

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



CP(2022)03

**Report submitted by the authorities
of Austria
on measures taken to comply with
Committee of the Parties Recommendation
CP/Rec(2020)03 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings**

Third evaluation round

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Report on the Austrian Response to GRETA's Recommendations

Third Evaluation Round

Preface

In the following, the Austrian authorities respond to the recommendations received from GRETA in accordance to Article 38, paragraph 1, of the Convention on Action against Trafficking in Human Beings ("the Convention") dated 23 June 2020. Measures taken to comply with the Committee of the Parties Recommendation CP/Rec(2020)03 will be outlined in line with the discussion of the Round Table held on 20 Mai 2022.

Comments ministries, local authorities and NGOs have been taken into consideration.

This follows the Third Evaluation Round: The Austrian Government's Reply to GRETA's Questionnaire, received by GRETA on 1 April 2019; GRETA's Report and Government's Comments, published 9 June 2020; and Recommendation of the Committee of the Parties, as aforementioned adopted and received 12 June 2020.

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Part 1: Issues Referred to by the Report as of High Relevance (URGES)

1.	Access to Compensation (Article 15)	<u>(BMJ, BMI/BK, BMSGPK, LEFÖ-IBF, MEN VIA)</u>
<ul style="list-style-type: none"> • <i>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;</i> • <i>prosecutors systematically requesting compensation and judges using all the possibilities the law offers them to uphold compensation claims;</i> • <i>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);</i> 		

In past years, Austria has adapted its legal system to ensure the access to compensation for victims of human trafficking. The recommendations by GRETA focus on their implementation. This implementation is showcased by two examples, laid out by two Austrian victim support organisations: LEFÖ-IBF and MEN-VIA. These examples also point to the remaining structural challenges. After the input on the actual implementation by the organisations, the contributions by the competent ministries will expand on the legal framework in place.

The NGO LEFÖ-IBF highlights one specific judgement of the civil court. In 2021, a regional civil court rewarded two victims of human trafficking a compensation sum of 16,500€. The court ordered a psychological opinion in order to determine the harm and pain period. This case is particularly special as the court based this decision on the harm as a result of JuJu. The rituals the trafficked women had to go through were perceived as the initial cause of the suffering.

The NGO MEN-VIA references a case of THB for labour exploitation on construction sites. In June 2021, there has been a conviction in a THB case for the purpose of labour exploitation in Austria, in which a group of exploited construction workers was

supported by MEN VIA. This case can serve as a best practice. Therefore, this case has been analysed in working groups. Some relevant key factors for success could be identified: These included correct identification, access to victim support, free legal aid, and assistance during legal procedures (“Prozessbegleitung”) provided by MEN VIA, but also the systematic collection of evidence on different levels. The reports of the victims were backed by additional evidence such as the documentation of unpaid taxes, lack of registration to health insurance and other violations of financial duties of the companies of the exploiter. Also, the contradictory and incomplete bookkeeping and paper work of the exploiter’s companies were seized and analysed as evidence. In addition, a detailed calculation of unpaid wages and payments, which the workers did not receive, documented the exact sums and the dimension of the exploitation. All these elements of evidence led to the conviction of the perpetrator, and the court also decided that the exploiter has to pay a significant financial compensation to the victims.

The problems which hindered the money actually reaching the hands of the victims are manifold and range from companies in insolvency (which is linked again to exploitation) to challenges in cross-border responsibilities when it comes to the seizure of properties like houses built or cars bought by traffickers. Here, more efforts must be taken to make procedures more effective and more easily applied in practical terms in order to ensure that traffickers do not profit from exploitation and victims have access to compensation.

At least, with support of the Austrian Chamber of Labour (Arbeiterkammer), and much shared effort, it was possible to grant the victims representation in the insolvency proceedings against the companies of the exploiter. In this way, they could at least get a small part of their money back from the Austrian Insolvency Compensation Fund (“Insolvenz-Entgelt-Fonds”). This covered about 12% of the money that the victims did not get in accordance to the conviction by court.

This example shows that positive progress can be observed and awareness is growing, but compensation for victims of THB still remains a strong challenge, which faces many obstacles that urgently need further systematic efforts to be overcome.

A report on the case is also available on <https://vorarlberg.orf.at/stories/3107614/>

From a more general perspective, the THB unit of the Federal Office of Criminal Investigation and the CIDs of the Regions are generally tasked concerned with the collection of evidence about the harm the victim has suffered, as well as the financial gain from the exploitation of the victim, as the evidence mentioned afore is already paramount for the police investigation and a possible conviction of the perpetrators. All the evidence that is collected, be it digitally or in any other form, is subsequently provided to support compensation claims by the victim in court.

Having outlined two recent examples of trafficking cases and how access to compensation was, at least partly, secured, the legal framework for compensation will now be discussed in greater detail:

On the legal basis, the Austrian Federal Ministry of Justice notes, that, as stated in the report, there is a procedure through which victims are entitled to obtain a decision on compensation from the offender. In Austrian criminal proceedings, according to § 67 para. 1 CCP (Strafprozessordnung), victims 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. The extent of the damages or infringements has to be determined ex officio insofar as this is possible on the basis of the outcome of the criminal process or further simple inquiries. As it is stipulated, if an expert is appointed to 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 §§ 366 to 373b CCP). In case of an acquittal, the private party is referred to civil proceedings to claim their compensation. If the defendant is to be sentenced, the court also has to decide on claims of the private participant (§ 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 (§ 366 para. 3 CCP). The court's decision on claims of private participant is enforceable under the rules of the Austrian Enforcement Act.

In line with the aforementioned recommendations, the Austrian Federal Ministry of Justice has dedicated itself on many different levels to improving victims' access to compensation, taking into account seizure and freezing of assets.

Thus, as of 1.11.2018, there was the removal of a procedural hurdle in connection with seizure (section 115 para. 1 subpara. 3 of the CCP) in order to achieve both a standardisation of case law and effective asset protection for victims.

Moreover, the brochure "Compact Knowledge for Practice: Criminal Proceedings, Compensation and Victim Protection" published by LEFÖ-IBF in spring 2019, which was produced in cooperation with the Federal Ministry of Justice, focused on the topic of victim compensation.

On May 28, 2020, an updated and supplemented third edition of the Guidelines for Property Orders ("Leitfaden Vermögensrechtliche Anordnungen") was published and is now intended to serve as a tool for the daily work of practitioners in the criminal police as well as in the public prosecutor's office and in court.

On the report, the Austrian Federal Ministry on Social Affairs, Health, Care and Consumer Protection expands on the Victims of Crime Act. Under the Victims of Crime Act (Verbrechensopfergesetz, VOG), BGBl. No 288/1972, compensation is awarded to individuals when it is likely that they suffered injury to their body or damage to their health as a result of an unlawful and intentional act carrying a sentence of more than six months' imprisonment. The Victims of Crime Act covers compensation for loss of

earnings or maintenance, the costs for therapeutic care, orthopaedic care, medical, occupational and social rehabilitation, psychological and psychotherapeutic crisis interventions, are allowances, reimbursement of funeral expenses, means-tested additional benefits and lump-sum compensation for pain and suffering. The Federal Office for Social Affairs and People with Disabilities (Sozialministeriumservice) decides on the compensation claims. There are no administrative or other charges for the claim. An appeal against the decision can be submitted to the Federal Administrative Court (Bundesverwaltungsgericht). Appeals may also be lodged with the Constitutional Court (Verfassungsgerichtshof) and the Supreme Administrative Court (Verwaltungsgerichtshof). From 2019 to 2021 there were in total 13 applications of victims of THB under the VOG in Austria (positive decisions: 5, negative decisions: 4, not yet decided: 4). For the applications made from 2005 to 2021 an amount of € 182,280.71 was awarded. There is a legal obligation to instruct for security authorities and relevant judicial authorities under the Victims of Crime Act (§ 14) and the victim support organisations are informed and aware of the possibility for compensation under the VOG.

2.	Access to Data Collection	(BMI-BK, BMJ, BMA, LEFÖ-IBF)
<p><i>develop a comprehensive system for the collection and analysis of data on measures to protect and promote the rights of victims, 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);</i></p>		

Challenges of data collection are manifold and are a priority for the Austrian engagement in the combat of Human Trafficking. In 2020, the Austrian Federal Ministry of the Interior (Migration research branch of the Training Academy) commissioned the Austrian Ludwig Boltzmann Institute of Fundamental and Human Rights to conduct a stock-taking study on human trafficking in Austria; the study recommended a rights-based, comprehensive approach to prevent both exploitation and trafficking, complemented by broader data collection and effective monitoring. Following the study and the GRETA report, a new working group of the Task Force has been established, which will focus on this very topic: the Working Group on Future Perspectives.

The Austrian Federal Ministry of the Interior states that the measures for improvement took place with the introduction of new forms of commission as of 1.1.2022. This includes the areas of exploitation through begging, sexual exploitation, exploitation

through the commission of criminal acts, labor exploitation, exploitation through the removal of organs and child trafficking (person under 18 years of age).

The data collected are in particular: criminal offenses, clarifications, suspects (age, gender, nationality, residence status) as well as victims (age, gender, nationality, residence status), relationship between suspects/victims.

On the part of Department II/BK/8, the forms of exploitation from the criminal police cases are evaluated manually in analogy to the Austrian police statistics on crime. The result flows into the implementation of Austria-wide strategic and operational measures.

The Federal Office of Criminal Investigation Austria is willing and able to share and collect information within the legal framework.

On the collection of data on residence permits: The "Residence Permits for Individual Protection" (Section 57 Paragraph 1 Line 2 Asylum Act) for witnesses or victims of human trafficking is collected in the Federal Agency for Immigration and Asylum (BFA). If a residence title is extended for reasons worthy of consideration under the Asylum Act, a "Red-White-Red Card plus" is issued in accordance with Section 41a Paragraph 3 of the Settlement and Residence Act. The data can be found in the Department V/2, a separate breakdown of the data on how many residence permits there are in connection with witnesses or victims of human trafficking is not possible to date.

In this context the Austrian Federal Ministry of Justice notes that victims according to § 65 Z 1 lit. a and b CCP are entitled to psychosocial and legal assistance during the proceedings. All victims have the right to join the proceedings as a private party to claim compensation in this context. In the statistics, the private participant awards appear with the respective defendants. The amount of compensation is not recorded statistically. Once victims have been recorded, they are not deleted again. Therefore, they also appear in the statistics at the time the proceedings are even if the proceedings have been discontinued or an acquittal has been reached. An analysis by gender, nationality and age is possible. However, the age of the victim does not refer to the time of the offense, but to the time of the date on which the case was brought to court. It is not possible to assign the form of exploitation to the victims is not possible.

Incidence: An evaluation is possible both case- and offender-related. The data refer only to the incident that occurred at the time of the evaluation. Cases that have already occurred at an earlier point in time but have not yet been closed do not appear in the statistics.

Executions by the prosecution: The evaluation of all types of executions (e.g. discontinuation, diversion, indictment) is possible. Cases are also statistically recorded here.

Disposals by the court are recorded as well and the evaluation can be broken down by the type of settlement, in particular all (final and non-final) convictions and acquittals.

The penalty amounts for convictions refer exclusively to convictions that have already become final. The forms of exploitation can only be shown in connection with the individual convictions and refer exclusively to convictions that have already become final.

The Federal Office of Criminal Investigation in accordance with LEFÖ-IBF note that preliminary proceedings on suspicion of trafficking in human beings (§ 104a StGB) and of cross-border trafficking in prostitution (Section 217 of the Criminal Code) are usually very complex and last for several months, and in some cases the investigations take years to complete. This results in the fact that cases only appear in the Austrian police statistics on crime in the following years.

An example of this is the investigation on the OPERATION HASKOVO against a Bulgarian group of perpetrators suspected of trafficking in human beings for sexual exploitation, cross-border prostitution and other criminal offenses. The police investigations were started at the end of 2012 and the court hearings of the respective defendants took place in 2014 and 2015. The investigation of the case called Operation Haskovo therefore does not appear in the Austrian police statistics on crime until 2015.

The following data on suspects and victims are recorded for offenses under Sections 104a and 217 of the Criminal Code. The following data is recorded in the Austrian police statistics on crime:

- Age
- Gender
- Nationality

A distinction between the various forms of exploitation in the case of criminal offense concerning § Section 104a of the Criminal Code (sexual exploitation, labour exploitation, begging, commission of criminal offenses, organ trafficking) does not take place.

The Austrian Federal Ministry of Labour recalls that labour inspectorates do not collect specific data on labour exploitation. However, certain data from the labour inspectorates may be indicative of the existence of labour exploitation (for example, about exceeding the working time).

Data are also collected by NGOs. In this context, LEFÖ notes that all services offered by the LEFÖ Intervention Center (NGO) are voluntary, anonymous and confidential. Due to the counselling and care oriented to the resources of the women and as a sustainable prevention against trafficking in women, there is no minimum or maximum duration of care. For this reason, the total number of women evaluated by LEFÖ-IBF in a given year includes all women who were cared for by LEFÖ-IBF.

From this total, you can filter by various categories:

- Age
- Residence category
- Form of exploitation
- Education level
- Nationality

LEFÖ-IBF has a query, whereby it can be calculated how many new cases have been added in a reporting year. The evaluations of individual categories, such as form of exploitation or similar, can only be evaluated in the total sum, as described above.

LEFÖ-IBF is funded by the Federal Ministry of Justice to provide psychosocial and legal process support for women and children nationwide. The evaluation of criminal justice measures are victim-centered. Again, evaluation is done from the total of all women served. Reports are evaluated according to offense, whereby the last status before the query is always evaluated. This means that offenses which change in the course of time to another offense, or if cases are combined into one case, are only represented in the evaluation to a limited or distorted extent. Furthermore, the status of proceedings and sentences are also evaluated according to their by the most recent status.

This comparison shows that the evaluation according to criminal law measures by LEFÖ-IBF represents a status quo in the period of devaluation. Accordingly, the case of Haskovo was recorded in LEFÖ statistics among all women served by LEFÖ-IBF already been recorded in 2012 and until 2015.

3.	Labour Exploitation	(BMI, BMF, BMSGPK, BMA)
<ul style="list-style-type: none"> • <i>expand the mandate of labour inspectors to enable them to play a frontline role in the prevention of human trafficking for the purpose of labour exploitation and the identification of victims, including in private households with a view to preventing abuse of domestic workers;</i> • <i>address the risks of human trafficking in the agricultural sector;</i> • <i>ensure that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of human trafficking (paragraph 218);</i> 		

The comments to the GRETA report in this section is structured in three sections: First, the Austrian Federal Ministry of Labour responds in detail about the implementation of the three recommendations. Secondly, the Austrian Federal Ministry on Social Affairs,

Health, Care and Consumer Protection expands on the meaning and significance of para 215 and 183 for the recommendations. And, lastly, the Austrian Federal Ministry of Finance gives an outline on the tasks performed by the Financial Police to ensure a more comprehensive understanding of the Austrian framework.

Relating to the recommendation to expand the mandate of labour inspectors to enable them to play a frontline role in the prevention of human trafficking for the purpose of labour exploitation and the identification of victims, including in private households with a view to preventing abuse of domestic workers, the Austrian Federal Ministry of Labour notes the following: The Labour Inspectorate is the legally mandated organisation for the prevention of deficits in occupational safety and health in Austria. The control of working conditions (including working hours) carried out by the labour inspectorates is an important factor in the detection of labour exploitation. In cases of suspicion of labour exploitation, the officials of the Labour Inspectorates are instructed to inform the Police (Hotline of the Bundeskriminalamt – Federal Criminal Police Office) or the public prosecution. However, the Labour Inspectorates do not determine whether there is a case of labour exploitation. The allocation of competences among the different control authorities and the cooperation between them has worked well so far. Therefore, an extension of the competence of the labour inspectorates regarding labour exploitation is not envisaged.

According to the Austrian Federal Ministry of Labour and in relation to the recommendation to address the risks of human trafficking in the agriculture sector, the Working Group against Labour Exploitation, which is part of the Austrian Task Force, placed one of its focal points on the topic of "labour exploitation in agriculture" and dedicated three meetings to this topic in 2021. A separate sub-working group was also set up. All relevant stakeholders (ministries, control authorities, provinces, social partners, victim protection agencies) have exchanged views in detail. Existing information materials from various organisations (some available in up to 14 languages) were disseminated. Austria also participated in the European Labour Authority (ELA) campaign "Rights4allSeasons" in 2021. During the action week of this campaign in September 2021, special awareness-raising measures were taken; the control authorities also set control priorities in the agricultural sector.

With regards to the recommendation to ensure that sufficient resources are made available to labour inspectors to fulfil their mandate, including in remote locations at risk of human trafficking (paragraph 218), the Austrian Federal Ministry of Labour would like to note that the Labour inspectorates in Austria have sufficient resources to fulfil their mandate. An extension of their competences is not envisaged. The Federal Ministry of the Interior notes on this point that labour inspectors do not fall under the responsibility of the Ministry of the Interior. While the competence of investigations is concentrated in the MOI (federal police), the Federal Office of Criminal Investigation will look to improve ways of cooperation with the labour inspectors.

The Labour Inspectorate has had its own decree on human trafficking and labour exploitation for several years (last updated in 2017). The decree instructs staff to forward information to the competent authorities (police, public prosecutor's office) in case of suspicion. Should there be an Austria-wide NRM covering all sectors, these regulations could also be included.

The Austrian Federal Ministry on Social Affairs, Health, Care and Consumer Protection expands on the meaning and significance of para 215 and 183:

- **(Referring to para 215)**

The drop-in counselling center for undocumented workers "UNDOK", run by Austrian Trade Unions, also serves as a contact point for potential victims of human trafficking for the purpose of labour exploitation. Migrants working in Austria without a secure residence permit and/or limited or no access to the labour market receive free multilingual information and counselling on labour and social rights considering migration and residency laws as well as assistance in asserting deprived entitlements resulting from undocumented employment relationships. Furthermore, UNDOK refers clients affected by human trafficking to specialized THB counselling institutions such as MEN VIA. The Federal Ministry of Social Affairs, Health, Care and Consumer Protection continues to financially support the counselling center UNDOK, currently with € 480,000 for the period from December 2021 to November 2024. In December 2021, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection started to co-fund the project "MIREB" run by the Austrian Trade Union Federation (ÖGB), which offers legal counselling for migrant workers in Arab, Bulgarian, Romanian and Russian language and thereby also contributes to combating labour exploitation and human trafficking.

- **(Referring to para 183 "role of business")**

Within the context of the implementation of the National Action Plan on Combating Human Trafficking, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection financed and finances projects to prevent and combat labour exploitation in supply chains:

- "Trafficking in Human Beings in the supply chain – successfully combat labour exploitation" (2018-2021)
 - "The effects of the Covid-19-pandemic on working conditions in global supply chains" (2020-2022)
 - "Sustainable supply chains for renewable energies" (2021-2022)
- All three projects were/are carried out by the "Network Social Responsibility", an Austrian network of NGOs and trade unions active in the fields of Corporate Social Responsibility and Business & Human Rights.

For a more comprehensive understanding of the tasks performed by the Financial Police, the Austrian Federal Ministry of Finance states the following:

Measures to Prevent and Combat Trafficking for the Purpose of Labour Exploitation

In Austria, labour market controls are also performed by the Financial Police. The tasks include controls against wage and social dumping where there is a thin line between underpay and exploitation. The officials of the Financial Police are instructed to inform the Police when reasonable suspicion about trafficking for the purpose of labour exploitation arises. The latter takes over the further investigation for which the Financial Police is not entitled. This is also the reason why no separate statistics are necessary. The cooperation between the different actors (Police, Social Insurance, Construction Workers' Annual Leave and Severance Pay Fund [Bauarbeiter-Urlaubs- und Abfertigungskasse] (BUAK), administrative law enforcement authorities, insolvency insurance fund and also in single cases with MenVia and LEFÖ) has proven effectiveness and is daily routine.

To complete the picture with figures, please see the answer to the parliamentary request about statistics and organisation, https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_09790/index.shtml.

Below you can find an extraction from the website of the Federal Ministry of Finance, <https://www.bmf.gv.at/en/topics/combating-fraud.html>, with regard to the current recommendations.

Further explanation of the Task of the Financial Police in the Labour Market

The Financial Police is a professional and efficient investigation and control unit of the Anti-Fraud Office. The central task of the Financial Police is to carry out targeted controls in order to detect tax evasion, social fraud, organised shadow economy and illegal gambling, thereby protecting the financial interests of the Republic of Austria.

Tasks of the Financial Police

The task of the Financial Police is to ensure fair and equal conditions for all participants in economic life by means of controls and thus to protect the financial interests of the Republic of Austria. In the interest of the labour market and Austria as a business location, the preventive work of the Financial Police is intended to prevent unfair competition resulting from competitive advantages through illicit work and social and tax fraud. This also serves to safeguard the wage and working conditions of domestic and integrated foreign workers, especially with regard to the development of the Austrian labour market situation.

The primary tasks of the Financial Police activity essentially comprise tax supervision measures (supervisory and control activities for the purpose of tax collection) as well

as regulatory measures (in particular labour market tasks and controls under the Social Fraud Act (*Sozialbetrugsgesetz*) and compliance with the Gambling Act (*Glücksspielgesetz*)). The purpose of bundling these measures in the Financial Police is to make the necessary actions more up-to-date and quicker, to detect and evaluate facts promptly, and to evaluate and pass on the knowledge gained in a targeted manner.

Regulatory tasks

Regulatory measures (in particular labour market tasks and checks on compliance with the Gambling Act) include in particular

Detection of illegal employment of foreign nationals

Control of and in companies, business premises, operating premises, foreign workplaces and recreation rooms as well as of the employees met there for the existence of permits under labour market, residence and establishment law.

- Control of the contracting authority/entity regarding the fulfilment of the reporting obligations with regard to the contracted companies
- Notification and safeguarding of party status in administrative criminal proceedings

Detection of violations of the provisions and regulations of the Austrian Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumpingbekämpfungsgesetz, LSD-BG*)

Checking of and in companies, permanent establishments and foreign workplaces as well as of the employees met there for the existence of permits under labour market, residence and establishment law in accordance with the Anti-Wage and Social Dumping Act.

Detection of violations of the insurance and reporting regulations of the Austrian General Social Security Act (*Allgemeines Sozialversicherungsgesetz, ASVG*).

- Detection of violations of the regulations of the Austrian General Social Security Act (ASVG)
- Checking of and in companies, business premises and external workplaces to verify the correct registration of all employees before they start work and to check for incorrect and fraudulent registrations

Detection of infringements in connection with national and international secondment of workers

Inspection of and in companies, business premises and foreign workplaces as well as the employees met there who have been seconded by domestic and foreign companies.

- Detection of violations of the Austrian Act on Secondment of Workers (*Arbeitskräfteüberlassungsgesetz, AÜG*)
- Inspection of and in companies, establishments and external workplaces to check the correct registration of the seconded workers and the remuneration to which they are entitled
- Detection of sham secondments

4.	Recovery and reflection period for victims of human trafficking (article 13)	(BMI, BMJ)
<p><i>"enshrine in law the recovery and reflection period and ensure that it is systematically offered to presumed foreign 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 (paragraph 250)."</i></p>		

According to the Austrian Federal Ministry of Justice, the ex officio-principle is one of the main principles in Austrian criminal proceedings: Within their mandates, criminal investigation and prosecution authorities have a duty to investigate any reasonable suspicion of a criminal offence that has come to their attention (not including offences that are only prosecuted at the request of entitled persons) and probe it ex officio in investigating proceedings (section 2 of the CCP). One consequence of this ex officio-principle is, that once criminal proceedings have been initiated by reporting of a victim or any other kind of external tip, the victim or the person/body that was giving the tip (e.g. the whistleblower etc.) can no longer stop the continuation of these proceedings, because they must be continued due to the ex officio-principle (e.g., the "withdrawal of a criminal report" is not possible and has no effect).

As regards the exemptions from the duty to answer questions concerning relatives in section 156 of the CCP and the refusal to answer questions that would expose a relative to the risk of being criminally prosecuted in section 157 of the CCP, the following should be taken into account: Sections 156 and 157 of the CCP give witnesses the right to refuse to testify before the criminal investigation authority, the public prosecutor's office or the court, either in whole or to a certain extent, only in certain cases and for specific reasons. The purpose of these provisions is above all to avoid the particular emotional stress of either having to testify falsely or having to incriminate a relative (Fabrizy/Kirchbacher, StPO14 § 156 Rz 2 mwN).

However, there is no proper legal justification for extending these exemptions, which have a specific justification and purpose, to all crime victims regardless of their relationship to the offender.

The decree of the Federal Ministry of the Interior (Directive on Trafficking in Human Beings) of 13.04.2022 was newly adapted and the so-called "recovery and reflection period" was explicitly stated. To regulate this matter within the frame of a decree corresponds to a general Austrian practice. A specific legal provision is therefore not established.

Even without an explicit legal provision, the Federal Administrative Court (BVwG) has recently decided to release two potential female victims of human trafficking from detention and granted them a period of 30 days to decide whether they would like to make a statement on the indicated crimes.

5.	Identification of victims of human trafficking – NRM (article 10)	(BMI, BKA (Jugend), Stadt Wien)
<ul style="list-style-type: none"> • <i>“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.</i> • <i>Further, GRETA considers that the Austrian authorities should:</i> <ul style="list-style-type: none"> - <i>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;</i> - <i>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;</i> - <i>ensure independent monitoring of the care and legal counselling provided to asylum seekers in reception centres”</i> 		

Before going into more detail about the Austrian engagements with regards to the crisis in Ukraine and its effects on human trafficking, a more general overview of mechanisms in Austria is showcased.

Overview

In the fight against human trafficking, the publication of the human trafficking hotline is intensified within the framework of the media and public relations work of the Federal Ministry of the Interior and the Federal Criminal Police Office, respectively, as well as in numerous information folders and brochures. Citizens can and were able to anonymously report indications of human trafficking by telephone at +43 677 61343434 or by e-mail at menschenhandel@bmi.gv.at (humantrafficking@bmi.gv.at), even during the lockdown. The hotline is published on the homepage of the Federal Criminal Police Office (www.bundeskriminalamt.at) as a reporting office for human trafficking, and in 2021 around 600 tips, inquiries and notifications were registered. The reports are received by knowledgeable officers of the Division 8 Central Office for Smuggling / Trafficking in Persons. The reporting office of the Federal Criminal Police Office is available around the clock (24/7).

Likewise, reference can be made to the Joint Action Days (JAD) Labour Exploitation, Child Trafficking and JAD Human Trafficking - formerly LS JAD - Sexual Exploitation, Begging and Committing Crimes. Basically, it should be noted that periodic or event-related focus checks are carried out throughout Austria in the provinces to identify perpetrators and victims in cooperation with the victim protection institutions and the child and youth welfare agency.

According to the City of Vienna, a counselling unit (social workers) is integrated in the Center for Sexual Health of the Health Service of the City of Vienna, which carries out the legally prescribed examinations for sex workers. The social workers working there are trained on exploitative relationships and human trafficking for identification of victims. Video interpreters can also be used, if necessary.

Austrian Efforts Regarding Ukraine

In order to protect children and adolescents from rough violations of fundamental children's rights as laid down in the UN Convention on the Rights of the Child and the recently adopted Council of Europe's Strategy on the Rights of the Child, special attention must be drawn to identifying minors affected by child trafficking, exploitation and sexual abuse. The war in Ukraine and the resulting movement of refugees to Austria has shown this once more. Among these people there are also (unaccompanied) minors who arrive in Austria alone, without their parents or relatives or accompanied by foreign adults.

In view of these new challenges, in order to improve awareness and knowledge about the indicators for suspected child trafficking and the procedure required in such cases among all potentially concerned authorities and institutions in Austria, an information folder is updated and will be republished by the working group on child trafficking established within the Task Force Human Trafficking. This information is primarily intended for the police, security authorities, Asylum and Immigration authorities, and personnel of child and youth welfare services of the Laender, medical personnel, social workers or personnel in care and support facilities for refugees. The Folder addresses

as indicators, for example, the child's behaviour, the circumstances of entry, the existence of documents, the situation of accommodation or signs of exploitation through illegal employment.

The purpose of identification is to protect affected children from further threats and endangerment of their physical and psychological integrity, to verify their identity, to separate them from potential perpetrators, to have them interviewed by specialised personnel, to document the case and report it, to organise the placement, care and support of the child and to prevent unaccompanied children from disappearing. According to the applicable internal decrees, the child and youth welfare agency must be called in as soon as possible to take over the children. The security authorities are to carry out a risk and danger analysis with the involvement of suitable experts and with comprehensive consideration of the best interests of the child, especially with regard to a possible return to the country of origin; in doing so, the personal circumstances of the child and the living conditions in the home country that have been explored are to be taken into account.

On these topics, courses and trainings for the staff at the police and in the involved care facilities take place on a regular basis. In Austria, trainings are offered by the Federal Office of Criminal Investigation, the specialised institutions ECPAT, LEFÖ-IBF, MEN-VIA, IOM with the involvement of experts in the field of children's rights.

In the near future, the more detailed practical guidelines for dealing with (potential) victims of child trafficking prepared by the Working Group on Child Trafficking in 2016 will be evaluated and republished.

Part II: Further Relevant Recommendations

6.	Access to Legal Assistance and Free Legal Aid (Article 15)	(BMJ, BMI, BMSGPK LEFÖ-IBF, MEN VIA)
<i>"61. GRETA considers that the Austrian authorities should take further steps to ensure trafficking victims' access to legal assistance and free legal aid [...]"</i>		

The Paragraphs 54-66 in the GRETA Evaluation Report describe the situation in Austria very well and in detail.

LEFÖ-IBF assesses the current situation regarding access to legal assistance and free legal aid as excellent. In Austria, the system of psychosocial and legal victim assistance services is a unique, victim-centred and unbureaucratic implementation of legal assistance. Since the internal degree of the police was amended and now the information about the right to legal representation was clarified; The police informs the

victims support organisation form every presumed victim of trafficking and secures as such, that the legal representation can be offered.

Especially the high quality of the Austrian program of assistance during criminal procedures and civil law procedures (“Prozessbegleitung”), which is internationally seen as best practice, is reflected very well (55+54). Nevertheless, it has to be noted accorded to MEN-VIA, such support is only accessible as soon as the victim makes an official statement and/ or a report to the police.

In Austria, all lawyers are in principle obliged to provide legal aid. The selection of the individual lawyer having to provide legal aid is the responsibility of the competent bar association. Due to constitutional as well as simple law provisions, the bar association has to ensure an even distribution of legal aid cases between lawyers. At the same time, however, the bar association has to comply with the wishes of the party for the appointment of a specific lawyer in agreement with the latter if possible (§ 62 para. 1 Code of Criminal Procedure). This ensures, that, for example, a lawyer cooperating with an NGO can be named to the bar association as a specially trained lawyer who is prepared to take over the defence in a legal aid case. The recommendation formulated under the second indent of para. 61 is thus already currently complied with.

Furthermore, it should be noted that the education and training of lawyers (such as training concerning the issue of human trafficking) is part of the self-government of lawyers. The Ministry of Justice has no direct competence in this regard.

Since 2017, the Federal Ministry of Justice in cooperation with the Lawyers' Academy has been offering the advanced training seminar „Psychosoziale Prozessbegleitung: Eine Einführung für juristische Prozessbegleiter/innen“, which was excellently evaluated by the participants.

As regards the first recommendation in paragraph 61, the following should be pointed out:

The possibility for victims to get legal (and psychosocial) support according to Section 66b para. 1 CCP – and in general all victim rights in criminal proceedings – are granted regardless of whether a victim cooperates with law enforcement agencies. There is no provision in the CCP, which would focus on the cooperation of victims in criminal proceedings or even make the grant of rights dependent on it – such a regulation would otherwise have to be regulated expressly as a statutory exemption according to the system of the CCP.

In addition, it should be pointed out that the granting of legal (and psychosocial) support in proceedings 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 are entrusted with the decision whether to grant the assistance.

As regards the second recommendation in paragraph 61, the following should be pointed out:

Legal assistance (juristische Prozessbegleitung) and legal aid (Verfahrenshilfe) are two different systems:

Like already pointed out in the report, according to Section 66b para. 1 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. The costs are initially borne by the victim support organisations and are refunded by the Federal Ministry of 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 para. 1 subpara. 9 CCP). The right to legal assistance exists before, during and in some cases even after criminal proceedings, irrespective of immigration status or type of exploitation. 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 that are specialised in THB are therefore entrusted to also provide legal assistance to the victims. For this purpose, they use a list of specialised lawyers who are frequently involved in matters of victims' rights.

Victims, who are not entitled to legal assistance and who have joined the proceedings as private parties are to be granted by the court legal aid for the proceedings 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.

Finally, with regards to access to assistance, the following points are important to note:

- The Federal Agency for Immigration and Asylum (BFA) is in regular contact with LEFÖ (and also IOM) and multilingual brochures from LEFÖ are available for free in the BFA's offices. In addition, potential victims of human trafficking receive these brochures by the BFA's case owners.
- The BFA was also in contact with LEFÖ regarding the flyers and posters created by them in connection with the war in Ukraine. In particular, displaced Ukrainian women are at risk of human trafficking. For this reason, the flyers created by LEFÖ were distributed nationwide in all organizational units of the BFA in English and Ukrainian/Russian, and the LEFÖ posters were affixed. Also a link to the LEFÖ

homepage (<https://lefoe.at/be-safe-on-the-way/?fbclid=IwAR3IGgUEXiqtUeF5DNAZ4jqXs4kjQ9yd7LrAtRo8CG4xJVE4uxlFygs0so>) was put online directly on the BFA homepage under FAQs Ukraine.

- “MEN VIA”, the Austrian victim protection facility for men who are affected by human trafficking, was again financially supported in 2021 by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, the Federal Ministry of the Interior and the Federal Ministry of Justice. The clients are provided with safe accommodation, multilingual psychosocial support, including during judicial proceedings, medical aid and other services. According to the needs of many affected men, since 2015 MEN VIA offers ongoing assistance (during daytime) at the shelter. The Federal Ministry of Social Affairs, Health, Care and Consumer Protection disbursed approximately € 150,000 to MEN VIA for the year 2021. Additionally, the Ministry of Social Affairs financially supports MEN VIA with € 480,000 for the period from December 2021 to November 2024. Furthermore, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection finances a project of the NGO “FOOTPRINT”, which offers low-threshold support and counselling for women affected by human trafficking and all forms of violence, especially also trauma pedagogical support.

7.	Access to Work, Vocational Training and Education (Article 12)	(BMA, LEFÖ-IBF)
<p><i>“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;</i></p> <p><i>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)”</i></p>		

In Austria, victims and witnesses of human trafficking have easier access to the Austrian labour market (provided they are not already exempted from restrictions as citizens of an EU country).

According to an agreement between the Austrian public employment service in Vienna and LEFÖ/IBF, those affected can be offered special support in their search for a job and the necessary qualifications.

Labour Market access for asylum seekers / people entitled to asylum:

- Persons entitled to asylum have the same access to the labour market as Austrian citizens.
- Under certain conditions, asylum seekers can receive a work permit after three months. Prior to granting the permit, the authorities carry out a "labour market test": audit whether someone from Austria or an EU country is available for this job.

Since 2019, LEFÖ-IBF intensified the effort to enhance vocational trainings through the EU-project "TOLERANT" and implement innovative methods to improve the access to work. Additionally, LEFÖ-IBF improved the quality of counselling and support regarding finding employment and developed an internal handbook on the thematic issue of "work".

One innovative method of the EU-project is now part of LEFÖ-IBF's common services: the Buddy-Programm. This allows VoT to connect and build a social network outside the support of victim protection organization and thus, result in a sustainable social inclusion.

8.	Investigations, Prosecutions and Convictions (Article 27)	(BMJ)
<p><i>"130. Austrian authorities should take further steps to ensure that all possible human trafficking offences are promptly investigated"</i></p> <p><i>"131. 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"</i></p>		

According to Section 67 para. 1 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 periods 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).

As regards the third recommendation in paragraph 97, the following should be pointed out:

There is already a procedure through which victims are entitled to obtain a decision on compensation from the offender. In Austrian criminal proceedings, according to § 67 para. 1 CCP victims 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. The extent of the damages or infringements has to be determined ex officio insofar as this is possible on the basis of the out-come of the criminal process or further simple inquiries. As it is stipulated if an expert is appointed to examine the extent of injury or health damage that pain periods have to be determined.

The 17th part of the CCP stipulates the procedure about civil claims within the criminal proceeding (see §§ 366 to 373b CCP). In case of an acquittal, the private party is referred to civil proceedings to claim his or her compensation. If the defendant is to be sentenced the court also has to decide on claims of the private participant (§ 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 (§ 366 para. 3 CCP). The courts decision on claims of private participant is enforceable under the rules of the Austrian Enforcement Act.

Prosecution of criminal acts in Austria is guaranteed by the principle of public prosecution and therefore, public prosecutor's offices are obliged to prosecute these offences ex officio. 4

An offence under the principle of public prosecution may be reported by any person, even anonymously, and cannot be withdrawn.

If there is a reasonable suspicion that the offence of trafficking in human beings (Section 104a CC) has been committed and this suspicion comes to the attention of criminal investigation and prosecution authorities, these authorities have a duty to investigate ex officio in investigating proceedings ("ex officio"-principle according to § 2 CCP).

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 (in particular in matters of detention) is a main principle of criminal proceedings (§ 9 CCP) - in addition to the principle of truth-seeking (§ 3 CCP). Of course, the duration of the proceedings always depends on the circumstances of the individual case, but in this context, it should be noted that there is a constitutional obligation on the state, derived from Art. 6 para. 1 ECHR, to organize its jurisdiction in a manner which allows termination of proceedings within a reasonable time. Furthermore, according to § 232 para. 2 CCP the presiding judge has the duty to promote the investigation of the truth and has to ensure that debates that would prolong the main trial without any use for the inquiry into the matter are avoided.

Due to Section 4 para. 3 of the Regulation on the Act of Public Prosecution Service [Verordnung zur Durchführung des Staatsanwaltschaftsgesetzes (DV-StAG), BGBl. II Nr. 325/2016], whenever appropriate, the heads of the public prosecutor's offices are required to combine prosecutorial matters of a certain type in a single unit. Certain prosecutorial matters, in particular juvenile, military, drug, environmental and economic criminal cases, extradition, media and criminal cases under the Prohibition Act, incitement (§ 283 of the Criminal Code) or terrorist groups (§ 278b of the Criminal Code), terrorist offences (§ 278c of the Criminal Code), financing of terrorism (§ 278d of the Criminal Code), according to §§ 278e and 278f of the Criminal Code or § 282a of the Criminal Code ("extremist criminal cases") or according to the twenty-fifth section of the Special Part of the Criminal Code ("genocide, crimes against humanity, war crimes"), furthermore, the participation in proceedings on conditional release and in civil cases should be assigned to one public prosecutor, or, in the case of a large volume of business, to several public prosecutors.

Since 2013, the Austrian authorities organise an annual exchange of experience and opinions with the participation of representatives of law enforcement agencies and victims' protection organisations on trafficking in human beings, in particular by discussing experiences and problem areas on the basis of already completed practical cases. In order to expand the professional exchange, also representatives of the Bar Association and the judiciary are invited to the exchange of experience and opinions. A constructive expert dialogue marked once more the recent exchanges.

9.	Non-Punishment Provision (article 26)	(BMI, BMJ)
<p><i>"139. [...] 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."</i></p>		

According to the Austrian Federal Ministry of the Interior there are no connections to human trafficking found In the judiciary monitoring of the Directorate General V, this applies in particular to illegal entry and illegal residence in accordance with Section 120 Aliens Police Act and administrative violations in accordance with Section 77 Settlement and Residence Act.

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings states that *"Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."*

According to para. 274 of the Explanatory Report to the Convention, the obligation under Article 26 may be implemented through a substantive provision or a provision of criminal procedure or any other measure that allows victims not to be punished when the mentioned conditions are met.

According to the Austrian Federal Ministry of Justice Article 26 has been implemented in Austria in the area of criminal law by Section 10 of the Criminal Code (excusable state of emergency).

In implementation of the recommendation of the 2nd GRETA Report (GRETA (2015)19) to provide guidance to law enforcement authorities regarding the non-punishment principle, in February 2017, the Federal Ministry of Justice issued a decree on refraining from punishing victims of trafficking who have committed crimes due to excusable necessity - Section 10 of the Criminal Code, BMJ-S.130.007/0007-IV1/2017. This decree was an important step in raising awareness among prosecutors and courts about the application of Section 10 of the Criminal Code in human trafficking cases. That this was successful is shown by the decision of the Linz Higher Regional Court of 5 April 2019, 9 Bs 71/19h, which overturned the first-instance conviction for forgery of specially protected documents (Sections 223, 224 StGB) because Section 10 StGB had not been examined *ex officio*.

The creation of a special provision on the impunity of victims for their participation in unlawful acts is not possible in view of the differentiation between judicial criminal law and administrative criminal law. In any case, separate provisions would have to be created for both areas. But also in the area of judicial criminal law, the creation of a separate provision on the impunity of victims would not be opportune. Indeed, Section 10 of the Criminal Code also implements Article 14 of Directive 2011/93/EU, which provides for the impunity of victims of sexual exploitation and sexual abuse under certain conditions. Therefore, if a special provision were to be created for the impunity of victims of trafficking in human beings, it would be difficult to argue why there should be no special provision for impunity for victims under Directive 2011/93/EU. In view of the fact that it is not foreseeable which 6 international obligations Austria will have to fulfil in the future, a patchwork of impunity provisions for different groups of persons should be avoided.

10.	Identification of, and Assistance to, child Victims of Trafficking (Article 10)	(Stadt Wien)
<p><i>"238. GRETA considers that the Austrian authorities should</i></p> <ul style="list-style-type: none"> <i>• finalise and put into practice as a matter of priority the country-wide concept for protection and support of child victims of trafficking;</i> 		

- *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."*

On this issue, several comments have been received:

Regarding the country wide concept for the protection on child trafficking:

The Task Force's working group on child trafficking has completed a concept for the practical implementation of a nationwide accessible shelter for victims of child trafficking. The purpose of such a facility is to create a safe haven for these children and provide them with care and support from trained staff, as it also has been the case for adult men and women for many years. The Federal Ministry of the Interior started the process to examine the erection of the protective facility and the therefore necessary budget means.

Regarding the City of Vienna:

Training for employees of child and youth welfare takes place on an ongoing basis. The Drehscheibe center uses video interpreters for the first contact with victims of child trafficking and personal interpreters thereafter.

Regarding Austrian regions overall:

Austrian regions are above all involved in trainings. One example stems from the Region Tyrol. In view of the current events in Ukraine and the associated special threat situations for children, the Region Tyrol organised a three-hour online training course at short notice on May 5 for employees of child and youth welfare services and for external persons employed in the care of war-displaced persons. The lecturers were Evelyn Probst and Astrid Winkler. About 20 people took part and the feedback was very positive. Costs of the training were covered from regional funds.

11.	Residence Permits (article 14)	(BMI, LEFÖ-IBF)
<i>"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</i>		

ensuring that the procedure is less bureaucratic and not dependent on co-operation with law enforcement authorities in criminal proceedings."

Pursuant to Article 57, paragraph 1, line 2 of the Asylum Act, third-country nationals are to be granted a special protection residence permit ex officio or upon a justified application to ensure the prosecution of criminal acts or to assert and enforce civil claims in connection with such criminal acts, in particular to witnesses or victims of trafficking in human beings or cross-border trafficking in prostitution.

The residence permission is granted by the BFA for twelve months and can be extended for a further year at a time. Due to the protection of victims, the BFA has to decide within six weeks on the application for a residence title "residence permit special protection".

The residence title "Residence entitlement special protection" iSd § 57 Abs. 1 Z 2 AsylG is in line with the legal requirements of the European Union and offers victims of human trafficking a high level of protection.

With the national regulation, the provisions of Directive 2004/81/EC on the issuance of residence permits for third-country nationals who are victims of human trafficking or who have been assisted in illegal immigration and who cooperate with the responsible authorities are implemented accordingly at national level.

Directive 2004/81/EC obliges the EU member states to introduce a residence permit for victims of human trafficking "that offers them sufficient incentives to cooperate with the competent authorities and at the same time is linked to certain conditions to prevent abuse". The directive thus explicitly stipulates that this right of residence must be linked to conditions (cf. recitals 9 and 10 of the directive).

According to Art. 8 of the directive, the residence permit may only be issued if the person concerned has clearly expressed his or her willingness to cooperate and the Member States have examined "what possibilities arise for the investigations by extending the stay in their sovereign territory or result in the court proceedings". In addition, the victim must have severed all ties with those suspected of trafficking.

Furthermore, the requirements of the Council of Europe Convention on Combating Human Trafficking are met by the national regulation: Article 14 requires that each Party shall grant a renewable residence permit to a victim of human trafficking if at least one of the following two cases applies:

a) The competent authority considers that the victim's stay is necessary because of his/her personal situation.

b) The competent authority considers that the victim's stay is necessary for his/her cooperation with the competent authorities in the investigation or in the criminal proceedings.

In addition, each Contracting Party shall ensure that the granting of a residence permit under this provision does not affect the right to seek and receive asylum (Article 14 (5)).

The following can be said about the recommendation "not dependent on co-operation with law enforcement authorities in criminal proceedings":

The fact that criminal proceedings within the meaning of Section 1 (2) of the Code of Criminal Procedure have begun is decisive for the granting of a residence permit in accordance with Section 57 (1) Z 2 AsylG. According to Section 1 Paragraph 2 StPO, criminal proceedings begin as soon as the criminal police or the public prosecutor's office investigate an initial suspicion in accordance with the provisions of Part 2 of this federal law. There is initial suspicion if, based on certain indications, it can be assumed that a criminal offense has been committed. The outcome of the proceedings is irrelevant.

In principle, Section 197 StPO does not prevent the granting of a residence permit in accordance with Section 57 Asylum Act if the preliminary proceedings against absentees or against unknown perpetrators are broken off. However, a case-by-case assessment is required.

Thus, this admissibility requirement is deliberately set at a low threshold in the sense of victim protection. Neither from para. 1 no. 2 nor from para. 3 leg. cit. the cooperation of the foreigner with the authorities is to be derived as a mandatory requirement for the granting of a residence permit (cf. RV 1803 BlgNr. 24.GP 47).

The fact that the foreigner must necessarily cooperate with the authorities is therefore not intended for the application of the provision. Even if there is no cooperation with the authorities, a title can be granted ex officio or upon application.

In order to recommend the less bureaucratic procedure, the following can be said about the practical process:

With regard to the existence of the requirements, the BFA must obtain a reasoned opinion from the responsible police department (LPD).

If, in the course of the official act or during the interrogation of a foreigner, there are indications that this person is a victim or witness of human trafficking, the State Criminal Police Office must be informed. This contacts the victim protection facility Intervention Centre for Victims of Trafficking in Women LEFÖ-IBF, which is available all day. Contact should be made within 24 hours of notification.

A non-bureaucratic procedure is therefore already in place.

LEFÖ-IBF coordinated an international project "REST", implemented in Austria, France, Moldova, the Netherlands, Serbia and Spain. The research was co-funded by the Council of Europe. The study and the guide of promising practices laid an important foundation to evidence-based knowledge regarding the long-term protection and shed light on missing gaps and barriers to guarantee systematic efforts to protection. Based on the lessons learned, LEFÖ-IBF developed a draft law regarding a residence permit for VoT on their personal situation which was shared with the Minister of Interior and the Minister of Women's Affairs during a meeting in May 2022.

12.	Measures to Discourage Demand (Article 6)	(BKA (Frauen), MEN VIA)
<p><i>"203. 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.</i></p> <p><i>204. 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"</i></p>		

Article 19 of the Council of Europe Convention on Action against Trafficking in Human Beings states that: „Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

The provision does not necessarily require legislative implementation because it is of an optional nature.

In Austria, there is no separate offense covering the knowing demand for services of victims of trafficking in human beings. However, the following provisions exist to implement Art. 19:

§ 207b (2) of the Criminal Code makes sexual acts with girls or boys under the age of 18 punishable if the perpetrator exploits a predicament of the person under the age of

18 (e.g. illegal residence, homelessness). According to para. 3 leg. cit., sexual acts with girls or boys under the age of 18 are punishable if the sexual contact takes place against payment. Sexual contact with juvenile prostitutes is therefore punishable for the paying party. A corresponding criminalization of sexual contact with adult prostitutes is not provided for. However, the elements of § 205a of the Criminal Code (violation of sexual self-determination) may be fulfilled, according to para. 1 of which it is a criminal offense to engage in coitus or a sexual act equivalent to coitus with a person against the person's will, by taking advantage of a coercive situation or after previous intimidation. Pursuant to subsection 2 leg. cit., a person shall be punished who, in the manner described in subsection 10 induces a person to perform or tolerate coitus or a sexual act equivalent to coitus with another person or, in order to arouse or satisfy himself or a third person sexually, involuntarily performs a sexual act equivalent to coitus on himself. However, if clients use or threaten prostitutes with coercion or violence, the elements of crime of Sections 201 (rape) and 202 (sexual coercion) of the Criminal Code will usually be fulfilled.

In addition, taking advantage of the special dependency of an alien who is unlawfully residing in the territory of the Federal Republic of Austria, does not have an employment permit or is otherwise in a special dependency relationship, with the intention of thereby obtaining continuous income for him/herself or a third party, is punishable by law (regardless of the age of the victim) under section 116 of the FPG.

Pursuant to Section 28c (2) AuslBG, anyone who unlawfully employs a foreigner without a right of residence in the federal territory under particularly exploitative working conditions (subparagraph 1) or employs a foreigner without a right of residence in the federal territory, of whom he knows that he is a victim of human trafficking (Section 104a of the Criminal Code), using his work or services provided under duress (subparagraph 2), is liable to prosecution.

Insofar as the above-mentioned elements of the crime do not apply, it must be pointed out that the forms of commission of the crime under Section 104a of the Criminal Code are already very comprehensive, so that - even taking into account the frequent division of labor, especially in the area of organized crime - those cases in which someone "only" exploits the victim without having neither recruited him nor accommodated him or otherwise taken him in or transported him should probably not have too much practical significance. This applies in particular to those cases in which the exploiter does not harbor the victim (although it should be noted that even short-term harboring is sufficient), but does "otherwise accommodate" him. The explanatory notes to the government bill of the Criminal Law Amendment Act of 2004 already expressly pointed out that this form of action will come into play in particular if the perpetrator does not transport or pass on the victim, but receives the victim at a certain place for the purpose of future exploitation by himself or a third party (294 BlgNR 22. GP, 13). Now, the wording of the provision does not require that the victim be received by a third party, nor does it require that the victim be received at a place other than the place where she is also to be exploited (see also List in SbgK § 216 Rz 19, which also speaks of

reception "at the destination"). Thus, if the brothel operator who wants to sexually exploit the victim picks up the victim in his brothel, either after she has been transported there by (another) trafficker, or after she has gone there herself (for instance because she is in a predicament), he is no less a trafficker than the one who has picked up the victim at another place and without the intention to exploit her himself. It is also not contrary to the crime of (other) picking up if it does not remain with a one-time picking up by the perpetrator, but if the perpetrator picks up the victim on a daily basis when she appears to him for the performance of his services or is brought there. Even if one agrees with Schwaighofer in WK2 StGB § 104a Rz 5 that a certain care activity is required, this does not have to have a positive connotation, but can be limited to monitoring and/or assigning customers or assigning work, etc. In summary, it can be assumed that a person who exploits another person in his or her business - regardless of whether the demand for the activity or the use of the service or any other profit from it is punishable per se - will regularly commit the crime of trafficking in human beings, because in such a case the exploitation is regularly accompanied by an admission or hardly seems conceivable without such an admission (EBRV 2319 BlgNR 24. GP, 3f).

Moreover, according to Section 12 of the Criminal Code, under a criminal provision - in this case Section 104a of the Criminal Code - not only the direct perpetrator, but also the person who determines another to carry it out or otherwise contributes to its execution, is to be punished.

Extensive expansion of the counselling services offered by the intervention centre for trafficked women including online outreach work (awareness raising work)

Significant challenges in the fight against human trafficking and identifying victims are the self-identification of trafficked persons and access to trafficked persons. Comprehensive awareness-raising work is a key element here, in line with the GRETA recommendations.

In addition to regular inspections of the various fields of work, particularly vulnerable to exploitation (such as domestic work, seasonal work, 24-hour care or sex work), sustainable outreach work and awareness raising - both by the police and by counselling centres - are thus essential to reach trafficked persons.

The IBF is responsible for supporting trafficked women throughout Austria. In order to address today's challenges and further strengthen awareness-raising work, the 2014 contract has been significantly expanded (in October 2021) and the annual budget has been substantially increased.

Additional services since the contract extension in 2021:

- Establishment of nationwide outreach work in digital space: Digital space has come to play a major role in many stages of exploitation, such as in the recruitment or deception process via social media. The innovative method of outreach work in the

digital space is essential for the identification of victims and simultaneously provides a means of early detection - thus prevention. With the shift of THB also into digital space, outreach work online is a logical and necessary response to this change.

- Expansion of support for women with disabilities and trans women and girls (to address increased counselling demands)
- Expansion of police trainings by IBF: trained police staff, as first contact, play an important role in identifying victims. Training by the IBF is designed to ensure this awareness. Previously, training of police staff were conducted only in Vienna and Lower Austria. Now, these trainings are also offered in 6 more federal provinces.
- Expansion of support for the step into an autonomous life: IBF accompanies women and girls on their way to a self-determined and dignified life. Social inclusion in all its dimensions - in particular language, labour and social integration are essential for this process. COVID once more highlighted the significance of these aspects. To further support this process, the contract extension allowed for move-out apartments. These are intended to make it easier for women to move into independent living after the phase of shelter housing. In addition, a "buddy program" supports social inclusion.
- Expansion of networking and public relations work in order to further strengthen collaboration and sensitisation of multipliers

Continuation of the Austria-wide working group on prostitution (headed by the Department of Women's Affairs)

The Expert Group on Prostitution was established in 2009 as a Working Group of the Task Force on Human Trafficking and is chaired by the Austrian Federal Chancellery, Women and Equality. 30 experts of police departments for human trafficking and prostitution, specialised counselling centres for sex workers, and relevant public service departments (i.e. health services, women's departments, legal departments responsible for prostitution law, and brothel licensing authorities) cooperate in the Working Group to ensure a multi-disciplinary approach.

The main objective of the Working Group is to support improvement of the legal framework of prostitution in Austria and to counteract discrimination of sex workers in order to improve their living and working conditions – and thus also to combat human trafficking in prostitution.

These intensive awareness-raising and networking activities of the working group for many years, including police actors in the federal states, contribute essentially to ensure that the operation of legal brothels does not contribute to human trafficking.

Rather, it can ensure that sex workers in legal brothels remain visible, accessible, and aware of their rights. Trained police personnel carry out regular checks, which allows for the rapid detection of possible trafficking.

Publicly funded counselling centres for sex workers

There is at least one publicly funded specialised counselling service for sex workers in 8 out of 9 federal states (Länder) in Austria: in total 8 centres and mobile counselling in two states (Vienna (3x), Upper Austria (2x), Carinthia, Tyrol, Salzburg and Styria, mobile counselling in Lower Austria and Burgenland).

These counselling centres provide support and essential information on how to work legally (social services, taxes etc.), besides that general trust-building measures are taken: They provide online and offline outreach work already at an early stage at the health check up, as well as in brothels and on the streets.

If the counselling centres for sex workers identify a possible victim, they refer them to the specialised IBF.

As in other labour fields, the Austrian approach is to promote and regulate legal working places for sex workers in order to encourage legal work and discourage the supply of services by trafficked persons and therefore the demand for services by trafficked persons.

Discourage Demand in the Context of Labour Exploitation

In order to prevent labour exploitation, and in order to discourage demand, it is fundamental that all labour and social-security-law violations are consequently and strictly sanctioned, including all form of underpayment, unfair treatment of migrant workers, wage and social dumping, etc. The density of control of workplaces must be higher, and fines must be high enough in order to discourage companies to use exploitative practices. Also, the ongoing efforts to prevent THB und Human Rights violations in supply chains must be strengthened and applied in a way, which effectively leads to consequences in practical terms in real everyday business-life.