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Group of Experts on Action
against Trafficking in Human Beings

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

First evaluation round

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Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims' rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting into place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as "irregular migrants" or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities,.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of fifteen independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case-law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

Executive summary

In recent years, the Austrian authorities have taken a number of significant measures to combat trafficking in human beings (THB) on all fronts: prevention, protection of victims and prosecution of traffickers. The Task Force on Combating Human Trafficking was established in 2004 to co-ordinate the efforts of all relevant actors. Since 2007, this Task Force has been responsible for developing National Action Plans which aim to cover all aspects of the fight against THB. The appointment of a National Co-ordinator on Combating Human Trafficking in 2009 is another important stage in this process.

However, GRETA considers that certain aspects of the action against THB in Austria fall short of the comprehensive approach prescribed by the Council of Europe Convention on Action against Trafficking in Human Beings ("the Council of Europe Anti-Trafficking Convention). In particular, there are geographical differences in the approach to the fight against THB, the infrastructure for providing assistance to victims being much more developed in Vienna and environs than in other *Länder* (provinces). GRETA therefore considers that the co-ordination and co-operation between the Federal Government and the governments of the *Länder* should be reinforced.

A series of measures designed to raise awareness on THB and to train relevant professionals have been taken by the Austrian authorities in co-operation with NGOs and intergovernmental organisations. GRETA welcomes the introduction in 2009 of special procedures to prevent THB for the purpose of domestic servitude in diplomatic households. That said, GRETA considers that the Austrian authorities should take further measures to raise awareness on the problem of THB, in particular as regards child trafficking and trafficking for the purpose of labour exploitation. More research is needed to shed light on the extent of these forms of trafficking and to guide the authorities in the development of policies to tackle them. In this context, the introduction of a comprehensive and consistent data collection system is of crucial importance.

As regards the identification of child victims of trafficking, GRETA is concerned that there are shortcomings resulting from the lack of awareness amongst certain officials who treat potential victims of trafficking as offenders or irregular migrants. There have been reported cases of unaccompanied minors disappearing from accommodation centres and sometimes reappearing in another city. GRETA urges the Austrian authorities to develop a nationwide system for the identification of and assistance to child victims of THB by establishing co-ordination and contacts between all the relevant authorities and in particular the authorities of the *Länder*.

All victims of THB identified so far in Austria have been foreign nationals. GRETA is concerned that possible victims of trafficking residing illegally in Austria and placed in police detention centres pending deportation run the risk of being deported before they have been identified. GRETA considers that the Austrian authorities should take further measures to ensure that victims of THB are properly identified as such in order to benefit from full assistance and protection, including a recovery and reflexion period during which they should not be removed from the country. This will also avoid that they are punished for illicit acts they may have been compelled to commit by their traffickers. Further, GRETA considers that the Austrian authorities should develop a clear institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child.

Although it is generally acknowledged that there are cases of trafficking in men, the current system for combating THB does not secure their identification and does not sufficiently meet the needs of this category of victims. GRETA considers that the Austrian authorities should adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, for example by organising regular visits by labour inspectors to work sites (e.g. agricultural and construction sites) commonly using migrant workers. Further, it is necessary to create an assistance system adapted to the specific needs of men victims of THB.

As concerns measures to assist and protect victims of THB, the Austrian authorities have set up facilities and services, in co-operation with civil society, primarily tailored to the needs of female victims. The Federal Ministry of the Interior has introduced by an internal decree a recovery and reflection period of a minimum of 30 days for presumed victims of trafficking, during which time the person concerned should not be removed from Austria. However, the number of persons who have benefited from such a period is very low. GRETA considers that the Austrian authorities should establish clearly in law a recovery and reflection period and ensure that all potential victims of THB are being informed of its existence and are guaranteed access to the assistance measures provided for under the Convention during this period.

The access to compensation for victims of THB remains limited in Austria, among other due to the low number of prosecutions and convictions of traffickers. GRETA considers that the Austrian authorities should adopt measures to facilitate and guarantee access to compensation for all victims of trafficking, including those who were residing illegally in Austria at the time of the offence.

Finally, GRETA considers that the Austrian authorities should review the current provisions criminalising THB with a view to addressing possible overlaps and ensuring the dissuasiveness of the penalties provided for, in order to reflect the fact that THB constitutes a serious violation of human rights. In addition, victims of trafficking should be better protected both during the legal proceedings against traffickers and afterward, in particular by making full use of the witness protection programme in respect to victims of trafficking.

I. Introduction

1. Austria deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") on 12 October 2006. The Convention as such entered into force on 1 February 2008, following its tenth ratification.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings ("GRETA") monitors the implementation of the Convention by the parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Austria being in the first group of 10 Parties to be evaluated in 2010-2011.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Austria to implement the provisions set out in the Convention. The "Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties – first evaluation round" was sent to Austria on 11 February 2010. The deadline for submitting the reply to the questionnaire was 1 September 2010. Austria submitted its reply on 31 August 2010.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Austria, other information collected by GRETA and information received from civil society. A country visit to Austria took place from 16 to 19 November 2010. It was carried out by a delegation composed of:

- Ms Hanne Sophie Greve, President of GRETA (at the time of the visit)
- Mr Vladimir Gilca, member of GRETA
- Ms Claudia Lam, Administrator at the Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings.

5. During the country visit, the GRETA delegation held meetings with representatives of relevant ministries and other public bodies. These meetings took place in a spirit of close co-operation.

6. The GRETA delegation also held separate meetings with representatives of non-governmental organisations (NGOs) and civil society active in the field of action against THB. A list of the national authorities, non-governmental organisations and other organisations with which the delegation held consultations is set out in Appendix II to this report.

7. GRETA wishes to place on record the excellent assistance to the delegation provided by the contact person appointed by the Austrian authorities, Ambassador Elisabeth Tichy-Fisslberger, Austrian National Co-ordinator on Combating Human Trafficking, Ministry for European and International Affairs.

8. The draft version of the present report was approved by GRETA at its 9th meeting (15-18 March 2011) and was submitted to the Austrian authorities on 12 April 2011 for comments. The authorities' comments were received on 16 May 2011 and have been taken into account by GRETA when drawing up the final report. GRETA adopted the final report at its 10th meeting (21-24 June 2011).

II. National framework in the field of action against trafficking in human beings in Austria

1. Overview of the current situation in the area of trafficking in human beings

9. As indicated by the Austrian authorities, due to its geographical situation, Austria is affected by trafficking in human beings (THB) both as a country of transit and of destination. According to official estimates, the most frequent forms of THB include trafficking for the purpose of sexual exploitation; domestic servitude; forced begging; and forced illicit activities[1]. The great majority of victims of THB identified by the Austrian authorities have been women and children. All victims identified have been foreign nationals.

2. Overview of the legal and policy framework in the field of action against trafficking in human beings

a. Legal framework

10. At the international level, in addition to the Council of Europe Anti-Trafficking Convention, on 15 September 2005 Austria ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol"), supplementing the United Nations Convention against Transnational Organised Crime.

11. European Union (EU) regulations related to the fight against THB and binding on Austria include the EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), the EU Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

12. Concerning national legislation, there is no single law in Austria dealing specifically and exclusively with trafficking in human beings. At the time of ratifying the Council of Europe Anti-Trafficking Convention, the Austrian Parliament indicated that it would be implemented through the adoption of laws, in accordance with Article 50(3) of the Federal Constitution. However, it was not deemed necessary to adopt new legislation, for instance in the field of criminal law. The main provision concerning THB is to be found in Article 104(a) of the Criminal Code (CC) entitled "trafficking in human beings" (*Menschenhandel*), which was introduced in 2004 to complement Article 217 of the CC. The latter article, which used to be entitled "trafficking in human beings", became "transborder prostitution trade" (*Grenzüberschreitende Prostitutionshandel*) after the introduction of Article 104(a), while its content remained unchanged. The CC also contains a provision (Article 104) criminalising slavery and slave trade. Further, the Aliens Police Law (Article 116) penalises the "exploitation of aliens".

13. Due to the federal structure of the Austrian State - composed of nine *Länder* - issues of relevance to the fight against THB can be regulated differently in the legislation of each *Land*. For instance, in the field of children and youth welfare, many aspects of the assistance to victims of trafficking are divided between the Federal State and the *Länder*, legislation as regards principles being the prerogative of the Federation, while more detailed legislation and implementation of the laws are left to the *Länder*.

[1] See First Austrian Report on Combating Human Trafficking (covering the period from March 2007 to February 2009), Federal Ministry for European and International Affairs, p. 1.

b. National Action Plans

14. The First National Action Plan against Human Trafficking was adopted by the Council of Ministers in March 2007. It comprised seven sections: co-ordination; prevention; protection of victims; compensation of victims; criminal prosecution; international co-operation; and data collection, monitoring and evaluation. The First Report on Combating Human Trafficking, covering the period from March 2007 to February 2009, was prepared under the aegis of the Federal Ministry for European and International Affairs (FMEIA) and was adopted by the Council of Ministers on 10 March 2009.

15. The Second National Action Plan against Human Trafficking, which was adopted by the Council of Ministers on 26 May 2009, covers a three-year period from 2009 to 2011. As explained by the Austrian authorities, this plan reflects the comprehensive approach adopted by the State in combating THB. It is divided into nine sections, namely: co-ordination; prevention (in Austria); identification of potential victims of human trafficking; protection of and support to victims of human trafficking; criminal prosecution and the legal framework related to human trafficking; compensation; collection of data; international co-operation; and evaluation/monitoring.

3. Overview of the institutional framework for action against trafficking in human beings

a. Task Force on Combating Human Trafficking

16. The Task Force on Combating Human Trafficking (hereafter "Task Force") was set up by a Council of Ministers Resolution in November 2004. The Task Force is responsible for co-ordinating and intensifying the measures taken by Austria in combating THB and has amongst its main functions networking, evaluation of the situation in Austria, development of strategies and plans on a national level (i.e. a National Action Plan), and issuing recommendations to the Austrian Government.

17. The Task Force is composed of representatives of the following entities:
- the Federal Ministry for European and International Affairs (FMEIA)
- the Federal Ministry of Economy, Family and Youth
- the Federal Ministry of the Interior
- the Federal Ministry of Justice
- the Federal Ministry of Labour, Social Affairs and Consumer Protection
- the Women's Directorate of the Federal Chancellery
- the Federal Ministry of Health
- the Federal Ministry for Defence and Sports
- the Federal Ministry for Education, Arts and Culture
- the Drehscheibe Centre, operated by the City of Vienna for children in crisis and child victims of trafficking
- the Austrian Development Agency (ADA)
- the NGO Intervention Centre for Migrant Women Affected by Human Trafficking (LEFÖ-IBF)
- the NGO "End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes - Austria" (ECPAT-Austria)
- the independent research centre Ludwig Boltzmann Institute of Human Rights (BIM).

18. Furthermore, other Austrian NGOs and representatives of international governmental organisations active in combating THB take part occasionally in the meetings of the Task Force.

19. Two working groups have been set up within the Task Force, one dealing with the issue of child trafficking and another on the topic of prostitution. The Working Group on Child Trafficking is headed by the Federal Ministry of Economy, Family and Youth and is composed of experts from relevant ministries, *Länder,* NGOs and other institutions. It submitted its first report[2] (covering the period from March 2007 to February 2009) to the Council of Ministers on 10 March 2009. The Working Group on Prostitution was set up in March 2007 and is headed by the Women's Directorate of the Federal Chancellery. It submitted its final progress report entitled "Prostitution in Austria: Legal Situation, Effects, Recommendations"[3] to the Council of Ministers on 10 March 2009. This working group is due to be transformed into a working group on "Prostitution: the scope of responsibility of the *Länder*" in order to enable a follow-up on the conclusions of the previously mentioned progress report.

b. National Co-ordinator on Combating Human Trafficking

20. The first National Co-ordinator on Combating Human Trafficking was appointed by a Council of Ministers Resolution of 10 March 2009. The National Co-ordinator, who is a senior official at the FMEIA, heads the Task Force. The Co-ordinator also plays the role of representative (main contact person) of Austria for THB-related issues vis-à-vis external entities such as representatives of other countries and international governmental organisations.

c. Police

21. A special Central Unit in the Federal Criminal Intelligence Service within the Federal Ministry of the Interior is specialised in investigating THB and migrant smuggling. This unit has the power to conduct criminal investigations and is in regular contact with units of the regional criminal intelligence services specialised in combating THB and other serious criminal activities. In addition, it plays the role of an intermediary between the Austrian police and law enforcement agencies of other countries in the field of information exchange, participation in joint operations, etc.

d. NGOs and members of civil society

22. LEFÖ-IBF enjoys a special position compared to other NGOs involved in the fight against trafficking in human beings in Austria. It operates on the basis of an agreement with the Government and is financed though governmental funds, in particular for the provision of assistance to THB victims (see paragraph 96).

23. There are a number of other NGOs which take part in the fight against trafficking in human beings at national and/or local level. As stressed by the Austrian authorities, NGOs have been instrumental in achieving progress in this area.

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[2] Report by the Working Group on Child Trafficking under the Task Force on Human Trafficking "Child Trafficking in Austria; Prevention of trafficking in children and protection of victims of child trafficking", prepared under the aegis of the Federal Ministry of Economy, Family and Youth, February 2009, 39 p.

[3] ExpertInnenkreis "Prostitution" in Rahmen der Task Force Menschenhandel, "Prostitution in Österreich, Rechtslage, Auswirkungen, Empfehlungen; Maßnahmenkatalog für eine (arbeits- und sozial-)rechtliche Absicherung von Personen, die in der Prostitution arbeiten – Arbeitsbericht", Vienna, June 2008, 74 p. This report is in the German language only.

III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria

1. Integration of the core concepts and definitions contained in the Convention in the internal law

a. Human rights-based approach to action against trafficking in human beings

24. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report of the Convention states that the main added value of the Convention is its human rights perspective and its focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that "the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims"[4].

25. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. The human rights-based approach entails that a State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights (in case the State concerned is a Party to it). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB "within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights"[5] (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims, or potential victims, as well as a procedural obligation to investigate trafficking.

26. GRETA considers that the human rights-based approach to action against THB requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of THB are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

27. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of THB, in line with the relevant international legal instruments[6].

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[4] Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), http://www.ohchr.org/Documents/Publications/Traffickingen.pdf

[5] *Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010.

[6] Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

28. As far as the situation in Austria is concerned, the introduction to the Second National Action Plan against Human Trafficking states that "human trafficking represents a grave violation of human rights and human dignity"[7]. According to the Austrian authorities, THB is considered as a human rights violation under Austrian law. The authorities have stressed that the European Convention on Human Rights has the rank of directly applicable federal constitutional law in Austria and therefore forms part of the catalogue of fundamental rights in the Austrian Federal Constitution. In consequence, the legislative, executive and judicial authorities are obliged to respect and apply the European Convention on Human Rights within their scope of action. This also means that any complaint filed with the Constitutional Court can invoke the rights guaranteed by it. In this context, the Austrian authorities have referred to the above-mentioned case *Rantsev v. Cyprus and Russia* (see paragraph 25). To GRETA's knowledge, to date there is no case-law in Austria on the applicability of Article 4 of the European Convention on Human Rights in a case concerning a victim of THB.

29. The human rights-based approach to THB entails accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the systematic training of relevant professionals, further research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Austrian authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in Austrian law

i. Definition of "trafficking in human beings"

30. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of a child, under Article 4(c), it is immaterial whether the means referred to above have been used.

31. Under Austrian law, the only provision defining THB is Article 104(a) CC. According to this provision, "(1) any person who recruits, houses or otherwise accommodates, transports or offers or passes on to a third party a minor (under 18 years of age) or an adult using dishonest means (paragraph 2) against this adult with the deliberate intention of the minor's or adult's sexual exploitation, exploitation through organ transplantation or labour exploitation, is to be punished with a prison sentence of up to three years. (2) Dishonest means are defined as deceit regarding the facts, exploitation of authority, of situations of distress, of mental disease or any condition rendering the person defenceless, the intimidation or the granting or accepting of an advantage for surrendering control over that person (…)."[8]

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[7] Task Force on Combating Human Trafficking, National Action Plan against Human Trafficking covering the period from 2009-2011, prepared by the Republic of Austria, co-ordinated by the Federal Ministry of European and International Affairs, Vienna, 26 May 2009.

[8] Translation provided by the Austrian authorities. For the full text of Article 104(a) CC, see paragraph 134.

32. Pursuant to Article 104(a) CC, the following forms of exploitation are criminalised: sexual exploitation, exploitation through organ transplantation and labour exploitation. The list as such is not open-ended and therefore appears to be more restrictive than the one to be found in the Convention. According to the Austrian authorities, Article 104(a) CC has been interpreted by the judicial authorities in a rather wide manner as applying to types of exploitation which are not expressly mentioned. For instance, "sexual exploitation" encompasses the exploitation of the prostitution of the others and other forms of sexual exploitation, and "labour exploitation" covers forced labour or services as well as forced begging[9]. Further, THB for the purpose of slavery or practices similar to slavery and servitude is covered by Article 104 which prohibits slavery and slave trade. However, GRETA must stress that under Article 18 of the Convention, each Party shall establish as a criminal offence the conduct contained in Article 4(a) and that the list of forms of exploitation referred to in this provision is open-ended. The Austrian authorities have indicated that in the process of implementing the new EU Directive on THB (see paragraph 11) the exact wording of the above-mentioned provisions will be subject to review.

33. As far as the list of "means" is concerned, Article 104(a) of the CC refers to "dishonest means" and defines them as "deceit regarding the facts, exploitation of authority, of situations of distress, of mental disease or any condition rendering the person defenceless, the intimidation or the granting or accepting of an advantage for surrendering control over that person". Concerning the means of "threat or use of force", see paragraph 138. According to the authorities, the list of dishonest means in Article 104 (a) of the CC entirely covers the list of means foreseen in Article 4 (a) of the Convention. For instance, the concept of "deceit regarding the facts" in Article 104(a) of the CC covers all forms of deception and fraud.

34. For further analysis of Article 104(a) CC from a substantive criminal law perspective, see paragraphs 137-140.

ii. Definition of "victim of THB"

35. Article 4(e) of the Convention defines "victim of THB" as any natural person subject to THB as defined in Article 4 the Convention.

36. The Austrian authorities have indicated that in respect of criminal proceedings, victims of THB as defined by the Convention are covered by the definition of a victim provided for in Article 65(1) of the Code of Criminal Procedure (CCP). According to this provision, a "victim" is: "1) a person, who could have been exposed to violence or dangerous threat or whose sexual integrity could have been compromised through an intentional criminal offence, 2) the spouse, life companion, relative in a direct line, brother or sister of a person, whose death could have been caused by a criminal offence, or other relatives, who were witnesses of the criminal offence, 3) any other person, who could have suffered damage caused by a criminal offence or who could have otherwise been affected with respect to his/her interests protected by criminal legislation".

37. Pursuant to Article 4(b) of the Convention, the consent of the victim of THB is irrelevant where any of the means set forth in the definition of THB have been used. The Austrian authorities have indicated that the question of consent to the exploitation is irrelevant with regard to the standing as a victim in criminal proceedings. According to Article 104(a) CC, children are not in the position to consent to exploitation. Regarding adult victims, the authorities have stated that consent would be invalid since a precondition for the criminal offence is the use of dishonest means listed in Article 104(a)(2) of the CC.

[9] In the judgment 31 Hv 57/09s of the *Landesgericht für Strafsachen Wien*, exploitation of begging was considered as a form of labour exploitation.

38. There is no other definition of a victim of THB outside the scope of Article 65(1) of the CCP. However, this does not prevent authorities and NGOs from using an open approach. For instance, the Austrian authorities have indicated that a residence permit may be granted to a victim of THB regardless of whether the person is considered a victim under criminal law. LEFÖ-IBF can decide to offer assistance to women who may not be considered as victims of THB according to criminal law, and uses this possibility quite often. The question of the definition of a victim of THB and its implications for the identification process and the assistance provided will be further discussed later in this report (see paragraphs 77 and 94).

c. Comprehensive approach to the fight against THB, co-ordination of all actors and actions, and international co-operation

i. Comprehensive approach and co-ordination

39. One of the aims of the Convention is to design a comprehensive framework for the protection and assistance of victims and witnesses (Article 1(1)(b)). This comprehensive national action must be co-ordinated through a specific governmental body or entity. The Explanatory Report on the Convention adds that multidisciplinarity is necessary to combat THB effectively at the national level.

40. The previously mentioned Second National Action Plan against Human Trafficking (covering the period 2009-2011) can be seen as a comprehensive instrument to the extent that it covers all main fields of action envisaged by the Convention and contains a series of objectives and corresponding actions to be taken, some of which are described further in this report. That said, this Action Plan is rather general and, on a number of occasions, does not foresee any concrete actions beyond the adoption of a "report and, possibly, proposals". For instance, as far as the identification of child victims of trafficking is concerned, all relevant actors agree that there is a serious problem in this respect in Austria and that some children may go unidentified and may not receive the full protection they are entitled to as victims of THB (see paragraph 88 for further details). At the same time, the objective foreseen in the Action Plan (namely a "review of a concept for improved co-operation between the competent bodies – police, youth welfare authority, basic welfare support – with a view to identifying victims of child trafficking") does not address the urgency of this problem. As indicated later in this report (see paragraph 106), GRETA is of the opinion that the Austrian authorities should take rapid action to establish a nationwide system for the identification of and assistance to child victims of THB.

41. The internal Report by the Task Force on the implementation of the Second Action Plan in 2010 has been adopted in 2011. A new national action plan for 2012-2014 is in the process of being negotiated and is due to be adopted in December 2011. The Austrian authorities have indicated that the suggestions made by GRETA in its report will be taken into consideration in this new action plan.

42. There is no specific budgetary line in the federal budget dedicated to the fight against THB nor any specific amount allocated to the implementation of the Second National Action Plan against Human Trafficking. The Austrian authorities have indicated that the activities and measures to combat trafficking are financed from the budgets of each of the relevant ministries and other structures, and it is up to each ministry to decide on the amount it will spend to accomplish the tasks which are under its responsibility, including on activities such as training. As stated in the Second National Action Plan, "in view of the current difficult economic environment and the fact that the amount of budget funding for the implementation of the National Action Plan cannot be foreseen, measures having financial implications are in principle subject to the availability of funds".

43. Some training on THB organised for relevant officials in co-operation with NGOs has partially been financed by the NGOs concerned. That said, certain NGOs consider that the financial resources invested by the Government in action against THB have been insufficient to cover all relevant needs. The Austrian authorities have stated their intention to specify more clearly in the future the financial implication of the measures to be taken in the field of combating THB.

44. GRETA considers that certain aspects of the action against THB in Austria fall short of the comprehensive approach prescribed by the Convention. Firstly, the Austrian approach is incomplete in the sense that not all victims of THB benefit from an established system of identification and referral for protection and assistance (see paragraphs 77-89 for further information on the identification system). The Austrian authorities have so far set up a specialised infrastructure, in co-operation with civil society, primarily for the protection of and assistance to women victims of THB. However, as already stated above, trafficking in children is acknowledged to constitute a serious problem in Austria, and it is essentially only the Drehscheibe Centre in Vienna that is involved in providing protection and assistance to this group. Moreover, it is generally acknowledged that there are cases of trafficking in men for the purpose of sexual and/or labour exploitation. The current system for combating THB in Austria should therefore be extended to ensure that all victims of THB benefit from full protection and assistance.

45. In addition, GRETA has been informed of a geographical difference in the approach to the fight against THB. In several respects the infrastructures to fight THB existing in Vienna and environs are much more developed than in other *Länder*. For instance, there is no equivalent in terms of victims' accommodation and support to the Drehscheibe Centre operated by the city of Vienna, which does not normally take care of child victims of THB found in other *Länder* (see also paragraph 101). Further, it would appear that some *Länder* have not been involved sufficiently in the Task Force work even if representatives of the *Länder* are invited to participate in all meetings of the Task Force, the Working Group on Child Trafficking and the Working Group on Prostitution and receive the minutes/reports of all meetings.

46. As far as co-ordination with the *Länder* is concerned, in 2008, contact persons for matters related to human trafficking were appointed in all nine *Länder*. To fulfil the objective of strengthening national co-operation, the Second National Action Plan foresees that an annual meeting is to be organised between the Task Force and representatives of the *Länder*. The authorities have indicated that measures to reinforce co-ordination and co-operation between the Federal Government and the governments of the *Länder* will be included in the new action plan 2012-2014. In addition, a conference focusing on intensifying cooperation with the governments of the *Länder* is to take place on 22 June 2011 in Vienna.

47. Concerning the co-ordination of all relevant actors, the Austrian authorities have informed GRETA that the Task Force meets approximately once every six weeks. The Second National Action Plan foresees several activities aimed to further develop the Task Force and enhance its structure. In particular, it envisages the setting-up of a working group for the purpose of preparing rules of procedure of the Task Force. The Austrian authorities have indicated that the adoption of rules of procedure for the Task Force will be included as a concrete measure in the future action plan 2012-2014.

48. **GRETA considers that the Austrian authorities should take measures to reinforce the comprehensive approach to the fight against THB, by ensuring that the action undertaken encompasses all categories of victims (in particular that it is extended to children and men) and all forms of THB (including for the purpose of labour exploitation).**

49. **Further, GRETA considers that the Austrian authorities should reinforce co-ordination and co-operation between the federal government and the governments of the *Länder* with a view to ensuring that all aspects of THB and all regions of Austria are integrated in the efforts undertaken to combat THB.**

50. **GRETA also encourages the Austrian authorities to take measures to allocate and secure appropriate funds in the federal budget and the budgets of the *Länder* dedicated to action against THB, in consultation with all relevant actors, and reflecting the actual needs.**

ii. International co-operation

51. The Convention requires Parties to co-operate with each other to the widest extent possible in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

52. The Austrian authorities have informed GRETA of several arrangements made and actions taken in terms of international co-operation with other countries in the field of prevention of THB, protection of its victims and prosecution of traffickers. They have also referred to a new EU Directive currently under preparation on the European Investigation Order in criminal matters, which covers cases of trafficking in human beings and should further facilitate international cooperation in this field. Further, the future action plan for 2012-14 is expected to include concrete actions/measures to intensify the co-operation with neighbouring countries as well as with countries of origin. GRETA considers that to combat THB in an efficient way, it is crucial that countries of destination and transit, such as Austria, co-operate with countries of origin with respect to victims of THB finding themselves in the country of destination/transit.

53. As concerns prosecution, Austria is party to numerous multilateral agreements on mutual legal assistance applying to the offence of THB[10]. When no such agreement is relevant, the Austrian Law on Extradition and Mutual Legal Assistance may apply on the basis of reciprocity. The Criminal Intelligence Service of Austria is responsible for the exchange of information within the framework of international police co-operation. This exchange of information is performed on the basis of agreements such as Europol, INTERPOL or multilateral or bilateral treaties. Further, spontaneous transmission of information is possible under Article 59(a) of the Law on Extradition and Mutual Legal Assistance. The Austrian police also participates in the Analysis Work File on THB created and administrated by Europol ("Phoenix") the purpose of which is to support EU Member States in investigations on THB through the exchange of data from criminal investigations and criminal analysis.

54. In addition to co-operation within Europol and INTERPOL, the competent bodies within the Federal Criminal Intelligence Service can contact directly partner authorities in other countries. At present, Austrian police liaisons officers are accredited to 26 countries. They can also assist in initiating or carrying out investigations or proceedings concerning THB. International co-operation between the Austrian police and other police forces is generally considered as bringing good results by the authorities and other actors working in the field of anti-trafficking action. For example, a joint operation with the Hungarian police has resulted in the arrest of suspects in a case of trafficking into prostitution of Romanian and Hungarian women[11].

55. Concerning international co-operation in the field of prevention, the Austrian Development Agency (ADA), which is a member of the Task Force, runs a number of projects against THB and in particular several projects in co-operation with organisations in the Western Balkan region as well as in South and West Africa. These projects generally involve awareness-raising measures**,** reintegration and victim-protection initiatives, psychosocial support for victims and training sessions for officials and lawyers.

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[10] The authorities have pointed to the following agreements: 1) Regarding relations with the Member States of the EU: the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA); the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council Act of 29 May 2000 and its Protocol of 16 October 2001. 2) In the framework of the Council of Europe: the European Convention on Extradition of 13 December 1957 and its second Additional Protocol; the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its first Additional Protocol. 3) In the framework of the United Nations: the United Nations Convention against Transnational Organised Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol). Furthermore, Austria has concluded a number of bilateral extradition and/or multilateral treaties with several countries.

[11] The results of the operation were publicised at a joint press conference. See Europol press release, "Five victims of sex trafficking rescued in cross-border police operation". 19 November 2010.

56. The issue of co-operation in the field of the repatriation and return process of victims of THB and the absence of a systematised transnational referral mechanism will be addressed in paragraph 128.

57. **GRETA encourages the Austrian authorities to continue and further develop their co-operation with all relevant countries at the law enforcement and judicial level as well as in the field of preventive measures against THB.**

iii. Data collection

58. In Austria, data concerning THB is collected by different ministries and NGOs (victim support organisations). Police data on identified victims is different from that collected by NGOs because different criteria are applied to the identification of a victim of THB. NGOs tend to have an encompassing approach and include all persons whom they have assisted, while the police use a more restrictive approach linked to the investigation and the number of victims who have given testimony. This partly explains the significant difference between the figures communicated to GRETA by the Federal Ministry of the Interior, on the one hand, and those published by LEFÖ-IBF, on the other hand. According to the Federal Ministry of the Interior, a total of 124 victims of THB were identified in 2008 and 224 in 2009, while LEFÖ-IBF assisted 203 women and child victims of trafficking in 2008, and 182 in 2009.

59. Although statistical data on the overall numbers of prosecutions, convictions and sanctions related to the offence of THB is available, the statistical data system of the Federal Ministry of Justice does not provide information on how many times a specific criminal law provision has been applied by the courts. As indicated by the Austrian Report on judicial statistics[12], *"*in the case of conviction on the grounds of several actions that are punishable by law, the conviction is assigned to the 'leading offence*'*, i.e. the article that is decisive for the punishment imposed".

60. The Austrian authorities acknowledge the importance of the collection of data in the fight against THB**.** The Federal Ministry of Justice has set up an expert group to improve the existing data collection and data analysis. This expert group is working on the technical requirements to collect more information related to victims, in particular gender, age and nationality. In addition, the Federal Criminal Intelligence Service is also working on improving its system of data collection in the field of THB. According to the Austrian authorities, close cooperation within the framework of the European Union will facilitate the collection of comparable data on an EU-wide basis.

61. In the opinion of GRETA, the availability of comprehensive and reliable data on THB is essential when it comes to drawing up strategies, including national action plans, and planning measures that are tailored to specific needs. It is also important that the data reflects a gender-based approach and an approach based on the rights of the child, both of which are transversal themes in the Convention. The above-mentioned difference in approach to counting victims of THB and the lack of detailed data make it difficult to undertake a comprehensive assessment of the situation[13] and the extent to which the measures to combat THB corresponds to the actual needs.

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

12 Gerichtliche Kriminalstatistik, Statistik Austria, 2009.

13 See for instance Section 4 of this report.

2. Implementation by Austria of measures aimed to prevent trafficking in human beings

63. According to the Convention, Parties must take measures to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society as appropriate (Article 5(2) and 5(6)). Implementation of preventive measures concerns all countries, whether they are countries of origin, transit and/or destination of THB. The Convention establishes that Parties must take measures to discourage demand, strengthen border controls and ensure the integrity and security of travel or identity documents (Articles 6 to 8).

a. Research

64. There are some research projects in the field of THB such as a recent study on THB for labour exploitation in Austria, conducted by the Ludwig Boltzmann Institute of Human Rights and co-financed by the Austrian Government, as a part of an international research project on THB for labour exploitation (for another example, see paragraph 121). However, GRETA was informed that certain aspects of the action against THB would require further research. Although the Federal Ministry for Social Affairs and Consumer Protection financed a study regarding assistance and protection for male victims of THB in Austria, further research on the topic of trafficking in men would be advisable in order to identify the best ways of preventing this type of trafficking and protecting this category of victims. Trafficking in children also requires further research.

65. **GRETA considers that the Austrian authorities should put stronger emphasis on the aspect of research programmes to prevent THB. In particular, GRETA invites the Austrian authorities to continue supporting research on the nature and extent of the THB, in particular for the purpose of labour exploitation as such, in order to have a better grasp of the problems and to take appropriate action to tackle these forms of THB.**

b. Awareness raising and education

66. Article 5(2) of the Convention requires that each party establish and/or strengthen effective policies and programmes by means of awareness-raising activities. A series of measures designed to raise awareness on THB have been taken in recent years by the Austrian authorities, sometimes in co-operation with civil society and/or intergovernmental organisations. For instance, an annual event is organised on the occasion of the EU Anti-Trafficking Day (18 October). In 2009, this event took the form of a conference entitled “Together against human trafficking: a comprehensive multidisciplinary approach towards trafficking in human beings, active co-operation among countries of origin, transit and destination”. In 2010, another conference under the title “Joining forces against trafficking” explored the situation in Austria as well as the need for global partnership and action in combating human trafficking.

67. As far as awareness-raising measures for young people are concerned, an exhibition entitled “THB - 21 century’s slavery” was launched in October 2010 and is currently circulating in schools and universities throughout Austria. The Second National Action Plan contains the objective of elaborating a concept which would consider previous experiences from the implementation of awareness-raising activities aimed at school children and teachers.

68. An interesting initiative is the organisation of training sessions by the Ministry of Defence for members of the Austrian armed forces who participate in peace-keeping operations abroad and are in contact with the local population. This training is an opportunity to raise awareness on the issue of THB and on the need to be vigilant and resolved to take appropriate action when confronted with cases of THB.

69. The Federal Ministry for Social Affairs and Consumer Protection has undertaken measures to raise awareness on the problem of THB among labour inspectorates. Currently, the Ministry is working on a leaflet aimed at providing practical information (criteria for identifying victims of THB, etc.). A specialised workshop on THB for the purpose of labour exploitation is to be organised in the autumn of 2011.

70. The Second National Action Plan includes a number of other awareness-raising measures targeted at specific groups, such as media representatives and general public. The plan envisages activities dealing with the demand-related aspects of THB (in co-operation with private sector companies, trade unions, the media, etc.). Reference should also be made to an initiative targeting demand organised by the International Organization for Migration (IOM) in Vienna in 2010 including the distribution of posters "Buy responsibly" and a press conference.

71. **GRETA considers that the Austrian authorities should take further measures to raise awareness on the problem of THB, in particular as regards child trafficking and trafficking for the purpose of labour exploitation. Awareness-raising campaigns should target among others foreign nationals coming to work in Austria, employers and employers' associations, trade unions, social workers, recruitment agencies and other intermediaries, as well as labour and tax inspectors.**

c. Measures to enable legal migration

72. Article 5(4) of the Convention requires Parties to take appropriate measures "to enable migration to take place legally, in particular through dissemination of accurate information on the conditions enabling the legal entry in and stay on its territory".

73. In the field of combating THB for the purpose of domestic servitude in diplomatic households, the FMEIA has introduced several preventive measures. Since 2009, any foreigner who wishes to come to Austria to work for a diplomatic household has to apply in person for a diplomatic legitimation card. This gives the Austrian authorities an opportunity to interview the applicants, examine their work contracts, and inform them of their rights and obligations while in Austria and of the contact details of NGOs which could be of assistance. The FMEIA requests that a written contract be concluded between the employer and the employee and that the working conditions be in conformity with Austrian labour law, in particular in terms of leave and minimum wages. The contract should also ensure that the employee is paid by means of transfer to his/her bank account

74. The Austrian authorities have informed GRETA of a procedure put in place for foreign nationals who apply for a visa, according to which they have to apply for the visa in person and on this occasion they receive information on the legal aspects of their stay in Austria, including on the danger of THB. Consular staff are instructed to refuse to grant a visa if there is a suspicion that the applicant might become exploited. The authorities have also issued a brochure in several languages aimed at informing visa applicants about possible risks of exploitation, their rights and relevant contact details in case of emergency.

75. Diplomatic and consular staff working abroad are regularly trained on questions of THB as part of their general training curriculum in order to enable them to identify victims of THB or traffickers who apply for a visa, as well as to take appropriate measures to alert the relevant authorities.

3. Implementation by Austria of measures to protect and promote the rights of victims of trafficking in human beings

a. Identification of victims of THB

76. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, they must provide its competent authorities with persons who are trained and qualified in preventing and combating THB, in identifying and helping victims, including children. The Convention also establishes that when the competent authorities have reasonable grounds to believe that a person has been a victim of THB, he/she must not be removed from the country until the identification process relating to whether the person is a victim of trafficking is completed.

77. In Austria, the police is the main body identifying victims of THB, and in particular the special Central Unit on Migrant Smuggling and THB of the Federal Criminal Intelligence Service within the Federal Ministry of the Interior. Victims of THB who have been identified by the police are referred to the NGO LEFÖ-IBF (in the case of women) or the Drehscheibe Centre (in the case of children found in Vienna).

78. LEFÖ-IBF can also identify victims of THB and provide them with accommodation and assistance. GRETA was informed by the authorities granting residence permits in Vienna that they would be ready to consider the case of a person identified as a victim of THB by LEFÖ-IBF and applying for a residence permit (see paragraph 111). Further, social workers and other officials who enter into contact with potential victims, as well as other NGOs, participate in the identification process of victims of THB and may refer them to the police. According to the Austrian authorities, there is an ongoing exchange of information between the special police units and victims' protection organisations.

79. Self-reporting of victims is very rare, particularly in the case of male victims, irregular migrants and children, who either do not consider themselves as victims or are reluctant or fearful to come forward. In July 2010, the police set up a nationwide hotline in respect of trafficking in human beings, the aim of which is to enable individuals to report cases as well as to facilitate self-reporting.

80. To identify a victim of THB, police officers use the definition of THB in Article 104(a) of the CC ("trafficking in human beings") and to some extent Article 217 of the CC ("transborder prostitution trade"). Police officers have at their disposal various documents and manuals on THB and victim identification which list the main indicators for identifying a victim of trafficking[14].

81. GRETA notes as positive developments the setting-up of specialised police units at regional level and the inclusion of the topic of THB in police officers' basic and on-going training programmes. Further, a seminar on this issue is organised yearly by police experts and NGOs, and an electronic training manual is available to law enforcement officers. However, there is reportedly still a problem of lack of awareness among certain police officers coming into contact with potential victims of trafficking, in particular outside Vienna. The First Austrian Report on Combating Human Trafficking (2009) underlines that "it is important to give clear instructions to the police officers working in the street on how to deal with victims of human trafficking"[15].

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[14] For example, a leaflet entitled "Child Trafficking in Austria: Background Information and Checklist to Assist Youth Welfare Authorities, Police Forces, Aliens' Authorities, Embassies/Consular Offices and Justice in Identifying Victims of Child Trafficking" (Federal Ministry of Health, Family and Youth, September 2008).

[15] See First Austrian Report on Combating Human Trafficking (covering the period from March 2007-February 2009), Federal Ministry for European and International Affairs, item 3.3.

82. According to the Austrian authorities, border police officers receive intensive training on the topic of THB, particularly in the context of the enlargement of the Schengen area[16]. Similarly, consular staff receive information and training (see paragraph 75). Further, tax inspectors reportedly receive regular training on identifying potential victims of trafficking.

83. The number of men who have been identified as victims of THB in Austria is low and it is acknowledged that the official figures do not reflect the real situation. Male victims of THB may be more reluctant than women to declare themselves as victims of THB and to seek assistance. In addition, because of the focus on women trafficked for sexual exploitation, staff in contact with immigrants might be less alert to signs that a man is a potential victim of trafficking. The Austrian authorities have stated that the police are working in the direction of improving the identification of trafficked men[17].

84. GRETA is concerned that possible victims of trafficking residing illegally in Austria and placed in police detention centres pending deportation run the risk of being deported before they have been identified. Such persons cannot receive the protection they are entitled to in accordance with the Convention, including the reflection and recovery period of at least 30 days. Apart from UNHCR representatives and private legal counsellors, there is a very limited number of NGOs that have access to detention centres for irregular migrants. LEFÖ-IBF in particular does not have direct access to such centres and cannot check whether they are holding potential victims of THB. According to the Austrian authorities, staff working in detention centres are obliged to refer any suspected case of trafficking to the police and/or LEFÖ-IBF. However, to GRETA's knowledge, hardly any foreign national held in a police detention centre has been referred to LEFÖ-IBF as a potential victim of THB. One explanation could be the lack of awareness among staff and legal counsellors having access to these centres as regards the problem of trafficking in human beings.

85. GRETA notes that one of the measures envisaged by the Second National Action Plan is to review the opportunities for identifying/providing care and support to (potential) victims of human trafficking during detention pending deportation. The Austrian authorities have indicated that as of 1 December 2011, all foreign nationals detained by the aliens police, including persons identified as victims of trafficking, will have access to free-of-charge legal counselling, with a special attention to be given to victim protection. The Task Force will also explore options of granting specialised NGOs access to detention centres. GRETA considers that it is essential that victims of trafficking in police detention centres are properly identified as such in order to benefit from the recovery and reflexion period, a risk assessment, the definition of their immediate needs with a view to cater to them, and a referral to a crisis structure providing them with appropriate and secure accommodation and other forms of assistance. Another risk resulting from the non-identification of victims of THB among irregular migrants is that they could be punished for falsification of identity documents, illegal prostitution or illegal stay although they have been compelled to commit these offences by their traffickers (see paragraph 157).

86. Another issue is the identification of victims of THB among asylum seekers. For instance, some women from Nigeria and other African countries who are asylum seekers have reportedly been forced into prostitution by their traffickers. In general, asylum seekers and in particular those who live in reception centres are in a vulnerable position vis-à-vis traffickers. GRETA notes with interest the launching of a pilot project in a reception centre for asylum seekers, in co-operation with LEFÖ-IBF, which aims at facilitating the identification of victims of trafficking.

16 See First Austrian Report on Combating Human Trafficking, p. 4.
17 See First Austrian Report on Combating Human Trafficking, item 3.8.

87. As regards the identification of victims of trafficking for sexual exploitation, the weekly health checks of registered sex workers could be used as an opportunity to detect potential victims of THB. These health checks could be supplemented by the provision of social counselling and by training medical staff involved in the checks to identify possible victims of THB and to refer them to relevant structures. However, there are a number of foreign national sex workers who work illegally in Austria and are particularly vulnerable to THB as they are not registered.

88. GRETA is concerned that there are serious shortcomings in the identification process of child victims of trafficking. Several entities have underlined the lack of awareness and knowledge of THB amongst relevant officials and in particular youth welfare centres[18]. According to the Report of the Working Group on Child Trafficking, "potential victims of child trafficking are frequently treated as offenders (for instance by police forces when they apprehend minors for theft, drug trafficking or prostitution) or as illegal migrant and unaccompanied refugee minors"[19]. The current system for age identification has been criticised as being uncertain and unfavourable to the person concerned. As indicated in the Report of the Working Group on Child Trafficking, there have been a few reported cases of unaccompanied minors disappearing from accommodation centres and sometimes reappearing in another city. Although it is not possible to state with certainty whether these minors were victims of trafficking, such examples show that there is a need for further co-operation and co-ordination among youth welfare institutions to ensure appropriate identification of and assistance to child victims of THB throughout Austria (see paragraph 106)[20].

89. The Second National Action Plan foresees several measures to improve the identification of potential victims of human trafficking, including training of relevant officials, involvement of relevant actors in the fight against THB for the purpose of labour exploitation, and further development of the criteria for the identification of victims of trafficking. It is encouraging that training seminars on action against child trafficking are organised in co-operation with ECPAT-Austria. However, more needs to be done to improve the identification of victims of THB in Austria.

90. **GRETA considers that the Austrian authorities should develop the training on the identification of victims of THB for staff working in detention centres for irregular migrants.**

91. **GRETA also invites the Austrian authorities to continue providing training of the identification of victims of THB to all relevant officials**, **in particular law enforcement officials, border guards, immigration officials, staff working in refugee centres, child and youth welfare institutions, and diplomatic and consular staff.**

92. **GRETA considers that the Austrian authorities should take further measures to:**

- **adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, for example by organising regular visits by labour inspectors to work sites (e.g. agricultural and construction sites) commonly using migrant workers;**

- **secure the identification of victims of THB held in police detention centres prior to their deportation, by giving access to such centres to specialised NGOs and enabling detained irregular migrants to have access to legal assistance;**

- **ensure that identified victims of THB are duly referred for assistance and are informed of their rights and of the procedures under which they can seek protection, in a language they understand.**

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[18] See for instance the Letter prepared by the participants of the Round Table on Trafficking in Children (Ludwig Boltzmann Institute of Human Rights, ECPAT, FICE, ICMPD, IOM, LEFÖ-IBF, UNICEF and UNODC) launched by UNICEF in 2007, mentioned in the Report by the Working Group on Child Trafficking under the Task Force on Human Trafficking.

[19] See, for instance, the cases described in the Report by the Working Group on Child Trafficking under the Task Force on Human Trafficking, p. 19 and 27.

[20] The Second National Action Plan includes the "review of a concept for improved co-operation between the competent bodies (police, youth welfare authority, basic welfare support) with a view to identifying victims of child trafficking".

b. Assistance measures

93. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12).

94. Assistance measures provided to victims of THB in Austria differ considerably due to the fact that there is no specific legislation or scheme applying to all victims of THB on a nationwide basis. Most services available to victims of trafficking are designed and tailored to the needs of female victims; as a result, men identified as victims of THB do not have access to many of these services. In particular, there is no shelter or other safe accommodation for male victims of THB. The Austrian authorities have indicated that the Task Force would explore options to create a special shelter for male victims of THB and that measures to protect and assist male victims of THB would be part of the future action plan for 2012-2014.

95. Victims of THB can benefit from assistance measures on grounds other than their status of victims of THB, for instance, as asylum seekers or because they belong to the category of foreigners who may benefit from an allowance to cover their basic subsistence needs. There are also differences between *Länder* due to the fact that social, child and youth welfare is generally of the competence of the *Länder*.

96. As far as female victims of trafficking are concerned, LEFÖ-IBF is the only NGO mandated by the State to assist victims of trafficking, in principle migrant adult women[21]. An agreement has been set up between the Federal Ministry of the Interior and the Women's Directorate at the Federal Chancellery on the one hand and LEFÖ-IBF on the other hand, pursuant to which LEFÖ-IBF is supported financially by these two government agencies. This agreement applies nationwide. There are some 50 other victim support organisations which have concluded similar agreements with the Government on psychosocial and legal assistance to victims of other types of criminal acts but LEFÖ-IBF is the only one focusing on victims of THB.

97. Under Article 56(1) of the Law on Security Police, police officers are obliged to inform the presumed victim about the possibility of receiving counselling and support from LEFÖ-IBF. They have also to inform LEFÖ-IBF about victims in so far as it is necessary to ensure their protection. LEFÖ-IBF may provide the police with information concerning the victim, but only with the latter's consent. LEFÖ-IBF can be contacted by the police through a 24-hour hotline.

98. By virtue of the above-mentioned agreement, LEFÖ-IBF provides free psychosocial support and legal assistance to victims of trafficking in the context of the criminal proceedings. This involves preparation of the victim for the criminal proceedings and the emotional difficulty that might be related to it, accompanying the victim during the proceedings, and providing legal counselling and legal representation for victims who are witnesses or private parties during criminal proceedings.

[21] The mandate is based on Article 25 of the Austrian Law on Security Police and Article 66(2) of the Code of Criminal Procedure.

99. LEFÖ-IBF also offers a wide range of services to victims and potential victims of trafficking, including health care, crisis intervention and accommodation in a secret emergency shelter that can accommodate up to 12 persons. It also provides another accommodation facility for stabilisation (with a capacity of six places) for women who have recovered enough to live more independently and without the presence of a cultural mediator. Other forms of assistance provided by LEFÖ-IBF include a personal counsellor assigned to each woman, help in administrative procedures (such as residence permit application, obtaining identity documents), translation and interpretation in a wide range of languages, assistance to access the labour market and vocational training, German language courses and other integration measures.

100. During the recovery and reflection period (see paragraph 101), victims have access only to emergency medical assistance. This represents a problem as access to general medical care can be crucial for persons who are traumatised and usually do not have the means to pay for it themselves. The Austrian authorities have indicated that one of the priorities of the Second National Action Plan is to find ways of providing better medical care for victims of trafficking who have not yet obtained a residence permit.

101. The Drehscheibe Centre, founded and operated by the city of Vienna, provides unaccompanied foreign minors and child victims of trafficking with accommodation, food and protection and tries to determine the children's identity. Children are often brought to the shelter after having been apprehended by police while committing petty crime or begging in the streets. The number of such children was quite high in the mid-2000s (315 in 2004, 701 in 2005 and 319 in 2006, but declined in recent years (72 in 2007and 88 in 2008). The Centre indicated that its policy is to return the children, if possible, to their country of origin and their family, the focus being on the best interest of the child[22].

102. The work of the Drehscheibe Centre in favour of child victims of trafficking has been generally described as having positive results. However, as the centre is operated by the city of Vienna its action is limited geographically. Further, the Drehscheibe Centre has limited means and capacity and is not responsible only for victims of trafficking, but more generally for unaccompanied foreign minors.

103. The absence of a nationwide system of identification and assistance to child victims of trafficking represents a serious lacuna in Austria. As noted above, child and youth welfare is within the competence of *Länder* and the care and support provided depends on the specific standards applicable in the respective *Länder*[23]. According to the Report of the Working Group on Child Trafficking, the participants of the Round Table on Trafficking in Children concluded that "trafficking in children is a nationwide problem in Austria and therefore requires a nationwide, co-ordinated response involving a nationwide care and support concept"[24]. The solution advocated by several members of civil society is the establishment of a nationwide referral mechanism for child victims of THB which would allow for appropriate identification of these victims and ensure that, once identified, they receive all the protection and assistance they are entitled to.

104. There are a number of other NGOs which assist victims of trafficking, sometimes specialising in the support of specific group, such as African women, children or sex workers. LEFÖ-IBF co-operates with other NGOs in Austria and in countries of origin of victims of trafficking.

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22 See also below: Repatriation and return of victims.

23 For more information and details on these standards, see Report by the Working Group on Child Trafficking under the Task Force on Human Trafficking, p.21.

24 See for instance the Letter prepared by the participants of the Round Table on Trafficking in Children (Ludwig Boltzmann Institute of Human Rights, ECPAT, FICE, ICMPD, IOM, LEFÖ-IBF, UNICEF and UNODC) launched by UNICEF in 2007, mentioned in the Report by the Working Group on Child Trafficking under the Task Force on Human Trafficking.

105. **GRETA considers that the Austrian authorities should take measures to:**

- **further develop co-operation with governmental and non-governmental organisations in order to ensure the provision of protection and assistance to all victims of THB. In particular, victims outside Vienna should be guaranteed access to protection and assistance measures, for instance by establishing a network of contact persons/offices in each *Land* which can be consulted by victims who live there;**

- **facilitate access to general health care for potential victims of THB who are still in the process of being identified;**

- **create an assistance system adapted to the specific needs of men victims of THB.**

106. **Further, GRETA urges the Austrian authorities to develop a nationwide system for the identification of and assistance to child victims of THB by establishing co-ordination and contacts between all the relevant authorities and in particular the authorities of the *Länder*. Solutions should be found for emergency assistance particularly in terms of shelter accommodation, but also medium and long term support programmes tailored to the needs of children.**

c. Recovery and reflection period

107. As victims of THB are extremely vulnerable after the trauma they have experienced, the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and it serves a number of purposes, including to allow them to recover and escape the influence of traffickers. During this period, Parties must authorise the persons concerned to stay in their territory and expulsion orders cannot be enforced.

108. According to information provided by the Austrian authorities, the Federal Ministry of the Interior has introduced by an internal decree a recovery and reflection period of a minimum of 30 days for presumed victims of trafficking, during which time the person concerned should not be removed from Austria. Police officers are reportedly informed of the provisions of this decree on a regular basis. However, GRETA has received information which would suggest that potential victims of THB are not sufficiently informed by the police of the existence of this period. Further, it is not clear what kind of assistance and support potential victims are entitled to during this period. GRETA has not been informed of the exact number of persons who have benefited from a recovery and reflexion period but, according to non-governmental sources, their number is very low and concerns only persons who had accepted to co-operate with the law enforcement authorities.

109. **GRETA considers that the Austrian authorities should take measures to:**

- **establish clearly in law a recovery and reflection period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim of THB and during which period it is not possible to remove the person from the country's territory;**

- **raise the awareness of law enforcement officials of the need to respect the recovery and reflection period and to inform potential victims of THB of its existence and implications;**

- **guarantee to persons who are entitled to the recovery and reflection period all the assistance measures provided for in Article 12 (1) and (2) of the Convention.**

d. Residence permits

110. Article 69(a)(1) of the Law on Settlement and Residence (LSR) provides for a residence permit for special protection of at least 6 months for nationals of non-EU countries who have been victims or witnesses of THB or transborder prostitution trade or who have been smuggled into Austria, with a view to enabling criminal prosecution or for the victim to pursue civil law claims related to the respective offence. This provision was amended in April 2009 in order to enable victims to apply themselves for such a residence permit. In case of refusal, it is possible to appeal the decision to the Federal Ministry of the Interior. Aliens police officers have the obligation to inform the persons concerned of their right to apply for such a residence permit, the application procedure and the possibility to get into contact with LEFÖ-IBF. The provision of this information is not conditional on the willingness of the victim to cooperate with the law enforcement authorities.

111. According to the Austrian authorities, the main condition for obtaining a residence permit for special protection is that the authority responsible for granting it is informed of the existence of an offence and that legal proceedings have started. This explains why aliens police officers are under the obligation to inform the relevant authority about such cases. The permit is only granted if the person does not represent a threat to public order. However, according to an agreement between the aliens police and the residence authority, a general residence ban is not an obstacle to issuing a specific residence permit for special protection. The authorities have stressed that the granting of a residence permit does not depend on the co-operation of the victim with the law enforcement authorities. In Austrian law there is no explicit possibility to grant a residence permit on grounds of the personal situation of the victim of trafficking as provided for in Article 14(1)(a) of the Convention. However, the Austrian authorities have explained that as the Task Force is also involved in specific cases of THB and due to a functioning network in the framework of the Task Force, solutions can also be found on an individual basis in order to protect the rights of victims of THB.

112. In principle, the authorities have an obligation to decide whether to grant a residence permit for special protection within six weeks. However, it seems that in practice this deadline is not always met and that applicants have to wait longer. GRETA was informed that the residence permit is generally granted for a period of one year and that it is renewable. Under certain conditions, the residence permit for special protection may be followed by a long-term residence permit. Thus it is possible to apply for a limited residence permit (Article 43 of the LSR) after one year if legal proceedings are still pending and if the conditions related to the Agreement on integration[25] have been fulfilled, and for an unlimited residence permit (Article 44 of the LSR) after three years of stay. All residence permits, including the one for special protection, give access to the labour market.

113. Information on the number of residence permits for special protection issued to victims of THB was not available, due to the decentralised decision making and the lack of indication in the statistics of the grounds on which such permits were granted. Regardless of the authorities' affirmation, concerns have been expressed by NGOs that in practice such residence permits are only issued to victims who co-operate with the police.

114. GRETA was informed that in practice, victims of THB who are granted a residence permit experience difficulties in accessing the labour market and vocational training, despite the assistance provided by NGOs. An application for a first work permit can be made only by the employer, which means that the person needs to find an employer ready to apply on his/her behalf. The authorities have indicated that in March 2011, the Law on Foreigners' Employment was amended in order to enable the granting of work permits to victims or witnesses of THB who have received a residence permit on the grounds of Article 69(a) LSR regardless of the rule on quotas on work permits for each sector. This measure will hopefully facilitate access of the persons concerned to the labour market and the training services offered by the Austrian labour market Service. Another avenue currently being explored by the Task Force is to give access to vocational training to victims of trafficking who are unable to find a job.

[25] Agreements on integration are concluded between the State and an applicant for a residence permit and mainly deals with the requirement that the applicant attends German classes.

115. **GRETA considers that the Austrian authorities should continue to take steps to facilitate the access of victims of THB who are granted a residence permit to vocational training and work.**

e. Compensation and legal remedies

116. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of THB to legal assistance and free legal aid. Parties must also provide for the right of victims to compensation from the perpetrators of the THB, and take measures to guarantee compensation for victims, in accordance with their internal law.

117. In Austria, there is a general obligation for all relevant entities (police, prosecution authorities, judges) to inform victims of a criminal offence of their rights in the criminal proceedings.

118. As far as criminal and civil proceedings are concerned, the possibility of claiming compensation before criminal and civil courts is independent of the claimant's citizenship, domicile or legal status in Austria. The rules applicable to the compensation of material and non-material damages suffered by victims of THB are those concerning the compensation for victims of violent crimes. In accordance with Article 67 of the CC, victims of criminal offences are entitled to claim compensation for damages suffered as a result of the offence or if they have otherwise been affected with respect to their interests protected by criminal legislation. If a further examination of the damages suffered is required from a civil law point of view, the victims are referred to civil courts. Similarly, if the criminal proceedings do not result in a conviction, the victim can claim civil damages to a civil court. Victims are also entitled to directly claim compensation before civil courts for damages suffered from a THB-related crime (Article 1293 onwards of the Civil Code). It is a positive step that pursuant to an amendment made to the Law on Protection against Violence in 2009, victims of THB are entitled to free psychosocial assistance in case of civil law proceedings aimed at obtaining compensation for damages.

119. On 30 November 2010, the Austrian National Assembly enacted the so-called "criminal law competence package". The provisions of this law which concern the strengthening of the system of confiscation entered into force on 1 January 2011. The Austrian authorities have indicated that the Federal Ministry of Justice would establish specialised public prosecutors for the confiscation of profits of crime and that this new measure would contribute to support victims of THB to claim compensation from confiscated assets.

120. Further, the Law on Victims of Crime provides for a compensation scheme for victims of violent acts that applies to victims of THB as well. They are entitled to assistance when they have suffered physical injuries or damage to health. This assistance is financed by a State compensation fund. Austrian citizens receive compensation from this fund irrespective of the place where the offence was committed. EU/EEA citizens are only entitled to compensation if the act was committed in Austria or, in some specific circumstances, in cases which happened abroad if their country of origin does not pay any compensation. The Austrian authorities have indicated that only three victims of THB have so far applied for compensation on the basis of the Law on Victims of Crime and that all three cases concerned EU citizens. Further to an amendment introduced in 2005, third-country nationals may receive compensation through the State compensation fund but only if they were residing legally in Austria at the time when the offence took place. As already pointed out, all victims so far identified in Austria have been foreigners, either from new EU countries or from third countries. In the latter case, they were often residing illegally in Austria at the time of the offence, which made them ineligible for assistance from the fund. However, the authorities have indicated that in such cases, the Federal Ministry of Finance may grant a hardship allowance according to Article 14(a) of the Law on Victims of Crime. To GRETA's knowledge, this possibility has not yet been used in respect of victims of THB.

121. Research shows that the chances of third-country nationals and children to receive compensation either from the perpetrators or the State are very low. The limited results in terms of compensation are also partly linked to the low number of prosecutions and convictions of traffickers (see paragraph 148). A recent study on compensation for victims of THB in Austria, prepared by LEFÖ-IBF, the Ludwig Boltzmann Institute of Human Rights and others, contains recommendations on how to improve access to compensation. The Austrian authorities have indicated that some of these recommendations will be taken on board when drafting the future action plan for 2012-2014.

122. **GRETA considers that the Austrian authorities should adopt measures to facilitate and guarantee access to compensation for all victims of THB, including those who were residing illegally in the country at the time of the offence by taking due account of the results of the research on THB victims' access to compensation in Austria.**

f. Protection of witnesses and victims

123. The Code of Criminal Procedure provides for a number of protection measures applicable to witnesses and victims of criminal acts, including victims of THB. Depending on the age, psychological and/or health condition of the witnesses, their participation in the criminal proceedings can be organised through audio-visual means when requested by a public prosecutor or when decided ex officio by a judge. The Code of Criminal Procedure also provides that under certain conditions, a witness can testify anonymously. There are specific protection procedures provided for witnesses under the age of 14, and for witnesses or who have been victims of sexual abuse. Further, the Federal Ministry of the Interior operates a witness protection programme that is applicable to victims of trafficking and, under specific conditions, to their relatives. However, it seems that this programme is very seldom applied to victims of THB.

124. The obligation to inform the victim of the release of the perpetrator has been introduced recently in the Code of Criminal Procedure. However, according to NGOs, the protection of victims should be continued after the end of the trial and when the perpetrator is released from detention.

125. **GRETA considers that the Austrian authorities should take steps to extend the protection measures for victims of THB after the end of the criminal law proceedings, and particularly when the perpetrator is released from detention.**

126. **GRETA encourages the Austrian authorities to make full use of the witness protection programme in respect to victims of trafficking and/or their relatives where necessary.**

g. Repatriation and return of victims

127. The Convention requires Parties to establish repatriation programmes, involving relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return, including into the education system and the labour market. Parties must also make available to victims of THB information on the services and organisations which could assist them upon their return. The return of victims of THB must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the persons and for the status of any legal proceedings related to the fact that the person is a victim of THB (Article 16).

128. According to the Austrian authorities, since 2009 the Federal Ministry of the Interior has been implementing special return and reintegration programmes aiming at providing financial support and counselling activities for victims of trafficking. The Second National Action Plan foresees the examination of target-oriented repatriation and reintegration programmes. The Austrian authorities have also indicated that within the framework of the EU repatriation fund, a project by LEFÖ-IBF is being implemented which is aimed at developing a list of quality standards, such as the principle governing voluntary return, an effective risk assessment based on the individual's story of a person and taking into account any special individual vulnerability.

129. In some cases, victims of trafficking return voluntarily to their country of origin. In such a case, female victims may benefit from the assistance of LEFÖ-IBF which works in co-operation with NGOs in the country of origin. It is unclear what happens in case of a non-voluntary return. The Austrian authorities have indicated that although in cases of illegal presence the law entitles the aliens police to enforce return, in practical terms this is not done. However, this has to be read in connection with the information in paragraph 84 concerning the lack of identification of victims of THB among detained irregular migrants, which may lead to a situation in which a non-identified victim of THB is removed from Austria on a non-voluntary basis.

130. As regards child victims of THB, the Drehscheibe Centre has developed a model for repatriation. The solution of repatriation is often considered by the centre to be the one which meets the condition of safeguarding the best interest of the child. Concerning Bulgaria and Romania and some non-EU countries in Eastern Europe, the centre has developed a model in partnership with the authorities and youth welfare institutions in these countries. Special monitoring of every repatriated child enables the provision of support and assistance to the children following their return. However, this procedure is followed only by the Vienna regional welfare centre; it does not apply to all child victims of THB in Austria.

131. **GRETA considers that the Austrian authorities should develop a clear institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child.**

4. Implementation by Austria of measures concerning substantive criminal law, investigation, prosecution and procedural law

a. Substantive criminal law

132. As explained above (see paragraph 12), Article 104(a) of the CC ("trafficking in human beings") was introduced in 2004 and the title of Article 217 was changed to "transborder prostitution trade", when Austria ratified the Palermo Protocol. Later on, at the time of ratifying the Council of Europe Anti-Trafficking Convention, it was considered that there was no need to adopt new criminal law provisions in order to implement the Convention.

133. The following Austrian law provisions are considered to be relevant for the implementation of the Convention in the field of substantive criminal law: Article 104, Article 104(a) and Article 217 of the CC, as well as Article 116 (exploitation of a foreign person) of the Aliens Police Law.

134. Article 104(a) of the CC reads**:** "(1) any person who recruits, houses or otherwise accommodates, transports or offers or passes on to a third party a minor (under 18 years of age) or an adult using dishonest means (paragraph 2) against this adult with the deliberate intention of the minor's or adult's sexual exploitation, exploitation through organ transplantation or labour exploitation, is to be punished with a prison sentence of up to three years. (2) Dishonest means are defined as deceit regarding the facts, exploitation of authority, of situations of distress, of mental disease or any condition rendering the person defenceless, the intimidation or the granting or accepting of an advantage for surrendering control over that person. (3) A person who commits the criminal act using force or severe threats is to be punished with a prison sentence of a minimum of six months up to five years. (4) A person who commits the criminal act against a minor below the age of 14 years, in the context of a criminal association, under the use of severe violence or in such a way that the life of the person is severely endangered deliberately or by gross negligence or in such a way that particularly serious harm is caused to the person, is to be punished with a prison sentence of at least one year up to ten years."[26]

[26] Translation provided by the Austrian authorities.

135. Under Article 217 of the CC, "(1) a person who procures or recruits another person into prostitution, regardless of whether this person is already prostituting herself/himself, in a country different from the one she/he is a citizen or permanent resident of, is to be punished with a prison sentence of a minimum of six months up to five years. If a person commits this criminal act on a professional basis with the intention to gain regular profits from such criminal acts, he/she is to be punished with a prison sentence of a minimum of one year up to ten years. (2) A person who, with the deliberate intention that another person prostitutes herself/himself in a country different from the one she/he is a citizen or permanent resident of, by deceiving the other person about this undertaking or using violence or severe threats, induces or forces the other person to move to another country, or brings such person to another country using force or exploiting the misapprehension of the other person about the real nature of the undertaking, is to be punished with a prison sentence of a minimum of one year up to ten years."[27]

136. Another provision mentioned in the context of the fight against THB is Article 116 of the Aliens Police Law. This article provides that: "(1) A person who, with the deliberate intention of obtaining continuous profits from the exploitation of the specific dependency of a foreign person, who resides illegally in the country, does not have a working permit or otherwise is in a particular situation of dependency, exploits such foreign person, is to be punished by the court with a prison sentence of up to three years. (2) A person who brought a foreign person into a situation of hardship by such criminal act or exploits a larger number of foreign persons, is to be punished with a prison sentence of six months up to five years. (3) If the criminal act caused the death of a foreign person, the perpetrator is to be punished with a prison sentence of a minimum of one year up to a maximum of ten years."[28] This provision seems to be applied very seldom. The same can be said of Article 104 of the CC on the basis of which charges were brought in four cases and one conviction was pronounced in 2009.

137. According to the Austrian authorities, Articles 104, 104(a) and 217 of the CC as well as Article 116 of the Aliens Police Law were introduced before the entry into force of the Council of Europe Anti-Trafficking Convention and some of these provisions may overlap. Thus in cases of slavery or practices similar to slavery (including servitude) Article 104 of the CC applies, whereas less severe practices of labour exploitation fall within the scope of Article 104(a) of the CC. As regards the relation between Article 104(a) of the CC and Article 116 of the Aliens Police Law, the former provision does not require that the trafficker him/herself exploits the victim, but if this is the case, the conditions of both provisions are met and the perpetrator has to be punished according to both provisions. Further, as regards the relation between Article 104(a) of the CC and Article 217 of the CC, if the elements of both provisions are fulfilled, Article 217(1) applies besides Article 104(a)(1), Article 217(2) applies instead of Article 104(a)(1), and Article 104(a)(4) applies besides Article 217.

138. In addition to the aggravating circumstances enumerated in Article 104(a) (use of force; use of severe threats; in the context of a criminal association; criminal act against a child under 14; endangering the life or causing serious harm to the victim), Article 33 of the CC provides for other aggravating circumstances (such as previous convictions for specific crimes by a national or, under certain conditions, a foreign court) which are applicable to the offence of THB. That said, the Convention requests Parties to consider as aggravating circumstances the fact that the offence of THB was committed against any person under 18 years of age and not 14 as is the case under Austrian law.

139. The Austrian authorities have indicated that the penalties envisaged by the Criminal Code for offences related to THB are meant to be effective, proportionate and dissuasive, as requested by Article 23 of the Convention. They include imprisonment, fines and the confiscation of assets. GRETA notes that, under Article 104(a)(1), the maximum term of imprisonment in the absence of any aggravating circumstances is three years. Further, under certain circumstances, following a criminal conviction, it is also possible to impose an administrative sanction in the form of withdrawal of a business license or closing down of a business (concerning the general revision of the criminal law provisions related to the offence of THB planned by the Austrian authorities, see paragraph 32).

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27 Translation provided by the Austrian authorities.

28 Translation provided by the Austrian authorities.

140. Since 2006, the Austrian Federal Law on the Responsibility of Entities for Criminal Offences provides for criminal liability of legal persons for all types of criminal offences, including THB, in addition to and independently from the criminal liability of the natural persons prosecuted for the same act. The main penalty against a legal person is a fine. The Austrian authorities have informed GRETA that so far, no legal entity has been convicted for THB. The law is currently being evaluated by the Austrian authorities.

141. Article 19 of the Convention requests that each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offence the use of services of a victim of THB with the knowledge that the person is a victim of THB. The authorities have indicated that no provision of this kind exists in Austria. It does not seem that the Austrian authorities have considered adopting legislation criminalising the use of services from a victim of THB.

142. Article 20 of the Convention requires the criminalisation of forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, when committed intentionally and for the purpose of THB. The Criminal Code contains a number of provisions which establish as criminal offences the production or falsification of a document with the intent that it will be used in legal relations to prove a right, a legal relationship or a fact (Article 223(1)), and the use[29] of a false or falsified document with a similar intent (Article 223(2)). The sanction is higher if the document concerned is a public domestic or foreign document (Article 224). According to the authorities, Article 229 of the CC criminalises the fact of suppressing, damaging or destroying a document that the perpetrator may not dispose of with the intention of preventing the document from being used in legal matters as evidence and, according to the authorities, the term “suppressing” is a general clause that covers every act - other than damaging or destroying - that prevents a person from using his/her documents, therefore “suppressing” encompasses the conduct of retaining, removing and concealing a travel identity document of another person as requested by Article 20-c of the Convention. These provisions are not specific to acts relating to travel and identity documents that would be committed for the purpose of enabling THB as envisaged in Article 20 of the Convention. Nevertheless, they are applicable to such situations, as the law does not make exceptions in such cases.

143. **GRETA considers that the Austrian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB. The dissuasiveness of the penalties provided for in Article 104(a) of the CC should be re-examined as concerns the offence of THB in the absence of any aggravating circumstances as well as the offence of trafficking in children between the age of 14 and 18. In particular, GRETA encourages the Austrian authorities to increase the maximum term of imprisonment in Article 104(a)(1) in order to reflect the fact that THB constitutes a serious violation of human rights.**

144. **Further, GRETA considers that the Austrian authorities should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.**

[29] As explained in the Explanatory Report, the Convention is not concerned with the possession of a fraudulent document (paragraph 238 of the Explanatory Report).

b. Investigation, prosecution and convictions

145. As far as investigation is concerned, the Central Unit on Migrant Smuggling and THB of the Federal Criminal Intelligence Service works closely with the regional specialised police units and serves also as a platform for contact with law enforcement officials of other countries. Austria has adopted legislative provisions regulating special investigative measures applicable to the most serious crimes including trafficking in human beings. The Central Unit on Migrant Smuggling and THB centralises all information concerning THB cases and runs a recently established hotline for reporting THB-related cases including anonymously and from abroad. The Austrian authorities consider it important to adopt a proactive approach when it comes to investigating THB as victims may be reluctant to come forward. For example, the Central Unit regularly scrutinizes advertisements in newspapers in order to identify cases of THB into sexual exploitation. Another useful tool is the electronic database thanks to which the unit is immediately informed when minors are arrested by the police somewhere in Austria. This allows the unit to start checking possible connections with THB.

146. GRETA was informed that since 2008 prosecutors are responsible for leading the investigations conducted by the police. Some NGOs have suggested that prosecutors were not given the additional means needed to fulfil this new task and that this change has impacted negatively on the quality of investigations into THB.

147. The Austrian authorities have informed GRETA that the number of prosecutions initiated in THB cases (on the basis of Article 104(a) and 217 of the CC) amounted to 174 in 2008, 134 in 2009, and 167 in 2010. The number of convictions was respectively 27 in 2008, 38 in 2009, and 24 in 2010[30]. According to information from an official reply by the Ministry of Justice to a parliamentary question[31], out of the 38 convictions in 2009, four were based on Article 104(a) and 34 on Article 217 of the CC.

148. Even in the absence of detailed statistical data concerning Article 104(a), all actors in the fight against trafficking consider that prosecution on the grounds of the application of this provision is rather rare. According to the Austrian authorities, this is often due to a lack of evidence, partly linked to a concern that the testimonies from victims and witnesses of THB would not be considered as sufficiently reliable. Testimonies are sometimes evaluated by prosecutors and judges as being not credible or of "insufficient quality" to lead to convictions. This problem has arisen particularly in cases related to THB for the purpose of exploitation of the prostitution of others. Another explanation given by the Austrian authorities is that victims and potential witnesses are not always willing to testify in court, among other reasons for fear of retaliation. In the case of THB for the purpose of domestic servitude in diplomatic households, the immunity of the diplomatic staff concerned needs to be lifted to enable prosecution. In such a case, the prosecutor has to notify the FMEIA which has to take the necessary steps to ask for the lifting of immunity by the relevant State.

149. Witnesses and victims of THB may return voluntarily to their country of origin and therefore not be in Austria during the criminal law proceedings, a fact which renders the administration of evidence before Austrian courts more difficult. Some solutions have been found to facilitate the participation of witnesses who have left Austria during the criminal law proceedings. For instance, the price of transport is reimbursed when the person comes back to testify and the summon which is sent to witnesses indicates clearly that they can receive advance payment for transport in order to facilitate the procedure. Another solution is to give the possibility to testify from abroad by means of a system of a video-conference.

[30] The authorities have indicated that these data come from the register of courts and public prosecutors. Some additional figures for the years 2005-2007 can be found in the First Austrian Report on Combating Human Trafficking.

[31] Anfrage der Abgeordnete Mazg. Johann Maier und GenossInnen and die Bundesministerin für Justiz betreffend „Menschenhandel, Sklavenhandel und grenzüberschreitender Prostitutionshandel – Gerichtliche Erledigung dieser Strafanzeigen (2005-2009)., 6306/J XXIV.GP-Anfrage 25.08.2010.

150. Another reason why Article 104(a) is not yet used in many cases may be that this Article was only introduced recently in the Criminal Code (in 2004), and not all judicial authorities are fully aware of its scope and relevance. These authorities are more familiar with Article 217 of the CC and successful implementation of this provision. However, Article 217 only applies in the field of prostitution and cannot therefore be used when other forms of THB are concerned.

151. Yet another explanation for the low number of convictions for THB and in particular the absence of convictions in cases of labour exploitation other than domestic servitude (for instance in agriculture or tourism) is that the notion of exploitation in the field of labour is not yet sufficiently clearly determined in Austrian case-law[32]. This notion plays a significant role in the definition of trafficking as it constitutes one of the elements of the offence, namely the "purpose" for which the act is committed. It also seems that situations which could amount to cases of labour exploitation are sometimes only seen as illegal work, including by the victims themselves, a factor which does not facilitate criminal law proceedings against THB for the purpose of labour exploitation. Labour inspectors are requested to inform prosecutors when they come across potential cases of THB and it is possible for the police and labour/tax inspectorate to conduct joint operations. However, these possibilities have not really been explored so far in the field of combating THB. The Austrian authorities are taking steps to address these issues by providing training to labour inspectors (see paragraph 69) and tax inspectors (see paragraph 82). Further, a new anti-wage dumping law, adopted in 2011, aims to prevent abuse of temporary and permanent workers from other countries inter alia by raising the penalties for the perpetrators of this form of dumping. The Austrian authorities have stressed that this new law will facilitate the process of identifying cases of labour exploitation.

152. The Austrian authorities have informed GRETA that in co-operation with several NGOs, they have organised a number of training seminars and other education activities for law enforcement officials, prosecutors and judges on detection and prosecution of THB. Judges and prosecutors have also access to training on THB organised at an international level. The First Austrian Report on Combating Human Trafficking gives a list of in-service training and continuing education measures which have often been organised for judges and prosecutors starting from 2007. It is positive that such training sessions are organised with an interdisciplinary approach, as it is important that the different actors of the criminal justice system should be able to share their experience on combating THB. It seems that annual obligatory round-tables between judges, prosecutor and relevant victims' protection NGOs have been initiated by the Federal Ministry of Justice. To GRETA's knowledge, with this exception, all other training sessions and awareness-raising activities are optional and do not seem to attract much interest among the targeted groups. For instance, in 2010 an optional seminar on THB organised by the Federal Ministry of Justice for judges had to be cancelled due to the low number of registrations received. However, the Ministry intends to expand the range of seminars on the issue of THB. The next seminar will be organised in October 2011 in Vienna under the title "Active against THB" in cooperation with LEFÖ-IBF and IOM. Judges and public prosecutors as well as employees of crime victim organisations and other relevant Austrian ministries are involved.

153. An interesting measure is the pilot project launched in 2006 establishing special competence of the Public Prosecutor's Office in Vienna for certain offences, including Articles 104(a) and 217 of the CC. There is also a specialised unit at the Vienna Magistrate Court for certain criminal offences which include THB-related offences. To GRETA's knowledge, there is no similar system in other prosecution offices and the judicial system of Austria does not foresee any system whereby a court would specialise in THB-related offences.

154. **GRETA invites the Austrian authorities to step up the training provided to judicial staff and other relevant actors, including labour inspectors, on the issue of THB and the criminal law provisions applicable.**

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[32] See ExpertInnenkreis "Prostitution" in Rahmen der Task Force Menschenhandel, "Prostitution in Österreich, Rechtslage, Auswirkungen, Empfehlungen; Maßnahmenkatalog für eine (arbeits- und sozial-)rechtliche Absicherung von Personen, die in der Prostitution arbeiten - Arbeitsbericht", Vienna, June 2008, 74 p. at p. 64. This report is in the German language only.

155. **Further, GRETA invites the Austrian authorities to clarify what could constitute exploitation in the field of labour, for instance by drawing a list of indicators that could be used by the relevant authorities to detect cases of THB for the purpose of labour exploitation.**

c. Non-punishment of victims of THB

156. Each Party to the Convention 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 (Article 26). The Convention follows the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking according to which "trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons."[33]

157. The Austrian authorities have indicated that according to Article 10(1) of the CC (Exculpating state of necessity), "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 disproportionally graver than the disadvantage to be averted, and if in the situation of the offender no other conduct was to be expected from an individual attached to the values protected by law". If the requirements of exculpation according to Article 10(1) of the CC are not fulfilled, the provisions on the withdrawal from prosecution (diversion) could be applied. GRETA did not receive clear information as to whether the non-punishment rule has been applied in favour of victims of THB, for instance in relation to illegal border crossing. The main problem in such cases seems to be the fact that the person is not identified as a victim of THB (see paragraph 84) and thus cannot benefit from the non-punishment rule.

158. **GRETA considers that the Austrian authorities should take measures to assess the implementation by the judicial and other relevant authorities of the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, as contained in Article 26 of the Convention. They should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.**

5. Concluding remarks

159. GRETA welcomes the measures taken by the Austrian authorities which favour the prevention of THB both in Austria and abroad. It takes note of the fact that the Austrian authorities consider THB as a serious violation of human rights and human dignity. As co-ordination is essential to an effective action against THB, GRETA also welcomes the existence of the Task Force and the National Co-ordinator as these entities play a role which could yet be reinforced in some aspects, in the success of the Austrian government's efforts against THB. The agreement concluded between the Austrian Government and LEFÖ-IBF in the field of assistance to adult women victims of THB constitutes a good practice, and the co-operation between the authorities and civil society in the field of prevention of THB and protection of its victims should be maintained and strengthened.

160. However, GRETA considers that to reinforce the human rights-based approach to the action against THB, the Austrian authorities should extend the measures taken in order to protect all categories of victims of THB, regardless of the form of exploitation. In this context, more attention should be paid to the needs of child and male adult victims. It is also essential to address the particularly vulnerable situation of victims of THB residing illegally in Austria. This implies that the authorities should make further efforts to protect the rights of foreign nationals concerning the identification procedure, the granting of a recovery and reflexion period as well as a residence permit, and the implementation of repatriation and return programmes. This also entails that the Austrian

[33] See Principle 7 of the Recommended Principles on Human Rights and Human Trafficking.

authorities should continue to co-operate with countries of origin and other countries of destination and/or transit in order to find the best arrangements for assisting victims of THB.

161. As far as effective investigation and prosecution of traffickers is concerned, the Austrian authorities should review the existing criminal law provisions and practice in light of a victim-centred approach. To guarantee the human rights of the victims, the traffickers must be duly prosecuted and punished and all victims should be fully protected and assisted before, during and after the criminal proceedings. Effective access to compensation and legal redress for victims of THB should be a priority for the Austrian authorities.

162. In order to guarantee that the human rights-based and victim-centred approach lies at the heart of the Austrian authorities' action against THB, it is also important that all relevant officials and other actors in the fight against THB are sensitised to the fact that THB is a serious form of human rights violation and that its victims need to be duly protected. The human rights dimension to action against THB should be reflected in all relevant training, education and awareness-raising activities carried out by the Austrian authorities.

163. GRETA invites the Austrian authorities to keep it regularly informed of developments as regards the implementation of the Council of Europe Anti-Trafficking Convention and looks forward to continuing its good co-operation with the Austrian Government for achieving the purposes of this Convention.

Appendix I : List of GRETA's proposals

Comprehensive approach and co-ordination in the fight against THB

1. GRETA considers that the Austrian authorities should take measures to reinforce the comprehensive approach to the fight against THB, by ensuring that the action undertaken encompasses all categories of victims (in particular that it is extended to children and men) and all forms of THB (including for the purpose of labour exploitation).

2. Further, GRETA considers that the Austrian authorities should reinforce co-ordination and co-operation between the federal government and the governments of the *Länder* with a view to ensuring that all aspects of THB and all regions of Austria are integrated in the efforts undertaken to combat THB.

3. GRETA also encourages the Austrian authorities to take measures to allocate and secure appropriate funds in the federal budget and the budgets of the *Länder* dedicated to action against THB, in consultation with all relevant actors, and reflecting the actual needs.

International co-operation

4. GRETA encourages the Austrian authorities to continue and further develop their co-operation with all relevant countries at the law enforcement and judicial level as well as in the field of preventive measures against THB.

Data collection

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

Research

6. GRETA considers that the Austrian authorities should put stronger emphasis on the aspect of research programmes to prevent THB. In particular, GRETA invites the Austrian authorities to continue supporting research on the nature and extent of the THB, in particular for the purpose of labour exploitation as such, in order to have a better grasp of the problems and to take appropriate action to tackle these forms of THB.

Awareness raising and education

7. GRETA considers that the Austrian authorities should take further measures to raise awareness on the problem of THB, in particular as regards child trafficking and trafficking for the purpose of labour exploitation. Awareness-raising campaigns should target among others foreign nationals coming to work in Austria, employers and employers' associations, trade unions, social workers, recruitment agencies and other intermediaries, as well as labour and tax inspectors.

Identification of victims of THB

8. GRETA considers that the Austrian authorities should develop training in the identification of victims of THB for staff working in detention centres for irregular migrants.

9. GRETA also invites the Austrian authorities to continue providing training of the identification of victims of THB to all relevant officials, in particular law enforcement officials, border guards, immigration officials, staff working in refugee centres, child and youth welfare institutions, and diplomatic and consular staff.

10. GRETA considers that the Austrian authorities should take further measures to:

- adopt a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, for example by organising regular visits by labour inspectors to work sites (e.g. agricultural and construction sites) commonly using migrant workers;
- secure the identification of victims of THB held in police detention centres prior to their deportation, by giving access to such centres to specialised NGOs and enabling detained irregular migrants to have access to legal assistance;
- ensure that identified victims of THB are duly referred for assistance and are informed of their rights and of the procedures under which they can seek protection, in a language they understand.

Assistance measures

11. GRETA considers that the Austrian authorities should take further measures to:

- further develop co-operation with governmental and non-governmental organisations in order to ensure the provision of protection and assistance to all victims of THB. In particular, victims outside Vienna should be guaranteed access to protection and assistance measures, for instance by establishing a network of contact persons/offices in each *Land* which can be consulted by victims who live there;
- facilitate access to general health care for potential victims of THB who are still in the process of being identified;
- create an assistance system adapted to the specific needs of men victims of THB.

12. Further, GRETA urges the Austrian authorities to develop a nationwide system for the identification of and assistance to child victims of THB by establishing co-ordination and contacts between all the relevant authorities and in particular the authorities of the *Länder*. Solutions should be found for emergency assistance particularly in terms of shelter accommodation, but also medium and long term support programmes tailored to the needs of children.

Recovery and reflection period

13. GRETA considers that the Austrian authorities should take measures to:

- establish clearly in law a recovery and reflection period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim of THB and during which period it is not possible to remove the person from the country's territory;
- raise the awareness of law enforcement officials of the need to respect the recovery and reflection period and to inform potential victims of THB of its existence and implications;
- guarantee to persons who are entitled to the recovery and reflection period all the assistance measures provided for in Article 12 (1) and (2) of the Convention.

Residence permits

14. GRETA considers that the Austrian authorities should continue to take steps to facilitate the access of victims of THB who are granted a residence permit to vocational training and work.

Compensation and legal remedies

15. GRETA considers that the Austrian authorities should adopt measures to facilitate and guarantee access to compensation for all victims of THB, including those who were residing illegally in the country at the time of the offence by taking due account of the results of the research on THB victims' access to compensation in Austria.

Protection of witnesses and victims

16. GRETA considers that the Austrian authorities should take steps to extend the protection measures for victims of THB after the end of the criminal law proceedings, and particularly when the perpetrator is released from detention.

17. GRETA also encourages the Austrian authorities to make full use of the witness protection programme in respect to victims of trafficking and/or their relatives where necessary.

Repatriation and return of victims

18. GRETA considers that the Austrian authorities should develop a clear institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their safety, dignity and protection and, in the case of children, by fully respecting the principle of the best interest of the child.

Substantive criminal law

19. GRETA considers that the Austrian authorities should conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning THB. The dissuasiveness of the penalties provided for in Article 104(a) of the CC should be re-examined as concerns the offence of THB in the absence of any aggravating circumstances as well as the offence of trafficking in children between the age of 14 and 18. In particular, GRETA encourages the Austrian authorities to increase the maximum term of imprisonment in Article 104(a)(1) in order to reflect the fact that THB constitutes a serious violation of human rights.

20. Further, GRETA considers that the Austrian authorities should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.

Investigation, prosecution and convictions

21. GRETA invites the Austrian authorities to step up the training provided to judicial staff and other relevant actors, including labour inspectors, on the issue of THB and the criminal law provisions applicable.

22. Further, GRETA invites the Austrian authorities to clarify what could constitute exploitation in the field of labour, for instance by drawing a list of indicators that could be used by the relevant authorities to detect cases of THB for the purpose of labour exploitation.

Non-punishment of victims of THB

23. GRETA considers that the Austrian authorities should take measures to assess the implementation by the judicial and other relevant authorities of the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, as contained in Article 26 of the Convention. They should be prepared to readjust on the basis of such an assessment the content and/or the application of the relevant provisions with a view to addressing any shortcoming identified.

Appendix II: List of the national authorities, other public bodies, non-governmental organisations and intergovernmental organisations with which GRETA held consultations

National authorities and other public bodies

- National Coordinator on Combating Human Trafficking
- Task Force on Combating Human Trafficking
- Federal Ministry of Justice
- General Public Prosecution Office
- Higher Regional Court of Vienna
- Federal Ministry for European and International Affairs
- Federal Ministry of Labour, Social Affairs and Consumer Protection
- Federal Ministry of Economy, Family and Youth
- Federal Ministry for Women and Civil Service
- Federal Ministry of the Interior
- Federal Ministry of Defence and Sports
- Federal Ministry of Finance
- Federal Ministry for Education, Arts and Culture
- Austrian Parliament
- Austrian Development Agency
- Local Authorities:
    - Vienna Municipal Department 35
    - Drehscheibe Centre, Vienna

Non-governmental organisations and other organisations

- End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT)-Austria
- EXIT
- Intervention Centre for Migrant Women Affected by Human Trafficking (LEFÖ-IBF)
- Ludwig Boltzmann Institute for Human Rights

Intergovernmental Organisations

International Centre for Migration Policy Development (ICMPD)
IOM Vienna

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 authorities of Austria 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 7 July and invited them to submit any final comments within one month. The Austrian authorities' comments, submitted on 5 August 2011, are reproduced hereafter.



Federal Ministry for
European and International Affairs

Final Comments to the Report on the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

(co-ordinated by the Austrian Federal Ministry for European and International Affairs, August 2011)

Austria would like to acknowledge receipt of the final report drawn up by the Group of Experts on Action against Trafficking in Human Beings (GRETA) containing both conclusions on the measures taken by Austria to implement the provisions of the Convention as well as proposals concerning the way in which this implementation may be strengthened.

In preparation of the present final report, the Austrian government responded to the questionnaire provided by GRETA and received a delegation of GRETA in the framework of a country visit which took place from 16 to 19 November 2010.

The present "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria" is the result of a very constructive dialogue and co-operation between GRETA, the Austrian Authorities and representatives of Civil Society.

Austria was one of the first countries to have deposited the instrument of ratification of the Convention on 12 October 2006. In implementing the Convention, Austria has always focused on the human rights perspective and the protection of victims. In her strategy to combat human trafficking Austria has adopted a co-ordinated and multidisciplinary approach encompassing the three P's: Prevention, Protection and Prosecution.

GRETA confirmed that the Austrian authorities have taken a number of significant measures to combat trafficking in human beings. However, GRETA also stressed that further efforts are needed to implement all aspects of the Convention. In this respect, Austria would like to highlight a few areas which are also mentioned in the present report.

- Austria will continue her efforts to introduce a comprehensive and consistent data collection mechanism in order to facilitate information sharing among the main actors in the combat against Trafficking in Human Beings (THB).
- Measures to reinforce co-ordination and co-operation between the Federal Government and the *Länder* governments will be further strengthened in the near future.
- Regarding international co-operation, the new Austrian Action Plan on Combating Human Trafficking for the period 2012-2014 will encompass concrete actions to intensify the co-operation with neighbouring countries as well as with countries of origin.
- Austria would like to stress that all relevant officials are sufficiently trained with regard to the identification of victims of THB. However, Austria also shares the view expressed by GRETA that further measures are necessary, in particular when it comes to the identification of victims in the field of THB for the purpose of labour exploitation or child trafficking.
- Austria has put the strengthening of the rights of victims of THB high on its agenda. Assistance measures, regulations on residence titles, access to the labour market for victims of THB, compensation schemes, witness protection programmes as well as repatriation and return programmes are evaluated and discussed in the framework of the Austrian Task Force on Combating Human Trafficking on a regular basis. In this respect, Austria welcomes the detailed proposals of GRETA concerning the improvement of the situation of victims of THB in Austria.

- Regarding material criminal law, Austria fully complies with the provisions of Article 4(a): every conduct explicitly mentioned in Article 4 (a) of the Convention was established as a criminal offence in Austrian Law. However, in the process of implementing the new Directive of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims (adopted in April 2011), the effectiveness of the relevant sections in the Austrian Criminal Code will be evaluated and amended accordingly.
- As regards prosecution, the Austrian Authorities will continue to focus on awareness-raising and training activities for judicial staff and other relevant actors, including labour inspectors, on the issue of THB.

The present report offers a valuable opportunity for Austria to further improve the Austrian policies and strategies to combat human trafficking.

Austria is interested in continuing her fruitful cooperation with GRETA and is prepared to regularly inform GRETA on developments concerning the national implementation of the Convention.

Vienna, 5 August 2011

On behalf of the Federal Minister for European and International Affairs:



Ambassador Dr. Elisabeth Tichy-Fisslberger

National Coordinator on Combating Human Trafficking