 and 224 of the CC) because the non-punishment principle has not been examined in the proceedings. The Regional Court for Criminal Matters in Vienna has also applied Section 10 of the CC in the case of juvenile victims of THB who were indicted for criminal offences they had committed, by invoking Section 10 of the CC.

136. Furthermore, in April 2017, the Federal Chancellery issued a circular on the implementation of the non-punishment provision in the context of administrative law. It clarifies that Section 6 of the Administrative Penalties Act 1991 (*Verwaltungsstrafgesetz, BGBl. No. 52/1991*) is the legal basis for implementing the non-punishment principle to victims of THB in the administrative penalty procedure.⁵² The Austrian authorities have stated that in the context of the victim identification procedure, the focus has been put on the non-punishment provision, and close co-operation between the judicial and administrative authorities has been established.

137. In addition, the fifth National Action Plan includes measures to review and evaluate the application of the non-punishment provision, also with regard to child trafficking, and to develop guidelines for the application of the principle to administrative offences.

138. However, interlocutors met during the visit reported that the non-punishment provision is rarely applied, often due to a lack of sensitisation and co-operation among the authorities, and highlighted the importance of adopting a specific legal provision on the non-punishment of victims of trafficking.

139. GRETA welcomes the steps taken by the Austrian authorities to strengthen compliance with the non-punishment provision of the Convention through the issuing of the above-mentioned decree and circular. With a view to ensuring the application of this provision, GRETA considers that the Austrian authorities should adopt a specific legal provision on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, as well as ensuring that the decree of the Federal Ministry of Justice is used in the training of judges and prosecutors.⁵³

⁵¹ 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" (unofficial translation).

⁵² Section 6 of the Administrative Penalties Act reads as follows: "An act is not punishable if it is excused by a state of emergency or, although it corresponds to the facts of an administrative offence, provided or permitted by law." (unofficial translation).

⁵³ See OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, available at: <https://www.osce.org/secretariat/101002?download=true>

9. Protection of victims and witnesses (Articles 28 and 30)

140. Under Article 28 of the Convention, Parties must take the necessary measures to provide effective and appropriate protection from potential retaliation or intimidation to victims and witnesses of human trafficking, as well as to members of civil society organisations supporting victims during criminal proceedings and, where appropriate, to victims' family members. Intimidation of victims and witnesses is nearly always aimed at suppressing evidence against defendants. Effective protection can be of various types (physical protection, relocation, identity change...) and depends on the assessment of the risks that victims and witnesses run. In addition, Article 28(3) provides that a child victim shall be afforded special protection measures, taking into account the best interests of the child. Regarding the period during which the protection measures are to be provided, the Convention aims in a non-exhaustive manner at the period of investigation and of the proceedings or the period following them. The period in which protection measures have to be provided depends on the threats to the persons concerned. Moreover, because trafficking in human beings is often international and some countries are small, Article 28(5) encourages Parties to enter into agreements or arrangements with other countries so as to implement Article 28.

141. Further, Article 30 of the Convention requires Parties to adapt their judicial procedure so as to protect victims' privacy and ensure their safety, including special protection measures for child victims. While the measures provided for in Article 28 address extra-judicial protection, the measures referred to in Article 30 are concerned with the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audio-visual technology, recordings of testimony, and anonymous testimony.

142. As explained in GRETA's second report on Austria, 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 5.4.1.2 High-Risk Witness and Victim Protection of the Criminal Intelligence Service of the Federal Ministry of the Interior. According to the authorities, the application of protection measures as part of the High Risk Victim Protection Programme were not necessary during the 2015-2018 reporting period.

143. The Witness Protection Programme is the responsibility of the Federal Criminal Police Office, Department of Witness Protection. Witness protection can be granted to persons who can provide information about a dangerous attack or a criminal connection and are therefore particularly at risk, as well as vulnerable family members of these persons. It is the responsibility of the Federal Criminal Police Office to assess whether the conditions for granting witness protection measures have been met, after carrying out a corresponding risk analysis. In addition to the special risk situation, the explicit consent of the persons to be protected is an essential prerequisite for inclusion in the witness protection programme.

144. The first step to victims' protection is the correct referral to specialised NGOs which offers protection via shelter, psycho-social and legal assistance in criminal proceedings. This means that counsellors accompany victims to police interviews and court hearings. The close co-operation between LEFÖ-IBF, MEN VIA and the police enables a close safety assessment and exchange of information about any potential threats. Nevertheless, threats occur via family members of the victim and/or social media. One of the missing links to victims' protection is the protection of family members.

145. 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 to 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. In addition, 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 of technical means (audio or visual transmission).

146. As already noted in paragraph 106, Section 165 provides for a procedure for questioning victims and witnesses which avoids direct contact with defendants and avoids secondary victimisation. Taking into consideration the age, psychological or health condition of the witness, the participation in the questioning of other participants in the proceedings may be limited either on request of the public prosecutor or *ex officio* through the use of technical means (audio or visual transmission) for following the questioning and putting questions. If a witness is younger than 14, it is possible to appoint an expert to conduct the questioning. Victims of sexual abuse may request to be questioned in this particular manner. Further, Section 250 of the CCP provides for the possibility of indirect questioning of a witness during the main trial. The Violence Protection Act 2019, which entered into force on 1 January 2020, extended the application of Sections 165 and 250 of the CCP to particularly vulnerable victims.

147. The court, the prosecutors and the police are obliged to inform lawyers of victims of THB, LEFÖ-IBF, MEN VIA, and/or victims about detention, release or escape of alleged perpetrators. Victims are therefore informed about the progress of their case through LEFÖ-IBF.

148. For details concerning the protection of children in court proceedings, please see the separate section below (paragraphs 173-179).

149. **GRETA invites the Austrian authorities to ensure that the available protection measures are effectively applied to victims and witnesses of human trafficking, as well as their family members, including by ensuring that specialised NGOs receive adequate funding for the purpose.**

10. Specialised authorities and co-ordinating bodies (Article 29)

150. Under Article 29(1) of the Convention, Parties have to adopt the necessary measures to promote specialisation of persons or entities in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists in sufficient numbers and endowed with appropriate resources. The staff of specialised authorities and coordinating bodies should, as far as possible, be composed of both women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

151. There are 10 special investigation departments (one at Criminal Intelligence Service Austria and nine at the country's Provincial CIDs). Additionally, a shared analysis database is in use. The existence of specialised police investigation units at federal and Länder level is a positive feature, but in recent years they have had to prioritise the investigation of cases of smuggling of migrants, which has been at the expense of proactively investigating human trafficking cases.

152. The Austrian Ministry of Finance has established the special unit Financial Police, which closely collaborates with the Criminal Intelligence Service Austria and immediately reports suspected THB cases. As part of their legal mandate (such as fiscal supervision, fight against social security fraud, investigation of illegal employment of foreign nationals), the Criminal Intelligence Service Austria and the Financial Police carry out joint action days (inspection measures) aimed at investigating cases of labour exploitation. Investigations into THB always include the Financial Investigations and Asset Recovery Sub-Department.

153. GRETA was informed that each local prosecutor's office is expected to have a prosecutor specialised in dealing with human trafficking cases. The Austrian authorities have specified that some Prosecutor's Offices have a department specifically dedicated to THB cases, but in general, there is no obligation to assign THB cases to the same prosecutor.

154. In 2018, the Ministry of Constitutional Affairs, Deregulation, Reforms and Justice organised together with the Ministry of the Interior an interdisciplinary seminar on property-law orders in criminal proceedings, which, among other topics, covered property-law orders in the field of THB for financial investigators and public prosecutors. In the same year, another interdisciplinary seminar for prosecutors and police officers took place, which focused on the strategies to combat child pornography and sexual abuse of minors.

155. The Austrian authorities have indicated that as a high number of THB cases occur in Vienna, candidate judges attend specialised training on THB during their training of usually three to four years. The Ministry of Justice is planning a two-training seminar in the autumn of 2020, for some 30 prosecutors and judges from all over Austria, on combating sexual offences and THB, including on the issue of compensation of victims.

156. As noted in paragraph 89, LEFÖ-IBF offers training for the police on a regular basis. It includes identification of THB and access to compensation. Further, in 2019, LEFÖ-IBF offered a seminar to prosecutors and judges on access to compensation. The Ministry of Constitutional Affairs, Deregulation, Reforms and Justice was to promote this seminar among judges and prosecutors and will continue to enable judges and prosecutors to participate in international seminars on THB organised by the Academy of European Law (ERA) or the European Judicial Training Network (EJTN).

157. GRETA welcomes the existence of police investigators specialised in trafficking in human beings, and considers that the Austrian authorities should promote specialisation and training of prosecutors and judges to deal with THB cases (see also paragraph 131).

11. International co-operation (Article 32)

158. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another “to the widest extent possible”. This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments⁵⁴ on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

159. On 4 May 2016, the Joint Operational Office (JOO) against Human Smuggling and Human Trafficking (Sub-Department 3.4. of Criminal Investigation Service Austria) was inaugurated by the then-Austrian Interior Minister, the Head of Criminal Intelligence Service, the FRONTEX Deputy Executive Director and the Head of the European Migrant Smuggling Centre at EUROPOL. During critical investigation phases of an operation, the JOO aims to involve international investigators in order to work collaboratively on a case. Foreign investigators are being continuously deployed on an operational basis. According to the Police Co-operation Convention for South East Europe (PCC for SEE), officers from the Balkan region or investigators from EU countries can, in line with Austria’s EU Police Co-operation Act, conduct joint operations with investigators of the JOO. The Austrian authorities have specified that the JOO also acts as an operative link to EUROPOL and is used for networking with the Joint Investigation Office in Catania, as well as helping to establish the Turin-based Joint Analytical and Strategic Operational Office (JASOO).

160. The co-ordination activities of Eurojust have been used by the Austrian authorities in one case. On 25 January 2016, the Netherlands, Bosnia and Herzegovina, and Austria established a Joint Investigation Team (JIT) on THB for the purpose of committing criminal offences, which was extended twice and ended in 2018. Furthermore, in six cases other EU-Member States used the assistance of Eurojust to request and coordinate mutual legal assistance from the Austrian authorities.

161. Further, based on a suspicious transaction report by Criminal Intelligence Service Austria (FIU), international investigations were conducted with the Romanian and German authorities into a Romanian group of offenders engaged in THB and sexual exploitation. The victims of THB were lured with the “lover-boy” method and were trafficked into prostitution in the destination countries, or else their labour was exploited. In this case, a cleaning company was used for money laundering activities.

162. Overall, there were seven requests for mutual legal assistance with regard to trafficking in human beings according to Section 104a of the CC and 10 requests with regard to trans-border prostitution trade according to Section 217 of the CC in 2018. There is no statistical data available on the outcome of the requests.

⁵⁴ For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

163. The Criminal Intelligence Service Austria is a co-partner in "Prevention of and Fight against Crime" (ISEC) projects. Austria is an active member of the ETUTU subproject (combating Nigerian THB within the EU), which is led by Germany and has been developed and supported within the framework of the EMPACT THB. The objective of the project, which is supported by 17 participating countries, is to comprehensively fight the Nigerian trafficking networks operating in the EU. Further, Austria is an active member of the CHINESE THB subproject (combating Chinese THB within the EU), which has been developed and supported within the framework of the EMPACT THB. The Criminal Intelligence Service Austria is also a co-partner in the ISF project THB LIBERI for combating THB and the exploitation of children, youths and young adults in Germany and Europe. Each year this project includes many strategic and operational meetings at home and abroad, which are attended by Criminal Intelligence Service Austria. Another project, involving Austria, Germany, Italy, France, the Netherlands and Interpol, aims at preventing and combating people smuggling and human trafficking along migratory routes towards the EU via North Africa. Further, the Criminal Intelligence Service Austria together with Slovenia is the project manager of "Twinning Serbia", which supports the fight against human trafficking. Another project in which the Criminal Intelligence Service Austria participates as a co-partner of Romania is WESTEROS, focusing on combating THB and its proceeds through advanced financial investigations.

164. The Criminal Intelligence Service Austria participates in a UNODC project to assist the Colombian authorities in implementing an integrated national strategy for fighting THB and to support the criminal justice system in prevention, investigation and prosecution according to the standards laid out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

165. The Austrian authorities have referred to international co-operation in the area of repatriation and reintegration of victims of THB in their countries of origin, in particular the victim reintegration project IRMA Plus II, conducted by Caritas Austria, in co-operation with partners in third countries.⁵⁵

166. According to civil society organisations, the execution of compensation does not work transnationally. LEFÖ-IBF supported cases where the victims returned to Bulgaria, and it sent all the information to the court on behalf of the victims; however, the compensation claim is still open. Another area which NGOs have stressed as important to reinforce in terms of international co-operation is the safe return of victims of THB.

167. **GRETA welcomes the Austrian authorities' participation in multilateral and bilateral international co-operation, and invites them to strengthen their efforts in this respect, in particular when it comes to the return of victims of trafficking, financial investigations and enforcing compensation orders.**

12. Cross-cutting issues

a. gender-sensitive criminal, civil, labour and administrative proceedings

168. As noted in CEDAW General recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.⁵⁶

169. Women encounter obstacles with respect to access to justice within and outside the legal system. Some of these obstacles are of a legal or institutional nature, while others have socio-economic and cultural grounds. The legal and institutional barriers include discriminatory or insensitive legal frameworks including legal provisions that are explicitly discriminatory; gender blind provisions that do not take into account women's social position; and gaps in legislation concerning issues that disproportionately affect women. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or child care.⁵⁷ Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".⁵⁸

170. In Austria, a gender-sensitive approach is adopted 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.

171. Reference is made to the CCP provisions pursuant to which victims whose sexual integrity may have been violated are provided with psycho-social support for the criminal proceedings and the practical implementation of these provisions by LEFÖ-IBF (see paragraphs 64-65).

172. Further, particularly vulnerable victims within the meaning of Section 66a of the CCP (see paragraph 36) have, *inter alia*, the right to be questioned by a person of the same sex.

b. child-sensitive procedures for obtaining access to justice and remedies

173. The following legal norms address the protection of the rights of victims of child trafficking in Austria: the Federal Constitutional Law on the Rights of Children 2011, the Federal Child and Youth Welfare Act 2013 and the implementing laws of the provinces.

174. The Federal Child and Youth Welfare Act obliges the authorities, institutions that provide counselling and care for children and adolescents, as well as members of health-care services, to notify the child and youth welfare services of suspected cases of threats to the best interests of the child (Section 37 of the Federal Child and Youth Welfare Act 2013). The best interests of the child must be the primary consideration of all measures affecting children undertaken by public and private institutions (Section 1 of the Federal Constitutional Act on the Rights of Children). The best interests of the child must also be considered during legal counselling of children and adolescents in the admissions procedure determining whether Austria is responsible for the child's asylum claim).

⁵⁶ CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

⁵⁷ Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13 available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁵⁸ Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

175. Victims under the age of 18 are considered to be particularly vulnerable and have special rights in criminal proceedings. If a child victim is also a witness in criminal or civil proceedings, he/she has the right to trial support according to Section 66 of the CCP. An institution providing trial support to this target group should be tasked with the case as soon as possible to ensure that the child's rights in association with trial support can be guaranteed. This includes the gentlest possible approach to court hearings, as well as the right to assert a claim for damages. Child victims must be interviewed in the presence of a trusted person (Section 160, paragraph 2, of the CCP).

176. Reference has already been made in paragraph 106 to Section 165 of the CCP, which provides for the possibility of questioning indirectly victims with special protection needs, including child victims who may have been sexually abused. In such cases, the witness is released from the obligation to further testify and the protocol from the indirect questioning is read at the main trial. Further, upon request, the public is excluded from the main trial (Section 229 of the CCP).

177. With regard to civil proceedings, Section 289a of the Code of Civil Procedure, as well as Sections 20 and 35 of the Conflict Resolution Act, provide the option to have a child testifying as a party or as a witness in civil proceedings. The questioning is performed separately (i.e. in a room apart) from the other parties of the proceedings. If the child not having reached the age of 14 is a victim of a criminal offence, Section 289a of the Code of Civil Procedure postulates that a suitable court-appointed expert should be assigned to question the child concerning the subject matter of the criminal proceedings. In addition, Section 289b of the Code of Civil Procedure addresses the special protection requirement of the child in two ways. On the one hand, this provision makes it possible to waive questioning of the child altogether, if such questioning per se would already endanger his/her wellbeing. On the other hand, if not the questioning per se, but the questioning in the presence of the parties or their representative could endanger the child's wellbeing, considerate questioning (i.e. in a separate room or else in the presence of a suitable court-appointed expert) of the child shall be provided also in civil proceedings (even if the child was not a victim of crime).

178. Furthermore, Section 289b of the Code of Civil Procedure provides that a trusted adult shall always be called upon during the questioning of children, if such presence would be in their interest, regardless of whether the public is excluded from the proceedings and whether the child is being questioned as party or as witness. This provision is intended to provide psychological support to children during questioning and contribute to reducing any mental stress that might arise.

179. Child legal advocates (*Kinderbeistand*) are intended to assist the child as contact and confidential persons and to be the "voice of the child", inasmuch as the child cannot or will not speak for itself. A child legal advocate is not the representative of the child before the law, nor a party in proceedings, nor can he/she be compared with a court-appointed expert. The child legal advocate must attach special attention to creating a basis of trust between him/her and the child, so that the child – after many hours spent together – (for the first time) is capable of forming its own opinion. If needed, the child may then request the legal advocate to read out a prepared statement during the proceedings. Only psycho-social professionals may be appointed as child legal advocates (and not lawyers). The court may only appoint persons as child legal advocates who have been nominated by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice or by the Judicial Support Agency on its behalf.

180. **GRETA invites the Austrian authorities to ensure that child victims of THB are in practice afforded special protection measures. In this context, GRETA also refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁵⁹**

⁵⁹ [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

c. role of businesses

181. At the time of GRETA's visit, the project "Trafficking in Human Beings in the supply chain - successfully combat labour exploitation", financed by the Austrian Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, was being implemented by the "Network Social Responsibility", an Austrian network of NGOs and trade unions active in the field of corporate social responsibility, business and human rights. The aim of the project, which was extended until the end of 2020, is to analyse how existing quality seals and multi-stakeholder initiatives could be used to combat and prevent human trafficking and labour exploitation in international supply chains. The Austrian authorities have specified that 14 quality seals and multi-stakeholder initiatives have so far been identified as particularly relevant to prevent labour exploitation and human trafficking.

182. Victims of THB have the right to seek restitution for any damages suffered by the criminal offence or compensation for infringements of their legal interests protected by criminal law. This applies to criminal proceedings against natural persons as well as to criminal proceedings against legal entities (Section 14, paragraph 1, of the Federal Statute on Responsibility of Entities for Criminal Offences). According to information provided by the Austrian authorities, there were three criminal proceedings (in 2016, 2017 and 2018) against legal entities related to THB.⁶⁰ The proceedings were terminated; no damages or indemnities were awarded.

183. GRETA considers that the Austrian authorities should strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights⁶¹ and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business,⁶² with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies.

d. measures to prevent and detect corruption

184. Trafficking in human beings can occur in various contexts. Human traffickers may form part of organised criminal groups, which frequently use corruption to circumvent the law, and money laundering to conceal their profits.

185. According to the Austrian authorities, there are no known or proven cases of corruption related to THB.

186. Over the last years, Austria has made efforts in the fight against corruption. In 2010, the Federal Ministry of the Interior established the Federal Bureau of Anti-Corruption (BAK), which aims to prevent and combat corruption.⁶³ The BAK has nationwide jurisdiction in the prevention of and the fight against corruption; it has close co-operation with the Public Prosecutor's Office for White-Collar Crime and Corruption, and security police and criminal police co-operation with foreign and international anti-corruption institutions.

⁶⁰ Central Prosecutor's Office for Combating Economic Crime and Corruption 8 St 1/16z; Public Prosecutor's Office of Graz 29 St 3/17d; Public Prosecutor's Office of Wels 5 St 87/18p.

⁶¹ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶² [Recommendation CM/Rec\(2016\)3](#) of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

⁶³ For more information see: <https://www.bak.gv.at/en/101/start.aspx>

187. Amongst other measures, the authorities have taken steps in the field of prevention and established the Co-ordinating Body on Combating Corruption (*Koordinationsgremium zur Korruptionsbekämpfung*) in 2013.⁶⁴ This body convenes four times a year to exchange latest developments in the national and international context, as well as best practices in the field of combating corruption. Moreover, it aims to develop a national anti-corruption strategy and update the federal code of conduct for public service.

188. A national anti-corruption strategy was agreed upon in January 2019 and lays down the following prevention measures: integrity management – promoting conduct with integrity, compliance management for the public service, minimizing structural risks of corruption, enhancing concrete anti-corruption measures, raising public awareness, raising awareness within the public sector – training for specific target groups, annual convening of all stakeholders (“Austrian Anti-Corruption day”) as well as issuing codes of conduct for the public sector.

189. Other Council of Europe legal instruments, in particular those designed to combat corruption, money laundering and cybercrime, are also relevant to combating human trafficking. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). Its country reports are relevant in addressing structural shortcomings in preventing corruption, including potentially in a THB context. GRETA refers to the recommendations made by GRECO in its 2017 report on Austria, which focuses on corruption prevention in respect of members of parliament, judges and prosecutors.⁶⁵ GRECO recommended, *inter alia*, that: i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the *Länder* be invited to support those improvements by making the necessary changes which fall within their competence. Further, regarding prosecutors, GRECO recommended, *inter alia*, that: i) all prosecutors are bound by a code of conduct accompanied by, or complemented with appropriate guidance and ii) a system be put in place to provide confidential counselling and to support the implementation of the code in daily work.

190. **GRETA invites the Austrian authorities to include measures against corruption in a THB context in the national anti-corruption strategy.**

⁶⁴ It is composed of representatives of all federal ministries, the “Länder”, the Austrian Association of Towns, Cities and Municipalities, as well as the Federal Chamber of Economy, representatives of the public service union, the union of municipal employees, the Court of Auditors, the Central Office for Prosecuting Economic Crimes and Corruption (WKStA), the Federal Bureau of Anti-Corruption (BAK) and Transparency International - Austrian Chapter.

⁶⁵ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f2b42>

V. Follow-up topics specific to Austria

1. Data collection

191. In its second evaluation report, GRETA urged 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.

192. The Austrian authorities acknowledge that the data collection process needs to be based on a systematic methodology with comparable indicators. In 2009, "Guidelines for the Collection of Data on THB, including Comparable Indicators" were published by the Federal Ministry of the Interior and IOM, with the support of the European Commission, providing a set of guidelines on how to collect, store and exchange data on THB in an effective and comparable way.⁶⁶ Despite the development of these guidelines, data concerning victims of THB continue to be collected separately by different governmental bodies and NGOs, applying different criteria. The government statistics (see paragraph 12) are limited to victims who have participated in criminal proceedings, whereas the statistics from the LEFÖ-IBF and MEN VIA include also victims or presumed victims who did not take part in criminal proceedings, but nevertheless received assistance. Further, data from other NGOs, e.g. Solwodi and Herzwirk, which assist presumed victims of trafficking who do not wish to have contact with the police and do not have an officially recognised status, do not appear in any statistics.

193. In order to strengthen and improve data availability, the fifth National Action Plan foresees the development of a comprehensive annual collection of statistics on human trafficking. In 2019, the Task Force on Combating Human Trafficking created an ad-hoc working group to support these developments.

194. GRETA once again urges the Austrian authorities to develop a comprehensive system for the collection and analysis of data on measures to protect and promote the rights of victims of THB, which should ensure the participation of all relevant actors that can contribute to the provision of data, including NGOs and other service providers, law enforcement, immigration officials, labour inspectorates, health-care providers, prosecution services and others involved in the identification and registration of victims of trafficking, and the investigation and prosecution of human trafficking and related offences.

2. Measures to discourage demand

195. In its second evaluation report, GRETA considered 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.

196. Following the second evaluation by GRETA, a new Section 205a was introduced to the CC in January 2016, which criminalises cohabitation or sexual intercourse with a person against his/her will, taking advantage of a predicament or after having been intimidated. It reads as follows:

"(1) Any person who engages in sexual intercourse or conduct equivalent to sexual intercourse with another person by taking advantage of a predicament, after prior intimidation or against that person's will, is liable to imprisonment of up to two years unless the offence is punishable with a higher penalty under another provision.

(2) The same penalty applies to any person who leads another in the manner set out in paragraph 1 to engage in or acquiesce to sexual intercourse or conduct equivalent to sexual intercourse with a

⁶⁶ Available at: https://austria.iom.int/sites/default/files/IOM_Vienna_AT_MoI_Guidelines_Collection_Data_THB.pdf

third person or to perform an act equivalent to sexual intercourse involuntarily on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.”⁶⁷

197. According to the Austrian authorities, this provision can be applied to criminalise the knowing use of sexual services of trafficked persons. The authorities have referred to investigation proceedings at the Prosecutor’s Office of Vienna, 203 St 215/18b, against the client of a woman engaged in prostitution and the client’s wife, pursuant to Section 205a of the CC. The client is suspected of having had sexual intercourse with the victim against her will, and his wife is suspected of having contributed to the offence. The whereabouts of the accused persons are unknown and warrants to investigate their whereabouts have been issued; in the meantime, the proceedings have been suspended.

198. As already noted in GRETA’s previous reports, other provisions relevant to discouraging demand for the services of trafficked persons are Section 28c(2) of the Act Governing the Employment of Foreign Nationals, which criminalises a person who employs another person without the right of residence, whom he/she knows to be a victim of THB, and Section 207b (3) of the CC, which criminalises customers of sex workers who are under 18 years of age.

199. Prostitution is legal in Austria and its regulation falls within the competence of the *Länder*. The Federal Criminal Police inspects all brothels once a month and during the inspections, particular attention is said to be paid to detecting possible victims of THB, through carrying out individual interviews with sex workers. There are eight counselling centres for sex workers providing social work support. These centres carried out some 7 900 consultations and had 12 250 contacts with sex workers in 2018, during which information materials were handed out. The Austrian authorities have reaffirmed their position that legal and effectively regulated prostitution with a focus on ensuring the safety and working conditions of sex workers is a better option than driving the existing market for prostitution underground. According to the authorities and the counselling centres, a clear concept for voluntary sex work and a clear distinction between voluntary sex work and human trafficking is considered necessary. On the other hand, according to faith-based civil society actors (Herzwerk, Solwodi, Hope for the Future, Footprint), legalised prostitution increases the demand for trafficked women.

200. In a report issued in May 2018,⁶⁸ the Task Force’s working group “Prostitution” recommended to raise clients’ awareness of their responsibility to contribute to safe working conditions for sex workers, for example by not requesting unprotected sex, and to assess if clients could be held legally responsible. In 2017, the working group published the leaflet “Sexwork Info” intended for persons engaged in prostitution, which includes practical tips and information on the legal requirements for the provision of sexual services, health and social insurance, tax regulations, as well as addresses of counselling centres and other relevant bodies. The leaflet is available in several languages (Bulgarian, Chinese, Czech, English, German, Hungarian, Italian, Romanian and Spanish).⁶⁹

⁶⁷ Unofficial translation.

⁶⁸ Available in German at:

https://www.women-families-youth.bka.gv.at/women_and_equality/prostitution.html

⁶⁹ Available at: https://www.women-families-youth.bka.gv.at/women_and_equality/prostitution.html

201. Austria has continued to put an emphasis on preventing THB of domestic staff in private and diplomatic households through a number of measures, for example the requirement of a legitimization card, a written employment contract and wage transfers to a bank account in the sole name of the domestic worker.⁷⁰ The fifth National Action Plan envisages several activities to strengthen the protection of private domestic staff in diplomatic households. In July 2016, the Federal Ministry for Europe, Integration and Foreign Affairs published a brochure for private domestic staff informing them about their rights and obligations while in Austria and relevant contact details in case of emergency.⁷¹

202. As regards action against THB in public procurement, the new Federal Law on Public Procurement (*Bundesvergabegesetz*, BVergG 2018) and Federal Law on Public Procurement of Concessions (*Bundesvergabegesetz Konzessionen*, BVergGKonz 2018) entered into force in 2018.

203. While noting the measures taken since the second evaluation to discourage demand for the services of trafficked persons, GRETA considers that the Austrian authorities should continue making efforts to discourage demand for the services of trafficked persons, by adopting legislative, administrative, educational, social and cultural measures to discourage demand that fosters all forms of exploitation that leads to trafficking, in partnership with civil society, trade unions and the private sector. In this context, the Austrian authorities should carry out checks to ensure that the operation of legal brothels does not contribute to human trafficking.

204. Further, GRETA invites the Austrian authorities to consider establishing as a criminal offence the use of services of victims of trafficking, with the knowledge that the persons concerned are victims, for all forms of exploitation, as provided for in Article 19 of the Convention.

3. Measures to prevent and combat trafficking for the purpose of labour exploitation

205. In its second evaluation report, GRETA considered that the Austrian authorities should intensify their efforts to prevent THB for the purpose of labour exploitation and take further steps to identify victims of trafficking for the purpose of labour exploitation 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.

206. Public and civil society actors met during the visit reported cases of human trafficking for the purpose of labour exploitation taking place in different sectors of the economy (agriculture, construction, cleaning, catering), but noted that the reluctance of victims to complain and testify, due to their dependence on their traffickers for work and housing, as well as the lack of evidence, lead to difficulties in investigating and prosecuting.

207. The Task Force's working group on THB for the purpose of labour exploitation has continued its work, with a total of 26 meetings organised since 2012.⁷² GRETA was informed that the working group is putting a stronger emphasis on co-operating with the private sector and combating THB in supply chains.

⁷⁰ See also GRETA's first evaluation report (para. 73-75), available at: <https://rm.coe.int/greta-2011-10-fgr-aut-en-rev/168078b7d9>, and GRETA's second evaluation report (para. 84), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630cb4>

⁷¹ Available in English and Tagalog at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Informationsbroschuere_fuer_private_Hausangestellte_EN.PDF

⁷² The working group's report for the period 2015-2017 is available in German at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Bericht_AG_Arbeitsausbeutung_2015-2017.pdf

208. Austria's fifth National Action Plan foresees the organisation of a number of training and other measures aimed at tackling human trafficking for the purpose of labour exploitation. Particular attention is paid to the prevention of labour exploitation in supply chains and there is a specific action to examine public procurement law in relation to human trafficking.

209. In 2017, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection issued an update of the internal decree for labour inspectors on human trafficking,⁷³ which includes guidelines on how to proceed when there is suspected human trafficking, a list of indicators for the identification of victims of trafficking for the purpose of labour exploitation, as well as relevant contact details. **GRETA welcomes the update of the internal decree for labour inspectors on human trafficking, and invites the Austrian authorities to continue strengthening their awareness-raising measures on this issue.**

210. There is no legal definition of "labour exploitation" in Austria. With a view to providing some guidance, in 2017, the Ministry of Justice reportedly announced the preparation of an internal decree providing examples of situations of labour exploitation, which is still not available.

211. The Austrian authorities have indicated that, in 2018, the topic of THB for the purpose of labour exploitation was integrated into the basic training for new labour inspectors. Further, in 2015, annual training on identification of and assistance to victims of labour exploitation was launched by the Central Labour Inspectorate for labour inspectors from regional offices. On 2-3 October 2019, a meeting of the Labour Inspectorate took place in Wagrain, Salzburg, including two workshops on THB and indicators of labour exploitation.

212. The mandate of labour inspectors continues to be limited to inspecting work places for health and safety issues of employees, while the financial police monitor work contracts, social security, wage and social dumping, illegal employment of foreigners and wage tax payments. Labour inspectors are not entitled to identify cases of labour exploitation and human trafficking, and have to report suspected cases to the police. Co-operation between the police, labour inspectors and the financial police has reportedly increased, with joint action days and visits to workplaces being organised. However, according to stakeholders met during the visit, the limited mandate of labour inspectors hampers the identification of cases of labour exploitation.

213. In Austria, the requirements applying to the posting and hiring of workers as well as the associated legal implications are not contained in a single statute but laid down in several laws, for example in the Anti-Wage and Social Dumping Act, Temporary Employment Act and Employment of Foreigners Act.⁷⁴ The Anti-Wage and Social Dumping Act aims to ensure equal pay conditions for everyone employed in Austria and to ensure fair competition between Austrian and foreign companies. Penalties are imposed upon companies if wages and salaries (as provided for in the collective agreements) fall short. In 2017, the concept of customer liability ("*Auftraggeberhaftung*") in the construction sector was introduced to the Anti-Wage and Social Dumping Act to secure remuneration claims for foreign employees working in the construction industry. The new law also improves aspects of cross-border administrative prosecutions. However, its enforcement will depend on the co-operation of neighbouring countries. Between 2011 (start of the implementation of the Anti-Wage and Social Dumping Act) and end of November 2016, nearly 1 950 reports relating to underpayment are documented (affecting 7 308 workers). More than 1 100 final decisions relating to underpayment have been made, which affect around 2 300 workers, of whom nearly 64% are from abroad.⁷⁵

⁷³ See GRETA's second evaluation report (paragraph 61), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630cb4>

⁷⁴ For more information, see: https://www.postingofworkers.at/cms/Z04/Z04_10_999.8/legal-framework

⁷⁵ See study prepared by the European Employment Policy Observatory for the European Commission "European Platform tackling undeclared work Member State Factsheets and Synthesis Report", p. 9, available at: <http://ec.europa.eu/social/BlobServlet?docId=18860&langId=en>;

214. The Federal Law on Public Procurement (BVerG 2018) and the Federal Law on Public Procurement of Concessions (BVerGKonz 2018) entered into force in August 2018. Pursuant to these instruments, the contracting authority or entity has to exclude an economic operator from participation in the procurement procedure if that economic operator (or a member of its administrative, management or supervisory body or a person which has powers of representation, decision or control in the economic operator) has been convicted by final judgement of, *inter alia*, slavery, trafficking in human beings or trans-border prostitution trade. This mandatory exclusion ground also applies to all subcontractors. In case a subcontractor has been convicted of any of the mentioned offences, the economic operator has to be excluded from participation in the procurement procedure or the respective subcontractor has to be rejected (and the economic operator has to nominate another subcontractor).

215. The drop-in and counselling centre for undocumented workers UNDOK, established in 2014 with funding from the Federal Ministry for Labour, Social Affairs and Consumer Protection, the Austrian Chamber of Labour and trade unions has continued its work despite some funding difficulties. UNDOK informs undocumented migrant workers about their rights in various languages. According to the authorities, in 2017/2018, approximately 190 persons received assistance. From June 2018 to May 2019, 130 persons were assisted, 126 of whom participated in workshops. 31,4% of the assisted workers were women. However, civil society actors met during the visit reported that the operation of UNDOK had been hampered due to the reduction in funding from the Ministry. The authorities indicated that UNDOK would be funded with € 410 000 for the period June 2018 to December 2019, and € 147 240 in 2020. **GRETA considers that the provision of adequate and sustainable funding to UNDOK should be ensured to support and maintain its work.**

216. As regards assistance provided to foreign workers, two websites are relevant: one offering information concerning the posting and hiring out of workers to Austria,⁷⁶ and another providing information on immigration to and working in Austria.⁷⁷

217. Further, steps have been taken by the trade union PRO-GE to inform seasonal agricultural workers of their rights by sending trade union representatives to the farm fields. These efforts are part of an information campaign for the rights of agricultural workers in Austria, launched in 2015 by the trade union PRO-GE in co-operation with UNDOK, LEFÖ-IBF, MEN VIA, Nyéléni Austria, Migrare, the Austrian Trade Union Federation (ÖGB), Südwind Oberösterreich and Working Globally.⁷⁸

218. **While commending the efforts taken since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, GRETA urges the Austrian authorities to:**

- **expand the mandate of labour inspectors to enable them to play a frontline role in the prevention of THB for the purpose of labour exploitation and the identification of victims, including in private households with a view to preventing abuse of domestic workers;**
- **address the risks of THB in the agricultural sector;**
- **ensure that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of THB.**

⁷⁶ https://www.postingofworkers.at/cms/Z04/Z04_10/home

⁷⁷ <https://www.migration.gv.at/en/types-of-immigration/>

⁷⁸ For more information see: http://www.sezonieri.at/en/startseite_en/

219. In addition, GRETA considers that the Austrian authorities should build on the experience and recommendations of the working group on trafficking for the purpose of labour exploitation in order to:

- **strengthen co-operation between law enforcement officers, labour inspectors, financial police, tax authorities, trade unions, and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB for the purpose of labour exploitation;**
- **develop guidance for relevant professionals to enable the detection and investigation of trafficking cases for the purpose of labour exploitation;**
- **strengthen the monitoring of recruitment and temporary work agencies and supply chains;**
- **train labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;**
- **work 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 and Recommendation CM/Rec(2016)3 on human rights and business.**

4. Identification of victims of trafficking

220. In its second evaluation report, GRETA considered 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.

221. There is still no National Referral Mechanism (NRM) for the identification and referral to assistance of adult victims of trafficking in Austria. GRETA was informed by the authorities of a new internal decree of the Ministry of the Interior (BMI-LD1000/0036-II/BK/3.3/2018), which gives police officers instructions on how to proceed in cases of human trafficking.⁷⁹ According to the authorities, the decree states that the police should refer victims of trafficking to the specialised NGOs (LEFÖ-IBF or MEN VIA), subject to the victim's consent. In the case of children, the responsible child and youth welfare agency is to be informed. If the victim is not yet prepared to make a statement, the contact details of the responsible NGO or the police hotline must be made known to him/her so that the victim can make contact him/herself, if necessary.

222. The fifth National Action Plan has an enhanced focus on preventing and combating trafficking of refugees and asylum seekers, particularly unaccompanied children. It also envisages enhanced capacity building of employees and care providers at reception centres and police detention facilities.

⁷⁹ See the 2018 annual report of Austrian Ombudsman Board (*Volksanwaltschaft*), Monitoring of Public Administration, pp. 142-143, available in German at: <https://volksanwaltschaft.gv.at/downloads/72saq/PB-42-Nachprüfend.pdf>

223. Together with LEFÖ-IBF, the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA) has offered training on THB to BFA officials and staff at Federal Reception Centres (*Bundesbetreuungsstellen*). In addition, IOM Austria and LEFÖ-IBF have been sensitising asylum officials from the BFA and the Federal Administrative Court (*Bundesverwaltungsgericht*), legal counsellors and social workers in the asylum procedure on human trafficking and intercultural competency under the projects IBEMA (2014-2016) and Asyl-Train (2017-2019). The training is provided in co-operation with UNHCR, LEFÖ-IBF, MEN VIA, the police, the Drehscheibe Centre, a legal expert and the Intercultural Centre and is funded by the European Asylum, Migration and Integration Fund and the Austrian Federal Ministry of the Interior. In addition, throughout 2017-2019, approximately 500 law enforcement officers and medical staff of police detention centres (PAZ) received training on the identification of victims of THB. The Austrian authorities have indicated that the obligatory instruction manual of the BFA, which is the first-level decision-making authority in asylum proceedings, provides checklists for the identification of victims of THB and the steps to be taken. If there are indicators that an applicant might be a victim of THB, the Regional Crime Agency must be informed.

224. GRETA was informed that there has been an increase in the number of victims granted asylum, mostly Nigerian women, in particular in the second instance decisions of the Federal Administrative Court (*Bundesverwaltungsgericht*), based on the grounds of "membership of a particular social group". According to information provided by LEFÖ-IBF, nine victims of THB were granted asylum in 2018.

225. According to LEFÖ-IBF's annual report of 2017,⁸⁰ almost one third of the victims that had been referred to LEFÖ-IBF were Nigerian women and girls (97 of 327 cases). The number of victims in detention for immigration purposes increased and LEFÖ-IBF is concerned that potential female victims of trafficking are deported to their countries of origin or transferred to other EU Member States in application of the Dublin III Regulation.⁸¹ Other stakeholders referred to cases where trafficked persons were returned to the country of first entry despite clear indications of being trafficked. Such returns can place the person at risk of exploitation or re-traumatisation.⁸² It would appear that if a victim was not exploited in Austria, she/he would be sent back to the EU country where they first applied for asylum. At the same time, GRETA was informed of a case in Styria, where victims of trafficking who had been exploited in Austria were not returned to the state responsible for the asylum request (i.e. Italy), in order to enable them to take part in criminal proceedings in Austria.

226. GRETA stresses that the application of the Dublin procedure to victims of trafficking runs contrary to the obligation to assist and protect such victims. GRETA recalls that Article 10, paragraph 2, of the Convention stipulates that if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process has been completed by the competent authorities. GRETA stresses the state's obligation to identify victims of trafficking among asylum seekers who are subject to the Dublin Regulation procedure, in order to avoid any risk of reprisals from traffickers or re-trafficking and to ensure that the State's obligations to provide a recovery and reflection period, assistance and protection to victims in accordance with Articles 12 and 13 of the Convention, are fulfilled. In this context, GRETA notes that Article 17.1 of the Dublin Regulation III permits States to unilaterally take responsibility for the determination of an asylum claim, even where the objective responsibility criteria allow for a request to be submitted to another Member State of the EU.

⁸⁰ LEFÖ-IBF's annual report „Tätigkeitsbericht 2017“, pp. 18,19,30; available in German at: http://www.lefoe.at/tl_files/lefoe/Ibf_Tätigkeitsbericht_2017.pdf

⁸¹ Ibidem.

⁸² See Office of the United Nations High Commissioner for Human Rights Officer Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return, 15-18 October 2018, p. 7.

227. GRETA refers to the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2019 Concluding Observations, which expressed concerns that efforts to identify women as victims of human trafficking are undermined by the restrictive asylum policies in place, which often involve speedy deportation, and recommended that Austria revise immigration policies to ensure that laws and policies on the deportation of foreign women are not applied in a discriminatory manner, do not deter migrants, refugees and asylum seekers from reporting crimes of trafficking and do not undermine efforts to prevent human trafficking, identify or protect victims or prosecute perpetrators.⁸³

228. In January 2019, as a result of an organisational restructuring with the aim of increasing the efficiency of reception at federal level, the new "Section V" was established within the Ministry of the Interior. It brings together resources and know-how on affairs related to asylum and immigration, including reception, residence, citizenship, return, border control and Aliens Police. "Section V" is also meant to provide support for the BFA, which continues to be in charge of processing asylum applications. ORS GmbH, a company contracted by the Ministry of the Interior, provides care and counselling to asylum seekers in reception centres. GRETA was informed that, as of January 2021, a new state-owned Agency for Supervision and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU*) will be taking over the work of ORS GmbH and will be based within "Section V" of the Ministry of the Interior.⁸⁴ It will, *inter alia*, be in charge of providing reception conditions ("basic care"), legal assistance, interpreters and translators, assistance for return and monitoring deportations. Civil society actors met during the visit criticised the fact that the proposed agency is not institutionally independent as it falls under the direct responsibility of the Federal Government. They expressed concerns that the exclusion of external service providers and civil society organisations from the asylum procedure could lead to a lack of external control which could jeopardise the independent legal counselling and representation to one of the most vulnerable groups at risk of trafficking in the country. The Austrian authorities have indicated that once the BBU has taken up its activities, legal counselling for asylum seekers will be provided exclusively by the Agency, in accordance with the BFA Procedures Act (BFA-VG), which contains requirements for the independence and autonomy of legal counsellors.

229. While commending the steps taken since the second evaluation to strengthen the identification of victims of trafficking among asylum seekers, GRETA urges the Austrian authorities to set up a formalised National Referral Mechanism which involves a range of frontline actors who may come into contact with victims of trafficking, including social workers, labour inspectors, officials dealing with irregular migrants, officials interviewing asylum seekers, medical staff, trade unions and NGOs, defines the procedures and their respective roles, and follows a multi-disciplinary approach.

230. Further, GRETA considers that the Austrian authorities should:

- **pay increased attention to identifying victims of trafficking among migrant workers, persons placed in immigration detention centres and asylum seekers, including those who are subject to the Dublin Regulation Procedure;**
- **review the application of the Dublin Procedure to presumed victims of THB and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked;**
- **ensure independent monitoring of the care and legal counselling provided to asylum seekers in reception centres.**

⁸³ Concluding observations on the ninth periodic report of Austria, adopted by the CEDAW at its seventy-third session (1-19 July 2019), CEDAW/C/AUT/9, paragraphs 24c, 25e, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AUT/CO/9&Lang=En

⁸⁴ See bill available at: https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00594/index.shtml

5. Identification of, and assistance to, child victims of trafficking

231. In its second evaluation report, GRETA urged the Austrian authorities to adopt as a matter of priority a National Referral Mechanism for child victims, to ensure that child victims of THB across the country benefit from the assistance measures provided for under the Convention, and to take steps to address the problem of children going missing while in the care of the state.

232. Tackling child trafficking, including preventative measures, is one of the main objectives of the new National Action Plan with the major focus on unaccompanied children as a potential risk group for trafficking.

233. The Task Force's working group on child trafficking, chaired by the Federal Chancellery – Division for Families and Youth, has continued its work.⁸⁵ The group meets two to three times per year. One of its main activities was working on the development of guidance and strategy papers concerning the protection of child victims of trafficking.

234. The responsibility for implementing assistance measures regarding child victims of THB lies with the child and youth welfare offices of the *Länder*. In 2016, Austria adopted practical guidelines on identifying and working with potential victims of child trafficking, which constitute a National Referral Mechanism for children.⁸⁶ It provides non-binding guidance to relevant professionals, including a set of indicators to enable early identification of child victims and recommended actions for police, child and youth welfare services, asylum and immigration authorities, healthcare sector and detention authorities.

235. Civil society actors met during the visit have indicated that, despite training conducted by IOM and ECPAT Austria in 2016-2018, not all relevant actors are familiar with the guidelines. In addition, the implementation of the National Referral Mechanism for children is not being monitored. According to stakeholders met during the visit, the guidelines have not led to more detected, identified or referred child victims of trafficking.

236. GRETA visited once again the Drehscheibe Centre, founded in 2001 by the City of Vienna, which provides accommodation and social pedagogical support to unaccompanied foreign children and child victims of trafficking. According to the Centre management, since 2015, the number of unaccompanied children hosted at the Centre has significantly decreased. In 2018, there were two child victims of trafficking. At the time of GRETA's visit, no child victim of trafficking had been registered for 2019.

237. There are no specialised services for child victims of trafficking in the other *Länder*. The Task Force's working group on child trafficking is in the process of developing a concept for a country-wide child protection strategy paper which would enable the opening of specialised centres. The document is planned to be finalised by 2020. At the next meeting of the working group, which was planned to take place on 4 March 2020, initial talks were expected to take place with an NGO specialised in child protection with a view to building specialised capacities for child victims of THB, including safe accommodation and adequate care in the nine federal regions.

⁸⁵ The report for the period 2015-2017 is available in German at: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Bericht_AG_Kinderhandel_2015-2017.pdf

⁸⁶ Available at: <https://www.frauen-familien-jugend.bka.gv.at/jugend/kinderrechte/kinderhandel.html>

238. **While commending the measures taken since the second evaluation to improve the identification of child victims of trafficking, GRETA considers that the Austrian authorities should:**

- **finalise and put into practice as a matter of priority the country-wide concept for protection and support of child victims of trafficking;**
- **ensure that child victims of THB across the country benefit from appropriate accommodation, in particular by setting up specialised centres in all regions of the country;**
- **ensure that relevant professionals, in particular front-line officers and child protection authorities, are provided with training on how to implement the National Referral Mechanism for child victims of human trafficking;**
- **monitor and evaluate the effectiveness of the National Referral Mechanism to identify and refer child victims of human trafficking.**

6. Assistance to victims

239. In its second evaluation report, GRETA considered that the Austrian authorities should take further measures to ensure that presumed and identified victims of trafficking across Austria receive adequate assistance and support.

240. LEFÖ-IBF remains the main provider of assistance to presumed and identified female victims of trafficking (women and girls over the age of 16). It runs four shelters for victims of THB which can accommodate 26 persons in total. LEFÖ-IBF operates on behalf of the Ministry of Interior and the Federal Chancellery's Division on Women Affairs and Equality, and is funded by both ministries in equal shares. The funding, which amounted to € 707 000 in 2014, increased to € 747 117 in 2018. Access to the shelters run by LEFÖ-IBF is granted regardless of the victim's co-operation with the police and the services are accessible to all victims and presumed victims across Austria. LEFÖ-IBF provides services centralised in Vienna for safety reasons; therefore victims who accept to be assisted by LEFÖ-IBF have to be transferred to Vienna. Quality control of LEFÖ-IBF is ensured and monitored by the Federal Ministry of the Interior and the Federal Chancellery of Women and Equality Section.

241. The NGO MEN VIA, established in 2013 with financial support from the Ministry of Labour, Social Affairs and Consumer Protection, provides assistance and support to adult male victims of human trafficking in Austria. In 2015, a shelter for male victims of THB was set up, but its funding was suspended in 2017. However, in mid-2018, due to funding from the Ministry of the Interior, MEN VIA reopened its specialised shelter for male victims of THB, with a capacity of 12 persons. At the time of GRETA's visit, MEN VIA had still not been given official intervention status, as recommended by GRETA in its second evaluation report, and funding by the Ministry of the Interior and the Ministry of Labour, Social Affairs and Consumer Protection was secured only until December 2019 (the funding for the period from 1 June 2018 to 31 December 2019 was € 158 000). Other activities, such as counselling, social work and awareness raising, are financed by the Ministry of Labour, Social Affairs and Consumer Protection in the joint funding for UNDOK and MEN Via (approximately € 400 000).

242. There are several other NGOs active in offering support to presumed victims of trafficking, such as Caritas, Diakonie, ECPAT Austria, Herzwerk, Hope for the Future, Solwodi and Footprint. By way of example, the faith-based NGO Solwodi runs a shelter for presumed victims of THB, and the NGO Hope for the Future provides training to presumed victims of trafficking and supports them in finding jobs.

243. Victims who do not wish to testify, as well as those who find themselves in areas outside of Vienna, do not necessarily have access to support services for victims of THB. Apart from Caritas Carinthia, organisations such as Herzwirk or Footprint also refer presumed victims to the Solwodi shelter. The need for shelter is often greater than the supply, and all rooms of the Solwodi shelter are usually occupied.

244. As regards access to health care for victims of THB, according to the basic provision (*Grundversorgung*) for third-country nationals, the competent federal state is responsible for health care provision. The circle of persons entitled to needs-based minimum benefits in the Vienna Needs-Based Minimum Benefits Act (*Wiener Mindestsicherungsgesetz*) has been extended. Since 2018, persons entitled to asylum and beneficiaries of subsidiary protection who have been granted this status in accordance with the provisions of the Federal Asylum Act, as well as persons who are nationals of an EU or EEA country or Switzerland, victims of THB, trans-border prostitution trade or violence, or persons who have a residence permit as victims of trafficking in human beings, trans-border prostitution trade or violence (Section 57(1), (2) and (3) of the Asylum Act 2005), have access to needs-based minimum benefits in Vienna.

245. If a victim is officially identified by the police and is in contact with LEFÖ-IBF or MEN VIA, health care is usually accessible. However, if a person is not able to access the public health care system due to the limitation of the general framework, LEFÖ-IBF has to work with NGOs that offer health care to persons without insurance. At times, access to health care takes much effort and persuasion. MEN VIA reported that in some cases, in spite of their efforts, victims cannot get the needed health services. Other NGOs who provide assistance to presumed victims of THB have reported problems in ensuring their access to health care.

246. GRETA welcomes the increase in funding of victim assistance since the second evaluation, as well as the improvement in victims' access to health care. GRETA considers that the Austrian authorities should take additional steps to:

- **give an official intervention status to MEN VIA and secure the long-term funding of its activities;**
- **further develop co-operation with NGOs, including those working outside Vienna, and the federal states in order to ensure the provision of protection and assistance to all victims of THB.**

7. Recovery and reflection period

247. In its second evaluation report, GRETA urged the Austrian authorities to ensure that all possible victims of THB are offered an effective recovery and reflection period, as well as all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period.

248. The recovery and reflection period for trafficking victims is still not established in law in Austria, despite previous GRETA recommendations. It is regulated in the "Handbook on Aliens Act", which is an internal decree of the Federal Ministry of the Interior. GRETA was informed that the new internal decree issued by the Ministry of the Interior for police officers on how to proceed in cases of THB (see paragraph 221) states that police officers must inform victims of THB of their rights, including the right to a 30-day recovery and reflection period.⁸⁷

⁸⁷ See also the 2018 annual report of the Austrian Ombudsman Board (*Volksanwaltschaft*), Monitoring of Public Administration, pages 142-143, available in German at: <https://volksanwaltschaft.gv.at/downloads/72sag/PB-42-Nachpruefend.pdf>

249. However, according to civil society actors met during the visit, in many cases victims are not informed about their right to a recovery and reflection period and the period is not being applied consistently. In the absence of an explicit legal framework concerning the recovery and reflection period, presumed victims of trafficking 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. GRETA was informed, for example, of a case of Chinese presumed victims of THB being deported despite the recovery and reflection period still running.

250. GRETA once again urges the Austrian authorities to enshrine in law the recovery and reflection period and to ensure that it is systematically offered to presumed foreign victims of human trafficking, including EU and EEA citizens, together with 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.

8. Residence permits

251. In its second evaluation report, GRETA considered that the Austrian authorities should keep under review the practical implementation of Section 57 of the Asylum Act and take steps to ensure that decisions to grant residence permits to victims of THB are taken in compliance with the time-limit specified in law.

252. Residence permits for trafficked persons and victims of trans-border prostitution trade are regulated by Section 57 of the Asylum Act, which provides for "special protection" residence permits for third-country nationals necessary for the criminal prosecution or civil claim. According to Section 57 (3) of the Asylum Act, the BFA has to decide whether to grant a residence permit for "special protection" within six weeks.

253. GRETA was informed that the process of granting residence permits to victims of trafficking had been accelerated and the situation had improved compared to what was observed by GRETA during the second evaluation visit.⁸⁸ Nonetheless, specialised NGOs informed GRETA that due to the bureaucratic requirements linked to the number of documents necessary for verifying the identity of victims, the issuing of residence permits is delayed, leaving victims in a situation of uncertainty. Further, GRETA was informed that victims of trafficking have been granted residence permits pursuant to Section 57 of the Asylum Act when they were exploited in Austria, even though they were affected by the Dublin Regulation, because the latter was suspended.

254. As previously stressed by GRETA, in practice, Section 57 of the Asylum Act, which links the residence permit to criminal or civil proceedings, undermines the unconditional nature of assistance to victims. Granting a residence permit on account of the personal situation of the victim, as envisaged by Article 14 of the Convention, takes in a range of situations, such as the victim's safety, state of health and family situation, and tallies with the human rights-based approach to combating human trafficking.

255. GRETA considers that the Austrian authorities should review the application of the system for granting residence permits to victims of trafficking with a view to ensuring that the procedure is less bureaucratic and not dependent on co-operation with law enforcement authorities in criminal proceedings.

⁸⁸ See paragraph 133 of GRETA's second evaluation report on Austria.

Appendix 1 - List of GRETA's conclusions and proposals for action

Topics related to the third evaluation round of the Convention

Right to information

- GRETA considers that the Austrian authorities should strengthen the systematic provision of information to presumed victims and formally identified victims of trafficking regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. This concerns in particular the right to a recovery and reflection period. Law enforcement officers should continue being trained and instructed on how to properly explain to victims their rights and systematically refer them to specialised NGOs which enable victims to exercise their rights. Similarly, staff working at asylum reception centres and detention centres should be trained and instructed on how to provide information, in a proactive manner, to persons and groups at risk of being trafficked (paragraph 50);
- GRETA also considers that the Austrian authorities should take additional steps to ensure the availability, independence and sensitisation to the issue of human trafficking of interpreters (paragraph 51).

Legal assistance and free legal aid

- GRETA considers that the Austrian authorities should take further steps to ensure trafficking victims' access to legal assistance and free legal aid, in particular:
 - a lawyer should be appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, including in the case of asylum seekers and persons placed in detention prior to deportation, before the persons concerned have to decide whether or not they want to co-operate with the authorities and/or make an official statement;
 - Bar Associations should encourage training and specialisation of lawyers to provide legal aid to trafficking victims, and ensure that trafficking victims are systematically appointed a specialised lawyer (paragraph 61).

Access to work, vocational training and education

- GRETA considers that the Austrian authorities should:
 - strengthen effective access to the labour market for victims of THB and their economic and social inclusion through the provision of vocational training, language courses and job placement, raising awareness among potential employers, and the promotion of micro-businesses, social enterprises and public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking;
 - ensure that asylum seekers eligible to engage in self-employment are provided with effective access to the labour market, in particular by providing them with vocational and language training (paragraph 73).

Compensation

- GRETA urges the Austrian authorities to make additional efforts to guarantee effective access to compensation for victims of THB, in particular by:
 - ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is part of the criminal investigations with a view to supporting compensation claims in court;
 - prosecutors systematically requesting compensation and judges using all the possibilities the law offers them to uphold compensation claims;
 - introducing a procedure through which victims are entitled to obtain a decision on compensation from the offender as part of the criminal trial and requiring courts to state, where applicable, why compensation is not considered (paragraph 97);
- Further, GRETA considers that the Austrian authorities should take further steps to enable access to compensation for victims of trafficking, in particular by:
 - making compensation awarded in criminal proceedings payable by the State in advance and the State taking the responsibility to recover the amount from the offender;
 - additional training being provided to prosecutors and judges on the issue of compensation (paragraph 98).

Investigations, prosecutions, sanctions and measures

- GRETA welcomes the use of the possibility provided under Section 165 of the CCP to conduct hearings of victims and witnesses without the presence of the alleged perpetrator and the guidance issued to prosecutors to apply this provision when interviewing victims of human trafficking (paragraph 128);
- GRETA considers that the Austrian authorities should take further steps to ensure that all possible human trafficking offences are promptly investigated, regardless of whether a complaint about the reported crime has been submitted or not, making use of special investigation techniques in order to gather evidence and not to have to rely exclusively on testimony by victims or witnesses (paragraph 130);
- Further, GRETA considers that the Austrian authorities should take additional measures to ensure that THB cases are investigated proactively, prosecuted effectively, and lead to effective, proportionate and dissuasive sanctions. In this context, the Austrian authorities should continue providing training and encourage the specialisation of prosecutors and judges to deal with human trafficking cases (paragraph 131);
- As regards in particular human trafficking for the purpose of labour exploitation, reference is made to the recommendations in paragraphs 218-219 (paragraph 132).

Non-punishment provision

- GRETA welcomes the steps taken by the Austrian authorities to strengthen compliance with the non-punishment provision of the Convention through the issuing of the above-mentioned decree and circular. With a view to ensuring the application of this provision, GRETA considers that the Austrian authorities should adopt a specific legal provision on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, as well as ensuring that the decree of the Federal Ministry of Justice is used in the training of judges and prosecutors (paragraph 139).

Protection of victims and witnesses

- GRETA invites the Austrian authorities to ensure that the available protection measures are effectively applied to victims and witnesses of human trafficking, as well as their family members, including by ensuring that specialised NGOs receive adequate funding for the purpose (paragraph 149).

Specialised authorities and co-ordinating bodies

- GRETA welcomes the existence of police investigators specialised in trafficking in human beings, and considers that the Austrian authorities should promote specialisation and training of prosecutors and judges to deal with THB cases (paragraph 157).

International co-operation

- GRETA welcomes the Austrian authorities' participation in multilateral and bilateral international co-operation, and invites them to strengthen their efforts, in particular when it comes to the return of victims of trafficking, financial investigations and enforcing compensation orders (paragraph 167).

Child-sensitive procedures for obtaining access to justice and remedies

- GRETA invites the Austrian authorities to ensure that child victims of THB are in practice afforded special protection measures. In this context, GRETA also refers to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 180).

Role of businesses

- GRETA considers that the Austrian authorities should strengthen engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights and Council of Europe Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, with a view to raising awareness of the important role and responsibility of businesses in supporting the rehabilitation and recovery of victims, and to provide access to effective remedies (paragraph 183).

Measures to prevent and detect corruption

- GRETA invites the Austrian authorities to include measures against corruption in a THB context in the national anti-corruption strategy (paragraph 190).

Follow-up topics specific to Austria

Developments in the institutional and policy framework for action against human trafficking

- GRETA reiterates the importance of ensuring that prosecutors are involved in the Task Force and its working groups on a regular basis (paragraph 15);
- GRETA welcomes the steps taken to include more civil society representatives in the work of the Task Force and invites the Austrian authorities to continue building strategic partnerships with civil society (paragraph 16);
- GRETA welcomes the development of the guidelines specifying the role of the *Länder* in the fight against human trafficking, the appointment of a regional co-ordinator in the federal states of Tyrol and Vorarlberg, and the setting-up of a working group on THB in the City of Vienna. 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, in particular by appointing regional co-ordinators in all *Länder* and engaging them in the work of the Task Force and its working groups (paragraph 21);
- GRETA reiterates its recommendation from the second evaluation report and considers that the Austrian authorities should examine the possibility of establishing an independent National Rapporteur or designating another existing mechanism for monitoring the anti-trafficking activities of state institutions, as provided for in Article 29, paragraph 4, of the Convention, or commissioning the monitoring to an external, independent evaluator (paragraph 23).

Data collection

- GRETA once again urges the Austrian authorities to develop a comprehensive system for the collection and analysis of data on measures to protect and promote the rights of victims of THB, which should ensure the participation of all relevant actors that can contribute to the provision of data, including NGOs and other service providers, law enforcement, immigration officials, labour inspectorates, health-care providers, prosecution services and others involved in the identification and registration of victims of trafficking, and the investigation and prosecution of human trafficking and related offences (paragraph 194).

Measures to discourage demand

- While noting the measures taken since the second evaluation to discourage demand for the services of trafficked persons, GRETA considers that the Austrian authorities should continue making efforts to discourage demand for the services of trafficked persons, by adopting legislative, administrative, educational, social and cultural measures to discourage demand that fosters all forms of exploitation that leads to trafficking, in partnership with civil society, trade unions and the private sector. In this context, the Austrian authorities should carry out checks to ensure that the operation of legal brothels does not contribute to human trafficking (paragraph 203);
- Further, GRETA invites the Austrian authorities to consider establishing as a criminal offence the use of services of victims of trafficking, with the knowledge that the persons concerned are victims, for all forms of exploitation, as provided for in Article 19 of the Convention (paragraph 204).

Measures to prevent and combat trafficking for the purpose of labour exploitation

- GRETA welcomes the update of the internal decree for labour inspectors on human trafficking, and invites the Austrian authorities to continue strengthening the awareness-raising measures for labour inspectors on the issue of human trafficking (paragraph 209);
- GRETA considers that the provision of adequate and sustainable funding to UNDOK should be ensured to support and maintain its work (paragraph 215);
- While commending the efforts taken since the second evaluation to prevent and combat trafficking for the purpose of labour exploitation, GRETA urges the Austrian authorities to:
 - expand the mandate of labour inspectors to enable them to play a frontline role in the prevention of THB for the purpose of labour exploitation and the identification of victims, including in private households with a view to preventing abuse of domestic workers;
 - address the risks of THB in the agricultural sector;
 - ensure that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of THB (paragraph 218);
- In addition, GRETA considers that the Austrian authorities should build on the experience and recommendations of the working group on trafficking for the purpose of labour exploitation in order to:
 - strengthen co-operation between law enforcement officers, labour inspectors, financial police, tax authorities, trade unions, and other civil society actors, with a view to collecting evidence necessary for successfully investigating and prosecuting cases of THB for the purpose of labour exploitation;
 - develop guidance for relevant professionals to enable the detection and investigation of trafficking cases for the purpose of labour exploitation;
 - strengthen the monitoring of recruitment and temporary work agencies and supply chains;
 - train labour inspectors throughout the country, as well as law enforcement officers, prosecutors and judges, on combating THB for the purpose of labour exploitation and the rights of victims;
 - work 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 and Recommendation CM/Rec(2016)3 on human rights and business (paragraph 219).

Identification of victims of trafficking

- While commending the steps taken since the second evaluation to strengthen the identification of victims of trafficking among asylum seekers, GRETA urges the Austrian authorities to set up a formalised National Referral Mechanism which involves a range of frontline actors who may come into contact with victims of trafficking, including social workers, labour inspectors, officials dealing with irregular migrants, officials interviewing asylum seekers, medical staff, trade unions and NGOs, defines the procedures and their respective roles, and follows a multi-disciplinary approach (paragraph 229);

- Further, GRETA considers that the Austrian authorities should:
 - pay increased attention to identifying victims of trafficking among migrant workers, persons placed in immigration detention centres and asylum seekers, including those who are subject to the Dublin Regulation Procedure;
 - review the application of the Dublin Procedure to presumed victims of THB and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, but where they face the risk of being re-trafficked;
 - ensure independent monitoring of the care and legal counselling provided to asylum seekers in reception centres (paragraph 230).

Identification of, and assistance to, child victims of trafficking

- While commending the measures taken since the second evaluation to improve the identification of child victims of trafficking, GRETA considers that the Austrian authorities should:
 - finalise and put into practice as a matter of priority the country-wide concept for protection and support of child victims of trafficking;
 - ensure that child victims of THB across the country benefit from appropriate accommodation, in particular by setting up specialised centres in all regions of the country;
 - ensure that relevant professionals, in particular front-line officers and child protection authorities, are provided with training on how to implement the National Referral Mechanism for child victims of human trafficking;
 - monitor and evaluate the effectiveness of the National Referral Mechanism to identify and refer child victims of human trafficking (paragraph 238).

Assistance to victims

- GRETA welcomes the increase in funding of victim assistance since the second evaluation, as well as the improvement in victims' access to health care. GRETA considers that the Austrian authorities should take additional steps to:
 - give an official intervention status to MEN VIA and secure the long-term funding of its activities;
 - further develop co-operation with NGOs, including those working outside Vienna, and the federal states in order to ensure the provision of protection and assistance to all victims of THB (paragraph 246).

Recovery and reflection period

- GRETA once again urges the Austrian authorities to enshrine in law the recovery and reflection period and to ensure that it is systematically offered to presumed foreign victims of human trafficking, including EU and EEA citizens, together with 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 250).

Residence permits

- GRETA considers that the Austrian authorities should review the application of the system for granting residence permits to victims of trafficking with a view to ensuring that the procedure is less bureaucratic and not dependent on co-operation with law enforcement authorities in criminal proceedings (paragraph 255).

Appendix 2 - List of public bodies, intergovernmental organisations and civil society actors with which GRETA held consultations

Public bodies

- National Co-ordinator on Combating Human Trafficking
- Task Force on Combating Human Trafficking
- Federal Chancellery
- Federal Ministry for Europe, Integration and Foreign Affairs
- Federal Ministry of the Interior
- Federal Ministry for Constitution, Reforms, Deregulation and Justice
- Federal Ministry of Labour, Social Affairs, Health and Consumer Protection
- Federal Criminal Intelligence Service
- Federal Office for Immigration and Asylum
- Federal Labour Inspectorate
- Human Rights Advisory Council of the Austrian Ombudsman Board

City of Vienna

- Human Rights Office of the City of Vienna
- Institution of assisted living for unaccompanied children "Drehscheibe Wien"
- Regional Court for Criminal Law Vienna
- Public Prosecutor's Office of Vienna

Federal State of Styria

- Office of the Styrian Government
- Office of the Federal Chancellor in Styria
- Office of Criminal Investigations of Styria
- Public Prosecutor's Office of Styria

Federal State of Tyrol

- Office of the Tyrolean Government
- Anti-Trafficking Co-ordinator of Tyrol
- Child and Youth Service Unit, Unaccompanied Children Team
- Office of Criminal Investigations of Tyrol

-
- Office of the Labour Inspectorate in Tyrol
 - Federal Administrative Court

Intergovernmental organisations

- International Organization for Migration (IOM)

Civil society organisations


- LEFÖ-IBF
- MEN VIA
- Platform against Exploitation and Human Trafficking (Footprint, Herzwerk, Hope for the Future, SOLWODI)
- PRO-GE Trade Union

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 9 April 2020 and invited them to submit any final comments. The comments of the authorities, submitted on 14 May 2020, are reproduced hereafter.

 Federal Ministry
Republic of Austria
European and International
Affairs

Vienna, 14th of May 2020

Ms. Petya Nestorova
Executive Secretary
Of the Council of Europe Convention on Action
Against Trafficking in Human Beings
E-Mail: trafficking@coe.int

Dear Executive Secretary Nestorova,
Dear Petya,

thank you very much for your letter dated 9th of April 2020, transmitting the final GRETA report concerning the implementation of the Convention on Action against Trafficking in Human Beings Austria.


In this context, we would like to thank GRETA for the constructive exchange during the third evaluation process. The process to finalize this report has been intense. Austria would therefore especially like to thank the delegation of GRETA that came to Austria composed of Mr Frédéric Kurz, Ms Dorothea Winkler, Ms Ursula Sticker and of course yourself for the cooperation during the process.

The report contains valuable recommendations for further improving our actions against trafficking in human beings. Please find attached Austria's final comments on the report.

Yours sincerely,

Ambassador DDr. Petra Schneebeauer
(Director General for Legal and Consular Affairs,
National Coordinator on Combating Human Trafficking)

enclosed: "Comments on GRETA report on Austria, pursuant to Rule 15 of GRETA's Rules of Procedure"

	Unterzeichner	CN=Bundesministerium für europäische und internationale Angelegenheiten,C=AT
	Datum/Zeit	2020-05-14T08:13:49+02:00
	Aussteller-Zertifikat	CN=a-sign-corporate-05,OU=a-sign-corporate-05,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	789818819
Hinweis	Dieses Dokument wurde amtssigniert.	
Prüfinformation	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: http://www.signaturpruefung.gv.at Informationen zur Prüfung des Ausdrucks finden Sie unter: http://www.bmeia.gv.at/verifizierung	

Comments by Austria on the GRETA report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Third Evaluation Round (In pursuance of Rule 15 of GRETA`s Rules of Procedure)

your file number: GRETA(2020)03prov

the numbering below refers to the paragraphs of the draft report

(21). The Austrian authorities take note of GRETA`s recommendation and highlight that besides other relevant stakeholders, various agencies and offices of the Federal Ministry of the Interior are involved in the working group on human trafficking set up by the City of Vienna.

(47). Where paragraph 47 is concerned, the Austrian authorities want to clarify that independently of the BFA and the asylum procedure, informal talks take place with social workers.

(51). While taking note of GRETA`s recommendation, the Austrian authorities want to highlight that according to Sec. 126 para. 4 and Sec. 47 para. 1 of the Austrian Code of Criminal Procedures (CCP), in case of a conflict of interest of an expert witness and interpreter or as their expertise is in doubt, they must be discharged by the prosecution authority, or by the court, ex officio or due to objections raised by the accused (para. 5). Any service by the expert witness or interpreter will be void.

Currently, particular efforts are made to increase the number of registered court interpreters ensuring high-quality translation services for courts and authorities. The Austrian authorities welcome the efforts of the NGOs to ensure the appropriate sensitisation of interpreters. The Federal Ministry of Justice is hardly in a position to take advanced measures to increase sensitisation in individual fields of interpreting service. However, in October 2019 at the annual exchange of experience and opinions on trafficking in human beings organized by the Federal Ministry of Justice, the importance of interpretation services was discussed together with representatives of law enforcement agencies and victims` protection organisations.

In 2020, the Federal Ministry of the Interior is implementing a new quality-assured examination of language skills, a mandatory security check and an accompanying quality assessment for interpreting assignments. The aim is to ensure quality, independence and trustworthiness of all interpreters used in the Federal Ministry of the Interiors` area of responsibility. One of the training measures – done together with UNHCR - will be the sensitization in dealing with particularly vulnerable persons and victims of human trafficking and further training measures.

(61) The Austrian authorities take note of GRETA`s position but wants to point out that there is no provision in the Austrian Code of Criminal Procedures (CCP) focussing on – or demanding - the cooperation of victims with law enforcement agencies in criminal proceedings in order to get legal (and psycho-social) support or get certain rights granted. According to Sec. 66 para. 2 CCP legal (and psycho-social) support and all victim rights are granted regardless of any cooperation. Legal and psychosocial support as well as the granting of rights is not at the discretion of the public prosecutor or the court. On the contrary, the Federal Minister for Justice is authorized to enter into agreements with established, suitable institutions so that they, after assessing the statutory requirements, provide support for the proceedings to victims. The victims` support organisations alone are entrusted with the decision whether to grant the assistance.

The Austrian authorities also want to stress the importance of differentiating between legal assistance (*juristische Prozessbegleitung*) and legal aid (*Verfahrenshilfe*). Victims of trafficking are entitled to legal assistance before, during and in some cases after criminal proceedings irrespective of the immigration status or type of exploitation, as this is necessary to preserve the rights of the victim. This includes legal advice and representation by a lawyer free of charge independent of the victim`s financial situation. Costs are borne by victim support organisations and refunded by the Federal Ministry of Justice. In case of a conviction, the convicted person has to pay for the cost of the proceedings, including a lump sum for the

court assistance of up to EUR 1.000,-- (Sec. 381 para. 1 subpara. 9 CCP). After assessing the statutory agreements, the Federal Ministry of Justice agrees with established, suitable institutions that provide victim support for proceedings. These victim support organizations are also entrusted to provide legal assistance by using a list of specialized lawyers who are frequently involved in matters of victims' rights.

The court grants victims legal aid for proceedings if representation by a lawyer is in the interest of justice, in particular if necessary for the purposeful assertion of claims to avoid further civil proceedings. This applies to victims who are not entitled to legal assistance and joined proceedings as private parties but cannot meet the costs for legal representation without compromising their necessary livelihood (Sec. 67 para. 7 CCP). The regional competent bar association evenly appoints these lawyers, who are obliged to provide legal aid, and comply with the wishes of the party for the appointment of a specific lawyer in agreement with the latter if possible (Sec. 62 para. 1 CCP). Lawyers cooperating with NGOs can be named to the bar association as being specially trained and prepared to defend in this type of legal aid case.

The recommendation formulated under the second indent of para. 61 is thus already currently complied with.

(68) Concerning paragraph 68, the Austrian authorities emphasize that pursuant to Art. 57 of the Asylum Act, having found a job is no requirement for the residence permit to be renewed.

(69) If a victim fulfills the requirements of Art. 57 of the Asylum Act and if the requirements of Art. 60 para. 2 lit. 1-4 of the Asylum Act are met (adequate accommodation, health insurance and being able to sustain him- or herself) and if the victim of trafficking has fulfilled module 1 of the Integration Agreement, the residence permit "red-white-red-card plus", pursuant to Sec. 41a para. 3 of the Settlement and Residence Act (NAG) may be issued by the competent authority.

(97) The Austrian authorities take note of GRETA's recommendation and want to highlight that according to Sec. 67 para. 1 Austrian Code of Criminal Procedures (CCP), the criminal prosecution authorities are required to raise all circumstances that are decisive for the assessment of the private law claims of the injured party in preliminary proceedings but also in main proceedings. (Simple) additional investigations have to be carried out. If necessary, commissioned medical experts also have to clarify the period of pain for determining the amount of the compensation claim. However, if taking this evidence would considerably delay the proceedings, additional investigation - also with regard to Article 6 ECHR - must be omitted (Fabrizy, StPO13 § 67 Rz 2; Kirschenhofer in Schmölzer/Mühlbacher, StPO 1 § 67 Rz 2; Korn/Zöchbauer in Fuchs/Ratz, WK StPO § 67 Rz 3).

(97) The Austrian authorities note the position expressed by GRETA and want to stress that in Austrian proceedings victims are entitled to obtain a decision on compensation from the offender. Sec. 67 para. 1 Austrian Code of Criminal Procedures (CCP) determines the victim's right to seek restitution for any damages suffered by the criminal offence or compensation for infringements of their legal interests. Damages and infringements are determined ex officio – to the extent possible – based on the outcome of the criminal process or further simple inquiries. If experts examine the extent of injury or health damage, pain periods have to be determined.

The 17th part of the CCP stipulates the procedure about civil claims within the criminal proceeding (see Sec. 366 to 373b CCP). In case of an acquittal, the private party is referred to civil proceedings to claim the compensation. If the defendant is to be sentenced, the court also has to decide on claims of the private participant (Sec. 366 para. 2 CCP). In case the court is not in the position to decide on the full claim, the private participant may be referred to civil proceedings, unless evidence can be taken without significant delay. The private participant has the right to appeal against the court decision if he or she is referred to civil proceedings (Sec. 366 para. 3 CCP). The court's decision on claims of private participant is enforceable under the rules of the Austrian Enforcement Act. The reasons either for the granting of compensation or for the referral to civil proceedings have to be explained in the judgement according to Sec. 270 para. 1 no 5 CCP (*Danek in Fuchs/Ratz, WK StPO Sec. 270 Rz 45*).

(130) In Austria the public prosecutor`s office is obliged to prosecute these offences ex officio due to the principle of public prosecution. An offence under this principle can be reported by anyone, also anonymously, and the report cannot be withdrawn.

Special unit CID officers at provincial level and the Criminal Intelligence Service Austria initiate periodic checks in the framework of trans-regional focus operations in establishments and places offering sexual services to identify possible victims of human trafficking. In 2019, the police checked 1.655 persons (sex workers, beggars, minor beggars, labour force) in relevant places.

(131), (155) and (157) Austrian authorities provide officers, judges, public prosecutors and trainees on a regular basis with national trainings by the Criminal Intelligence Service Austria. Furthermore, Austrian authorities encourage afore mentioned professionals to participate in seminars of European institutions (ERA, DRA and EJTN). The Austrian Ministry of Justice supports these training programs actively and offers seminars on the topic of THB as well. Candidate judges from all over Austria attend presentations on THB during a regular seminar within a police department. As a high number of THB cases occur in Vienna, candidate judges from the Higher Regional Court of Vienna attend even further specialised training on THB during their training.

Since 2013, the Federal Ministry of Justice organizes annual exchanges for representatives of law enforcement agencies and victim protection institutions, in particular to discuss experiences and problem areas based on practical concluded human trafficking cases. In October 2019, such an exchange took place chaired by the Head of the Criminal Law Section and the Head of the Department for Major Proceedings and Reportable Criminal Matters. Representatives of the four departments of the Senior Public Prosecutor's Office, the Federal Ministry of the Interior, LEFÖ and MEN VIA, as well as other representatives of the Federal Ministry of Justice. The next exchange is scheduled for autumn 2020.

(134). The Federal Ministry of Justice has sent the decree to the four Higher Regional Courts of Appeal and has asked them to ensure that the decree is used in the training of candidate judges, judges and prosecutors.

(165). To avoid misinterpretation, the Austrian authorities want to clarify that the project focuses on the reintegration of vulnerable persons, including victims of THB.

(194). The Austrian authorities take note of GRETA`s urge and want to highlight that they are aware of the need for sound data in the field of combatting human trafficking as well as of the unique challenges that occur in the field of collecting, analysing – and comparing – data.

As an example we want to highlight that that based on the Austrian Code of Criminal Procedures (CCP), cases are registered and recorded in relation to the offender. This means that several reported crimes of a specific offender (or a group of offenders) are often registered to one already ongoing or new criminal court case or case of the public prosecution. Therefore, the case register is currently not designed to allocate or track the specific facts underlying police reports and consequently the judicial or prosecutorial procedures (e.g. conviction or acquittal of a reported fact).

In the area of responsibility of the Ministry of Justice, the strategic digitization initiative "Justice 3.0" intends to redesign the case register long-term. This will require adequate financial resources, but could provide potentially better support with regard to statistics.

Nevertheless, it will be necessary to fine-tune the demand for additional information/statistics in order not to overburden the judicial staff.

(199) The Austrian authorities and the counselling centers have reaffirmed their position, not only the Austrian authorities.

(215) The Federal Ministry for Labour, Social Affairs and Consumer Protection financed UNDOK together with MEN VIA in a joint funding. The named amount of EUR 410,000 includes funds for UNDOK's and for MEN VIA's activities. The same refers to recommendation par. 241.

(223) The Austrian authorities would like to specify that training is provided in cooperation with IOM, LEFÖ-IBF, MEN VIA, the Criminal Intelligence Service Austria, the Drehscheibe Centre, a legal expert and the Intercultural Centre. Instead of the stated Regional Crime Agency the Criminal Investigation Department (Landeskriminalamt) must be informed if there are indicators that an applicant might be a victim of THB.

For the period 2020-2022 the continuation of the Asyl-Train project (2017-2019) under the framework of the Asyl-Train II project with IOM is planned. In addition, further training on vulnerable asylum seekers in general will be offered in cooperation with UNHCR and the Austrian Red Cross within the BFA training program ("Vulnerability and Flight I", "Vulnerability and Flight II").

(228) The Austrian authorities would like to note that regarding the aspect of legal counselling offered by the state owned agency for Supervision and Support in the area of Asylum and Immigration, a Quality Advisory Board has been legally installed to safeguard the independence and autonomy of legal counsellors.

(230) During the whole asylum procedure as well as in cases of Dublin procedures, possible vulnerability of asylum seekers is taken into consideration based on the obligatory instruction manual of the Federal Office for Immigration and Asylum

(241) The funding for MEN VIA is secured until the end of 2020.

(243) and (246) As also commented under Para 61, assistance and support provided by MEN VIA and LEFÖ-IBF does not depend on the victim's willingness to report to the police or to cooperate with law enforcement agencies. In working with affected victims and providing full services, there is no distinction between presumed victims and victims identified by the police. Victims who do not wish to testify, as well as those who find themselves in areas outside of Vienna, do have access to support services for victims of THB.

Please also refer to Para. 37 of the report, which states that LEFÖ-IBF operates throughout Austria ("nationwide"). MEN VIA operates nationwide as well and cooperates with the police, NGOs and social support agencies in all Federal States of Austria. The support includes transfer to Vienna (if necessary accompanied) from all areas of Austria. It is true that the majority of victims transferred to MEN VIA is identified in Vienna or in regions close to Vienna. We agree with GRETA that further efforts should be made to reach more victims in other areas of Austria.

(245). The statement in the report might be misinterpreted, as it implies that access to the health care system (*Grundversorgung*) is dependent on the recognition of a victim of THB and/or limited to clients of counselling facilities or to victims of THB recognized by the police. Access to the health care system however is regulated by objectively defined criteria.