

AUSTRIA¹

The phenomenon

Austria is both a destination and a transit country of trafficking in human beings. No official and comprehensive statistics are currently available on the scale and forms of trafficking occurring in the country. Nevertheless, it is a fact that foreign women, men, and children are being trafficked and exploited in different sectors. Trafficking for the purposes of sexual exploitation and trafficking for domestic servitude in diplomatic households are the most commonly identified forms, which generally involve women and girls. Only few cases of trafficking for purposes of forced au pair work, forced marriage, begging, or petty crimes have been identified; while trafficking of men for labour exploitation in agriculture and in the construction sectors is suspected to take place, even though no cases have been officially identified yet.

Trafficked women are mostly between 19 and 35 years old and generally come from Bulgaria, Romania, Hungary, and Nigeria, but also women from Slovakia, Ukraine, Philippines, Russia Serbia and other Latin American, Asian, African and European countries have been identified.

National anti-trafficking legislation and institutions

Cross-border trafficking for the purpose of sexual exploitation has been part of the Austrian criminal code (art. 217) since 1970s. In 2004, the anti-trafficking legislation has been amended (art. 104a) to comply with the definition of the Palermo Protocol. According to this article, offenders can be sentenced to a term of imprisonment of up to 10 years. Child trafficking is

also punished through §104a. §116 of the Alien's Police Act – which punishes the exploitation of foreigners – is also used to punish trafficking in persons.

In Austria, two National Action Plans against trafficking in human beings have been developed by the Task Force *Menschenhandel* (Human Trafficking Task Force), the intergovernmental national coordination structure, for the following time periods: 2007-2008 and 2009-2011. NGOs such as Lefö-IBF, ECPAT and BIM (Ludwig Boltzman Institute for Human Rights) were structurally included in the development process of both plans. The implementation of the first National Action Plan has been assessed in the report “Human Trafficking” (2008).

No National Rapporteur on trafficking in human beings or any equivalent mechanism has been appointed in Austria yet.

Identification, protection of rights, and referral

In the case of Austria, the Federal Ministry of the Interior is formally responsible for the identification of trafficked women. The NGO Lefö-IBF acts on behalf of the Federal Ministry of the Interior and the Women's Directorate at the Federal Chancellery and can therefore contribute to the formal identification of trafficked women.

Still, no official published list of indicators to be used for the identification of trafficked persons exists. The Federal Ministry of Economy, Family and Youth though published indicators for child trafficking. In the case of trafficking in women, a list of indicators distributed and discussed during police trainings, which are carried out in co-operation with an expert of Lefö-IBF.

No formal standard procedures have been set up in positive law concerning

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the referral of trafficked persons. The Police of Vienna introduced an internal order that states that Lefö-IBF is to be contacted if a woman or a girl is suspected to be trafficked.

An internal directive to the police on the issue of granting a reflection period exists. Still, a reflection period has not been implemented in positive law, so that officials are not obliged to grant it.

A differentiation between short-term and long-term assistance is not made. In Austria, all trafficked women are granted access to the same support.

Lefö-IBF offers them a shelter, access to medical and psychosocial support, legal advice and support as well as psychosocial and legal support in criminal procedures. Medical assistance for trafficked women without a residence permit in Austria is only possible through the co-operation with other NGOs.

There are no specialized shelters for trafficked children or men.

Since 1998, trafficked persons have the option to apply for a residence permit on humanitarian grounds, if they commit to testify in a civil or criminal court procedure. In 2009, the law on residence permit was modified. The requirement for obtaining a residence permit now is the opening of a civil or criminal court procedure.

The new Austrian Law on Residence and Settlement of Foreigners NAG §69a not only grants the right to an application, but also allows for appeals. As long as a civil or criminal court procedure is in progress, the renewal of the residence permit is possible. Residence permits are granted for a period of at least 6 months; daily practice proves, however, that in most cases, they are automatically granted for a period of one year.

If any security authority or the aliens' police states that repatriation is

not possible on a continuous basis (due to danger in the country of origin) or that the case is already fully investigated, according to NAG §43 or §44, residence can be granted.

Lefö-IBF organizes the return of the trafficked persons who express the will to go back home. Although within the EU well-established networks already exist, Lefö-IBF only currently works on the development of quality standards for risk assessment to be carried out before a trafficked woman leaves Austria. So far Lefö-IBF has mostly been able to organize a return on an *ad hoc* basis. The current National Action Plan sets that assisted voluntary return should be carried out within the European Return Fund and an adequate case monitoring should follow. In the case of men and children, assisted voluntary return to the origin country can mainly be realized through return programme offered by IOM Austria.

Access to justice

The Code of Criminal Proceedings clearly states that victims of violence are to be referred to the accredited organisations for the protection of victims.

Lefö-IBF is the NGO assigned by the Federal Ministry of Justice to offer support in criminal procedures to trafficked women and girls. The NGO, therefore, supports and provides psychosocial counseling, while specialized lawyers grant legal counseling and assistance during the legal proceedings.

According to the Victims of Crime Act, trafficked persons are to be granted free access to psychosocial support, legal advice and support in criminal procedures. Based in the Victims of Crime Act, trafficked persons, who legally resided in Austria when the act of violence was committed, receive compensation for

the loss of income or alimony, medical rehabilitation, measures such as psychotherapy, orthopaedic care such as physiotherapy, and professional rehabilitation such as financing of vocational training and social rehabilitation, if their country of origin is not willing to pay for it.

There is no obligation for trafficked persons to personally testify in the main trial or to even be present. If facts are already proven, testimonies can be made anonymous. If trials were dismissed or suspended in court, the trafficked person has to be informed. In special cases, the trafficked person can take on a new identity. In criminal court proceedings, the state itself acts as prosecutor and carries all costs of the trial. In the case of a civil court procedure, the trafficked person may bear the costs, which can be significant. Financial support to file a suit for their employment rights can be sought with the Chamber of Labour (*Arbeiterkammer*).

Applying the Criminal Code as well as the Civil Code, compensation for the damages victims have suffered can be included into a court sentence on the defendant. There is evidence that this practice is being successfully applied in practice, albeit using the police to confiscate assets.

Prevention

In Austria, Lefö-IBF has carried out some awareness raising campaigns against human trafficking. On the occasion of its 10th anniversary, Lefö-IBF held a press conference as well the symposium “Work- migration-rights; strategies against trafficking in women”. Every year, folders on women trafficking are being distributed to embassies and consulates receive training. In 2006 the Movie “Kurz davor ist es passiert” (It happened right before) by Anja Salomonowitz addressing the issue of

human trafficking was produced in cooperation with Lefö-IBF.

The Federal Ministry of Economy, Family and Youth published folders on child trafficking. Another publication of the Austrian state was the NAP by the Task Force Human Trafficking. Further on the Task Force Human Trafficking created folders on human trafficking.

On the occasion of the 2009 EU Day against Trafficking in Human Beings, the Federal Ministry of the Interior, the Women’s Directorate at the Federal Chancellery and others organized a discussion platform “Together against Human Trafficking”.

In 2008, Austria contributed to the organisation of the UN-Gift Vienna Forum to Fight against Human Trafficking and to the Third World Congress against Sexual Exploitation of Children.

Training programmes on the issue of trafficking in women are being carried out by Lefö-IBF in co-operation with specialized police units, including border authorities.

ECPAT and the Federal Criminal Agency carried out trainings for, *inter alia*, the police, youth welfare, shelters for women, refugee centres.

Lefö-IBF also regularly holds trainings for judges and prosecutors.

Monitoring and evaluation system

The evaluation of the anti-trafficking measures carried out in Austria is foreseen in the 2009-2011 National Action Plan against trafficking in human beings. The Task Force carried out a National Report on Human Trafficking in 2009. This report cannot be seen as equivalent to an independent scientific evaluation study, though. The National Report on Human Trafficking was published by the Federal Ministry of the Interior and the Federal Ministry for European and International Affairs.

Recommendations

- Even though the police is currently more informed and prepared about human trafficking also due to the sensitization work carried out in the past years, improvement on the identification of trafficked persons is still needed.
- The current 30-day reflection period should be extended and, most of all, it should become a standard procedure. In addition, the residence permit should be unconditionally granted and not be dependant on the victim's willingness to testify in court.
- Facilities for the protection and support of trafficked children and men need to be developed urgently.
- Providing more room for legal migration and access to the labour market is crucial for the prevention of human trafficking.
- A National Rapporteur on Human Trafficking should be appointed to usefully contribute to the fight against trafficking in Austria.

Update New Phenomenon (from 2010/2011)

- Women (mainly from Nigeria and other African countries) who were trafficked into another European country where they applied for Asylum and needed to escape from this country as their perpetrators are located there as well. On the run they come to Austria. After the Dublin-proceedings those women will be send back to the 1st European country where they already applied for Asylum. But the offenders are there so the risk for them is very high. It is very challenging to deal with this new situation as there are no common and protecting rights in this regard.
- There was a lot of work done by LEFÖ in cooperation with the Austrian Foreign Ministry to sensibilise public for exploitation of domestic workers, mainly in diplomatic households. Therefore the number of identification of women (especially from the Philippines and Indonesia) being exploited as domestic workers rose up.

In this regard LEFÖ also started - with support of the Chamber of Labour - labour law proceedings with the women to get the outstanding salary back.

§69a can get now more easily a working permission as the labour market check falls away. But they still need to find an employer who is willing to register them.

- Since Austria's labour market was finally opened to the EU-8 countries LEFÖ is observing if there are any changes in the trafficking and exploitations practices. So far there are none. But as Austria was one of the last countries to open its labour market it might be too soon to make any conclusions yet. Therefore LEFÖ keeps on focusing on these new developments in future time.
- The Austrian foreign and asylum law changed again in July 2011 and got again more restrictive.
- A new law on prostitution was passed in November 2011 in Vienna. Until now LEFÖ is observing which consequences and effects this new law has on women being trafficked into prostitution, but for now it is to early to make any conclusions.
- Labour laws changed in July 2011. Women from third countries who have the legal residence permit